



Society for Dispute Resolution at Washington College of Law

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**Who We Are**

The Society for Dispute Resolution (SDR) is a student organization composed of the General Society and of the Competition Team. The General Society is open to all WCL students and is dedicated to promoting student interest in dispute resolution, both domestic and international. The General Society provides opportunities to participate in training sessions and attend panel discussions. The Competition Team provides students an opportunity to compete in a Spring Qualifying Tournament for a position as a member who will participate in a variety of dispute resolution competitions.

**Welcome!!! 2010-2011 SDR Board Members**

**President**

Lillian Lee-Chun

**Vice President  
of Competitions**

Koreena Bobo

**Business Director**

Brian Kotick

**Vice President  
of the Society**

Justin Carlson

**Director of  
Competitions**

Elizabeth McInturff

**Communications  
Director**

Kyle Ingram

**Newsletter Director**

Emily Baver

**Team Director**

Halley Allaire

**Events Coordinator**

Natalie Copra-Dokken

**IL/SQT Director**

Christopher Jaramillo

**SDR Liaison**

Sarra-Tilila Bounfour

**Plea Bargaining  
Competition Director**

Maya Dominguez

**Plea Bargaining  
Competition Co-Director**

Michelle Mora

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## 2010-2011 SDR Team Members

### **WELCOME!!!**

The Society for Dispute Resolution is proud to introduce the 2010-2011 SDR Team. After a highly selective Spring Qualifying Tournament, we are excited to welcome our newest members, and welcome back our returning members.



### **New Members**

Halley Allaire  
Sarra-Tilila Bounfour  
Nathan Burk  
Alejandro Diaz-Ferguson  
Natalie Copra Dokken  
Cesar Fishman  
Ashly Hinmon

David Hollenberg  
Christopher Jaramillo  
Brian Kotick  
Elizabeth McInturff  
Michelle Mora  
Cara Morse

Hilda Mwangi  
David Sawyer  
John Siadak  
Averell Sutton  
Lee Anna Tucker  
Rebecca Williams  
Lisa Winebarger

### **Returning Members**

Koreena Bobo  
Dana Bucy  
Justin Carlson  
Maya Dominguez

Kyle Ingram  
Lillian Lee-Chun  
Caitlin Mandel  
Francisco Medina

Samuel Pearson-Moore  
Joseph Richardson  
Heidi Sahmel  
Gilda Villela



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## 2010 SDR Classes

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### **Fall 2010**

|             |   |
|-------------|---|
| LAW-614-001 | Alternative Dispute Resolution          |
| LAW-651-001 | Lawyer Bargaining                       |
| LAW-789-001 | International Commercial Arbitration    |
| LAW-972-001 | Bilateral Investment Treaty Arbitration |
| SIS-609-001 | Conflict Resolution: Theory & Practice  |
| SIS-611-001 | International Negotiation               |
| SIS-619-006 | International Economic Negotiations     |
| SIS-619-012 | Dialogue: Approaches & Application      |
| SIS-639-001 | Conflict Resolution, Skills & Process   |

### **Spring 2010 (to be finalized)**

|             |   |
|-------------|---|
| Law 614-001 | Alternative Dispute Resolution                        |
| Law-651-001 | Lawyer Bargaining                                     |
| LAW-667-001 | International Litigation & Arbitration                |
| LAW-708-002 | Advanced Criminal Law: Plea Bargaining                |
| LAW-789-001 | International Commercial Arbitration                  |
| LAW-795-012 | International Dispute Resolution Involving Sovereigns |



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## Dispute Resolution Events & Websites

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### **ABA EVENTS**

Careers in International Arbitration for  
Young Lawyers

Arnold & Porter, 555 12<sup>th</sup> St, NW

12:30-2:00

To Register: Email Camila Valenzuela

Camila.valenzuela@aporter.com

September 22, 2010 – DC

Teleconference Point/Counterpoint:

Exploring the Pros and Cons of

Caucusing

To Register: [www.abanet.org/dispute](http://www.abanet.org/dispute)

