



2021 Newsletter

Message From The Director



In her 2021 State of Our Judiciary address, New York State Chief Judge Janet DiFiore announced: "We remain 100% committed to implementing our model of presumptive early ADR in order to transform the old culture of 'litigate first' to the new culture of 'mediate first' in all appropriate cases."

What a welcome transformation! It's one that requires aspiring and practicing lawyers to become agents of change. Now is the time for students and practitioners to update their philosophical map, expand the way they "think like a lawyer," and translate their refreshed perspective into a more flexible and more responsive approach to client representation.

This edition of the newsletter celebrates Carey Center students, alumni, and colleagues who have become these crucial change agents and are heralding a new ADR-centric legal culture.

Among other Center news, we spotlight this year's Dispute Resolution Advancement Award winners, Professors Avital Mentovich, J.J. Prescott, and Orna Rabinovich-Einy, who examined how ODR might reduce disparities caused by group-based biases related to age, gender, and race. We also share student insights on what it means to be agents of change in the context of ADR. And recent graduates offer reflections on putting the ADR knowledge and skills they gained at St. John's Law to work in the field.

As we celebrate these advancements and move forward in this legal evolution, we can't help but also wonder how this settlement-focused legal culture will continue to change the practice of law. These are exciting times, indeed and we're happy to be a part of it.

With my warm regards,

Elayne E. Greenberg
Assistant Dean for Dispute Resolution Programs

Announcing the 2021 Dispute Resolution Advancement Award Winners



Avital Mentovich, a Professor at the University of Haifa's School of Criminology, J.J. Prescott, the Henry King Ransom Professor of Law at the University of Michigan Law School, and Orna Rabinovich-Einy, an Associate Professor on the Law Faculty at the University of Haifa, will receive the Carey Center's 2021 Dispute Resolution Advancement Award for the research reported in their paper, "Are Litigation Outcome Disparities Inevitable? Courts, Technology, and the Future of Impartiality."

The \$5000 annual award recognizes scholars whose published empirical research has furthered the advancement and understanding of the values and skills of dispute resolution. This year's award recognizes the three academics for their look at how technology—particularly online dispute resolution (ODR)—can eliminate outcome disparities in legal proceedings and expand access to justice.

This year's Award winners bring an interdisciplinary perspective to their analysis and comparison of outcome disparities in online and in-person civil-infringement cases. Their paper looks at how ODR might reduce disparities caused by group-based biases related to age, gender, and race. The researchers sampled 5,232 Michigan traffic violation cases: 2,713 in-person hearings and 2,519 online hearings. The study was designed to examine whether ODR blinds judicial bias and whether the structure of the ODR process itself limits the judicial process discretion that increases the likelihood of decision-maker bias.

The research suggests that two of the group-based factors, age and race, yield less disparate outcomes when hearings are conducted using ODR. In the age-based comparison, younger drivers appear to pay notably higher fines than older drivers pursuant to in-person hearings. But when hearings are held online, this disparity in outcomes between younger and older drivers seems to evaporate. Considering race, the researchers find substantial evidence, after controlling for observable differences between cases, that Black litigants receive higher court fines and are less likely to receive charge reductions after in-person hearings. These racially disparate outcomes disappear when Black litigants resolve their cases through ODR. The researchers conclude that, under particular design schemes in certain contexts, ODR is capable of producing significantly fairer outcomes for members of disempowered groups.

The award-winning research, which is part of a broader study of various empirical aspects of ODR, has been presented widely in academic circles and to designers of online court systems. It is informing policymaker debates over ODR as the public health crisis continues to push online judicial procedures to the frontlines of dispute resolution and into public awareness and discourse.

Considering this year's Dispute Resolution Advancement Award nominations and submissions, the award selection committee comprised of Professors Elayne E. Greenberg, Keith Sharfman, Jeff Sovern, and Ettie Ward recognized their current paper as reflecting Professors Mentovich's, Prescott's, and Rabinovich-Einy's outstanding scholarship in the field.

