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ARCHBISHOP DESMOND M. TUTU

Receives the Straus Institute's First Peacemaker Award

This July Archbishop Emeritus Desmond M. Tutu became the first recipient of the Peacemaker Award from the Straus Institute for Dispute Resolution and the School of Law. Professor and Straus Director Tom Stipanowich traveled to Cape Town, South Africa, to present the award, which recognizes the archbishop's "achievements as a peacemaker on a global scale and promoter of peace, human rights, and reconciliation, often at great risk and cost to himself and his family." Documentary filmmaker Karen Hayes and a crew taped the presentation and Professor Stipanowich's conversation with Reverend Tutu.



"You could have knocked me down with a feather . . . [I]t was almost mindboggling, that a white man could doff his hat to my mother, a black woman, really a nonentity in South Africa's terms." In the world of South African apartheid, a world in which racial heritage and skin color determined as a matter of law where and with whom you could live, your education and job prospects, and who you could marry, an Anglican priest's instinctive act of courtesy to his mother made a huge impression on young Tutu. Later, as one of the leading members of the South African clergy, Tutu would provide key moral leadership to help bring about the end of apartheid and start the process of reconciliation and healing in South Africa. Tutu has worked tirelessly and passionately for peace, justice, understanding, and forgiveness among members of the human family.

Reverend Tutu's life reflects the power of a commitment to strengthening the bonds that unite all of us as humans. In addition to promoting the scriptural instruction to "love your neighbor as yourself" and Jesus' admonition to love your enemies, he seeks to put into practice the African concept of ubuntu: the notion that "you can't be human all by yourself." Put another way, we are all connected, and what each of us does affects all of us.

Reverend Tutu returned to South Africa from ministry in England at a crucial time in the struggle against apartheid. Nelson Mandela was in prison, the African National Congress was outlawed, and Tutu and other religious and community leaders stepped into the political leadership vacuum among those opposed to apartheid. A forceful and persuasive voice among the chaos, Tutu stood firmly for "nonracialism" and nonviolence. As episcopal archbishop of Cape Town he became the leading symbol of the anti-apartheid movement, and faced a storm of criticism for engaging in politics and calling for foreign disinvestment in South Africa. At the same time, he was criticized for being too moderate when many were advocating anti-government sabotage and violence. Time and again he put himself in harm's way, on more than one occasion wading into a murderous mob to save the life of potential victims.

Upon Mandela's release from prison in 1990, Archbishop Tutu withdrew from political leadership. Instead, he and other religious leaders played a crucial role as mediators among emerging political factions in an effort to avoid a bloodbath in the critical period of transition to elective democracy. Then as now, he emphasized the importance of continuous, dedicated communication with God through prayer in sustaining him during those difficult times.

In 1995 Tutu was appointed by Mandela's new Government of National Unity to chair the famous Truth and Reconciliation Commission, or TRC. In the words of Tutu, the TRC was established "to help South Africans come to terms with their extremely troubled past . . . to investigate the violations that took place between 1960 and 1994, to provide support and reparations to victims and their families, and to compile a full and objective record of the effects of apartheid on South African society." Under Tutu's leadership, the TRC sought to serve these goals by steering a course that was neither a Nuremberg-style proceeding to establish and punish criminal culpability nor an exercise in "national amnesia." He presided over many months of sessions involving horrific accounts of political bloodletting as well as expressions of forgiveness. During his interview, he explained that although evil was much in evidence during those hearings, his paramount image of the TRC was of goodness—of the extraordinary ability of individuals to open their hearts to wrongdoers.

Believing that "there can be no future without forgiveness," Reverend Tutu continues to promote broad-based reconciliation in places like Rwanda and the Solomon Islands. He is prominent among The Elders, a group of world leaders that has sought to address some of the globe's most intractable disputes.

Stipanowich and Hayes Conduct "LISTENING PROJECT" in South Africa



In addition to conducting a taped interview with Peacemaker Award recipient Desmond Tutu, Professor Tom Stipanowich and L.A. documentary filmmaker Karen Hayes had the opportunity to put Archbishop Tutu's contributions in perspective through a "listening project"—a series of taped interviews and conversations with others who helped transform South Africa, promote peace and reconciliation, overcome the barriers that separate races and economic classes, and aid and empower the disadvantaged.

Along with the film crew, Stipanowich and Hayes accompanied anti-apartheid advocate Eddie Daniels to Robben Island prison in Cape Town Harbor. Now a World Heritage Monument, Robben Island was made famous as the place where Nelson Mandela was imprisoned for 27 years; Daniels spent 15 years in the same cell block. Daniels spoke of the extraordinary impact of Nelson Mandela who, like Archbishop Tutu, exerted key moral leadership that helped avert civil war in South Africa. He also is one who has moved beyond the sufferings and wrongs of the past, having unburdened his heart of hate and the desire for vengeance.

Stipanowich's taped conversation with John Allen, the author of *Rabble-Rouser for Peace: The Authorized Biography of Desmond Tutu*, details many of the reasons why Archbishop Tutu was honored with our first Peacemaker Award. As a young newspaper reporter covering the struggle over apartheid, Allen was struck by Reverend Tutu's ability to reach across the political divide. When Tutu became archbishop in 1986, Allen became his press secretary, and experienced firsthand Tutu's courage, empathy, and sensitivity. Ten years later he moved with Tutu to the Truth and Reconciliation Commission, and observed the extraordinary force of Tutu's leadership role on the workings of the TRC and its broader impact on South African society.