September 14, 2010

8<sup>th</sup> Annual Advanced Mediation and

Advocacy Skills Institute

November 11-12, 2010 – FL

13<sup>th</sup> Annual Spring Conference

April 13 – 16, 2011 – CO

### **WCL EVENTS**

**For future events, please RSVP at:  
[sdr@wcl.american.edu](mailto:sdr@wcl.american.edu)**

March 5-6, 2010

ABA Representation in Mediation

Competition

### **USEFUL WEBSITES**

The ABA Section of Dispute Resolution

<http://www.abanet.org/dispute>

Association for Conflict Resolution

<http://www.acresolution.org>

American Arbitration Association

<http://adr.org>

Center for Analysis of ADR

<http://www.caadr.org>

CPR Institute for Dispute Resolution

<http://www.cpradr.org>

The Conflict Resolution Information  
Source

<http://www.crinfo.org>

Northern Virginia Mediation Service

<http://www.gmu.edu/departments/nvms>

Dept. of Justice Office of Dispute  
Resolution

<http://www.usdoj.gov/odr>



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## Internal Competitions

### **1L Student Competition**

The 1L Competition will be held on January 15, 2011, and will consist of a negotiation where participants in teams of three will be evaluated as individuals by a panel of judges. The teams will act as attorneys negotiating a dispute and receive judge commentary. Each participant will receive an evaluation to determine if they are able to advance to the final round.

The final round will consist of a mediation where participants will be reassigned to teams of two and will be evaluated as a team by a panel of judges. The teams will act as attorneys mediating a dispute while their client is present.

### **Spring Qualifying Tournament**

The Spring Qualifying Tournament (SQT) will be held on March 19, 2011. SQT provides for an opportunity to try-out for the SDR Competition Team. The team is for students who wish to hone their SDR skills by competing at a national and international level. Students who would like to learn more about SDR and find out if they are interested in this exciting field will have the opportunity to attend a Mediation Showcase, where they will watch current members of the team mediate a case. After the mediation, one of the coaches will provide feedback so that the students can better understand the process.



***Interested competition participants or alum volunteer assistance please email [sdr@wcl.american.edu](mailto:sdr@wcl.american.edu)***



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## Fall Competitions

### **St. John's Triathlon**

The Securities Dispute Resolution Triathlon is a joint initiative of the Hugh L. Carey Center for Dispute Resolution, the St. John's Securities Arbitration Clinic, and the Financial Industry Regulatory Authority (FINRA). Provides aspiring lawyers with an opportunity to build their advocacy skills in negotiation, mediation, and arbitration

More information is available at:

<http://www.stjohns.edu/academics/graduate/law/academics/centers/careycenter/triathlon.stj>

### **ABA Arbitration**

This competition promotes greater knowledge in arbitration by simulating a realistic arbitration hearing. Participants prepare and present an arbitration case, including opening statements, witness examinations, exhibit introductions, evidentiary presentations, and summations.

More information is available at:

<http://www.abanet.org/lsd/competitions/arbitration/home.html>

### **ABA Negotiation**

The competition simulates legal negotiations in which law students, acting as lawyers, negotiate a series of legal problems. The simulations consist of a common set of facts known by all participants and confidential information known only to the participants representing a particular side. All of the simulations deal with the same general topic, but the negotiation situation varies with each round and level of the competition.

More information is available at:

<http://www.abanet.org/lsd/competitions/negotiation/>

## Spring Competitions

### **ABA Client Counseling Competition**

The Competition simulates a law office consultation in which law students, acting as attorneys, are presented with a client matter. They conduct an interview with a person playing the role of the client and then explain how they would proceed further in the hypothetical situation.

More information is available at:

<http://www.abanet.org/lsd/competitions/clientcounseling/home.html>

### **ABA Mediation Competition**

Law students role-play as advocates and clients in a mediation setting. Each team consists of two students. In each round of the competition, one student plays the role of an attorney in mediation and the other student plays the role of the client. Finalists compete at the National Finals in conjunction with the ABA Section of Dispute Resolution's Spring Meeting in New York.

