



# GLOBAL CONNECTIONS

THE WEINSTEIN JAMS INTERNATIONAL FELLOWS NEWSLETTER | FALL 2015

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**Photo: Weinstein JAMS Fellows 2015 Class:**

**Back row, standing, left to right:** Jiang Liping (China), Ellen Bass (JAMS Foundation), Mohammad Abdul Halim (Bangladesh), Harrison Mutabazi (Rwanda), Maciej Tanski (Poland), Richard Birke (JAMS Institute), Peter Kamminga (Netherlands, Class 2011), Laila Ollapally (India, Class 2011), Gabriela Asmar (Brazil, Class 2011), Andrew Wei-Min Lee (China, Class 2011), Fernando Navarro Sanchez (Class 2013), David Brandon (JAMS Foundation), Nuria Gonzalez-Martin (Spain/Mexico); **Middle row, seated, left to right:** Do Thanh Thuy (Vietnam), Felicitas Paller (Austria), Ihsanullah Khan (Pakistan, Class 2014), Mijad Abdelazim Ahmed (Sudan), Jay Welsh (JAMS), Dimitra Gavriil (Greece), Elie Jebran (Lebanon), Paola Cecchi Dimeglio (France, Class 2011); **Front row, seated, left to right:** Olabisi Tolu Obamuroh (Nigeria), Hon. Daniel Weinstein (Ret.), (JAMS), Mayu Watanabe (Japan).

## LETTER FROM THE DIRECTOR

To our dear Weinstein JAMS Fellows,

Autumn is both a time of celebration and reflection for the Weinstein JAMS Fellowship program. In September 2015, the JAMS Foundation welcomed to the Bay Area the seventh class of Weinstein JAMS Fellows who join an expanding international network of innovative leaders in the field of dispute resolution. With over seventy Fellows from more than fifty countries around the world, the Fellowship program constitutes a geographically and culturally diverse group of ADR professionals with a rich depth of knowledge, experience, and insight.

In addition to the September Fellows' gathering, this year provided more celebratory moments marking the growth and success of the Fellowship program: In March 2015, Judge Daniel Weinstein (Ret.) was honored as the 2014 Cardozo International Advocate for Peace in recognition of his generous financial contribution and visionary leadership in helping to found the Fellowship program. And in June 2015, in further honor of these efforts, Judge Weinstein also received the ADR Achievement Award from the Association for Conflict Resolution—Greater New York Chapter.

In 2015, the JAMS Foundation expanded its network of support for the Fellowship program to include ADR organizations such as Partners Global, the Global Pound Conference series, and the ABA Dispute Resolution Section's initiative to develop an international dispute resolution research center. Whether you are working to establish court-annexed ADR programs, promote mediation legislation, develop community mediation training centers, or simply expand your own ADR practice, the JAMS Foundation remains committed to support your work post-Fellowship and to develop additional tools and resources you need to achieve success.

To paraphrase the words of the late Hon. H. Warren Knight (Ret.), founder of JAMS and for whom the work of the JAMS Foundation was especially dear, the dream of planting dispute resolution seeds around the world now bears the rich harvest he foresaw in each of you. May you continue to flourish and reap the rewards of your hard work and remember, even when you struggle, we at the JAMS Foundation remain your most devoted fans.

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FOUNDATION

# LETTER FROM THE DIRECTOR *continued from Page 1*

In reflection of our shared journey, we recall the lines of the poem Judge Danny has often recited when describing that long sought-after magical moment in mediation:

“Out beyond ideas of wrong-doing and right-doing there is a field. I’ll meet you there.” - Rumi

We wish you and your families all the best and hope to continue to hear from all you regarding your challenges and success in the New Year!

— **ELLEN BASS, DIRECTOR, WEINSTEIN JAMS INTERNATIONAL FELLOWSHIP PROGRAM**

## WEINSTEIN JAMS FELLOWS UPDATES



**MARÍA ROSARIO GARCÍA ALVAREZ**

*Spain, Class 2012*

**THE LAST FEW YEARS HAVE BEEN VERY BUSY FOR MARÍA R. GARCÍA ALVAREZ.** The guide for judges on establishing court-annexed mediation programs was published by the General Council of the Judiciary, and Judge G. Alvarez has continued to develop and promote the implementation of court-connected mediation programs in Spain. As a result, Barcelona started a new pilot program in June 2014. Judge G. Alvarez has continued writing and lecturing on

mediation at the School for the Judiciary (CLE for judges) at the Madrid Bar Association (CLE for lawyers) and has been invited to lecture on mediation as well by the Universidad Rey Juan Carlos, among other institutions. She joined ICADE School of Law, where she now teaches an ADR practicum with emphasis on mediation for new generations of lawyers at the postgraduate level. She has had the pleasure of discovering substantial interest in the subject on the part of future practicing lawyers in Spain.

In addition, Judge G. Alvarez was also invited to join the International Women’s Forum and the Board of Directors of GEMME, Spanish section (European Association of Judges for Mediation), where she is in charge of promoting the development of mediation in the employment courts in Spain.



**SPYROS ANTONELOS**

*Greece, Class 2013*

**SINCE SPYROS ANTONELOS RETURNED TO ATHENS FOLLOWING COMPLETION OF HIS FELLOWSHIP IN FALL 2013,** he has continued to develop his legal practice in commercial and civil disputes before the Greek courts. He has also continued to train young mediators at the Athens Bar Association Mediators Training Center, called “Prometheus,” where he is a trainer and the educational coordinator.

Furthermore, along with co-author and lawyer/mediator Ms. Eleni Plessa, Spyros wrote the first book in Greek, combining mediation history, theory and practice, and drawn from his experience at JAMS during his Fellowship,

titled *Mediation: Foreign Experience and Greek Implementation*. Judge Daniel Weinstein, various JAMS neutrals and the JAMS Foundation are mentioned in the book’s introductory remarks, and they are warmly thanked for all their support.

In March 2014, Spyros launched his own mediation company, called RESOLVE Mediators ([www.resolve.gr](http://www.resolve.gr)), to promote mediation awareness and implementation in Greece. He is a consultant to the Greek Ministry of Justice and various Greek bar associations and chambers on the use of mediation. RESOLVE subsequently co-sponsored, along with the Ministry of Justice, a conference on mediation in Athens in June 2014.

In November 2014, Spyros spoke on mediation at the Legal Professions Forum and delivered three trainings in Athens at the Prometheus Training Center through the end of the year. Also in November 2014, Spyros presented his 119th Mediation Advocacy seminar at the Athens Bar (the first seminar was offered in May 2011). These seminars take place regularly throughout the judicial calendar year.

Spyros served as a judge at the ICC Mediation Competition in Paris in February 2014 and was a speaker at the annual convention of GEMME (European Association of Judges for Mediation) in Paris in May 2014. Spyros again returned to the ICC Mediation Competition as a judge in February 2015.

Last but not least, Spyros reports that in 2015, his mediation company RESOLVE is now a leader in providing mediation services in Greece, regularly conducting mediations, and providing basic mediation and mediation advocacy training. And most recently,



**LYNNE COULSON BARR**

*Australia, Class 2013*

Spyros has been involved in conducting advanced mediation training programs in Turkey, Cypress, and France. More to come in 2016!

**IN 2014, LYNNE COULSON BARR WAS APPOINTED THE INAUGURAL MENTAL HEALTH COMPLAINTS COMMISSIONER IN VICTORIA, AUSTRALIA,** in recognition of her expertise in developing effective and accessible approaches to the resolution of

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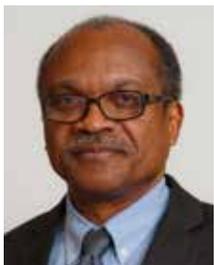
complaints and disputes involving people with disabilities and mental health issues. This is a unique new statutory role, the first of its kind in Australia, established under Victoria's new Mental Health Act 2014 as a result of community feedback that identified the need for a specialist independent body to receive and resolve complaints from people with a mental illness, as well as families and caregivers, about their experiences with public mental health services. Lynne's Weinstein JAMS Fellowship in 2013 enabled her to further develop her knowledge and expertise in approaches to dispute resolution that maximize the participation of people with disabilities or mental health needs.



**Lynne Coulson Barr at her official appointment ceremony as the inaugural Mental Health Complaints Commissioner.**

Following completion of her Weinstein JAMS Fellowship in November 2013, Lynne worked across jurisdictions in Australia to further develop knowledge and awareness of effective and accessible approaches to dispute resolution through her role as inaugural chair of the Statutory ADR Special Interest Group for Australia's professional association of ADR practitioners (LEADR) and

as a committee member for the National Mediation Conference. Lynne's contributions and achievements in dispute resolution were recognized in March 2014, when she was inducted into the Victorian Honor Roll of Women. In accepting this honor, Lynne was quoted as saying, "I have been fortunate to witness the powerful changes that can occur when people who are not used to speaking up are supported to be heard, and to see how issues can be resolved in ways that promote people's rights and improvements in their lives and services." More information on Lynne's work as the Mental Health Complaints Commissioner can be found at: <http://www.mhcc.vic.gov.au/>.



**FRANCIS H. V. BELLE**  
*Barbados, Class 2014*

**FOLLOWING COMPLETION OF HIS 2014 WEINSTEIN JAMS FELLOWSHIP, JUSTICE FRANCIS BELLE RETURNED TO THE EASTERN CARIBBEAN** to immediately start work on his quest to broaden the scope of mediation in the region. In November 2014, Justice Belle was asked to present two lectures in Barbados to initiate a program sponsored by the Caribbean Law Institute Centre and Improved Access to Justice Project (IMPACT Justice) at the Cave Hill Campus

of the University of the West Indies, Cave Hill, in Saint Michael, Barbados. Justice Belle spoke on the following topics: The Mediation Imperative: Benefits for the Courts and the Community,

and Problem Solving through Community Mediation.

In his presentation on The Mediation Imperative, Justice Belle described his experiences as chairman of the court-connected mediation committees in Grenada, Saint Kitts and Nevis and Saint Lucia. These committees manage court-connected mediation in the nine member states of the Eastern Caribbean Supreme Court. In the first lecture, Justice Belle outlined the achievements and challenges in detail that he faced in all three locations. For example, he spoke of the atmosphere in Grenada, where great enthusiasm for the implementation of court-connected mediation exists. This enthusiasm is reflected at the very top in the form of government support. Indeed, the Grenada government has provided facilities and a coordinator for its court-connected mediation program in the country's capital, Saint George's.

In the Federation of Saint Kitts and Nevis, Justice Belle's experience was different. The Saint Kitts government did not provide exclusive facilities for court-connected mediation. Even after some time was taken to examine and consider various options, no well-appointed location was identified. Consequently, in order to start up the program, the committee had to accept less-than-adequate facilities in the Sir Lee L. Moore Legal and Judicial Complex. In spite of the inadequate facilities, court-connected mediation picked up steam around 2007 and has been utilized in a robust manner by lawyers and litigants ever since.

