

INSIDE STRAUS

Translating Theory into Practice

2014

THE NUMBERS HAVE IT *at Straus*

THREE SUBSTANTIAL
EMPIRICAL SURVEYS
CONDUCTED

What's Inside

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Theory-to-Practice Research Project

The Straus Institute's Theory-to-Practice Research Project was begun in 2013 as an ongoing initiative aimed at expanding our knowledge of dispute resolution practices; understanding the perspectives of mediators, arbitrators, judges, corporate counsel, and legal advocates; and garnering other empirical information regarding dispute resolution processes and participants' judgments, decisions, and choices. The institute was previously engaged in a number of empirical research efforts, including Straus director and professor Peter Robinson's groundbreaking studies of settlement practices among California judges and Straus director, William H. Webster Chair and professor Tom Stipanowich's analysis of the landmark 2011 survey of Fortune 1,000 corporate counsel by the institute in cooperation with Cornell University and the International Institute for Conflict Prevention & Resolution (CPR). Stipanowich's coauthored article entitled "Living with ADR: Evolving Perceptions and Use of Mediation, Arbitration and Conflict Management in Fortune 1000 Corporations" in the *Harvard Negotiation Law Review* (2014) was last year's most-downloaded article on the Social Science Research Network under the headings of "arbitration," "mediation," and "ADR."

In 2013 three initiatives were undertaken under the umbrella of the research project: two parallel, pioneering studies of practices and perspectives among dispute resolution professionals—one of experienced arbitrators and the other, experienced mediators; and a survey of corporate counsel cosponsored by a section of the American Bar Association. All three efforts were undertaken by Stipanowich with the assistance of Zach Ulrich (MA '12, JD '13, MDR '13), who was named the Straus Institute's inaugural Research Fellow. The three surveys, each of which involved the creation of an online platform and individualized invitations to participants, as well as significant follow-up, could not have been implemented without his dedicated effort. Two of these initiatives are summarized here.

IAM—Straus Institute Survey on Mediator Practices and Perceptions

A parallel survey of experienced mediators, the International Academy of Mediators (IAM)-Straus Institute Survey on Mediator Practices and Perceptions, was conducted in the spring of 2014. The survey was facilitated by a grant from the IAM.

Survey group. The IAM-Straus Institute Survey was completed by 130 individuals (representing about 85 percent of IAM Fellows). The respondent pool included individuals who regularly practice in Africa; Asia, including the Middle East; Australia and New Zealand; Canada; Europe (with a majority from the U.K.); Latin America; and the United States. The median age of respondents indicating their age was in the sixties. Among respondents identifying their gender, 22 percent were female. About ninety percent of respondents indicated that they worked full-time at the time the survey was administered, and devoted, on average, more than seventy percent of their work time to mediation practice. Survey participants had, on average, over 18 years of mediation experience, and had mediated, on average, almost 1,500 cases.

Forthcoming analyses. In the coming months the Institute will be publishing a number of in-depth summaries and analyses of mediator perspectives and practices, including:

- » Mediator goals in mediation and self-assessments of "success" and "failure"
- » Mediator styles and strategies
- » Use of caucuses and joint sessions
- » Mediator patterns in communicating with counsel, parties, and others
- » Sources of mediator casework and their relationship to mediation outcomes
- » The role of professional reputations, panel affiliations, marketing, education, and other factors in success as a professional mediator
- » Mediation of class disputes
- » Mediator perceptions of the mediation field-at-large, and factors affecting the field
- » Mediators' experiences with arbitration, med-arb, and early neutral evaluation.



THREE NATIONAL ORGANIZATIONS

College of Commercial Arbitrators—Straus Institute Survey on Arbitration Practice (Fall 2013)

The College of Commercial Arbitrators (CCA)-Straus Institute Survey on Arbitration Practice came about as the result of an invitation to Stipanowich to present a report to the college on the future of commercial arbitration. The survey, made possible by a grant from the CCA, consisted of 65 multiple-choice and short-answer questions on CCA members' arbitration experiences and opinions on arbitration practices and the future of the arbitration field at large. The survey asked questions pertaining to both domestic and international arbitrations. The survey was completed by 134 individuals, a 63 percent response rate. (The survey and associated data are available from Stipanowich.)

Group profile. The average age of respondents who indicated their age was around 65. Eighty-five percent of those indicating their gender were male. More than eighty percent reported having litigation backgrounds; roughly three in ten had experience as transactional attorneys, and nearly ten percent claimed judicial experience. The participant pool had a mean arbitration-career length of more than 20 years and about four-fifths of the group had more than twenty years' practice as arbitrators. Two-thirds had arbitrated more than 100 cases.

Professionalization of arbitration practice. Nearly two-thirds of participants indicated they spend half or more of their work time as arbitrators, while almost twenty percent claimed to spend over 90 percent of their work time as arbitrators. (See graph below.)

About three-fourths of respondents indicated that they still worked full-time, and of those who did not work full-time over 90 percent worked at least occasionally. The great majority had arbitrated an international dispute, and almost half of this group had averaged at least one international case per year for the last five years; almost a third averaged at least two international cases per year.

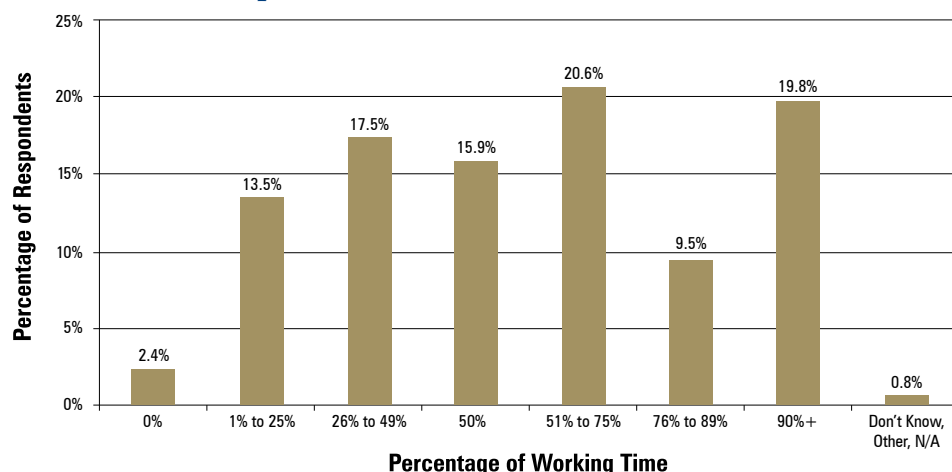
Settlements during arbitration. The first published analysis of data from the CCA-Straus Institute Survey, can be found in *Commercial Arbitration and Settlement: Empirical Insights into the Roles Arbitrators Play*, 6 YEARBOOK ON ARBITRATION AND