More information available at:

<http://www.abanet.org/dispute/mediationcomp.html>

### **ICC International Commercial Mediation Competition**

An ICC and ABA competition annually held in Paris, France. The competitors [are] required to act as counsel and parties before professional mediators and to use the ICC ADR Rules to solve problems devised by mediation experts.

More information available at:

<http://www.iccwbo.org/iccffag/index.html>



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## Center for International Commercial Arbitration (CICA)

### **INTRODUCTION**

The Center on International Commercial Arbitration provides a high-level academic forum for exchanging ideas on salient issues and current developments in the field of arbitration, expanding on the accomplishments of WCL's International Arbitration Program, which debuted in 2004.

The Center's academic offerings and activities focus on the theory and practice of international arbitration, including the resolution of international economic disputes. Practitioners are trained in the latest challenges in the field through courses, seminars, and workshops taught by leading academics and practitioners.

### **STAFF**

#### **DIRECTOR:**

**Horacio A. Grigera Naón**

Distinguished Practitioner in Residence

#### **WCL FACULTY:**

**Padideh Ala'i**, Professor of Law and Interim Director, International Legal Studies Program

**Janie Chuang**, Assistant Professor of Law

**Claudia Frutos-Peterson**, Adjunct Professor/Head of Publications and Consultant Curtis, Mallet-Prevost, Colt & Mosle LLP

**Claudio Grossman**, Dean and Raymond I. Geraldson Scholar, International and Humanitarian Law

**David Snyder**, Professor of Law, Director, Business Law Program

**Perry Wallace**, Professor of Law, Director, JD/MBA Program

#### **ADVISORY BOARD:**

**John Beechey**, Chairman, International Court of Arbitration of the International Chamber of Commerce

**Karl-Heinz Böckstiegel**, Professor Emeritus of International Business Law, University of Cologne

**Bernardo Cremades**, Partner, Cremades and Associates

**Yves Derains**, Partner, Derains Gharavi & Lazareff

**Emmanuel Gaillard**, Partner, Shearman & Sterling LLP

**Meg Kinnear**, Secretary-General, International Centre for Settlement of Investment Disputes

**Ahmed Sadek El-Kosheri**, Senior Partner, Kosheri, Rashed & Riad

**Carolyn Lamm**, President, American Bar Association and Partner, White & Case LLP

**Julian D M Lew QC**, Barrister and International Arbitrator, Chambers at 20 Essex Street

**Michael Pryles**, Chartered Arbitrator and Chairman, Singapore International Arbitration Centre

**William K. Slate II**, President and CEO, American Arbitration Association

**Claus von Wobeser**, Managing Partner, Von Wobeser y Sierra A.C.

**Anne-Marie Whitesell**, Of Counsel, Dechert, LLP

**For more on the Center, please visit: [www.wcl.american.edu/arbitration](http://www.wcl.american.edu/arbitration)**



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## Center for International Commercial Arbitration (CICA)

### **2009 ACTIVITIES**

#### **The Sixth Annual Seminar on International Commercial Arbitration**

A four-day intensive advanced program brought together twenty-four faculty and practitioner experts. The seminar used a mock case as a tool for providing practitioners with skills, strategies, and tactics for successfully conducting a BIT arbitration primarily under the ICSID rules. This year's seminar took place October 13-16, 2009.

Over 50 participants took part in the seminar including practitioners from Ghana, Korea, Costa Rica, the Dominican Republic, México, Ecuador, Switzerland, Canada, Venezuela, Ukraine, Brazil, Russia, and the United States.

The Seminar was co-sponsored by the: American Arbitration Association (AAA); International Centre for Settlement of Investment Disputes (ICSID); and International Court of Arbitration of the International Chamber of Commerce (ICC).

