

Stanford Law School

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2007 - 08 ANNUAL REPORT
GOULD NEGOTIATION AND MEDIATION PROGRAM
THE MARTIN DANIEL GOULD CENTER FOR CONFLICT RESOLUTION
STANFORD LAW SCHOOL

This marks the twelfth year of Stanford Law School's Gould Negotiation and Mediation Program, and the third under Jan Martinez' direction. The established curriculum to teach problem-solving skills and theory through a carefully sequenced series of courses continues, with a number of new directions initiated in teaching, outreach, and research. Our faculty is experienced, well-trained, and highly respected in both the law school and the dispute resolution community. Over eighty percent of the law school's students take at least one course in our program; teachers on the Negotiation and Mediation Team taught a total 250 students during a semester-long course this year.

Below is a more detailed look at our current curriculum at Gould; other related law school offerings; our faculty; our research; our work with alumni and others in the ADR field; and a sampling of the speaking, teaching, and publishing done by our faculty outside of the school.

THE NEGOTIATION AND MEDIATION CURRICULUM:

This year we offered seven different courses in the Negotiation and Mediation Teaching Program:

Class	Number of Sections	Number of Students
Negotiation Seminar	7	142
Mediation Seminar	1	18
Advanced Negotiation: Transactions	2	31
Advanced Negotiation: International	1	11
Conflict Resolution System Design	1	12
ADR: Law, Policy & Practice	1	30
ADR Externship	1 (Pilot)	6

Two hundred and fifty students took a course in the program in 2007-08. Most classes were full with waiting lists, reflecting the continuing demand for these legal practice classes. Course evaluations were consistently high (4.0? – 5.0). Appendix A summarizes the Program's courses and faculty over the last four years.

Negotiation. These four-unit classes typically meet for four hours each week and require up to five hours of negotiation outside of class in the last weeks of the term beyond the usual reading preparation; full attendance is required. Students complete at least one negotiation each week and must demonstrate extensive preparation before and reflection after they negotiate. Our student-teacher ratio generally is capped at 20:1, and in several classes we bring in specially trained coaches to provide additional individual attention. In addition, students meet with their teachers individually or in pairs at least once each semester to review videotaped negotiations and discuss individual goals. We also arrange for “cross-cultural” negotiating experiences with students in other schools and disciplines. In 2007-08, students negotiated via email with business students at UC-Berkeley and law students at both Berkeley and Hastings College of the Law.

One continued innovation was to open two sections of Negotiation to non-law students; during the winter quarter, Michael Dickstein taught one section of Negotiation with half of the twenty students from other graduate schools. The mix was well received as an opportunity for law students to represent non-law students as clients, and vice versa. The Negotiation section taught by Linda Netsch and Janet Martinez was especially designed for students in the Masters of Public Policy Program, and also included both law and other graduate students. Of particular note was Dickstein’s arrangement with the St. Lawrence Quartet and Rob Kapilow from NPR to give an interactive guest presentation on communication and negotiation in the context of a string quartet's preparation and performance. Also of note, Julie Kennedy hosted a panel of senior negotiators to talk about negotiation practice: Mohan Giridharadas, Director of McKinsey& Co, and David Rentfro, Partner of Rainbow Restoration (large construction management).

Advanced Negotiation. This year, we offered two sections of Advanced Negotiation (Transactions). Ralph Pais continues to explore collaboration opportunities with Mike Klausner’s “Deals” classes to link their respective law and practice emphases.

Jonathan Greenberg taught one section of Advanced Negotiation (International) this year, in which students studied a range of international public and private negotiations in the security, commercial, diplomatic, and environmental arenas. The class was fortunate to host a number of special guests: Jesús Almoguera, Partner, Ashurst; Steve Smith, Director of International Arbitration and Partner, O’Melveny & Myers; John Kamm, Founder and Director, Dui Hu Foundation; Thomas Graham, former Director, United States Disarmament Agency; Abraham Sofaer, Hoover Institution and former Legal Advisor, U.S. State Department; and Daniel Snyder, Associate Director, Stanford Asia Pacific Research Center (APARC).

The two spring advanced negotiation classes did a joint full-day negotiation simulation on climate change. Students played the role of the secretariat, or one of 23 country ambassadors, in negotiating the provisions of and compliance with an international treaty.

Mediation. One section of Mediation was offered this year. Practicing mediators served as coaches for several classes and students were offered the opportunity to observe and practice mediation in the pilot ADR Externship (see below).