MEDIATION 1 (2014). The article points out that arbitrators are generally reporting increased rates of settlement during arbitration, but their reported settlement rates vary considerably. It examines ways in which arbitrators are helping to set the stage for settlement, including their management of motions to dispose of some or all of the case; it also explores the experiences of some arbitrators with mixed roles (that is, mediating and arbitrating the same case).

Forthcoming analyses. In the coming months, we will be offering in-depth analysis of a range of topics covered by the survey, including:

- » Arbitrators' experience as sole arbitrator in cases of various sizes
- » Experience with streamlined or fast-track procedures; with "baseball," or "final offer" arbitration, or bracketed awards; with procedures for interim/emergency relief; with appellate arbitration rules
- » Experience as non-binding arbitrator or "early neutral evaluator"
- » Administered vs. non-administered arbitration rules, and ad hoc arbitration
- » Experiences with and perceptions of party-appointed arbitrators on tripartite panels
- » Tailoring of arbitration procedures
- » Non-lawyers as arbitrators
- » Handling of motions for summary disposition
- » Management of discovery in arbitration
- » Management of arbitration hearings
- » Standards for arbitrator decision making; handling of legal issues
- » Experience with arbitration provider organizations
- » Trends currently affecting practice and the field at large.

Q: What percent of your work time is currently devoted to practice as an arbitrator?



Pepperdine Makes Its LLM More Accessible to European Students Through an Agreement with Heidelberg University

Pepperdine has agreed to accept transfer credit for up to 8 units of preapproved courses at Heidelberg University Law School towards Straus' LLM degree in dispute resolution. This agreement will enable participating students to save time and money when earning the LLM from Pepperdine. The collaboration makes sense because Heidelberg University Law School has a significant international commercial arbitration curriculum and faculty expertise.

The tuition at Heidelberg University is comparatively nominal because it is a public university. Students transferring in 8 units will need to complete only an additional 20 units at Pepperdine. Thus students will be able to complete all their remaining classes in one semester, with the option of completing their Independent Study Project and an externship at the location of their choice. In addition to the reduction in tuition, this arrangement reduces the required Pepperdine residency to one semester.

Pepperdine LLM students must have earned their first degree in law from their country before earning LLM units. Students interested in the Pepperdine-Heidelberg collaboration must be accepted to both schools before matriculating. Students can begin their studies at either location.

Heidelberg professor Thomas Pfeiffer was the liaison for this relationship. His academic and practice specialty is international commercial arbitration, which he taught at Pepperdine in July 2014.

Interested students can complete the program in any sequence, but many might find the following sample instructive.

Sample Student Experience

- » Fall 2014: Student applies to and is accepted at both Heidelberg and Pepperdine to participate in a collaborative relationship LLM program.
- » Winter 2015: Student completes 2 unit winter intensive course.
- » Spring 2015: Student completes 14 units at Pepperdine.
- » Summer 2015: Student completes an externship and the Independent Study Project.
- » Fall 2015: Student completes 8 preapproved units at Heidelberg.
- » December 2015: Student graduates.

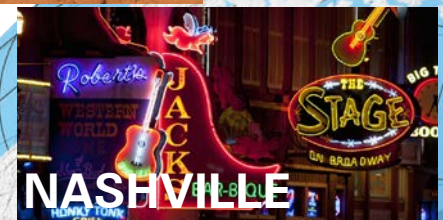
Interested students should contact Sarah Gonzales at Straus:
+1.310.506.4655

Pepperdine Agrees to Offer Many of Its LLM Courses in Nashville in Partnership with Lipscomb

Pepperdine and Lipscomb University have entered a collaborative agreement to make it easier for lawyers near Nashville, Tennessee, to earn Pepperdine's LLM in Dispute Resolution. The Straus Institute has been administering an LLM in dispute resolution for Pepperdine School of Law since 2003. Over the years practicing lawyers and judges from North America have commuted to Malibu to earn the degree. Examples include Knoxville, Tennessee; Baton Rouge, Louisiana; Philadelphia, Pennsylvania; Pittsburg, Pennsylvania; Orlando, Florida; Spokane, Washington; and Calgary, Canada.

Students can now earn an LLM from Pepperdine by completing 12 units offered at Lipscomb University in Nashville and 16 units at Pepperdine in Malibu. The two universities have agreed that Pepperdine will transfer in up to 6 units of Lipscomb's graduate dispute resolution courses and Lipscomb agreed to host Pepperdine to offer 6 units of its LLM courses on the Lipscomb campus. Practicing lawyers can complete the 10 units of additional course work in Malibu in a series of five one-week courses over 18 months, and the externships and Independent Study Project in their hometown. Students able to relocate can complete the additional units by attending full time in Malibu for only one semester.

Students participating in this program will need to have completed their juris doctor before enrolling in Pepperdine's LLM program and will have the freedom to complete the program requirements at their own pace.



for LLM Students

Sample Student Experience

While the program will be structured to accommodate a variety of student schedules, it will be promoted with the following schedule as the typical pattern. This schedule will enable a student to maintain a professional practice away from Los Angeles and complete the program in as little as two years.

