

CARDOZO LAW | 40

BENJAMIN N. CARDOZO SCHOOL OF LAW • VERMONT UNIVERSITY

Kukin Program for Conflict Resolution Newsletter | Spring 2017

2016 Cardozo Journal of Conflict Resolution Hosted the Jed D. Melnick Symposium: The Pound Conferences: Where Do We Come From? What Are We? Where Are We Going?



From left to right in the back row: Vicki Rogers (Pace), Dr. Jamie Walter (Maryland Courts), Benjamin Dynkin (CJCR Editor-in-Chief), Dan Weitz (NYS Unified Court System), Noam Ebner (Creighton), Ethan Katsh (U Mass Amherst); From left to right in the middle row: Nicole Hertzberg (CJCR Managing Editor), Alyson Carrel (Northwestern), Robyn Weinstein (EDNY), Lara Traum (former CJCR Editor-in-Chief), Lela Love (Cardozo), Jonathan Rosenthal (Maryland Courts), Thomas Stipanowich (Pepperdine); From left to right in the front row: Donna Erez-Navot (Cardozo), Mariana H.C. Gonstead (University of St. Thomas), Deborah Masucci (IMI), Lisa Blomgren Amsler (Indiana), and Kelsey Weiner (CJCR Symposium Editor).

The Symposium opened with two former Editors in Chief of the Cardozo Journal of Conflict Resolution—Brian Farkas and Lara Traum—giving a presentation on the history of the Pound Conferences. They were inspired! Brian Farkas, commenting on Gaughin's painting *Where Do We Come From? What Are We? Where Are We Going?*, which was used as a theme of the conference, reflected on how the painting sounded the fear and hope that we (as human beings) are either: 1) caught in an unbreakable cycle of repeating the same errors ("samsara" in the Buddhist world) or 2) involved in an evolutionary process. A take-away was that we should give the floor to our former students more often.

Did you know that the first Pound event in 1906 was a speech by Roscoe Pound to the ABA on a Sunday in St. Paul, Minnesota, on "The Causes of the Popular Dissatisfaction with the Administration of Justice" and that Wigmore called the speech a "barnstormer"?! Chief Justice Warren Burger in 1976 convened the more famous Pound Conference with that title. Following this, Tom Stipanowich gave a keynote address on Living the Dream: Taking Stock of the Quiet Revolution in Dispute Resolution. His comprehensive and thoughtful remarks shed light not only on the history of ADR but also on the direction we are going. For example, from "one size fits all" to "tailored to suit", from "advocate-controlled" to "client-controlled", from a "temple of justice" to "community", from "adversarial" to "collaborative". And, as the rest of the day unfolded, there were many illustrations of these movements. Tom noted that, despite the growth of mediation, there is still much we don't understand about conflict and its resolution; and there are still many points of divergence among mediators (use of caucus, making proposals for settlement, giving evaluations on likely litigation outcomes). He challenged the dispute resolution world to embrace diversity because credibility will ultimately be impacted by diversity.



Tom Stipanowich gave a keynote address on Living the Dream Taking Stock of the Quiet Revolution in Dispute Resolution

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Co-editors Professor Lela Love and Professor Glen Parker are joined by Srđan Simac (Croatia), Prathamesh D. Popat (India), Jawad Sarwana (Pakistan), Maria Cristina Camelino (Argentina), Tsisana Shamlikashvili (Russia), and Thierry Garby (France) at the Stories Mediators Tell session at the 2017 ABA Dispute Resolution Conference in San Francisco, California.

The Cardozo Dispute Resolution Society

The Cardozo Dispute Resolution Society (CDRS) charged full speed ahead during the 2016-2017 calendar year. Under the leadership of President Lauren Killeen, Vice President Nicole Margulis, Secretary Kateryna Bakhnak, and Treasurer Zachary Kalmbach, CDRS hosted many successful events.

Its programs included:



* Dinner and Lecture, discussing 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 ABA Labor & Employment Panel with Labor and Employment Law Society and the ADR Competition Honor Society 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.

* Co-sponsored event with Labor and Employment Law Society, featuring a lecture 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.

For more information about CDRS, you can send an e-mail to cardozocdrs@gmail.com.

