

Northwestern

PRITZKER SCHOOL OF LAW

Center on Negotiation and Mediation
375 East Chicago Avenue
Chicago, IL 60611
www.law.northwestern.edu/legalclinic/negotiations

Faculty

- Lynn P. Cohn**, Director and
Clinical Professor of Law
- Alyson Carrel**, Assistant Director and
Clinical Associate Professor
- Kevin Agnew**, Adjunct Professor
- Sara Buffett**, Center Coordinator
- Annalise Buth**, M. R. Bauer Foundation
Clinical Fellow in Dispute Resolution
- Paul Chadha**, Adjunct Professor
- Daniel J. Gandert**, Clinical Assistant Professor
- Stephen Goldberg**, Professor of Law Emeritus
- Janice Nadler**, Stanford Clinton Research
Professor of Law
- Leonard Riskin**, Harris H. Agnew Visiting
Professor of Dispute Resolution
- Edward D. Shapiro**, Adjunct Professor

List of Courses

- Advanced Dispute Resolution
- Advanced Negotiation Workshop
- Conflict Management in Legal Practice
- Dispute Resolution
- Dispute Resolution in Sports
- International Business Law & Negotiation
- Mediation Practicum
- Mediation and Advocacy
- Mental Models in Conflict
- Negotiation Workshop (12–15 sections per year)
- Restorative Justice and Human Design Project
- Restorative Justice Practicum
- Restorative Justice Seminar

Northwestern

PRITZKER SCHOOL OF LAW

Center on Negotiation and Mediation



Sara Buffett, Leonard Riskin, Alyson Carrel, Lynn Cohn, Daniel Gandert, Annalise Buth

Northwestern

PRITZKER SCHOOL OF LAW

Center on Negotiation and Mediation

Newsletter • Fall 2019

Letter from the Director



LYNN COHN, CLINICAL
PROFESSOR OF LAW

Our work in restorative justice, negotiation, mediation, and dispute resolution is filled with lessons that range from strategic to sacred. I am called to reflect on the teachings and consider how they can guide us if only we would absorb their messages in a deeper way.

For example, we teach interest-based problem solving in our classes based on the belief that a thorough understanding of values, needs, desires and priorities is essential for all consensual processes. We are exploring the value of introspection, identity, and internal family systems as part of a larger guiding principle to our Center's role in supporting our students. Yet, how many of us in this field truly engage in an interest-based examination of our own lives, choices, and impact on a regular basis? The last time that I remember deeply examining and intentionally constructing my life based on my values and interests occurred when I decided to leave law practice and enter the field of dispute resolution in the late eighties. Since then, many events have transpired that have shaped where I am now: motherhood, divorce, struggles with depression, the opportunity to direct our Center, economic ups and downs, changes in legal education, and hitting middle age all come to mind. Many of these things happened without a plan,

some of them have been wonderful surprises, and some have been quite painful. There is something to be said for being open to unplanned experiences. But just as we would advise any client to reexamine their interests over time and reconsider the right course of action, so should we in our personal lives and careers. This leaves me wondering if we should be teaching our students to apply these concepts to their own personal journeys; and, if yes, are we just as prepared to practice this as to teach it.

At the urging of my dear friend and colleague Alyson Carrel, I attended a workshop this summer called "Designing Your Life." Using a human-centered design approach that embraces getting comfortable with being uncomfortable as well as failure leading to success, participants are called upon to ask questions based on their interests. I welcome the idea of opening myself up in an intentional way to more fully align how I spend this one life with who I truly am. The best part is that this interest-based design process makes sense and is even familiar, based on what our field teaches in even the most basic courses. Doing a deep dive on these lessons in our own lives seems likely to strengthen our ability to share the wisdom with our students, our colleagues and our communities in ways that are profound and go well beyond getting a good deal. And one thing that I know for sure is that my life is greatly enriched by sharing and creating spaces that allow for growth and authentic connection inside and outside the classroom.