A student beginning this program in January 2015 and motivated to complete an accelerated course of study would have the following experience:

- » Fall 2014: Student applies to both Lipscomb and Pepperdine to participate in a collaborative relationship LLM program.
- » Fall 2014: Student accepted by both Lipscomb and Pepperdine will be separately notified by each institution.
- » January 2015: Student completes one course during the Winter Intensive at Pepperdine in Malibu.
- » Spring 2015: Student completes one Lipscomb course and one Pepperdine course in Nashville.
- » May 2015: Student completes a one-week course during the Summer Intensive at Pepperdine in Malibu.
- » July 2015: Student completes a one-week course during the Summer Intensive at Pepperdine in Malibu.
- » Fall 2015: Student completes one Lipscomb course and one Pepperdine course in Nashville.
- » January 2016: Student completes one course during the Winter Intensive at Pepperdine in Malibu.
- » Spring 2016: Student completes one Pepperdine course in Nashville and an externship supervised by Pepperdine in Malibu.
- » Summer 2016: Student completes a one-week course during the Summer Intensive at Pepperdine in Malibu and a second externship supervised by Pepperdine in Malibu.
- » Fall 2016: Student completes the Independent Study Project supervised by Pepperdine in Malibu.
- » December 2016: Student graduates.

Interested students should contact Sarah Gonzales at Straus:
310.506.4655

*Graph illustrates one way of completing
classes for the Pepperdine LLM
partially hosted by Lipscomb.*

CLASSES AT PEPPERDINE	PEPPERDINE CLASSES AT LIPSCOMB	LIPSCOMB CLASS
January 2015*		
	Spring 2015	Spring 2015**
May 2015*		
July 2015*		
	Fall 2015	Fall 2015**
Jan 2016*		
Spring 2016 (Externship)	Spring 2016	
May or July 2016*		
Summer 2016 (Externship)		
Fall 2016 Independent Study Project		

*Denotes classes that meet for four straight days.

** Denotes classes for 3 units; all other courses are for 2 units.
Thus 6 units from Lipscomb are satisfied by completing two courses.





Straus Completes Inaugural Year of the International Commercial Arbitration Program

This past fall Pepperdine welcomed 14 international students to the new Concentration in International Commercial Arbitration as part of the LLM in Dispute Resolution offerings. This inaugural class included students from Ghana, South Africa, China, Switzerland, United Kingdom, Sweden, Saudi Arabia, Panama, and India.

Led by Straus professor Jack Coe, this new program invites leading experts and faculty from law firms and organizations across the globe including Freshfields Bruckhaus Deringer; Jones Day; King & Spalding; and the World Bank to share their expertise in this area.

As part of the practice portion of the program, students competed in pre-moot competitions in February at the University of San Diego and Pepperdine University School of Law, in preparation for the LLM International Commercial Arbitration Moot Competition at American University in Washington, D.C., and the VIS Competition in Vienna, Austria.

Pepperdine has long been considered the place to be in international commercial arbitration and has hosted a number of events including the Floyd Landis/USADA arbitration; the

Institute for Transnational Arbitration (ITA) Winter Forum; the advisors and reporters of the American Law Institute project on the *Restatement of the Law (Third): The U.S. Law of International Commercial Arbitration*; the Foreign Direct Investment International Arbitration Moot; an arbitrator accreditation program for arbitrators organized by the Chartered Institute of Arbitrators; visits by officers of the American Society of International Law; career opportunity programs organized by the ABA Section of International Law; and a mock arbitration appellate case argued by the former solicitor general of the United States.

In addition to the International Commercial Arbitration Program, students can graduate with a general LLM in Dispute Resolution or a Concentration in Mediation, Arbitration, and Litigation. Additionally, starting this fall, students will be able to declare a Concentration in International Commercial Law and Arbitration (ICLA). Reacting to the growing interest in business law and arbitration this concentration will allow international students the opportunity to take more business law courses as electives of the LLM program.



Pepperdine Hosts Prestigious Fulbright Scholar Specializing in International Commercial Arbitration

Pepperdine continues to attract top scholars to study in the LLM in Dispute Resolution program. This year Fulbright Scholar ScheLeese Delpont was chosen to participate in Pepperdine's new Concentration in International Commercial Arbitration.

Before attending Pepperdine, ScheLeese Delpont was a practicing attorney at Webber Wentzel in South Africa where she worked on the dispute resolution team. Her work primarily focused on litigation and occasional arbitrations. In summer Delpont interned in the New York office of Linklaters, LLP, where she joined the U.S. litigation and arbitration team to gain a deeper understanding of cross-border commercial arbitration.

In September Delpont will be returning to her practice in South Africa with the intent of using her experience to expand her firm's international commercial arbitration base, focusing on international investment arbitration.

The Fulbright program was established by the U.S. Congress in 1946 and is the largest U.S. international exchange program for students, scholars, and professionals pursuing advanced study and research in the United States. Application for a

Fulbright Scholarship is very competitive and placement of a Fulbright Scholar speaks highly of an academic program.

Straus has received students on Fulbright scholarships for the past seven consecutive years from around the world including Germany, El Salvador, Egypt, Panama, Ukraine, Tunisia, the Czech Republic, and is welcoming two Fulbright Scholars from Russia this upcoming fall. In addition to the Fulbright Scholarship program, Pepperdine has previously hosted a Muskie Fellow from Moldova in 2008, three Weinstein International Fellows from Jordan, Nepal, and Ecuador in 2009, an Organization of American States (OAS) Scholar from St. Vincent in 2011, and a recent Rotary Scholar from Switzerland in 2012.

Straus Institute's LLM program is an advanced law degree specializing in dispute resolution. Straus' academic programs are regarded as the most comprehensive dispute resolution curriculum in the nation, and continue to be ranked as the number one dispute resolution program in the nation by *U.S. News & World Report*. Pepperdine also offers a certificate and master of dispute resolution (MDR) for non-law professionals.

STRONG DEMAND FOR STRAUS TRAINING PROGRAMS



MALIBU

In June 2014 the Straus Institute presented the 27th annual Professional Skills Program in Malibu. This program has grown to consist of 10 simultaneous courses offered with 18 accomplished scholars and practitioners serving as faculty. A record number of 301 people registered in 2014. Participants included representatives from 30 states, as well as from Argentina, Austria, Canada, Greece, Singapore, and New Zealand. We were also honored to have faculty law scholars from Gonzaga University, University of Arkansas, University of Colorado, and University of Hawaii. This program will be offered again in Malibu on June 25–27, 2015.

