



ST. JOHN'S
UNIVERSITY
SCHOOL OF LAW



The
Hugh L. Carey Center
for Dispute Resolution

2017 Newsletter

Message From The Director



The humanity of our society is measured by how we respond to conflict.

At the Hugh L. Carey Center for Dispute Resolution, our students don't just hone the skills they need to resolve conflict. *They live the values of conflict resolution.* We believe that, without the values, the skills are mere hollow acts.

Our students learn that these core values are shaped by the professional codes that guide lawyers and dispute resolution professionals. And they're reinforced by the Vincentian values that anchor St. John's University—values of service to the greater good that were modeled by our Center's namesake, the late Governor Hugh L. Carey, whose life's accomplishments show the importance of human connectedness to solving complex problems.

As a value, conflict is viewed as an opportunity to rethink what went wrong and to consider the best way to remedy the situation. Our students develop as client-centered lawyers who respect that the client is the conflict expert who knows what is most important in resolving the matter at hand.

Our students also understand the value of weighing diverse dispute resolution options to help advance the varied interests of their clients. Developing a self-awareness of their own strengths and weaknesses as lawyers and human beings, our students are able to be open and flexible about the best way to resolve the presenting conflict.

Although they may not agree with the other side, our students learn to engage those across the table with dignity and respect. Differences with clients and colleagues become jumping off points in a process that can enrich and expand understanding all around. Along the way, the students learn to rely on their professional, moral, and ethical compasses as they advocate for what's important to their client.

It's with great pride that I share with you the many ways that the Carey Center educates our students about, and demonstrates, these essential conflict resolution values. Our students' achievements are noteworthy, and the values that help them succeed will guide them throughout their professional lives.

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

Student Reflections

The Values of Conflict Resolution



{ Value: Conflict is an opportunity to make things better }

As a student in the Dispute System Design seminar, **Kenny St. John '17** developed a system to help prophylactically resolve potential scope of work claims in multi-union transportation industries, such as the Metro-North Commuter Railroad. The improved design recommends that unions meet with transportation management at the beginning of a proposed project to clearly define the allocation of different union assignments, minimizing union grievances that arise once a project is underway. St. John presented his dispute system to Kelli Coughlin, Assistant Director of Labor Relations at Metro-North Railroad.

{ Value: The Client is the conflict expert }

"Skilled lawyers know how to empower clients to voice what's important to them. I've learned that, once the client takes the lead as the real expert in the conflict resolution process, we can work together in our shared goals of reaching practical solutions, and fostering an attorney-client relationship based on trust and collaboration."

— **Janel I. Rottkamp '18**

{ Value: Attorneys need to be self aware }

"My DRS experience has taught me that, like the parties they represent, lawyers need to get out of their heated, emotional mindsets and think rationally about what's best for both sides to be effective in bringing about better and more sustainable resolutions."

— **Nicholas E. Templeton '18**

"As a participant in DRS, I've seen how easy it is for attorneys to get stuck in our own perceptions and perspectives about a dispute, the parties, and the resolution process. The challenge, and the opportunity, is to call out this self-involvement, and to focus instead on what our client and the other side are valuing. From there, with cooperation and determination, both parties can move on to a successful agreement."

— **Nicole Rende '18**

{ Value: Attorneys need to engage adversaries with dignity and respect }

"It's a given that attorneys are going to have to deal with difficult people on the other side of a dispute. DRS has given me the tools to calmly handle these situations, and to ensure that the process remains civil and productive."

— **Ryan P. Dolan '18**

{ Value: Difference with clients and adversaries are jumping points to understanding }

"Through DRS, I've come to understand that, in our global marketplace, 'difference' is a norm. So, when dealing with conflicts, it's vital that attorneys work with clients to understand the underlying values behind cultural and other differences."

— **Ipek Basaran '18**

"This lesson I learned through DRS is applicable in law and in life: No two humans see things exactly the same way, so conflict is inevitable. But that's not a bad thing. When we 'cross the table' and examine issues from another's perspective, the resolutions we reach are not only mutually satisfying, but put us in a better place than where we started."