Dispute Resolution Practices Guide Students Through Times of Polarization

If discussions on listservs and blogs are any indication, we are all grappling with how best to support students in today's divided times. The 2019 AALS Clinical Conference theme "Teaching the Next Generation of Lawyer Leaders in a Time of Polarization," provided us the opportunity to reflect on the process, skills, and tools we teach students to survive in today's world. In reflecting on our guiding principles for supporting students, we developed a model to illustrate the increasing focus we place on "self" and the value of introspection. Professor Daniel Gandert (JD '07) presented these ideas at the 2019 AALS Clinical Conference.

We introduce students to these processes, skills, and tools throughout our courses and reiterate their importance through various campus activities such as Northwestern Circles (a bi-weekly circle for students to discuss pressing topics), presentations at student organization events, and career advising.

- **SELF.** The foundation of the pyramid is teaching students to understand themselves. This includes helping students become more introspective and curious about their identity. Internal Family Systems, a model Professor Len Riskin has introduced to the mediation field, is another part of this foundational level as it helps students recognize their different parts, all of which influence the way that they act and feel.



- **OTHER.** The next level involves teaching students about listening and perspective taking. This is especially important during the current era of polarizing times, because in order for one to try to work with others with differing viewpoints, one needs to understand how to listen as well as how to understand the other side's perspective.
- **COMMUNICATION.** Strong communication skills are paramount to working with others who hold a different perspective. It is important to share ideas in a way the other party can relate to and understand. Two of the important tools at the "Communication" level are framing and neutralizing. Framing consists of putting a frame around one's message in a way that fits the other party's perspective. This can involve framing the message in a way to help the other party see why a proposal would bring them benefit. Neutralizing involves restating a message that removes especially strong or painful language while retaining the general meaning.
- **RELATIONSHIPS.** During polarizing times, it can be especially challenging for one to develop a relationship with those whom they disagree on major issues. However, learning to be curious and empathize with others brings about understanding, increases the opportunity to develop relationships.
- **STRATEGY.** This level includes many of the tenets that are classic to teaching dispute resolution. Familiar strategies such as negotiation preparation and choosing appropriate dispute resolution processes are parts of this level.
- **ACTION.** Utilizing dispute resolution and conflict transformational processes is a part of this level. Facilitation skills are also at this level as they can be extremely helpful for bridging divides.
- ***CORE CONCERNS.** Woven throughout the various components of the model is the value of understanding and utilizing core concerns, as defined by the book Beyond Reason by Roger Fisher and Daniel Shapiro.

Restorative Justice, Innovation, and Teaching



Interest in restorative justice is growing because of its transformative potential and the opportunity it presents to reimagine justice and build right and equitable relationships. The Center's restorative initiatives have similarly grown over the past four years to include seminars, practicums, conferences and bi-weekly circles for students and staff. But with this growth, our Center has felt challenged to move past the frameworks that constrain our vision of restorative justice to critically examine the way we teach and engage with restorative justice, especially with its rapid development.

Last year, we decided to step back and look inward before looking outward, using innovation concepts to question the status quo and explore new possibilities. In embracing the concept of inclusion, we felt it was important to invite students to be a part of this process. This was the origin of the Restorative Justice and Human-Centered Design Project course.

In the 2019 spring semester, M.R. Bauer Foundation Fellow Annie Buth (JD '07) taught a new project-based course that integrated human-centered design and restorative justice curricula. Student teams utilized a design-thinking approach to develop prototypes for restorative justice learning opportunities at the Law School. The teams created a research plan; identified potential stakeholders; gathered information through secondary sources, surveys, observations, and interviews; engaged in ideation;

prototyped their ideas; facilitated feedback sessions; and refined their ideas based on feedback. The course culminated with student presentations of final prototypes to an audience of law students, faculty, staff, restorative justice facilitators, and outside community members. These prototypes included new restorative justice courses that would integrate law students and the community in restorative justice learning and practice.

While we were impressed with the resulting prototypes, what was equally, if not more, significant was what students learned and experienced through the process of a course steeped in both a design thinking and restorative justice pedagogical approach. Mona Kalantar (JD '20) reflected, "Northwestern should offer more courses like this because while knowledge of the law is essential to a fruitful career, not enough courses teach attorneys how to build meaningful connections with others." Students grappled with creative problem solving, compassion, and building relationships; they wrestled with discomfort and practiced introspection; they learned to deeply listen and receive constructive feedback; and they did this all while keeping the needs and interests of people most affected by an issue at the forefront.

