



ST. JOHN'S
UNIVERSITY
SCHOOL OF LAW



The
Hugh L. Carey Center
for Dispute Resolution

2019 Newsletter

Message From The Director



Dear Friends and Colleagues,

At a time when our world is flailing to solve seemingly intractable problems, St. John's Law students are learning how their grounding in dispute resolution values helps guide them to resolve what initially appears to be unsolvable.

In this newsletter, you'll read about just some of the ways that students in our Dispute Resolution Society (DRS) and across St. John's Law have benefitted from this value anchoring.

Beyond learning dispute resolution skills in and outside the classroom, our students begin to understand that conflict is a welcome opportunity for clarifications, choices, and changes. Students learn to appreciate that, in their role as advocates, as they help their client to get what is most important to the client, they must also respect the humanity and interests of the other side. The process is as important as, if not more important than, the outcome. And their reputation is priceless.

This year, relying on those same dispute resolution values, our students continued to earn competition victories in a crowded and capable field. They engaged in the Governor Hugh L. Carey Bipartisan Bill Negotiation, an inaugural event honoring the namesake of our Hugh L. Carey Center for Dispute Resolution, in which students negotiated a bi-partisan bill on gun control. And they leaned on their dispute resolution values as they grappled with clarifying and navigating the personal/professional boundaries between the obligation to maintain confidentiality and the ethical mandate to report identified behavior.

As legal problems are becoming more complex and societal advancements spark legal issues never before contemplated, the Carey Center prepares our students for the changing practice of dispute resolution. With a grounding in dispute resolution values gained and honed in the classroom, in co-curricular activities, and in practice settings, St. John's students are finding that their value anchoring gives them the confidence and flexibility needed to adapt and respond to these ongoing dispute resolution challenges.

With my warm regards,

Elayne E. Greenberg
Assistant Dean for Dispute Resolution Programs
Professor of Legal Practice
Director, The Hugh L. Carey Center for Dispute Resolution

Alumni Reflections

DRS alumni carry the dispute resolution values they hone at St. John's Law throughout their careers in, and beyond, the legal profession. Here, three alumni share how they're putting those values into practice right now.



David Grossman '11
CEO, PanaSea

"After almost a decade of doing business in Latin America, I found myself in the ultimate force majeure scenario recently. With blood in the streets and martial law imposed, I had to quickly determine my legal exposure. I soon understood that it was limited, however my reputational risk couldn't be any higher. At that point, my DRS training kicked in. I proactively solved for X. I put myself in the shoes of my clients, investors, and partners. I started thinking about hidden repercussions—both now and in the future. After 18 months of active dispute resolution, I wound down my liabilities to zero and my reputation is not only intact, but actually enhanced through the decisions I made."



K. Terrell Hutchins '19
Law Clerk, Otterbourg P.C.

"For students and attorneys, embodying skills such as attentive listening and creativity in addition to practicing values of civility and respect is crucial. This combination is an invaluable technique for advancing clients' interests. Most importantly, students and attorneys with these skills are often the best equipped to guide any challenging conflict to a mutually beneficial resolution."



Liesse-Marie Slemon '11
Legal Counsel, Keyence International (Belgium) NV/SA

"In commercial settings, the most critical points are to know your authority, know your story, and know your BATNA. If you do not have the authority to make a significant financial offer, then it's your job to find non-monetary concessions to accommodate the counterparty. You will break through stone walls with non-monetary concessions. Active listening, echoing, and threading their position into your story will collectively prevent the friction from building between parties. You'll encourage them to face the issue as your teammate, not your adversary. Finally, nurture the tone of the conversation so that, even if you walk away, either party would feel comfortable reaching out at a later date."

Multidistrict Litigation Scholar Elizabeth Chamblee Burch Receives 2019 Mangano Award

St. John's Law welcomed Professor Elizabeth Chamblee Burch, the Fuller E. Callaway Chair of Law at the University of Georgia School of Law, to campus recently to accept the Carey Center's 2019 Mangano Dispute Resolution Advancement Award.

Professor Burch received the honor for the groundbreaking scholarship she presents in the *Vanderbilt Law Review* article "Monopolies in Mass Litigation." The third in a series of empirical pieces in a six-year-long data collection project, the article highlights the previously obscure multidistrict litigation (MDL) settlement process and prescribes needed reform.