— **Michael McConnell '18**

{ Value: There are many ways to solve a conflict }

"DRS has given me a deep sense of the lawyer's ethical obligation to try to resolve conflict by using an appropriate dispute resolution process, whether that's mediation, negotiation, or arbitration. Multiple tools are available to us, and we need to be open and flexible enough to engage the one that fits best as the dispute and the path to its resolution unfolds."

— **Philip George '18**



Andrea Cann Chandrasekher and David Horton

2017 Mangano Award Goes to Consumer Arbitration Scholars

Today, millions of Americans will buy a car, take out a loan, or choose a wireless carrier. When they do, without giving it a second thought, they'll also sign a contract requiring that both parties resolve their grievances through arbitration instead of in court.

How do disputants fare under these standard arbitration provisions, especially in view of recent U.S. Supreme Court decisions directing consumers to use two-party arbitration as opposed to class action? Professors Andrea Cann Chandrasekher and David Horton of UC Davis School of Law (King Hall) explore this important question in their article, "After the Revolution: An Empirical Study of Consumer Arbitration," 104 *Geo. L.J.* 57 (2015). Taking a deep dive into the data, they analyze close to 5,000 cases filed with the American Arbitration Association between July 2009 and December 2013.

Their investigation "behind the black curtain of the extrajudicial tribunal" is unprecedented in its scope and earned the team the Carey Center's 2017 Mangano Dispute Resolution Advancement Award.

The \$5000 annual 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 40-year career to promoting dispute resolution, first as presiding justice of the New York State Appellate Division, Second Department, then as a state legislator, and now as an arbitrator and mediator.

"David and Andrea have answered a question that has been the subject of controversy for years: whether companies that arbitrate over and over have an advantage over consumers who have never arbitrated before," says Professor Jeff Sovern, an expert in consumer law. "Their careful work has made a major contribution to the policy debate over whether pre-dispute arbitration clauses should be enforceable—a debate that's taking place in Washington, D.C., among other places, today."

Professor Sovern joined St. John's Law colleagues and students in welcoming Professor Horton to the Law School, where he accepted the Mangano award on behalf of his research team, presented their paper, and discussed their ongoing scholarly work.

"Receiving the award and presenting the paper was a terrific experience," Professor Horton says. "I could not have been more impressed by the faculty and students at St. John's. They had obviously read the article carefully, and they asked thoughtful and interesting questions."

Aaron Fine '18, one of the student attendees, says: "I think Professor Horton and Professor Chandrasekher recognized a pattern and sought to address it. In a profession dictated by

logic, it's important to realize that every trend happens for a reason, including companies more and more frequently turning to mandatory arbitration clauses."

The paper and presentation made an impression on Ipek Basaran '18 as well, particularly the finding that pro se parties won more cases than repeat plaintiffs' attorneys. "This result supported my assumption that alternative dispute resolution methods, including arbitration, are more favorable than litigation to people who represent themselves, as there are no strict rules of evidence and procedure is more flexible," she says.

As Aaron Leaf '17 recognizes, the study conducted by Professors Chandrasekher and Horton has practical implications because it dispels certain widely held beliefs about dispute resolution forums. "For instance, it shows that consumers fair worse in commercial arbitration as opposed to litigation," he says, adding, "The more hard facts you have about what to expect in terms of costs and outcomes, the better you can counsel your client in these matters."

Brendan O'Brien '18 agrees that the study offers valuable insights for practitioners—and for law students who are learning what it means to be zealous and effective advocates. "As a law student and legal intern in the Securities Arbitration Clinic, it was illuminative to see how claimants' attorneys are coming up with innovative ways to protect their clients' rights as they bring their claims against repeat players in arbitration proceedings."

Sharing that she was "so very disappointed to have missed the awards ceremony and the opportunity to meet the St. John's faculty and students," Professor Chandrasekher says, "David, however, is an amazing co-author and a dynamic presenter, and so I was delighted to know that he could attend to represent us both." As they continue to work together, the two hope to expand their dataset to include every dispute resolution provider and other kinds of cases. They would also like to look more closely at the relationship between company size and success in arbitration.

"David's and Andrea's research focuses an important, objective lens on the polarized debate surrounding pre-dispute arbitration clauses," says Professor Elayne E. Greenberg, who leads the Mangano award selection process. "They provide a more nuanced understanding of how pro ses, plaintiffs' lawyers, and repeat corporate players fare in their justice quest. The research also suggests how dispute resolution providers could reinforce specific practices and policies to help make arbitration a more level playing field for all. We appreciate Judge Mangano's ongoing support, which ensures that this kind of vital, empirical research and legal scholarship is recognized and encouraged."

