

INSIDE STRAUS

Translating Theory into Practice

2013

Straus Expands Globally

*Announcing New LLM
Concentration in*
INTERNATIONAL
COMMERCIAL
ARBITRATION

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Coe and Stipanowich Lead Distinguished Faculty and Participants in NEW LLM CONCENTRATION

This upcoming fall, Pepperdine welcomes the inaugural class for the new LLM in dispute resolution with a concentration in international commercial arbitration. Recognizing the growing importance of educating attorneys on international arbitration issues, the Straus Institute has expanded its curriculum to create this new area of specialty.

Some of the newly added courses include International Commercial Arbitration Theory and Doctrine, International Commercial Arbitration Procedure and Practice, Ethical Considerations in International Commercial Arbitration, International Commercial Arbitration and the National Courts, and International Investment Disputes.

Led by ICA faculty director Jack Coe and Straus academic director Tom Stipanowich, this new program brings in leading experts and faculty from law firms and organizations across the globe including Freshfields Bruckhaus Deringer, Jones Day, King & Spalding, and the World Bank.



Jack J. Coe, Jr.

Faculty director and professor of law

Coe is a specialist in private international law. He received his LLM at Exeter, where he was a Rotary International Graduate Fellow, and holds the Diploma of the Hague Academy of International Law, and a Ph.D. from the London School of Economics. He clerked for the Honorable Richard C. Allison at the Iran-U.S. Claims Tribunal, the Hague, and now consults with governments and multinational corporations in relation to commercial and direct investment disputes under the NAFTA and Bilateral Investment Treaties. He is an associate reporter on the ALI project addressing international commercial arbitration.



Thomas J. Stipanowich

William H. Webster Chair in Dispute Resolution, professor of law, and academic director, Straus Institute for Dispute Resolution

Stipanowich is a leading, award-winning arbitration scholar. He co-authored the much-cited, highly regarded treatise Federal Arbitration Law. His honors include the D'Alemberte/Raven Award, the ABA Dispute Resolution Section's highest honor, and the Companionship, the highest honor bestowed by the Chartered Institute of Arbitrators. From 2001-2006 he was CEO of the prestigious International Institute for Conflict Prevention & Resolution (CPR), placing special emphasis on commercial dispute resolution in Europe and Asia.

in International Commercial Arbitration

Some of the distinguished faculty members and guest speakers include:



JOHN R. COOK is professorial lecturer at George Washington Law School and is a frequent consultant to counsel in International Centre for Settlement of Investment Disputes and other international proceedings.



MEG KINNEAR is currently the secretary-general of the International Centre for Settlement of Investment Disputes at the World Bank.



LINDA SILBERMAN is the Martin Lipton Professor of Law at New York University School of Law. She has been a member of U.S. State Department delegations to the Hague conference on private international law as well as the state department advisory committee.



ERIC VAN GINKEL is a commercial mediator and arbitrator in Los Angeles with law degrees from the U.S. and the Netherlands.



LUCY REED is partner for Freshfields Bruckhaus Deringer, and the global co-head of the international arbitration group.



CATHERINE ROGERS is professor of law and international affairs, and the Paul and Marjorie Price Faculty Scholar at Penn State Law.



STEVE SMITH is partner at Jones Day and focuses his practice on the arbitration and litigation of complex international commercial disputes in a broad range of industries.



JASPER KIM is a 2011-2012 visiting scholar at Harvard University, professor and former department chair at the Graduate School of International Studies at Ewha University.



BEN H. SHEPARD, JR. is a distinguished lecturer at the University of Houston Law Center and the director of the school's A. A. White Dispute Resolution Center within the Blakely Advocacy Institute.



MARGRETE STEVENS is a consultant in King & Spalding's Washington, D.C., office working on investment treaty claims with the firm's International Arbitration Practice Group.



This fall Straus is especially pleased to welcome the following students as our inaugural class pursuing the LLM with a concentration in international commercial arbitration:

Reuben Ampadu-Asiamah
Practicing attorney from Ghana

Yizhi Guan
Recent law graduate from Shanghai, China

Zihui Meng
Recent law graduate from Beijing, China

ScheLeese Delport
Practicing attorney and Fulbright scholar focusing on ICA from South Africa

Julia Jung
Practicing attorney from Switzerland

Mariel Nuñez
Practicing attorney from Panama

Xiao Feng
Recent law graduate from Beijing, China

David Lewis
Practicing barrister from the U.K.

Pei Wang
Recent master's degree in law graduate from Beijing, China

Li Fu
Recent law graduate from Beijing, China

Abdullah Mazzah
Practicing attorney from Saudi Arabia

YingXin Wen
Recent law graduate from Guangdong, China

Ibraheem Mazzah
Law graduate from Saudi Arabia

Hao Wu
Recent law graduate from Shanghai, China



STRAUS TRAINING PROGRAMS

Impacting Professionals in the Field Coast-to-Coast

After celebrating its 25th anniversary last year, the Straus Institute looks to the future for continuing the annual Professional Skills Program and Mediating the Litigated Case programs with expanding opportunities on the East Coast. This move allows East Coast professionals more opportunities to participate in Straus training programs in locations that better suit their needs. New locations for training programs and cutting-edge symposiums will continue to be added as Straus looks to meet the current needs and trends in the dispute resolution field.

The newest location for training is Baltimore, Maryland. Straus is now offering an East Coast Professional Skills Program cosponsored by the University of Maryland Francis King Carey School of Law.



Peter Robinson welcomes participants to the Malibu Professional Skills Program plenary session, June 20, 2013.

The 26th Annual Summer Professional Skills Program June 20–22, 2013

The Summer Professional Skills Program is a three-day, 18-hour, skills-development training program held on the Malibu campus. This year's 26th annual Professional Skills Program attracted 235 participants from 23 states and seven foreign countries—Norway, Canada, India, France, Greece, Italy and New Zealand.

Next year's 27th annual Professional Skills Program will be held on the Malibu campus on June 19–21, 2014.

East Coast Professional Skills Program March 20–22, 2014

The first annual East Coast Professional Skills Program took place in Baltimore, Maryland, in March 2013 and offered eight courses in dispute resolution and had 150 participants attending from 17 states and three foreign countries.

The second annual East Coast Professional Skills Program in Baltimore will take place again on the campus of our cosponsor, the University of Maryland Francis King Carey School of Law.

Mediating the Litigated Case Programs

Mediating the Litigated Case is Straus Institute's premier training program that is offered as an open-enrollment professional-skills workshop several times each year. It is a sophisticated six-day program (42 hours CLE credit) for experienced litigators, in-house counsel, and other practitioners. Professionals can study the mediation of litigated cases to either become a mediator or to be a better advocate. Taught by experienced lawyers who have made the transition from litigation to mediation practice, course participants will learn the essential skills required to serve as mediators.

The Mediating the Litigated Case programs are in high demand and programs offered in California have sold out for the past five years. Programs held at Pepperdine campuses in California include:

- » MALIBU, CALIFORNIA August 5–10, 2013
- » WEST LOS ANGELES and IRVINE, CALIFORNIA January 23–25, and February 6–8, 2014
- » MALIBU, CALIFORNIA August 4–9, 2014

For the third year, Straus is once again pleased to offer the Mediating the Litigated Case program to be held at Pepperdine's campus in Washington, D.C.

- » WASHINGTON, D.C. September 9–14, 2013

Straus Trains International Judges

The Thailand Office of the Judiciary again returned to Malibu for a special offering of Mediating the Litigated Case and Advanced Mediation Skills on September 16–27, 2013. This year 44 judges from the Thailand judiciary participated in the training programs and two days of site visits to various dispute resolution centers and the Los Angeles Superior Court. In 2009, 45 judges from Thailand participated in the program.



UPCOMING STRAUS SYMPOSIA

Doping and the Culture of Sport: Law, Science, Money, and Ethics October 22, 2013

"Doping and the Culture of Sport" will feature a keynote presentation by Dr. Arne Ljungqvist, a pioneer in the fight against doping in sport; a showing of the award-winning film *The War on Doping*, followed by commentary by producer Bjorn Bertoft; and two panels including medical and legal experts, doping specialists, journalists, and athletes, discussing concerns related to doping, doping control, and what this means for the future of sport. This program is presented without charge, but participants and students MUST register online in order to attend.

Sponsored by: Global Sports Development Foundation, Sheppard Mullin Richter & Hampton LLP, and in collaboration with Dr. Arne Ljungqvist, Anti-Doping Foundation at the University of Stockholm.