Conflict Resolution System Design. Other Gould courses focus on negotiating or resolving discrete disputes; this course involves the design and implementation of a set of dispute resolution processes with the capacity for handling a category of disputes on a proactive, anticipatory bases. Processes may involve negotiation, mediation and arbitration, as well as other hybrids. Guest presentations included: P.D. Villarreal, General Counsel of Schering-Plough (by videoconference); Colin Rule of E-Bay/PayPal; Howard Herman, Director of ADR, US District Court for the Northern District of California; Prof. Francis McGovern of Duke Law School; David Rasch, Stanford University Ombudsman; and David Kovick, SLS '04, of the Consensus Building Institute, who has worked on mediating land disputes between the Israeli government and Arab Israelis in the Negev. Ms. Smith with Sim Avila, a Negotiation Lecturer and Counsel for the University of California, developed a new case on how to design university systems to address issue of students with mental disabilities, including threats of violence to self or others (as in the Virginia Tech case). Guest speakers included Dr. Alejandro Martinez, Director of Counseling and Psychological Services at Stanford, and Paul Grossman, Chief Civil Rights Attorney with the Department of Education's San Francisco office.

ADR Law, Policy and Practice. The course focused on the policy and legal development of alternative dispute resolution, together with some exposure to practice with guest appearances of leading practitioners in mediation and arbitration in a range of contexts. Julie Kennedy and Michael Dickstein developed supplemental sessions on litigation for two reasons: first, to give students a more concrete sense of "alternative" in ADR, and secondly, to provide a better sense on how ADR is often pursued in parallel, rather than in lieu of, litigation.

ADR Externship. This new course was offered this year on a pilot basis to provide students co-registered in ADR or Mediation a chance to observe and participate in ADR practice. Students met periodically to discuss ADR theory and observed cases. Students had three options: JAMS, a national, private third-party provider; the San Mateo County Family Court and the San Mateo County Small Claims Court.

Interpersonal Influence and Leadership. The Interpersonal Influence & Leadership course adapted from GSB was piloted at the Law School under Gould and is now in its fourth year. Due to logistical support issues, the course was transferred to GSB this year (but still only open to non-GSB Stanford graduate students). The course has been highly popular with law students.

WORKING WITH LEGAL RESEARCH & WRITING COURSE:

Jeanne Merino invited the Gould team to develop a negotiation component of the required LRW course for 1Ls. Michael Dickstein spearheaded the module design to include two sessions: the first was a presentation of negotiation and ADR theory overview, and the second was facilitated application of negotiation principles to the case students had been researching all term. The module was well received and will be provided again next year, in a slightly expanded version.

WORKING WITH THE CLINICS:

Larry Marshall, the director of the Mills Legal Clinic of Stanford Law School, has welcomed collaboration between the law school's many clinicians and the teaching team at Gould. We regularly attended clinic faculty meetings and have been part of efforts to coordinate and integrate our respective curricula. We also continue to teach individual clinic classes on negotiation tailored especially to the substantive problems that students in each different clinic face, especially the community law, immigration and environmental clinics

WORKING WITH STANFORD UNIVERSITY

We started a cross-Stanford negotiation teaching group with faculty from Engineering and GSB to share teaching ideas (e.g., game theory, case teaching) and coordinate cross-school negotiations.

Jan Martinez offered a negotiation session to alumni of the engineering school, and developed three sessions within a special skills course for graduate biomedical science students at Stanford Medical School during the spring quarter. The course was very well received and will be offered again next year. We are optimistic that given the Law School's vision of interdisciplinary education, it would make sense for the Gould Negotiation & Mediation Program to serve the University more broadly, as is currently the case with SCICN.

NEGOTIATION RESEARCH:

Last year, the Gould teaching faculty continued its research project on effective lawyer-client preparation and negotiation, with special survey data capture in all Negotiation sections. Jared Curhan, associate professor at MIT's Sloane School of Business, continues to consult with the Gould team on design of our research and collaborate on the lawyer-client negotiation studies.

A second area of research is to develop a course book on Conflict Resolution System Design. This course is taught at a number of law schools, but only articles and select textbook chapters are currently available. Stephanie Smith, who teaches Gould's course, and Janet Martinez, whose doctoral research was in this field, are collaborating with Robert Bordone at Harvard Law School and Lisa Bingham at Indiana University. Smith and Martinez presented at symposia for the topic at both Harvard Law School and the ABA annual meeting.

