

A hand holding a scale of justice. The hand is positioned at the top center, gripping the top bar of the scale. The scale's pans are positioned at the bottom left and bottom right. On the left pan, there is a stack of grey stone blocks. On the right pan, there is a stack of grey stone blocks and a large, light-colored, draped fabric. A stone bridge with two pillars and a central arch spans across the gap between the two pans. Two men in blue suits are standing on the bridge. The man on the left is holding a document and a gavel, while the man on the right is holding a document. The background is white.

Meet me in the middle

Dispute resolution offers
adversaries a kinder, gentler
alternative to litigation

Page 4

Also inside

HUMAN RIGHTS REPORTER MAC MCCLELLAND 32 TRACKING DOWN TREASURES 24 BASKETBALL'S JARED SULLINGER 20

Common ground

Dispute resolution offers an alternative to litigation.

By **STEVE WARTENBERG**

Law professor Nancy H. Rogers didn't think it would come to much when she was asked to create and lead a class on mediation.

It was 1982. Law schools that taught mediation and arbitration were few and far between, and little research and scholarship was being done in the field of alternative dispute resolution. The study of law was all about litigation and trials.

"I was surprised by how positively the students responded and how much value I thought the course was adding," said Rogers, who specialized in litigation, procedure, and evidence. With little practical experience in mediation, she learned along with her students.

Today, Ohio State's program in alternative dispute resolution—housed in the Michael E. Moritz College of Law—is ranked among the best in the country. Nationally recognized experts make up the faculty, and a student-run publication, the *Ohio State Journal on Dispute Resolution*, has long been a leader in the field.

Culture change

Alternative dispute resolution is the umbrella term for arbitration, mediation, and other methods designed to resolve conflicts without going to trial.

Many, if not most, law schools now teach it to some degree, and the courts increasingly are moving toward arbitration and mediation and away from lengthy and costly trials that slow down the wheels of justice.

"I think it has changed the culture and practice of law," said Rogers, who now is the Moritz Chair in Alternative Dispute Resolution.

Ohio State offers a certificate in dispute resolution, the equivalent of a minor. During their internships, students mediate actual cases, working with faculty, staff, and graduate associates at the university; with students in local public schools; or in

the Small Claims Division of the Franklin County Municipal Court.

"Fewer and fewer litigation cases go to jury trial—fewer than 2 percent, according to the American Bar Association," said Julie Woolley '03, a former editor of the student journal who specializes in business law for Baker Hostetler in Columbus. "That means they're using other means to settle, and having this background helps."

Brandon Lester '05 also edited the journal and now practices with Jones Day in Pittsburgh. He interned at a Columbus middle school, where he helped students