Malibu, California ■ June 19 - 21, 2014

- » STAR: A Systematic Approach to Mediation Strategies
Faculty: Peter Robinson and Jim Craven
- » Advanced Mediation
Faculty: Nina Meierding and Bruce Edwards
- » Mediator Boot Camp
Faculty: Tracy Allen and Eric Galton
- » Elder Care Mediation
Faculty: Zena Zumeta
- » Mediating Complex Construction Disputes
Faculty: George Calkins and Victoria Chaney
- » Tools of Mindful Awareness *Faculty: Rachel Wohl*
- » Strategic Negotiation Skills
Faculty: Randy Lowry and John Lowry
- » Family Law Mediation
Faculty: Irwin Joseph and Don Saposnek
- » Preventing Bad Settlement Decisions and Impasse
Faculty: Don Philbin and Doug Noll
- » Conflict Resolution Consulting
Faculty: Ken Cloke and Joan Goldsmith



BALTIMORE

In partnership with the University of Maryland School of Law, Pepperdine offered seven Professional Skills Program workshops. We were delighted that this program attracted over 100 enrolled participants in only its second year. Participants included representatives from the U.S. Department of Agriculture, Equal Employment Opportunity Commission, National Institutes of Health, U.S. Department of Justice, and the Federal Aviation Administration. It will be offered again in Baltimore on March 19–21, 2015.

Baltimore, Maryland ■ March 19 - 21, 2015

- » STAR: A Systematic Approach to Mediation Strategies
Faculty: Peter Robinson and Deborah Eisenberg
- » Advanced Mediation
Faculty: Nina Meierding and Bruce Edwards
- » Tools of Mindful Awareness *Faculty: Rachel Wohl*
- » Dealing with Workplace Conflict: Mediation and Beyond
Faculty: Toby Guerin and Marvin Johnson
- » Conflict Resolution Consulting
Faculty: Ken Cloke and Joan Goldsmith
- » Strategic Negotiation Skills
Faculty: Randy Lowry and John Lowry
- » Environmental Dispute Resolution
Faculty: Sean Nolon and Merrick Hoben
- » Restorative Practices in an Organization Setting
Faculty: Barbara Grochal and Kay Pranis
- » Preventing Bad Settlement Decisions and Impasse
Faculty: Don Philbin and Doug Noll
- » Advanced Collaborative Family Law
Faculty: Pauline Tesler and David Fink



TOKYO

Straus is pleased to announce that it has recently entered an agreement in principle with Hitotsubashi University to offer its Professional Skills Program in Tokyo, Japan. Tentative dates for the STAR, Strategic Negotiation and Advanced Mediation courses are July 23–25, 2015 .

Tokyo, Japan ■ July 23 - 25, 2015 (tentative)

- » STAR: A Systematic Approach to Mediation Strategies
Faculty: Tom Stipanowich and Jim Craven
- » Strategic Negotiation Skills
Faculty: Randy Lowry and John Lowry
- » Advanced Mediation
Faculty: Nina Meierding and Bruce Edwards



MEDIATING THE LITIGATED CASE

MEDIATING THE LITIGATED CASE is Straus Institutes' premier training program that is offered as an open-enrollment professional skills workshop several times each year. This is a sophisticated six-day, 42-hour CLE credit program 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.

The recent surge in mediation's popularity signifies a dramatic shift in the practice of law. Attorneys are now using professional neutrals to facilitate settlement negotiations for litigated cases. In the past, settlement efforts in the litigation arena have been limited to settlement conferences in which the focus is usually on the judge's case evaluation. As increasing numbers of courts are requiring parties to mediate in order to accommodate an overburdened legal system, there is a growing demand for professionals who, in addition to being able to evaluate a case, can also facilitate negotiations between adversarial parties to reach innovative solutions.

Lawyers and other established professionals can use their expertise to break into a new area of practice with tremendous possibilities. The Mediating the Litigated Case program offers a unique opportunity to

learn about the mediation process in a format geared specifically toward civil litigation cases. 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 California Mediating the Litigated Case programs are in high demand and have sold out for the past six years. Programs scheduled for this upcoming year include:

Mediating the Litigated Case Programs

- » **Malibu, California ■ August 4–9, 2014**
For the first time a third section was added!
- » **Washington, D.C. ■ September 11–13 and 15–17, 2014**
- » **Rio de Janeiro, Brazil ■ November 10–14**
- » **Salvador, Brazil ■ November 17–21**
- » **Singapore ■ January 19–24, 2015**
- » **Irvine and West Los Angeles, California ■ February 5–7 and 19–21, 2015**
- » **Malibu, California ■ August 3–8, 2015**

ADR PROGRAMS AWAKENING AROUND THE WORLD



Straus Begins Relationship with Brazilian Judiciary



In January 2014 the Straus Institute presented its first Mediating the Litigated Case program in Brazil. The program was hosted by the Regional Labor/Employment

Tribunal of the 10th Region—Brasilia, and was attended by about 50 judges. This tribunal focuses on the rights of employees, and its judges are responsible for managing very heavy caseloads. The focus of the program was to equip the judges to integrate responsible settlement strategies in their judicial practices. It was an especially interesting conversation as judges wrestled with how to encourage settlement and still honor this tribunal's mission to protect the rights of employees.

The program was the brainchild of Marcelo Rosadilla (LLM '10), a Brazilian attorney who earned his LLM at Straus and now serves as an adjunct professor and program administrator for international students and programs at Straus. Judge Rogerio Neiva Pinheiro was the liaison from the tribunal who partnered with Rosadilla to organize the program. Straus adjunct professor and retired judge Alexander Williams and Straus director and professor Peter Robinson partnered with Rosadilla to present the training in Brasilia.

Judges from five other regional labor/employment tribunals throughout Brazil attended the program. The program was so well received that Straus will be presenting the same program for regional labor/employment tribunals in the cities of Rio de Janeiro and Salvador in November. Commercial mediator and mediation trainer Tracy Allen from Detroit, Michigan, will join Rosadilla, Williams, and Robinson to present these programs.

