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## The Amazing Carrie Menkel-Meadow and What Wins When Passions Collide

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# THE AMAZING CARRIE MENKEL-MEADOW AND WHAT WINS WHEN PASSIONS COLLIDE

by: Lela Porter Love\*

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## I. INTRODUCTION

Carrie Menkel-Meadow (sometimes referred to as “Carrie” herein) is famous in the dispute resolution world as one of the field’s founders. Her prolific writing on dispute resolution—negotiation, mediation, arbitration, and the variants of these major processes—evidences an unrivaled passion for the subject. A renaissance thinker, her intellectual explorations also extend to other areas such as women’s rights and restorative justice for victims of egregious wrongs.

Her multiple passions sometimes create dynamic tensions. For example, what happens if mediation norms threaten a woman’s rights? Or if mediators divert the focus of a dispute resolution process to the future, neglecting a horrific past?

This Essay, in Part II, comments on Carrie Menkel-Meadow’s career and scholarship and then, in Part III, looks at two instances where dynamic tensions arise when her quest for justice in chosen arenas collides with mediation norms. When incompatible passions collide, what prevails?

## II. THE AMAZING CARRIE MENKEL-MEADOW

If you have any insecurities regarding your professional productivity, I would recommend you not look closely at Carrie Menkel-

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Meadow's CV.<sup>1</sup> It is astounding. Her publications—including books, monographs, articles, and book chapters—number two hundred and eight.<sup>2</sup> If you add in short articles, blogs, podcasts, book reviews, op-eds, and non-scholarly articles, the total number of publications reaches two hundred and forty-four.<sup>3</sup>

That number is shocking, but, of course, quantity isn't the most important measure of a successful scholar. Among a plethora of accolades, Carrie Menkel-Meadow won the inaugural Award for Outstanding Scholarship and Contributions to the Field of Dispute Resolution in 2011 from the American Bar Association Section of Dispute Resolution.<sup>4</sup> In addition to that award, she was the Outstanding Scholar in Law of the American Bar Foundation in 2018.<sup>5</sup> Carrie garnered these and many other accolades not for the quantity of words she penned, but rather for the quality and presentation of her ideas and the range of her thinking.

A little over 20% of her publications focus on dispute resolution broadly (arbitration and the variants of all the major processes, including negotiation and mediation).<sup>6</sup> Almost 17% focus on negotiation.<sup>7</sup> Approximately 12% examine issues connected with gender and feminism.<sup>8</sup> Nearly 10% focus on mediation.<sup>9</sup> Slightly more than 6% focus on legal education.<sup>10</sup> And the balance—almost 36%—cover a breathtaking sweep of topics, including: the adversary system, altruism, Dalkon Shield arbitration, deliberative democracy, dispute system design, ethics, fairness, law and culture, lawyering skills, lawyers, legal services, litigation, managed care, mandatory arbitration, peace in the Middle East, philosophy of law, restorative justice, social justice lawyers, transitional justice, secular humanism, war crimes, and tributes to colleagues including Trina Grillo, Nelson Mandela, and other

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1. The author based this Part of her Essay on Carrie Menkel-Meadow's 2021 CV, which Carrie sent the author in January 2022. Curriculum Vitae, Carrie J. Menkel-Meadow (Jan. 2022) [hereinafter CV] (on file with author). Carrie's CV is also continuously updated and available on her UCI Law faculty page. *Carrie Menkel-Meadow*, UCI L., <https://www.law.uci.edu/faculty/full-time/menkel-meadow/> [<https://perma.cc/4TCA-4GE3>].

2. See CV, *supra* note 1.

3. See *id.*

4. *Id.* at 24.

5. *Id.* at 23.

6. Based on the 208 books, monographs, articles, and book chapters in Carrie Menkel-Meadow's 2021 CV. See *id.* The list and placement of articles into (perhaps arbitrary) categories can be found in the Appendix to this Essay. Lela Porter Love, *Appendix to "The Amazing Carrie Menkel-Meadow and What Wins When Passions Collide,"* 10 TEX. A&M L. REV. ARGUENDO (2022), <https://doi.org/10.37419/LR.V10.Arg.1> [hereinafter Love, *Appendix*].