Women in Hollywood: 100 Years of Negotiating the System November 15–16, 2013

Women have played important roles in the entertainment industry from its earliest days. Individual female actors, writers, and directors often experience communicating, negotiation, and resolving disputes very differently from their male counterparts. This conference is intended to focus on the special issues and challenges facing women individually and collectively in the entertainment industry.

The program will feature a screening of the documentary *Without Lying Down: Frances Marion and Mary Pickford*. The program will feature prominent women from the entertainment industry.

Students may attend this program without charge, but they MUST register online in order to attend. Alumni will be offered a discounted rate to attend.

Straus Cosponsors Southern California Mediation Association Conference November 2, 2013

In 1987 Straus invited the 15 community mediation programs in Southern California to bring their volunteer mediators together for edification and mutual support. The more than 300 attendees led to the creation of the Southern California Mediation Association and Straus has continued to host their annual conference each year. Straus is looking forward to cosponsoring and hosting SCMA's 25th annual conference titled "Crisis and Opportunity: Expanding the Field of Conflict Resolution" on November 2, 2013, at the Malibu campus.

The theme is drawn in part from the organization's efforts to create new opportunities for mediators in the wake of the unexpected closing of the Los Angeles County Superior Court ADR program.

PEPPERDINE UNIVERSITY School of Law
STRAUS INSTITUTE FOR DISPUTE RESOLUTION

October 22, 2013

Doping and the Culture of Sport: Law, Science, Money and Ethics

Join an international group of medical and legal experts, anti-doping specialists, journalists, and athletes for this day of tackling one of the biggest issues in modern sport!

Tuesday, October 22, 2013
Pepperdine University School of Law
Malibu, California

This program will be webcast live – go to:
<https://new.livestream.com/pepperdinesol/dopingsports>

Registration Open: Sign up today!
[Facebook.com/DopingSymposium2013](https://www.facebook.com/DopingSymposium2013)

November 15–16, 2013

Women in HOLLYWOOD

100 Years of Negotiating the System

Past Straus Events

PEPPERDINE UNIVERSITY School of Law | Straus Institute for Dispute Resolution

Rescuing Relationships

Apology, Forgiveness, and Reconciliation

Cosponsored by the Pepperdine Dispute Resolution Law Journal

November 2nd, 2012 9 AM Pepperdine University School of Law Malibu, California

PEPPERDINE UNIVERSITY School of Law | Straus Institute for Dispute Resolution

A CONVERSATION about FORGIVENESS RECONCILIATION AND HEALING

LESSONS FROM SOUTH AFRICA

- Celebration of the Peacemaker Award to Archbishop Desmond Tutu
- Screening of *Reconciliation: Mandela's Miracle and A Conversation with Desmond Tutu and Biographer John Allen*

MARCH 21, 2013

Pepperdine University School of Law Malibu, California

Students Engage in ENTERTAINMENT, MEDIA, AND SPORTS

The 2012-2013 academic year marked the launch of EMS-Straus, the Straus Institute's new initiative focusing on dispute resolution in the areas of entertainment, media, and sports. EMS-Straus serves to provide a center for industry-expert conversations, innovative conferences, domestic and international off-campus programs, ADR industry-related student competitions, interdisciplinary course work, and externships in this area.



Under the leadership of EMS-Straus director Maureen Weston and industry advisor William Nix, EMS-Straus works closely with Pepperdine's Sports and Entertainment Law Society (SELS), the *Pepperdine Law Review*, the Career Development Office, and the University's Center for Entertainment, Media, and Culture on creating innovative new programs in these fields.

The inaugural year of EMS-Straus included a range of opportunities for students to learn about and experience dispute resolution in this exciting field. A two-week intensive course, Olympic and International Sports Dispute Resolution, in London, U.K., was offered on the eve of the 2012 Olympic Games, taught by Professor Weston and Jeff Benz, former general counsel for the U.S. Olympic Committee (USOC) and arbitrator with the Court of Arbitration for Sport (CAS). While immersed in case study, students met experts and officials from the London Organizing Committee for the Olympic Games; the USOC athlete ombudsman, general counsel, and chief of security; the Court of Arbitration for Sport; the U.K. Anti-Doping Agency; Sport Resolutions, Inc.; NBA London; the British Olympic Association; and Human Rights Watch. Site-visit highlights included a private tour of Arsenal Futbol Stadium and a trip to Olympic Park.

The EMS-Straus/SELS Industry Speaker Series brought in experts to campus for bimonthly luncheon briefings to discuss their work and current industry issues, and to advise on career paths



based on their own professional experiences. Speakers included representatives from Google, ESPN, Fox Sports Network, Creative Projects Group, Brillstein Entertainment, NCAA, talent agents, independent consultants, and entrepreneurs.

Industry guest speakers in professors William Nix and Gerald Phillips' Entertainment Dispute Resolution course included lawyers, executives, and representatives from the MPAA, William Morris Endeavor, Talent Managers Association, Association of Talent Agents, Entertainment Labor Consulting, Activision, and Mattel. Students also toured the Warner Bros. studio lot in Burbank, California, and were hosted by Warner's senior vice president and deputy general counsel, and vice president of litigation in the Warner Bros. legal department.

In association with the *Pepperdine Law Review*, EMS-Straus presented a symposium on cutting-edge issues in college sports entitled "The New Normal in College Sports: Realigned and Reckoning." Roger Cossack, ESPN legal analyst and Pepperdine Distinguished Visiting Professor, moderated a conversation on issues concerning major intercollegiate athletic programs among institutional leaders including Baylor University president Ken Starr, Conference USA commissioner Britton Banowsky, Pepperdine athletic director Steve Potts, and USC vice president for compliance Dave Roberts. Professor Weston moderated a panel of leading sports law scholars from Tulane, Marquette, Loyola, and Willamette Universities, and the University of New Hampshire, re-examining legal standards and processes in college sports disputes. Pepperdine Pulitzer-Prize winning professor Ed Larson moderated a "hot-topics" panel of sports law scholars and experts from the National Collegiate Athletic Association and USA Conference. A panel exploring "Money and What Drives the Machine," included broadcasting and media analyses from the ESPN journalists and broadcasting law scholars. An inspirational keynote address was given by Jeffery Moorad, former principal of the San Diego Padres and current CEO of Moorad Sports Management.

Through Industry Experts and Experiences

Student Competitions

Student Success at Sports and Entertainment ADR Competitions

Through EMS-Straus sponsorship, Pepperdine students were provided tremendous opportunities to showcase their skills and talents, and to network with established practitioners in national sports and entertainment dispute resolution competitions.

Pepperdine Number One at SABR Competition

Pepperdine School of Law students Joe Franzi, Dan Paret (JD '13), and David Meal (JD '13) partnered with Graziadio School of Business and Management students Rama Raju (MBA '12) and Michael Alexander (MBA '13) to place first at the Diamond Dollars Case Competition at the Society for American Baseball Research (SABR) Analytics Conference in Phoenix, Arizona. In this competition, a team of students evaluate a baseball-operations case problem and present their analysis and recommendation to a panel of Major League Baseball (MLB) front-office executives. As the competition champions, the Pepperdine law-business student team presented before the entire SABR Analytics Conference, presented by MLB and Bloomberg Sports.

Pepperdine Finalists at National Basketball Negotiation Competition

Pepperdine students Daniel Boysen (JD '13) and Eli Melamed advanced to the final championship round at the National Basketball Negotiation Competition at Fordham Law School's Sports Law Forum in New York City. Students from law schools across the country competed in this competition where students play the role of attorney teams representing NBA team owners, player agents, and corporate sponsors in negotiations involving player-team trades, player endorsements, corporate sponsorship deals with teams, and intra-league negotiations re-examining the NBA draft system.

Pepperdine at Tulane MLB Salary Arbitration Competition

Dan Paret (JD '13) and Kevin Dulaney (JD '13) represented Pepperdine at the Tulane University's sixth annual National Baseball Arbitration Competition. Paret and Dulaney finished in the top 10 of over 40 law school teams participating in this competition.

National Entertainment Moot Court

In November 2012 Pepperdine hosted its 15th annual National Entertainment Moot Court Competition with 24 law schools competing from around the United States.



UPCOMING EVENTS

- » October 22, 2013 Doping and the Culture of Sport: Law, Science, Money and Ethics
- » November 15-16, 2013 Women in Hollywood: 100 Years of Negotiating the System

Additional information about these upcoming events is listed on page 5.

For further information on EMS-Straus or SELS

law.pepperdine.edu/straus/news/entertainment-media-sports-project.htm.