South Africa continues to struggle with serious problems—racial separation, grinding poverty, violence, and disease—some of which reflect the impact of apartheid. In this setting, Archbishop Tutu's positive influence is reflected not only in the Desmond and Leah Tutu Legacy Foundation, but also in organizations affiliated with the Anglican Church like HOPE Africa. HOPE Africa CEO Delene Mark and her colleague Patrina Pakoe, shared the organization's efforts to work collaboratively with other groups to empower individuals in disadvantaged communities to end the cycle of destitution by developing their own resources. Pakoe took Stipanowich and Hayes into a number of the most economically challenged townships, including Manenberg, notorious for its gang activity and high unemployment rate. There, Stipanowich visited the home of a 77-year-old woman who had raised 8 children in an unheated two bedroom flat.

Mark is also affiliated with another important program aimed at forgiveness, reconciliation, and helping victims of oppression, the Institute for the Healing of Memories, an organization founded by Reverend Michael Lapsley. Reverend Lapsley still bears the effects of a mail bomb received during the final stages of the apartheid struggle, but has dedicated himself to helping others move beyond the state of victimhood to greater understanding.

Finally, through Reverend Mpho Tutu, the daughter of Desmond Tutu, they became aware of organizations like the Desmond and Leah Tutu Legacy Foundation and the Tutu Foundation UK. The latter supports causes as diverse as medical aid to pregnant women in Africa; Conversations for Change, a community building program; and mediation training based on the "ubuntu" concept.

Straus Announces an ENTERTAINMENT, MEDIA, AND SPORTS DISPUTE RESOLUTION INITIATIVE

Straus recently announced a new initiative focusing on dispute resolution in the areas of entertainment, media, and sports. All these industries are highly developed, yet continually evolving with constant frictions among the various labor, creative, technology, and other constituencies that lead to regular judicial and other confrontations among parties in relation to collective bargaining, intellectual property, commercial, and other issues. While law school curricula have historically focused on the substantive areas of law, with a particular emphasis on litigation, the area of ADR has not been a principal focus of any national law school. Straus Institute is particularly well positioned to develop and implement a series of different programs to address this gap in academic and professional education.

Details on the Entertainment, Media, and Sports Dispute Resolution Project (EMS) is available at: law.pepperdine.edu/straus/news/entertainment-media-sports-project.htm. The overall activities of this new project include speaker events, industry expert conversations, continuing legal education (CLE), conferences, student ADR competitions, research and analysis, and technology/media initiatives.

As part of the initiative, EMS and Pepperdine Law Review will present a sports law symposium entitled “The New Normal in College Sports: Realigned and Reckoning” on April 5, 2013.



Among the invited speakers are: Roger Cossack, ESPN legal analyst and Pepperdine University School of Law Distinguished Visiting Professor; Andrew M. Coats, Dean Emeritus, University of Oklahoma College of Law and Samuel Roberts Noble Foundation Presidential Professor; Babette E. Boliek, associate professor of Law; Daniel E. Lazaroff, professor of law and Leonard Cohen Chair in Law and Economics and director, Loyola Sports Law Institute at Loyola Law School; Gabriel Feldman, associate professor and director, Tulane Sports Law Program, Tulane Law School, and associate provost for NCAA Compliance, Tulane University and Bob Ley, ESPN, Outside the Lines.

In addition, the following have confirmed their participation as of the time of publication: Michael McCann, director of the Sports Law Institute and professor of law, Vermont Law School; Brian Halloran, NCAA Committee on Infractions; Matthew Mitten, professor of law and director, National Sports Law Institute, Marquette University Law School; and Brian Marler, director at Houlihan Lokey.

Maureen Weston has agreed to serve as the faculty director and William Nix has agreed to serve as the managing director of the new focus. Straus academic director Thomas Stipanowich and adjunct professor Gerald F. Phillips have also committed to oversee and support the Entertainment, Media, and Sports Dispute Resolution Project.

Faculty, staff, students, alumni, and distinguished counsel members of the Straus Institute celebrated the program's 25th anniversary with a social gathering on June 22 at the Jonathan Club in Santa Monica, California.

More than 160 guests gathered at the beachfront location to honor the history of the nationally top-ranked Straus Institute. Among those in attendance was L. Randolph Lowry III, founder of the Straus Institute, who currently serves as the 17th president of Lipscomb University in Nashville, Tennessee. In 2006 Professor Thomas Stipanowich resigned as the president of the International Institute for Conflict Prevention and Resolution in New York City to become the codirector of the Straus Institute.

“It was wonderful to be with so many of the people who have contributed to Straus’ success like Tom Stipanowich, Randy Lowry, Ron Phillips, and lots of adjunct professors and alumni,” said Peter Robinson, managing director of the Straus Institute. “We are humbled by the recognition we’ve received over the last 25 years. It was also a great opportunity to dialogue about future opportunities for service and influence.”

Straus Institute Faculty MEDIATE PROPOSED FARMERS FIELD CONVENTION AND EVENT CENTER



Professor of law and managing director of the Straus Institute Peter Robinson and adjunct professor of law Denise Madigan recently were honored to be appointed by the City of Los Angeles to co-mediate negotiations involving the draft environmental impact report (EIR) for the Farmers Field Convention and Event Center Project proposed for downtown Los Angeles. This project, which has been linked to the possible attraction of a National Football League team, is expected—if approved—to include not only the expansion of the current Los Angeles Convention Center, but also the construction of an adjacent sports, concert, and public event venue which will be able to seat over 70,000 fans at any single event. The formal mediation process ended in June.

Professor Madigan served as lead mediator for the mediation process, and was appointed by the Straus Institute as its first director of the Public Disputes Project in anticipation of this mediation. The mediation process was mandated by a special state statute, SB 292, amending the California Environmental Quality Act (CEQA) and aimed specifically at the Farmers Field Project; it directed the proposed developer, Anschutz Entertainment Group (or AEG), and the City of Los Angeles to participate in good faith mediation with any eligible party formally requesting mediation. The statute also streamlined judicial review of any challenge to the final EIR (including requiring litigants to file challenges directly in state appeals courts as opposed to superior courts) and imposed specific environmental achievement targets on AEG for the project.