1Ls Learn the Fundamentals of Negotiation Hands On



"I never thought a two-credit, one-week class would rock me to my core," Tina Kassangana '19 says, reflecting on the 1L Lawyering course that was held during the January 2017 intersession. "I was able to identify personal strengths and weaknesses via negotiation role-play. Lawyering instilled a confidence in me that renewed my commitment to my legal education. It was the best way to begin my second semester of law school."

Developed by Professor Elayne E. Greenberg, Lawyering focuses on negotiation skills and the companion skills of interviewing clients and drafting agreements—core competencies for lawyers.

The course, which is required for all 1Ls, is part of a suite of intersession offerings designed by the Law School faculty in response to the challenges and opportunities of the new legal marketplace. "As an innovator in legal education, St. John's understands that lawyers don't just need to know substantive law," Professor Greenberg says. "They need to be able to apply that substantive law using negotiation skills. This dual skillset makes St. John's first-year students more competitive applicants for desirable legal positions."

The full-time and adjunct faculty members who teach Lawyering bring a range of expertise and practical insight to the classroom. Each year, they collaborate to refine the course curriculum to meet the students' current needs. In addition to Professor Greenberg, this year's faculty included:

- Peter Jay Bernbaum
- Patricia Grande Montana
- Elaine M. Chiu
- Sejal Singh
- Dennis Glazer
- Rachel H. Smith
- Ann L. Goldweber
- Ettie Ward
- Michael Kerman

With their professor's guidance, the students applied the legal knowledge and analytical reasoning skills they developed during their first semester at St. John's Law to real-world situations. "The goal," Professor Greenberg says, "is to give every student a basic grounding in the theory and practice behind fundamental skills that lawyers use in all areas of legal practice. The course also prepares students for the more advanced skills training available through the Law School's clinics, externships, co-curricular activities, and other experiential offerings.

Professor Goldweber, St. John's director of clinical legal education and director of the Consumer Justice for the Elderly: Litigation Clinic, appreciates the foundation that the Lawyering course provides.

"Students who participate in any one of our 10 in-house and partner clinics use interviewing, counseling, and negotiation skills in advocating for New Yorkers in need," she says. "The Lawyering course not only helps our 1Ls develop these essential lawyering skills, it gives them the confidence to use them appropriately in a variety of real-world contexts, including at summer jobs and in law school clinics."

Students give the Lawyering course high praise for compelling them to re-think how they want to practice law. "The class brought me to the realization that effective negotiation takes teamwork across party lines," says Brendan Gibson '19. "Only genuine attempts to better your situation along with your opposing party's situation help bridge the gap between dispute and resolution."

Camila Sosa '19 says that the course changed her perspective on effective lawyering as well. "I always had the impression that the tough, angry, stubborn negotiator won negotiations, but I learned it is the skilled negotiator who wins," she shares. "Working alongside my classmates created a comfortable atmosphere where I practiced, made mistakes, and learned from myself and my peers."

The students also appreciate the opportunity to experience, and to develop, a wide range of negotiation approaches and styles. "I learned how to identify interests of negotiating parties and to create agreements that are a win for both sides instead of one-sided victories," says Kelly Hutchins '19. "I practiced how to listen to my client's story actively by using different body postures and how to build a good attorney-client relationship," Emily Zhou '19 adds.

The students came away from the week with a clear sense of accomplishment. "I saw my own personal growth through creating value, using objective criteria, and focusing on my client's interests," says Elliot Shine '19. "Likewise, the growth of the class as a whole was evident."

In addition to learning in the classroom, the students assembled for talks given by alumni Richard F. Hans '93, Michelle Johnson '05, Ashley Kloepfer '11, and EJ Thorsen '08. Each discussed how negotiation skills are essential to their law practice. "The speakers motivated me to stay focused and understand the goals of the class," says Jane Shin '19. "By the end of the week, I began to create an initial set of skills needed to become a successful lawyer and advocate."