Pepperdine Attracts INTERNATIONAL STUDENTS

from Across the Globe

NEW SUMMER LEGAL ENGLISH GATEWAY PROGRAM Attracts Students from Six Countries

This past summer the Straus Institute offered a new program for international students, lawyers, and judges—the Legal English Gateway Program. The Gateway program enables students to deepen their understanding of the U.S. legal system while immersed in an English-language learning environment.

The inaugural offering of this program attracted students from China, Saudi Arabia, Spain, India, Panama, and Korea. This four-week program combined daily classroom components with practical learning experiences. Students participated in regular visits to professional establishments that comprise the field of dispute resolution and the judicial system as a whole. Through visits to Los Angeles County courts, ADR service providers, and other settings, students were able to hear and learn directly from



leading professionals and get hands-on exposure to what the legal world looks like in California and in the U.S.

The program also provided students with many opportunities to immerse in American cultural experiences, such as visits to Universal Studios, a Dodgers game, and the Hollywood Bowl. Those activities consequently helped to enhance the students' exposure to the language and culture. During the duration of the Gateway Program, students were housed at the beautiful Pepperdine University Malibu campus. By the conclusion of the program, students possess a greater understanding of the English language, the U.S. legal system, and the American culture, which prepares them to enter an LLM program or pursue other opportunities within the U.S.

STRAUS WELCOMES PRESTIGIOUS INTERNATIONAL SCHOLARS for Sixth Consecutive Year

Pepperdine regularly attracts top scholars to study in the dispute resolution program at the School of Law. This year Pepperdine received scholars through the prestigious Fulbright Scholarship program, the Rotary Foundation, and Muskie Scholarship program.

Livia Giordano is a practicing attorney from Switzerland and has her law degree from the University of Zurich. Giordano left her law practice focusing on employment cases to attend Pepperdine's program. She is the first Rotary Ambassadorial Scholar to attend Pepperdine University School of Law.

Tatsiana Bialiyeva is an attorney from Belarus sponsored by the Muskie Scholarship program. She has her law degree from Belarus and an LLM in international and European law in Lithuania. Prior to Pepperdine, Bialiyeva was assistant director/trainer for the Center for Dispute Resolution in Belarus. After her degree, Bialiyeva wants to open a training mediation center to educate lawyers and judges in mediation. She is also looking at creating a mediation clinic at the state university.



Martin Freres is completing his master of dispute resolution, (MDR) under the Fulbright Scholarship program and comes to Pepperdine from Cologne, Germany. There he received his BA in integrated social and cognitive psychology and integrated social sciences from Jacobs University Bremen. In addition to Pepperdine's MDR, Freres is also completing a master's degree in industrial and organizational psychology at the Chicago School of Professional Psychology in Los Angeles. Freres is currently working on research studying the effectiveness of mediator techniques and ADR approaches.

The Straus Institute regularly receives applications from students around the world interested in studying dispute resolution at Pepperdine. Straus has received students on Fulbright Scholarships for the past six consecutive years from around the world including Germany, El Salvador, Egypt, Panama, Ukraine, Tunisia, and the Czech Republic. Straus is welcoming a scholar from South Africa this fall. In addition to the Fulbright Scholarship program, Pepperdine has previously hosted a Muskie Fellow from Moldova in 2008, and three Weinstein International Fellows from Jordan, Nepal, and Ecuador in 2009 sponsored by the JAMS Foundation.

Pepperdine Announces RECIPIENTS OF THE INAGURAL JAMS AND BAC FULL-TUITION SCHOLARSHIPS

In celebration of the new LLM concentration in international commercial arbitration, JAMS and the Beijing Arbitration Commission (BAC) each generously sponsored one full-tuition scholarship for 2013-2014. These scholarships attracted applications from top scholars across the globe, and the selection process was very competitive. The Straus Institute is happy to announce David Lewis as the recipient of the JAMS Scholarship, and Zihui Meng as the recipient of the BAC Scholarship.



Union and is on the roster of deployable rule-of-law experts for Justice Rapid Response. In 2011 he received the Freedom of the

DAVID LEWIS is admitted to practice as a barrister in England, Wales, and Northern Ireland. Lewis is a highly specialized trial advocate for both civil and criminal matters. He has extensive work experience in the fields of both private and public international law with the United Nations and European

City of London recognition as an arbitrator and was admitted as a Liveryman of the Worshipful Company of Arbitrators. Besides the United States, Lewis has lived, studied, and worked in 32 countries across Africa, Asia, Europe, the Middle East, and the Americas.



ZIHUI MENG graduated from Peking University Law School with a juris master degree concentrating in financial law. While pursuing a degree in law, Meng studied abroad at Columbia Law School, The Hague Academy of International Law, WIPO Academy, and the University of Geneva. She holds a bachelor of management from Zhejiang University. She has undertaken internships with the United Nations Global Compact Office in New York, the National Energy Administration of China, J. P. Morgan, and ING Life in Hong Kong. She speaks Chinese and English and is now learning French, Macedonian, and Korean.

JAMS is the largest for-profit provider of mediation and arbitration services in the United States, with offices in more than 25 cities and more than 300 retired judges and senior lawyers on its panel. JAMS has been focusing on international opportunities, including the opening of an office in London, U.K., and sees this scholarship as an expression of its support for future international arbitration practitioners.

BAC is a not-for-profit organization devoted to providing a forum for impartial and efficient alternative dispute resolution including arbitration and mediation. It was founded in 1995 following the passage of the Arbitration Law of the People's Republic of China. Since its founding, the BAC has grown into the foremost arbitration commission in China providing its services to both domestic and foreign parties. From an initial annual load of only a handful of cases, today the BAC consistently ranks among the top in both in the number of cases accepted and the total disputed amount.

Pepperdine Attracts INTERNATIONAL RESEARCHERS

For the past six years, Pepperdine University School of Law has been home to the AAA Library and Information Center Collection. Consisting of more than 24,000 titles on arbitration, mediation, negotiation, fact-finding, and other international and domestic dispute resolution procedures, it is considered to be the world's premier collection of conflict resolution materials. The AAA Library began in 1954 and was relocated from New York to Pepperdine in 2007.

The AAA Library attracts scholars and researchers from around the world. This year Pepperdine hosted Dr. Waleed Al-Tuwaigri, from the Higher Judicial Institute at Imam University in Saudi Arabia. He conducted research for several weeks in February on alternative dispute resolution processes in e-transactions. Al-Tuwaigri received his PhD in law from the University of Glasgow, an LLM from the Higher Judicial Institute at Imam University, and an LLB from Shari'ah College.



MEDIATION CLINIC EXPANSION

Unprecedented Number of Los Angeles County Citizens Will Be Served

Currently, Pepperdine Mediation Clinic students mediate or co-mediate 800 cases for the citizens of Los Angeles County per year.

Courthouses across the country have been closing and consolidating due to budget shortfalls and, unfortunately, the Los Angeles County Superior Court is no exception to the trend. On July 1, 2013, in a cost-cutting plan to close a projected \$85 million budget shortfall for the next fiscal year, the courts consolidated small claims calendars from over 15 courthouses to five.

With the consolidation of service delivery, the opportunity for mediation in the courts has expanded. Subsequently, Pepperdine has chosen to expand its clinical program to allow additional students to experience skills-based learning, develop proficiency as mediators, and serve Los Angeles County citizens. It is projected that students in the Mediation Clinic, which operates during fall, spring, and summer semesters, could mediate as many as 1,200 cases this academic year in small claims, limited jurisdiction, and civil harassment calendars in the Los Angeles Superior Court through Pepperdine's partnership with the Center for Conflict Resolution (CCR) and the California Academy of Mediation Professionals (CAMP).

The Mediation Clinic is a unique team-taught course which develops skills in self-directed and skill-based learning in order to



deepen students' understanding of the mediation process, mediation styles, and other dispute resolution skills critical to the legal profession including building rapport, strategic questioning, and closing the deal.

The Pepperdine Mediation Clinic opened its doors in the fall of 1992, originally funded by a grant from the U.S. Department of Education. The Mediation Clinic is the capstone of several Straus degree programs and most of the students

have completed over 24 units of dispute resolution curriculum before beginning the clinical program. The Mediation Clinic is a required course in both the MDR and general LLM programs, consistent with the philosophy that students earning an advanced degree in dispute resolution should possess honed mediation skills. With the expansion of service-delivery needs, Pepperdine has chosen to offer an opportunity for skills-based learning for Straus certificate students, as well as advanced-degree candidates.