The \$5000 annual Mangano Award recognizes scholars whose published empirical research has furthered the advancement and understanding of the values and skills of dispute resolution. It was established through the generosity of Hon. Guy J. Mangano '55, '83HON, who has dedicated his long career to promoting dispute resolution, first as presiding justice of the New York State Appellate Division, Second Department, next as a state legislator, and then as an arbitrator and mediator. After reading Professor Burch's article, Judge Mangano remarked, "I enjoyed it. It was well-written, well-researched, and on a topic that needed to be addressed at this point."

The opioid crisis, and the lawsuits seeking to hold the drug's prescribers, manufacturers, and distributors legally accountable for its devastation, have put MDL in the spotlight. MDL allows the opioid cases and other suits brought in federal courts across the country to be consolidated for preliminary proceedings before one judge. By some estimates, about 40% of all current federal cases are part of a MDL. The theory goes that centralizing pretrial business and settlement negotiations in cases that share common questions of fact creates greater, and much-needed, efficiencies.

After accepting the Mangano Award, Professor Burch talked about her MDL research and writing with St. John's students and faculty members, including Professor Greenberg and Professors Keith Sharfman, Jeff Sovern, and Ettie Ward, who served on the Award selection committee that recognized Professor Burch's outstanding scholarship in the dispute resolution field.

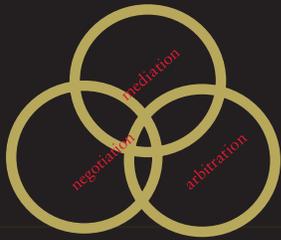
Discussing "Monopolies in Mass Litigation," Professor Burch noted that federal judges assigned to MDLs choose the same lead plaintiffs' and defendants' lawyers repeatedly. These repeat players achieve their goals in tandem—defendants end massive suits and lead plaintiffs' lawyers increase their common-benefit fees. "There is a shroud of secrecy in these MDL proceedings," she said, "and plaintiffs often end up twice victimized: first as a result of the harm that brought them into the legal system, and then again by the process and outcome of the MDL settlement." Lower payouts to plaintiffs, stricter evidentiary burdens in claims processing, and more coercive plaintiff participation measures in master settlements all signal that plaintiffs' best interests are being ignored or marginalized in MDL proceedings, Professor Burch explained.

As she went behind the scenes to examine the deals that MDL lawyers negotiate, and the deals' impact on plaintiffs, Professor Burch saw a way to counter the inherent pitfalls and achieve better results. Her article outlines structural modifications to improve the MDL settlement process for all parties, drawing, in part, from procedural safeguards that are already in place for class actions. Her effort to spotlight the shortcomings of MDLs and to suggest practical improvements that can benefit plaintiffs across the country goes to the heart of what the Mangano Award stands for.

"The purpose of the Mangano Award is to strengthen the legitimacy of the dispute resolution field by supporting quality empirical research that informs good dispute resolution practice," Professor Greenberg said. "Professor Burch's research examines the MDL settlement process and recommends procedural safeguards that will increase the likelihood that the process yields fairer outcomes to all involved."

"I enjoyed sharing my work with the St. John's Law students and faculty, who asked thoughtful and thought-provoking questions during our discussion," Professor Burch said. "It's an honor to receive the 2019 Mangano Award, to be included alongside the wonderful scholars who have been previous recipients, and to be recognized for my empirical work on multidistrict litigation."





The
Hugh L. Carey Center
for Dispute Resolution

The Financial Industry Regulatory Authority



invite you to participate in

10th

ANNUAL Securities Dispute Resolution Triathlon

A Three Skill Lawyering Event Consisting of Competitions in Negotiation, Mediation and Arbitration
Saturday and Sunday | October 13-14 | 2018
Manhattan Campus 101 Astor Place, New York, NY 10003



St. John's Law And FINRA Host Milestone 10th Securities Dispute Resolution Triathlon

It was a landmark occasion as the Carey Center and the Financial Industry Regulatory Authority (FINRA) hosted the 10th annual Securities Dispute Resolution Triathlon last month at St. John's Manhattan campus.

A decade after its launch, the Triathlon remains the only competition that tests law student ability in each of the three main ADR processes—negotiation, mediation, and arbitration. Students compete as advocacy lawyers, settlement counsel, and clients in a securities dispute. At the outset, they try to negotiate a resolution, then they represent their clients in mediation, and finally they proceed to arbitration before a three-person panel. Professional neutrals from FINRA's roster serve as mediators, arbitrators, and judges, giving students a realistic experience of these vital dispute resolution approaches.

An impressive 20 teams from law schools across the country participated in this year's Triathlon, tackling a timely competition problem concerning the allocation of responsibility between customers and brokerage firms to keep customer data safe from cyber security attacks.