#### **Annual Lecture on International Arbitration**

On November 5, 2009, more than 100 people, including leading practitioners in the field, attended the 2009 Annual Lecture. This year's Lecture featured *Jan Paulsson*, co-head of Freshfields Bruckhaus Deringer LLP's international arbitration and public international law

groups who spoke on "Three Reasons Why International Arbitration Will (Probably) Survive." A reception sponsored by Arnold & Porter LLP immediately followed the program.

#### **First Meeting of the Advisory Board**

On November 19, 2009, the Center held its first annual meeting of the newly established Advisory Board. The following board members participated:

**Horacio Grigera Naon**, Director, CICA, American University Washington College of Law

**John Beechey**, Chairman, International Court of Arbitration of the International Chamber of Commerce

**Janie Chuang**, Assistant Professor of Law, American University Washington College of Law

**Claudia Frutos-Peterson**, Adjunct Professor/Head of Publications, American University Washington College of Law, and Consultant Curtis, Mallet-Prevost, Colt & Mosle LLP

**David Snyder**, Professor of Law, Director, Business Law Program, American University Washington College of Law

**Anne-Marie Whitesell**, Of Counsel, Dechert, LLP

Several issues were discussed during the meeting including new activities, programs, and the creation of new courses and publications.



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## Center for International Commercial Arbitration (CICA)

### **2010 ACTIVITIES**

**March 17, 2010**

#### **International Commercial Arbitration in the Americas: Beyond Cultural Clash and Toward Maturity**

More than 80 people attended this conference, which took place as part of the Founder's Celebration. The event was co-organized with the Inter-American Bar Association (IABA) in cooperation with the International Centre for Dispute Resolution (ICDR) of the American Arbitration Association (AAA) and the Inter-American Commercial Arbitration Commission. Speakers included: *J. Eloy Anzola*, International Arbitrator; *John Bowman*, King & Spalding LLP; *Claudia Frutos-Peterson*, Curtis, Mallet-Prevost, Colt & Mosle LLP; *Horacio Grigera Naón*, Center on International Commercial Arbitration; *Jonathan C. Hamilton*, White & Case LLP; *Judd Kessler*, Porter Wright Morris & Arthur; *Luis Martinez*, International Centre for Dispute Resolution, AAA; *Pedro Martinez Fraga*, Squire Sanders LLP; *Lorena Perez*, International Arbitration Law Committee, IABA; *John H. Rooney*, International Arbitration Law Committee, IABA and Shutts & Bowen LLP; and *Marco Tulio Venegas*, Von Wobeser & Sierra.

**March 29, 2010**

#### **Panel Careers in Arbitration**

We are happy to report that more than 50 students attended the *Panel Careers in International Arbitration* that took place on March 29. Leading practitioners shared their thoughts and answered questions about the best ways to break into the field. Speakers included

*Michael Evan Jaffe*, Partner, Pillsbury Winthrop Shaw Pittman LLP; *Jean Kalicki*, Partner, Arnold & Porter LLP; and *Mark Kantor*, Independent Arbitrator. *Adriana Vito*, Assistant Director for International Career Programs, was the moderator.

The panel was co-sponsored by the Office of Career and Professional Development and the Society on Dispute Resolution.

**June 1 - 18, 2010**

#### **International Arbitration Summer Session**

Taught by leading practitioners and arbitrators from throughout the world, the International Arbitration Summer Session focuses on theoretical and practical aspects of international arbitration and provides insights on the practice of international arbitration and the handling of arbitration cases. 12 CLE credits per course (14 if NY) The Center is currently receiving applications for the Summer Session.

In 2010, the Center offered a summer program in Spanish, which included the following courses: Arbitraje Comercial Internacional; Arbitraje Inversionista-Estado; and Seminario Avanzado: Aspectos Prácticos del Proceso Arbitral.

Course offerings in English Included Nuts and Bolts of International Commercial Arbitration; Investor-State Arbitration: Current Developments; International Arbitration and Choice-of-Law Issues; Advanced Seminar: Practical Skills and Cross-Examination in International Arbitration and Salient Issues in ICC Arbitration.