The Straus Institute is enthusiastic about partnering with courts, bar associations, and universities in Brazil. The leadership and support of the National Council of Justice has created opportunities for mediation to thrive in the legal and judicial cultures. Straus enjoys supporting the efforts of like-minded Brazilian colleagues who are advancing mediation in Brazil.



Straus Partnering with Hitotsubashi University in Tokyo



Straus directors Thomas Stipanowich and Peter Robinson taught a workshop on negotiation on March 26 and 27 at Hitotsubashi University in Tokyo. The invitation was arranged

by Hideyuki Kobayashi from the Graduate School of International Corporate Strategy. Professor Kobayashi is a highly regarded professor and practitioner in the areas of negotiation and international commercial arbitration (ICA). In the fall of 2013 he visited Pepperdine School of Law and attended ICA courses taught by Pepperdine professor Jack Coe. While in Tokyo, Stipanowich also presented on his recent Fortune 1000 Corporations Survey at the International Affairs Division of the Japan Federation of Bar Associations.

The negotiation workshop provided an opportunity for Stipanowich and Robinson to meet with a variety of faculty members and the incoming law school dean at Hitotsubashi University. Hitotsubashi provided simultaneous translation for this event, but about half of its graduate-level law and business courses are taught in English.

The workshop was well received and now Straus and Hitotsubashi have an agreement in principle to present three workshops from the Professional Skills Program in Tokyo in 2015. The anticipated workshops and faculty for Tokyo are Strategic Negotiation, taught by Randy Lowry and John Lowry; the STAR Approach to Mediation, taught by Thomas Stipanowich and Jim Craven; and Advanced Mediation, taught by Nina Meierding and Bruce Edwards. Pepperdine is very honored to be partnering with Professor Kobayashi and Hitotsubashi University.

Pepperdine's Service in Uganda Expands to Training for Court-Annexed Mediators

Pepperdine School of Law has been involved in Uganda for many years. It began in March of 2007 when two law students traveled to Uganda for a judicial conference and returned with the idea of serving as interns for the Ugandan judiciary. That summer four students spent the summer interning for the High Court of Uganda. Two years later Pepperdine Law School and the Ugandan judiciary entered into a Memorandum of Understanding (MOU) whereby Pepperdine agreed to train the judiciary in dispute resolution and the judiciary agreed to mentor and train our law students. Also included in the MOU was Pepperdine's annual provision of a Nootbaar Fellow—a School of Law graduate who would serve as a mediator for the Commercial Division of the High Court.

In addition, a few Pepperdine law professors became concerned when they learned that inadequate resources in the juvenile justice system resulted in hundreds of youth being detained for months and sometimes years without a trial. Professor Jim Gash's commitment to this effort grew to the point where he took a six-month sabbatical and lived in Uganda with his wife and three children to help redesign Uganda's juvenile justice system. Gash was recognized as California's International Lawyer of the Year for 2013 by the California Bar Association's International Law Section.

Pepperdine's dispute resolution efforts to assist Uganda started in 2003 when two Ugandan judges traveled to Malibu for dispute resolution training. Straus is currently helping to raise funds so that a second graduate can inaugurate a full-time, court-annexed mediator program

in the Family Division of the High Court for the fall of 2014. Over the past decade, more than 15 Ugandan judges have advanced their mediation skills by attending Straus' Mediating the Litigated Case on the Malibu campus.

In the fall of 2013 the Ugandan courts decided to vastly expand court-annexed mediation and requested the Straus Institute to provide the training. Straus recruited a faculty team led by assistant director Stephanie Bell and consisting of adjunct professor and retired judge Mitchel Goldberg, adjunct professor Denise Madigan, and sitting judge Paul Beeman from Solano County, California, to provide two simultaneous Mediating the Litigated Case programs in November. About 40 judges took the program in one room, while about 40 attorneys took the program down the hall. The response was overwhelmingly positive with plans being made for an encore performance. Logistical support was ably provided by Gash and the Pepperdine-provided Commercial Division mediator, Susan Vincent (JD '13, MDR '13).



Straus Builds Bridges in Korea

With the encouragement of several Straus Institute Korean alumni, the Straus Institute is making a concerted effort to establish collaborative relationships with several Korean legal and judicial institutions. The alumni who have supported this effort include: Sungwon Jang, a mediator from the Press Arbitration Commission; Kwan Ho Lim (LLM '11), a judge and professor at the Judicial Research and Training Institute (JRTI); Hongjoong Kim (LLM '12), a lawyer at Bae, Kim & Lee; and Kang Boon Moon (LLM '13).

Hongjoong Kim and Kang Boon Moon, a lawyer with a labor law specialty, started mediating for the Seoul District Court after earning their LL.M.s from Pepperdine. They made arrangements for Straus director and professor Peter Robinson to present a lecture on May 29 for the judges and mediators who lead the Seoul District Court annexed-mediation program. As part of this visit, Robinson and Straus professor Jack Coe also lectured about court-annexed mediation for the faculty and students at the JRTI on May 28; these lectures were facilitated by JRTI professor Lim, who earned his LL.M. in 2011.

Coe and Robinson also made presentations to faculty and students at Korea University School of Law on "International

Investment Arbitration" and "Mediating High-Stakes Commercial Cases." These lectures were facilitated by professor Nohyoung Park who attended Mediating the Litigated Case on the Malibu campus. Robinson also met with the Korean Supreme Court's director general for judicial procedure, presiding judge Ji-Weon Cheon, who is responsible for court-annexed mediation for all South Korean courts.

Coe presented a lecture on recent developments on investment treaty laws and legitimacy of ISD (investor-state dispute) regime at the annual International Conference on International Investment Law sponsored by the Korean Commercial Arbitration Board (KCAB) on May 23. Professor Hi-Taek Shin at the Seoul National University facilitated this presentation. Coe also conducted briefings at Shin & Kim and Bae, Kim & Lee concerning aspects of investor-state arbitration. To institutionalize the growing relationship between the Straus Institute and Korean legal and judicial institutions, West Seegmiller, a current LL.M. student practicing personal injury law in Southern California, created the Seegmiller Scholarship to pay the tuition for a student from Korea to earn the LL.M. at Pepperdine.

