



## ADR Conversations

### The State of Mediation Training

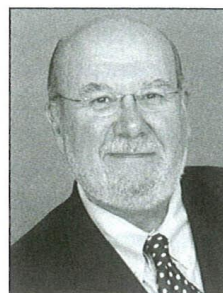
The following interview was conducted by JAMS Executive Vice President and General Counsel Jay Welsh, Esq., with JAMS Neutral Bruce Edwards, Esq.

**Q.** Bruce, you have trained mediators all over the world. How has mediation training changed?

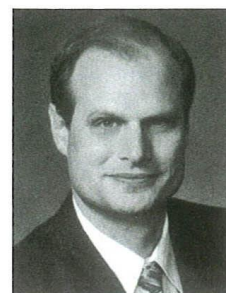
**A.** I first started training mediators in the United States almost 25 years ago largely out of necessity. At the time, we were seeking to expand and develop a broader ADR marketplace, and we needed to identify and train high-quality mediators for our first commercial enterprise, the Bates Edwards Group. Those early trainings emphasized developing a process expertise that sought to engage the parties and respect their right of self determination.

As you would expect, over the past 20 years, mediation training has evolved and been refined as each year hundreds of mediator hopefuls, often attorneys and retired judges, seek an alternate career path through mediation training. To meet this growing demand, mediation training has become more institutionalized, and through industry leaders, such as the Straus Institute for Dispute Resolution at Pepperdine University, it's now possible to choose from dozens of mediation-related courses in pursuit of advance credentialing.

My pet peeve in the U.S. are the ready supply of two- to five-day mediation training courses, which involve predictable lesson plans and scripted role plays. In this cottage industry of mediation training, mediator hopefuls seem interested only in learning new settlement techniques to add to their mediation toolbox or otherwise



**JAY WELSH, ESQ.**  
JAMS Executive V.P.  
& General Counsel



**BRUCE EDWARDS, ESQ.**  
JAMS Mediator  
& Arbitrator

looking for shortcuts to commercial success.

One of the greatest challenges for mediation training today is how to respect our roots of developing mediators who possess great process skills while being prepared to work in a marketplace of increasingly sophisticated and demanding consumers.

**Q.** What new modes of training are you seeing done outside the United States?

**A.** I've been teaching mediation internationally for the past six years, primarily in Europe, so I want to be careful not to generalize. Although it's tempting to describe the commercial mediation market in Europe as being in the same position as the United States 10 to 15 years ago, that would overlook some important distinctions. While the development of commercial mediation in Europe, particularly in the area of cross-border disputes, is still largely in the shadow of arbitration, there are clearly signs that mediation is emerging from its nascent stage of development.

Because the European Union member countries are largely ahead of the U.S. in their requirements for mediator certifica-

tion, mediation training is taken very seriously. As an example, Austria requires mediators who wish to be registered with the government to complete almost 500 hours of mediation training. Consequently, mediation training in Austria is extremely sophisticated and offers a multi-dimensional approach to learning.

The best example is the International Summer School on Business Mediation, held every other summer in the small Austrian village of Admont. The conference itself is the co-creation of two of Austria's leading mediation trainers, Dr. Mario Patera and his wife, Ulrike Gamm, both trained psychotherapists and mediators. The conference brings together trainers from all over the world and offers a far-ranging curriculum. Imagine a day of mediation training that begins with a lecture on recent findings in neurobiology and the implications of that research on decision making in mediation. The day continues with an interactive seminar on body language in mediation taught by a professor of pantomime. The day's coursework completed, the interactive learning moves to an evening hike in the Alps with European-based mediators discussing various business models for the expansion of commercial mediation.

This is one example of a pedagogically different approach to training mediators that is viewed by many as the gold standard in Austria and has important lessons for our own domestic mediation training.

*Q. What do you see the future of mediation to be in Europe?*

*A.* I'm very bullish on the growth potential for mediation in Europe. We are already witnessing an accelerated startup curve led by the European Union Directive slated for implementation in March 2011. That Directive will require all 27 member countries to adopt laws promoting the mediation of cross-border disputes. Some

countries, such as Italy, have taken the Directive a step further and have already passed laws mandating the use of mediation in all domestic-based civil litigation.

Moreover, the international consolidation of law firms and major corporations, including insurance companies, means that many of the potential users of mediation in Europe may be only one or two steps removed from co-workers in their own companies or firms who have direct experience with U.S.-based mediation.

As we seek to hasten the advance of commercial mediation in Europe, it's critical for us to remember that our audience is far from homogenous. Indeed, the 27 EU countries are characterized by major differences in language, culture and legal systems. It's also critical for us to keep in mind that the future of mediation in Europe will be carried forward on the backs of European-based mediators. The impetus for the creation of JAMS International was the opportunity to partner with two of Italy's premier mediator/trainers, Giuseppe De Palo and Leonardo D'Urso, and other premier providers throughout the EU.

