Hitting the Trifecta: Textbook, Bibliography, and Road Map

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Introduction

Some years ago, I remember having all my favorite and cherished photographs — of family, friends, pets, vacations, and landscapes — dutifully sorted into towering piles, awaiting the magic day when I finally had time to arrange and categorize them all into shiny photo albums. Each photo had a special and unique story, and had been lovingly collected. The piles were cumbersome, took up a lot of space, and were difficult to tote around if I wanted to show them to anyone. The magic day of organizing the piles did eventually arrive, but like so many other things, it looked different than I had expected. The creation of Shutterfly, Snapfish, and other photograph archiving and sharing services now allow me the luxury of keeping all my photos online in one place, consolidating them into a one-stop shop.

Similarly, since 1998, I have taught dispute systems design (DSD) seminars at several universities. Each semester, I have dutifully carted my cherished, carefully selected, but ever-expanding collection of DSD teaching materials, articles, resources, and simulations to class in clear green plastic file boxes. Thankfully, a development similar to Shutterfly or Snapfish will now allow me to abandon those boxes and teach from the

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Upon close reading and reflection, it seems to me that Designing Systems is much more than it purports to be. Not merely the first DSD textbook, it is also the first compilation of DSD resources, as well as the first comprehensive cataloguing of challenges facing the field. As textbook, bibliography, and road map, Designing Systems hits the trifecta. Whether the reader is a professor or a student, a researcher or a practitioner, Designing Systems has earned its place in the winners’ circle and will be an invaluable resource.

The history of DSD is as ancient as people sitting in circles and deciding how to handle the conflicts that have disrupted their lives, torn apart their communities, or dampened their spirits. Whether through gacacca in Africa or community circles in the Yukon, people have always found ways to manage recurring streams of conflicts. What has happened only relatively recently, however, are deliberate efforts to study, explore, categorize, and improve those processes by which countries, communities, organizations, groups, and individuals knowingly create systems to manage conflict and resolve disputes.

The first book in the field, Getting Disputes Resolved: Designing Systems to Cut the Cost of Conflict, by William Ury, Jeanne Brett, and Stephen Goldberg (1988), set out a model of resolution based on interests, rights, and power. It arose from the authors’ attempts to resolve disputes in the coal industry. Almost eight years elapsed before the next book, Designing Conflict Management Systems: A Guide to Creating Productive and Healthy Organizations, by myself and Christina Sickles-Merchant (1996), was published. In it, we offered a taxonomy for understanding systems and an interest-based model for working with organizational stakeholders. Two additional books followed: Controlling the Cost of Conflict: How to Design a System for Your Organization, by Karl Slaikeu and Ralph Hasson (1998) and Emerging Systems for Managing Workplace Conflict: Lessons from American Corporations for Managers and Dispute Resolution Professionals, by David Lipsky, Ronald Seeber, and Richard Fincher (2003). All four DSD books from this era were grounded in an organizational context. In addition, two major DSD symposia at law schools brought together practitioners to explore research practices and emerging issues: both the Harvard Negotiation Law Review and the Ohio State Journal of Dispute Resolution sponsored symposia in 2008.

Now, almost twenty-five years after publication of the first DSD book, Designing Systems is the latest addition to the field. It is not only the culmination of previous work, but it is also the beacon that will guide the field in its continuing evolution.
Winner of the First Race: Designing Systems as Textbook

As early as 1998, some universities began to offer courses in DSD. That year, Columbia University Teachers’ College in New York City offered a weekend “bookend course.” The seminar was organized so that the first weekend was an introduction to DSD theory and principles, followed by a clinical component in which students worked in an actual organization doing assessment and DSD work. During the second weekend, students, acting as consultants, presented their findings and recommendations to senior leadership of the organization in the classroom. Some schools, such as Stanford Law School, the University of Missouri Law School, and Georgetown Law School, offer more traditional classroom DSD courses, which often make use of simulations, group exercises, or guest speakers. Others, such as Harvard Law School, offer a hybrid model that comprises both a traditional classroom course and a semester-long DSD clinic in which students work with institutional clients.

Designing Systems is quite explicit in identifying its primary target audience (p. 7): “You are the primary target for this book if you are a student with a background in dispute resolution and interested in making design a part of your future work and community involvement.” In the preface, the authors state: “We hope this book will aid in preparing and encouraging a generation of individuals to bridge differences” (p. xvii). They note further: “While imagining the audience for this book to be broad, we wrote it in a special way to accompany our own teaching in dispute systems design and in running a skills-based clinic on stakeholder assessment, dispute systems creation, implementation, and evaluation in a law school environment” (p. xix). (Although this book is targeted toward law students, it could easily be used in other disciplines, such as public policy or international relations.)