By way of contrast, the government of Nevis, after some months of negotiation and inspections of less-than-adequate facilities, decided to provide an exclusive office space to the court-connected mediation project in Nevis. These facilities were well worth the wait.

Saint Lucia's teething problems took place before Justice Belle was assigned to that country and assumed the chairmanship of its court-connected mediation program. The challenges that exist in Saint Lucia are often created by delinquent lawyers who do not explain the importance of punctuality and of attending mediations sessions to their clients. By way of response, the committee has considered imposing sanctions on lawyers who do not comply with the court's mediation referral program, and it is likely these sanctions will be implemented by the court in the near future.

Justice Belle explained in both lectures that the importance of mediation was not just its potential to save time and costs for litigants and reduce the workload of the court; he emphasized that it is also important to consider that the court is not always the most appropriate venue in which to handle a dispute. Mediation stands out as a "non-arbitrary" method of resolving disputes where an outcome is often more likely to be complied with and respected by parties who have fashioned that outcome themselves.

Justice Belle further indicated that mediation provides skills and a way of looking at conflict that may have many applications. He

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**Justice Belle with outreach officers of the S.O.S. Project in Crown Heights, Brooklyn, New York.**

illustrated this point with the example of the violence interruption and intervention project in the Crown Heights neighborhood in Brooklyn, New York, where a former community mediation center was transformed into a center for intervention in violent crime, called Save Our Streets (S.O.S.). The decision to transform the mediation center in this way was influenced by the high level of violent crime, in particular shootings, in Crown Heights. A public health approach was adopted to identify the causes of violent crime and to intervene to prevent outbreaks of violence when possible. The result has been a reduction of violent crime, including murders, in Crown Heights.

Justice Belle visited the S.O.S. project thanks to the Weinstein JAMS Fellowship program, which enabled him to encounter a variety of mediation programs in New York City during August and September 2014.

In his presentation, Justice Belle also described how there were a number of cases he took to court as a lawyer some decades ago that would have been amenable to mediation. He further noted that mediation is an international phenomenon and people all over the world have been using mediation to resolve disputes. As example, he pointed to the 2014 Weinstein JAMS Fellowship participants, which included representatives of Thailand, Nigeria, Georgia, Pakistan, Spain, South Africa, Mexico, Egypt and Barbados.

In addition, three former Weinstein JAMS Fellows also attended the 2014 Fellows' meeting, which took place at the JAMS Resolution Center in San Francisco from September 1 through 7, 2014. These Fellows were nationals of Armenia, Ecuador and Trinidad & Tobago.

In conclusion, Justice Belle emphasized that the court system needed mediation and so did the community at large. The court can be used as a barometer of the conflict resolution needs of the society. In the case of Saint Lucia, Justice Belle has determined that the issue of land distribution and conflict between familial relations is an overwhelming source of conflict that often finds its way into court. Mediation can provide a method for engagement with the persons involved in these conflicts even before their disputes end up in court. This would be of great benefit to both the courts and the community.

Justice Belle spoke to audiences at the A. Ralph Carnegie Law Lecture Theatre on December 11, 2014, and at the Sir Hugh

Springer Auditorium at the headquarters of the Barbados Workers' Union on December 12, 2014. Among those present was a cross-section of people from the Barbadian community, including trained mediators who are eager to get involved with any newly launched mediation program in Barbados.



**PAOLA CECCHI DIMEGLIO**  
*France, Class 2011*

**DURING THE PAST YEAR, PAOLA CECCHI DIMEGLIO HAS EDITED A BOOK TITLED *INTERDISCIPLINARY HANDBOOK OF DISPUTE RESOLUTION*, published in French and English in 2015 by Larcier and the Oxford University Press Group. More than 50 influential authors from a variety of disciplines contributed to this original and ambitious handbook on ADR. The preface was written by the President of the Constitutional Council of France, Guy Canivet, and Dean of Science**

Politique Paris, Christophe Jamin. The book is dedicated to Judge Weinstein and offers a distinct collection of articles from leading international dispute resolution scholars and practitioners who have never before appeared within the same volume. Demonstrating the inherent interconnections between different disciplines engaged with ADR, as well as the relationship between ADR theory and practice, the book illustrates a multidisciplinary, interdisciplinary and transdisciplinary approach to better understand the theories and practices of negotiation, mediation and arbitration and other ADR practices.

By combining knowledge, research, theory and practice, this handbook provides a framework for considering various issues related to ADR, as well as related subjects raised in other disciplines. Each contribution builds on the works of a remarkable set of scholars, practitioners and innovators reflecting the state of the art of ADR. The book further provides a thorough analysis of the doctrine and practice in this area of research and offers a synthetic, critical, interdisciplinary and comparative perspective of classical and modern issues in ADR.

Dr. Paola Cecchi Dimeglio continues her work as a postdoctoral research fellow at Harvard Law School at the Program on Negotiation and as a joint fellow at Harvard Kennedy School at the Women and Public Policy Program. For more information regarding her past and current research, see <http://www.pon.harvard.edu/faculty/paola-cecchi-dimeglio/>.



**KATHY GONZALES**  
*Trinidad and Tobago, Class 2012*

**THE EXPANSION OF ALTERNATIVE DISPUTE RESOLUTION CONTINUES IN TRINIDAD AND TOBAGO AND IN THE WIDER CARIBBEAN REGION.** In 2012, Kathy Gonzales was privileged to have been appointed to design and then oversee the implementation of a court-annexed

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**Kathy Gonzales visiting Francis Belle in Saint Lucia while conducting conflict resolution training for the OECS Juvenile Justice Reform Project.**

mediation pilot project in the High Court of Trinidad and Tobago. The pilot project was successfully completed in May 2014 with a settlement rate of 67 percent. The Chief Justice has since expressed the intention to roll out the court-annexed mediation program in 2015 as a permanent part of the civil litigation system.

In September 2014, Kathy was further contracted to deliver conflict management and dispute resolution workshops in six territories that are members of the Organization of Eastern Caribbean States (OECS) as part of the Juvenile Justice Reform Project, which is taking place in the OECS in partnership with USAID.

In October 2014, the High Commission of Canada to Trinidad and Tobago agreed to fund the execution of a project that Kathy had conceptualized and submitted for the High Commission’s consideration under its Canada Fund for Local Initiatives program. This project entails the design and delivery of a training workshop in interpersonal communication skills, mediation and crisis negotiation techniques to the 20 police officers who would be the first responders to incidents of domestic violence. The objective of the project is to increase the capacity of the Trinidad and Tobago Police Service to respond effectively to these types of incidents.

Finally, and most recently in May 2015, Kathy successfully defended her dissertation “Increasing Access to Justice: A Case Study of the Mediation Program at the Family Court in Trinidad and Tobago,” in Conflict Resolution at Shepard Broad Law Center at Nova Southeastern University in Florida, and she is now a certified Ph.D., esteemed Dr. Kathy Gonzales! Onward and upward, Kathy is looking forward to more opportunities in 2016.



**MANUELA RENATA GROSU**  
*Hungary, Class 2011*

**SINCE SEPTEMBER 2014, MANUELA GROSU HAS BEEN WORKING AT A LAW FIRM**, with a practice focused on corporate and commercial disputes. An article she co-authored with her supervising attorney at the law firm was published in October 2014 (Mealey’s International Arbitration Report, Vol. 29, October 2014, Commentary, “Protecting National Assets à la Hungary – Unexpected Restriction to Arbitration”).

As mentioned in her previous update, Manuela participated in an international research project regarding the regulatory framework for mediation of civil and commercial cases and was responsible for the Hungarian legislation analysis in the subsequently published study (Manuela Grosu, Hungary, Manon Schonewille-Fred Schonewille (eds.), *The Variegated Landscape of Mediation: A Comparative Study of Mediation Regulations and Practices in Europe and the World* (Eleven International Publishing, 2014)).

In April 2014, Manuela participated as an arbitrator in the 21st Willem C. Vis International Commercial Arbitration Moot in Vienna. She also planned to participate in this event in the future as well and reports that it provides a great experience and educational exercise, as well as an exciting opportunity to meet students, scholars and practitioners from all over the world in international commercial arbitration.

Regarding recent mediation developments in her region, of note is the establishment of the Central European Mediation Institute in 2014 to encourage and promote mediation in Hungary. The Institute works in cooperation with the Hungarian section of GEMME (European Association for Judges for Mediation in Europe), with emphasis on the promotion of mediation in schools and school-related conflicts. The Institute also focuses on the development of an efficient family mediation system, including cross-border family disputes. In addition, the Institute aims to collect best practices regarding court-annexed and court-connected mediation. The Institute also works to develop the role of restorative justice in certain criminal disputes.

The Central European Mediation Institute organized its first workshop on November 18, 2014, and in order to further support its work, Manuela plans to apply for membership.



**JIANG HEPING**  
*China, Class 2011*

**IN APRIL 2014, JUDGE JIANG WAS INVITED TO SPEAK AT THE 3RD ASIAN MEDIATION ASSOCIATION CONFERENCE IN HONG KONG.** The conference attracted more than 400 mediators and related professionals from around the world to exchange views on current and emerging trends and ideas in the development of mediation in Asia. Judge Jiang introduced the reform of court mediation systems in China and analyzed the mediation model

used in the Dongguan No. 2 People’s Court while addressing its challenges and future development.

In June 2014, Judge Jiang published “A Practical Guide to Pretrial Mediation.” Based on Chinese traditional culture and Western modern mediation theory, this book details the process, rules and skills required in mediation. The book aims to promote the development of institutional mediation and advocates a mediation model involving the separation of mediation and trial.

In order to further disseminate modern mediation ideas throughout

China, Judge Jiang has held many lectures for more than 200 people's mediators. With his efforts, more and more community mediators have had the opportunity to learn advanced mediation skills.



**PETER KAMMINGA**  
*Netherlands, Class 2011*

**IN NOVEMBER 2014, PETER KAMMINGA BEGAN MEDIATING DISPUTES IN AMSTERDAM** in the areas of insurance, securities, construction and infrastructure involving Dutch multinationals. He also began providing mediation advocacy training to Dutch corporations. Peter is also participating in an initiative of experienced ADR professionals who have joined forces to form a mediation law firm. For his profile, see <http://schonewille-schonewille.com/>.

In November 2014, Peter also spoke at a seminar for the international litigation department of Shell Oil at its head office in The Hague, Netherlands. The seminar focused on how to best use mediation and guide corporate clients through a mediation procedure (mediation advocacy) both in the Netherlands and in other countries.



**TERESA MORAIS LEITÃO**  
*Portugal, Class 2013*

**TERESA MORAIS LEITÃO IS DIRECTOR OF THE NONPROFIT ORGANIZATION PRO BONO** which was recently recognized with two different awards for social entrepreneurship project ventures, the first of its kind in Portugal. The awarded project aims at promoting legal assistance to non-governmental organizations (NGOs) and their beneficiaries in need. Where appropriate, such assistance promotes the resolution of conflicts through mediation, to be promoted by joint teams of mediators,

lawyers and law students. Within its objectives for the promotion of mediation, PRO BONO is also in the process of developing a special project next year. This project is the creation of local mediation centers within its partners NGOs, which will help to promote mediation among their beneficiaries in need and others. One such example is an NGO to support individuals with HIV who prefer to avoid the courts, fearing social or professional discrimination.

