

Center on Negotiation and Mediation

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FALL 2014

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Save the Date: Negotiation Ethics and Improvisation— October 10

Professors Michael Wheeler (Harvard) and Art Hinshaw (Arizona) are coming to Northwestern Law School on October 10 for an afternoon workshop. Art Hinshaw will present his latest research regarding ethical decision-making by law students and attorneys and Mike Wheeler will discuss his new book, *The Art of Negotiation: How to Improvise Agreement in a Chaotic World*. The workshop will also feature an experiential component where audience members will have the opportunity to work with improvisational experts who will lead audience members through improv games and exercises to explore the skills and techniques presented in Professor Wheeler's book.

MCLE credit will be provided (professionalism credits pending)



A Few Words From Our Director

*Lynn P. Cohn, Clinical Professor of Law,
Director, Center on Negotiation and Mediation*

It's been a wonderful summer here in Chicago and we are looking forward to the start of the new academic year. This past winter we stayed warm by staying very busy at the Center on Negotiation and Mediation. Several new courses have been added to our curriculum, including Dispute Resolution in Sports and a Restorative Justice Seminar. We continue to offer multiple sections of the Negotiation Workshop, which consistently fill to capacity. Our students have enjoyed participating in competitions—this past year becoming National Semi-finalists in the ABA Negotiation Competition. And our faculty has enjoyed presenting at and attending conferences all over the world including: The ICC Mediation Conference in Paris, France; ABA Dispute Resolution Conference; International Association of Sports Law World Congress of Sports Law; The International Conference on Mindfulness in Legal Education; and the AALS Annual Clinical Legal Education Conference. The opportunity to interface with peers at other institutions is always welcome.

One key initiative on our agenda for this year is enhancing learning in our program with emerging technology. Professor Alyson Carrel has been exploring ways to bring the laptop (and other devices) back into the classroom. Using Google Forms, Twitter, Storify, and other emerging technology, Professor Carrel is working to innovate the classroom and better engage students to meet learning objectives while increasing the students' information/technology literacy.

Professor Len Riskin will be publishing an article with Rachel Wohl featuring new strategies for using mindfulness in negotiation as well as writing a new book that integrates conflict resolution, mindfulness and internal family systems.

Finally, we were honored to be included in the Top Ten Programs in Dispute Resolution by US News & World Report. We are very dedicated to both our students and to the field and it feels good to be noticed. Kudos are also due to Professor Paul Chadha who was honored with the student voted teaching award for his International Business Negotiation course.



Negotiation Competition National Semi-finalists: Andrew Wang and Victoria Lee with Dean Richard Bales, Competition Director.



Bluhm Legal Clinic
Northwestern Law

Student Profile

Ashleigh Morpeau



As an upcoming third-year student at Northwestern Law, Ashleigh Morpeau believes that the Center for Negotiation and Mediation has brought about some of her most meaningful law school experiences. Among them was observing Professor

Lynn Cohn, Director and Clinical Professor of Law (JD '87) mediate an employment discrimination case. According to Ashleigh, observing a thirteen hour mediation allowed her to see teaching points from all of the center's classes put to use in one day. In addition to witnessing Professor Cohn use skills from the Mediation Process class in practice and attorneys use skills from the Negotiation and Mediation Advocacy classes, Ashleigh was able to observe the parties exhibit "thinking like a lawyer" and making use of what she had learned from her doctrinal classes.

Ashleigh has also benefitted from mediating cases in different courthouses as part of the Mediation Practicum. Ashleigh's favorite courthouse has been the Skokie courthouse, as she appreciates the way the judge at this courthouse introduces the mediators to the parties. Ashleigh feels that the greatest benefit from her mediation experience is practicing what she has learned in a real situation, as opposed to just in a simulation. "In court with real people and real emotions, anything can happen. Being able to use skills in a dynamic setting has significantly enhanced my educational experience."