7. See CV, *supra* note 1; Love, *Appendix*, *supra* note 6, *passim*.

8. See CV, *supra* note 1; Love, *Appendix*, *supra* note 6, *passim*.

9. See CV, *supra* note 1; Love, *Appendix*, *supra* note 6, *passim*.

10. See CV, *supra* note 1; Love, *Appendix*, *supra* note 6, *passim*.

luminaries.<sup>11</sup> Had Carrie just focused on dispute resolution, or negotiation, or gender—or any one of the topics she shone a bright light on—she doubtless would have been recognized for outstanding scholarship in that narrower field. But that she did all reported on her CV is amazing.

Given the backdrop of success we celebrate at the Texas A&M fest-schrift, this Essay examines two instances where Carrie's passion for one of her foci led her to challenge the tenets or practices of another, and where the normative tensions between two worlds resulted in outcomes that challenge traditional mediation practice and stimulate further questions. It may be that a collision of norms—particularly in the case of mediation norms—depends on whether you adopt a flexible or more fixed definition of mediation. In any case, though, examining mediation in the richer context of competing passions is a welcome and good exercise—another gift from Carrie Menkel-Meadow.

### III. WHEN PASSIONS COLLIDE

There was a time in my career when I felt no compulsion to write. Carrie Menkel-Meadow, Roger Fisher and William Ury, Lon Fuller, Josh Stulberg, Len Riskin, and Baruch Bush, among other luminaries, had said the things I wanted to say—the things I thought the world needed to understand. And they had said them eloquently. No need to summarize or repeat. Having great writers articulate views one agrees with is a gift.

Points of disagreement, however, also are a gift. They make us examine, clarify, and expand our own views. There came a time when my heroes said things that I disagreed with: famously, Len Riskin painted half the mediation world as “evaluative”;<sup>12</sup> and Baruch Bush and Joseph Folger threw out “problem solving” as one of the exciting, to me, targets of mediation, positing mediation's sole targets as “empowerment” and “recognition.”<sup>13</sup> I was pretty sure that mediation was a facilitative process and that understanding, problem solving, and agreement were among its targets.

Two points where I disagreed with Carrie, discussed below, raised critical questions about mediation as it was juxtaposed against one of her other passions—feminist advocacy in one case and championing Holocaust and other victims in another. In both cases, I believe these

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11. See CV, *supra* note 1; Love, *Appendix*, *supra* note 6, *passim*.

12. Leonard L. Riskin, *Understanding Mediators' Orientations, Strategies, and Techniques: A Grid for the Perplexed*, 1 HARV. NEGOT. L. REV. 7, 44–45 (1996).

13. See ROBERT A. BARUCH BUSH & JOSEPH P. FOLGER, *THE PROMISE OF MEDIATION: RESPONDING TO CONFLICT THROUGH EMPOWERMENT AND RECOGNITION* (Jeffrey Z. Rubin ed., 1994).

other passions trumped her mediator's perspective.<sup>14</sup> When competing passions collide, what wins? Perhaps the one you love best.<sup>15</sup>

A. *The Case of Ziba: Values of a feminist scholar challenging values of a mediator*

*No man can serve two masters . . .*<sup>16</sup>

Ellen Waldman asked Carrie to write a commentary on the following hypothetical (called here "The Case of Ziba") for her book, *Mediation Ethics: Cases and Commentaries*.<sup>17</sup>

Case 12.2: Ziba and Ahmed's Iranian-American Divorce

Seventeen-year-old Ziba and her forty-four-year-old husband Ahmed have come to you for mediation services. Ziba and Ahmed have been married for four years. They have two sons, ages three and two. Ziba wants a divorce, but, like her husband, is anxious to remain part of the local mosque and surrounding community. In order to ensure that the divorce is handled in accord with Quranic principles and meets the approval of their peers and community elders, Ziba and Ahmed met with their imam to learn how their marriage contract may be properly resolved in accord with local interpretations of Islamic law.

Their imam advised them that while a husband can ask for and obtain a divorce for any reason, he is obliged to support his children until they reach the age of majority, regardless of who has primary custody. If the wife remains in the husband's home to observe a mandatory waiting period of seclusion, then he must provide for her needs during that time. In addition he is obliged to pay the amount stipulated in the marriage contract that must be paid if the marriage comes to an end. Ziba and Ahmed's marriage contract calls for a payment of forty thousand dollars.

The imam also tells Ziba that she cannot receive a divorce without Ahmed's consent. And if she initiates the divorce, she will lose her right to the marriage contract payment, although Ahmed's financial obligations toward the children still stand. As far as custody of the children goes, local understandings of Islamic law presume that young children should stay with their mother, but that once sons reach their seventh birthday, custody reverts to the father.

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14. This of course is debatable. I take liberties as the writer.