Faculty Spotlight



**Brian Farkas, Adjunct
Professor of Law**

Tell me about the class you teach at Cardozo.

Beginning next year, I'll teach a course entitled "Arbitration Law: Theory and Practice." The course will introduce students to arbitration - an ancient method of conflict resolution that is increasingly used by businesses across industries.

Arbitration is fascinating. It's often taught under the broader umbrella of "dispute resolution," but incorporates elements of both mediation and litigation, and gives parties a tremendous degree of control over the process. My goal with the course is to expose students to the foundations of American arbitration law, and also consider some of the key questions swirling around arbitration: Is it dangerous or anti-democratic to allow arbitrators to make binding decisions? Is arbitration always voluntary? How do we define "bias"? What does society gain, and lose, by removing certain disputes from our system of public adjudication? The course will also have a strong practical dimension. All law students take courses in civil procedure, and at Cardozo, many also take our Intensive Trial Advocacy Program. Students have a certain comfort with the rules of evidence and civil procedure. But after years of working in "litigation," I know that commercial lawyers need to feel equally comfortable in arbitration. So this course will prepare students for the nuts-and-bolts of arbitration. How does one draft an agreement to arbitrate? Where do you find qualified arbitrators, and how do you select one in conversation with your client? What are the procedural rules that govern arbitration hearings? Students will also learn to draft the motions that surround the arbitration process - for example, motions to compel arbitration, appoint an arbitrator, or vacate an arbitral award. In short, I want my students to emerge with a fairly comprehensive picture of arbitration's history, its place in the modern legal system, and the directions it may take in the future.

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Professor Erez-Navot Presents about Diversity and Cross-Cultural

Issues at 2017 ABA Dispute Resolution Conference in San Francisco



On April 21, 2017, Donna Erez-Navot, Assistant Director of the Kukin Program, presented alongside Cardozo alum Professor Brian Farkas and Associate Director of the Straus Institute at Pepperdine Law School, Professor Sukhsimranjit Singh. The session was entitled "Teaching Negotiation on the Tower of Babel: Strategies in a Cross-Cultural Classroom or Workplace."

Some take away points from the session were: (1) Diversity, especially among leadership, has been proven in the business world to improve creative thinking and increase financial earnings of corporations. Diversity = innovation. (2) Cultural identity is unique to each individual and therefore you need to explore with each student how they define themselves. (3) Structuring the syllabus of a class to include women and diverse authors for the main readings of the class will create an atmosphere where those minorities groups are inspired to speak up and participate more in class. Including women and minorities to lead a class by recruiting outside speakers and using diverse people to facilitate small group sessions is also helpful to ensure that all voices are heard.

CARDOZO LL.M. DISPUTE RESOLUTION AND ADVOCACY STUDENTS WIN COMPETITIONS

LL.M. Students Win Arbitration Competition in DC

Congratulations to the Cardozo LL.M. team for winning the 2017 LL.M. International Commercial Arbitration Moot Competition at American University! Cardozo team placed first

out of 20 teams. This competition seeks to foster the study of international arbitration for LL.M. students from many universities in the U.S. It teaches them skills in the resolution of international business disputes as well as investment disputes. The competition, which includes the preparation of an outline of participants' arguments on behalf of both the claimant and the respondent, focuses primarily on oral advocacy skills before panels of arbitration experts. During the five group and playoff rounds, students were required to argue on proper jurisdiction over the dispute, as well as on the merits in the moot arbitration hearing.



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.

Veronika Waldhof, LLM Dispute Resolution and Advocacy Student, places first in the Cyberweek eMediation Competition

Veronika Waldhof, Candidate for the Benjamin N. Cardozo School LL.M Program in Dispute Resolution and Advocacy 2017 placed first in the mediator category in the 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 has a law degree from University of Vienna and is certified as a Collaborative Lawyer with the Austrian Attorneys' Association for Mediation and Cooperative Negotiation.