St. John's Hosts 2016 Securities Dispute Resolution Triathlon

The Carey Center and the Financial Industry Regulatory Authority (FINRA) hosted the eighth annual Securities Dispute Resolution Triathlon in October 2016 at St. John's Manhattan campus.

The Triathlon presents a unique test of student ability in each of the three main ADR processes—negotiation, mediation, and arbitration—in a single competition. Students are given the roles of 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.

This year's fact pattern centered on a reoccurring issue in current practice: When a Structured Product that is recommended by the brokerage firm fails, what is the allocation of responsibility between the broker who has recommended the Structured Product to (his)(her) clients and the brokerage firm?

"The student participants find that, in many actual legal cases, there is no bright line between right and wrong," says Professor Elayne E. Greenberg. "They also begin to realize that presenting legal problems are also often business, emotional, and moral problems. The learning comes in discerning which process is best for the particular case and in figuring out the effective ways to advocate in the three processes."

Regardless of the career path they choose, in or outside the legal profession, "law students benefit tremendously from developing the dispute resolution skills they need to be effective advocates," Professor Greenberg adds. "Our collaboration with FINRA helps students to grasp the nuances of settlement modalities and to experiment with different advocacy styles in simulated, real world contexts."

Besting a field of 18 teams from law schools around the country, South Texas College of Law/Houston took the overall championship, with Texas A&M in second place and American in third place. Mississippi won the arbitration round, with American taking second place and South Texas College of Law/Houston third place. The mediation round went to Texas A&M, with Maryland taking second place and Mississippi taking third place. Rutgers won the negotiation round, with Miami taking second place and Northwestern taking third place. American won the Advocate's Choice Award, given to the team voted by the other competitors as demonstrating the highest degree of effectiveness and professionalism.

The competitors found the Triathlon an exceptional, hands-on learning opportunity, and came away with a number of valuable insights, including:

- "Never assume you know what the other side cares about."
- "Be flexible and willing to move away from positional bargaining"
- "Some of the most confrontational, uncomfortable, or extremely personal disputes can be resolved effectively through mediation."



- "Every mediator has their own particular style, which requires a lot of adaptation mid-mediation on behalf of both parties in order to most effectively pursue our own interests."
- "Each round needed a different strategy in order to achieve the best outcome. We reached better outcomes in the rounds that were more collaborative and facilitative."
- "The processes are actually intertwined and interdependent on each other, because the effectiveness of your strategy in prior rounds will affect your strategy in subsequent rounds."

This year's Securities Dispute Resolution Triathlon will be held on October 14-15, 2017. For more information about the competition, please visit our website at stjohns.edu/law/careycenter/triathlon.



St. John's Law and American Bankruptcy Institute Hold Annual Bankruptcy Mediation Training

The Carey Center and the American Bankruptcy Institute, the nation's leading provider of quality bankruptcy educational programs, held their annual 40-hour bankruptcy mediation training for experienced bankruptcy practitioners at St. John's Manhattan campus in December. Each year, in addition to the basic training, the program includes an additional practice focus in bankruptcy mediation. This year, the Honorable Melanie L. Cyganowski, a former Chief Judge in the Southern District of New York and now chair of the Otterbourg P.C.'s bankruptcy group in New York shared the differences that exist when bankruptcy judges mediate bankruptcy cases.

DRS in Action

Students in the Dispute Resolution Society, the Carey Center's student arm, participated in a range of activities during the 2016-2017 academic year. Here are just a few of the highlights of DRS in action.



National Baseball Arbitration Competition Champions

Nick Berg '17, Sean McGrath '18, and Miller Lulow '18 teamed to win the two-day National Baseball Arbitration Competition at Tulane Law. They were coached by **Ryan Lake '13LLM.** and **Kap Misir '04CPS, '13LLM.** Lake and Misir coached last year's St. John's team to the final round of the competition.



ABA Representing Clients in Mediation Competition

The team of **Stephanie Canner '18** and **Amanda Tersigni '18** placed second at the regionals of the ABA's Representation in Mediation Competition. **Raspreet Bhatia '16** and **Michael McDermott '15** served as coaches. **Christopher and Kevin** placed third in the region, and **Christopher and Kevin** placed fifth.