15. Interestingly, if scholarship is a measure of "love," Carrie wrote more about feminist topics than she did about mediation. See Love, *Appendix, supra* note 6.

16. *Matthew* 6:24 (King James).

17. *Mediating Multiculturally: Culture and the Ethical Mediator*, in *MEDIATION ETHICS: CASES AND COMMENTARIES* 305 (Ellen Waldman ed., 2011) [hereinafter *Mediating Multiculturally*].

Ziba is miserable in the marriage. Ahmed is controlling and rigid in his notions of what Ziba can do. He monitors her movements, allowing her outside only to shop for groceries and run errands for the house. In addition, he has taken a second wife (in accord with his privileges pursuant to Islamic law) and has begun to pay less and less attention to both Ziba and their children.

Angry and humiliated, Ziba insists she must have permission for the divorce from her husband and without it cannot move on with her life. Ahmed says that he will not grant her request unless she forfeits her marriage dissolution payment and any other financial support for herself and agrees to give up custody of each child at age five. Ahmed says that by asking for a divorce, Ziba is demonstrating that she is an unfit mother and that his sons should thus revert to his care at the earlier age. Ahmed says that it is fitting that his sons should be taken into his care and raised by his female relatives.

At the mediation, Ziba capitulates and tearfully says she will waive all rights to financial support and agree to his requests regarding the transfer of custody at the given ages so long as Ahmed grants her request for a divorce. Although Ziba has agreed to relinquish her children two years earlier than traditional Islamic law would warrant, privately negotiated deviations from default rules are not uncommon. Ahmed is very unhappy with the prospect of divorce and strongly feels Ziba's behavior compromises her ability to parent. He has stated to you in private that the only reason he is not demanding immediate transfer is that he doesn't think Ziba will agree and doesn't believe he would receive support from his community. He is confident, however, that the agreement as contemplated is broadly supportable and within the norms of the Iranian community in which they live.

As mediator, do you help the parties with their divorce?<sup>18</sup>

Carrie Menkel-Meadow joined Hal Abramson as a commentator on this case. She comes to the following conclusions, quite different from Professor Abramson. After each bullet-point conclusion of Carrie's, I summarize questions that each conclusion raises and give my own view.

- Carrie would not elect to take a case where parties decide to use Shari'a law but would refer it to a specialized religion-based mediation center.<sup>19</sup>

This position raises the following questions: Can mediators take cases where they must learn the underlying law, or industry norms, or cultural or religious beliefs "on the job" or by research ahead of time? Can mediators take a case embedded in a culture or religion other

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18. *Id.* at 318–19.

19. Carrie Menkel-Meadow, *Comments on Case 12.2, in Mediating Multiculturally*, *supra* note 17, at 320 [hereinafter Menkel-Meadow, *Comments*].

than their own? Where the law or norms being proposed—here Shari'a law—lead to an outcome the mediator finds abhorrent, what courses of action are available to a mediator?

I believe mediators can and do take cases where they must learn the underlying law or industry norms or cultural or religious beliefs “on the job” or by research ahead of time. In cases where parties and their attorneys must educate the mediator, they may also educate each other in the process, which serves the important mediation goal of enhancing understanding by and among the parties. In addition to education mediators might get from parties, mediators should do background research either in the library or by consulting with colleagues. To elaborate, I do not think one has to be gay to mediate a divorce between a gay couple—though the parties might seek a gay mediator. A Catholic mediator could intervene in a situation between two Jewish businessmen where the parties call on principles in the Torah to resolve the dispute.

That said, in cases like Ziba's, I might recommend a more knowledgeable mediator or mediation center if I thought such would serve the parties better. I doubt many places in the country have a specialized, religion-based mediation center with mediators as talented as Carrie, though. Alternatively, I might engage a co-mediator who had the information I lacked concerning the relevant principles of the Quran.

However, if the mediator's disaffection for the outcome to which Shari'a law leads is the cause of withdrawal, then the mediator is withdrawing due to her own lack of neutrality. Withdrawing for that reason would be correct.<sup>20</sup>

- Carrie finds that self-determination by the mediator and the mediator's “own legal and social justice concerns . . . militate against . . . deferring to the parties' claimed desire to use religious law and principles to resolve their dispute.”<sup>21</sup>

This stance raises the following queries: Should the mediator's self-determination or legal and social justice concerns come into play at all, except perhaps to influence a decision for the mediator to withdraw? Is withdrawing for lack of neutrality the only correct course where the mediator finds that the choice of law (here Shari'a law)

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20. Sending the parties to a religion-based mediation center might mean, in this case, that Ziba would not be urged to get the benefit of legal information about American law.