As both a classroom and clinic text, Designing Systems has five core strengths:

1. It is process-focused.
2. It is student/user friendly and highly visual.
3. It is practical in its approach and addresses planning, assessment, implementation, evaluation, and use of technology.
4. It describes and critically examines six real-life systems design examples that are described throughout the book.
5. It offers hypotheticals, exercises, and supplemental materials to stimulate analysis and discussion.

Perhaps the most unusual feature of Designing Systems, which sets it apart from other law school texts, is that it is highly focused on process:
the how and why of DSD. The authors clearly made a deliberate choice not to write or reinvent the classic alternative dispute resolution (ADR) text. In fact, they include no discussion of the various ADR processes anywhere in the book. Rather, Part One is “Setting the Stage,” Part Two is “The Planning Process,” and Part Three is “Key Planning Issues in More Detail.”

Topics include taking design initiative, assessing stakeholders and goals, gaining acceptance, exercising creativity, seeking ways to overcome barriers, engaging the participants, and enhancing relationships. A shaded box of “Designing Steps” in the left margin alerts students to which step in the design process is being discussed. The authors are to be commended for adopting this unique process-oriented approach to a law school text and for recognizing that the substance of DSD is highly context-specific and thus difficult to synthesize in a text or to teach. What can be taught in a pedagogical setting, however, are those common processes and skills that transcend the DSD context. The process focus in this book will also be particularly helpful to clinic students working with real-life institutional clients, as well as to their instructors.

Students will find the softback book user-friendly, highly visual, easy to follow, inviting, and engaging. The layout is spacious and attractive. Through the use of photographs, examples, interviews, shaded boxes, stories, and checklists, the book reinforces the concepts being explored. The text (thankfully) makes minimal use of footnotes, and each chapter ends with a list of references. No case excerpts, statutes, or legal citations clutter the book’s focus on process.

Students and practitioners will also be drawn to the book’s practical nature. The authors explore such difficult questions as whether a designer would add value, whether a designer would be willing to engage in the design process, how to handle designer dilemmas around competing stakeholder interests, how to be selected and accepted as a designer, and what it takes to be an effective intervenor. They illustrate these issues with interviews with actual designers, some embedded in the text, others contained in four “Designers’ Stories” in Appendix A. Such realistic considerations as how to get started, how to get “buy-in,” and how to get and leverage resources, such as funding and personnel, pepper the text. Individual chapters are dedicated to implementation and evaluation, two topics that have become increasingly important in the DSD field. One short chapter — perhaps too short — entitled “Using Technology in Dispute Management Systems and Processes” discusses the use of technology to support and enhance systems. This is a chapter that could easily be expanded in a second edition to include additional detail and examples from around the world.

Six real systems-design examples that are discussed throughout the book are particularly helpful:
eBay’s online dispute resolution process;
the process by which the South African government and insurgents created a peaceful transition to majority rule;
Cure Violence (originally Cease-Fire Chicago), an organization that deploys community outreach workers to work with at-risk youth to diminish violence in Chicago’s most violent neighborhoods;
the ombudsman and conflict management program at the National Institutes of Health (NIH);
the Indian Residential Schools Settlement Agreement in Canada, which provided the framework to create processes to address past injustices suffered by indigenous children who had been removed from their homes by the government and placed in institutional care; and
Maryland’s inclusive statewide mediation program.

Illustrations (e.g., screen shots from eBay’s dispute resolution site, maps of the Maryland ADR programs) and interviews with the designers (e.g., Colin Rule of eBay; Michael Young, who organized secret meetings between the South African government and the African National Congress; and Howard Gadlin, the director of NIH’s Office of the Ombudsman) bring the DSD concepts to life. Both the designs and the designers are fascinating and thought-provoking — they add a certain “guest lecture” quality to the hard copy text. A teacher could build an entire integrated DSD course around these six designs and designers.

DSD principles and concepts are further reinforced by hypotheticals, discussion questions, and supplemental materials. Students are asked to:

- act as members of a design team at the hypothetical Tallahoya University (p. 41);
- examine the interests of attorneys within a dispute resolution system (p. 99);
- create an “interest map” of stakeholders’ concerns (p. 77);
- discuss using “influential stakeholders” to achieve public policy consensus (p. 171);
- identify impediments to a court mediation program (p. 283); and
- debate whether the U.S. should urge inclusion of a mediation clause in transnational trade agreements that require arbitration (p. 314).

Supplemental materials include four designers’ stories (Appendix A); an arbitration overview (Appendix B); advice on instructing stakeholders how to overcome barriers to reaching negotiation goals (Appendix C);
Uniform Mediation Act (Appendix D), which, if adopted by states, would create common mediation standards and practices; and case study sources (Appendix E).