Twenty-First Century Skills for a Changing Profession

Our students, and the legal profession more generally, are facing significant change and uncertainty given the rise of alternative legal service providers and the use of emerging legal technology. With these changes, it is increasingly important for the dispute resolution field to provide opportunities to learn the process, skills, and tools outlined in the Center's model (described on page 2) to ensure our students are set up for success and able to manage these changes.

As lawyers increasingly utilize and rely on technology related to data analytics and artificial intelligence to improve the delivery of legal services, law schools have responded by introducing new programming and curricular initiatives in legal technology and innovation. To be sure, law schools must ensure their students are equipped with 21st-century knowledge and skills in technology. However, these new initiatives sometimes inadvertently overshadow the importance of skills related to

emotional intelligence and problem-solving; skills that we teach in dispute resolution programs. Ironically, it is precisely these skills that differentiate the value a lawyer provides compared to technology and artificial intelligence, which is increasingly replicating aspects of lawyering. AI is conducting legal research and predicting court outcomes, but it has not (yet, and maybe won't ever) replicated the role of trusted advisor and counselor so crucial to a lawyer's relationship with their client.

Law students not only need to master the differentiating skills they provide clients in this changing landscape, but they need to master the skills of navigating this change themselves. The legal profession continues to struggle with issues of substance abuse and wellness—a struggle that is only compounded in the face of change and uncertainty. The processes, skills, and tools outlined in the pyramid are equally essential to help our students navigate these changes through self-reflection and intentional decision-making.

Legal educators in the dispute resolution field have advocated for the importance of skills related to emotional intelligence and problem solving for decades. Given the increasing use and reliance on legal technology, and the resulting change and uncertainty facing our students, it becomes that much more crucial to ensure we provide them opportunities to master these skills before launching them into the legal profession.

Yes, I'm Black. And I'm Here to Mediate: An Exploration of Race and Identity in Mediation



BY REBEKAH GORDON (JD '20)

As an African-American woman, I often find myself being the only person of color in many classes I've taken, many events I've attended and many meetings I've contributed to. It's no shock or surprise anymore. And being

the only one in a large room has impacted me in different ways. Sometimes I feel fearful and burdened and other times I feel powerful and influential. Here is a story about

one of the times my identity as a woman of color and my identity as a certified mediator were both tested.

One day at the Cook County Courthouse, I began a mediation with an already tense plaintiff, a middle-aged white woman represented by a white male attorney who complained to the judge about sending the case to mediation, and a self-represented middle-aged black woman accompanied by her black male friend.

As the mediation unfolded, I thought I could see the light at the end of the tunnel – the landlord and tenant began to communicate their needs and interests, hear each other, and connect. However, things began to fall apart when the white male plaintiff's attorney started to sneer and spew sarcasm under his breath whenever the black female defendant spoke. Finally, tears welled up in her eyes as she said to me, "See, miss. I can't do this if he's going to be disrespectful like this." It began to feel like war in the small closet-sized mediation room.

I had to think quickly. I had to check my bias to make sure I wasn't racially motivated to side with the black woman, nor that I expressed a micro aggression towards the white male attorney and the clear power struggle I believed he was having with me, a younger black woman as his mediator. So, I summarized the defendant's concerns, and then tried to engage the attorney by acknowledging his role and experience, "You are very familiar with this courthouse and process. Can you help me make this a better experience for everyone?" It was like magic. He agreed and stopped purposefully triggering the black woman. The parties eventually were able to reach a moment when they appreciated their relationship with each other and the care and concern they shared.

I share this experience because it highlights the complexity of race dynamics, neutrality, and the need for increased diversity in mediators. While I saw the importance of checking my bias and ensuring that I was not demonizing the white male attorney for the seemingly racist undertones of his comments, I realize my identity is something that can't be placed on a hanger and hung outside the mediation door. Here's the hard truth: there aren't enough people of color in the mediator seat in the court system. I know when I run these sessions, I can almost feel the parties release a sigh of relief: "Ah, someone who looks like me and who

can understand me." It really makes a difference. There are certain euphemisms or mannerisms I understand that may take someone else for a loop. There's a level of cultural coding that I'm built with that takes the shock value away and helps me do my job more efficiently.