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Faculty included: José Astigarraga, Astigarraga Davis; Janis Brennan, Foley Hoag LLP ; Claudia Frutos-Peterson, Curtis, Mallet-Prevost, Colt & Mosle LLP; Javier Jiménez Gutiérrez, Curtis, Mallet-Prevost, Colt & Mosle LLP; Michael Jaffe, Pillsbury, Winthrop, Shaw, Pittman LLP; Jean Kalicki, Arnold & Porter LLP; Loukas Mistelis, School of International Arbitration, Centre for Commercial Law Studies, Queen Mary, University of London.; Eduardo Silva Romero, Dechert LLP; and Lawrence Shore, Gibson, Dunn & Crutcher LLP;

### **The Summer Session also included 2 Seminars:**

**Thursday, June 17**

#### **Cross-Examination in International Arbitration**

Led by José I. Astigarraga, partner at Astigarraga Davis, this four-hour practical seminar on art of cross-examination in international arbitration proceedings covered cross-examination techniques, scope of cross-examination, the role of the tribunal in controlling cross-examination, cross-examination styles and dealing with advocates from different legal cultures.

**Monday, June 14**

#### **The Federal Arbitration Act in Practice: Overview, Selected Issues and a Case Study**

The seminar covered the structure of the Federal Arbitration Act, how it works in practice, current "hot topics" in the

recognition and enforcement of foreign arbitral awards in the United States, and included a brief case study of the U.S. courts role in an international commercial arbitration dispute between U.S. and Latin American companies involving a commodities shipment from a third country. The seminar was taught by Janis Brennan, Partner, Foley Hoag LLP.

**October 12 - 15, 2010**

#### **Seventh Annual Seminar on International Commercial Arbitration**

##### **How to Handle Competition Issues in an International Commercial Arbitration**

This three-day intensive seminar based on a mock arbitration case provided critical skills and practical insight into handling arbitration cases primarily under the auspices of the ICC Rules of Arbitration. The seminar was co-sponsored by the International Court of Arbitration of the International Chamber of Commerce (ICC), the American Arbitration Association, and the International Centre for Settlement of Investment Disputes.

**November 11, 2010**

#### **Fifth Annual Lecture on International Commercial Arbitration**

Established in 2006, the Annual Lecture offers an eminent figure in international arbitration a platform on which to share his or her ideas on novel issues and current trends in international arbitration. This year's lecture, "Arbitrators' Deliberation," will be presented by Yves Derains, Partner, Derains & Gharavi.



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## Center for International Commercial Arbitration (CICA)

### **ANNOUNCEMENTS**

#### **ICC Internship Placements**

The Secretariat of the International Court of Arbitration of the International Chamber of Commerce has reserved since 2005 a place in June-July for a WCL student to be part of its prestigious internship program. The intern is assigned to one of the teams in charge of case follow-up and works under the supervision of the team's leading attorney. We are happy to announce Daniel Herzlin (*JD Candidate, May 2012*) for the 2010 internship.

#### **Spring 2010 Research Team**

As a member of the Research Team students conduct extensive research under the supervision of the Center's Faculty to produce a paper/comment for potential publication. The selected students are Safina Lakhani, (LL.B/JD U. of Ottawa – WCL) and Jamie Briggs (JD candidate, May 2011).

#### **WCL Participation in Willem C. Vis International Commercial Arbitration Moot Competitions**

This year four students will represent WCL in Hong Kong and in Vienna. Colby Sullins, Lou Dennig, Willa Obel, and David Sulzbacher will compete in Hong Kong from March 15-21 while Shivani Poddar, Kathryn Coniglio, David Chen, Gretta Walters will compete in Vienna from March 27-April 1.