In addition, the text comes with a full-length video disc of the feature film *Endgame* (Travis 2009), which chronicles the secret talks in South Africa that brought about the end of apartheid and the release of Nelson Mandela from prison. *Endgame* can be used to teach certain points or assigned as supplemental work outside of class with follow-up discussion questions.

As a textbook, *Designing Systems* does have a few weaknesses. It reflects a particular stance, although an explicit and clearly articulated one. It is premised on an underlying philosophy of social reform and social justice, the belief that DSD should be a tool for social and political transformation. References to a “better world,” “changing the world,” “advancing the cause of justice,” “promoting peace and reconciliation,” and “changing the law” (which, interestingly, is in the chapter entitled ‘Using the Law’) dot the text. The book places much less emphasis on DSD initiatives that create alternatives to traditional dispute resolution methods; for example, the claims process for the victims of the September 11, 2001 terror attacks can be seen as a designed process that has provided an alternative to a more traditional court-based tort approach. The authors are to be commended on their transparency regarding their DSD philosophy, but professors who use *Designing Systems* should be aware of this bias.

Second, the text assumes a certain familiarity and comfort with DSD — both its theoretical constructs and its practical implementation. This is not a text that one who has never practiced or taught DSD can pick up, read, and then step into the classroom to teach. Neophyte DSD instructors will not be able to navigate competently in the classroom or the clinic without some additional primary source and collateral reading in advance. Although there are many DSD articles and resources referenced in the book, there are few if any excerpts embedded directly in the text, so one is left to read them on one’s own. It might, for example, have been helpful, in addition to the excerpt about interests, rights, and power (p. 108) from Ury, Goldberg, and Brett’s book (1988), to include an excerpt about “fitting the forum to the fuss” from the article by Frank Sander and Stephen Goldberg (1994), or the list of the criteria for studying systems that was developed by Stephanie Smith and Janet Martinez (2009).

For some readers, the book’s failure to include any material on ADR processes may also be perceived as a weakness. Certainly, the discipline does not need yet another ADR text, and the authors do note sources that students can consult to get an overview of ADR if they need one. It might have been helpful, however, to include at least a basic ADR primer or an appendix article (similar to Appendix B, which is an arbitration overview) to reiterate the various ADR processes available to stakeholders and
designers. (Some law schools, such as Georgetown, require that students take at least one ADR course prior to enrolling in the DSD seminar).

The authors are to be commended for including a section on evaluation, metrics, and statistics, which are becoming increasingly important to clients and stakeholders. And implementation and evaluation are covered in some detail. But I think the book overemphasizes planning and assessment: almost 245 of 382 pages are devoted to planning and stakeholder assessment. These are indeed important steps in the DSD process, but Designing Systems at times seems lopsided in its emphasis on the beginning stages. Little attention is devoted to actually choosing conflict management and dispute resolution procedures, and the need for stakeholder training and/or education is barely touched upon.

None of these weaknesses, however, are fatal. They are at most bumps on the track that would simply require the instructor or clinical coordinator to do a bit of race preparation prior to arriving at the starting gate. The few minor stumbles in Designing Systems in no way jeopardize its overall win as a useful and comprehensive DSD textbook.

**Winner of the Second Race: Designing Systems as Bibliography**

Perhaps as important as its debut as the first DSD textbook is the distinction that Designing Systems holds as the first comprehensive DSD bibliography. Although numerous DSD bibliographies have been compiled by professors as supplemental reference guides for their DSD students, these resources have never been gathered in one place. In the introductory “An Owner’s Guide to This Book,” the authors list “using the book as a reference tool” as one of its purposes (p. 11).

In discussing how students can tap into accumulated experience and search for ideas, the authors note that the book contains both empirical research and theoretical work (p. 9). They observe quite correctly that most of the DSD books to date have been confined to one context: an organization, an institution, or an industry (p. 4). Designing Systems and Processes for Handling Disputes is truly the first compendium of DSD resources across situation-specific contexts and multiple disciplines.

As a resource guide, the book will help multiple audiences. For both professors and students, the references listed at the end of each chapter are rich resources for discussion topics and seminar papers. For example, at the beginning of a course, professors could introduce DSD by considering which criteria to consider when studying a system, drawing on the article by Smith and Martinez (2009). Toward the end of the course, they could explore the next generation of DSD by discussing the role of technology using an article by Orna Rabinovich-Einy and Ethan Katsh (2012). The book, in keeping with its student focus, also offers tips about “looking for information for a paper or class project” by using the text as a reference tool (p. 11).
For researchers, the authors state their intent to inspire new work: “In this book, we aspire to do more than simply synthesize theory, research, and practice. We also hope to expand upon past work” (p. xvii). To stimulate new research, they raise provocative questions throughout the book and conclude with twenty-one pages of references. Faculty who thumb through this book will find no shortage of DSD topics to study, including such old favorites as ethics, evaluation, and implementation, as well as less conventional and more controversial topics, such as “changing law to change culture and customary practice” (pp. 306–308), and “creativity as a necessary skill set for designers” (pp. 375–379).

