

KUKIN PROGRAM FOR CONFLICT RESOLUTION

2016-17 Summary of Activities

Prepared by: Lela P. Love

HIGHLIGHTS FOR THE 2016-17 YEAR INCLUDE THE FOLLOWING:

- The Dispute Resolution Program at Cardozo was ranked #8 in the country by US News & World Report.
- The Cardozo Journal of Dispute Resolution was ranked #7 in the country in global law journal rankings in the Civil Litigation and Dispute Resolution category in the 2015 Washington & Lee rankings of law reviews. Additionally, CJCR was the 5th most cited journal in those same 2015 *global* rankings for the Civil Litigation and Dispute Resolution category.
- Cardozo hosted the first Global Pound Conference held in the United States (9/12/16).
- Veronika Waldhof, an LLM student in the Mediation Clinic, placed FIRST in the mediator category in the Cyberweek eMediation Competition, sponsored by the Scheinman Institute on Conflict Resolution/Cornell University.
- Ava Chetrit, an LLM student, co-authored an article in 35 ALTERNATIVES APRIL 2017 on *Expanding Views? Justices Test Kentucky Ruling that Defeated an Arbitration Contract*.
- Cardozo's LLM Team won (out of 20 teams competing) the American University Washington College of Law LLM International Commercial Arbitration Moot Competition, the only moot competition solely for LLM students with teams competing from law schools throughout the United States.
- Cardozo's team, Michael DiTrapani and Noah Batist, won the regional ABA Representation in Mediation Competition at Rutgers-Camden in February out of ten teams competing and advanced to the national Finals in San Francisco in April where they placed 2nd.

1. Student Writing Awards and Publication:

Ava Chetrit, an LLM student, co-authored an article in 35 ALTERNATIVES APRIL 2017 on *Expanding Views? Justices Test Kentucky Ruling that Defeated an Arbitration Contract*.

2. The Cardozo Dispute Resolution Society

The Cardozo Dispute Resolution Society (CDRS), under the leadership of President Lauren Killeen, Vice President Nicole Margulis, Secretary Kateryna Bakhnak, and Treasurer Zachary Kalmbach, hosted several successful events, including:

- A dinner and lecture on *Alternative Dispute Resolution in the Restorative Justice Field* was held on November 16, 2016. Elizabeth Clemants, a mediator and

shaman, discussed her work with Hidden Waters to create a safe space for families and communities to heal after the devastating impact of child abuse. Glen Parker, a Principal Court Analyst in the ADR Program of the Unified Court System, discussed his work at the NY Peace Institute (NYPI) overseeing restorative practices in matters referred to the NYPI from the criminal and juvenile justice systems in Brooklyn and Manhattan.

- Co-sponsored with the Labor and Employment Law Society and the ADR Competition Honor Society, a *Panel on Labor & Employment* on November 16, 2016. This panel included: Erin Lloyd, a partner at Lloyd Patel LLP; David Reinman, a federal mediator at the Equal Opportunity Commission (EEOC); Pinny Goldberg, an associate at Proskauer Rose LLP; and Jay Jaffee, Senior Managing Counsel at the Service Employees International Union (SEIU). The panel discussed matters such as employment discrimination, the government's role in labor and employment, and management and employee representation.
- An event co-sponsored with the Labor and Employment Law Society, *A Lecture on Mediation in the Employment Arena* on March 20, 2017 with David Reinman, who is a federal mediator at the Equal Employment Opportunity Commission (EEOC). Mr. Reinman, a Cardozo LLM, discussed the mediation process, how it is used in the context of employment law, and how the employer and employee sides approach mediation differently.