Mediation Clinic director and assistant professor of law Stephanie Bell remarks, "One of the hallmarks of the Pepperdine Mediation Clinic is the significant impact that Pepperdine students are able to make in the lives of Los Angeles County residents. I am in awe of the touch that Pepperdine students have in the community, increasing both the public's trust in government by providing access to dispute resolution options and the public's awareness of dispute resolution as procedural justice. I am excited to be a part of this expanding service opportunity."

Pepperdine and the Department of Fair Employment and Housing Launch NEW EMPLOYMENT MEDIATION CLINIC

PEPPERDINE IS PLEASED TO ANNOUNCE THE CREATION OF AN EDUCATIONAL PARTNERSHIP with the Department of Fair Employment and Housing (DFEH), California's civil rights agency whose mission is to protect the people of California from unlawful discrimination in employment, housing and public accommodations, and from hate violence. The purpose of the partnership is to launch a new employment mediation clinic for students interested in the intersection of civil rights law, employment law, and dispute resolution.

The new employment mediation clinic, which began in August, allows DFEH senior attorney-mediators to serve as clinical faculty at the Straus Institute. Students enrolled in the program prepare department cases for mediation under the Fair Employment



Clara Slifkin and JoAnne Frankfurt

and Housing Act. In addition, they will gain practical experience mediating and settling employment discrimination complaints under the department's supervision.

"Our students will experience dispute resolution skills and techniques in all stages of the department's administration: pre-investigation, post-investigation, pre-civil complaint, and class/group, as well as individual complaints," said Pepperdine University School of Law dean Deanell Tacha.

"This is an invaluable partnership for Pepperdine students and the community. We are proud to be a part of it."

"The goal of this partnership is to train a future generation of mediators to resolve disputes in the robust employment discrimination practice," explained department director Phyllis Cheng. "Together the DFEH and Pepperdine are developing a pipeline from training to practice."

PEPPERDINE INVESTOR ADVOCACY CLINIC Sets National Standard Again!

With the FINRA grant that started the clinic concluding this past spring, Pepperdine is extremely grateful for the support of director Robert Uhl and his efforts to ensure the clinic continues as a labor of love.

On July 2, 2013, the Pepperdine Investor Advocacy Clinic received an award from the Financial Industry Regulatory Authority (FINRA) ordering a broker dealer and its broker (collectively "Broker") to pay the clinic's client monies based on wrongful conduct engaged in by the Broker.

The dispute was arbitrated in a hearing lasting four days wherein the client was represented by certified law students Jeffrey Majors and Elizabeth Zabel under the direct supervision of Investor Clinic director Robert A. Uhl, who also participated in the arbitration. Both students and Uhl prepared every question of every witness, with Majors drafting and delivering the opening argument and Zabel doing factual research in the middle of the arbitration and testifying about her findings. Majors and Zabel are named in the award as Pepperdine Investor Advocacy Clinic certified law students.

This is the third-straight win for the clinic, which is unprecedented for any FINRA-sponsored securities-arbitration clinic. The first two wins for the clinic resulted in make-whole awards for each of the clients wherein four former Pepperdine certified law students actively participated in each of the arbitrations and whose names appear in the awards.

The clinic has several pending arbitrations which should be tried within the next 12 months and has settled many others. The clinic has received, and continues to receive, hundreds of inquiries from investors seeking representations, most of which do not fit the clinic's eligibility standards because they either are not California residents or have incomes more than \$100,000. The

clinic operates on a pro bono basis not charging attorneys fees and has absorbed virtually all other costs or has them waived by FINRA. Other vendors and expert witnesses graciously contribute their services for free.

In 2010 FINRA's Education Foundation awarded Pepperdine University School of Law's Straus Institute for Dispute Resolution a grant to establish a comprehensive clinical education program in investor advocacy and to educate the community and help investors avoid becoming fraud victims. Uhl is assisted by associate director Judith Hale Norris, an attorney and former director of FINRA's western regional offices.

This fall semester, Uhl, who started teaching in 2010, teaches Arbitration Law in the Securities Industry, and selects up to a maximum of five of the highest achieving students to participate in the clinic which requires a two-semester commitment (spring and the following fall) for a total of 4 credits.

Uhl says that the course and the clinic are a win for everyone involved. The students benefit from the hands-

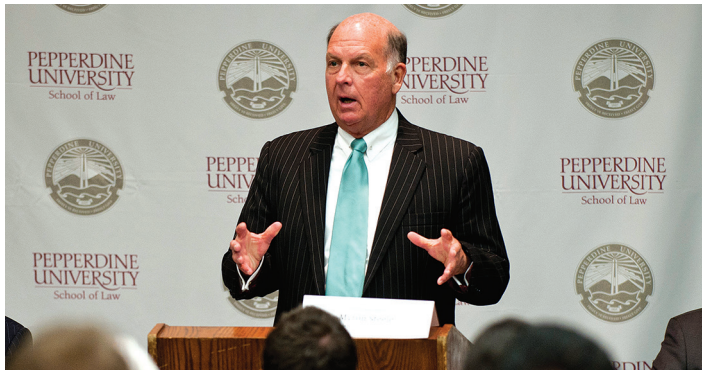
on, real-life experience of working on an actual case from start to finish proceeded by the practical how-to-do-it course in the fall. The clients win by having free legal representation under the direct supervision of Uhl, who has more than 25 years experience trying securities arbitration cases. And Uhl wins by fulfilling a lifelong dream of teaching the next generation of attorneys what he loves to do.



Tom Stipanowich, Judith Norris, and Robert Uhl

School of Law Hosts Symposium on the DELAWARE ARBITRATION PROGRAM

Last fall the School of Law's *Pepperdine Journal of Business, Entrepreneurship, and the Law* hosted a symposium on the Delaware Arbitration Program, a procedure by which businesses can agree to have their disputes heard in an arbitration proceeding before a sitting judge of the state's highly regarded Chancery Court. Tom Stipanowich moderated the symposium, which featured a keynote address by chief justice Myron Steele of the Delaware Supreme Court.



The Delaware Arbitration Program arguably offers a veritable trifecta of procedural advantages for commercial parties, including expert adjudication, efficient case management, and short cycle time, and above all, a proceeding cloaked in secrecy. It also may enhance the reputation of Delaware as the forum of choice for businesses. But the program's ambitious intermingling of public and private forums brings into play the longstanding tug-of-war between the traditional view of court litigation as a public venue for private dispute resolution and the and perception of courts as institutions that represent and are accountable to the public.

Delaware Coalition for Open Government, Inc. v. Strine, a constitutional challenge based on third parties' right of access to court proceedings resulted in a district court ruling that arbitration proceedings, heard before sitting judges of the Delaware Chancery Court were "essentially" non-jury civil trials and thus were subject to public access. The case raises legitimate questions about the appropriateness of structuring a program in which sitting judges serve as arbitrators and preside over a procedure that is effectively shielded from public view. It also implicates issues regarding the use of public resources in ostensibly private disputes, and even the way our justice system is funded. Earlier this year the Third Circuit heard arguments in the appeal of the case. Some say that however the Third Circuit rules, efforts will be made to bring the case before the Supreme Court.

Stipanowich framed his own thoughts and conclusions in an introductory article for the symposium entitled "In Quest of the Arbitration Trifecta, or Closed-Door Litigation?: The Delaware Arbitration Program." The article explores the factors that provided the impetus for the Delaware Arbitration Program and analyzes the arguments and policy considerations for and against the district court's decision. The article may be found and downloaded at: <http://ssrn.com/abstract=2271359>.

Ambassadors and Other Leading Figures Highlight SOUTH AFRICA EVENT

More than 300 attended the Straus Institute's event "Forgiveness, Reconciliation, and Healing: Lessons from South Africa" at the Caruso Auditorum on Thursday, March 21, 2013.



The centerpiece of the program was a two-part "Conversation on Forgiveness, Reconciliation, and Healing" moderated by professor Tom Stipanowich. The conversation explored how apartheid fragmented a nation and produced a culture of repression and violence that made victims of generations of South Africans. Moving beyond apartheid was—and is—a painful process facilitated by the moral leadership of Nelson Mandela, Desmond Tutu, the Truth and Reconciliation Commission, and other individuals and organizations. Participants included Ebrahim Rasool, South African ambassador to the United States; Father Michael Lapsley, SSM, founder, Institute for Healing of Memories; John Allen, Desmond Tutu biographer and former press officer for the South African Truth and Reconciliation Commission; and documentary filmmakers Michael Henry Wilson, Carole Wilson, and Karen Hayes.

