



ST. JOHN'S  
UNIVERSITY  
SCHOOL OF LAW



The  
**Hugh L. Carey Center**  
for Dispute Resolution

2018 Newsletter

## Message From The Director



Our families, workplaces, social groups, and places of worship are typically hierarchal organizations where roles are assigned and decisions are made by a few on behalf of the many. More often than not, this tiered structure leaves most members of the group feeling disempowered, resigned to believe that they can't change the way the organization functions.

Recognizing this common scenario, and finding a hierarchal framework inconsistent with the dispute resolution values they were learning, two years ago the students in our Dispute Resolution Society (DRS)—the Carey Center's student arm—adopted a flat organizational structure. The decision has given our students a unique opportunity to apply their conflict resolution values and skills to the day-to-day administration of DRS.

As a flat organization, DRS retains its Executive Board and each Executive Board member oversees a sphere of organizational activity. But all members share equally in the success of DRS's initiatives, and work together to ensure the organization's overall wellbeing and sustainability. No one member has greater importance or more responsibility than any other. Now, our students recognize the worth of each member's contributions, the benefits of shared responsibilities, and the strength of collaborative decision making. Moreover, they are experiencing first-hand how DRS's flat organizational structure helps to manage and resolve the inevitable conflicts that arise.

As you'll read in this newsletter, DRS's organizational restructuring has been a success. Initially, some students doubted the viability of a flat DRS. Now they can't imagine it any other way.

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

## Making the Switch to a Flat Organization



**Recently, DRS students from the Class of 2018 gathered to reflect on their pivotal decision to switch to a flat organizational structure, and to share how being part of a thriving, flat organization has impacted them as future lawyers, dispute resolution professionals, and members of diverse organizations.**

**{ Ipek Basaran }**

"Everyone in DRS has a say so you do things because you want to, not because you have to or because your position on the Executive Board dictates it. What we learned about leadership has wide application. I had room to be transparent with others and for them to be transparent with me."

**{ Stephanie Canner }**

"As a member of a flat organization, you're more willing to help out when you know others will, too. There's trust in reciprocity."

**{ Michael McConnell }**

"As Executive Board President, I learned that you can foster collaboration as a leader. Leadership doesn't have to mean someone's above and others are below. Collaborative structures break down walls that might otherwise exist. There were issues, of course, but we resolved them quickly and efficiently all together."

**{ Nicholas E. Templeton }**

"Much less fell through the cracks because everyone in the organization was willing to step in and help."

**{ Matthew Wiener }**

"No one in DRS gets pigeon-holed into one role. The structure allows you to be more familiar with all aspects of the organization. We all know how the entire organization runs. There are no silos of operation."

### 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.

# ST. JOHN'S HOSTS 2017 SECURITIES DISPUTE RESOLUTION TRIATHLON

In October 2017, the Carey Center and the Financial Industry Regulatory Authority (FINRA) hosted the annual Securities Dispute Resolution Triathlon at St. John's Manhattan campus.

The Triathlon stands alone as a single 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.

This year's fact pattern, "Shades of Gray," centered on an emerging issue in current practice: What constitutes a brokerage firm's adequate supervision of its graying population of brokers? Implicit in this issue is whether adequate supervision requires an ongoing assessment of a broker's mental capacity.

"Given these novel facts and issues, the competitors came 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, creator of the Triathlon. "For instance, they considered organizational changes that brokerages need to make to heighten their awareness of brokers who are starting to experience cognitive decline. The learning comes in discerning which dispute resolution process best addresses the multiple dimensions of a particular case, and in identifying 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. "After all, most legal cases do settle," Professor Greenberg notes. "As collaborators on the Triathlon, the Carey Center and FINRA give students a unique opportunity to grasp the nuances of settlement modalities, and to experiment with different advocacy styles in simulated, real world contexts."