CARDOZO ADR COMPETITION TEAM UPDATE

Celebrating A Milestone: Former and Current Vis International Commercial Arbitration Competitors Join Together to Honor Professor Curtis Pew

On March 28, 2017, Cardozo celebrated 15 years of Professor Curtis Pew's innovative arbitration

programming at the Law School. Professor Pew transformed the way students studied arbitration through his experiential learning opportunities. He coached the students in his International Commercial Arbitration Practicum which culminated in competing in the Willem C. Vis International Commercial Arbitration Competition in Vienna or Hong Kong. He also founded Cardozo's Securities Arbitration Clinic and has taught both International and Domestic Commercial Arbitration at Cardozo.



Students and Judges Participate in the 2017 Cardozo/ABA Intra-school Negotiation Competition

On March 22, 2017, the ADR Competition Honor Society hosted the 2017 Cardozo/ABA Intra-school Negotiation Competition. There were over 80 students and judges at this year's competition and a total of thirty-two teams competed.



The winners in the picture above from left to right: Ali Rudansky (2nd Place), Joshua Roseman (1st Place), Ricky Shah (1st Place), Aaron Horn (3rd Place), and Alex Sable (3rd Place)

Cardozo Students Compete in Mediation, Negotiation and Arbitration Competitions from Texas to Vienna

Noah Batist and Michael DiTrapani competed at the 2017 ABA Representation in Mediation National Competition in San Francisco on April 19th and 20th and came in 2nd place. Noah Batist and Michael DiTrapani are pictured below.



Lyndsey Peck reached the Semi-Final round and tied for third place at the Jeffrey S. Abrams National Mediator Competition in Houston, Texas. Lyndsey is pictured below with her teammate Reginald Greene.



At the NYSBA Dispute Resolution Section's AAA Moot Arbitration Competition, the Cardozo team won Best Brief and Best Witness Preparation. Rasica Selvarajah won the Judith S. Kaye Advocate Award, the highest individual honor for the event. Rasica Selvarajah is pictured below:



At the Willem C. Vis International Commercial Arbitration Moot in Vienna, Austria, Reginald Greene won an honorable mention for the Martin Domke Award for Individual Oralists. Reginald Greene is pictured below:



At the Robert R. Merhige National Environmental Law Competition, Natalie Freeman and Yana Shnaider (pictured below) advanced past their first two rounds on March 25th, before finishing as semi-finalists on the 26th.



Cardozo's 2016-2017 ADR Competition Team attended the following national and international competitions:

- Jeffrey S Abrams National Mediator Competition (Houston, TX)
- St. John's 2015 Securities Dispute Resolution Triathlon (Queens, NY)
- ABA Law Student Division 2015-16 Negotiation Competition (New York, NY)
- NYSBA Dispute Resolution Section's AAA Moot Arbitration Competition (New York, NY)
- New York Law School's Inaugural Intellectual Property Negotiation Competition (New York, NY)
- ICC International Commercial Mediation Competition (Paris, France)
- Willem C. Vis International Commercial Arbitration Moot (Vienna, Austria)
- ABA Representation in Mediation Competition (New York, NY)
- Robert R. Merhige National Environmental Law Competition (Richmond, VA)

Alumni Spotlight



Bryan Branon '12 at American Arbitration Association

Bryan Branon is the Director of ADR Services for the Commercial Division of the American Arbitration Association in Seattle, Washington. In this role, Bryan conducts business development, case management of the AAA's Large Complex Commercial Caseload and helps maintain the AAA's Panel of Arbitrators and Mediators in

Washington, Oregon and Alaska.

Before joining the AAA, Bryan was a former intern in the Irish Parliament, U.S. Senate and Law Clerk on the U.S. Senate Judiciary Committee. He has always focused on the intersection of Alternative Dispute Resolution (ADR) and public policy. Before attending law school, Bryan worked for the AAA in their Seattle office and their International Centre for Dispute Resolution in New York where he helped launch the International Mediation Institute (IMI) and the Bahrain Chamber for Dispute Resolution. After graduating from Cardozo, Bryan was selected to be a Research Fellow at the ADR Center in Rome, Italy where he co-authored a study on the implementation of the 2008 E.U. Mediation Directive into Member States' national legislation and helped establish the Afghanistan Center for Commercial Dispute Resolution. Most recently, Bryan was one of five Inaugural Fellows with the ABA Section of Dispute Resolution where he served as Coordinator of the Global Pound Conference Series and where he is authoring a national study, "Court-Connected ADR in America."

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