In the decade since this book’s first edition* was introduced, the use of mediation — especially in legal disputes — has grown enormously. Knowledge about this often-mandated process — once seen as a threat by many legal professionals — is now a staple in the diet of virtually every U.S lawyer. Mediators, historically embroiled in debates over what constitutes “good” or “real” mediation, have, despite their continuing differences, come to recognize the many forms that this process can take and the choices they face in deciding which approach is best suited to each dispute. Those charged with finding ways of resolving or reducing conflict in an increasingly polarized world have come to recognize how skillfully-guided discussions can address disputes in ways that may elude courts and other traditional justice mechanisms — sometimes averting self-help or even violence.

In preparing this third edition, we have continued to monitor new developments in mediation research, policy and practice, including the increasing “lawyerization” of the field. This has led us to incorporate new material that challenges the conventional model of opening the mediation process with everyone in the room and discusses the pressure some legal representatives place on neutrals to dispense with joint sessions entirely.

We have also added new text and video on human (including lawyers’) biases, their impact on judgment, and how the mediator’s persuasion can help participants make better decisions about their conflicts. This research suggests that studying and practicing mediation is potentially useful for all law students, not just those who wish to become mediators, offering the hope of improving their future judgment in traditional client representational tasks such as advising, negotiating, and advocacy.

This third edition also takes into account changes in law school skills curricula in the wake of new regulations requiring all students to enroll in experiential courses and be assessed in them. New review (“formative assessment”) problems appearing in most chapters are designed to help students and instructors measure student progress in mastering course material as the semester progresses. We welcome your feedback on how well these problems work in improving and tracking student learning.

Finally, a personal co-author note: It has been nearly twenty years since the concept for this multimedia text was hatched. The following that our book has

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* We include below the Preface to the 2008 first edition as a statement of our objectives in writing this book. Those goals that have not changed.
enjoyed in law schools, non-law classrooms, and training settings and that has allowed us to reach a third edition has been enormously satisfying for us professionally. But even more gratifying has been the close friendship that this lengthy collaboration has spawned. For that indirect gift we will be forever grateful — to the thousands of students who chose to study mediation, as well as to all the faculty adopters who chose to assign them our text.

Thank you.

Doug Frenkel
Jim Stark
June 2018