MID (LATER) CAREER LLM ALUMNI PROFILES

They say, “you can’t teach an old dog new tricks”... Judge Jewel “Duke” Welch, Jr.

When it comes to old judges, Straus certainly defies this principle. I have been a practicing lawyer, prosecutor, and assistant attorney general. I served as a state district court judge for 10 years, and have been privileged to serve as one of 12 judges on the Louisiana First Circuit Court of Appeal since 2005. After 35 years in this field, it was presumed I had seen and heard everything about litigation strategies. I have presided over—and witnessed—thousands of trials. Matters have ranged from the complexities of death-penalty cases to the straightforwardness of traffic offenses; from state regulatory appeals to intricate class actions; and every type of civil litigation imaginable. Throughout my legal career, the one thing that stood out, that always appeared to prevail, was that cases were constantly being scored by the litigants as a “win” or a “loss”—the “fixed pie” mentality prevailed. “I have to beat you” if we litigate.

The actual reality was that in most instances, even the “winning” side wasn’t completely happy. Did they really “win”? The cost and expense of trying a case, together with the emotional and psychological toll on the litigants can be staggering. During my service as a trial judge, I observed that when faced with settlement conferences in civil cases, the litigants often displayed a sense of relief, and were much more satisfied with the agreed-upon settlement than they would



have been with a trial. I had a strong sense that alternative dispute resolution would be of great benefit to the people of our state. With the exception of workers compensation cases, at present, Louisiana has no mechanism for court-affiliated alternative dispute resolution. Could this change?

My self-imposed charge was to design and implement a practice for court-affiliated alternative dispute resolution. In order to accomplish this goal, I needed to acquire the skills and expertise in the field of alternative dispute resolution. After extensive

research, and considering the logistics, I chose Straus. Why? The short answer—it is simply the best. Once again, for the 10th consecutive year, Straus was ranked the number one dispute resolution program in the nation. In addition, the flexible course schedules allowing full-time judges to attend made my pursuit for knowledge actually feasible.

I am grateful I chose Straus. From Dean Robinson to the staff, everyone makes you feel like family. The faculty are remarkable, including top professors in their respective fields. The students are diverse, coming from all over the world to study and learn at this great institution. Whether it's a certificate, or master of dispute resolution, or a master of laws (LLM), there is something for anyone with the desire to learn from the best in this field.

In August 2014, I will receive my second LLM. I am currently in the process of completing my proposal to implement appellate mediation for the Louisiana Courts of Appeal. The knowledge gained from the program at Straus has allowed me to set in motion the attainment of my goal. My only regret is that I did not acquire the skills and insight taught at Straus earlier in my legal career—but I plan to make up for lost time.

I am 61 years old—living proof that you can teach old judges and lawyers new, relevant, and usable knowledge.

Judge Welch was born in Baton Rouge, Louisiana. He joined the United States Air Force during the Vietnam War and served with NATO as a communication specialist. In 1976, he began his studies at the LSU Law School. In 1980, he was elected to the Baker city council where he served from 1980 to 1988.

He then ran for and won a seat on the East Baton Rouge Parish Metropolitan Council serving from 1989 to 1994 and

during this time served as chair of the planning and zoning commission adjunct. In 2005, he ran for and won his seat as a Court of Appeals judge on the Louisiana First Circuit Court of Appeals. He has also served as a prosecutor and consumer advocate with the attorney general's office.

He has been a professor of law for 16 years and has served for six years as a member of the State Judicial

Ethics Commission and also serves on the Louisiana State Bar Association Professionalism Committee. Welch has continued his education receiving advanced degrees in law, graduating with a master's degree in judicial studies from the University of Nevada in 2009.

He is currently completing his LLM in dispute resolution at Pepperdine University. In 2012 Welch was inducted into the Louisiana Justice Hall of Fame.

Beki Callahan (LLM '07)

BACKGROUND

I am a native Californian and was raised in a small, farming town in the Central Valley. My parents were both teachers and, of course, placed a high value on education. When I was in high school, we moved to what I thought was a big city—Fresno. A few years later, I went to Los Angeles to attend college at USC, and discovered what a real big city was! Needless to say, I never went home. After college, I worked a few years as a paralegal and then went to UC Berkeley for law school. Why did I wait to go to law school? I don't know, but it was a good thing I did because that is where I met Rich—my husband of 32 years. We have one son Alex, with whom we are very close. In fact, we are all business partners in a paintball manufacturing business based in Orange County.

I've been practicing law for over 30 years. I established my neutral practice about five years ago, but still maintain an active law practice. As my neutral practice has grown, my law practice has "downsized" to the point where I limit my practice to long-standing clients and referral sources.

HOW I FOUND MY WAY TO MEDIATION AND STRAUS

I discovered mediation, in general, and Straus, in particular quite by accident! First off, in the early 1980s when I was in law school, the word "mediation" was not in the law school vocabulary (let alone its curriculum). Secondly, by the mid-1990s, I was a full-fledged trial lawyer who regularly took my clients' disputes to court for resolution. My general orientation was that when parties brought disputes to their lawyers, our job was to take those matters to court for resolution. Settlement discussions were pretty much reserved for the mandatory settlement conference or the courthouse steps.

What I did not mention in the background section is that my litigation practice for 20 years was centered in insolvency law, representing debtors or creditors in Chapter 11 reorganization proceedings where there were either contested matters in the core bankruptcy case or "related to" litigation to be resolved in other state or federal courts. In the mid-1990s, the Bankruptcy Court for the Central District of California established a court-annexed mediation program. This was a court in which I routinely practice, and one of the judges insisted that I "go get trained." The training program was designed and presented by Straus. That training opened up a whole new world of dispute resolution alternatives, and forever changed the way I practiced law.