With respect to the mediation process, the statute directed the City of Los Angeles to appoint the independent mediator(s) and AEG to pay the mediators’ fees. Parties

who submitted written comments on the draft EIR (which was over 10,000 pages in length) had five days after the close of the public comment period to request mediation. Mediations were to commence and conclude within the next 30 days.

The mediators began their work by drafting informational materials about the mediation process; these materials were made available at the public hearing in May and were posted on both the project website and the Straus Institute website. The mediators then conducted private and confidential conversations (“convening

sessions”) in late May and early June with each of the requesting parties—and with the city and AEG—before scheduling in-person mediation sessions. The mediation process—and the mediators’ appointment—ended the last week of June. Although no formal agreements were reached during the 30-day process, the parties emerged with a clearer understanding of each other’s concerns and constraints, and several indicated they would continue their conversations with each other after the mediations ended.

Parties requesting mediation included the Legal Aid Foundation of Los Angeles representing the Los Angeles Community Action Network (“LA CAN”), the Natural Resources Defense Council (NRDC), and individuals and coalitions such as the Coalition for a Safe Environment (CASE), Save Our Communities, Inc. (SOCI), and the Society for a Just Economy (SAJE), among others. Issues discussed included various ways to define environmental impacts, options for mitigation where required, community impacts and possible community benefits, and engineering and seismological issues.

Professors Madigan and Robinson hope to canvass the participants later this year for their reflections on this mediation process. The California legislature has been exploring mandatory ADR processes for other kinds of “public disputes,” including a recently-passed “neutral evaluation process” required before any California city may file for bankruptcy (subject to limited exceptions). Professors Madigan and Robinson hope to understand better how these mandated processes affect public participation, decision making, and conflict resolution.



Symposium on RESCUING RELATIONSHIPS: APOLOGY, FORGIVENESS, AND RECONCILIATION



On November 2, 2012, the Straus Institute and the Pepperdine Dispute Resolution Law Journal will present an apology symposium called “Rescuing Relationships: Apology, Forgiveness, and Reconciliation.”

One of the keynote speakers, David Lerman, MD, general counsel at Kaiser Permanente Southern California, will share positions resulting from Kaiser’s use of apology. Other speakers on apology will include Eileen Barker, author; Susan Daicoff, professor, Phoenix School of Law; Nick Smith, associate professor, University of New Hampshire; Calvin Sharpe, Galen J. Roush Professor in Business Law and Regulation, Case Western Reserve University School of Law; Lee Taft, Taft Solutions; and Sam Edwards, associate professor, Green Mountain College.

Panel discussion on forgiveness is represented by Ken Cloke, director, Center for Dispute Resolution, and Solangel Maldonado, professor, Seton Hall Law School.

The cost of the program is \$125, or \$95 if registered before October 15, 2012. Registration includes 2013 DRLJ Symposium Issue. The symposium is approved for six hours of CLE credit.

To register or for more information, visit straus.pepperdine.edu or call Tess Marme at 310.506.6330 or e-mail tess.marme@pepperdine.edu.

Straus Faculty Present at THE ABA DISPUTE RESOLUTION SECTION MEETING IN WASHINGTON, D.C.

Straus Institute faculty presented topics of interest on arbitration, mediation, and negotiation during the three-day ABA Dispute Resolution Section meeting in Washington, D.C., in April. Tom Stipanowich chaired a program entitled “Promoting a National Dialogue on Resolving Consumer and Employment Disputes” that summarized the efforts of the National Roundtable on Consumer and Employment Dispute Resolution cosponsored by Pepperdine Law School, Straus Institute for Dispute Resolution and the Penn State School of Law. He also moderated a panel for the Legal Educators’ Colloquium entitled “Current Empirical Research on Contract Based Arbitration: New Insights and Continuing Challenges.” Peter Robinson cochaired a program on “The Use and Misuse of Apology in Mediation.” He also spoke at a meeting of the International Academy of Mediators which preceded the Dispute Resolution Section meeting. Judith Hale Norris was the moderator of the panel on “Achieving Justice Through 21st Century Arbitration.” Maureen Weston was a panelist on two programs entitled “Arbitration Case Law Update” and “Measuring Negotiation Learning: What Do We Know and How Do We Know It?”



STEPHANIE BELL JOINS THE STRAUS INSTITUTE as Assistant Director and Assistant Professor of Law

Stephanie Bell had her heart set on becoming a mediator when she graduated from the University of Washington School of Law in the spring of 1996.

Just out of law school, Bell practiced at the Office of the Federal Public Defender as a research attorney working on death penalty appeals. “While it was satisfying work, I couldn’t shake ‘the mediation thing.’ I took mediation training wherever I could find it. A year after graduating I knocked on Julia Gold’s door. (Gold was in her first year teaching at the UW Mediation Clinic.) I asked her if she would mentor me.”

After a few months of Gold’s tutelage, the now 43-year-old took a half-pay cut from being a federal defender to work with the Dispute Resolution Center of King County where she supervised mediators in 11 divisions of the district court in a small claims and civil harassment mediation program. “I decided you earn or you learn. And I was definitely learning. One day it was the disappointed bride whose wedding pictures were overexposed; the next day it was disgruntled neighbors fighting over a rooster’s 5 a.m. wake-up call. Those early experiences were invaluable and are the DNA of the mediator that I am today.”

In 2000 Bell designed and implemented a labor and employment mediation program for the City of Seattle workforce. “I convened a team of 25 labor and management leaders for a three-day ‘Dispute Design Workshop’ where we hammered out the design, contract language, and implementation plan.” After her stint at the city, she moved to county government, where she managed a shared-neutrals mediation program serving a tri-county region, again focusing on public policy, labor, and employment mediation. As part of the model, she managed a practicum that trained attorneys, law students, and government employees in mediation.