Ashleigh hopes to be a JAG officer in the future and believes that the listening and problem solving skills will be instrumental in this new goal. She believes that the skills that she learned from mediating will be helpful both for her career and for other areas of her life.

Alumni Profile

Heather Scheiwe Kulp (JD '10)



Heather's career is a tale of many firsts. When she graduated Northwestern in 2010, she was determined to move into dispute resolution and like many individuals trying to work in ADR as a first career was told it would be near impossible. But Heather was

determined to make it work and she became the first Skadden Fellow to be awarded a fellowship in dispute resolution. Heather's Skadden Fellowship focused on researching and designing mediation programs as a process for addressing the height of the foreclosure crises. After completing her fellowship, she was then hired as the first ever Clinical Fellow at Harvard's Negotiation and Mediation Clinical Program. And now, Heather is the first non-Harvard grad to be hired as a Clinical Instructor position in the Negotiation and Mediation Program where she will start this fall.

Heather says her career aspiration started in law school when she took the Negotiation Workshop at Northwestern Law. Prior to this course, she had always seen negotiation skills in the practice of law, but didn't realize that being a professional dispute resolution expert could be a career in and of itself.

Heather relied on her entrepreneurial skills to creatively design her own path. In fact, Heather says that anyone who wants to enter the field of ADR as a first career needs to have an entrepreneurial mindset. She says, "I look at what a better outcome might be, then set out to design processes using tools that may be underutilized."

Congratulations to Heather as she starts her new position as Clinical Instructor at Harvard Law School! We are so proud of her and all the firsts she has accomplished.



NEW VIDEO BLOG

Professor Alyson Carrel has started a video blog to highlight stories of individuals who chose to begin their professional careers in the ADR field. Typically, ADR is seen as a 2nd (or 3rd) career. But as more and more law schools, graduate schools, undergraduate schools, and even high schools, are teaching students about mediation, individuals are graduation and looking to begin their career in ADR from the start. This video blog explores how and why the next generation of ADR professionals is going into ADR earlier than our field's first generation of leaders. Check out this video blog and share your story at www.adras1stcareer.blogspot.com



Sports Law Dispute Resolution: World Anti-Doping Code Revisions

Daniel Gandert (JD '07), lecturer, Center on Negotiation and Mediation

Starting in 2015, the World Anti-Doping Code (WADC) will increase its standard penalty for an athlete's first doping offence from two years of ineligibility to four years of ineligibility. While the new rules will be more fair to most athletes with inadvertent doping offences, there are some athletes who will receive increasingly harsh sanctions for their actions. It will be interesting to see how the Court of Arbitration for Sport (CAS) handles these cases in the future.

In 2008, the International Olympic Committee (IOC) issued the "Osaka Rule," which prohibited athletes with doping suspensions of greater than six months from competing in the next Olympic Games regardless of whether their suspension was already completed. This even included athletes whose offence fell into the *No Significant Fault or Negligence* category. However, the validity of the "Osaka Rule" was challenged in the case *USOC v. IOC* (CAS 2011/0/2422). The case involved the runner LaShawn Merritt who became contaminated after purchasing the supplement ExtenZe at a 7 Eleven store. The CAS Panel hearing *USOC* determined that the "Osaka Rule" was inconsistent with the WADC and that which the IOC was required to follow under the Olympic Charter. As such, CAS invalidated the rule.

This case led the IOC to urge WADA into adding the "Osaka Rule" to the first draft of the 2015 World Anti-Doping Code. However, between the first and second draft of the revised Code, the "Osaka Rule" was dropped. The final

version of the revised code increases the standard penalty for an athlete's first doping offence from two years of ineligibility to four years of ineligibility. This change will also more than double the minimum penalty for a *No Significant Fault or Negligence* offence from one year of ineligibility to four years of ineligibility.