Research considered for the Award has broad applicability to the alternate dispute resolution field, or focuses on the values and application of dispute resolution in a specific area. Interdisciplinary research is encouraged, and the findings should be published in a nationally respected journal within a specified period. In assessing a candidate, the selection committee also considers:

- The significance and quality of the research
- The interdisciplinary and/or innovative nature of the work
- The extent to which the research has started to impact the field
- The researcher's reputation and capacity to continue being an agent of change

"What an important contribution to mitigate systemic, group-based litigation outcome disparities," Professor Greenberg says. "This compelling research also encourages court administrators and justice reformers to consider the broader swath of cases that might be appropriate for ODR. It's worth noting that 'blind' judging was a central ODR design choice. An unanswered challenge going forward is how to reconcile that design choice with the growing public demand to spotlight, not blind, the faces and humanity of the many Black defendants who have been, and continue to be, victims of systemic racial injustice."

St. John's Law Team Wins International Baseball Arbitration Competition

It wasn't how Alexander Zedlovich '22 had pictured it. But there he was, standing alone in his home's unheated basement office, in front of a computer screen, making his case virtually to a panel of experts judging this year's Tulane International Baseball Arbitration Competition.

For Zedlovich and teammates Matthew Callahan '19TCB, '22L, John Gilroy '18C, 21L, and Rebecca Pasternak '22, participating in this unique law school competition from a distance was another twist in a year that has thrown a lot of curveballs. But, guided by coach Ryan Lake '13LL.M., they advocated capably through several rounds and bested a crowded field to take first place.

"I was so impressed with the team and their dedication," says Lake, a Colorado-based sports lawyer who has coached past competition teams and taught Sports Law at St. John's. That dedication included preparing to represent multiple players and clubs in mock salary arbitration hearings, with arguments based on complex game statistics. "The students really drove the formation of their competition cases," Lake explains. "As they crafted their arguments and practiced presenting them, I offered feedback on how to make them stronger. This was all done remotely using video calls, recorded videos, and communication on Slack."

Flexibility was key to working across three different U.S. time zones and over some technology hurdles says Callahan, who played a vital team role, but didn't compete. "I helped prepare the statistical comparisons and player profile sections," he shares. "Much of my work was sifting through player data and developing the themes we wanted to argue. But the highlight for me was seeing the wide variety of opinions and ideas that the other team members brought. I think our diverse backgrounds and mutual respect was instrumental in our success."

Like Callahan, Pasternak says that being on the team was well worth the effort, even with the 6:30 a.m. PST practice sessions she attended from her home in California. A lifelong baseball fan, she came to St. John's with an interest in Sports Law. "I joined the Law School's Dispute Resolution Society (DRS) and, when sign-ups came out to try out for Tulane Competition, I knew right away that I wanted to participate," she says. In addition to expanding her baseball knowledge and analytics skills, Pasternak appreciates the opportunity she had to engage with the competition's judges. "As someone who wants to work in baseball, being able to hear from people on both the player and the club side was enlightening, as each person has followed a different path in the industry," she says.

While Gilroy, a veteran of last year's Tulane Competition team, considers winning a highlight of this year's Competition, he also points to other memorable moments, including a panel program that featured a player agent and a former MLB general manager. But, as someone aiming for a career in the field, he says the biggest benefit of competing is getting an insider's look at sports arbitration. "Baseball arbitration is at one end a science and at another an art," he observes. "It's hard to explain exactly what falls into each. There's a way you want to present it, certain things you want to convey, and certain rules you must abide by. And getting your message across, how you want to prove your point, requires creativity and the ability to think on your feet."

Looking back on the experience, the team members recognize the unwavering support of Professor Elayne E. Greenberg, who guides DRS and facilitates its participation in the annual Tulane International Baseball Arbitration Competition. They also recognize and appreciate one another, notes Zedlovich. "Everyone did their part, putting in late nights and early mornings because we all had the goal of winning," he says. "We really developed a connection and became friends, and that translated into our competition performance. Even when I was presenting alone, in that freezing cold basement, I knew that my teammates were with me, and that made all the difference."



Love and ADR: St. John's Law Students Make the Connection

Brady Foster '21 knew that Terrace on the Park restaurant in Corona, Queens was the perfect spot for a marriage proposal this past December. There was the Manhattan skyline to take in, a family tradition to uphold, and—maybe best of all for a diehard Mets fan—his beloved Citi Field in clear view. It was also just a short ride to St. John's Law, where he and his now fiancée, Gia Fornicola '21, met three years ago.