21. See Menkel-Meadow, *Comments, supra* note 19, at 320 (“Self-determination (by both the parties and the mediator), capacity and consent to any agreements, ‘true’ understanding of possible alternatives, and my own legal and social justice concerns all militate against my deferring to the parties' claimed desire to use religious law and principles to resolve their dispute.”).

would lead to morally, legally, or ethically “unconscionable” results in her view?

In my view, the mediator’s exclusive focus should be on furthering self-determination by the parties. The mediator’s own legal and social justice concerns could inform a decision not to serve as mediator at all due to bias or lack of neutrality but should not interfere with party choice about the use of religious law and principles to resolve their dispute. If the mediator finds that the choice of law (here Shari’a law) would lead to morally, legally, or ethically “unconscionable” results, then the mediator should withdraw for lack of neutrality.

- Carrie would, as a lawyer mediator knowledgeable about domestic relations, in both a joint premediation session and separate caucuses, give Ziba and Ahmed her legal analysis and counsel regarding American law’s treatment of the status of their marriage and the impact of that status on a divorce. She would tell them: both, that their marriage is not “legal” under American law and could be annulled; Ziba, what American law entitles her to for financial support and custody; and Ahmed, that he might be guilty of statutory rape under American law—an opinion that gives Ziba a potentially potent bargaining chip.<sup>22</sup>

This course of action invites the following questions: Should mediators use their own legal analysis to move the parties toward their own moral view? Is it okay for mediators to inject their legal analysis to the end of advancing informed consent? Can mediators inject legal information when it advances one party and hurts another?

The legal analysis here importantly serves Ziba and disserves Ahmed. Stepping to one party’s side is inappropriate for a mediator. Furthermore, as a mediator, an intervenor should not give legal advice

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22. *See id.* at 320–21. As Carrie describes:

Ziba, now seventeen, has . . . been married for four years. . . . [S]he was thirteen when she married. The facts as given do not specify whether her marriage took place in the United States or in another country, but by no measure of “full faith and credit” would I regard a marriage made at thirteen to be a legal marriage in the United States. And wherever they live in the United States, a state court will have to finalize their “legal” divorce. Most states require evidence of a marriage certificate to certify the marriage when the divorce is judicially approved. A marriage certificate of a girl of thirteen would not be valid in virtually all states of the United States. Thus, in my view, the marriage is not “legal” under American domestic law (and American law is still required to make the divorce legally binding here) and legally could be annulled. In addition, it is also possible that, given the absence of a legal marriage, Ahmed might even be guilty of statutory rape under American law. Ziba could possibly file charges against him if she wanted to (or she might choose to use this information to prevent him from further abusing her or to “bargain” for her “rightful” financial and custody rights).

*Id.*



but could, and perhaps should in a case like this, suggest that the parties get legal advice. Furthermore, it is speculative, and not the role of the mediator, to predict the outcome of an adversarial process. Would U.S. courts really annul this marriage that has two children involved? Would U.S. courts really hold a Muslim who has married a 13-year-old guilty of statutory rape? Interesting questions for a feminist scholar.

- Carrie is a party to the mediation too and, as such, is accountable and responsible for the mediated agreement, along with the parties.<sup>23</sup>

This position raises the following: Are mediators parties to the disputes they mediate? Are mediators accountable for the substantive fairness of agreements?

I believe mediators are participants, but not parties, to the cases they mediate. The question of mediator responsibility for the fairness of agreements has been analyzed and debated extensively, most notably in the famous exchange between Professors Larry Susskind and Joseph Stulberg.<sup>24</sup> Where mediators become judges of substantive fairness, they change roles to that of arbitrator, judge, or expert.<sup>25</sup> The Model Standards of Conduct for Mediators do not hold mediators accountable for the substantive fairness of agreements.

- Carrie “will not mediate a case where there is relevant law for the parties to consider in evaluating their possible outcomes, rights, and alternatives, and the parties are unaware of those legal entitlements or endowments.”<sup>26</sup>

This stance invites the following questions: Is it possible for parties to know all relevant law and entitlements? Given mediation’s commitment to party self-determination, can parties elect to resolve a matter

23. *Id.* at 326.