During the past academic year, Teresa lectured on negotiation and mediation at the Catholic Faculty of Law in Porto. She also intends to promote the development of commercial mediation in Portugal by including a course on negotiation and mediation in the law degree curriculum for beginning lawyers.

**SINCE HIS RETURN FROM HIS 2011 FELLOWSHIP PROJECT AND THE ESTABLISHMENT OF HIS COMPANY**, ADR Partners, the first firm to provide professional ADR services in Armenia, Mushegh Manukyan has been extremely busy as usual, starting



**MUSHEGH MANUKYAN**  
*Armenia, Class 2011*

with ADR Partners' provision of several training sessions for judges, judicial assistants, attorneys and law students. In addition, in 2013, Dr. Aida Avanesian, a lawyer and arbitrator with more than 10 years of experience in Iran and the United Kingdom, returned to Armenia to join ADR Partners to continue her arbitration practice in her home country. With their joint efforts, Mushegh and Aida conducted further trainings on mediation and arbitration for judicial assistants in cooperation with the Judicial Department of Armenia. At the end of 2013 and in early 2014, Mushegh and Aida also began teaching mediation and arbitration in the Advocates School for lawyers who aim to obtain a license to become an attorney. Three sessions were held for a group of 60 lawyers in total.

In 2013, ADR Partners started a Young Mediators and Arbitrators (YMAG) project to engage young lawyers and other professionals in activities related to ADR. YMAG began with roughly 20 participants with most of its members law students. YMAG is currently conducting a project to assist small and medium-sized businesses in reviewing and analyzing their contracts in relation to dispute resolution clauses.

In October 2013, Mushegh was invited by Dr. Renate Dendorfer-Ditges to speak at the Mediation in a Global Village – Aspects of ADR and Mediation in Eastern European Countries conference in Ravensburg, Germany, where Mushegh spoke at a session regarding the Armenian and Caucasus culture of resolving disputes. Throughout 2013-2014, Mushegh further assisted the USAID Enterprise Development and Market Competitiveness (EDMC) project on ADR to develop a strategy for ADR development in Armenia. However, in September 2014, EDMC was closed, and the project, among others, was unfortunately not completed.

In early 2014, Mushegh also initiated the first court-annexed mediation program together with a young judge, Ms. Nora Karapetyan, who began referring some of her cases to Mushegh (mostly related to family law and property law issues). Even though Armenian law does not establish specific rules by which the judiciary may refer cases for mediation and judges cannot act outside the boundaries of the law (i.e., they cannot undertake actions that are not prescribed by law in Armenia), Mushegh and Nora found a way to establish a first attempt at court-annexed mediation. Mushegh agreed to conduct such mediations on a pro bono basis to avoid any negative impressions that might be formed regarding the judge's independence and impartiality.

In 2014, ADR Partners, as part of its Mediation and Arbitration Clinic at the American University of Armenia, organized the 2nd Mock Arbitration Competition, which was a big success, with 10 teams participating (four more than the previous year). The

Mediation and Arbitration Clinic and ADR Partners are already planning to base the 3rd Mock Arbitration Competition on a real case of the Armenian court, in which Mushegh served as an expert witness.

After two Deputy Ministers of Justice, Mr. Aram Orbelyan and Mr. Yeghishe Kirakosyan, left their government offices in mid 2014, both joined ADR Partners as arbitrators, a valuable addition to ADR Partners' list of arbitrators.

In November 2014, ADR Partners held a conference on mediation and arbitration for businesses, which was followed by a training for attorneys on effective skills in mediation.

Mushegh has also been in the process of discussing a school mediation project with the Armenian branch of World Vision International, whereby ADR Partners would conduct several trainings on developing negotiation skills for students and conciliation techniques for schoolteachers to help decrease disputes in schools. Mushegh plans to engage YMAG members in this project, who will eventually become school dispute experts and 911 contacts for specific schools.

Most significantly, the Ministry of Justice initiated an ADR project within the Council of Europe called Strengthening the Independence, Professionalism and Accountability of the Justice System in Armenia. Mushegh was designated the key expert to assist the Ministry in establishing rules, guidelines and legislation on mediation and arbitration. In May 2015, Mushegh elatedly reported that the law on mediation in Armenia was passed by the Armenian Parliament.



**SAVATH MEAS**  
*Cambodia, Class 2011*

**SAVATH MEAS PRESENTLY SERVES AS PRESIDENT OF THE CAMBODIAN CENTRE FOR MEDIATION (CCM).** The CCM team has recently developed a conflict resolution and mediation manual as a basic and advanced mediation skills and process manual for CCM.

In December 2013, Savath provided a one-day reflection training on mediation skills and practice to 30 mediators of the community dispute resolution committees of the Siem Reap and Battambang provinces. Savath further provided a two-day training on mediation skills and processes to 40 Justice Service Centers (JSCs) at Phnom Penh with 80 officers of the JSCs in April 2014 in Phnom Penh.

CCM cooperated with the RECOFTC Center for People and Forests and provided a four-day training course on Conflict Transformation and Mediation Skills in Natural Resource Management in January 2014 in Phnom Penh. CCM had previously cooperated with the RECOFTC Center for People and Forests to conduct three research studies on conflict mediation analysis: perspectives and practices for conflict mediation frameworks in the context of community forests in Cambodia, understanding the relationship

between REDD+ and conflict over forest land and resources, and an equity case study on indigenous land title in Cambodia in 2013 and 2014.

More recently, CCM cooperated with the non-governmental organization Life with Dignity to conduct an introductory training on ADR to 32 community councilmembers and district and provincial cadastral commissioners and staff from three provinces' target areas. The training course was divided into three successive modules. Module one was held in December 2014, module two in February 2015, and module three in March 2015.

The goal of the training course is to understand and analyze the concrete conflict situations involved in land disputes and to establish a local mediation panel at each community and district level to ensure that the practice of mediation is well applied to address local conflicts positively and peacefully.



**PEMA NEEDUP**  
*Bhutan, Class 2011*

**PEMA NEEDUP, CURRENTLY SERVING AS PRESIDING JUDGE AT THE PUNAKHA DISTRICT COURT,** has continued to work in the field of alternative dispute resolution in Bhutan in addition to his adjudication of cases at the Court.

In September 2014, Judge Needup organized one-day presentations on ADR for the people of Goenshari Gewog (County) in Punakha. He highlighted the importance and usefulness of mediation and urged the community to practice mediation processes as an alternative to litigation. This presentation was his first activity after he took over the Punakha District Court in 2014.

Judge Needup's ADR objectives include the revival of the age-old tradition of amicable dispute resolution at the community level and the facilitation of the resolution of disputes in order to supplement the delivery of justice to the people inexpensively and expeditiously.



**LAILA OLLAPALLY**  
*India, Class 2011*

**LAILA T. OLLAPALLY IS THE COORDINATOR OF THE BANGALORE MEDIATION CENTRE,** one of India's leading court-annexed programs, and is the founder of the Centre for Advanced Mediation Practice (CAMP), a pioneering institution to provide private mediation services in India.

**Development of Court-Annexed Programs**  
Laila has contributed to developing mediation as a concept in India and toward the betterment of the Court annexed programs. Below are Laila's contributions since November 2013.

(A) Training of Trainers and Mediator Training Refresher Courses

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- November 2013: Trainer at “training of trainers,” organized for the court-annexed programs in the country. This was conducted by the Mediation and Conciliation Project Committee of the Supreme Court of India.
- February 2014: Trainer at the refresher training program organized for the mediators of the court-annexed program of the Supreme Court of India.
- March 2014: Trainer at the refresher training program organized for the mediators of the court-annexed program of the High Court of Delhi.

## (B) Auditing Court-Annexed Programs

- March 23, 2014: Laila, along with Victor Schachter, founder of the Foundation for Sustainable Rule of Law Initiatives, was invited by the High Court of Chandigarh to audit their court-annexed mediation program.

## Integration of Mediation in the Private Sphere

Mediation is moving into the private sphere in India. Laila was invited to several speaking events and conferences to discuss mediation as an alternative dispute resolution mechanism. Here are some highlights of the events and conferences Laila participated in.

## (A) Conferences and Speaking Events

- March 2014: Moderator and panelist at Think | Manage | Lead, India’s first management event for the legal industry. She spoke to in-house corporate and general counsels on mediation. This was the first time mediation was featured in a corporate event.
- April 2014: Discussion session on mediation at the Sneha Counseling Centre, a reputed nonprofit organization in India for emotional counseling in cases of conflict.
- July 2014: A panelist at the India Dispute Resolution Conclave to discuss mediation. Senior legal professionals were present at this event.
- September 2014: Moderated a discussion session on mediation at the Legal Counsel Congress. Corporate managers and legal counsel were the target audience in these sessions.
- February 12–15, 2015: Laila participated in the Asia-Pacific International Mediation Summit, organized by the American Bar Dispute Resolution Section, which focused on mediation, with participation from eminent mediators from the United States and the Asia-Pacific region as panelists and speakers at the event. Laila was invited to moderate the event on court-annexed mediation and spoke on how to build a private mediation practice.

## (B) Presentations and Awareness Building

- For private mediation services, Laila founded CAMP, which is a pioneering organization providing institutionalized mediation services in India.
- October–November 2014: Made four presentations to create awareness on mediation and CAMP to top-tier law firms in India, including AZB & Partners, J. Sagar and Associates, Tatva Legal and Kochhar & Co. The objective was to create an understanding among lawyers regarding mediation as an effective alternative dispute resolution mechanism.
- January 2015: CAMP organized a mediator training event to train senior legal professionals who could be a part of the CAMP mediation panel. The training was conducted by Jay Folberg and Jay Welsh, eminent trainers from JAMS International. More details on CAMP and its services can be found at [www.campmediation.in](http://www.campmediation.in).



**AŞIYAN  
SÜLEYMANOĞLU**  
*Turkey, Class 2013*

## AŞIYAN SÜLEYMANOĞLU, A PRACTICING ATTORNEY IN ISTANBUL,

has continued her work as a consultant to foundations working in the field of alternative dispute resolution in Turkey. Upon completion of her Fellowship in 2013, she continued her LL.M. studies in the Rule of Law for Development at the Rome campus of Loyola University Chicago. Asiyan recently completed her LL.M. thesis, titled “Balancing the Tension for Sustainable Architectures: The Relational Dynamics of ADR and the Rule

of Law within Legal Development Programs.” Upon her return to Turkey, she prepared a report and conducted several meetings with the Union of Turkish Bar Associations, the Ankara Bar Association and the Ministry of Justice to share her experiences as a Weinstein JAMS International Fellow and to offer guidance regarding developing mediation programs and awareness-raising activities among the business community for the promotion of mediation in Turkey. Asiyan is in the process of working with the Chamber of Mediation, under the auspices of the Ministry of Justice, to redesign mediation trainings and the Chamber’s future court-annexed mediation program as a consultant. Asiyan is a member of the network of Cross-Border Family Mediators and continues her work as a mediator of international child abduction cases.