While the revised WADC appears to be harsher than the current code, it contains a new *Contaminated Product* category that makes the revised code more fair to many athletes with inadvertent doping offences. It is common for athletes to take nutritional supplements, which are not on the *Prohibited Substances* list. Because athletes believe that their competitors are taking supplements, athletes believe that they need to take supplements in order to remain serious contenders. The current WADC prohibits athletes who test positive from a contaminated supplement from having their case fall into the *No Fault or Negligence* category since athletes are warned about the risk of taking supplements. This puts athletes into a difficult situation. The revised WADC includes a *Contaminated Products* category which allows arbitrators to reduce the penalty for athletes who test positive from taking contaminated supplements to a reprimand with no period of ineligibility. This makes things more fair for athletes who inadvertently test positive because of supplement contamination.

Although the revised WADC is more fair for instances of inadvertent doping, it is increasingly harsh for cases where

an athlete tests positive for a substance that does not enhance his or her performance, such as marijuana. Because marijuana is on the *Prohibited Substances* list, athletes who test positive from the recreational use of marijuana will receive four year suspensions beginning next year. While the threshold for a positive marijuana test was raised last year, it is problematic that recreational drug users will receive the same penalty for a positive offence under the revised WADC as intentional dopers.

It is important for athletes to understand the revisions to the WADC and the impact these new penalties will have on their ability to compete. The new rules follow many years of interplay between CAS and WADA which has shaped the evolution of doping rules for international sports.

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1. The penalty prescribed for *No Significant Fault or Negligence* under the 2015 World Anti-Doping Code will remain the same as the penalty under current World Anti-Doping Code, which allows an athlete's penalty to be reduced to no less than half of what the athlete's suspension would normally be (Article 10.5.2, 2009 and 2015 World Anti-Doping Codes). Because the ineligibility period for standard doping offences will increase under the code revisions, the ineligibility period for *No Significant Fault or Negligence* offences will increase as well.
 2. There were some cases under the current WADC for which athletes could have their suspensions reduced to a reprimand with no period of ineligibility under the *Specified Substances* category. However, for an athlete's case to fall into this category, he or she must establish that there was no attempt to enhance performance. CAS arbitrators following the *Foggo* line of cases have established that the lack of knowledge that a prohibited substance is present in a supplement does not negate the athlete's attempt to gain an advantage, thus prohibiting the athlete's case from falling into the *Specified Substances* category.

**Northwestern Law
Dispute Resolution
Courses:**

Advanced Dispute Resolution

Advanced Negotiation
Workshop

Colloquium on Negotiation
and Alternative Dispute
Resolution

Conflict Management
in Legal Practice

Dispute Resolution

Dispute Resolution
in Sports

International Business
Negotiation

Lawyer as Problem Solver

Mediation Advocacy

Mediation Practicum

Mediation Process

Negotiation Workshop
(12–15 sections per year)

Power, Status, and
Negotiation

Restorative Justice



Tech Tip: Integrating Emerging Technology in the Classroom

Alyson Carrel, Clinical Assistant Professor

Assistant Director, Center on Negotiation and Mediation

Google Forms is an effective formative assessment tool and an example of integrating emerging technology in the classroom. I use Google Forms to encourage student self-reflection and inform our discussions. Following in-class simulations, I ask students to log into a Google Form I created and answer a short list of questions about their experience. Their answers are captured in a single Google spreadsheet that I review immediately after they complete their reflection and before we begin the in-class discussion.

HOW TO:

1. *Create/Log In* to Google
2. *Go to* Google Drive (drive.google.com)
3. *Click* **CREATE** or **NEW** (depending on your version of Google Drive)
4. *Choose* the type of document you want to create—**FORM**.
5. *Add questions* (Google Forms allows you to ask narrow questions with defined answers, or open questions requiring narrative responses.)
6. Permit students to view form. *Click* on **SHARE** in the top right corner.
7. Review student responses. To access the spreadsheet of student responses, simply *click* on **VIEW RESPONSES**.