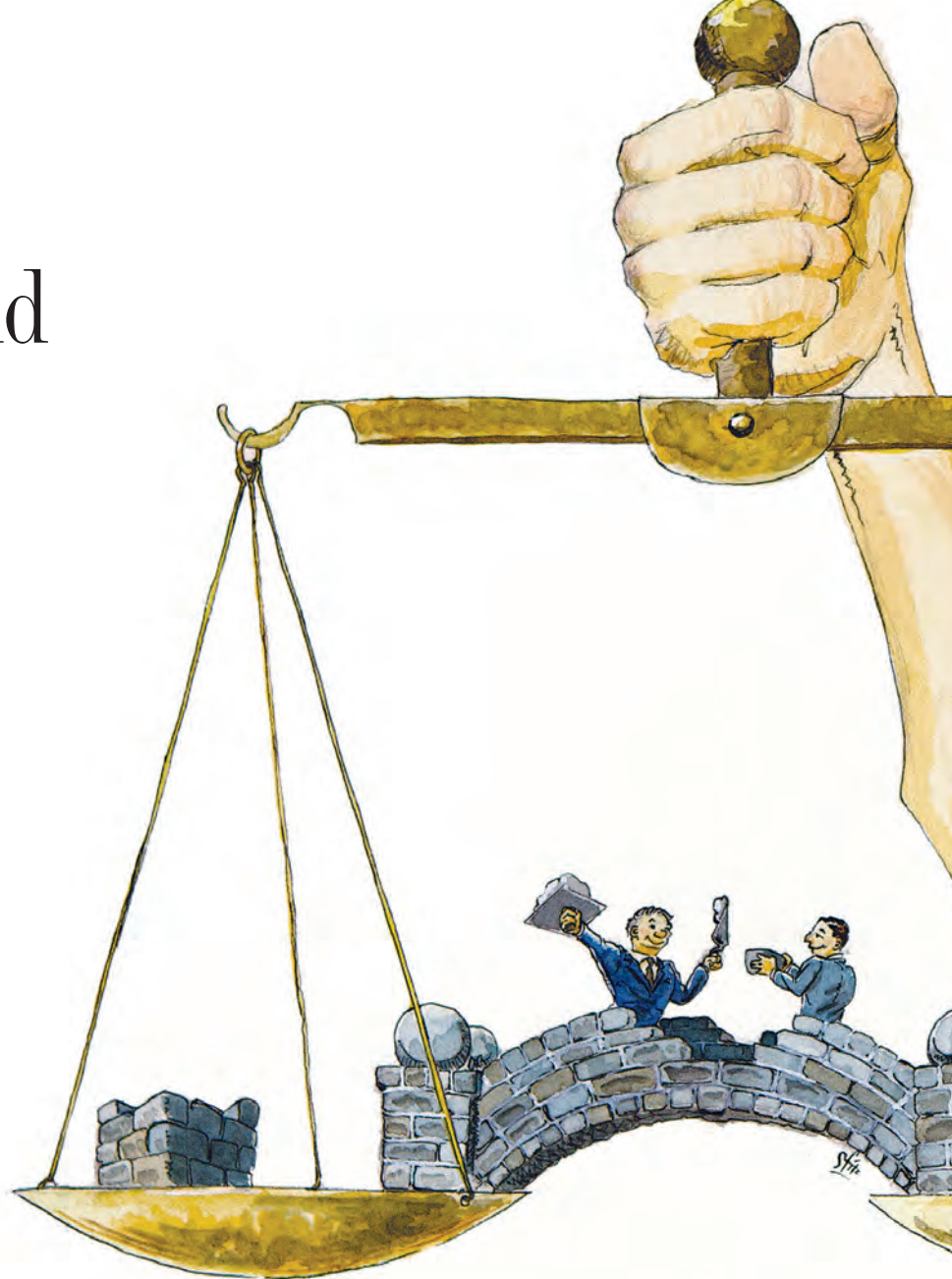
Brandon Lester

resolve conflicts without resorting to violence.

"It could be bullies picking on kids, or fights with a brother or sister or parents," Lester said. "A lot of these kids had family members who were involved in criminal activity, and we discussed how to avoid conflicts with the law."

He recalled one boy who was having an ongoing problem with his sister. "At the end, he thanked me and said, 'Because of this, I won't push my sister down the stairs anymore.'"

Woolley participated in a clinic in collaboration with the Franklin County Small Claims Court through which she mediated a disagreement between a contractor and a homeowner. The two sides wouldn't listen to each other at first, but with her guidance they were able to find common ground and avoid a trial, she said.





SCOTT FITZPATRICK



RECK HARRISON

Julie Woolley

'World-class program'

Lester described the Moritz faculty as an "amazing group of talent."

"I learned early on that they had a world-class program," he said. "The opportunity to work with these people was a no-brainer."

Josh Stulberg and Sarah Cole joined the faculty in 1998 in the midst of a major drive to bring the college even more recognition in alternative dispute resolution.

Cole is the program's director and the Squire, Sanders, and Dempsey Designated Professor of Law. She came to Ohio State from Creighton University in Omaha, Neb.

Stulberg was recruited from the University of Missouri. "Nancy

called and asked me if I would consider coming here," he said. "Ohio State had this richness to it, and the faculty was already highly regarded and had an energy and imagination for the program."

Stulberg, the John W. Bricker Professor of Law, was already well known in the field. In the early 1970s, he was involved in the fight to desegregate schools in Rochester, N.Y.

"We created a mediation process to deal with acts of violence and

implement the ordinance, and it worked well," he said. Stulberg eventually became the first director of the Rochester Center for Dispute Resolution.

Stulberg was drawn to dispute resolution because it "engages the participation of the people who have to live with the outcome directly," he said.