Participating coaches include *James Boykin*, attorney at Hughes Hubbard & Reed LLP, practices in the area of international arbitration and antitrust law

and is a graduate of William & Mary Law School and *Jennifer Toole*, attorney-adviser at the U.S. Department of State in the Office of the Legal Adviser, former adjunct instructor in the Legal Rhetoric and Writing Program, and WCL alumna (2001).

*J. Hess*, associate at DLA Piper, practices in the areas of civil litigation and international arbitration, WCL alumni (2009); and former student participant in the Willem C. Vis Competition. J. won third place in the individual oralist category, from among over 1,000 students who participated in the 2008 competition.

#### **ICC International Commercial Mediation Competition**

WCL students participated in the ICC Mediation Competition that took place from February 6 to 10 in Paris, France. The WCL team was one of the eight teams out of forty-four from around the world which made it into the quarter-finals. Teams have successfully represented WCL since the competition was established in 2006. In fact, the team representing WCL won the 2007 competition.

The team was composed of Salua Baida, Dana Bucy, Samuel Pearson-Moore and Meti Zegeye and was coached by Carolyn Parr, Retired Judge, United States Tax Court, 1985-2002, mediator and arbitrator.

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## Washington College of Law Arbitration Brief

As a result of over a year of hard work, we are proud to announce the upcoming launch of the new *Washington College of Law Arbitration Brief*. First and foremost, we would like to express our utmost gratitude to all the students, faculty and staff who have contributed and helped to mold this process. Your efforts and enthusiasm have been both motivating and inspiring, and we certainly could not have done it without you!

Briefly, the *Arbitration Brief* is a completely student-run publication. Though there will not be a faculty advisory board, the Brief will work closely with the Washington College of Law's Center for International Commercial Arbitration (CICA).

Under the direction of former Secretary General of the International Court of Arbitration of the International Chamber of Commerce, independent international arbitrator and WCL Distinguished Practitioner in Residence, Dr. Horacio Grigera-Naon, CICA has graciously offered to provide their academic and resource support as necessary. The *Brief* will publish one issue per semester with a general focus on international commercial arbitration, but will also encompass related areas such as investor-state arbitration and domestic arbitration. The individual issues will be divided into sections, each with a focus on a different topic, as seen below. Finally, each issue will include one or two articles from practitioners or academics in addition to student-written articles.



For more information on the *Arbitration Brief* or if you have any questions, please email Jacqueline Chamberlain or Salua Baida at: [wclarbitrationbrief@gmail.com](mailto:wclarbitrationbrief@gmail.com) or visit [www.Snipurl.com/ArbitrationBriefonMyWCL](http://www.Snipurl.com/ArbitrationBriefonMyWCL). If you would like to find out more about CICA and what the Center has to offer, please visit their website at [www.wcl.american.edu/arbitration](http://www.wcl.american.edu/arbitration).



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## Alternative Dispute Resolution is Here to Stay

By Mary Dunnewald\*

Popular culture tends to portray lawyers only as litigators. As a result, most students entering law school have never heard of Alternative Dispute Resolution. But over the last several decades, the use of ADR processes to solve legal problems has skyrocketed. This means that essentially all lawyers now entering practice will at some point in their careers be required to participate in ADR.

Court rules in all fifty states now provide for the use of Alternative Dispute Resolution processes during the course of litigation. In fact, some states mandate the use of ADR in particular legal contexts. In the federal system, the Alternative Dispute Resolution Act of 1998 required federal district courts to “devise and implement” procedures for the use of ADR in all civil cases. The Act also requires civil litigants to “consider” using ADR processes. Further, currently, most standard commercial contracts, for instance real estate contracts and employment agreements, require parties to settle any related disputes through ADR process.

### **Sources of ADR**

Alternative Dispute Resolution, sometimes called “appropriate dispute resolution,” has its roots in non-Western dispute resolution process that emphasize community healing over individual rights. In the U.S. legal system, the growth of ADR has been prompted by perceived weaknesses of the adversarial litigation system, including

high costs, crowded dockets, a limited range of solutions available to resolve disputes, and an emphasis on winning rather than on problem solving.