Besting a field of 20 teams from law schools around the country, the Benjamin N. Cardozo School of Law took the overall championship, with the University of Mississippi School of Law coming in second place and the American University Washington College of Law taking third. Cornell Law School won the arbitration round, with the

Marshall-Wythe School of Law at the College of William & Mary placing second and Texas A&M University School of Law coming in third.

The mediation round went to Brooklyn Law School's Team Q, with the University of Maryland Francis King Carey School of Law taking second place and William & Mary coming in third. Brooklyn Law School's Team R won the negotiation round, with American placing second and Cardozo earning third. University of Pittsburgh School of Law won the Advocate's Choice Award, given to the team voted by the other competitors as demonstrating the highest degree of effectiveness and professionalism. Texas A & M took second place and Brooklyn Law School's Team Q earned third.

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

- Negotiation is an art form between flexibility and adaptability
- Always know your BATNA and never accept a bad deal for convenience
- Humility can go a long way with a mediator
- Mediators can get through to the client and keep us on track
- Using external standards can be very effective
- Try as much as possible to resolve your case before you go to arbitration. The arbitration outcome is much less foreseeable than in negotiation or mediation
- Learn the difference in advocacy styles among the three dispute resolution processes
- Facts and wishes don't change the law

This year marks the 10th anniversary of the Securities Dispute Resolution Triathlon. For more information, please visit the competition website at [stjohns.edu/law/careycenter/triathlon](http://stjohns.edu/law/careycenter/triathlon).





**Carey Center Hosts ABA Negotiation Competition**

In November 2017, DRS students demonstrated their organizational skills once again when the Carey Center hosted the regional rounds of the **ABA Law Student Division Negotiation Competition** at St. John’s Law. The competition simulates legal negotiations in which law students, acting as lawyers, negotiate a series of legal problems. Competitors from Columbia Law School and Fordham University School of Law bested the field of 24 teams to advance to the competition finals.



**Nip Conflict in the Bud: The Ombuds Approach**

There are multiple ways to respond to conflict. The sooner we address a problem, however, the easier it is to resolve it. In February 2018, St. John’s Law alumna **Joan Waters, University Officer at Columbia University, and Tracy L. McNeil, Ombudsman at the U.S. Securities and Exchange Commission**, shared how they help their respective organizations manage and resolve conflicts. Referring to ombudsmen as “the concierge of conflict resolution services,” Waters and McNeil brought home to students in a lively discussion the value of nipping conflict in the bud before it became a much larger problem. The program was co-sponsored by DRS and the Corporate and Securities Law Society.



**Carey Center and ABI Present Bankruptcy Mediation Training Program**

In December, the Carey Center and the American Bankruptcy Institute held its **Eighth 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 also introduced to an emerging specialized issue in bankruptcy mediation. In this year’s training, participants were educated about how to address the potential ethical issues that may arise for mediators and mediation participants when one of the parties is receiving third-party funding.



**How Core Religious and Spiritual Values Guide Us in Conflict Negotiations**

In March, **St. John’s Law Chaplain Rev. John W. Gouldrick C.M.** engaged students from our Catholic Law Students Association, Jewish Law Students Association, and Dispute Resolution Society in a rich and introspective conversation about how our core religious and spiritual values provide welcome boundaries that help guide us in conflict negotiations throughout our legal careers. The discussion inspired the participants to consider how their values can help them choose the type of law they practice, the organizations they work for, and the clients they represent.

**DRS** students participated in a range of activities during the 2017–2018 academic year. Here is a just a sampling of DRS in action:



### **New York Law School Intellectual Property Negotiation Competition**

Nicholas Templeton '18 and Jimmy Rodriguez '18 teamed to take first at the New York Law School Intellectual Property Negotiation Competition.



### **ABA Law Student National Representation in Mediation Competition**

The team of Daniel Borbet '19 and Madeline Mallo '19 won the ABA's Law Student National Representation in Mediation Competition regionals. Coached by Raspreet Bhatia '16 and Michael McDermott '15, the team then advanced to the national competition in Washington, D.C.