3. The Cardozo Journal of Conflict Resolution

Generous funding was provided by Jed Melnick, a founding editor of the Journal, to sponsor the 2016 Jed D. Melnick Annual Symposium on November 7, 2016: **The Pound Conferences: Where Do We Come From? What Are We? Where Are We Going?** The faculty for the event included: Professor Thomas Stipanowich (Pepperdine) gave a keynote address, and other distinguished speakers followed: Professor Lisa Blomgren Amsler (Indiana), Professor Brian Farkas (Baruch), Professor Alyson Carrel (Northwestern), Professor Mariana Hernandez Crespo (University of St. Thomas Law School), Professor Noam Ebner (Creighton), Daniel Garrie (JAMS), Noah Hanft (CPR), Professor Donna Erez Navot (Cardozo), Professor Ethan Katsh (University of Massachusetts Amherst), Debbie Masucci (IMI), Jeremy Lack, Esq., Professor Lela Love (Cardozo), Vikki Rogers (Institute of International Commercial Law – Pace Law School), Jonathan Rosenthal (MACRO), Colin Rule (Modria), Erika Sasson (Center for Court Innovation), Lara Traum, Esq., Jamie Walter (Maryland Judiciary's Administrative Office of the Courts), Robyn Weinstein (EDNY), and Daniel Weitz (NYS Unified Court System).

CJCR gave its prestigious **2017 International Advocate for Peace Award** to Rajiv Shah, the President of the Rockefeller Foundation, Former Administrator of the U.S. Agency for International Development, and Chief Scientist and Undersecretary of Agriculture for Research, Education, and Economics during President Obama's Administration.

January Intensive Courses

- **Collaborative Family Law, Professor Adam Berner.** Introduced in January 2012, this interactive class introduces students to Collaborative Family Law, a new and growing alternative process, which provides a framework and skill set to help attorneys collaboratively work in attorney-client teams to resolve conflicts out of court. Through a combination of lecture, demonstration, discussion and role play exercises, students learn the fundamental concepts and basic skills that underlie the Collaborative Law framework. The class is structured around the actual stages of the collaborative negotiation process, from the initial consultation with clients and assessing appropriateness of the process, to the joint meetings, through the "end game" of negotiating a collaborative settlement.
- **(IMAP) Representation in Mediation, Professor David White:** This intensive, interactive course introduces students to negotiation and mediation theory and develops strategies and skills for effective attorney representation in mediation. The course examines attorney responsibilities in advising clients about dispute resolution options, in preparing both the case and the client for mediation, and in representing the client effectively in the mediation session itself. There is substantial reading assignment prior to the commencement of the course. The program culminates in the students participating in a mock mediation coached by seasoned mediators.
- **Negotiation Theories and Skills, Professor Michael Tsur:** This seminar provides students an introduction to both theoretical and practice-based foundations of negotiation. Through simulation-based exercises and classroom discussions, the course covers the elements of both integrative and distributive bargaining; barriers to agreement and strategies to overcome them; the nature of dialogue; negotiation power; the role of culture, gender and race in negotiations; negotiation preparation, tactics, initial and responsive strategies, and ethics.

5. The Certificate in Dispute Resolution

The following students received a Certificate at graduation: Carlyle W. Edwards-Balfour, Jiali Huang, Michael Kar, Brian M. Salazar, Randall Tesser, Stephen Wah, and Kelsey Weiner.

6. Conferences and Presentations

- The Association of Conflict Resolution of Greater NY (ACRGNY) presented its annual conference at Cardozo (6/2017).
- The NYS Bar Association Section of Dispute Resolution presented a 3 day *Commercial Arbitration Training for Arbitrators and Counsel* CLE Program (6/2017).

7. Competitions—The ADR Competition Honor Society

In addition to a successful competition year, the ADR Competition Honor Society hosted the Willem C. Vis International Commercial Arbitration Moot and Cocktail Reception Honoring Professor Curtis Pew (2/28/17). The reception was generously co-sponsored by Anderson Kill.

The Cardozo/ABA Intraschool Negotiation Competition

This year 64 students (32 teams) competed in the Annual Cardozo/ABA Intraschool Negotiation Competition on March 22, 2017. The winning teams were: Joshua Roseman & Ricky Shah (1st); Ali Rudansky (2nd); and Alex Sable & Aaron Horn (3rd).

The American Bar Association Negotiation Competition

The 2017 ABA Regional Negotiation Competition was hosted at New York Law School from November 12 - 13, 2017. Coached by Executive Editor Michael Meyers and Senior Editor Jordan Simon, Cardozo sent two teams consisting of Shawn Green & Jeffrey Jacobson and David Cherman & Aaron Iovine.