In contrast, ADR proponents envision a transformative approach to resolving disputes, in which participants can devise their own solutions that focus on their individual interests and needs. Further, ADR advocates argue that parties to disputes benefit from having the opportunity to tell their stories and being “heard” by the other parties. From this perspective, ADR satisfies important psychological needs and achieves better quality justice.

### **Variations of ADR**

ADR offers three basic types of dispute resolution: facilitative, evaluative, and adjudicative. *Facilitative processes*, like mediation, employ third-party neutrals to help parties communicate and negotiate solutions to their problems. In a facilitative process, a neutral may not impose a solution or even offer the parties an opinion about appropriate solutions. In *evaluative processes*, like early neutral evaluation and neutral fact finding, a third-party neutral provides the parties with a candid assessment of the strengths and weaknesses of the case. This evaluation can help parties reach a settlement agreement, or it can narrow and shape the issues to be resolved in litigation.

On the other hand, *adjudicate processes*, which result in evidence-based decisions made by third-party neutrals, resemble in-court litigation processes.



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## Alternative Dispute Resolution is Here to Stay

They are generally quicker and less expensive than in-court litigation and offer parties more control over the outcome than traditional litigation. Arbitration is probably the best-known adjudicative process; others include moderated settlement conferences, mini-trials, and summary jury trials, in which advisory judges and juries hear cases and issue non-binding decisions. All of these ADR processes can be either binding or non-binding, depending on the agreement of the parties. Agreements reached by the parties through ADR processes are memorialized in contracts, enforceable by contract rules. Parties can also elect to combine processes in any way that suits their needs.

### **ADR and Criminal Disputes**

ADR processes are not limited to civil disputes, however. In the criminal arena, some jurisdictions employ similar concepts in "restorative justice" programs. In these programs, the victim, the offender, and the community come together to address the harm criminal behavior causes. For instance, in victim-offender mediation, a victim tells the offender about the personal impact of the crime, giving the offender the opportunity to better understand the consequences of his or her actions. In sentencing circles, which bring together offenders and members of the impacted community, community members discuss the crime's impact and related issues, and promote healing for the community as a whole.

- Mary Dunnewold (mdunnewold@hamline.edu) is a legal writing instructor at Hamline University School of Law.

### **How Law Students Can Get Involved**

Given the prevalence of ADR in legal practice, law students have a responsibility to familiarize themselves with the relevant concepts and processes. To gain a basic background in ADR, students should take advantage of the ADR courses and training opportunities offered at their law schools. Some law schools offer summer study abroad programs in ADR, open to students from all law schools. State and local bar associations, as well as continuing legal education providers, also offer ADR training.

Students can also increase their exposure to ADR processes through ADR-related moot courts and law school competitions. The Willem C. Vis International Commercial Arbitration Competition, held annually in Hong Kong and Vienna, draws law students from all over the world. Some ADR competitions are run completely on-line, making them accessible even to students without the budget or time to travel. The American Bar Association also sponsors an annual ADR essay contest.

While some students came to law school because they knew they wanted to be litigators, others are relieved to discover that ADR offers an alternative approach to legal problem solving. In either case, given the expanding presence of ADR in the legal arena, learning about ADR should be an essential part of any contemporary legal education.

For more information on these and other ADR opportunities for students, visit [www.abanet.org/disute/21centuryattorney.html](http://www.abanet.org/disute/21centuryattorney.html).



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## Why Are Some Law Firms Beginning to Promote Settlement Expertise At the Expense of Their Litigation Revenues?

By: Norman Solovay and Tanya Paula de Sousa\*

A much quoted recent book, *The New Lawyer: How Settlement Is Transforming the Practice of Law*, by Professor Julie Macfarlane, has made a remarkable impression on the world of alternative dispute resolution (ADR). Part of its popularity is no doubt the timeliness of its compelling and well-documented description of the still ongoing replacement of litigation with processes that focus the parties on the potential for settlement. But the book's popularity may also be attributable to its equally compelling recognition of the spiritual renaissance being experienced in the legal profession today as a result of these new processes.

