

CURRENT LITERATURE IN ADR

By Sherman D. Fogel

The American presidential election season is usually marked by the publication of a plethora of “insider tells all” books, each usually intended to serve the particular political agenda of the author or of some political party or advocacy group with whom the author is identified. As a result, it is very tempting to just dismiss them all as pure political propaganda. In doing so, however, one will miss the few rare gems of objective insight and analysis that also reach the shelves during the election season. One such jewel is *Statecraft: How to Restore America’s Standing in the World* by Dennis Ross.

Dennis Ross served on the National Security Council staff during the Reagan administration and as the chief peace negotiator and Middle East envoy during both the George H. W. Bush and Clinton administrations, playing a leading role in shaping U. S. involvement in the Middle East for more than 12 years. In *Statecraft* Ambassador Ross describes and analyzes what the United States did well, where it failed and why, using concrete case studies from the administrations of Bush I, Clinton and Bush II, and finishes with a discussion of the proper application of statecraft in dealing with the most challenging foreign policy issues facing our country today. Although Ross is a self-described neoliberal and is currently a foreign policy advisor to Barack Obama, he has served both Republican and Democratic Presidents, and any objective reader should find his analysis in *Statecraft* to be fair and impartial.

Why is a book on contemporary American foreign policy being reviewed in a column on current literature in alternative dispute resolution? Because Ross says “negotiations are probably the most essential tool of statecraft,” and then devotes four chapters in the middle of his book to an in depth discussion of negotiation and mediation. In the final analysis, Ambassador Ross is, like so many ADR Section members, just another negotiator and mediator, albeit one who performs on a very large stage and manages conflicts that may involve the survival of our world as we know it.

Anyone who deals with conflict management and dispute resolution in the private sector and reads *Statecraft* will be struck by the similarities between what Ross does in the world arena of foreign policy negotiation and mediation and what he or she does in private practices negotiating and mediating private disputes. The threat of the use of force and going to war by nation states is remarkably analogous to the way private parties and negotiators often use the threat of going to court. The way Ross describes statecraft as involving first a determination of the state’s objectives, and then the matching of available means to those objectives in a reality-based assessment, sounds exactly like the way

mediators in the private sector regularly try to help the parties rethink the way they see their real interests and realistically assess possible solutions.

Ross discusses the American approach to negotiations, both with our friends and with our adversaries (including state and non-state actors), and then offers the following twelve rules that he describes as a “good guide to the ‘how’ of negotiations.”

1. Know what you want, know what you can live with.
2. Know everything there is to know about the decision maker(s) on the other side.
3. Build a relationship of trust with the key decision maker.
4. Keep in mind the other side’s need for an explanation.
5. To gain the hardest concessions, prove you understand what is important to the other side.
6. Tough love is also required.
7. Employ the good cop-bad cop approach carefully.
8. Understand the value and limitations of deadlines.
9. Take only calculated risks.
10. Never lie, never bluff.
11. Don’t paper over differences.
12. Summarize agreements at the end of every meeting.

He then notes that, although mediation involves negotiations and the negotiation rules also apply to mediation, mediation is not about resolving our own disputes with others, but about using negotiation techniques to try to resolve conflicts between others. He then provides the following eleven guidelines for mediation to “compliment the rules for negotiations.”

1. Identify shared objectives.
2. Assess what can be negotiated, and frame the talks.
3. Sensitize each side to the other’s concerns and grievances.
4. Think outside the box when forging critical compromises.
5. Make sure the parties demonstrate their seriousness.
6. Get each side to adjust to reality.
7. Set aside each side’s principles and focus on practicalities.
8. Make agreements where you can.
9. Act swiftly to contain crises.
10. Use anger as a tool – but use it rarely.
11. Put your drafts on the table.

Although it is beyond the scope of a short book review to examine the rules and guidelines in any depth, Ross discusses each of the negotiation rules

and mediation guidelines in some detail, with examples from his incredible real world experiences. Anyone interested in conflict management and dispute resolution will find a veritable gold mine of useful information in the four chapters expressly dedicated to negotiation and mediation. If, in addition, one has any interest in foreign policy and diplomacy in the modern world, *Statecraft* is profoundly thoughtful and absolutely compelling. For negotiators and mediators who are immersed in the day to day resolution of seemingly mundane disputes in the private sector, they should enjoy seeing how so many of the same dispute resolution principles and practices they regularly employ are used in the context of international diplomacy.

© 2008, Sherman D. Fogel. Sherman Fogel is a principal in the Phoenix law firm of Sherman D. Fogel, P.A., and is the current Chair of the Alternative Dispute Resolution Section. He frequently speaks on arbitration and mediation at programs sponsored by the American Arbitration Association and the State Bar of Arizona. He has been selected for inclusion in the 2008 and 2009 lists of *The Best Lawyers in America* in Alternative Dispute Resolution. Mr. Fogel can be reached at 602-264-3330 or mede8@msn.com.