Bell’s experience led to adjunct teaching positions with the Seattle University School of Law, and the University of Washington’s graduate program in public administration. She began spending her vacations teaching at Pepperdine’s Straus Institute.

“I referred to my adjunct work as, ‘my teaching habit,’” she said. “Frankly, I can’t stop. I am most alive when I teach.”

This fall, Bell joins the Straus Institute on a full-time basis, serving as assistant director and assistant professor of law. The role was previously held by Jack McCrory, who began his tenure at Pepperdine in 2000 after retiring from the



Vermont Law School. Though he has left the Straus Institute for a second retirement, McCrory will continue to serve as a member of the adjunct faculty.

Bell directs the mediation clinic and will teach podium classes as well. In addition she advises 30 JD/MDR students, as well as the 150 JD students that receive a Certificate in Dispute Resolution from Straus. Bell is tasked with developing an advanced employment mediation clinic and will be working with the director of the institute’s Public Disputes Project, Denise Madigan, to bring her experience of public policy mediation to Straus.

Bell said of public policy mediation, “The Pepperdine mission, ‘Purpose, Service, and Leadership,’ says it all. It is incumbent upon the Pepperdine network to serve our community, and engender an ethic of service in the next generation of dispute resolution leaders.”

When asked what she wants to contribute to Straus, Bell said, “I want to pass on the face of rigorous study and mindful professionalism to new lawyers in the classroom and clinic.” She concludes, “In 14 years, not a day has gone by that I didn’t love, (or at least very much like) my job. I am grateful for the ‘role of the lawyer’ that I have chosen.”

Straus Institute Cohosts First Meeting of NATIONAL ROUNDTABLE ON CONSUMER AND EMPLOYMENT

The first facilitated gathering of the National Roundtable on Consumer and Employment Dispute Resolution was held on February 2-4, 2012, at the Villa Graziadio Executive Center on Pepperdine University’s Malibu campus. The roundtable brought together more than 30 leading scholars, advocates, and policymakers to discuss much-debated issues including (1) disputes involving consumer financial services and (2) disputes between investors and securities brokers. The arbitration of these disputes is currently under review by the Consumer Financial Protection Bureau (CFPB) and the Securities and Exchange Commission (SEC); representatives of the CFPB were in attendance at the roundtable.

The roundtable was the brainchild of an ad hoc planning committee comprising Professors Tom Stipanowich and Nancy Welsh (cochairs), together with Professor Lisa Blomgren Bingham and Larry Mills, with advice and assistance from Professor Homer LaRue. The planning committee’s goal was to provide an opportunity for a structured, facilitated discussion among thoughtful people about the current state of United States consumer-arbitration policy and practice in order to identify: (1) areas of current or possible consensus; (2) gaps in knowledge that require empirical research; and (3) promising initiatives. They invited scholars, business and consumer advocates, agency representatives, policymakers, and dispute resolution providers to participate in a national conversation regarding

consumer and employment dispute resolution. The effort was designed to build upon the work of Consumer Arbitration Study Group convened in January 2010 by the American Bar Association Section of Dispute Resolution.

To prepare for the first roundtable and to make the time together as productive as possible, the planning committee borrowed a best practice often employed in the mediation of broad-based conversations on public policy questions: in advance of the roundtable, the planning committee members had informal conversations with the participants about their perspectives, ideas, and suggestions. Everyone’s comments were combined in an informal aggregate report, without revealing individually identifiable information or attribution of comments to anyone.

The February roundtable resulted in a wide-ranging discussion and the creation of a number of working groups. These include a working group to explore the opportunities for the use of online dispute resolution to resolve consumer disputes; the creation of an “Arbitration Fairness Index” as a guide for consumer and employment arbitration programs (a concept based on an article by Professor Stipanowich); and further study on contractual arbitration provisions in different consumer transactions.

A second meeting of the roundtable was held at Penn State University School of Law in September 2012. The focus was on employment disputes.



STIPANOWICH SPEAKS ON “ARBITRATION FAIRNESS INDEX” at Hastings and UCLA

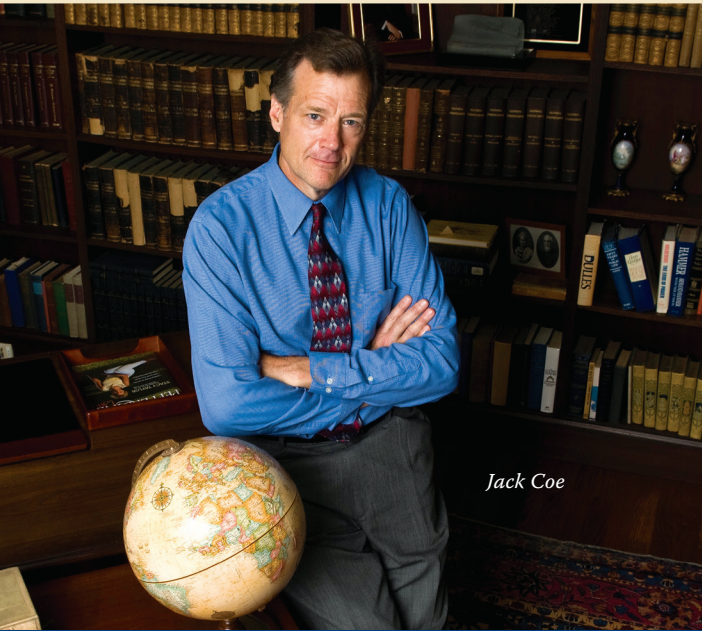
In connection with a Kansas Law Review symposium on the current state of arbitration law and in anticipation of the February National Roundtable on Consumer and Employment Dispute Resolution, Professor Tom Stipanowich developed his own proposal to address the current state of arbitration—an open rating system for consumer and employment arbitration programs centered on an “Arbitration Fairness Index.” Such a system, Stipanowich asserts, would not only provide valuable information to consumers, but would also shape corporate behavior through transparency.