**GALYNA  
YEROMENKO**  
*Ukraine, Class 2010*

**IN SEPTEMBER 2014, GALYNA YEROMENKO COMPLETED A JOINT COURSE WITH THE ACADEMY OF THE MUNICH CHAMBER OF COMMERCE AND INDUSTRY and received mediator certification**

# TEACHING ADR TO HELP LAWYERS FULFILL THEIR ETHICAL DUTIES

By **María Rosario García Alvarez** (Spain, Class 2012)

Legal scholars have discussed in depth the possibility of imposing an ethical obligation on lawyers to counsel clients about alternative dispute resolution (ADR). C. Menkel-Meadow, R. F. Cochran, J. Goldberg, F. Sander and many others think that every lawyer should be familiar with various ADR options and should have a duty or ethical obligation to counsel clients about the multiple ways of resolving a dispute, a problem and planning a transaction. Even when the Rules of Professional Conduct do not provide an explicit guide regarding the mandatory condition of ADR counseling, some legal commentators, in light of the modern movement of ADR, understand that there is an implicit obligation inferred from the Rules that requires attorneys to consult with clients to explain a matter and render candid advice on relevant issues affecting their clients' interests.

The Code of Conduct for European lawyers represents one pillar of possible implementation of this ethical obligation since there is a specific duty requiring all European lawyers to advise their clients about alternative means of resolving disputes. Specifically, Rule 3.7.1 establishes that "[t]he lawyer should at all times strive to achieve the most cost-effective resolution of the client's dispute and should advise the client at appropriate stages as to the desirability of attempting a settlement and/or a reference to alternative dispute resolution."

By enacting this ethical obligation, the European Code of Conduct not only promotes the goal of providing speedy, efficient and inexpensive resolution of disputes, but also requires lawyers to be informed and prepared to advise their clients about ADR as a possibly more efficient and effective means of resolving disputes. A similar Rule is contained in the Code of Conduct for Spanish lawyers, which imposes a duty to advise the client, even in writing

if the client so desires, regarding the convenience, possibilities and desirability of extrajudicial settlements and alternative solutions to litigation (Rule 13.9.e).

In order to satisfy this duty and alleviate demands on overburdened court systems, lawyers should be familiar with and able to explain and use ADR options. They should educate themselves about available ADR processes and how to assess a variety of ADR methods in order to counsel clients about these processes and represent clients in ADR proceedings. If the lawyer does not know that ADR methods exist, the client will not be able to use an option that would be clearly beneficial, saving both time and expense while at the same time serving the collective social, political and legal values that dispute resolution implies.

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**Judge María Rosario García Alvarez at her office at the Labor Division of the Madrid High Court of Justice**

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from the Westerham Academy in Germany. Under Galyna's leadership as manager and trainer, the Ukrainian Mediation Center of the Kyiv-Mohyla Business School has become a partner in the joint business and mediation training project of CCI with the Academy of the Chamber of Commerce and Industry for Munich and Upper Bavaria. The Ukrainian Mediation Center is conducting the implementation of this international training program in Ukraine.

In November 2014, Galyna's presentation on mediation in Ukraine, titled "Location Factor in Global Competition: Germany, Poland and the Ukraine in Focus" was held at the International Conference of Alternative Dispute Resolution in Munich, Germany. On October 9, 2014, the National Association of Mediators of

Ukraine officially became a registered organization in Ukraine. Galyna was appointed President.

During the 2013-2014 academic year, Galyna participated in an international research study, the result of which is the Compilation of Case Studies (within the framework of two projects: SCOPES (Switzerland, 2013) and The Variegated Landscape of Mediation (Utrecht University, Netherlands, 2014). One of the cases published in the Compilation of Case Studies, prepared jointly with partners from the University of Fribourg (Switzerland), was selected through a double-blind review process and was presented at the annual EuroMed conference that took place in Estoril, Portugal, in 2013. ■

# THE 2015 WEINSTEIN JAMS INTERNATIONAL FELLOWS



JAMS is proud to welcome this year's class of Weinstein JAMS International Fellows. During their time in the U.S., Fellows may be based in a JAMS Resolution Center where they will learn more about dispute resolution processes and practices and pursue a project of their own design that serves to advance the resolution of disputes in their home countries.



**MIJAD ABDELAZIM AHMED** is an Associate Weinstein JAMS Fellow from Sudan. As part of her Associate Fellowship, Ms. Abdelazim Ahmed intends to augment her background in international relations by attending dispute resolution training courses and by observing mediations at JAMS. Upon her return to Sudan, she hopes to assist in the establishment of local ADR centers to provide dispute resolution training in rural areas throughout Sudan.



**DIMITRA GAVRIIL** (*Greece*) Ms. Gavriil is an attorney, certified mediator and founder of Metaplasis, the first volunteer community dialogue center for dispute resolution in Athens. She also serves as a member of Mediators Beyond Borders International to facilitate public dialogue regarding immigration and school violence. While in the U.S., Ms. Gavriil will focus on exploring community mediation and restorative justice practices to expand dispute resolution services to schools, courts, prisons, and juvenile institutions in Greece.



**NURIA GONZALEZ-MARTIN** (*Spain*) Ms. Gonzalez-Martin is a certified mediator in family, civil and commercial law as well as a professor and senior researcher at the Law Research Institute of the National Autonomous University of Mexico. As part of her ongoing comparative research in cross-border child abduction and protection issues, Ms. Gonzalez-Martin intends to expand the use of ADR in international family law cases. Upon completion of her fellowship, Ms. Gonzalez-Martin plans to promote conflict resolution by establishing further ADR processes within academic, judicial and governmental sectors in Mexico.



**MOHAMMAD ABDUL HALIM** (*Bangladesh*) Mr. Halim is Additional District and Sessions Judge at the Jhalokathi District Court. During his fellowship, he will pursue his graduate studies at Loyola Law School with emphasis on court-connected programs and dispute resolution practices. Upon his return, he intends to improve access to justice by implementing court-connected dispute resolution programs throughout the court system. Mr. Halim also hopes to establish a private ADR service center to further promote dispute resolution and community mediation in Bangladesh.



**ELIE JEBRAN** (*Lebanon*) Mr. Jebran is a judge of the Court of Appeal of the Civil and Commercial Division at Jdeidet-el-Metn and a law professor at the Lebanese University. As part of his fellowship, he will focus on further developing his understanding of court-connected ADR processes to develop dispute resolution programs for the Lebanese judiciary. He also intends to establish a graduate program in ADR at the Lebanese University in 2016.



**JIANG LIPING** (*China*) Ms. Jiang is a mediator at the Shanghai Commercial Mediation Center and former judicial assistant at the Dongguan Municipal No. 2 People's Court, a national pilot site for the implementation of court-connected ADR programs in China. While in the U.S., Ms. Jiang will focus on further developing her mediation skills by observing mediations and meeting with ADR practitioners. Upon her return from her fellowship, Ms. Jiang intends to promote the establishment of private mediation in China as a complement to existing court-connected ADR programs.



**HARRISON MUTABAZI** (*Rwanda*) Mr. Mutabazi is a judge and president of the intermediate court of Gicumbi. In his judicial capacity, he has served as point person to the Chief Justice of the Rwandan Supreme Court regarding the integration of mediation in the Rwandan courts. Following his fellowship, he will continue his work with the judiciary to implement a national ADR system to complement traditional forms of cultural mediation with court-connected dispute resolution programs in Rwanda and throughout the East African community.



**OLABISI TOLU OBAMUROH** (*Nigeria*) Mr. Obamuroh is a lawyer and doctoral candidate at Penn State University Dickinson School of Law, specializing in international arbitration. Upon completion of his doctoral degree in juridical science, he intends to work at the Lagos Court of Arbitration to provide arbitration and mediation services to promote ADR as a stimulant for economic growth. Additionally, Mr. Obamuroh will teach a course on international arbitration and ADR at the University of Lagos-Negotiation and Conflict Management Group (NCMG) College of Negotiation.



**FELICITAS PALLER** (*Austria*) Ms. Paller is a judge of the Vienna Commercial Court and founder of its court-annexed mediation program. As part of her fellowship, Ms. Paller will focus on designing a standardized program to facilitate the expansion of court-annexed mediation throughout the court system in Austria. Ms. Paller also intends to continue to develop her skill as a mediator by observing mediations at JAMS.



**MACIEJ TAŃSKI** (*Poland*) Mr. Tański is the director of Partners for Democratic Change Poland. A mediator, trainer and consultant with more than 20 years of experience, he is a member of the Council on ADR, an advisory board to the Minister of Justice. Upon his return, he intends to provide recommendations to reform the legal framework of mediation and to develop sustainable centers for mediation research, education, training and practice in Poland and throughout the Central and Eastern European region.



**DO THANH THUY** (*Vietnam*) Ms. Do is an intellectual property lawyer and ADR practitioner. As a pro bono mediator at the Indochina Commercial Arbitration Center, she mediates disputes involving intellectual property and commercial contracts. As part of her fellowship, Ms. Do will continue to refine her mediation skills as well as explore ADR processes to facilitate the mediation of disputes involving intellectual property in Vietnam.



**MAYU WATANABE** (*Vietnam*) Ms. Watanabe is a doctoral candidate in business law at the Graduate School of International Corporate Strategy at Hitotsubashi University, specializing in dispute system design. While in the U.S., she intends to complement her theoretical research with practical experience by observing mediations and other dispute resolution practices with the goal of establishing a private dispute resolution service provider in Japan.

# MEDIATOR CERTIFICATION IN NEPAL

By **Badri Bhandari** (Nepal, Class 2009)



**BADRI BHANDARI**

Nepal, Class 2009

There is a long history of out-of-court settlements of disputes in Nepal. Prior to the enforcement of the Mediation Act in 2011 and mediation regulation legislation in 2014, the training time and curriculum for mediators varied, and there was no uniformity in the trainings provided to mediators by different organizations. With the enforcement of the new law, mediation has become a regulated profession. The law acknowledges the traditional community and indigenous dispute resolution mechanisms, and such practices are

monitored by a committee constituted at the district level. The new law provides for a Mediation Council as its centerpiece in the licensing, monitoring and supervision of mediators. The provision of the Mediation Council—served by the sitting justice of the Supreme Court as the chairman and the Registrar as the member secretary—has created a regulatory mechanism for the practice of mediation at both personal and organizational levels.

Like other professionals, a mediator has to have a mediation certificate issued by the Council, which must be renewed every three years. Any institution providing mediation services is likewise required to obtain a mediation certificate from the Council. The rules, procedures and the curriculum intended for mediators must be approved by the Council, which also monitors mediation activities and the implementation of a code of conduct for mediators.