"Examining these facts and issues, Triathlon competitors come to see that presenting legal problems are often not just about the law, but also involve business, economic, psychological, and societal problems," says Professor Elayne E. Greenberg, who created the Triathlon. "And, regardless of the career path they ultimately choose, law students benefit tremendously from developing the dispute resolution skills they need to be effective advocates. As collaborators on the Triathlon, the Carey Center and FINRA give the competitors a unique opportunity to grasp the nuances of settlement modalities, and to experiment with different advocacy styles in simulated, real world contexts."

Besting an able field, the team from the University of Pittsburgh School of Law took the overall championship, with Syracuse University College of Law coming in second and University of Mississippi School of Law taking third. The Benjamin N. Cardozo School of Law won the arbitration round, the mediation round went to the University of Maryland Francis King Carey School of Law, and the University of Houston Law Center came away with top honors in the negotiation round. The University of Maryland also took home the Advocate's Choice award. The competitors found the Triathlon an exceptional, hands-on learning experience and gained a number of valuable insights, including:

- Listening is key in producing a true conversation and in coming to an agreement
- Determining the "why" behind the other party's position is important and allows us to be better problem-solvers
- Stay calm, but know when to walk away from a bad deal
- Mediation is a safe space to pilot viable creative solutions
- Come into negotiation and mediation with an open mind

Providing a singular learning opportunity for law students has been the Triathlon's goal from the start, and its continued success reflects the commitment of dedicated educators and dispute resolution professionals, including Kenneth L. Andrichik, FINRA's vice president, chief counsel, and director of mediation and strategy. He has been a cornerstone of the Triathlon for all of its 10 years, and reflects proudly on that role as he prepares to move on to other professional pursuits.

"The Triathlon has been one of my most satisfying professional collaborations," he says. Working with St. John's Law Professors Elayne Greenberg and Christine Lazaro has been rewarding personally and professionally. They bring extraordinary talents to this team and are reliable as partners and as friends. It's gratifying that the FINRA neutrals come back year after year to support this competition, giving uniquely valuable feedback to the teams. I feel fortunate that many FINRA employees have volunteered over the years to help make this a special event. And I'm inspired watching the student competitors pour creativity and heart into their preparation and performances. Hopefully, the Triathlon encourages them to broaden their vision and add to their tools for effectively representing clients in the future. I know that many of them will become outstanding advocates."

As much as Andrichik values his Triathlon leadership role, his Triathlon colleagues value him. "There is only one Ken—the highest integrity, spirituality, and sense of irony when all else fails," Professor Greenberg shares. "Over 10 years ago, when we began developing the Triathlon, Ken and I were committed to providing students with a realistic dispute resolution experience in which they learned how to become more effective advocates. In many ways, our collaboration modeled the very values and skills Triathlon participants learn year after year."



DRS Students Negotiate Bipartisan Gun Control Bill

This past spring, DRS students participated in the inaugural Governor Hugh L. Carey Bipartisan Bill Negotiation. Governor Carey, the Center's namesake, was known for his exceptional ability to garner bipartisan support for pending legislation by collaborating with colleagues from both parties, often over beers and song. Throughout his successful negotiations and dispute resolutions, he treated everyone with dignity and respect, all the while believing that every problem offered an opportunity for betterment.

The idea for the negotiation exercise came from Marianne Carey Hayes, Governor Carey's daughter. "In my father's term, the U.S. Congress was a place where skilled negotiating and bipartisanship got laws passed *For the People*," she says. "We had the idea to challenge the law students to simulate this process of creating legislation. Training future leaders in the art of productive compromise and 'the better win' was Governor Carey's mission in founding the Carey Center at St. John's Law. Perhaps future political leaders hailing from St. John's will emerge from the process."

For the exercise, students assumed the role of U.S. Senate or House of Representatives members. Over two weeks, they applied their negotiation skills and worked to shape a bipartisan bill that would promote the responsible use of guns.

The majority of Senate members represented constituents who believed in a Constitutional right to own and carry guns. They opposed gun control for various reasons, including: guns are necessary to protect themselves and their property; guns keep the crime rate low; gun collections are part of a family legacy; guns are used for the sport and hobby of hunting; and any controls on the thriving gun industry would adversely affect its contributions to the U.S. economy. Of course, other members in the Senate represented constituents who felt differently than the majority.

In the opposing camp, the majority of the members in the House of Representatives represented constituents who wanted guns banned outright. This majority felt that: the inadequacy of background checks and training make it unsafe for most people to have guns; mass shootings are on the rise because guns are readily available; other First World Countries have gun control policies, so we need one, too; and the gun industry should become part of the solution and contribute money to developing safer guns. Still, other members of the House of Representatives represented a minority of constituents whose beliefs about guns didn't align with the majority view.