The American Bar Association Representation in Mediation Competition

Cardozo sent one team to ABA Representation in Mediation Competition this year. That team--Michael DiTrapani and Noah Batist--won the regional competition at Rutgers-Camden in February out of ten teams competing. The team was coached by Justin Gindi and Michael Kar. The team went on to the Finals in San Francisco in April at the ABA Dispute Resolution Conference where they placed 2nd. This Competition allows students to practice and improve their negotiation and mediation skills by simulating mediations in which the teams of two students, one acting as a lawyer and a client, attempt to solve a series of legal problems through collaboration and creative problem solving.

American University Washington College of Law LLM International Commercial Arbitration Moot Competition

This is the only moot competition solely for LLM students with teams competing from law schools throughout the United States. The competition includes written submissions as well as oral advocacy skills.

Cardozo's team placed first out of 20 teams. The winning Cardozo team included LL.M. students: Simon Allal, Diane Caron-Laviolette, Pauline Weess, and Fabiana Zangara. Professor Curtis Pew coached the team with the assistance of Josh Epstein, Director of Graduate and International Programs.

Cyberweek eMediation Competition

Sponsored by the Scheinman Institute on Conflict Resolution/Cornell University, this year's competition included 42 participants from 11 different universities in 3 different countries. Veronika Waldhof, an LL.M student in Dispute Resolution and Advocacy, placed first in the mediator category.

Fordham National Basketball Negotiation Competition

The Fordham National Basketball Negotiation Competition is an interscholastic negotiation competition hosted by the Fordham Sports Law Forum in New York City. The competition consists of head to head negotiations between teams of two

competitors. The negotiation problems are based on real world scenarios relating to the NBA, such as trades, free agency signings, and sponsorship deals. This year's Competition was held on March 24-25, 2017, where Jeff Jacobson and Shawn Green represented Cardozo. The team was coached by ADRCHS Executive Editor Michael Meyers, with assistance from Cardozo Professor David Weisenfeld.

Jeffrey S. Abrams National Mediation Competition

The Jeffrey S. Abrams National Mediator Competition, held in Houston on October 8-9, 2016, is one of the only competitions where students are judged on their effectiveness as a mediator. The Competition runs simultaneously with the University of Houston Law Center's Newhouse Representation in Mediation Competition. Lyndsey Peck reached the Semi-Final round and tied for third place on behalf of the Benjamin N. Cardozo School of Law. Reginald Greene also competed. Executive Editor Carlyle Balfour and Senior Editor Brian Salazar served as coaches.

NYSBA AAA Judith S. Kaye Arbitration Competition

The ADR Competition Honor Society participated in the second annual NYSBA AAA Judith S. Kaye Arbitration Competition from November 18 - 19, 2016. Coached by Senior Editor Joe Torres and Professor Elizabeth Goldman, a team of Noah Batist, Rehana Jamal and Rasica Selvarajah argued both sides for two rounds in the competition. The team won Best Brief and Best Witness Preparation. Rasica Selvarajah won the Judith S. Kaye Advocate award, the highest individual honor for the event.

New York Law School Intellectual Property Negotiation Competition

On October 15, 2016 New York Law School hosted their inaugural Intellectual Property Negotiation Competition giving students the opportunity to represent parties prominent in today's media. The disputes centered on copyright and trademark issues with students being judged on their effectiveness as counsel. Cardozo sent two teams consisting of CeCe Cole & Divya Ramaswamy, and Joshua Saccurato & Yana Shnaider. Senior Editor Joe Torres and Editor-In-Chief Stephen Wah served as coaches.

St. Johns Annual Securities Dispute Resolution Triathlon

The Annual Securities Dispute Resolution Triathlon is a joint initiative of the Hugh L. Carey Center for Dispute Resolution at St. John's School of Law and the Financial Industry Regulatory Authority (FINRA). This year, the competition was held on October 15 and 16, 2016 in New York City. The competition consists of a negotiation, mediation, and arbitration round. Cardozo competed against 18 other teams from around the country. Michael DiTrapani, Natalie Freeman, and Michael Ricottone participated on behalf of Cardozo. Justin Gindi and Stephen Wah served as coaches.