The mediation law is procedurally similar to arbitration in terms of the number of mediators and coordination amongst the mediators. If there is a provision in an agreement regarding the appointment and the number of mediators, the mediators are appointed as provided in the agreement. In the absence of

such a provision in the agreement, parties appoint a mediator by mutual consent. Like arbitration, one or three mediators can be appointed. In case of appointment of three mediators, each party appoints one, and the third is chosen either by the two parties or by the two mediators appointed by the parties, and the third mediator acts as the coordinator of the mediators.

Mediation certificates are issued by the Mediation Board for three years and can be revoked if a mediator is found to have committed fraud or forgery while working as a mediator. The law has prescribed qualifications for mediators. A mediator has to have at least 40 hours of training from an institution recognized by the Council. Individuals under the age of 25 and without a bachelor's degree from a recognized university are not eligible to be certified as mediators. However, if the parties themselves choose a mediator, a person without any training and university degree can work as a mediator. Citizenship is a barrier to serving as a mediator in Nepal because a non-citizen cannot be a mediator unless there is involvement of a foreign party. Mediation organizations also must obtain approval from the Mediation Council to provide mediation services. Corporate bodies' rules and procedures for rendering mediation services need to be approved by the Council.

The practice of mediation has become a regulated profession in Nepal, and mediator certification is now controlled by the institution established by law. The district-level supervision committee is also headed by the district court judge. The law has entrusted judicial and adjudicatory bodies to regulate mediation practice. Yet despite this increasing attention to regulation, the following contradiction remains: On the one hand, the law has introduced the certification process detailing mediator qualifications and established an institution to monitor, supervise and regulate mediation related activities, while on the other, it has recognized mediators without any training or skills. ■



**PETER KAMMINGA**

Netherlands, Class 2011

## MANAGING EXPECTATIONS ABOUT MEDIATION WHEN MEDIATING BETWEEN PARTIES FROM DIFFERENT COUNTRIES

By **Peter Kamminga** (Netherlands, Class 2011)

According to a number of recent studies, business mediation is expanding around the world. As a result, we likely will see a growing demand for cross-border mediation as well. Experience teaches us that these types of mediations can be

particularly challenging. The parties (and the mediator) sometimes have significantly different views about mediation, including what the process should look like and how a mediator should operate. Research indicates that these differences in perspectives may

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hinder the settlement of complex conflicts. Unmet expectations can present unique obstacles and derail a mediation process. Therefore, investing in identifying expectations regarding the mediation process and the role of the mediator may become an important success factor in cross-border mediations.

A recent empirical study published in 2014 supports this premise. The authors of “The Variegated Landscape of Mediation” studied more than 60 different mediation cultures and found significant differences across countries. Moreover, discussions with foreign parties who have participated in mediations in the U.S. also evidence disappointment in or frustration with the mediation process because it did not match their expectations.

The typical challenges that arise out of divergent expectations in cross-border mediations can be categorized as (1) cultural challenges; (2) challenges arising from differences in legal systems; and (3) differences in expectations about the mediation process and the role of the mediator.

First, cultural differences may exist, for example, with regard to the importance of titles, formality and etiquette. A German party may be used to interactions in which parties address each other using their academic titles. Compared to the parties from the U.S., German parties may be also less likely to voice their opinions if not specifically invited to do so by the mediator.

Legal disparities may also cause challenges. The availability of litigation instruments such as class actions and discovery are examples of factors that may drive behavior and influence parties’ eagerness to settle. Similarly, the costs of litigating may vary widely, as may the time it takes to obtain a court decision. In Germany, for instance, a ruling can be obtained relatively quickly and inexpensively, whereas in Greece, the same case may take years, and litigation costs may run significantly higher. These differences will impact parties’ willingness to pursue a case in court or find a mediated solution.

Alongside cultural and legal differences, substantial differences regarding how the parties view the mediation process itself exist. These variations may be less immediately apparent, but they are just as important in terms of the mediation dynamic. Distinctive views regarding mediation exist between Western and non-Western countries, but they are also found between U.S. and European nations. The study referenced above identifies specific mediation worldviews with a variety of trends while illustrating an array of preferences for particular types of mediation. The authors, for example, typify the U.S. and U.K. mediation worldview and approach as “efficient,” the German style as striving for “perfection,” the French style as “conceptualism” and the Dutch style as “pragmatic” (Schonewille and Schonewille, 2014). Each of these styles indicates a specific expectation about the mediation process and preference for a mediator style, suggesting that mismatches may arise easily.

Imagine a defendant from the U.K. who is used to a formal exchange of documents leading up to a mediation. He may be in for a surprise when he finds himself mediating with a French counterpart. These two may have completely opposing views as to how the mediation process should be organized, whether mediation briefs should be used at all and what kind of content should be addressed in the briefs. Or picture a U.S. mediator mediating a case involving a U.S. plaintiff and a Swiss defendant. The mediator may need to explain to the Swiss party why she does not follow a strict agenda during the mediation session. She may also need to decide whether she calls parties by their first names and whether she allows them to interrupt each other freely. If the mediator fails to address these questions, she may unknowingly have offended, or at least confused, the Swiss party, and it may become impossible to make any progress during the mediation without the mediator aware as to the reason why.

Considering these variations, it may be challenging for a mediator to identify and keep track of all the cultural, legal and mediation differences, particularly when the mediator lacks specific knowledge about the parties’ home countries’ legal and mediation cultures. With some research, cultural and legal differences are relatively easy to spot, but the third category can be overlooked easily, even by an experienced mediator. Mediation style and preferences are partly influenced by the local legal culture and practices that have developed over time, but also by who has been training the first mediators in a particular country. How does the legal community perceive mediation? In what types of disputes is mediation primarily used? What are the leading training institutes in the country, and what type of mediation do they teach (e.g., evaluative, facilitative, a mix)? Do courts actively refer cases to mediation, and for what types of disputes? These are all questions that may clarify expectations. What may appear as a stylistic difference can be revealed as essential to the mediation process as confidentiality and neutrality of the mediator. Further, some of these beliefs and expectations about mediation may exist on a subconscious level and may be difficult to detect. In some countries, an evaluative style is simply not considered “real” mediation, and any hint of evaluation may come as a shock.

Based on the Schonewille study, and discussions with foreign lawyers and parties, it appears that some time spent identifying and bridging differences and becoming familiar with specific mediation cultures may pay off during the mediation process. Mediators could greatly benefit from diagnosing and anticipating differences, and working with the parties to overcome them. Consulting with lawyers or ADR neutrals from the parties’ home countries is one way to accomplish this. In fact, the ever-expanding network of Weinstein JAMS Fellows may be a great resource from which to gather such information both before and during mediations.

# THE ESTABLISHMENT OF LOCAL JUSTICE SERVICE CENTERS IN CAMBODIA

By **Savath Meas** (Cambodia, Class 2011)



**SAVATH MEAS**  
Cambodia, Class 2011

During the colonial period and after Independence, Cambodia's courts were organized in a four-tier court system, in contrast to the three-tier system of today, which includes the Court of First Instance, the Court of Appeal and the Supreme Court.

The justice of the peace, known as *Sala Lohuc*, or local legal authority—the fourth-tier court located at both the district and community levels—was empowered to hear and rule on legal

issues regarding minor civil and criminal matters, as well as to mediate and conciliate civil matters. Unlike in other courts, proceedings of the *Sala Lohuc* were more informal, with little or no involvement by lawyers. Criminal complaints were brought by the local police authorities instead of a prosecutor, and the *Sala Lohuc* was free to fashion different sentencing dispositions for offenders, including the use of community service in place of prison sentences.

The *Sala Lohuc* has since been replaced by the Justice Service Center (JSC). The mediation and local justice service is an alternative and confidential method for resolving various types of disputes, including disputes related to minor land disputes, violence, divorce, minor crimes, personal disputes, defamation, debts and money disputes. These involve the use of both mediation and conciliation.

develop the JSCs in order to strengthen and develop mediation mechanisms at the local level and thereby promote access to justice by moving justice closer to the people with the provision of legal consultations and alternative dispute resolution processes to facilitate dispute resolution in a place where disputes normally cannot be resolved.

The mission of the JSCs is to provide training and/or technical advice to community councils on conciliation and certain legal matters, to assess the demand for legal information at the district and community levels, to disseminate necessary legal information to local officials and the public in the district, to mediate and conciliate disputes if parties agree and to provide referral services to disputants whose cases cannot be or are not desired to be resolved at the local level.

Local civil servants and contracting officers with sufficient qualifications and expertise have been assigned by the Ministry of Justice to serve as chiefs and deputy chiefs in each center, with the appointment of a number of assistants who are civil servants currently working in the district offices. The JSC staff has been well-trained in conflict resolution, mediation skills and basic laws; they constitute the professional mediators of the Centers. A mediator's goal is to find a practical solution to the dispute presented while maintaining neutrality.

The main role and responsibilities of the mediators of the JSCs are the following:

- Lead mediation and conciliation session, if parties agree;
- Observe selected mediations that are conducted by community councils and identify the strengths and weaknesses of the mediation or conciliation processes and record the lessons learned;
- Provide recommendations to improve mediations and share best practices among community councils;
- Provide training and advice on legal and mediation matters to community councils;
- Provide training to community councils on the strategy for dissemination of legal information to villagers;
- Provide information on legal procedures (referral services); and
- Develop necessary synergies to liaise with the Courts of First Instance and share relevant information.



**Savath Meas leading a mediation training to new officers of the Justice Service Center (JSC).**

The Department of Mediation and Local Justice at the national level was created through sub-decree No. 240 by the Prime Minister of Cambodia, signed on August 29, 2014. The purpose of the establishment of the Department is to manage and

Mediation simply saves money, time and relationships. In addition, mediation is less risky for opposing parties because they are not at the mercy of a judge or arbitrator.

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# ETHICS, PASSION AND LOVE *By Fernando Navarro Sánchez (Mexico, Class 2013)*



**FERNANDO NAVARRO  
SÁNCHEZ**

*Mexico, Class 2013*

I remember visiting the Weinstein JAMS Fellowship website approximately 746 times during the years preceding the submission of my application. I read the flyer 59 times, and I proofread my file 82 times before sending it. Even then, I felt a mix of confidence and hopelessness about my being selected. And then I made it to the finalist interview round. Little detail: the interview was scheduled for the day after my 27th birthday party. Lucky for Ellen Bass, Jay Folberg, David Brandon and Jay Welsh, Skype doesn't transmit smells (yet), because I had a

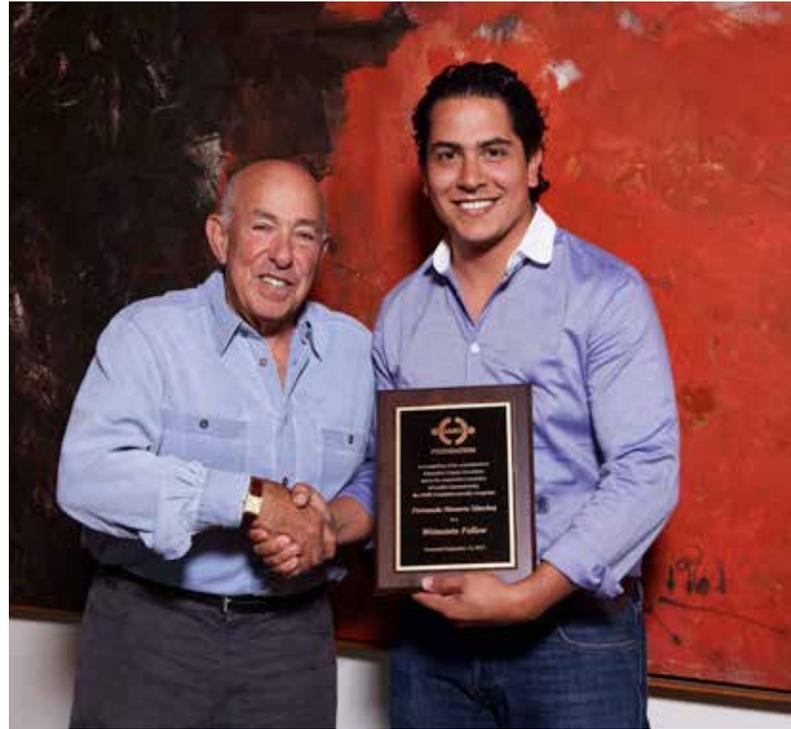
pretty strong hangover that day. Looking back, I think that may have contributed to my success as a candidate. (There's a tip for all future applicants.)