Stipanowich presented his concept on Thursday, February 23, 2012, when the Hastings Business Law Journal hosted “Mandatory Arbitration in Contracts of Adhesion: When Many Become One,” at UC Hastings College of the Law in San Francisco, California. The topic of discussion centered around last year’s Supreme Court decision in AT&T Mobility v. Concepcion, and its implications on adhesion contracts, arbitration, class actions, and consumer protection. The symposium attracted scholars and practitioners from all over the United States to discuss the merits of the Court’s ruling, and its impact on consumers and corporations.

The Arbitration Fairness Index was also the main topic of Stipanowich’s presentation for the UCLA School of Law Negotiation and Conflict Resolution Program on April 5, 2012. UCLA Professor Russ Korobkin hosted the event, which was a part of a series of presentations by leading dispute resolution scholars. Professor Katherine Stone offered reflections on Stipanowich’s concept.

If you are interested in learning more about the Arbitration Fairness Index, see:

“The Arbitration Fairness Index: Using a Public Rating System to Skirt the Legal Logjam and Promote Fairer and More Effective Arbitration of Employment and Consumer Disputes” in Symposium, “Perspectives on the Current State of Arbitration Law,” Kansas Law Review (forthcoming), available at <http://ssrn.com/abstract=2004543>.



Coe and Stipanowich Speak at FIRST ATLANTA INTERNATIONAL ARBITRATION CONFERENCE

Professors Jack Coe and Tom Stipanowich shared a podium at a recent conference in Atlanta, Georgia, “The United States and Its Place in the International Arbitration System of the 21st Century: Trendsetter, Outlier or One in a Crowd?”

Professor Coe, an associate reporter for the new Restatement of U.S. Law of International Commercial Arbitration, and Professor Stipanowich (who is an advisor on the project) were both members of a panel on the subject “The Federal Arbitration Act: In Need of a Tune-up or Better Left Alone?”

The Federal Arbitration Act (the “FAA”) was enacted in the U.S. in 1925, prior to the modern growth of arbitration as a routine means of resolving international commercial disputes. As a result, its terms are more skeletal than those of many other national laws that govern international arbitration, a number of which have been modernized in recent years, including, most recently, those of France and Italy in 2011. Coe, Stipanowich, and other panelists offered thoughts on the need for revamping of the FAA and the practical implications of proposed reforms for international arbitrations in the United States.



PACIS Project ENCOURAGES UNITY FOR SYRIAN OPPOSITION GROUPS

PACIS’ faith-based reconciliation programs have been warmly embraced by the coalition opposing the government of Syrian president Bashar al-Assad. PACIS team members, Tim Pownall, Brian Cox, and Michael Zacharia have led multiple workshops to utilize the Abrahamic Faith-Based Reconciliation approach to articulate a shared vision of national healing and reconciliation for all Syrians. The participants in the latest workshop in July 2012 in Cairo, Egypt, included representatives from the Syrian National Council, the Syrian Coordinating Committee, the Free Syrian Army, Bedouin tribal leaders, and leaders from the Syrian Kurdish community.

PACIS aims to engage identity-based and religious antagonists in understanding “the other” and softening hearts as the prelude to constructive, joint problem solving. PACIS’ innovative approach is a distinct experience that causes participants to search the depths of their own being and to experience at the deepest level the heart of “the other” in a faith-based, sacred-space context. PACIS seeks to be a friend to the Syrian people and their aspirations by facilitating a vision of “national healing and reconciliation in Syria” as a goal of the revolution for a post-Assad Syria.

The Bedouin and Kurdish leaders in the Syrian opposition coalition have requested additional workshops to spread the vision for national healing and reconciliation to other leaders in their communities. These workshops must be postponed until funds can be raised to pay for the PACIS team’s travel and workshop expenses. Pepperdine’s four-year funding for PACIS has been expended and PACIS partner, the International Center for Religion and Diplomacy in Washington, D.C., raised the money for the last workshop. Please contact Straus assistant director Tim Pownall if you can help locate the funds to continue this important approach to reconciliation in the Middle East.



Assistant Director Pownall Acquires Reputation for HELPING TO RESOLVE DENOMINATIONAL DISPUTES



Early this year assistant director W. Timothy (Tim) Pownall was retained to assist the Presbytery of San Francisco (PCUSA) to mediate a historically contentious issue regarding a “gracious dismissal policy” for congregations desiring to renounce membership in the national Presbyterian denomination. Over the course of three

years, the presbytery had appointed a series of task forces to address this issue with varying degrees of success.

After a particularly heated debate, the presbytery appointed a balanced team of 12 commissioners representing a variety of perspectives and convictions to address the matter with the help of a mediator. The commissioners reflected the diversity of the Presbytery of San Francisco, and in some cases possibly the polar ends of its 86 congregations. Through a process that was more involved than any of the participants anticipated, the commissioners unanimously approved a revised policy regarding a gracious dismissal policy. This policy was adopted without dissent by a vote of the entire presbytery.

This was a difficult peacemaking and faith-building journey for the mediation team, but a journey in which it came to know that the Lord had been with them; they sensed and came to know the Spirit of God working among them; and by which they all grew and learned to love and appreciate one another in ways they did not expect. Pownall has since been retained by other denominational bodies to mediate similar issues.

The mediator-assisted commissioners’ work product can be reviewed at: www.presbyteryofsf.org/2012/05/mediation-groups-dismissal-policy-report.