For me, everything about the mediation process is practical, rational, and intuitive, which cannot always (ever) be said about litigation. As a result, I found myself wanting to learn

more. At the time, Straus offered three-day skills courses on a broad range of advanced topics. Over a six year period, I returned to Straus each summer to take one of the advanced course offerings and reconnect with friends made the year before. In 2004 I noticed a pamphlet that described the academic degree programs being offered by the law school at Pepperdine in conjunction with Straus. Until I saw that pamphlet, I was unaware that there were advanced degree programs in dispute resolution. I did some research and learned that there were a number of other universities and institutions offering such advanced degree programs. I chose Straus for three reasons: First, I knew from my prior

learning experience that it was a top-notch institution dedicated to developing and advancing the field of ADR. Second, Straus is—and for many years running has been—the top-ranked ADR program, so a degree from Straus would have "resume value." Third, I had gotten to know several people at Straus and believed that they would be accessible to me in designing a course of study to fit my work schedule.

IMPACT ON MY CAREER

The time and money I invested in my LLM degree is the single best investment I have made in my personal development and career. I entered the LLM program with the simple goal of "learning more." I was not motivated by a desire to change the course of my career. I was looking for an "add on." That being said, obtaining the LLM in dispute resolution has changed my career because opportunities have been presented that I quite frankly did not know existed and was not seeking. The following is one example:

Through my LLM studies, I was introduced to arbitration—an alternative to court litigation about which I knew very little when I started. As luck would have it, one of my favorite professors and the advisor assigned to oversee my thesis project was a highly-regarded labor arbitrator. One thing led to another,

and the suggestion was made that I apply to the American Arbitration Association (AAA) to be on their commercial panel. I did and my application was accepted, which then led to a further course of study with the AAA per their panel training requirements. I have now presided over about a dozen arbitration proceedings through evidentiary hearing and award, and have really enjoyed the experience. I would not have had this opportunity or these experiences but for the new path charted by my LLM studies.

The LLM program had an equally significant impact on the way I mediate and market myself as a mediator, and gave me tools and insights that have helped me distinguish myself in what is a very crowded field in Southern California.





Straus Proud to Help Cohost International Mediation Conference

The International Academy of Mediators (IAM) and the Straus Institute for Dispute Resolution cosponsored “West Coast Stories: A 21st-Century Junto for Commercial Mediators” on May 1 - 3, 2014, in Santa Monica, California. Playing off the American musical of rivalry and reconciliation, IAM Fellows and guests gathered on the Santa Monica oceanside to share their own stories of love and rivalry, and conflict and change in the mediation industry. The program was sold out with attendees from nine countries and across the United States.

A preconference day was scheduled to allow visiting mediators to shadow Southern California mediators. Fifteen mediators participated in the program. Chuck Doran said of the shadowing experience, “What a rare and wonderful treat to shadow a proven leader in our field—Jeff Krivis. Not only was the case fascinating (an eight-figure class action involving multiple counsel from five firms across the U.S.), Jeff’s skill and timing brought the case to closure that day. Being a fly on the wall would have been sufficient. Instead, Jeff took the time between each private session to sit down with me to share his strategies and ask for my thoughts.” The preconference also included Benjamin Franklin-styled “Juntos” including “Apologies in Mediation” by Straus director and professor Peter Robinson; “Five Forms of Stealth Empathy for Commercial Mediators” by Straus assistant professor Stephanie Bell; “Dual Mediation: Mediating Insurance Coverage and Liability Simultaneously” by IAM Distinguished Fellows Eleanor Barr and Ralph Williams, and many more.

The conference inaugurated the “Pepp Talks” concept, an 11-minute format for presentations/stories named after the IAM/Pepperdine collaboration. The purpose of the Pepp talks at this conference, and future IAM conferences, is to allow IAM Fellows and invited guests the opportunity “to inspire, make us think, question what we think we know, explore the boundaries of our field, educate, and entertain.” Each talk lived up to the “PEPP” name: Provocative, Educational, Powerful and Persuasive. Talks were presented by IAM Distinguished Fellows Marvin Johnson, George Brown, Michel Kalipetis, and current IAM president Mike Young, as well as Straus academic director and professor Tom Stipanowich.

The conference featured speaker Bruce Edwards, chair of the board of JAMS, The Resolution Experts, who delivered a keynote address on the future of mediation practice, here and abroad, entitled “The State of the Union: Business of Mediation in America Past, Present and Future.” Stipanowich’s keynote address “Rebels on the Lot: Negotiating and Resolving Conflict in the Golden Age of Hollywood” highlighted the dramatic behind-the-scene battles stories of such silver screen legends as Jimmy Cagney, Bette Davis, and Olivia de Havilland.

The conference ended with a dinner and open house sponsored by Gene Moscovitch and his wife Nancy Kless in Santa Monica with a blues performance from IAM Fellow Pat Nichols.

Cochair Jan Frankel Schau said of the conference, “In all, the conference was a great melding of intellectual thinking and practical concerns and a terrific endorsement for the benefits of collaboration between practitioners and academics.”

STEPHANIE B. BELL

Presentations

Presentations, NW Alternative Dispute Resolution Conference, Seattle, Washington, March 2014.

“Storytelling as a Mediator Intervention,” American Bar Association Section of Dispute Resolution Section Annual Spring Conference, April 2014, Miami, Florida.

“Five Forms of Stealth Empathy for Commercial Mediators,” International Academy of Mediators “West Coast Stories” Conference, Santa Monica, California, May 2014.

“Advanced Negotiations: Skills Strategies and Ethics,” Federal Dispute Resolution Conference, San Francisco, California, July 2014.

JACK J. COE, JR.

Book

Making Remission and Other “Curative” Mechanisms Part of the Forum Shopping Conversation – A View from the United States with Comparative Notes, reprinted in *FORUM SHOPPING IN THE INTERNATIONAL COMMERCIAL ARBITRATION CONTEXT* 347 (Franco Ferrari, ed., 2013).

Article

A Reply to “Hollow Spaces” 62 *BUFFALO L. REV.* 177 (2014) (with George A. Bermann, Christopher R. Drahozal & Catherine A. Rogers).