In 2013, I married the love of my life, and she and I drove to California. After three years, I stopped working in a law firm to become a full-time student again to complete my LL.M. And with these recent changes in my life, I started a thrilling experience as a Weinstein JAMS Fellow. I had the opportunity to learn about conflict and the paths to its resolution from some of the most amazing and experienced people in the field at the Straus Institute for Dispute Resolution. I observed mediations in the heart of the most successful mediation institution in the world: JAMS. I learned about mediation from outstanding JAMS panelists in two of the most exciting cities in the world: San Francisco and New York.

But if I were to define my experience as a Weinstein JAMS Fellow in a nutshell, I would say the Fellowship inspired me. I am inspired by the high ethical standards of the JAMS family; by the outstanding passion and commitment JAMS panelists exhibit for what they do, no matter how successful they are or how much they have already achieved; and by their admirable love for their lives and the lives of others and their generosity and humility in opening their hearts and their homes (literally) to complete strangers from all over the world (literally).

The Weinstein JAMS Fellowship supported the pursuit of my LL.M. and helped me become a young ADR professional. But that is only a small part of what being a Weinstein JAMS Fellow has meant to me. The Fellowship has inspired me to return and inspire others in my country and throughout my life to live with ethics, passion and love.

Finally, I want to extend special thanks to the individual who carries all these flags and inspires others everywhere he goes: Judge Danny Weinstein. ■



*Fernando Navarro Sánchez and Judge Daniel Weinstein (Ret.), Weinstein Mediation Center, September 2013.*



*Fernando Navarro Sánchez and his wife Carolina, Weinstein Mediation Center, September 2013.*

# REPORT REGARDING MEDIATION IN SERBIA

By **Blažo Nedić** (Serbia, Class 2012)



**BLAŽO NEDIĆ**

*Serbia, Class 2012*

On October 25, 2014, the Serbian National Association of Mediators (NUMS) was established. More than 120 mediators from all parts of Serbia gathered in Belgrade to incorporate the Association and elect the Managing and Supervisory Boards and the President of the Assembly. Weinstein JAMS Fellow Blazo Nedic, a lawyer and mediator from Belgrade, was elected as the first President of NUMS.

The Constitutive Assembly of NUMS included welcome addresses and presentations by Mihailo Vesovic, Vice-President of the Chamber of Commerce and Industry of Serbia; Justice Ljubica Milutinovic of the Supreme Court of Cassation; Joe Lowther, mediator and Director of the USAID Serbia Business Enabling Project (BEP); Vid Pavlica, mediator of the Slovenian Association of Mediators; and Boris Jukic, attorney and mediator from the Mediation Center of the Croatian Bar Association. Croatian attorney Ana Tuskan read a letter from Srdjan Simac, President of the Croatian Association of Mediators and Weinstein JAMS Fellow (Croatia, Class 2010). The participants were also greeted by Jasmina Pavlovic of the Serbian Bar Association; Ivana Matic, Director of the Bankruptcy Supervision Agency; Radica Dimitrijevic from the Center for Financial Consumers Protection of the National Bank of Serbia; and Vesna Gojkovic, Local Ombudsman of the Municipality of Vozdovac, on behalf of the Local Ombudsman Association.

NUMS is a voluntary, independent, non-governmental, nonprofit association of citizens, established with the aim of promoting mediation as a primary method of conflict resolution and improving the conditions for the use of mediation in all fields. The Association will work on professional development and continuing improvement of mediation skills of its members. One of the most important tasks of the Association will be to raise



**Blažo Nedić and the Serbian National Association of Mediators, October 2014.**

awareness about the benefits and availability of mediation. The Association will establish cooperation with similar organizations in the region and in the world in order to improve the mediation practice in Serbia through the exchange of experience, practice and international standards.

Following the trends in other countries, mediation in Serbia is becoming a recognized and widely used method of dispute resolution. In recent decades, mediation has taken precedence over other methods of alternative dispute resolution in the world and often is the first choice of public institutions, businessmen, lawyers, NGOs and citizens to resolve various types of conflicts, because judicial systems can no longer be efficient without functional connections with mediation services. In order to fully benefit from the potential of mediation in conflict prevention and resolution and to establish an effective and accessible system of mediation services in Serbia, a comprehensive approach including all relevant institutions, organizations and individuals is necessary. In pursuing these goals, NUMS will gather all mediators on a voluntary basis and work to make mediation the primary method of dispute resolution in Serbia. ■



**FRASER SAMPSON**

*United Kingdom, Class 2010*

## AN UPDATE REGARDING U.K. LAW ENFORCEMENT

By **Fraser Sampson** (United Kingdom, Class 2010)

Two years ago, the United Kingdom introduced the first elected police and crime commissioners. And while the concept of elected officials in charge of law enforcement scarcely raised an eyebrow when it was presented to Weinstein Fellows at the Gould Center for Conflict Resolution at Stanford University in 2011 by this author, the notion of

having an elected person in charge of law enforcement is both novel and highly contentious here in the U.K. A critical aspect of the author's Fellowship was based in part on two key elements. The first was to examine how mediation and ADR might be used to better effect in the U.K. to settle community disputes and complaints against the police more generally, and the second was to predict and preempt the prospect of having elected officials directly responsible for local policing across England and Wales

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to help capture the real opportunity for change in this area. It has been more than three years since that presentation to Weinstein Fellows at the Gould Center and since this author published an article in the Oxford journal *Policing* titled “Hail to the Chief: Will elected police commissioners herald a U.S.-style politicisation of policing in the U.K.?” How then does the predicted situation look from the U.K. today?

First, it is fair to say that, across the board, the 41 police and crime commissioners have demonstrated an early and earnest commitment to improving community satisfaction with, and confidence in, the police complaints process. This has been bolstered by extensive political and media attention on causes celebres and public scandal involving police integrity and accountability.

More specifically, several police and crime commissioners have begun to look very closely at mediation processes and restorative programs for resolving police complaints. In West Yorkshire (this author’s own police area covering 2.2m population with an annual revenue budget of around £415m and around 9000 officers and staff) the police and crime commissioner commissioned a report about the police’s handling of complaints and conduct matters. That report (the Crawford Report) praised the innovative work of this author’s Fellowship and recognized the potential for this to be taken further. The police and crime commissioner for West Yorkshire accepted the recommendation that this be explored further, and he has agreed to pilot mediation around some specific community complaints in some cities. Other police areas are

watching closely, while some have already introduced their own form of alternative restorative approaches to resolving grievances and complaints about policing. Meanwhile, the Secretary of State has begun her own wholesale review of the police complaints system and the underpinning legislation, and this author has been invited to contribute to that review as well as to sit on the national boards reviewing the law and procedure governing these areas. In addition, this author has met with several peers in the House of Lords to increase awareness of and support for a restorative and mediated approach to complaints arising out of law enforcement activities and has spoken at several national conferences about this. He has also met with senior figures from law enforcement from Washington, DC, including former U.S. Attorney General Edwin Meese III, and has proposed that suitably trained personnel from the U.K. might usefully be deployed in addressing the community tensions arising out of recent U.S. scenarios such as the shooting and subsequent public disorder in Ferguson, Missouri.

In the meantime, as highly conspicuous and accountable public figures, the police and crime commissioners have had their own share of complaints to deal with. Given the importance of instilling and retaining public confidence in the complaints process as part of the wider accountability of their elected officials, there is a pressing need for a participative, informal and meaningful resolution process. Such a process needs also to be prompt, pragmatic and productive. This sounds like a recipe for mediation.



**FERNANDO NAVARRO SÁNCHEZ**  
*Mexico, Class 2013*

## MEDIATION IN MEXICO: A REPORT ON PROMISING TIMES *By Fernando Navarro Sánchez (Mexico, Class 2013)*

Not long ago, mediation in Mexico was nowhere to be found other than in some international law texts, a lecture here or a law review article there. A little over a decade ago, community mediation centers and some mediation training started to pop up. *Sin prisa, pero sin pausa* (or slowly but surely), mediation has begun to spread throughout the Mexican legal landscape during the past

ten years. States’ congresses began to enact mediation statutes, universities started to offer regular training or curricular classes in ADR with special mediation chapters, the courts began to operate court-connected mediation centers and private mediators started to offer their services.

A long-overdue transformation, the inclusion of ADR in the justice system of the Mexican Republic is undoubtedly good news for the Mexican people, as it is for the country’s social and economic development. In the most recent World Justice Project Rule of

Law Index, Mexico ranked 79 out of 99 countries, and 12 out of 16 in the Latin American regional ranking for Civil Justice, including a low grade in the use of efficient ADR methods.<sup>1</sup>

The Mexican legal system has now entered a promising era that recognizes, regulates and promotes the usage of a broader spectrum of dispute resolution methods.

In a nutshell, here is a summary of some of the most important developments signaling a promising future for access to justice in Mexico through the expanding use of mediation in the nation:

1. In 2008, the Mexican Congress added a provision to the Federal Constitution in which access to justice through alternative dispute resolution methods was encouraged.
2. Twenty-nine of the 32 states now have a public or court-connected mediation center and a mediation statute.<sup>2</sup>

3. In fall 2014, the National Alternative Dispute Resolution Act for criminal matters (the only mediation statute with a federal approach) was enacted, seeking to include mediation and restorative justice among available criminal procedures in Mexico to improve an unsatisfactory criminal system, decrease impunity, give a better attention to victims while also tackling a large backlog in the criminal courts and help to solve the overcrowded prison problem.<sup>3</sup>
4. In addition, most of the states where mediation has been embraced include and promote the use and certification of private mediators for family, civil and commercial matters. This seeks to achieve two goals: (1) to homogenize to the extent possible the knowledge and understanding of the mediation process by certifying previously trained mediators and (2) to give a certain force to the agreement reached before a certified mediator. This is particularly true in states where, as in Mexico City, agreements reached in mediation before a certified mediator have the full force and effect of a judicial decision.