"It was day one of our 1L year and Brady sat right next to me in Professor Cavanaugh's Civil Procedure class," Gia says of the start of this Law School love story. The story continued to unfold as the two explored a mutual interest in alternative dispute resolution (ADR) through upper-level courses offered at St. John's under the auspices of the Carey Center.

"As we see it, life is too short to litigate," Gia explains. "Plus, most cases never see a courtroom. So, we knew it would be useful to learn how to operate in the range of ADR settings. Being so interpersonal in nature, ADR also teaches general life lessons that anyone, even non-lawyers, can benefit from."

Together, Gia and Brady took Mediation: Representing Clients and ADR Advocacy and quickly saw that they could apply the knowledge and skills they were gaining to their own relationship.

One of his biggest takeaways from the two courses, Brady shares, is how important it is to understand the other side of an argument. "Just like in legal disputes, there's always a reason why someone feels the way they do, and a lot of the time it's something beneath the surface that needs to be uncovered," he says. "Any relationship can benefit from that understanding, getting to the root of an argument. It may even be more important in romantic relationships, since multiple disputes can have the same root cause."

Taking ADR courses at St. John's Law was also a formative experience for Gia, personally and interpersonally. "I'm a very outspoken, extroverted person," she says. "The ADR courses taught me to think before I speak and that, sometimes, silence is a good thing. This simple lesson I learned when mediating or negotiating can be applied to my relationship with Brady. If we're ever in an argument, I remind myself that it's okay to stay silent—to embrace it. Sometimes, silence is what you need to cool off, to avoid saying anything in anger, and to collect your thoughts."

As they prepare to graduate from St. John's next month, start their careers, and marry in May of 2023, Brady and Gia look forward to building on their ADR skillsets. "Problem solving is at the heart of ADR and any healthy and successful relationship, whether business or personal" Gia notes. "The problem-solving approaches we honed in class, and all of the ADR lessons we learned, flow into and complement one another, and we're thankful for them."

Members of the Carey Center's student-run Dispute Resolution Society (DRS) share what it means to them to be agents of change as they learn about ADR and animate that learning beyond the classroom:



Olivia Calamia '22

Learning about and practicing ADR has taught me that, even in situations where the game appears to be "zero sum," like in a trial or an arbitration, there is room for effective communication with the other party and understanding the other party's position. The principles of ADR have value not only in negotiation, mediation, and arbitration, but even traditional adversarial settings like litigation.

Jennifer Hepner '23

I'm an agent of change through ADR because I foster an environment of collaboration and teamwork by acknowledging and respecting every viewpoint involved in the decision-making process. This way, everyone feels that they have contributed to the resolution and that we have come to a conclusion as a team, as opposed to individually.



Kelly McNamee '23

I'm an agent of change through constantly working to try and find common interests between me and the opposing party. By doing this, I'm showing that even though we may have differences, we can still come together to find common ground.

Matthew Stewart '23

A wide range of options for the resolution of legal matters ensures efficiency for clients with limited resources. Alternatives to litigation can remove barriers such as burdensome cost, delay, emotion, and publicity from the process of protecting one's rights or interests.



Matthew Sulewski '22

To be an agent of change, I've learned that I must first be able to understand what needs to be changed and why there is a need for change. ADR has shown me that, in order to employ positive change, I must first take into consideration all interests that are or will be affected by my actions, and only then can I work towards employing positive change in a strategic and thoughtful manner.

Alexa Tommaso '22

On a small scale, I've been able to assist my friends and family in facilitating conversations that, at times, seem to be impossible among them. To be able to put my ADR skills to use in my day-to-day life in a way that positively impacts the outcomes of their debates and disagreements is very special to me.



Alumni Reflections

Here, DRS alumni reflect on how they put the ADR knowledge and skills they gained at St. John's Law to work in various practice settings.