The conversation was accompanied by screenings of *Reconciliation: Mandela's Miracle*, the award-winning documentary by the Wilsons, and excerpts from Hayes' projected forthcoming documentary *The Foolishness of God: My Forgiveness Journey with Desmond Tutu*. The bestowal of the Straus Institute's Inaugural Peacemaker Award on Archbishop Tutu's in Cape Town, South Africa, was highlighted in the feature *A Conversation with Desmond Tutu and Biographer John Allen* (now available on YouTube).

The event was concluded with an evening reception and dinner during which the Wilsons and Hayes were awarded the Straus Institute's first Illumination Awards for Filmmakers for their efforts to document efforts at reconciliation in South Africa and around the world. The awards were presented by actor Louis Gossett, Jr.

On Friday, March 22, a one-day Introductory Workshop on the Healing of Memories and Journeys of Forgiveness was conducted by Father Michael Lapsley, a survivor of the struggle against apartheid and founder of the Institute for Healing of Memories. The workshop was aimed at counselors, mediators, and others who wish to become acquainted with approaches that enable people from different ethnic groups, races, and religions to reach a better understanding of themselves and each other.

Women in Hollywood

100 YEARS OF NEGOTIATING THE SYSTEM

The Straus Institute and Pepperdine University's Center for Entertainment, Media, and Culture (EMC) will cosponsor the conference **Women in Hollywood: 100 Years of Negotiating the System** on November 15–16, 2013, on the Malibu campus.

Women have played important roles in the entertainment industry from its earliest days. They have achieved great success as actors, directors, producers, and legal advisors, and have attained leadership positions in guilds, studios and other industry organizations. But women still face significant challenges in Hollywood, including the relative scarcity of opportunity for females as creative artists. Females in creative, business, and legal roles must find ways to effectively negotiate in the workplace while balancing careers and personal lives. Although notable efforts have been made toward addressing these realities, challenges and disparities remain.

Women in Hollywood will commence with the showing of a documentary based on historian Cari Beauchamp's book *Without Lying Down: Francis Marion and the Powerful Women of Early Hollywood*. This will be followed by a conversation moderated by Straus Institute academic director and professor Tom Stipanowich on the contributions of outstanding female actors, writers, directors, and producers such as Mary Pickford, Frances Marion, Bette Davis, and Olivia de Havilland. Stipanowich interviewed Ms. de Havilland in Paris, France, for his current research on her epic court battle with Warner Bros. Studios.

The primary emphasis of the two-day program will be to offer critical guidance for women in managing and negotiating conflicts and relationships in their careers and personal lives. Building on the work of Women in Film Los Angeles, New York Women in Film and Television, the Center for the Study of Women in Television & Film, and the Directors Guild of America Women's

Steering Committee, the program will also spotlight sources of resistance to greater opportunities for women and set a collective-action agenda aimed at altering the landscape for the next wave of women in the entertainment industry. The symposium will feature a keynote address entitled "Lean In: Honoring the Next Wave of Hollywood Women Leaders."

Organizers of the symposium include Thomas J. Stipanowich; William Nix, EMC-Straus industry advisor and adjunct professor; Stephanie Bell, assistant director and assistant professor of law; Craig N. Detweiler, Seaver College communications professor and director of Pepperdine's Center for Entertainment, Media, and Culture (EMC); and Kathryn Linehan, manager of the EMC. Other members of the symposium planning committee include major film and television industry professional women and organizations, each of whom will lend their backgrounds in

production, management, and law to the design and staging of the event. These include Cari Beauchamp, film historian and author of *Without Lying Down*; Susan Cartsonis, studio production executive and independent film producer and chair of the Women in Film Foundation (WIFF); Ivy Kagan Bierman, partner at Loeb & Loeb and Women in Film Los Angeles (WIFLA) board of directors member; Rachel Kimbrough, studio business affairs lawyer and vicepresident of business and legal affairs at Lionsgate; Ghen Laraya Long, entertainment and technology attorney and WIFLA vice president, technology, and executive

board member; Terry Lawler, executive director of New York Women in Film and Television (NYWIFT) executive director; Victoria Riskin, screenwriter, producer, and former Writers Guild of America West (WGAW) president; Kim Richardson, vicepresident, legal affairs, Universal Studios; Jennifer Schaeffer Snitko, studio business affairs lawyer, CORE Media Group; Suzanne M. Smith, partner with Howarth & Smith; Bonnie Stylides, studio business affairs lawyer and former senior vice president, business, legal, participant media; and Christa Zofcin ('97, MBA '00, JD '01), executive vice president, business and legal affairs, River Road Entertainment.



Professor Tom Stipanowich interviewed Olivia de Havilland at her home in Paris.



Straus Continues Tradition of HELPING RECONCILE FAITH-BASED DISPUTES

The Straus Institute has a long-standing history of responding to calls for help from churches across the country.

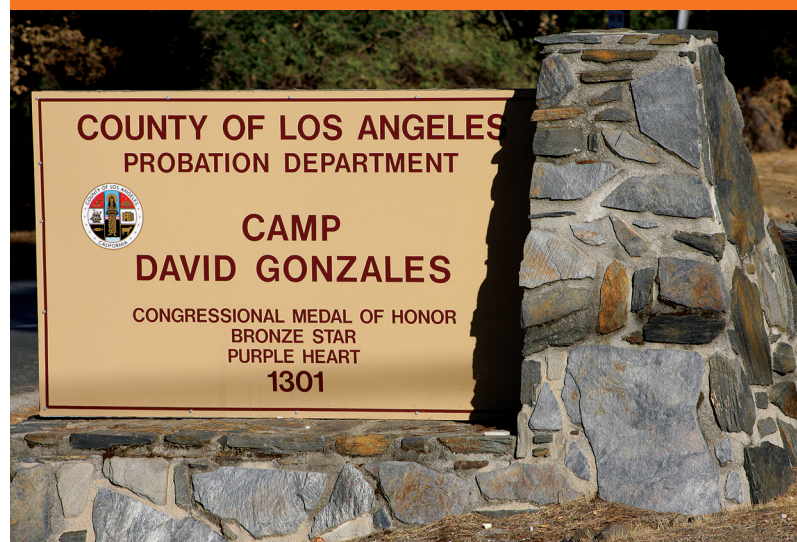
This past year, Straus assistant director Tim Pownall continued to be instrumental in conciliating and mediating a number of conflicts involving individuals, churches, and ministries. These engagements ranged from Connecticut to St. Louis to San Francisco, and also included a number of interventions in Southern California. Pownall is regularly asked to “come alongside” church and ministry leaders who have recognized the need to overcome relational or cultural conflict in their communities and who are reaching out as good stewards to fellow Christians for help and counsel.

The Straus Institute’s Church Leaders Program emphasizes the often overlooked opportunities that are found in conflict situations to clarify, dispel, repurpose, and reconcile. This weekend training series is offered to church and ministry leaderships wishing to engage conflict constructively in loving and God-honoring ways. During these trainings, Pownall helps participants recognize the “great spiritual release” that comes to faith leaders when they become intentional about addressing their challenges in reasoned, biblical fashion on behalf of their communities. Pownall concludes, “There is no stigma in addressing conflict—it is in fact, scripturally encouraged and good stewardship. It is a glorifying witness before a world that needs and wants healing and reconciliation. It is peacemaking!”

THE STRAUS INSTITUTE AND THE PRISON OF PEACE PROJECT to Provide Pepperdine Students the Opportunity to Mentor Incarcerated Youth at Camp David Gonzales

Beginning this spring, Pepperdine law students will have the opportunity to learn the skills as taught in the Prison of Peace Project and gain insight into the policies and practices of incarceration through a new practicum run by Laurel Kaufer. Students in this program will facilitate classes and mentor juveniles incarcerated at Camp David Gonzales, a Los Angeles County juvenile-detention facility in Malibu, as Prison of Peace expands into juvenile programs.

Prison of Peace, a pro bono project began in late 2009 with maximum-security prison inmates by Laurel Kaufer and Douglas Noll, both attorneys and professional mediators, provides communication, peacemaking, and mediation skills to prison inmates. “Since the start of the Prison of Peace program, our institution appears quieter and with less violence,” reported former Valley State Prison for Women warden Walter Miller. In July 2012 Prison of Peace became the first-known internally-sustainable, inmate-driven, peacemaking program inside a prison—a model to be shared in prisons and jails across the nation. Kaufer and Noll were recipients of the 2012 California Lawyer Attorney of the Year award in the Pro Bono category for Prison of Peace. To learn more about Prison of Peace visit www.prisonofpeace.org.