ICC International Commercial Mediation Competition

Since 2007, Cardozo has sent a team to the ICC International Commercial Mediation Competition in Paris, an invitation only event that gathers student competitors from around the world. Students participated in a week-long intensive competition at the ICC Headquarters in Paris, France from February 3 - 8, 2017. The purpose of this prestigious competition is to encourage the teaching and learning of the effective use of mediation

while empowering tomorrow's legal practitioners to meet the dispute resolution needs of an increasingly cross-cultural and global market. David Cherman, Michael Meyers, Lyndsey Peck and Rasica Selvarajah competed on behalf of Cardozo. Senior Editor Jordan Simon served as head coach with assistance from last year's competitors Brian Salazar (Senior Editor) and Michael Kar (Managing Editor). Cardozo's team was coached in Paris by Professor Lela Love, who also presented a session at the ICC for all participants on *Stories Mediators Tell*.

24th Annual Willem C. Vis International Commercial Arbitration Moot Competition

The Vis Competition in Vienna, Austria promotes the study of international commercial law and arbitration for law students from around the world. The competition, held April 7- 13, 2017, included the submission of two written briefs in December 2016 and January 2017, respectively, followed by oral argument in Vienna. The Cardozo team consisted of Cece Cole, Reginald Greene, Aaron Iovine and Joshua Sacurato. After the submission of their final brief in January, the team participated in practice moots hosted by Fordham, the ICDR and the City Bar. Over three hundred-fifty teams from more than seventy countries participated in oral arguments in Vienna. Reginald Greene received an honorable mention for the Martin Domke Award for Individual Oralists at the closing ceremony for his excellence in advocacy. The team was coached by Editor-in-Chief Stephen Wah and Adjunct Professor Peter Halprin.

8. Clinics

- **Mediation Clinic**

The Mediation Clinic is an 8 credit, 2 semester clinical program in which 16 students are trained and supervised in mediating cases at community dispute resolution centers, small claims and the pro se civil courts, high schools, and the Equal Employment Opportunity Commission (EEOC), while studying the broad field of alternative dispute resolution. The Mediation Clinic was founded in 1985 and has been offered each year since. In addition to the educational value of the Mediation Clinic, Cardozo is proud of the community service the Clinic provides. Clinic participants are trained to be mediators in the fall semester of their program. However, in the spring semester they are approved community mediators servicing difficult and diverse cases in a variety of venues. In addition, each student gives a presentation on conflict resolution to community or other groups. Students may elect after the fall semester to take only a 2-credit Advanced Mediation Practicum and/or a 2-credit ADR Writing Seminar in the spring. This year Cardozo students reported participation in 277 cases, either as an apprentice mediator (observing or co-mediating) or as a mediator. For all the cases, the agreement or resolution rate was 54%.

As in past years, the Mediation Clinic was popular. A total of seventy three students applied for the sixteen clinic openings.

- **Divorce Mediation Clinic Divorce Mediation Clinic**

In the Spring of 2010, Cardozo Law School was selected by the New York State Office of Court Administration to create a divorce mediation program to bring the benefits of

family mediation to the public. The Cardozo Divorce Mediation Clinic was established as a result. Over the last eight years, the Cardozo Divorce Mediation Clinic has offered a competitively-selected law students each semester an opportunity to gain practical mediation experience and develop matrimonial drafting skills, while offering critical, cost-free divorce services to residents of New York City and the metropolitan region.

The Cardozo program provides mediation services at the courthouse at 80 Centre Street in Manhattan three days each week, working with couples screened by the Office of Court Administration; it is remarkable among law school clinical programs in affording students the responsibility to mediate the complete range of a couple's economic issues as well as parenting provisions. Working under the direct supervision of Robert Kirkman Collins, a professor with over thirty-five years of divorce mediation experience in private practice, students assist separating couples resolve the full range of the issues presented by their divorce – the parenting schedule and decision-making protocols for their children, the equitable division of their assets and liabilities, a calculation of basic child support and allocation of major parental expenses, the setting of spousal support, the negotiation of appropriate insurance coverage, and a navigation through the tax issues triggered by divorce. Upon completion of catalyzing the couples' discussions (which typically require from two to five mediation sessions) students assume responsibility for drafting the parties' legal Separation Agreement and preparing and filing the complex set of papers and forms needed to obtain an uncontested decree of divorce.