"The two sides are always so much more creative than you can imagine in coming up with solutions."



Sarah Cole

New way of thinking

Mediation and arbitration are the foundations of alternative dispute resolution. Mediation is a voluntary process in which a neutral

RICK HARRISON

“The two sides are always so creative in coming up with solutions.”

—Josh Stulberg,
John W. Bricker Professor of Law

third party—the mediator—works with opposing sides to help them reach an agreement on their own, without involving the court. The mediator has no decision-making power. Instead, he or she facilitates the discussion and helps guide the parties toward a resolution that each side can live with.

In one recent, high-profile example, a mediator helped the owners of National Football League teams and the players come to an agreement and save the 2011 season.

Arbitration, which is more formal than mediation, involves a third party who does have the power to make a binding decision. The process resembles a court proceeding in that each side testifies and presents evidence and the arbitrator, or a panel of arbitrators, makes a ruling.

“You see arbitration in credit card disputes, with cable companies, real estate contracts, almost every industry in which an entity sells something or provides something to a consumer,” Cole said.

In Franklin County and many other counties in Ohio, arbitration is used to resolve civil disputes that involve relatively small amounts of money. Any judge can order a case to be assigned to a board of arbitration made up of three licensed attorneys.



Josh Stulberg



SCOTT FITZPATRICK

Cole believes being a good arbitrator or mediator requires listening skills and the same type of patience it takes to be a good parent.

“It helps if you are a person who can read other people and understand why they make decisions the way they do. And you need to be more of a listener and take adversarial words and turn them into neutral ideas, so both sides can see a way forward instead of yelling at each other,” she said.

It’s a new way of thinking for many attorneys, especially those used to the more aggressive style required for trials.

“It’s not so easy for those Type A lawyers,” Cole said. “They have to

turn off the part of their brain that wants to tell people how it’s done.”

Gaining ground

In the history of arbitration, the passage in 1925 of the Federal Arbitration Act was a milestone. “Up until this point, U.S. judges would not enforce arbitration agreements [if one side was unhappy with the decision and fought it in court],” Stulberg said. “The act said contracts to arbitrate a dispute are binding, and the courts began to honor this, even if the decision was one the judge didn’t agree with.”

Alternative dispute resolution gained ground in the 1960s to settle

a range of conflicts connected to civil rights, antiwar demonstrations, and environmental issues, Stulberg said. In the 1980s, it began to be used in divorce proceedings, and in recent years it has been used extensively to settle employment disputes.

While Stulberg believes in the principle of alternative dispute resolution, he has some concerns.

“If, for nonunion employees, it’s built into their contracts that disputes over firings or over religious or civil rights issues go to arbitration rather than trial, who pays for it? If someone has just lost their job, it’s an unfair burden; and if it’s the company that’s paying, isn’t that like buying the judge?”



RECK HARRISON

Nancy Rogers

“It has changed the culture and practice of law.”

—Nancy H. Rogers, Moritz Chair in Alternative Dispute Resolution

Problem-solver

Stulberg and Cole describe Rogers as one of the founders of alternative dispute resolution and say she paved the way for Ohio State to become a leader in the field.

Rogers herself prefers to spread the credit around. However, there’s no doubt she played a prominent role in the growth of alternative dispute resolution in Ohio’s courts at a time when, as she said, “the state began thinking about ways to make things better.”

Richard Celeste, governor from 1983 to 1991, appointed Rogers to chair a task force. Supreme Court

chief justice Thomas J. Moyer chose her to lead a committee to incorporate mediation into the state’s courts.

Rogers later led a task force for the American Bar Association, and she wrote a treatise on mediation that became required reading in the field.

Moyer, who passed away last year, believed in the value of dispute resolution. In a statement reprinted on the Moritz Web site, he said: “The best of the next generation of lawyers will be adept in their use of negotiation, mediation, and other processes to help their clients settle disagreements.”

When Rogers thinks back to the first class she taught in alternative dispute resolution, she recalls how engaged her students were.

“I remember reading the evaluations, and I could see the students loved it as much as I did,” she said.

“One student said they had come to law school to help people solve their problems better—and as a result of this course, I can.’ And I thought to myself, this is why I went to law school.” ■

Learn more:

<http://moritzlaw.osu.edu/programs/adr>