STRAUS PUBLIC SECTOR DISPUTES PROJECT Serves Los Angeles County

The Straus Institute for Dispute Resolution is formally launching the Public Sector Disputes Project in the fall of 2013. Project director Denise Madigan is working with Straus assistant professor Stephanie Bell and MDR student and Straus Fellow for the 2013 academic year Karen Orlansky to create opportunities for local government jurisdictions to resolve conflict and train employees in mediation and dispute resolution.

With the crisis in public sector funding, mediation and other dispute resolution options are increasingly recognized as not only conducive to building collaborative government and better communities, but as an imperative efficiency. Public managers and political leaders are addressing unprecedented challenges; diminishing coffers coupled with the increasing complexity of multi-jurisdictional networks and intergovernmental dependencies create tensions ripe for collaborative solutions. The project is designed to serve the public sector and mitigate against the wasted taxpayer dollars tied up in unresolved disputes. The project will provide direct service to public-sector entities in conflict-resolution consulting services, mediation, and facilitation of large groups in conflict; provide training in dispute resolution and mediation to public sector entities; and leverage opportunities for students to participate in public sector dispute resolution.

Madigan has a master’s degree in public policy from the John F. Kennedy School of Government at Harvard University and started her career as associate director of the Harvard-MIT Public Disputes Program, based within the Program on Negotiation at Harvard Law School. Working closely with MIT professor



From left to right: Denise Madigan, Karen Orlansky, and Stephanie Bell

Lawrence Susskind, she managed and co-mediated large multiparty cases involving state public-private partnerships and local budget priorities, and supervised other mediators on the teams. Prior to joining Pepperdine, Bell served as the manager of a labor-management and public policy mediation program serving a tri-county region in Seattle, Washington. Orlansky has a master of public affairs degree from the Woodrow Wilson School of Public and International affairs at Princeton University. She matriculated at Pepperdine after 25 years of working for the Montgomery County (Maryland) Council resolving conflict within the context of legislative, fiscal, and public policy analysis, debate, and decision making.

PROFESSOR BELL SPEAKS in Republic of Georgia on Current Trends in Mediation

ASSISTANT PROFESSOR OF LAW STEPHANIE BELL, AND STRAUS MDR ALUMNUS TODD NICOL (MDR ’12) were invited to the Republic of Georgia to speak at Tbilisi State University at the Current Trends in Mediation Conference sponsored by Georgia’s National Center for Alternative Dispute Resolution in October 2012. Bell presented, “Court-Annexed Mediation and Beyond: Government Application of Mediation as a Risk-Management Tool.” Nicol’s talk was entitled “Mediation Advocacy: A Practitioner’s Approach to Mediation Advocacy.” In addition, Bell provided a two-day training for students on “Designing Dispute Resolution Systems and Commercial Mediation.” The mission of the National Center for Alternative Dispute Resolution (NCADR) is to develop capacity in Georgian law schools; teach students lawyering skills including ADR skills; develop Georgian law professors and improve law teaching methods; assist in the introduction of ADR in Georgia; and develop capacity to provide continuing education to practicing



Georgian lawyers. Presenters from law schools in Europe and America attended the conference.

While in Georgia, Bell and Nicol were accompanied by Straus alumnus, Giorgi Chaladze (LLM ’08), former vice minister at the Georgia Ministry of Culture and current mediator. The three met with the minister of justice, the minister of commerce, and the president of the Georgian Parliament. The highlight of the trip included a visit with the Georgian Patriarch, His Holiness Ilia II of Georgia, who has been seated since 1977. His Holiness Ilia of Georgia is passionate about the integration of conflict resolution curriculum into primary, secondary, and graduate-level education.

Stipanowich Cochairs ITA-ASIL Conference on “GATEWAY ISSUES” IN INTERNATIONAL ARBITRATION

On April 3, 2013, professor Tom Stipanowich and well-known international Canadian advocate Sophie Nappert cochaired “Gateway Issues in International Arbitration” at the Renaissance Washington, D.C., Downtown Hotel. The conference was cosponsored by the Institute for Transnational Arbitration’s (ITA) Academic Council and the American Society of International Law (ASIL).

The conference featured leading arbitration scholars and noted international practitioners discussing a widely varying array of questions that must be decided in advance of addressing the merits, as well as the allocation of decision-making authority between courts and arbitrators. Among the more troublesome factual scenarios are: issues regarding the scope of agreements

to arbitrate; questions of privacy and the rights and obligations of non-signatory third parties; and the fulfillment of conditions precedent to arbitral jurisdiction. These “cases of trouble” have produced different responses by U.S. and European courts regarding appropriate default rules for decision making, as well as the level of explicitness required to overcome default rules and reallocate decision-making authority.

The conference opened with a keynote presentation by George A. Bermann, chief reporter, *ALI Restatement (Third) of the U.S. Law of International Commercial Arbitration*; and Jean Monnet Professor of EU Law and Walter Gellhorn Professor of Law, Columbia University Law School. Stipanowich moderated a panel on gateway issues in international commercial arbitration featuring Alan Scott Rau, Mark G. and Judy G. Yudof Chair in Law, University of Texas School of Law at Austin, and Timothy G. Nelson, Skadden, Arps, Slate, Meagher & Flom LLP, New York.

The International Academy of Mediators and the Straus Institute for Dispute Resolution Cosponsor “WEST COAST STORIES: A 21ST-CENTURY JUNTO FOR COMMERCIAL MEDIATORS”

The International Academy of Mediators (IAM) and the Straus Institute for Dispute Resolution are cosponsoring, “West Coast Stories: A 21st-Century *Junto* for Commercial Mediators,” May 1-3, 2014, in Santa Monica, California.

The program will be emceed by IAM Honorary Fellow and Pepperdine professor Peter Robinson and is an opportunity for mediation professionals to teach one another cutting-edge practice tools through story, narrative, and case study. “This IAM/ Straus marriage is a sound one,” Stephanie Bell, IAM/Straus conference liaison notes, “Pepperdine’s joie de vivre is ‘putting theory into practice;’ IAM is a preeminent community of practitioners. Together we elevate the field of mediation. I know each Straus professor is looking forward to learning from practitioner colleagues.”

The conference will include the introduction of informal, small discussion groups in the format of the *Junto*, which is the name Benjamin Franklin chose in 1727 for a professional club of “mutual improvement,” also known as the Leather Apron Club. The purpose was to debate questions of morals, politics, and natural philosophy and exchange knowledge of business affairs. In like form, Jeff Krivis, IAM conference cochair reflects, “The IAM Spring 2014 conference is intended to return mediators to their

roots, teaching one another through the tangles of ethics, practice, and politics.”

IAM Honorary Fellow Tom Stipanowich will be providing a keynote entitled, “Cagney, Davis, and de Havilland: Negotiating the Studio System in the Golden Age of Hollywood” and IAM Distinguished Fellows Mark Rudy, Jonathan Marks, and Denise Madigan are just a few of those scheduled to present. In addition the conference will include a series of “Pepp Talks” from IAM members and Pepperdine collaborators. Pepp Talks, modeled after the TED Talks format, will expose conference participants to perspectives of diverse ethnicities and backgrounds, experience, and subject matter germane to the field. The IAM ambassador

model is also being introduced at the Santa Monica conference. Each Southern California delegate will be appointed as an IAM ambassador for the visiting delegates well in advance of the conference. Ambassadors will reach out to Visiting Fellows from all over the world and invite them to arrive a day early and shadow their mediations, shuttle them to dinner and leisure activities, engage them during and following the conference, and serve as a welcoming presence. Conference co-chair Jan Frankel Schau says, “The strength of our organization is in our fellowship. Los Angeles is one of the leading mediation markets in the world and we hope to foster positive impressions, true friendships, and collegiality amongst our Visiting Fellows that will last long beyond the spring conference.