As I continue my law school education and continue to build my career, I have learned to channel all of those things into spaces and opportunities where I am needed the most. In this context, it may be the mediation room.

Practice & Application Spotlight

Reading about and practicing interest-based problem solving in class, conducting simulations, and analyzing role plays are essential tools for instilling an understanding of client's values, needs, desires, and priorities. And in these increasingly polarizing times, it is equally as important, maybe even more so, for our students and alum to internalize these skills and apply them to themselves and to their lives.

The heart of the Center on Negotiation and Mediation's program is its students and alum. As we reflect on the value of introspection and identity, we asked a current and former student to share what incorporating these skills in their lives, to better understand themselves and those around them, looks like.



Yondi K. Morris-Andrews, Esq. (JD '10), founding partner of Knight, Morris & Reddick Law Group and recipient of the Harold Washington Leadership Award, the 40 Under 40 Game Changers Award, and Crain's Most

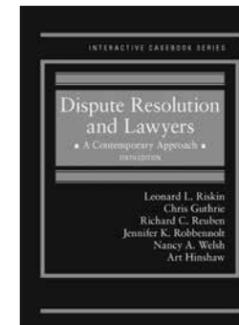
Influential Minority Lawyers in Chicago (2018), describes how effortlessly her mediator skills come into action when talking with her husband. She says, "Sometimes during a debate or (to be more specific) an argument, he says I start speaking to him in 'mediation' language and that it's no longer a fair argument. I always chuckle at this because once you learn how to communicate via mediation skills, it's hard to forget it. Having this training as a general rule helps me listen better to a person's argument, arrive at the 'what' it is they need from me and prepare to help both of us get to yes!"



Usama Ibrahim (JD '20) is the President of the Muslim Law Students Association, Street Law, and the law school's acapella group, Habeas Chorus. Usama has taken multiple courses through the Center and says they "allow you to recognize the various privileges and biases that are constantly at play, but almost never addressed, in alternative-dispute resolution contexts. The courses will also teach you a great deal about yourself. How aspirational do you tend to be? How do you respond when someone counteroffers in a negotiation? Can you bring biases to the forefront of your consciousness and address them while simultaneously listening to the parties for their needs and interests?"

To read the full interview with Yondi and Usama, visit the Center's website at <https://bit.ly/2OPYJhE>

6th Edition of Dispute Resolution & Lawyers Published



West Academic recently published the sixth edition of Dispute Resolution and Lawyers, by Leonard Riskin (Northwestern), Dean Chris Guthrie (Vanderbilt), Professors Richard Reuben (Missouri), Jennifer Robbennolt (Illinois), Nancy Welsh (Texas A&M), Art Hinshaw (Arizona State), and with Alyson Carrel

(Northwestern) as managing editor. This new edition is part of West Academic's innovative Interactive Casebook Series and provides students access to new online content as well as formative and summative assessments to help gauge their understanding of the material.

The Past and Future of Dispute Resolution in Legal Education



photo courtesy of Straus Institute at Pepperdine Law

This summer, Pepperdine and Texas Tech law schools provided dispute resolution legal educators the opportunity to reflect on the state of the field during their conference, “Appreciating our Legacy and Engaging the Future.” The Center was honored to participate at both ends of the spectrum: the legacy and the future. Leonard Riskin spoke about the beginning of the dispute resolution movement and creation of law school initiatives and Alyson Carrel introduced “the Delta Model” addressing the impact of technology on the future of the field. There are many written summaries and reflections about the conference on the ADR Prof Blog, Indisputably, including two pieces by Rebekah Gordon (JD ’20) located at the post here: <https://bit.ly/2GCDn0B>



photo courtesy of Rebekah Gordon

A Law Prof Explains

Northwestern launched a new YouTube series called “A Law Prof Explains” where professors break down timely and complex topics. The series recently added videos featuring Annie Buth (Restorative Justice) and Alyson Carrel (The Delta Model: 21st Century Competencies for Lawyers).