ADR used to be essentially synonymous with arbitration or mediation. But it has morphed into an umbrella term for a panoply of settlement techniques now widely utilized to resolve conflicts of virtually all types while by-passing the costs, emotional stress, and destruction of relationships that accompany protracted court battles. Our present-day spectrum of ADR processes emerged as an outgrowth of the so-called "mediation explosion" of the early 1980's. While the use of mediation has continued to grow, commercial arbitration, sometimes now mockingly referred to as the "new litigation" has come under frequent attack as too slow and costly.

Unfortunately, mediation does not always work. An exploration of when and why it can fail is too broad a topic for this article although some obvious examples spring to mind -- imbalances between abilities of the parties and adherence by many mediators to positional bargaining and allocation of fault which the parties have attempted to avoid by staying out of court. Fortunately, however, the "invention" of important new ADR techniques, along with the revived popularity of previously disfavored or little used ones, has ameliorated "defects" like these.

Litigators are usually the most vociferous critics of ADR practitioners: "Who needs them; we settle cases all the time" is a frequently heard refrain. References to the "vanishing trial" based on the now well-recognized statistic that over 98% of litigated disputes are settled and never go to trial confirms the truth of that claim. But that statistic ignores the emotional and economic drain, as well as the polarizing effects on parties, of the lengthy, increasingly expensive (although pocket-lining for lawyers and law firms) pre-trial proceedings that take place before most settlements.

Even more importantly, those claims ignore the lessons driven home by new ADR techniques such as Collaborative Law, or older ones now revisited and increasingly utilized, such as settlement counsel.



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## Why Are Some Law Firms Beginning to Promote Settlement Expertise At the Expense of Their Litigation Revenues?

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Asking lawyers to engage simultaneously in litigation strategy and settlement discussion often creates a dissonance, a conflict of interest, and focus that is not easily overcome. Backing these two horses at the same time can often set lawyers and their clients adrift in a legal minefield.

In sharp contrast, lawyers who are drawn to ADR are far more likely to have a temperament and possess a skill set sharply different from their litigation counterparts. As reflected by the continuing explosive growth of ADR, such lawyers tend to nurture relationships with their adversaries in an attempt to reach their client's goal through interest based rather than rights based negotiations.

Even the most ardent promoters of ADR acknowledge that our courts are an essential part of the jurisprudential system and can never be entirely eliminated. But some have compared them to hospital emergency rooms: necessary, but not to be utilized if one can possibly get better and less traumatic help. Moreover, while ADR still has its detractors—at least some of whom are financially disadvantaged by it—there now remains little question that, ADR, through its many diverse avatars is a recognized and separate discipline that is here to stay.

Law students may prove to be the real beneficiaries of these winds of change. As Professor Macfarlane notes, the disillusionment those winds are causing with "the traditional 'warrior' mentality

may free new lawyers up to initiate new ways of practicing law that reflect a desire—both philosophical and pragmatic—to bring peace and resolution, rather than fight protracted court battles." Mohandas Karamchand Gandhi, before becoming the architect of India's independence, was a brilliant trial lawyer for 20 years. In describing his reaction to settling rather than litigating a commercial dispute, he said: "*My joy was boundless. I had learnt the true practice of law. I had learnt to find out the better side of human nature and to enter men's hearts. I realized the true function of a lawyer was to unite parties driven asunder. The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby—not even money, certainly not my soul.*" Yes ADR is the true practice of law. It is the spiritual renaissance of the legal profession and one that you as a law student have a chance to be part of.

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\*Norman Solovay (nsolovay@mclaughlinstern.com) is the chair of the Alternative Dispute Resolution department at McLaughlin and Stern, LLP in New York.

\*Tanya Paula de Sousa (tpdesousa@mclaughlinstern.com) is an associate at the Alternative Dispute Resolution department at McLaughlin and Stern, LLP in New York.