STIPANOWICH APPOINTED to the U.N. Working Group on Online Dispute Resolution

Professor Tom Stipanowich was appointed by the American Bar Association’s Section of International Law to attend meetings of the United Nations Commission on International Trade Law (UNCITRAL) Working Group III. The working group is considering the development of standards for online platforms for resolution of business-to-business disputes, as well as consumer-business disputes. The working group met at the United Nations headquarters in New York City on May 21-26, 2012. Many countries from around the world were represented.

A major debate within the working group involves the character and scope of online platforms. The U.S. State Department is strongly encouraging platforms which would include mediation, as well as binding arbitration. Representatives of the European Union are resisting the inclusion of binding arbitration.

The group will reconvene in Vienna late in 2012.



SUPREME COURT DECISIONS ON ARBITRATION are Subject of Annual Byrne Symposium Lecture

This year’s annual Bryne Judicial Symposium at Pepperdine School of Law concluded with a Bryne Lecture that consisted of a panel discussion moderated by Professor Tom Stipanowich and featuring three outstanding speakers. Stipanowich opened the discussion on “Arbitration and Justiciability” with a quick summary of the Supreme Court’s jurisprudence under the Federal Arbitration Act, including *Rent-A-Center, West, Inc. v. Jackson* and *AT&T Mobility LLC v. Concepcion*.

Recently retired Ninth Circuit chief judge Mary Schroeder offered perspectives on the courts’ efforts to grapple with their role vis-à-vis the enforcement of arbitration agreements under the FAA (including the Ninth Circuit’s treatment of *Rent-A-Center* and *AT&T Mobility*). Drawing upon her own scholarship, including the recent *Harvard Law Review* article “Fairness in Numbers: A Comment on *AT&T v. Concepcion*, *Wal-Mart v. Dukes*, and *Turner v. Rogers*,” Yale professor Judith Resnik provided views on the evolving functions and roles of courts and the privatization of adjudication under the rubric of the FAA. Professor Chris Drahozal, who has conducted extensive empirical research on consumer arbitration under the auspices of the American Arbitration Association, summarized some of those findings offering a different perspective on the course of arbitration law and its impact on the justice system.

Those interested in learning more about recent Supreme Court arbitration decisions, Congressional responses, and options for the future of arbitration should see:

“The Third Arbitration Trilogy: *Stolt-Nielsen*, *Rent-A-Center*, *Concepcion*, and the Future of American Arbitration” (*American Review of International Arbitration*, 2011), available at <http://ssrn.com/abstract=1919936>.



Straus Institute Hosts THREE INTERNATIONAL SCHOLARS

Pepperdine School of Law's Straus Institute for Dispute Resolution has a history of drawing students and professionals from throughout the world to study the program's unique curriculum. In its 25 years of existence, and with its eight-year stint at the top of the *U.S. News & World Report* ranking for dispute resolution programs, Straus has hosted nine academic scholars associated with both the Fulbright and Muskie Fellowship programs. These scholars stem from diverse backgrounds in Germany, El Salvador, Egypt, Panama, Tunisia, the Czech Republic, and Moldova.

The Fulbright Program is an international educational exchange program sponsored by the United States government, and is designed to promote positive relationships between Americans and citizens of other countries. Similarly, the Edmund S. Muskie Graduate Fellowship program promotes involvement with the United States among scholars from Eurasia. Both programs are highly competitive, and seek to include individuals with the highest standards of research and academia.

Straus recently welcomed three additional internationally recognized scholars to the Malibu campus.

Yazmina Batista – Fulbright Scholar

A native of Panama, Yazmina Batista (LLM '12) completed her undergraduate work at the University of Panama before continuing her education and earning her law degree from the Latin American University of Science and Technology in 2007.

Upon graduating, Batista began working for the district attorney's office in Panama, specifically focusing on juvenile cases.

Since her career began, the now 28-year-old began noticing a need in her home country for lawyers who specialize in alternative dispute resolution. She heard from a fellow Fulbright Scholar and Straus Institute alumnus, Benito Vega, also a native of Panama, about the unique program offered by Pepperdine.

She was accepted into both the Fulbright and Straus programs and, since beginning her studies in California, worked as an intern with the Ventura County Public Defender, focusing specifically on criminal cases. When she completed the one-year program, Batista returned to Panama and the district attorney's office.

Elena Seryapina – Fulbright Scholar

Elena Seryapina (LLM '12) graduated with the equivalent of a juris doctor from South Ural State University in her home country of Russia in 2009, focusing much of her studies on civil law and commercial law.

The now 25-year-old began working as a corporate transactional lawyer for OAO Fortum, an international energy production corporation that contracts work to large power plants.

Due to its high volume of contracts, OAO Fortum began requiring a greater need for skills in arbitration and dispute resolution. Seryapina reached out to the Fulbright Program and to the Straus Institute, and, upon her acceptance, took an academic leave of absence from her position in Russia to complete the LLM program.

Oleksandr Volkov – Muskie Scholar

Oleksandr Volkov's native Ukraine is in the process of developing international and national arbitration and dispute resolution strategies to incorporate into its judiciary system, filling a void in what Volkov says is a field that needs improvement.

The 24-year-old completed his law degree from Yaroslav the Wise National Law Academy of Ukraine, and works as an associate with Shkrebet and Partners LLC. He has maintained an interest in strengthening the legal system in his home country.

Volkov says the sophisticated faculty, curriculum, and library are what drew him to choose the Straus Institute. More specifically, Volkov was impressed by the opportunities provided by the institute to gain the experience and skills he needed when he returned to Ukraine.



STRAUS ANNOUNCES PILOT LLM PROGRAM IN LONDON

This year, Straus Institute announced the new LLM in dispute resolution formatted for European lawyers and judges starting January 2013. Through this new format, working attorneys will be able to take a series of extended weekend intensives once a month at Pepperdine's London campus, participate in two Winter Intensives and spend six weeks in Malibu during the summer to earn Pepperdine's LLM in dispute resolution.