Nonetheless, we are still at the bottom of the hill, and cultural obstacles and natural resistance have yet to be overcome (as happens with every challenging new system). Among the most important milestones in the road to a harmonious development of mediation, besides the natural need for training and promotion, are the following:

**1. Who mediates?** Let's assume for a minute that the market and the rules are ready for mediation. Well, now we have one slight detail left to address: Where do we get our mediators from? There are two points that need to be considered: (1) quality of the mediator and (2) a standard concept of mediation.

- There are a few things happening in Mexico that can help guarantee these concerns are met:
- Public registries of certified mediators (who are homogeneously trained).<sup>4</sup>
- Professional mediators' associations (with codes of ethics, standard training and rules for mediation).<sup>5</sup>

**2. What process?** The last thing we want is people offering mediation services without first establishing basic procedural guidelines. Publicized nightmares of wrongly managed mediation services can hinder the development of mediation in a fresh market like Mexico. In order to mitigate those risks, the following ideas are set forth:

- Mediation acts provide for a rather standard process.
- Professional association rules.
- Abide by model mediation (dispute resolution) clauses and institutional rules.<sup>6</sup>

**3. Confidentiality Protection** Assuring and enforcing confidentiality is a crucial task for mediator promoters and legislators. If lawyers or frequent users start finding opportunities to use mediation in bad faith and discover information to damage the other party in an adversarial procedure or otherwise, mediation will fail. Moreover, mediation requires candor; it is imperative for the parties to trust the process and the mediator (and trust, my friends, is a treasure hard to achieve in a naturally suspicious culture such as Mexico's, as will be referenced below). Here are some ideas to enhance confidentiality protection:

- Thorough confidentiality agreement prior to the mediation, with pecuniary sanctions.
- Due care by the mediator to protect confidentiality within the process through private sessions and without keeping track of the mediation records to the extent possible.
- Legal provisions voiding any information obtained through mediation as evidence in trial.

**4. Time Limits** Besides agreeing to stop a judicial proceeding to try mediation<sup>7</sup>, there is little out there that helps to "stop the clock" for a statute of limitations if a litigation is not running in parallel. Some ideas are as follows:

- For the mediator to be mindful of the timings and take appropriate measures.
- For the parties to agree to start a litigation process (ad cautelam) and immediately ask the judge to stop the clock.

**5. Enforcement of the Mediation Agreement** Suppose we have a shiny and pretty agreement that settles the dispute...and then one party breaches it. What now? Start all over again from scratch? Well, there is important information, as mentioned in the first section of this article, that sheds light on this topic:

- Some states' civil procedure rules give the mediated agreement (in certain circumstances) the force of a judicial decision.
- Where that is not available, the mediator and the parties' lawyers should be careful to draft a good agreement in the form of a settlement agreement (convenio de transaccion), as recognized by the procedural rules in most states, and certify the signatures before a notary public.

**6. Cultural Obstacles** As mentioned above, the Mexican culture is naturally suspicious, and people have a hard time trusting their emotions, financial information and other private matters to the mediator, let alone the other party. For this reason, twice in my (rather short) life as a mediation enthusiast I have heard the same discouraging statement from experienced mediators with connections in Mexico: Mediation won't work in Mexico. But I



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**Back row, left to right:** David Brandon (JAMS Foundation); Amos Gabrieli (Israel); Srdan Simac (Croatia, Class 2010); Jay Welsh (JAMS); Spyros Antonelos (Greece); Hon. Daniel Weinstein (Ret.) (JAMS); Farshad Ghodoosi (Iran); Fernando Navarro Sanchez (Mexico); Ellen Bass (JAMS Foundation); Sayed Abdul Ahad Mansoor (Afghanistan); Asiyen Sulemanoglu (Turkey). **Front row, seated, left to right:** Jay Folberg (JAMS Foundation); Tatsiana Bialiyeva (Belarus); Primila Edward (Malaysia); Lynne Coulson Barr (Australia); Ahmed Mostafa Abou Zeid (Egypt); Teresa Morais Leitao (Portugal)

### The Weinstein JAMS International Fellowship program, inaugurated in 2008-2009 with the first class of Weinstein JAMS Fellows, constitutes the JAMS Foundation's primary international initiative.

Funded to support ADR practitioners worldwide in the promotion and advancement of conflict resolution in their home countries and beyond, the Fellowship program is named to honor the generous financial contribution and visionary leadership of JAMS mediator Hon. Daniel Weinstein (Ret.) and to date has supported international ADR practitioners consisting of judges, lawyers and graduate law students from over fifty countries in their pursuit of a range of independent projects involving court-annexed ADR, community-based mediation, and ADR legislation, among others.

Since 2011, each class of Weinstein JAMS Fellows has come together in September to experience a week-long training and exchange program held in San Francisco at the JAMS Resolution Center and in Napa at the Weinstein Mediation Center. Above is a group photo of the class of 2013 at the Weinstein Mediation Center in September 2013. Below is a group photo of the class of 2014 at the Weinstein Mediation Center in September 2014. The class of 2015, which recently completed its September training program, are featured on pages 10-11.



## WEINSTEIN JAMS INTERNATIONAL FELLOWS CLASS 2014

**Back row, left to right:** Ellen Bass (JAMS Foundation); Mushegh Manukyan (Armenia, Class 2011); Bongkinkosi Petros Mkhize (South Africa); Sherif Elnegahy (Egypt); Francis H.V. Belle (Barbados); Francisco Giménez-Salinas Framis (Spain); Aleksandre Tsuladze (Georgia); Ihsanullah Khan (Pakistan); Ignacio Ripol (Spain); David Brandon (JAMS Foundation). **Front row, seated, left to right:** Hauwa Yakubu (Nigeria); Jay Folberg (JAMS Foundation); Ximena Bustamante (Ecuador, Class 2009); Hon. Daniel Weinstein (Ret.) (JAMS); Parichart Munsgool (Thailand); Kathy Gonzales (Trinidad & Tobago, Class 2012)

# HOW TO SUCCESSFULLY PROMOTE MEDIATION IN CROATIA

By **Srdan Šimac** (Croatia, Class 2010)



**SRDAN ŠIMAC**  
Croatia, Class 2010

The Croatian Mediation Association (CMA) successfully organized its second Mediation Week on October 13 through 17, 2014. The main aim of Mediation Week is to promote mediation visibility in Croatia to the greatest extent possible.

Mediation Week 2014 was notable in that the year marked the first non-material sponsorship of CMA from the following governmental entities: the Ministry of Justice, the Ministry of the Economy, the Ministry of Social Affairs and the City of

Zagreb. The City of Zagreb provided CMA with five billboards for use within the city. CMA designed five large posters, enabling mediation to be visible throughout the city for the first time to thousands of people. In addition, for the very first time, the City of Zagreb allowed CMA to use a booth on the main city square for two days to promote mediation. Members of CMA's Young Mediators Club did an excellent job speaking about mediation and offering people informational flyers, candies and fruit.

The five days of Mediation Week were filled with different mediation activities, such as lectures, workshops and roundtables. For example, CMA visited two primary schools and held a peer (school) mediation workshop, a restorative justice workshop, a workshop for inexperienced mediators to exercise mediation role-plays, a family mediation roundtable, two mediation workshops for the public, a roundtable with Croatian mediation institutions, a roundtable with corporate lawyers and business executives regarding their roles in mediation promotion and, finally, a lecture regarding the current mediation situation in Croatia. The peak of Mediation Week was a celebration of World Conflict Resolution Day, held on October 16, 2014, in a very prominent facility in the center of the city and attended by many prominent guests,

including two Deputy Ministers and a Deputy City Mayor. It was really something! The highlight of the day was the Deputy Mayor's nomination of a City Mediation Commissioner.

CMA invited members of the public interested in resolving disputes through mediation to schedule a free mediation if requested during Mediation Week. Phones did not stop ringing! About 20 free mediations resulted.

Many people came to CMA's facilities to learn more about mediation. Two public workshops were especially impressive. The first workshop encompassed an introduction to mediation, and the second focused on mediation role-play.

With the help of CMA's young public relations team, Mediation Week succeeded in attracting media attention as never before, including numerous announcements through social media, articles in newspapers and promotion on radio and television. CMA received 71 minutes of radio time and 75 minutes of television time, as well as 27 articles published online and 7 in newspapers.

Through these efforts, we realized that the biggest challenge to the growth of mediation in Croatia is a lack of information about mediation and its advantages. CMA made great strides in disseminating information about mediation with the help of the media. Many journalists were impressed with the idea and promised to help CMA again.

Our goal is for Mediation Week to become a tradition in Croatia. It is not difficult to conclude that after any kind of public mediation promotion, we see a correlative increase of interest in mediation. Mediation is no longer a dirty word in Croatia. However, we still have a lot work in front of us if mediation is to become widely accepted. I think mediation in Croatia is stepping strongly and persistently forward. I am certain of its great future. ■

## MANAGING EXPECTATIONS ABOUT MEDIATION *continued from Page 13*

What type of information should mediators look for? Some basic issues are, for instance, the parties' expectations about the length of mediations (in some countries, a maximum of two hours per session is expected, whereas in others, mediations may last several days); the customs around agenda setting (a German party may expect a detailed mediation agenda); the tone and approach of the lawyers (more or less formal) in mediation; the structure and focus of both separate and joint meetings (will the mediator evaluate substance and what type of information can be shared with the other party, if any). Mediators may also need to work with the parties to overcome a negative perception of certain mediation practices, such as the use of meeting separately with the parties. In some matters, a mediator may consider involving

an ADR expert or co-mediator familiar with the legal system and mediation culture from the parties' home countries, whereas in other cases, it may suffice to simply inquire with ADR professionals from the home countries and identify differences so the mediator knows where to pay extra attention.

Different ideas about mediation are leading to wildly differing ideas about what a mediator should or should not do. Research suggests that mediators may greatly benefit from investing their time in studying mediation culture in addition to having an open mind regarding the differences in culture, legal practice and mediation history. The Weinstein JAMS Fellows may be a great source in bridging these differences and a key success factor in cross-border mediation. ■

# THE NEW ITALIAN MEDIATION LAW: EXPERIMENTING WITH A “SOFT” APPROACH TO MANDATORY MEDIATION

By **Giulio Zanolla** (Italy, Class 2009)



**GIULIO ZANOLLA**  
Italy, Class 2009

Mediation was first introduced as a prerequisite to litigation in the Italian legal system in 2011, when the government issued a decree to implement the EU Mediation Directive of 2008. This legislative measure sparked a mix of enthusiastic reactions and harsh criticisms that culminated with lawyer strikes against its implementation. In 2012, the mandatory provision of the mediation regulation was declared unconstitutional, but the Constitutional Court's decision was based on the

government's lack of legislative legitimacy to impose the mandatory requirement, rather than on the illegitimacy of the mandatory requirement itself.