A third ongoing effort is on development of teaching cases. We have in process negotiation teaching cases on bankruptcy, intellectual property, airline operation, the Georgia pipeline, and the Writers' Guild of America strike. Harvard Business School is interested in carrying our cases, if we decide on that mode of distribution.

NEW DEVELOPMENTS:

- *Visiting scholars & researchers.* Professor Deborah Kolb (Deloitte Ellen Gabriel Professor for Women and Leadership at Simmons School of Management) is visiting Stanford University's Clayman Center in 2008-09 is a world-known negotiation scholar; we anticipate that we will engage her in substantive discussions with our faculty and classes. Also, Gould hosted two visiting researchers, Paola Cecchi from Montpellier University School of Law in France and Peter Kamminga of Tilburg University School of Law in the Netherlands; both are completing their doctoral dissertations on conflict resolution in international franchises and the construction industry, respectively. Lastly, Ray Prasad, a judge with the telecommunication tribunal in India, visited the Stanford Department of Economics, Center for International Development, this spring and consulted with Stephanie Smith and Jan Martinez on the design of telecommunications dispute resolution systems worldwide. We look forward to encouraging additional visitors – academics and practitioners alike -- to visit for some period, to participate in classes, meet with students and faculty to stimulate our teaching and course development.
- *Web/publishing.* The Gould Program will update its web description and provide links to professional work opportunities and curriculum offerings.
- *Executive education.* A number of the Gould faculty offer executive education training for lawyers, public and private executives. Negotiation workshops can be highly lucrative, but require significant marketing and program management expertise. We would like to explore offering a pilot negotiation workshop, either partnered with other SLS alumni and executive programs, or as a standalone pitched at high-level lawyer/client teams in a specific field, e.g., intellectual property. If successful, such revenue could fund some of the other program activities proposed above. Allen Weiner of SCICN is interested in possible partnering as well.
- *Negotiation Roundtable.* We have already a group of cross-disciplinary faculty interested in negotiation and would propose organizing around a specific topic, e.g., energy, or intellectual property. The group would meet periodically for some specified period, then consider whether interest in the topic warrants a public colloquium to invite leading scholars and practitioners in the field, and publish the proceedings.
- *2002 Fellowships.* The Class of 2002 Conflict Resolution Fellowships was a 5-year program that expired last year. The alumni are keen to raise funds to continue the program, and there are a number of law students who are anxious to undertake a research project.

FACULTY:

The Gould Negotiation and Mediation Program courses are taught by ten lecturers, coordinated and led by Senior Lecturer and Program Director, Jan Martinez. We have been fortunate to recruit highly qualified lawyers and mediators to teach throughout the program. All lecturers have been selected for their seniority in legal practice, legal judgment, effective teaching, and skill in either negotiation or mediation. We increase our lecturers' knowledge of negotiation and mediation theory and research by requiring each lecturer to sit in on a full semester's seminar before he or she begins teaching and by holding frequent substantive team meetings.

Classes are full, teaching evaluations are high, and the reputation of good work at Gould is strong. All of our Negotiation Seminar faculty have returned and are teaching overflowing classes. Members of the team also contributed to the ADR world in many other ways. [See Appendix B].

NORTHERN CALIFORNIA ADR FACULTY COLLABORATION:

This year we once again coordinated and hosted the Fifth Annual Conference of Northern California ADR Faculty. The Conference was held at the law school and attracted both great presenters and a large number of faculty from Northern California. This year's focus was on social psychology of ADR. Professor Donna Shestowsky, a SLS alumna, now at UC Davis School of Law, presented on "What ADR Specialists Need to Know About the Psychology of Persuasion". Professor Parlamis from the University of San Francisco presented on "Letting Off Steam or Just Steaming: the Influence of Venting Target and Offender Status on Venting".