Nick Berg '17

As an Expert Agent Advisor handling salary arbitration cases for Major League Baseball Players, the skills I learned during my time in DRS have proven invaluable on a near daily basis. The entire process of MLB salary arbitration is designed to foster settlement between the player and the club. During months-long negotiations, I must be adequately prepared with an accurate valuation of the client player. As offers are sent back and forth, understanding the process enough to know the available value is constantly changing against the backdrop of built-in deadlines is necessary to remain patient and resolute as I try to extract the most value possible from the club. With this knowledge and preparation, I can navigate through a flurry of tempting offers to hold out for a settlement that captures the player's true value and minimizes what is left on the table. At the same time, it's just as important to know when to stop pushing and seize the value already gained. Sometimes, an arbitration hearing is unavoidable at which point all that can be done is to present the strongest possible case. From start to finish I routinely deploy the skills I learned during my time in DRS, for which I am incredibly grateful.



Tina Kassangana '19

As a member of Moritt shock & Hamroff LLP's Corporate practice group, I specialize in complex corporate matters including, but not limited to, mergers and acquisitions. ADR, the Carey Center, and the first-year Lawyering intersession course have helped me in multiple ways. The two skills I use every day are interviewing and negotiating. I still remember interviewing mock clients in the Carey Center and hearing my professor say, "get the full picture." Whenever we represent sellers, I need our client to not only trust me but to give me all information pertaining to their business. Strong interviewing skills help put our clients at ease during the diligence process. When negotiating with opposing counsel, all the negotiation skills I learned in Lawyering are used. I make sure to ask why terms or numbers are proposed; I always have a reason for my proposal; and I always make sure we have a BATNA. Without a BATNA, negotiations can run away from you very quickly. I'm thankful the ADR programs at St. John's teach students how to best identify client goals and, from said goals, create a BATNA. The ability to clearly see our clients' goals is what sets me apart.



Adam Lau '17

The skills and knowledge I gained through DRS have been invaluable. As Legal Counsel at Kantar, a global data analytics and consulting company, my job is to provide support to the business teams to negotiate and close deals, as well as handle internal legal issues. I consistently use the tips and strategies I learned during my time with DRS in my everyday practice. Whenever I'm negotiating, I often build buy-in with counterparties' counsel right at the outset in order to prevent them from digging into their positions, which in turn helps build that golden bridge needed to close a deal. DRS also helped prepare me to handle the internal legal issues that in-house counsel often encounter. I routinely use the interviewing methods I learned in DRS when speaking to internal stakeholders to gain a full understanding of the legal issues, which ultimately helps me issue spot and provide the appropriate guidance in each situation. Overall, DRS helped prepare me to tackle common, everyday legal issues in a practical and efficient way.

Carey Center Welcomes Inaugural Visiting Scholar in Dispute Resolution



On October 5, 2021, Professor Ettore Maria Lombardi, the Carey Center's 2021 Inaugural Visiting Scholar in Dispute Resolution, virtually presented his paper, "The Singapore Convention, the UE Mediation Development Toolkit, and the New ADR Perspectives in the United States: All Attempts to Shape A Lawyer's Mediation Advocacy?" to students in the Law School's Mediation: Representing Clients course.

His riveting talk discussed mediation development from three perspectives: Italy, the EU and the United States and then prescribed how U.S. lawyers could integrate that knowledge to become more effective advocates in mediation.

Professor Lombardi is the Professor of Private Law and International Business Law at the University of Florence School of Law. In his distinguished career, he is helping advance the use of ADR through his global collaborations and scholarship.

Professor Lombardi's three take-aways for the students were:

1. Study deeply your cases and be always very prepared also on their nuances.
2. Do not be aggressive. You can prevail through your cleverness.
3. Be always curious and open to others' perspectives.

The Carey Center's Visiting Scholars in Dispute Resolution program invites ADR scholars from around the world to spend two weeks engaging with St. John's Law students virtually about ADR as a global construct. To learn more, contact Professor Greenberg at greenbee@stjohns.edu.

About DRS

The Law School's **Dispute Resolution Society (DRS)** is the Carey Center's student division. Formed in 2007, DRS seeks to educate students about the values and skills of appropriate dispute resolution. It also helps students hone their negotiation, mediation, arbitration, and hybrid process skills through seminars, mentoring, and events, including external and intra-school competitions.



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