MICHAEL A. HELFAND

Book

NEGOTIATING STATE AND NON-STATE LAW: THE CHALLENGES OF GLOBAL AND LOCAL LEGAL PLURALISM (Michael A. Helfand, ed., Cambridge University Press, forthcoming 2015).

Chapter

The Persistence of Sovereignty and the Rise of the Legal Subject, in *NEGOTIATING*

STATE AND NON-STATE LAW: THE CHALLENGES OF GLOBAL AND LOCAL LEGAL PLURALISM (Michael A. Helfand, ed., Cambridge University Press, forthcoming 2015).

Article

The Challenge of Co-Religionist Commerce, 64 DUKE L.J. (forthcoming 2015) (with Barak D. Richman).

Between Law and Religion: Procedural Challenges to Religious Arbitration Awards, 90 CHI.-KENT L. REV. (forthcoming 2014) (invited symposium contribution).

Religious Legal Theory Symposium Introduction, 39 PEPP. L. REV. 1051 (2013) (with Robert Cochran) (symposium introduction).

Purpose, Precedent, and Politics: Why Concepcion Covers Less Than You Think, 4 Y.B. ARB. & MEDIATION 126 (2013) (invited symposium contribution).

PETER R. ROBINSON

Presentations

Taught Mediating the Litigated Case to various audiences, including 50 Judges from the Regional Labor/Employment Tribunal, Brasilia, Brazil, and the California Association of Realtors, Los Angeles, California.

Taught the two-day Negotiation Skills program at multiple locations, including Hitotsubashi University in Tokyo, Japan; Kia Motor Corporate Representatives in Irvine, California; and LexisNexis representatives, Miami, Florida.

Taught Strategic Negotiation Skills for members of the Association of Corporate Counsel sponsored by the Agency for Dispute Resolution, as well as environmental cleanup managers for the U.S. Navy, Atlanta, Georgia.

Gave presentations at the Judicial Institute for Training and Research, the Korea University School of Law, the Korean Supreme Court, and the Seoul District Court Mediation Program, Seoul, Korea.

THOMAS J. STIPANOWICH

Book Chapters

Soft Law in the Organization and General Conduct of Commercial Arbitration Proceedings, in *SOFT LAW IN INTERNATIONAL ARBITRATION* (Juris Publishing, forthcoming 2014).

Articles

Managing Construction Conflict: Unfinished Revolution, Continuing Evolution, 34 (4) CONSTRUCTION LAW., (Fall 2014) (Article invited for special "Crystal Ball" Issue) (forthcoming); also published as a chapter in 100 Years: Chartered Institute of Arbitrators, Selected Topics in International Arbitration—Liber Amicorum (forthcoming).

Commercial Arbitration and Settlement: Empirical Insights into the Roles Arbitrators Play, with Zachary P. ULRICH 6 Y.B. ARB. & MEDIATION 1 (2014) (lead article for the Yearbook); available at SSRN: ssrn.com/abstract=2461839.

Living with ADR: Evolving Perceptions and Use of Mediation, Arbitration and Conflict Management in Fortune 1,000 Corporations with Ryan Lamare, 19 HARV. NEGOT. L. REV. 1 (2014) (lead article for the edition); available at SSRN: ssrn.com/abstract=2221471.

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); available at SSRN: ssrn.com/abstract=2271359.

Presentations

"International Mediation and Conflict Management: Near a Tipping Point?," New Zealand Law Foundation Annual International Dispute Resolution Lecture, Wellington, New Zealand, Sept. 30, 2014.

"Rebels on the Lot: Negotiating and Resolving Conflict in the Golden Age of Hollywood," Luncheon Keynote Presentation, International Academy of Mediators, Los Angeles, California, May 2, 2014.

"Recent Developments in Commercial Arbitration," Hong Kong University School of Law, Apr. 1, 2014.

"Trends in Corporate Conflict Management," Japan Federation of Bar Associations, Tokyo, Japan, Mar. 28, 2014.

"Using the CCA Protocols to Make Arbitration Proceedings More Efficient," Webinar Presentation to GE International Litigation Group, Nov. 20, 2013.

"Solutions to the Challenges Facing Commercial Arbitration; Results of the CCA/ Straus Survey," College of Commercial Arbitrators, 13th Annual Meeting, Albuquerque, New Mexico, Oct. 18, 2013.

MAUREEN C. WESTON

Articles

Gamechanger: NCAA Student-Athlete Likeness Litigation and the Future of College Sports, 3 MISS. SPORTS L. REV. 80 (2014).

The New Normal in College Sports: Realigned and Reckoning, 41 PEPP. LAW REV. 209 (2013).

The Accidental Preemption Statute: Federal Arbitration Act and Displacement of State Agency Regulation, 6 PENN STATE Y.B. ARB. & MEDIATION. 59 (2013).

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

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Upcoming Events:

2014

AUGUST 4-9

Mediating the Litigated Case - *SOLD OUT*

SEPTEMBER 11-13 AND 15-17

Mediating the Litigated Case, Washington, D.C.

SEPTEMBER 12-18 (BY INVITATION ONLY)

Reimagining Corporate Conflict Management

OCTOBER 24-26

Foreign Direct Investment International Arbitration Moot

NOVEMBER 6

SCMA 26th Annual Fall Conference Roads to Resolution

NOVEMBER 10-14

Mediating the Litigated Case, Rio de Janeiro, Brazil

NOVEMBER 17-21

Mediating the Litigated Case, Salvador, Brazil

DECEMBER 29-31 AND JANUARY 2, 2015

Winter Intensive Academic Program
(five simultaneous classes)

2015

JANUARY 19-24

Mediating the Litigated Case, Singapore

FEBRUARY 5-7 AND 19-24

Mediating the Litigated Case, West Los Angeles and Irvine, California

MARCH 19-21

East Coast Professional Skills Program, Baltimore, Maryland
(10 simultaneous workshops)

MAY 18-29

London/Geneva Study Tour

MAY 26-AUGUST 1

Summer Intensive Academic Program (approximately
22 classes offered)

JUNE 25-27

Summer Professional Skills Program (10 simultaneous
workshops)

AUGUST 3-8

Mediating the Litigated Case