PREFACE

This book is based on three key assumptions: First, to represent clients effectively, lawyers must be skilled negotiators. Second, lawyer negotiation differs from direct negotiation between parties because lawyers are professional agents representing clients and therefore have unique responsibilities and potential conflicts. Finally, a negotiation textbook should be interesting to read; bring together the latest, best, and most provocative writing on negotiation; and lend itself to interactive teaching.

Our book, therefore, has a different perspective from most other texts on negotiation. It focuses on legal negotiation—the settling of substantial legal claims in which the disputants are represented by attorneys. Although the emphasis is on negotiating settlements of disputes, negotiation of deals and transactions is also covered. This book includes a chapter on obstacles to reaching agreements and assisted negotiation. Another chapter covers how to negotiate in a mediation. The reality is that lawyers now regularly use mediation to conclude difficult negotiations of litigated disputes and need to understand how mediation works and how to use it as an advantageous negotiation tool to best meet their clients’ needs. Most students enrolling in a negotiation course will not take a separate mediation course, and if they do it may focus on how to be a mediator rather than an advocate in the process, as emphasized here. This book concludes with a chapter that asks if there are situations in which you should not negotiate and examines settlement policy.

The text is practical while grounded in theory, and lawyer-focused but also enriched by interdisciplinary material. This book asks many questions and poses problems designed to provoke critical thinking about the readings and stimulate class discussion. Accompanying role-plays and exercises provided in the Teacher’s Manual allow students to apply the readings and bring the text material to life. These role-plays center on the types of disputes in which students are likely to find themselves as practicing lawyers—cases with legal claims or issues, rather than purely personal conflicts or neighborhood quarrels.

This third edition of *Lawyer Negotiation* follows the same organization that proved popular in prior editions and contains the same core elements. We have updated some of our narrative and included excerpts from the most recent writings on negotiation. Readings have been carefully edited to keep the material interesting and lively. Additional notes and examples extend the topic coverage, including game theory, heuristics, psychological traps, the role of emotions, decision analysis, neuroscience, computer software and apps, apologies, collaborative law and mindfulness. We also take advantage of technology, and of students’ increasing preference for electronic and video formats. Items that have traditionally gone into a paper appendix now appear on the book’s Web site. This makes this book easier to carry without sacrificing depth, allows readers to download specific codes or standards for discussion. The Web site also provides
streaming videos of negotiations and mediations to illustrate some of the points and techniques presented in the readings.

The book’s fourteen chapters are designed for a semester course with readings assigned before class so that class time can be devoted to exercises, role-plays, and discussion. The first chapter explores the nature of conflict and the second the role of perceptions and settlement psychology. We then analyze in chapter 3 both competitive and cooperative negotiation, and in chapter 4 provide help in combining the approaches and choosing a comfortable style. After setting out an analytic structure to help students make sense of negotiation and understand styles, we offer in chapters 5 through 7 a step-by-step explanation and comparison. The negotiation process and outcome-enhancing skills are covered in these three chapters, which provide instruction from preparation through writing the agreement. Following a chapter on telephone and cyber negotiation, students are guided in chapter 9 to explore issues of gender, culture, and race. Chapters 10 and 11 then examine negotiation ethics and the law of negotiation. Obstacles to negotiation and the role of mediation are reviewed in chapter 12, and how to most effectively negotiate in mediation is then presented in chapter 13. Finally, in chapter 14, there is an exploration of negotiation limits and policy.

A note about form: To focus discussion and conserve space, we have substantially edited the readings and have deleted most footnotes, references, and case citations. Deletions of material are shown by three dots or ellipses, but omitted footnotes and other references are not indicated. Cited authority in the text usually appears only by author’s last name and year of publication, with a full citation found in the list of references.

This book is the culmination of our combined decades of teaching and training negotiation in legal contexts. Although our acknowledgments follow, we are especially grateful to the many students and lawyers whom we have had the pleasure of teaching negotiation and from whom we have learned much about what works in a negotiation class. We are also thankful to the professors who have suggested corrections and improvements for this new edition.

January 2016

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