Appendix A: Gould Negotiation and Mediation Program

	2004-05	2005-06	2006-07	2007-08
# Courses	10	11 + IIL ¹	13 + IIL	14
# Lecturers	6	8 + 1 IIL	9 + 2 IIL	11
# Students	195	219 + 18 IIL	231 + 18 IIL	250
Courses (# sections/ # students)	Neg (7/140) Adv. Neg (2/37) Med (1/18)	Neg (7/151) Adv. Neg (2/39) Med (1/16) Int'l Conflict (1/13) Leadership (1/18)	ADR (1/16) Neg (7/140) Adv. Neg (3/43) Med (1/15) CRSD (1/17) Leadership (2)	ADR (1/30) Neg (7/142) Adv. Neg (3/42) CRSD (1/12) Med (1/18) ADR Externship (1/6)
Faculty (# courses taught)	Avila (1) Curtis (1) Kennedy (1) Martinez (3) Pais (2) Pervere (2)	Avila (1) Dickstein (1) Greenberg (1) Johnson (1) Kennedy (2) Martinez (2.5) Notini (1) Pais (1.5) Robin (IIL)	Avila (1) Dickstein(.5) Greenberg (1) Johnson (2) Kennedy (1) Martinez (3) Notini (1.5) Pais (2) Smith (1) Robin & Bristol (IIL)	Avila (1) Dickstein (1) Greenberg (1) Johnson (1) Kennedy (1) Martinez (2.5) Netsch (.5) Notini (2) Pais (2) Rossiter (1) Smith (1)

¹ Interpersonal Influence & Leadership (IIL) course was included under Gould for 2005-06 and 2006-07. It continues to be offered to law and other non-GSB graduate students, but now is administered at GSB.

Appendix B: Team Members' Individual Accomplishments for 2007-08

Every member of the Gould Teaching Team (except for the Director) has another substantial full-time job. Through that work, many find ways to contribute to the ADR community beyond their teaching at Stanford Law School.

Simao Avila:

- **Office of the General Counsel, University of California.**
- Presented to the National Association of College and University Attorneys. (NACUA) entitled "Disciplining Official Speech: Garcetti v. Ceballos."
- Presented to University of California, Affirmative Action and Equal Employment Opportunity Officers on "Prevention Strategies for Harassment, Discrimination and Retaliation in Employment."
- Presented a seminar with Dr. Charles Scott, Associate Professor, Department of Psychiatry and Behavior Sciences, at UC Davis and Dr. Stephen White, Work Trauma Services on "Threat Assessment and Prevention in the Workplace."
- Presented in Iceland for the Confederation of Employers "Labor Negotiations in the United States and the Duty to Bargain in Good Faith under the LMRA".
- Presented to the Iceland Bar Association "Basics of Negotiation and Interest-Based-Bargaining".
- Chair for the annual Northern California ADR Educators Conference at Stanford.
- Wrote a chapter for the book "Capelinhos: A Volcano of Synergies" concerning my roots as a Portuguese Immigrant.

Michael Dickstein

- ***Principal, Dickstein Dispute Resolution***, based in San Francisco and Toronto, where he offers mediation, arbitration, and consulting services on a wide variety of employment, commercial, contract, personal injury, complex mediation and class action (employment, environmental and commercial) disputes to a worldwide clientele.
- Presented negotiation training workshops for multinational corporate audiences in Paris and Munich, as well as for the government negotiating team in Bermuda.
- Mediator for complex class action that involves 60,000 members in class.
- Presented to Law Society of Ontario on mediating class actions.

Jonathan Greenberg

- Of Counsel, Hennen and Blaikie LLP and Chair of International Dispute Resolution, a practice group with senior lawyers expert in the field of oil and gas who focus on the mediation of international maritime disputes.
- Advisor to the international legal team defending former Yukos CEO Mikhail Khodorkovksy, imprisoned in Siberia, Russia.
- "The Kremlin's Eye: the 21st Century Prokuratura in the Russian Authoritarian Tradition," currently under review by the Stanford Journal of International Law.
- "Against Silence and Forgetting," in Anjali Gera Roy and Nandi Bhatia, ed. *Partitioned Lives: Narratives of Home, Displacement, and Resettlement* (Pearson Longman, India, 2007).

- “Panel: Law and Geography,” 5 Santa Clara Journal of International Law 2 (2007).
- Presented “Global Warming and Transnational Conflict,” and Conference Chairman, IQPC Oil & Gas/Asia conference on international boundary disputes, Kuala Lumpur, Malaysia, May 2008; also post-conference master class on the negotiation and mediation of maritime boundary disputes.
- Presented "Partition's Children: reflections on the 60th anniversary of the independence of India and Pakistan," Law and History Symposium, Stanford Humanities Center, June 2007.

Dave Johnson:

- ***Deputy General Counsel, Caliperls.*** Practice includes major transactions, IP matters and litigation.
- Consulted with Professor Ally Johannsdottir, lead faculty of the LLM program in Energy and Environmental Law at the University of Iceland Law School to discuss Iceland’s leadership in alternative energy development. Dave is working to develop a transnational environmental negotiation simulation for his class to be negotiated with students at the Law School in Iceland.