This new format was created for practitioners across Europe who would not be able to dedicate a full year to the traditional LLM program in Malibu. Similar to the Malibu LLM program, participants in the London LLM will be able to mediate 20 cases in the courts, observe commercial private sector mediations, and tour the largest court-annexed mediation program in the world. The London LLM was created as a pilot program and will be limited to 15 students.

For additional information, please visit law.pepperdine.edu/straus/academics/europe-llm.htm.

Ken Feinberg Launches STRAUS INSTITUTE CONVERSATION SERIES



The Straus Institute for Dispute Resolution debuted an exciting new conversation series on November 14 at the School of Law to herald its 25th anniversary celebration. Ken Feinberg, one of the best known figures in the field of alternative dispute resolution, was the inaugural speaker. Feinberg focused on highlights from his dynamic career, including working as chief of staff for Senator Edward Kennedy and his time as special master of the September 11th Victim Compensation Fund.

"Ken Feinberg was the ideal person with whom to start the series," says Tom Stipanowich, the Straus Institute academic director and William H. Webster Chair in Dispute Resolution. "His presence here at Pepperdine was a boon for our students, faculty, alumni, and colleagues in the dispute resolution community."

Stipanowich moderated the conversation and recounted Feinberg's career trajectory and milestones prior to opening the forum for audience questions.

After discussing Feinberg's blue collar upbringing; early work with U.S. Supreme Court justice Antonin Scalia on the Foreign Intelligence Surveillance Act; and efforts setting up the Washington, D.C. office of Kaye Scholer LLP; the guest of honor delved into the turning point in his career: when he was named special settlement master in the Agent Orange product liability litigation case in 1984.

"That one was on the front pages everywhere," remembered Feinberg, of the case that had been pending for seven years, for which he was given eight weeks to prepare. "You talk about one case that changed your professional career in an instant, that was the case! Once that settled, everyone started calling me." Luckily, said Feinberg, "When you go to mediate the case, you're 75 percent of the way home before you start."

Of his more difficult appointments, the mediation expert mentioned his work on the Brooklyn Navy Yard mesothelioma and asbestos exposure case, which shifted the topic to aggregate justice. "When you get these mass claims involving thousands of people, you can't resolve them one-by-one," he explained. "Justice delayed is justice denied."

Finally, Feinberg spoke in great and sometimes grave detail about his experience mediating two of the most significant cases in recent history: the September 11th Victim Compensation Fund, a role in which he served pro bono for almost three years, and the BP Deepwater Horizon Disaster Victim Compensation Fund, a \$20 billion fund to pay claims resulting from the BP Gulf Oil Spill.

Over the course of 33 months, Feinberg personally conducted 900 hearings for the families of victims or those physically injured by the September 11 tragedy. Fifteen hundred others also came forward "not to talk about the money," recounted Feinberg, "but to vent about life's unfairness. They wanted to validate the memory of a lost loved one." Placing value on these claims was a hefty task, one which caused much controversy throughout the litigation process. "I tried to explain that nobody could validate the moral integrity of a human being, but they didn't get it," he contended. Feinberg explained that he distributed \$250,000 for the death of the victim and \$100,000 for each surviving spouse and dependent—a non-economic component that was added to economic loss. "I wasn't going to try to fine-tune different amounts of pain and suffering."

Undertaking a case such as that of the BP oil spill was of a different magnitude, as the Obama Administration and BP established a \$20 billion restitution fund for those affected.

INVESTOR ADVOCACY CLINIC Finds Success in Mediation and Arbitration of First Year Cases



Members of Pepperdine University School of Law's Investor Advocacy Clinic, a branch of the Straus Institute for Dispute Resolution, have found success in their first three cases.

The Pepperdine Law Investor Advocacy Clinic was established in the fall of 2010 through a \$250,000 grant from the Financial Industry Regulatory Authority (FINRA). The clinic's founding director, Robert Uhl, an attorney specializing in securities arbitration and litigation, approached the Straus Institute about establishing the clinic based on a recommendation from his law firm partner Philip Aidikoff. Thomas Stipanowich, academic director of the Straus Institute, William H. Webster Chair in Dispute Resolution, and professor of law, supported the idea and assisted Uhl and the clinic's associate director Judith Hale Norris in writing the FINRA grant.

Upon the approval of the grant, Uhl began teaching a securities arbitration course at the School of Law. The first class of 12 students was welcomed in the fall of 2010. Of the 12, five were invited to join the clinic and begin working on a select number of cases. Students who participate in the Investor Advocacy Clinic are certified with the State Bar so they can represent parties under the direct supervision of an attorney.

"We were receiving dozens of calls," Uhl said. "Many were regarding investments people made with friends. Our focus is on investments made with licensed brokers, so we had to turn down about 95 percent of the calls."

Uhl noted that each case takes approximately 14 months to prepare and go to either mediation or an arbitration hearing. The students work closely with Uhl to prepare the witnesses and documents for mediation and arbitration, and to develop negotiation and learning strategies. In addition to preparing the case, the clinic's students are required to participate in community outreach projects designed to educate the public about investment fraud.

In the fall of 2011 Uhl welcomed 25 students into his second securities arbitration class. Five additional students were selected from that class to join the clinic for the coming year.

The clinic's first case, Surinder Paul, et al. vs. FSC Securities Corp., et al., included the School of Law's Meghan Milloy (JD '12), a certified law student. The case was settled in January 2012 in mediation. Milloy delivered the opening statement and negotiated the settlement under Uhl's supervision.

The second case, Susan Jenkins vs. Crowell, Weedon & Co., went to arbitration hearing in February, 2012. School of Law students Matthew Troncali (JD '12) and Lindsey Dodge, worked with Uhl and Norris on the case. Troncali delivered the opening statement and the direct examination of Susan Jenkins. After four days, the chair of the arbitration panel ruled in favor of Jenkins, and awarded 100 percent of the damages requested at the hearing. Pepperdine is the only one of six investor advocacy clinics funded by FINRA to try a case, and the first FINRA clinic to prevail at arbitration.