24. Compare Lawrence Susskind, *Environmental Mediation and the Accountability Problem*, 6 VT. L. REV. 1 (1981) (opining that mediators presiding over environmental disputes have responsibility for just and stable outcomes; maximizing the possible joint gains; addressing the interests of parties not at the table, including future generations; and creating good precedents), with Joseph B. Stulberg, *The Theory and Practice of Mediation: A Reply to Professor Susskind*, 6 VT. L. REV. 85 (1981) (asserting that a commitment to impartiality and neutrality is the defining principle of the mediator’s role).

25. See Ellen Waldman & Lola Akin Ojelabi, *Mediators and Substantive Justice: A View from Rawls’ Original Position*, 30 OHIO ST. J. ON DISP. RESOL. 391, 423 (2016) (“The mediator is not being asked to wear a lawyer or a judge’s hat; she is not expected to be knowledgeable about every discipline, trade, or subject matter. She is not being asked to steer parties to a particular outcome.”).

26. Menkel-Meadow, *Comments, supra* note 19, at 325.

without such knowledge? Even if informed bargaining is an ideal, should parties be forced to obtain such knowledge?<sup>27</sup>

In my view, if ensuring that parties knew all relevant legal entitlements and endowments were a qualifier for stepping into a case as a mediator, such would provide a block to most, if not all, mediator engagements. Of course, where a party has a lawyer, a mediator might comfortably assume that the party knows their legal entitlements<sup>28</sup> (though that assumption is often wrong). Do we also require that parties know their relevant financial, psychological, moral, and other endowments? Though mediators may urge such consideration, it is not a requirement or precondition to mediation.

- Carrie acknowledges that she would decline this case because she is not “impartial.”<sup>29</sup>

Carrie’s conclusion to decline the case is a correct one. Full stop. How could she be neutral in a mediation that would lead to results unconscionable to her strongly held point of view? Indeed, how could any outspoken “feminist advocate for equality in marriage, self-determination, and the rights of women to [a] no-fault divorce”<sup>30</sup> participate in a mediation that would lead to results anathema to her strongly held beliefs?

What is impressive about Carrie’s analysis is the depth of her feeling toward Ziba and her anger at the outcome that Shari’a law allows. Her energy and ability as an advocate are other dimensions of her talents that are wonderful but, I think, misplaced in a mediator’s role.

B. *Remembering the Past: Values of an ardent advocate for victims of atrocities challenging values of a mediator*

*Those who cannot remember the past are condemned to repeat it.*—George Santayana<sup>31</sup>

In a moving article, *Remembrance of Things Past? The Relationship of Past to Future in Pursuing Justice in Mediation*, Carrie shows her deep empathy toward victims of past atrocities and grievous wrongs—Holocaust survivors, and victims of crime, discrimination, sexual harassment, and violence—and calls on the mediation process to integrate a richer understanding and deeper appreciation, along with

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27. See Jacqueline M. Nolan-Haley, *Informed Consent in Mediation: A Guiding Principle for Truly Educated Decisionmaking*, 74 NOTRE DAME L. REV. 775, 821 (1999) (arguing that parties are entitled to a basic knowledge of their legal rights).

28. See *id.* at 827.

29. Menkel-Meadow, *Comments*, *supra* note 19, at 321.

30. *Id.* at 322.

31. 7 GEORGE SANTAYANA, *THE LIFE OF REASON OR THE PHASES OF HUMAN PROGRESS: INTRODUCTION AND REASON IN COMMON SENSE*, BOOK 1, at 172 (Marianne S. Wokeck & Martin A. Coleman eds., 2011).

more nuanced practices, to address the role of the past in crafting the future.<sup>32</sup>

- Carrie finds mediation too “future-oriented.” She feels that mediator practices take parties away from reflection about the past.<sup>33</sup>

This perspective raises these questions: Does mediation weave the past into the process so that parties bargain with each other in the shadow of the past?<sup>34</sup> How do mediators balance “understanding the past” and “focusing on the future”?

I believe mediation properly looks forward. Speaking to the model I teach and practice, the mediator provides an opportunity for each party to explain what brings them to mediation. This is a chance to explore the past as they wish. This stage of the process can take as long as the parties need and can involve vivid stories, exhibits, films, and charts. The parties can converse about what happened in the past and illustrate their views. When the parties are ready, the mediator pivots the discussion to the future. At that point, the mediator asks, What can be done now to rebalance the situation—to find an acceptable conclusion?