Julie Kennedy:

- ***Director of Litigation Training, Morrison & Foerster.*** Designed and taught negotiation and litigation workshops for associates (both business and litigation), partners, clients in U.S. and abroad, as well as seminars on deposition skills, writing, direct and cross-examination, legal research, evidence, e-discovery, privilege and other litigation topics. Also prepared special presentation on the ethical issues raised by the Qualcomm case.

Janet Martinez:

- ***Senior Lecturer in Law and Director, Gould Negotiation and Mediation Program.***
- Trainer, “Negotiation Workshop” (3-day program with Stephanie Smith) for Borden Ladner & Gervais, Toronto, Ontario.
- Trainer and Consultant, “Executive Negotiation Workshop” (2-day program with LaxSebenius Group) for Shell Oil, Calgary, Alberta
- Trainer, Negotiation Workshops for Juniper Networks and Skadden Arps
- UC Davis International Environmental Law Symposium: Beyond Kyoto, February 29, 2008: Panel Moderator: Transacting For the Future: Facilitating Growth in the Clean Tech Industry, and Panelist: Taking it to the Courts: Litigating Climate Change.
- Harvard Negotiation Law Review Symposium: Dispute Systems Design Across Contexts and Continents, March 7-8,2008: Panelist, Dealing with the Inevitable: DSD in the Institutional Context.
- ABA: Dispute Resolution Section, April 4-6, 2008. Panelist, How Does Dispute System Design Shape Justice?

Linda Netsch:

- **Principal, Align Consulting**, a firm that works with business, legal and government officials throughout the world on negotiation training and consulting, dispute resolution, diversity management and organizational strategy. Also on faculty at Harvard Law School and Haas School of Business.
- Designed negotiation training program for partners of a global management consulting company; leads training sessions for partners worldwide; guest speaker at global partners' conference.
- Delivered negotiation program for directors at The Monterrey Institute of Technology and Higher Education (ITESM) in Mexico City.
- Designed and delivered executive education for corporate professionals in Kuwait.
- Consulted on resolution of multi-million dollar Internal Revenue Service (IRS) tax dispute – dispute settled.

Jessica Notini:

- **Principal, Notini Mediation**, a firm that offers extensive mediation, facilitation, training and consultation services to a wide variety of public, private and governmental clients, both in the U.S. and abroad.
- Chair of the California Bar Association, ADR Committee.

Ralph Pais:

- **Partner, Fenwick & West LLP.**
- Designed and conducted (with Matt Rossiter) Negotiation Program for Fenwick & West Summer Associates.
- Conducted negotiation workshops in Amsterdam and Frankfurt for Allen & Overy LLP.
- Conducted negotiation workshop for Cisco Systems.
Co-author with Wharton Professor Richard Shell's new book , *The Strategic Lawyer: Using Law to Build and Sustain Competitive Advantage*.

Stephanie Smith:

- **Advisor/Consultant, Compton Foundation's Peace and Security Program.** Continued to serve as Director of the Peace Operations and Human Security Initiative, funded by the Compton Foundation. Served as the consultant for grantmaking in the Peace and Security program at Compton.
- With Jan Martinez, continued to teach negotiation to lawyers in private law firms, with Borden, Ladner & Gervais (Toronto).
- Steering Committee of the Peace and Security Funders Group (PSFG), the affinity group for philanthropies, large and small, which fund peace and security topics. Was a founding member of the Conflict Prevention and Peacebuilding subgroup of PSFG.
- Presentation with Bonnie Jenkins of the Ford Foundation at a pre-conference session for European and US funders on transatlantic cooperation in peace and security funding, for the meeting of the European Foundation Center in Istanbul in June.

- Presented at Harvard Law School Symposium on Dispute Systems Design on closing panel on “Emerging Issues in DSD”. Working with Jan Martinez on article for symposium issue of Harvard Negotiation Law Journal.
- Working with Jan Martinez, Lisa Bingham and Bob Bordone on Systems Design book.
- Presented on panel with Jan Martinez and Lisa Bingham at ABA Dispute Resolution Section meeting in Seattle on “Justice and Dispute System Design”
- Served as ADR consultant to the Abu Dhabi Government Restructuring Committee in connection with a proposed commercial court system for Abu Dhabi.