For practitioners, *Designing Systems* is a reference tool full of checklists, guidelines, and step-by-step explanations. These include, to highlight just a few:

- “Practice Notes: Research for an Assessment” (pp. 92–98);
- “Legal Practice Notes: Law Regarding Confidentiality and Openness” (pp. 187–194);
- “Practice Implications to Enhance Relationships” (pp. 231–243); and
- “Skills for Designers,” which offers tips on active listening, meeting planning and agenda setting, facilitation, and creativity (pp. 359–379).

Practitioners will likely find themselves repeatedly turning to the chapters on assessment, implementation, and evaluation as they work with stakeholders, whether in the individual, group, community, organizational, or global context.

**Winner of the Third Race: *Designing Systems* as Road Map**

The third focus of *Designing Systems* is identifying future challenges facing the field of DSD. As a road map, the book highlights “the challenges that designers face in managing competing interests in their design work, such as those of justice and reconciliation, or those of resolving the immediate dispute and achieving deeper change” (p. xviii). I have previously identified categories of issues facing the field, including:

- the process (who is the client, what is the purpose of the design, how do DSD systems “fit” with other processes, are systems sustainable?);
- the practitioner (what is the role of the designer, should the designer be impartial, should the designer advocate for change, what knowledge, skills, and competencies do designers need?); and
- the profession (what ethical issues do designers face, what standards of conduct should designers follow?) (see Costantino 2009).
Others have addressed whether there is a need for a code of ethics in the profession (see Menkel-Meadow 2008).

*Designing Systems* spotlights these topics and others as the discipline moves through its second generation and toward the next. Future challenges that the book identifies include:

- how to safeguard the confidentiality and ethics of data collection for evaluation purposes (p. 340);
- approaches to take when stakeholders’ interests and goals differ (pp. 80–84);
- competing considerations about confidentiality within the design process (pp. 180–183);
- concerns about fairness that arise because of the “digital divide” (p. 255); and
- managing cultural differences that help determine whether users will accept a design (pp. 87–88).

The book describes, for example, some issues eBay faced in designing an online dispute resolution system that was “culturally fluent” around the world. Each of these challenges are worthy of consideration by themselves and could easily spin off other collateral topics for discussion and analysis among the next generation of designers and practitioners.

What is perhaps most intriguing about *Designing Systems* as road map into the DSD future is its strong focus on process and macro considerations. The usual ADR substance issues — whether pre-dispute arbitration clauses are fair, should mediation be mandatory, what are the limits of mediator privilege and immunity — are thankfully left to be discussed elsewhere. Rather, the book invites inquiry, appreciative or otherwise, into topics not addressed in other works or by other scholars, such as the scope and proper role, if any, of DSD as a transformational process, and the power of the designer to influence (or manipulate) the end product design. In addition, Chapter Thirteen discusses how a designer might use the law to change incentives, to encourage constructive contacts, to establish new processes, and to change culture and customary practices. This is perhaps a first-ever discussion of a designer’s possible proactive role “to secure a change in law to implement a design effectively” (p. 299),2 and one that raises a host of philosophical and ethical issues for lively discussion.

Finally, the “Thoughts Going Forward” section at the end of each chapter identifies road map topics relevant to the future practice of DSD:

- the role of the designer as advocate for a design initiative (p. 65);
- assessment choices that raise issues about the designer’s broader responsibility (p. 98);
• how the sequencing of processes can change the character of those processes (p. 135);
• managing the tension between openness and confidentiality (p. 194);
• dealing with inequality and wrongdoing (p. 217); and
• measuring unanticipated consequences (p. 353).

I predict that, in these discussions, the authors have identified what will prove to be some of the most important issues confronting the third generation of dispute systems designers and practitioners.

Conclusion

*Designing Systems* is truly an important and groundbreaking contribution to the DSD field: as textbook, as bibliography, and as road map. It is a thoroughbred destined to become a classic that will be taught from, referenced, and discussed for many years to come. Whether you are a professor or a student looking for a text, or a researcher or a practitioner searching for a reference, or anybody who needs a road map of the DSD future, pony up and hit the trifecta by purchasing *Designing Systems and Processes for Handling Disputes*.

**NOTES**

1. The authors do not shy away from discussing statistical methodologies in a law school text. They take on topics such as comparison, causal inference, sampling, and representativeness, as well as inferential and descriptive statistics (see pp. 342–348).

2. The reverse process is already taking place: using the law as the basis for a design, such as the September 9/11 Victim Compensation Fund, which was created pursuant to federal statute.

**REFERENCES**