During the eight years of its operation, the Cardozo Divorce Mediation Clinic has assisted some 400 couples traverse the bewildering process of marital separation – without cost to them and with a minimization of rancor—and contributed what's been calculated as more than \$ 750,000 in legal services to the City. The program has directly benefited members of the public who could not otherwise have afforded experienced guidance through their divorce, and aided the judiciary by resolving several complex cases directly referred to the Cardozo Clinic from the bench. In addition, many law students have reported the Divorce Mediation Clinic to have been the highlight of their educational experience at Cardozo, and a number of Clinic alumni have gone on to incorporate divorce mediation into their practices after graduation.

- **Securities Arbitration Clinic**

The Securities Arbitration Clinic represents claimants who cannot afford an attorney and who have securities or commodities-related claims arising from improper actions by retail securities brokers and/or broker-dealers, and/or to correct mistakes or problems with executions of customer orders. The majority of the Clinic's clients are elderly and retired, others include disabled persons, persons for whom English is not their first language, young adults who have inherited some small sum of money on the passing of their parent(s), and persons with otherwise limited income. The clients' cases mostly involve arbitrations, which are tried primarily before FINRA, but the Clinic also handles matters before the NFA and AAA arbitration forums, the CFTC, and in the New York State and federal courts. During the past year, the Clinic received 14 inquiries, settled, mediated to settlement, or otherwise resolved 4 cases, and currently has two cases pending before FINRA, one pending in the Bankruptcy Court for the Eastern District of New York (an adversary proceeding), and one case currently under investigation. The

remainder of the cases either presented claims that were not actionable; were barred by the statute of limitations and/or arbitration eligibility rules; or involved parties who were in jurisdictions to which the Clinic's student practice order does not extend. To date, the Clinic has recovered judgments of over \$2 million on behalf of its clients.

The Clinic is staffed by eight students, and one full-time Director/Clinical Faculty member, Professor Elizabeth Goldman.

9. Lela P. Love

Most Recent Publications

Stories Mediators Tell—World Edition (with Glen Parker) (ABA Publishing 2017).

The Hopes and Fears of All the Years: 30 Years Behind and the Road Ahead for the Widespread Use of Mediation, 31 Ohio State J. on Disp. Res. 123 (2016) (with Ellen Waldman)

Mediation and Property Issues in the Estate Planning Process (with Stewart Sterk) chapter in *Mediation for Estate Planners* Susan Gary, ed. (2016 ABA Publishing).

The Uses of Mediation, updated for 2d edition of *The Negotiator's Fieldbook* (to be published 2017, ABA Publishing).

The Uses of Mediation, chapter in *The Negotiator's Fieldbook*, (ABA Publishing 2006) (with Joseph Stulberg) re-published in *Contemporary Tendencies in Mediation* (Humberto dalla Bernardina de Pinho and Juliana Loss de Andrade, eds.) (Editorial Dykinson 2015).

Success and Failure in ADR: A Dialogue between Partners (with Joseph Stulberg), INTERNATIONAL JOURNAL ON CONFLICT ENGAGEMENT AND RESOLUTION 1-2014.

Teachers Manual for Mediation: Practice, Policy and Ethics, 2nd Edition (with Carrie Menkel-Meadow and Andrea Schneider) (Wolters Kluwer 2014)

Mediation: Practice, Policy and Ethics, 2nd Edition (with Carrie Menkel-Meadow and Andrea Schneider) (Wolters Kluwer 2013)

The Middle Voice: Mediating Conflict Successfully, 2nd Edition (with Joseph Stulberg) (Carolina Academic Press 2013) (published in Russian 2014)

Following the Golden Rule and Finding Gold: Generosity and Success in Negotiation, chapter in *Educating Negotiators for a Connected World* (DRI Press 2013)

Silver Linings: Reimagining the Role of ADR Education in the Wake of the Current Great Recession, Northeastern University Law Journal, Vol. 6, No. 1, 2013 (with Brian Farkas)

Stories Mediators Tell (editor, with Eric Galton) (ABA Publishing 2012)

Courses, Conference and Other Presentations:

Professor, *Negotiation and Mediation*, **Tulane-Humboldt** Summer Program in Berlin (8/17)

Speaker and Mediator, *How Mediation Differs From Adversarial Proceedings—Benefits of Mediation and the Mediation Process*, **NYSBA Program on Mediation's Advantages in Resolving Wills, Trusts, Estates and Adult Guardianship Matters** (NY Law School 6/17).