During the first week of the exercise, each student-legislator identified the interests of their constituents and prioritized those interests. Then, each legislative body developed a draft bill they might support that also considered the other legislative body's interests. In the second week, four representatives from the House and four from the Senate met to negotiate the bill.

As they negotiated, students experienced first-hand the importance of a process that allowed for meaningful and respectful participation by all. Those who dominated the discussion and mansplained provided a real-life opportunity for students to develop a heightened awareness of the gender issues in negotiations and become more gender-sensitive negotiators. Those who came in believing they offered good resolutions to the problem soon learned the importance of buy in and involvement in shaping resolutions before they are adopted. Finally, during the uneven progress, frustrations, and inevitable setbacks, students experienced the value of stepping back and relying on their foundational values to give them the needed perspective, optimism, and resilience to continue in the negotiation.



President John F. Kennedy (left) and Governor Hugh L. Carey



Carey Center and ABI Present Bankruptcy Mediation Training Program

The Carey Center and the American Bankruptcy Institute held their Ninth Annual 40-Hour Bankruptcy Mediation Training. The only training of its kind, the program was designed in collaboration with bankruptcy judges and experienced bankruptcy mediators. Participants are all experienced bankruptcy practitioners who want to either learn bankruptcy mediation skills, refine the mediation skills they already have, or learn to be better advocates when representing clients in bankruptcy mediation. In addition to learning the specialized skills of bankruptcy mediation, participants are introduced to an emerging specialized issue in bankruptcy mediation. In this year's training, participants learned about unforeseen ethical issues that arise for mediators and mediation participants when one or both of the parties is receiving third-party funding.

Fostering a Dialogue on ADR, Confidentiality, and Ethical Reporting Obligations

The Rev. John W. Gouldrick, C.M., who serves as Chaplain at St. John's Law, facilitated a discussion with DRS students about the ethical and personal values that help guide decision-making when professionals are mandated or discretionary reporters. Governing ethical codes explicitly provide that, under certain circumstances, lawyers and dispute resolution professionals may be relieved from their confidentiality obligations and may report what is otherwise protected conduct. The decision about whether or not to exercise that reporting authority is not just an either/or decision. Rather, it's also about ways lawyers and dispute resolution professionals personally prioritize the law, society's morality, and their own sense of morality in their decision-making.



Students Learn About Lawyer Malpractice Issues Arising in ADR

St. John's Law alumna Stefanie Singer '10 returned to *alma mater* to give a talk on lawyer malpractice issues that may arise when representing clients in ADR. The engaging discussion offered a practical perspective on an important topic related to dispute resolution values. Singer, who now serves as General Counsel for the national professional services organization Novogradac & Company LLP, shared insights gained from years of practicing professional liability defense and insurance coverage in private practice.



DRS students participated in a range of activities during the 2018–2019 academic year. Here is a just a sampling of DRS in action:



ABA Representation in Mediation Competition

The Dispute Resolution Society (DRS) team of **Julia Bover '20** and **Dominick Ragno '20** bested a crowded field to become regional champs in the 2019 ABA Representation in Mediation Competition. Coached by Raspreet Bhatia '16 and Michael McDermott '15, the team advanced to the nationals in Minneapolis, MN. This marked St. John's third trip to the regional championship in three years, and its second trip to the national competition in two years.



International Baseball Arbitration Competition

Cormac Leddy '20, **Patrick Reilly '20**, and **David Combs '20**, along with coaches Kap Misir '04CPS, '13LL.M and Nick Berg '17, advanced to the quarterfinals and won the Best Written Advocate Award at Tulane Law's 12th annual International Baseball Arbitration Competition. For the competition, the team created an MLB player profile and participated in a simulated salary arbitration.

About DRS

The Law School's **Dispute Resolution Society** (DRS) is the student division of the Carey Center. Formed in 2007, DRS seeks to meet the demand for practical education in the constantly developing field of alternative dispute resolution. DRS helps St. John's Law students hone their negotiation, mediation, and arbitration skills through events, seminars, and intra-school competitions held at St. John's and in external competitions hosted locally, nationally, and internationally.