The heated debate on the mediation regulation continued inside and outside the rooms of policymakers and led the Italian Parliament to enact a law in 2013 re-introducing mandatory mediation for certain civil and commercial actions in a mitigated form. The new mediation law, which is not affected by the constitutionality issue of the previous regulation, aims to address the concerns brought by a sector of the legal community claiming that the prerequisite of participating in mediation prior to bringing a legal action unjustly burdens and restricts disputants' rights to access to justice. Unlike the previous regulation, the new Italian mediation law mandates that parties in certain civil and commercial disputes attend only an initial information session with the mediator; it does not require parties to participate in an actual mediation process as a prerequisite to litigation. The parties remain free to opt out of the mediation before the actual process starts and without any consequence for refraining to continue in mediation.

Through the initial information session, the parties have an opportunity to learn about the mediation process and make an informed decision regarding whether to attempt an out-of-court resolution through mediation or to initiate litigation. The

information session is free of charge, and parties who refuse to attend the session are subject to sanctions in the subsequent trial. Only if all the parties agree to proceed with mediation will the mediator formally commence the procedure and begin to facilitate discussions of the disputed issues. With the new Italian mediation law, the parties' participation in the actual mediation process is fully voluntary. The parties' only mandatory requirement is to educate themselves about the option of mediation through the initial information session.

Recent statistical data available from the Ministry of Justice regarding the first six months of 2014 demonstrates that more than 22 percent of all disputes for which the initial information meeting is mandatory and more than 50 percent of disputes mediated by deliberate initiative of the parties are resolved without recourse to court litigation. In a little over a year since enactment of the law, the benefits of the new law are tangible, not only for those parties who resolved their disputes without litigation, but also—and especially—for the overwhelmed Italian judicial system as a whole, and ultimately for all taxpayers.

Most important, each of the numerous information sessions and mediations that took place but did not result in settlement created a concrete opportunity for parties and attorneys to familiarize themselves with the mediation process and educate users about mediation, thus contributing to the development of the culture of mediation throughout the country.

If we believe that the principle of voluntariness is of fundamental value to the mediation process and if we agree that the need for user education is a critical element in the development of a culture of mediation, the Italian mediation law could represent a balanced solution to the question of how to promote the use of mediation through legislation.

The next few years' statistics will reveal whether the number of parties who choose to continue in mediation past the initial information session, and the concomitant overall settlement percentage, will grow thanks to an increased level of awareness and sophistication among mediation users. ■

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## MEDIATION IN MEXICO *continued from Page 18*

happen to be Mexican, and I think it does work and will continue to work even better. Among the things that can help overcome such cultural obstacles are the following:

- Build reputation and meet the highest ethical standards. One's reputation is deemed to be the best marketing tool for

the mediator, so the better his or her reputation, the greater the chance that people will trust him or her.

- Set in practice sanctions from ethical boards in the professional associations.

*continued on Page 22*

# THE CHANGES IN LEGAL INFRASTRUCTURE: EMPIRICAL ANALYSIS OF THE STATUS AND DYNAMICS INFLUENCING THE DEVELOPMENT OF COLLABORATIVE LAW AROUND THE WORLD

By Dr. Paola Cecchi-Dimeglio (France, Class 2011) and Pr. Peter Kamminga (Netherlands, Class 2011)



**PAOLA CECCHI  
DIMEGLIO**  
France, Class 2011

Around the world, the legal profession is undergoing unprecedented changes at the structural, operational and infrastructural levels. To meet these challenges, lawyers are adopting a set of innovative practices. The growth and implementation of these practices depend significantly on lawyers' perception of these new practices. As advisers, lawyers play a pivotal role in guiding their clients to use certain forms of dispute resolution. Nonetheless, the perceptions of innovative practitioners

have not yet been explored in great detail. This study is a step forward in bridging this gap.



**PETER KAMMINGA**  
Netherlands, Class 2011

For the purpose of analyzing the perception of innovative practitioners and the environment in which they operate, we used collaborative law as a case study. In this study, we surveyed 226 respondents from 19 randomly selected countries. The respondents' prime characteristics are that they officially registered themselves as collaborative practitioners and qualified collaborative law as one of their specialties (N=226). The data collected was analyzed through the use of multivariate regression.

This study aims to deepen our understanding of how innovative practitioners perceive their environment. The main findings are summarized as follows:

## MEDIATION IN MEXICO *continued from Page 21*

- Build trust with the parties in each particular mediation. For this purpose, even pre-mediation sessions with each party shall be considered. Thus, on the mediation day, the ice has been broken, and the parties both trust the mediator by then. Pre-mediation sessions in this young Mexican market shall serve to (1) educate the parties in mediation, (2) gain commitment from the parties to the process and (3) earn the parties' trust. Needless to say, the mediator shall be as transparent with the parties as possible, while at the same time protecting confidentiality.

**7. Lawyers' Resistance** There may be resistance from lawyers who feel mediation is a threat to their jobs. It is through training, for both mediators and advocates, and by offering alternatives

First, we found that collaborative law practice has been only recently established in most of the countries that were part of this study. Second, innovative practitioners' perception of the percentage of lawyers in their country who have heard of, and been introduced to, collaborative law is low. Third, the data reveals that the main area of perceived practice is family law.

Also, these findings are similar to those of earlier studies with regard to the success rate and motives that drive clients to use collaborative practice. Our findings, however, pinpoint a gender difference between female and male practitioners, especially regarding the main motive identified with respect to a client's use of collaborative law.

Furthermore, more than 90 percent of respondents reported that collaborative law is perceived negatively or is a practice unknown to other members of their legal community. The findings further explain the motives perceived by the practitioners.

Finally, the study found that practitioners' perception of their environment evolves over time. The study indicates that the longer a collaborative professional is active in the field of collaborative law, the more positive he or she perceives the environment (the legal framework and perceptions of the legal community).

The results highlight some areas that deserve additional study to further deepen our understanding of the use of innovative practices such as collaborative law, and, more broadly, the changes occurring in the legal profession. ■

<sup>1</sup> The full version of the article is available, see Cecchi-Dimeglio, P., and Kamminga, P. (2014), "The Changes in Legal Infrastructure: Empirical Analysis of the Status and Dynamics Influencing the Development of Innovative Practice," *Journal of the Legal Profession* 38(2): 191-230.

to the billable hour (i.e., a fee for settling the case) that this resistance can be gradually overcome.

With care, diligence and appropriate marketing, mediation has the potential to become the next big thing in the Mexican legal system. Stay tuned. ■

<sup>1</sup> <http://data.worldjusticeproject.org/pdf/rule-of-law-index-MEX-full.pdf>.  
<sup>2</sup> Gonzalez Martin, Nuria, "El ABC de la Mediacion en Mexico," in Vega, Juan (Coord.), *Libro homenaje a Sonia Rodriguez Jimenez*, Mexico, IJJ-UNAM, 2014, p. 7, available online at <http://www.asadip.org/v2/wp-content/uploads/2013/12/NURIA-El-ABC-de-la-mediacion-en-Mexico.pdf>.  
<sup>3</sup> When a majority of the prisons' population committed small robberies or other minor felonies.  
<sup>4</sup> For instance, Mexico City certifies and offers a registry of previously trained private mediators, which can be found in Spanish at [http://www.poderjudicialdf.gob.mx/work/models/PJDF/PDFs/org\\_dep/cja/Reglas\\_Mediador\\_Privado%20.pdf](http://www.poderjudicialdf.gob.mx/work/models/PJDF/PDFs/org_dep/cja/Reglas_Mediador_Privado%20.pdf).  
<sup>5</sup> Several operate already.  
<sup>6</sup> Three of the main ADR institutions operating in Mexico (CANACO, ICC and CAIC) have mediation rules.  
<sup>7</sup> E.g., Article 1208 of the Mexican Commercial Code.

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## TEACHING ADR TO HELP LAWYERS

*continued from Page 9*

However, the real situation in both Europe and Spain is that lawyers are, in general, poorly informed about ADR options, despite the efforts of legislators, practitioners and courts promoting and encouraging the use of ADR methods, specifically mediation.

If assessing the best and most cost-effective resolution of a client's dispute is part of an explicit professional obligation for our lawyers, national bar associations and law schools should help them fulfill their duty and role as counselors, for example, requiring them to complete mandatory continuing legal education courses in dispute resolution and ethics incorporating information about ADR. Mandatory courses for current and future practicing lawyers might be one way to ensure that, at a minimum, lawyers are informed about mediation and other alternative methods to resolve disputes. Incorporating ADR course requirements in law schools will also educate and prepare future lawyers to counsel clients about alternative processes for resolving disputes. The challenge and duty to prepare future lawyers for society is even greater if we consider the mandatory bar exam requirements, because according to Spanish law, each prospective lawyer is required to receive substantial instruction in professional skills, generally regarded as necessary for effective and ethical participation in the profession.

These changes, although they may seem very logical, are nonetheless not taking place in reality in Spain. Very few Spanish legal institutions and law schools offering master's degrees for admission to the Bar are including ADR instruction. One commendable exception is ICADE School of Law, which, among more traditional subjects, integrates counseling, organization and management of legal work, negotiation, arbitration, mediation and dispute resolution in its curriculum as part of the subjects required to be taken for the bar exam that fulfill the professional and ethical duties stated in the Code of Conduct for lawyers on counseling clients regarding their ADR options.

This past academic year, I had the pleasure to teach a practicum course on dispute resolution and mediation at ICADE. I had just under 50 students. This year, the number has doubled. I have been pleasantly surprised by the substantial interest in the subject from these future lawyers, which confirms that mediation and dispute resolution are not merely passing trends or of interest to only a few of the dispute resolution-conscious.

Expanding perspectives on the lawyer's role in society as dispute resolvers and participants in mediation, increasing familiarity with alternative dispute processes, promoting critical thinking about lawyers' responsibility and exploring the connections between social and legal institutions and court interests—in other words, helping future lawyers to better serve their clients and society—has improved my judicial perspective and allowed me to fulfill the fundamental mission of all legal professionals, helping people to help people in conflict. ■

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## SERVICE CENTERS IN CAMBODIA *continued from Page 14*

A 2013 report from the Cambodian government, the Ministry of Justice and the Department of Mediation and Local Justice details the establishment of 31 JSCs at the district level in nine provinces in Cambodia, which had received and mediated a total of 1,510 cases, of which only 609 cases were completely mediated. Whereas, at the community level, 56 community dispute resolution committees (CDRCs) received and mediated a total of 1,808 cases, of which 1,253 cases were successfully mediated. The majority of cases received and mediated were related to domestic violence disputes, with those related to land disputes second.

The case numbers received by the JSCs and CDRC mediators have increasingly contributed to the settlement of disputes in local communities and districts. Local mediators are most important in providing mediation services for local disputes close to the community, where people cannot find justice in the formal justice system. ■

# GLOBAL CONNECTIONS

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If you have any questions or comments about Global Connections, please email Ellen Bass at [ebass@jamsadr.com](mailto:ebass@jamsadr.com)

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