Judith S. Kaye Arbitration Competition

Aaron Leaf '17, Melanie Lee '17, Michael Lezamiz '17, Michael McConnell '18, Janel Rottkamp '18, and **Amanda Tersigni '18,** along with coach **Daniel Merker '11,** competed in the Judith S. Kaye Arbitration Competition organized and hosted by the American Arbitration Association. The team was awarded a certificate for best cross-examination.



1L Internal Negotiations Competition

Elidger Dauphin '19 and **Terrell Hutchins '19** bested 19 other teams to win the 2017 DRS 1L Internal Negotiations Competition. The team of **Daniel Randazzo '19** and **Olivia Tourgee '19** made a strong showing to take second place. The competitors were tasked with demonstrating their negotiation skills to the St. John's Law alumni and negotiation professionals who served as judge.



Ghanian Judges Visit With DRS Students

Ghanian Judges **Arit Nsemoh** and **Jonathan Avogo** and St. John's Law students compare and contrast the dispute resolution systems in Ghana and the United States.

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.





Peter Jay Bernbaum

Professor **Peter Jay Bernbaum**, who counsels businesses in the cable television and broadcast industries, serves on the Panel of Mediators for the United States District Court for the Southern District of New York and as a mediator for the Alternative Dispute Resolution Program for the Commercial Division of the New York County Supreme Court. He is also a contract hearing officer for the New York State and Local Retirement System.



Elaine M. Chiu

Professor **Elaine M. Chiu** won a Dean's Teaching Award this year for her efforts in the 1L Lawyering course during the January intersession. Through her work with the Ron Brown Center for Civil Rights, and in collaboration with the Carey Center, she also helped to organize small group dialogue events for the Law School community on Gender in America and on the Constitution and America Post-Charlottesville.



Ann L. Goldweber

As a member of the Statewide Access to Justice Council, Professor **Ann L. Goldweber** helped to organize this year's NYS Access to Justice Commission Conference on the Role of New York's Law Schools in Helping Meet the Essential Civil Legal Needs of Low-Income New Yorkers and facilitated a workshop there. Professor Goldweber continues to present regarding financial exploitation of the elderly and moderated a panel at the annual NYC Annual Elder Abuse Conference. As the new co-director of the Public Interest Center at St. John's Law, she has worked to enhance pro bono opportunities for students and to bring access to justice issues to the Law School community for discussion through forums and panels.



Elayne E. Greenberg

Professor Elayne E. Greenberg's critique of empirical research that assessed where there is a need for a new UNCITRAL instrument to enforce global commercial mediation, "Realizing the Gap Between Rationality and Information," was published in 74 Wash. & Lee L. Rev. Online 47 (2017). She was named one of three Women of Influence in Alternative Dispute Resolution in New York City, and was again recognized by *Best Lawyers New York City* for Dispute Resolution. Professor Greenberg co-presented a talk, When 'Yes' Means 'No': Rethinking Informed Consent to Dispute Resolution Procedures, at the ABA Section of Dispute Resolution Spring Conference. This collaborative presentation with Professors Donna Shestowsky of UC Davis and Gil Siegal of University of Virginia built on the presenters' respective informed consent research. Professor Greenberg's current scholarship focuses on addressing the ethical concerns about litigation funding in the dispute resolution context, and Law 360 has quoted her on the subject.



Patricia Grande Montana

Professor **Patricia Grande Montana's** recent article, "Bridging the Reading Gap in the Law School Classroom," was published in the Summer 2017 issue of the *Capital University Law Review*.



Nancy Thevenin

Professor **Nancy M. Thevenin**, who teaches International Commercial Arbitration at St. John's Law, became the first African American woman chair of the New York State Bar Association's International Section, a dynamic group of approximately 2,000 attorneys based in over 50 countries who practice public or private international law. At the group's recent meeting in Antigua, Guatemala, Professor Peggy McGuiness—co-director of St. John's Center for International and Comparative Law—organized a panel on Transnational Practice and Legal Education in the Americas, and several St. John's Law students served as volunteers.



Ettie Ward

Professor **Ettie Ward** spoke on the Role of the Court of Arbitration for Sport at New York Law School and was a panelist at that school's annual Sports Law Symposium. She also lectured on U.S. sports law at Spain's University of Lleida. Professor Ward organized three CLE panels for law clerks in the Second Circuit for the Federal Bar Association.



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