### **National Baseball Arbitration Competition**

Mollie Galchus '19, Miller Lulow '18 and Sean McGrath '18 advanced to the quarterfinals of the two-day National Baseball Arbitration Competition at Tulane Law. The team was coached by Kap Misir '04CPS, '13LL.M. and past team member Rob Vogel '16.



### **Willem C. Vis International Commercial Arbitration Moot**

Bryant Gordon '18, Tina M. Kassangana '19, and Parm Partik Singh '18 represented St. John's Law at the Willem C. Vis International Commercial Arbitration Moot held in Vienna, Austria. The team was coached by Lorraine Brennan of JAMS, which provides arbitration, mediation, and other ADR services globally.



## Center Faculty News



### Peter Jay Bernbaum

Professor **Peter Jay Bernbaum** continued as a member of the mediation panels for the United States District Court for the Southern District of New York and for the New York State Supreme Court Commercial Division, New York County. He has also been reappointed as a hearing officer for the New York State and Local Retirement System. Professor Bernbaum's legal practice includes work in the cable television industry. As a presenter in classes at the Drexel University Paul F. Harron Graduate Program in Television Management this year, he incorporated an industry-related negotiation simulation he originally developed for a course at St. John's Law. In 2017, Professor Bernbaum received the Harvard University Hiram S. Hunn Memorial Schools and Scholarships Award for more than four decades as an alumni volunteer with local schools and scholarships committees interviewing prospective undergraduates.



### Ann L. Goldweber

Professor **Ann L. Goldweber** received the Queensboro Council for Social Welfare's Outstanding Advocate Award. As Director of the Consumer Justice for the Elderly: Litigation Clinic at St. John's Law, she supervises students in representing older Queens residents who are victims of deed theft. The Clinic is working closely with the Economic Crimes Unit at the Queens County District Attorney's Office, which is prosecuting the deed theft cases while the Clinic provides civil representation. The Assistant District Attorney on these cases has been so impressed with the Clinic's work that she has helped to structure \$11,000 in donations to the Clinic as part of the criminal defendants' plea agreements.



### Elayne E. Greenberg

Professor **Elayne E. Greenberg** has been appointed to serve as a member of New York Chief Justice Janet Di Fiore's ADR Advisory Board to promote the use of ADR in the state's court system. She conducted an advanced mediation training on Expanding a Lawyer's Philosophical Map to Overcome Impasse(s): The Role of Law in Commercial Mediation at the Università Degli Studi Firenze in Florence, Italy; moderated a panel of the Economics of Dispute Resolution at Cravath's 2018 Summit on Global Dispute Resolution; and presented Advocating in the Mediation Process at the NYSBA Mediation and Arbitration Clinic for Advocates and New Lawyers, co-sponsored by the Carey Center. Professor Greenberg's article, ". . . Because 'Yes' Actually Means 'No': A Personalized Prescriptive to Reactualize Informed Consent in Dispute Resolution" has been accepted for publication in the fall edition of the *Marquette Law Review*. Her latest Ethical Compass column "Act Like a Lawyer, Talks Like a Lawyer . . . Non-lawyer Advocates Representing Parties in Dispute Resolution" appeared in the Spring 2018 *New York Dispute Resolution Lawyer*. Once again, Professor Greenberg has been chosen by her peers as one of the Best Lawyers in America in Mediation.



### Patricia Grande Montana

Professor **Patricia Grande Montana's** recent article, "Watch or Report? Livestream or Help? Good Samaritan Laws Revisited: The Need to Create a Duty to Report," was published in the Summer 2018 issue of the *Cleveland State Law Review*. She also presented on Live and Learn: Live Critiquing and Student Learning at the Southeastern Regional Legal Writing Conference in Atlanta, Georgia in April 2018.



### Rachel H. Smith

Professor **Rachel H. Smith** presented on her work-in-progress, "Pink-Collar Pedagogy," at the 2018 Biennial Conference of the Legal Writing Institute and presented on Deep Thinking at the 2018 Southeastern Association of Law Schools Conference.



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