Professor, week long intensive course on *Mediation Theory and Practice*, **the Straus Institute, Pepperdine University School of Law** (5/17).

Workshop/Juntos Leader at the **International Academy of Mediators Conference** (Memphis 5/17).

Moderator for a Panel on *Stories Mediators Tell, World Edition* and Coach for Cardozo's ADR Competition Honor Society Team in the *National ABA Representation in Mediation Competition* at the **ABA Dispute Resolution Section Conference** (San Francisco, 4/17).

Moderator for a Panel on *Stories Mediators Tell* and Coach for the Cardozo ADR Competition Honor Society, **International Chamber of Commerce (ICC) Mediation Competition** (Paris 2/17).

Panelist, Conference on Legal Formalism, **Bar Ilan University** (Israel, 12/19/16)

Invited Professor, Bar Ilan ICC Competition Team Short Course on Representation in Mediation, **Bar Ilan University** (Israel, 12/18 & 20/16)

Welcome, Opening Remarks and Moderator, *Designing Dispute Resolution Processes: The Multidoor Courthouse and Beyond*, **the 2016 Annual Jed D. Melnick Symposium of the Cardozo Journal of Conflict Resolution** (11/7/16).

Moderator, *Harnessing the Power of Language, Narratives and Literature to Foster a Culture of Peace*, **International Center for Ethno-Religious Mediation (ICERM) Third Annual International Conference on Ethnic and Religious Conflict Resolution and Peacebuilding** (NYC, 11/3/16).

Panelist, **Global Pound Conference/NYC Event** (Cardozo School of Law, 9/12/16).

Committee and Other Service:

Advisory Board, International Journal on Conflict Engagement and Resolution, Bar-Ilan University (2012-)

Member, International Board of Distinguished ADR Professionals of the Center for Mediation and Law in Moscow (2011-)

Chair, Academic Standards Committee, Benjamin N. Cardozo School of Law (2011-2016)

Member, Surrogate's Court Mediation Pilot Project (2009-present)

Member, CPR Executive Advisory Committee (2010-2015) and Mediation Committee (2010-2015)

Mediator, mediated first case in a Surrogate's Court (2010)

Member, Mediation Ethics Advisory Committee, Unified Court System of New York State (2006-2009).

Member, Committee on Mediator Ethical Guidance, ABA Section of Dispute Resolution (2006-2010). Chaired subcommittee that drafted response to first ethical query to the Committee on Mediator Ethical Guidance.

10. Donna Erez Navot

Most Recent Publications:

The Repeat Player Effect in Child Protection Mediation: Dangers and Protections Against Second-Class Justice for Marginalized Parties, 16 CARDOZO J. OF CONFLICT RESOL. 831 (2015).

Tools for the Clinical Professor: Applying Group Development Theory to Collaborative Learning in Law School Mediation Clinics, 69 DISP. RESOL. J. 65 (2014).

Courses, Conference and Other Presentations:

Panelist, *Teaching Negotiation on the Tower of Babel: Strategies in a Cross-Cultural Classroom or Workplace*, **ABA Dispute Resolution Section Conference** (San Francisco 4/17).

Moderator, *Studying ADR – A New Focus on Empiricism*, **Cardozo Journal of Conflict Resolution's Jed D. Melnick Annual Symposium** (NYC 11/16).

Professor, *Introduction to Dispute Resolution Processes*, **Cardozo School of Law Summer Seminar for International Law Students** (7/16).

Committee and Other Service:

Judge, **James B. Boskey Law Student Essay Contest in Dispute Resolution** (2014, 2016 & 2017).

Member, Planning Committee, **Global Pound Conference**, hosted at Cardozo Law School (9/16).