"I'm very enthusiastic about it," said Peter Robinson, managing director of the Straus Institute and professor of law. "It's an incredible opportunity for our students. It's lawyering at its pinnacle. For the students to be coached and prepared and to be a part of presenting peoples' cases is a perfect law school educational experience. The fact that we had such a good outcome is a dream come true."

A third case, Robert Olson vs. Morgan Wilshire, et al., went to a three-day arbitration hearing in March. In April the single arbitrator ruled in favor of Olson, granting him virtually all of his net out-of-pocket loss. Pepperdine certified law students Maxfield Marquardt (JD '12, MDR '12) and Cory O'Yang participated. Marquardt, a member of the clinic's first cohort, delivered the opening statement and the direct examination of Robert Olson.

"The clinic and the underlying securities arbitration course that we teach are a triple-play win for all concerned," Uhl said. "Clients receive professional representation at no cost for claims that otherwise would go begging, the students learn practical skills generally not taught in purely doctrinal classes, and I personally satisfy a long-held desire to pass on by way of teaching the incredible experiences I have had representing investors for more than 20 years."

A DECADE OF CHAMPIONSHIPS for the Pepperdine Trial Advocacy Teams

Pepperdine has an established track record of success in trial advocacy competition. Over the last 10 years, Pepperdine has garnered seven national titles and 17 regional championships. Included among the successes are the NITA Tournament of Champions championship as well as three-time champions of the National Civil Trial Competition.

Pepperdine's remarkable run of successes began by capturing the NITA Tournament of Champions competition during the 2002-2003 academic year. That team of Jack White (JD '03), Allyson Rinella (JD '03), Georgia Woodruff (JD '03), and Marty Dearcangelis (JD '04) defeated the University of Texas at Austin to win the national title. This tournament invites teams from the 16 schools who enjoyed the most success over the proceeding three years. Pepperdine has been invited eight times.

In 2004 Kendra Magnuson-Thomas (JD '05), Tina Talim (JD '04), Melissa Alessi (JD '05), and Sharunne Foster (JD '04) swept through the western finals and then on to the national championship of the Thurgood Marshall National Trial Competition.

In 2006 Pepperdine began an unprecedented run by winning the first of three National Civil Trial Competition championships. It is noteworthy that no other school has won this competition more than once. The competition is by invitation only and traditionally draws only schools with elite trial team advocacy programs. That 2006 team consisted of Janelle Dine (JD '07), Zeke Fortenberry (JD '07), Amy Teeple (JD '08), and Stephen Faulk (JD '07). The 2010 team was composed of Amber Lee (JD '11), John Barron (JD '11),

Shane Michael (JD '11), and Brittney Lane (JD '12). The most recent winners of this prestigious competition were Alyssa Ayotte (JD '12), Chalak Richards (JD '12), Mane Sardaryan (JD '12), and Destiny Ramsey who took the title this past fall.

Pepperdine has also dominated the ABA National Labor and Employment Law Trial Competition, winning national titles in 2008 and 2009. The 2008 team members were Matt Sharbaugh (JD '08), Ashley Locke (JD '08), John Huber (JD '08), and Sterling Cluff (JD '09), and the 2009 competitors were Richard Gillespie (JD '10), Seth Laursen (JD '11), Hannah Montgomery (JD '10), Zack Shine (JD '10), and Alicia Campbell (JD '09).

Preparation for all these competitions is grueling with three two-hour sessions each week for 10 to 12 weeks coupled with five to ten practice trials lasting four to five hours. The dedication displayed by these students is truly remarkable.

Pepperdine began competing in interschool competitions in the mid-1990s under direction of Professor Harry Caldwell (JD '76). In 2000 Caldwell received the Richard S. Jacobson Award for Excellence from the Roscoe Pound Institute as the nation's premier trial advocacy teacher. Over the years he has been ably joined by a stellar group of faculty advisors including Tim Perrin, Naomi Goodno, Chris Goodman, Terry Adamson, J. Michael Crowe, Michael Mewbourne (JD '10, MDR '10), Chris Frost (JD '98), and dozens of alumni who come back each year to judge practice rounds.



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Upcoming Events:

2012

SEPTEMBER 20-22

East Coast Professional Skills Program
(6 simultaneous workshops)
Woodstock, Vermont

NOVEMBER 2

Symposium on Rescuing Relationships:
Apology, Forgiveness, and Reconciliation
Malibu, California

NOVEMBER 3

SCMA 24th Annual Fall Conference
The Working Mediator: Improving the
Culture of Conflict
Malibu, California

DECEMBER 31, 2012 TO JANUARY 5, 2013

Winter Intensive Program
(7 academic courses)
Malibu, California

2013

JANUARY 24-26 AND FEBRUARY 7-9

Mediating the Litigated Case
Irvine and West Los Angeles, California

JANUARY 25, 2013

Public Presentation of the Straus Institute's
Peacemaker Award to Archbishop Emeritus
Desmond M. Tutu

MARCH 14-16

1st Annual Baltimore, Maryland
Professional Skills Program
(8 simultaneous workshops)
Baltimore, Maryland

APRIL 5

Sports Law Symposium
The New Normal in College Sports:
Realigned and Reckoning
Malibu, California

APRIL 8-13

Mediating the Litigated Case
Washington, D.C.

MAY 20-31

London/Geneva Study Tour

MAY 28-AUGUST 3

Summer Intensive Academic Program
(22 courses offered)
Malibu, California

JUNE 20-22

Professional Skills Program
(11 simultaneous workshops)
Malibu, California

AUGUST 5-10

Mediating the Litigated Case
Malibu, California