Many mediation training programs I am familiar with, including my own, include “focus on the future” as part of a list of “moves” to generate movement. Frankly, it is difficult to get anyone to focus on the future if they have not had their say about the past, and chronologically that “move” comes after the period of time, mentioned above, called “accumulating information.” I teach a move for generating movement called a “paradoxical intervention.”<sup>35</sup> Here’s what it entails: When the parties are going back and forth about what happened in the past, the mediator says, “We have another hour together today, and we can continue to talk about what each of you did in the past. But would you prefer, at this point, to spend the hour talking about an acceptable arrangement for the future that addresses the concerns you raise?” This is paradoxical because offering to continue to talk about the past often makes parties want to move on and talk about the future, particularly in cases where the back and forth about the past is repetitive and toxic.

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32. Carrie J. Menkel-Meadow, *Remembrance of Things Past? The Relationship of Past to Future in Pursuing Justice in Mediation*, 5 CARDOZO J. CONFLICT RESOL. 97 (2004) [hereinafter Menkel-Meadow, *Remembrance of Things Past*].

33. *Id.* at 107–08.

34. This borrows and adapts Robert Mnookin’s phrase “bargaining in the shadow of the law.” Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950 (1979).

35. Lela P. Love & Joseph B. Stuhlberg, *Targets and Techniques to Generate Movement*, in DISPUTE RESOLUTION: BEYOND THE ADVERSARIAL MODEL 242, 242 (3d ed. 2019).

Of course, there are now many different processes being used that get called “mediation.” For some of them, parties don’t talk about the past, or even talk to each other, in any stage of the mediation. A discussion of such processes—settlement conferences or mediator brokered agreements among attorneys—is beyond the scope of this Essay.

To the extent that the exploration of the past in determining “facts” about what happened is the hallmark of litigation, and its claim to justice, that process is flawed by the adversarial nature of the process itself. The quality of the lawyering, the presentation of the witnesses and evidence, will have much to do with the facts that are found—the past that is captured.

- Justice involves a determination about past conduct. Adjudication is “the process thought to provide justice.”<sup>36</sup>

Important questions follow from this conclusion: What is the justice that litigation provides? What is the justice that mediation provides?<sup>37</sup> How are they each flawed? Which is better?

In mediation, the parties crafting the future and remaking their duties and responsibilities toward each other may be a “justice” exercise. Parties bargain in the shadow of the past,<sup>38</sup> and what they do or don’t do is shaped by that past. Indeed, as Carrie points out, “[T]he past is an essential part of justice.”<sup>39</sup> It will weave into the fabric of any consensual outcome. It will block outcomes where parties don’t feel heard or acknowledged.

The justice that litigation provides is very different than the justice mediation offers. Litigation provides a public forum where precedents are set and public morality is advanced.<sup>40</sup>

- “[M]ediation as a process is too associated with an instrumental need to ‘move forward,’ whether it be in the more material aspects of case settlements, agreements, contracts and payments made, or in the more psychological realm of acknowledgment and recognition of the existential reality and intersubjective experience of others.”<sup>41</sup>

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36. Menkel-Meadow, *Remembrance of Things Past*, *supra* note 32, at 99.

37. For an in-depth analysis in response to this question, see Jonathan M. Hyman & Lela P. Love, *If Portia Were a Mediator: An Inquiry into Justice in Mediation*, 9 CLINICAL L. REV. 157 (2002).

38. Cf. Mnookin & Kornhauser, *supra* note 34, at 950 (detailing how parties “determine their postdissolution rights and responsibilities”).

39. Menkel-Meadow, *Remembrance of Things Past*, *supra* note 32, at 104 (emphasis omitted).

40. Owen Fiss, *Against Settlement*, 93 YALE L.J. 1073, 1085 (1984).

41. Menkel-Meadow, *Remembrance of Things Past*, *supra* note 32, at 102.

This invites the question: How do you balance the need for accountability and reparation with the need for moving on and making peace?

What Carrie complains of here might be a major virtue of mediation. Parties, mired deep in conflict, can move on!

#### IV. CONCLUSION

On top of the foundational platform that has helped define our field, Carrie Menkel-Meadow, with her multiple facets and passions, gives us age-old, rich questions that inform and haunt dispute resolution. We may answer the questions differently; raising them is the gift.

In conclusion, thank you, Carrie, for articulating, in an immense body of work, what I almost invariably agree with, and for giving me a few things I can push back on. With respect to those, I expect that we agree more than we disagree and that I have overstated the disagreement. What stands out are the multiple facets. Not only are you a pioneer of mediation, but also a protector of and advocate for victims, and a feminist par excellence. Your colleagues salute you.