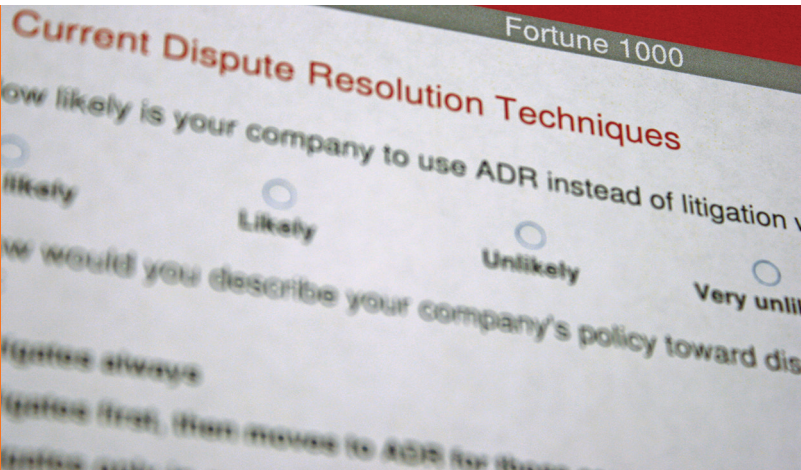
Stipanowich and Lamare Analyze the Landmark FORTUNE 1,000 SURVEY

A new study of dispute resolution practices in Fortune 1,000 corporations indicates that many large companies are using binding arbitration less often and relying more on mediated negotiation and other approaches aimed at getting disputes settled more informally, quickly, and inexpensively.

The study, based on a 2011 survey of corporate counsel developed by researchers at Cornell University and the Straus Institute, with input from the International Institute for Conflict Prevention & Resolution (CPR), indicates that although the approaches of large corporations vary, their decisions about managing conflict usually boil down to issues of control.

The complete study, “Living with ADR: Evolving Perceptions and Use of Mediation, Arbitration, and Conflict Management in Fortune 1,000 Corporations” by Thomas J. Stipanowich and J. Ryan Lamare, will be published in a forthcoming issue of the *Harvard Negotiation Law Review*. The study may be found and downloaded at <http://ssrn.com/abstract=2221471>.

The new survey, reflecting the responses of 368 Fortune 1,000 corporate counsel, presents a decidedly mixed picture. The respondents, almost half of whom are general counsel, believe their companies are less likely to employ hardball litigation as a primary strategy, and instead broadly embrace mediation as a tool for resolution of all kinds of disputes now and in the future. They are also becoming more proactive in managing conflict in the early stages, employing third parties to evaluate and assess different dimensions of a legal dispute in order to chart an appropriate path to resolution. But they tend to be less assured of the potential benefits of “alternative dispute resolution,” perhaps reflecting a more realistic (or more cynical) view borne of experience. When it comes to adjudication, more companies seem to be falling back on litigation in court. Binding arbitration usage has dropped for most kinds of disputes, and corporate counsel are evenly divided on the question of their company’s future use of arbitration. Notable exceptions to this marked downward trend are consumer and



products liability cases, as some companies appear to be taking advantage of Supreme Court’s decisions supporting the use of binding arbitration clauses in standardized consumer contracts, including provisions waiving the right to participate in class actions.

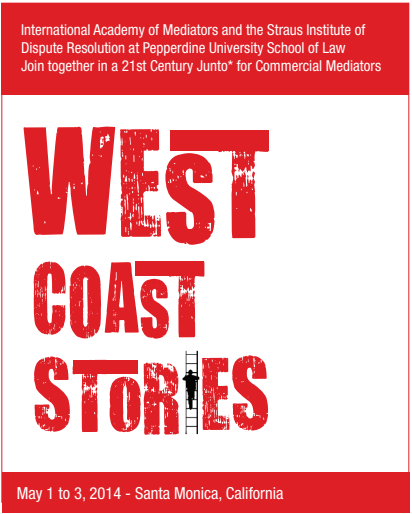
These choices probably reflect a desire for maximal control of the dispute resolution process. Corporate attorneys logically prefer to manage outcomes, so mediation and other approaches that aim at

achieving a mutually acceptable settlement are strongly favored. If settlement cannot be achieved, some companies then want to try their commercial cases in court despite the well-known costs and risks, if only because of the traditional “second chance”—the opportunity to overturn a faulty verdict or judgment on appeal. But many other corporate counsel continue to view this preference for litigation as ironic, since the alternative—binding arbitration—is a choice-based process offering options for enhanced confidentiality, speed, and efficiency, expertise . . . and even private appeal.

Similar themes may be found in the handling of workplace disputes. The survey data reveal that a growing number of companies have

incorporated one or more mechanisms to manage employment issues, including hotlines, open-door policies, conflict coaching, peer review, ombuds, and mediation. About a third of companies apparently have offices or functions to manage workplace conflict. On the other hand, nearly half of respondents claim that their company has developed no special dispute resolution tools for the workplace.

Ultimately, the successful evolution of effective alternatives for the handling of business-related disputes depends upon internal decisions that corporate interests can be better achieved by moving beyond traditional approaches. This means overcoming the prevalent caution among corporate counsel about leaving habitual comfort zones and the low priority assigned to dispute resolution in negotiating and drafting business agreements. These are considerable barriers. As one expert on corporate deal-making recently explained when asked why the companies he advises had not rushed to employ a particular new program for dispute resolution, “My clients prefer to cross the street in a group.”



Bilateral Investment Treaties on the World Stage

NOT JUST A BIT PART

This is an abstract from a keynote presentation given by Professor Jack Coe to the Chamber of Commerce in Quito, Ecuador, at the University of Andina Simon Bolivar on July 3, 2013.

Over the last 15 years, few topics related to international trade have rivaled investor-state arbitration in terms of its capacity to occupy the minds of scholars, government officials, and members of the arbitration bar.

With hundreds of investor-state claims in various stages of completion—representing many billions of dollars—it is sometimes difficult to remember that investor-state arbitration, while no longer embryonic, is a decidedly recent development; the system has by no means reached full maturity. Indeed, the prospect of being named a respondent in an arbitration launched by a foreign investor was of little concern to sovereign states as recently as 20 years ago. As of 1993 a single proceeding of that type had not been concluded, and the hundreds of bilateral investment treaties (BITs) then in effect were considered primarily a way for developing states desirous of investment to affirm a general commitment to the rule of law and to the minimum requirements of international law.

Originally drafted by capital-exporting states, such BITs now number around 2,850 and often involve states at equivalent stages of development. Under the prevailing format followed by such instruments, the substantive part contains mutual promises assuring prospective investors that, for instance, they will not be subject to unfair or discriminatory treatment and that their property will not be taken (directly or indirectly) by the host state without the payment of full compensation. For decades, the fact that most BITs also authorize an investor to enforce those promises in international arbitration remained underappreciated, even though the ability to do so and thus to avoid a host state’s local courts is what gives the substantive promises their true rigor; without a predictable means of enforcing such assurances, those assurances remain relatively weak. The downside risk for states, of course, has always been that investors would pursue their arbitration option, as indeed they began to do in the mid-1990s (in the case of some states, dozens of times thereafter).

The investor-state arbitration system has been the object of both praise and legitimate criticism. While the system has enabled many investors to be compensated for arbitrary government action, inevitably it has also come to display some of the attributes of the fast-growing adolescent that could not avoid acquiring a measure of awkward clumsiness; in the case of investor-state arbitration this lack of maturity came in the forms of inconsistent jurisprudence, a certain percentage of unwarranted claims brought by imaginative investors, and a need to refine the conflict rules to account for repeat players as counsel and arbitrators.



In light of the foregoing, it is significant that about 40 percent of the BITs currently in effect will be eligible for unilateral termination in coming months. Although many treaties are designed to “grandfather-in” existing investments for a substantial period of continued protection once the BIT is terminated, termination may make sense to states that want to renegotiate their BITs to account for the learning of the last 20 years.

The kinds of adjustments one might expect to find in recast BITs are several. Space does not allow an exhaustive listing, but some examples will illustrate. First, as has occurred in the two more recent iterations of the U.S. Model BIT, language might be included to limit the respondent state’s exposure to liability for health and safety regulation (establishing a presumption against compensation if the regulation was designed and applied in a nondiscriminatory manner and genuinely directed at public safety). Second, the extent to which breach-of-contract actions may be brought to investor-state arbitral tribunals might be clarified; owing to vagueness in treaty-provision addressing such claims, tribunals have diverged significantly on this question. Third, the scope and meaning of “essential security” provisions might be explained more precisely in future treaties. Uncertainty about the exact operation of existing security provisions came into dramatic relief when tribunals grappled with the many claims filed against Argentina following emergency economic measures instituted by it in the early 1990s. The results were inconsistent awards on a fundamental question of state responsibility.

For its part, the arbitral-claims machinery might be refined in two respects. First, the ability of states to make counterclaims to address, for example, an investor’s violation of environmental laws, could be more clearly regulated; at present, a state’s right to make such a counterclaim is subject to debate. Second, revised BITs might include express encouragement for the parties to employ mediation as a precursor or parallel process to arbitration; over one-third of investor-state claims settle, suggesting that a percentage of such claims ought to be good candidates for mediation and the value it can add.