*Q. You just returned from training in Malaysia. How was that different from training in the U.S. and Europe?*

*A.* The 50 students in our class in Kuala Lumpur were mostly attorneys, skilled in the requirements of arbitration, but understanding very little about mediation. As a former British Colony, Malaysia has a legal system based on English law, which gave us common points of reference. As a group, the class was eager to learn about mediation and exceedingly hospitable throughout the six-day training.

Perhaps the most obvious difference that became apparent in training was the rich cultural diversity of the group and its implications for training new mediators to understand and work within an envi-

ronment of profound cultural differences. Approximately 60 percent of Malaysians practice Islam, while many others practice Buddhism or Hinduism. These differences promoted candid classroom conversations, which ranged from the practical, i.e., not mediating on Friday afternoons during the Muslim call to prayer, to the theoretical, i.e., why not attempt to co-mediate using mediators of different backgrounds to span this cultural divide.

*Q. In addition to training, you've been mediating every day for more than 20 years now. How do you keep it fresh so that you are delivering your best every day?*

*A.* Years ago, someone asked Larry Bird, a former professional basketball player for the Boston Celtics and now Hall of Famer, how he could perform at such a high level night in and night out. He replied that it was simple; he just had to remind himself that there may be someone in the audience watching who had never seen him play and he owed it to that fan to perform at his very best. I try to keep that in mind, especially on days that I'm fatigued or tempted to cut corners.

I'm also reminded of the career advice given by my father, which was "love what you do and you'll never work another day in your life." I love the challenge of finding ways to connect with people and to help resolve increasingly complicated disputes. These challenges help keep me fresh.

*Q. Can you describe a particularly memorable moment in your international mediation training?*

*A.* This past year I was enjoying the quiet serenity of Chinese tea service with a Professor of Negotiation from Peking University in Beijing, Andrew Wei-Min Lee. We had just finished talking about

how the Chinese central government has decreed that a law favoring mediation will be drafted and implemented in the months ahead when the conversation shifted. Professor Wei-Min Lee asked if I was familiar with the ancient Chinese character writing. He proceeded to show me that the Chinese word for mediation, *tiao jie*, is written using two characters or symbols; the first symbol represents tuning an instrument (its Western interpretation suggesting repairing a relationship), while the second symbol suggests cutting the horns off a bull – perhaps eliminating the threat of future harm. The most memorable lessons are not always in the classroom.

*Q. Where do you see mediation going in the United States in the next 10 years?*

*A.* I foresee continued growth, particularly in smaller markets around the country. [People living in] communities with populations less than 100,000 historically had to travel to major metropolitan areas or import someone to gain access to a skilled mediator. Now, most of these communities have at least one burgeoning ADR practice as well as many part-time mediators.

It's obvious that our system of public justice is a shrinking resource, with judicial time and courtroom availability increasingly allocated away from complex civil disputes. This can only serve to fuel an expanding demand for ADR services.

These observations are supported by an economic analysis of the ADR industry as a whole. National surveys have attempted to calculate how many dollars are spent in the U.S. on ADR services as a fraction of major law firm revenue. By any analysis, these surveys suggest significant growth potential for mediation before it achieves its rightful place in the hierarchy of "Appropriate Dispute Resolution." ■

## ***JAMS Dispute Resolution Alert* BOARD OF EDITORS**

**John J. Welsh, JAMS Vivien B. Shelanski, JAMS**

**Jay Folberg, JAMS, Professor Emeritus, University of San Francisco School of Law**

**Michele Apostolos, JAMS**

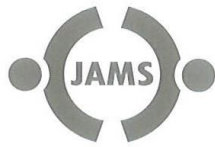
### **CONTRIBUTING EDITORS**

**Justin Kelly**

**Richard Birke, Professor of Law, Willamette University College of Law**

### **CONTRIBUTING STAFF**

Editorial Assistants – **Jaelyn Herrera, Victoria Walsh** Graphic Designer – **Cheryl Kohler**



**THE RESOLUTION EXPERTS®**

*Dispute Resolution Alert* seeks only to provide information and commentary on current developments relating to dispute resolution. The authors are not engaged in rendering legal advice or other professional services by publication of this newsletter, and information contained herein should not be used as a substitute for independent legal research appropriate to a particular case or legal issue. *Dispute Resolution Alert* is published by JAMS, Inc. Copyright 2010 JAMS. Photocopying or reproducing in any form in whole or in part is a violation of federal copyright law and is strictly prohibited without the publisher's consent.

### **JAMS ADR News & Case Updates –**

**To subscribe to regular ADR News and Case Updates from JAMS or to receive the Dispute Resolution Alert electronically, log onto <http://www.jamsadr.info/>**