To watch the videos, visit the YouTube playlist at <https://bit.ly/2YvxeOP>

Publications, Presentations, and Appointments

ANNALISE BUTH

Publications

New Directions in Whole-School Restorative Justice Implementation, 36 Conflict Resol. Q. 207 (2018) (co-authored with Thalia González and Heather Sattler)

Presentations

“Restorative Justice,” Latin United Community Housing Association, February 2019

“IDK, Do We Speak the Same Language?” National Organization of Bar Counsel Midyear Meeting, January 2019

Appointments

Committee Member, Governor JB Pritzker and Lieutenant Governor Juliana Stratton’s Restorative Justice and Safe Communities Transition Committee, November 2018

ALYSON CARREL

Publications

Mind the Gap: Bringing Technology to the Mediation Table, 2019(2) J. Disp. Resol. 1 (2019) (co-authored with Noam Ebner)

Digital Toolbox Pedagogy: Teaching Students to Utilize Technology in Mediation, ACRResolution (July 2019) (co-authored with Noam Ebner)

Legal Intelligence Through Artificial Intelligence Requires Emotional Intelligence: A New Competency Model for the 21st Century Legal Professional, 35 Ga. St. U. L. Rev. 1153 (2019)

Presentations

“Engaging the Real World—Globalization and the Technological Revolution,” (Plenary Panel Presentation), Appreciating our Legacy and Engaging the Future: An International Conference for Dispute Resolution Teachers, Scholars, and Leaders, Pepperdine School of Law Straus Institute for Dispute Resolution, June 2019

“The Future of This Profession,” (Symposium panel presentation), Georgia State Law Review Symposium, Legal Intelligence through Artificial Intelligence, April 2019

“Mind the Gap: Bringing Technology to the Mediation Table,” University of Florida School of Law Institute for Dispute Resolution Conference, October 2018, Association for American Law Schools Annual Conference, January 2019

LYNN COHN

Publications

The Case for Including Negotiation, Dispute Resolution and Problem-Solving Teaching in the Law School Curriculum and How to Get Started, Maria Lucia Padua Lima, Jose Garcez Ghirardi (Eds.), *Global Law: Contemporary Challenges, Future Perspectives*, November 2018

Presentations

Dispute Resolution Workshop Discussion Group: Using Dispute Resolution Skills to Teach Current Events, SEALS 2019 Conference

“The Future of Mediation,” Tel Aviv University, with Amos Gabrieli, June 2019

“The System and Access to Justice,” Panel Moderator, Access to Justice Symposium, Bluhm Legal Clinic, September 2018

Appointments

Special Master, *Senegal v. JPMorgan Chase Settlement*, appointed to manage the fund distribution process in a racial discrimination class action settlement

DANIEL GANDERT

Publications

The WADA Code: The Maximum Extent of Enforcement, 11 Int’l J. Sport Pol’y Pol. 275-293 (2019)

Presentations

“Teaching Sports Law,” Sports Lawyers Association 45th Annual Conference, May 2019

“Dispute Resolution Skills Guide Students Through Times of Polarization,” AALS 2019 Conference on Clinical Legal Education, May 2019

LEONARD RISKIN

Publications

Dispute Resolution and Lawyers, 6th Edition (West Academic 2019) (Co-authored by: Chris Guthrie, Richard C. Reuben, Jennifer Robbennolt, Nancy Welsh, and Art Hinshaw)

Presentations

“Mindfulness & the Path to Lawyer Well-Being,” Mindfulness in Law Society 2018 National Conference, August 2018

“Appreciating our Legacy: Successes, Failures and Work in Process,” (Opening Plenary Panel Presentation), Appreciating our Legacy and Engaging the Future: An International Conference for Dispute Resolution Teachers, Scholars, and Leaders, Pepperdine School of Law Straus Institute for Dispute Resolution, June 2019

Negotiation for Professionals (with Dan Shapiro and Katie Marie Zouhary), Northwestern University School of Professional Studies, July 2019