The possibility of doing away with investor-state arbitration—in effect eliminating the back half of most BITs—is also actively being considered. The question that arises, however, is: what would replace it? Investors will not generally gravitate toward host states offering only local courts in the event of perceived mistreatment. Some governments have proposed the creation of a first-instance investment tribunal, on a regional or international basis. That is an intriguing idea, but in the eyes of investors such an institution will be unlikely to represent a satisfactory mechanism for avoiding domestic courts unless it possesses, ironically, many of the attributes characterizing the existing arbitration mechanism: party control over the judges that will preside in a given case, decision-maker independence and expertise, flexibility of procedure, and treaty-backed enforceability of the court’s rulings on liability. At present, such an institution appears to be quite far off, leaving investor-state arbitration the best alternative in offering investors a way to assert grievances away from local courts.

FULL-TIME FACULTY UPDATES



JACK J. COE, JR.

Book Chapter

Making Remission and Other “Curative” Mechanisms Part of the Forum Shopping Conversation—A View from the U.S. with Comparative Notes, in FORUM SHOPPING IN THE INTERNATIONAL COMMERCIAL ARBITRATION CONTEXT (Sellier European Law Publishers 2013).

Activities

Keynote, Speaker, Seminar on Investment Protection Treaties Conference by the Arbitration and Mediation Center of the Chamber of Commerce, Quito, Ecuador (July 2013).

An Assessment of the U.S. as a Place for International Commercial Arbitration, Speaker, at Bae, Kim & Lee, Seoul, South Korea (Apr. 2013).

A Progress Report on the *Restatement Third, The U.S. Law of International Commercial Arbitration*, Speaker, Korean Commercial Arbitration Board (KCAB), Seoul, South Korea (Apr. 2013).

Coe continues to work on the *Restatement of the Law (Third) International Commercial Arbitration*.



MICHAEL A. HELFAND

Articles

Purpose, Precedent, and Politics: Why Conception Covers Less than You Think, 4 YB. ARB. & MEDIATION 126 (2013).

Litigating Religion, 92 B.U. L. REV. 493 (2013) (selected for presentation at the Stanford/ Yale/ Harvard Junior Faculty Forum).

Religion’s Footnote Four: Church Autonomy as Arbitration, 97 MINN. L. REV. 1891 (2013).

Activities

Peaceful Coexistence? Reconciling Non-Discrimination Principles with Civil Liberties, Speaker, U.S. Commission on Civil Rights (Mar. 2013).

Between Law and Religion: Procedural Challenges to Religious Arbitration Awards, Presenter, Conference on Sharia and Halakhah in America, University of Illinois at Chicago (Apr. 2013).



ANTHONY MILLER

Book

FAMILY LAW: CASES, MATERIALS AND PROBLEMS (with Peter M. Swisher and Jana B. Singer) (Lexis, 3d ed. forthcoming).

Activities



Miller shared expertise in the documentary *Divorce: Circa 1960s*, which appears on the DVD of the fourth season of the television program *Mad Men*.



RICHARD M. PETERSON

Article

Caught in the Cross-Fire—The Psychological and Emotional Impact of the Individuals with Disabilities Education Act (IDEA) upon Teachers of Children with Disabilities: A Therapeutic Jurisprudence Analysis, 33 PACE L. REV. (forthcoming 2013).



PETER ROBINSON

Article

An Empirical Study of Settlement Conference Nuts and Bolts: Settlement Judges Facilitating Communication, Compromise, and Fear, 17 HARV. NEGOT. L. REV. 97 (2013).

Activities

Taught a three-day course on Apology, Forgiveness, and Reconciliation at the University of Idaho in Moscow, Idaho.

Taught the Tennessee State Rule 31 Mediation Training at Lipscomb University in Nashville, Tennessee.



THOMAS J. STIPANOWICH

Articles

Living with “ADR”: Evolving Perceptions and Use of Mediation, Arbitration, and Conflict

Management in Fortune 1,000 Corporations (with J. Ryan Lamare), HARV. NEGOT. L. REV. (forthcoming 2013).

In Quest of the Arbitration Trifecta, or Closed-Door Litigation?: The Delaware Arbitration Program, 6 PEPP J. BUS. ENTREPRENEURSHIP & L. 102 (2013) (lead article; published in Symposium on the Delaware Arbitration Program).

Activities

Trends in the Corporate Use of ADR (discussing my Fortune 1,000 Survey and analysis), Keynote and Panelist, Business Law Section, ABA Annual Meeting, San Francisco, California (Aug. 9, 2013).

The Dealmaker’s Dozen: Negotiating Tips and Tactics and Tactics Lawyers Can Use Everyday; Lincoln’s Lessons for Lawyers; Rebels on the Lot: Negotiating and Resolving Conflict in the Golden Age of Hollywood, Presenter, Minnesota Continuing Legal Education (Aug. 5-6, 2013).

Olivia de Havilland v. Warner Bros. Pictures: Changing the Landscape of Hollywood Contracts, Presenter, Lady Margaret Hall, Oxford University (May 7, 2013).

Lincoln’s Lessons for Lawyers, Presenter, Mark and Kathy Travis Dispute Resolution Endowment Inaugural Lecture, University of Tennessee College of Law Center for Advocacy and Dispute Resolution, Knoxville, Tennessee (Apr. 18, 2013).

Gateway Issues in International Arbitration, Conference Cochair and Panel Moderator, 10th Annual Conference of the Institute for Transnational Arbitration/American Society of International Law, Washington, D.C. (Apr. 3, 2013).

Symposium: Delaware’s “Closed-Door” Arbitration Program, Moderator, Pepperdine Journal of Business, Entrepreneurship, and the Law, Pepperdine School of Law (Oct. 30, 2012).

Telebriefing on U.S. Supreme Court Decision in *American Express v. Italian Colors Restaurant* (with Archis Parasharami of Mayer Brown and Deepak Gupta of Gupta Beck), Moderator, Law Seminars International (July 23, 2013).

Negotiation Nuts and Bolts: Key Insights for Lawyer-Negotiators, Trainer, Annual Meeting of Chevron Litigation Counsel, San Ramon, California (July 18, 2013).

Managing Business Disputes: The Use of Alternative Dispute Resolution in Business Disputes, Presenter, Henry Stewart Talks, London (web-based training program) (2013).

Streamlining the Arbitration Process, Presenter, ABA Dispute Resolution Section Annual Meeting, Chicago, Illinois (Apr. 5, 2013).

The Third Arbitration Trilogy Revisited: Federal and State Cases Following upon *Stolt-Nielsen*, *Rent-A-Center*, and *Concepcion*, Moderator and Speaker, CPR Annual Meeting, Torrey Pines, California (Jan. 2013), and College of Commercial Arbitrators Annual Meeting, New York, New York (Oct. 26, 2012).

Appointed to the Academic Counsel of the Institute for Transnational Arbitration (ITA) (2013).

Appointed official representative/observer, American Bar Association, United Nations Commission on International Trade Law Working Group III on Online Dispute Resolution (2012–2013).



MAUREEN WESTON

Articles

The Accidental Preemption Statute: The Federal Arbitration Act and Displacement of Agency Regulation, PENN ST. Y.B. ON ARB. & MEDIATION 59 (2013).

The Public Costs of Private Judging, (Springer Publications) (Univ. of Nebraska Law-Lincoln, Conference on Justice, Conflict, and Well-Being 2013).

Activities

Weston continues to serve as director of the Pepperdine School of Law Entertainment, Media, and Sports Dispute Resolution Project.

She also serves as chair of the American Bar Association, Law School Division, Arbitration Competition; and Secretary, AALS, Sports Law Section.

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Upcoming Events:

2013

OCTOBER 22

Doping and the Culture of Sport: Law, Science, Money, and Ethics

NOVEMBER 2

SCMA 25th Annual Fall Conference—Crisis and Opportunity: Expanding the Field of Conflict Resolution

NOVEMBER 15–16

Women in Hollywood: 100 Years of Negotiating the System

2014

DECEMBER 30–JANUARY 4

Winter Intensive Program
(eight academic courses in dispute resolution and legal practice skills)

JANUARY 23–25 & FEBRUARY 6–8

Mediating the Litigated Case
Irvine and West Los Angeles, California

MARCH 20–22

Professional Skills Program
(eight simultaneous workshops)
Baltimore, Maryland

MAY 26–AUGUST 2

Summer Intensive Academic Program

JUNE 2–13

Hong Kong/Beijing Study Tour

JUNE 19–21

Professional Skills Program
(11 simultaneous workshops)

AUGUST 4–9

Mediating the Litigated Case