Judith S. Kaye Arbitration Competition

Two DRS teams competed in the New York State Bar Association's fourth annual Judith S. Kaye Arbitration Competition. **Christina Buru '20**, **Gabriella Petrillo '20**, and **Gabriella Scarmato '20** took third place and won Best Opening Statement and Best Closing Statement. Finishing right behind them in fourth place was the team of **Dan Kornberg '20**, **Cormac Leddy '20**, and **Andre Oge '20**, who earned Best Cross Examination. The teams were coached by Dan Borbet '20 and Dan Merker '11, and Ross Kartez '12 helped to organize the entire Competition.

1L Internal Negotiation Competition

Applying the negotiation skills they learned in their January intersession Lawyering course, St. John's Law first years competed in the annual 1L Internal Negotiation Competition. **Dannielle Mariono '21** and **Fiona Hogan '21** bested a talented fiend to win the Competition, with **Dallas Park '21** making an impressive showing as runner-up.



New York Law School IP Negotiation Competition



It was a St. John's Law sweep at this year's New York Law School IP Negotiation Competition. **Bianca Fox '20** and **Joshua Lahijani '19** placed first and took home Best Teamwork and Best Self-Evaluation. Finishing in second place were **Jacob Alexander '20** and **Shaniya Johnson '20**. Both teams were coached to the final round by K. Terrell Hutchins '19.



Center Faculty News



Peter J. Bernbaum

In his law practice, Professor **Peter J. Bernbaum** counsels businesses in cable television and related industries. He continues to serve on the Panel of Mediators for the U.S. District Court for the Southern District of New York, as a mediator for the Alternative Dispute Resolution Program for the Commercial Division of the New York County Supreme Court, and as a contract hearing officer for the New York State and Local Retirement System. This past year, Professor Bernbaum presented a lecture on contract negotiation, including a role play simulation focusing on the cable television industry, at the Drexel University Graduate Program in Television Management.



Elaine M. Chiu

Professor **Elaine M. Chiu** continues her work as Faculty Director of the Ronald H. Brown Center for Civil Rights at St. John's Law, as well as her leadership of the Center's award-winning pipeline initiative, the Ronald H. Brown Law School Prep Program for College Students. Professor Chiu also helps to organize the recurring St. John's Law Dialogues, which bring students, faculty, and administrators together for conversations about current events and controversies, such as the federal government shutdown and family separation at our borders.



Elayne E. Greenberg

Professor **Elayne E. Greenberg** was honored to serve as a member of Chief Judge Janet DiFiore's ADR Advisory Committee and the NYCLA Plea Bargaining Task Force. She has been selected as the Chair-Elect for the AALS Section of Dispute Resolution, and her article, "Hey, Big Spender: Ethical Guidelines for Dispute Resolution Professionals when Parties are Backed by Third-Party Funders," was published in the *Arizona State Law Journal*. Professor Greenberg presented that paper at the Garibaldi Inn of Court and at the annual ABA Dispute Resolution meeting. She also co-presented her paper, "What Dinosaurs Teach Lawyers About How to Avoid Extinction in the ODR Evolution," at the AALS ADR Works-in-Progress Conference. Together with Creighton University Professor Noam Ebner, Professor Greenberg co-authored "Ethics Meets the 'O' in DR," her *Ethical Compass* column in the *New York Dispute Resolution Lawyer's* 10th anniversary issue.



Ann L. Goldweber

Professor **Ann L. Goldweber**, Director of Legal Education at St. John's Law, has been appointed to the Board of Directors of Queens Legal Services (QLS). Founded in 1967 and part of Legal Services NYC, the nation's largest civil legal services provider, QLS provides high-quality civil legal services, social work support, and advocacy to low-income communities in Queens, New York City's most diverse borough.



Patricia Grande Montana

Professor **Patricia Grande Montana's** article, "Live and Learn: Live Critiquing and Student Learning," was published in the Spring 2019 issue of *Perspective: Teaching Legal Research and Writing*.



Andrew J. Simons

Vice Dean Emeritus **Andrew J. Simons** has been appointed by the President of the Nassau County Bar Association (NCBA) to the Association's Financial Oversight Committee. He will also be a delegate from NCBA to the American Bar Association's House of Delegates for the next two years. The House meets twice a year, and NCBA sends two delegates, including its President.



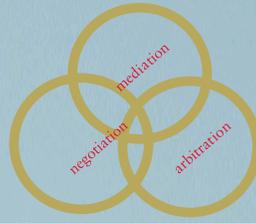
Rachel H. Smith

Professor **Rachel H. Smith's** recent publications include the second edition of her co-authored legal writing textbook, *The Handbook for the New Legal Writer*, and a review of James Boyd White's *The Legal Imagination: Studies in the Nature of Legal Thought and Expression* published in the *Scribes Journal of Legal Writing*.



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