

Center on Negotiation and Mediation

IN THIS ISSUE

FALL 2015

- 1 Welcome Letter
- 2 Student Perspective
- 2 Alumni Profile
- 3 Teaching Tech
- 5 Mindfulness in the Heat of Conflict
- 6 Center Faculty

Save the Date: Leigh Steinberg— September 24

On the evening of September 24, 2015, the Center on Negotiation and Mediation will host a talk by sports agent Leigh Steinberg. Steinberg is one of the most famous sports agents in the world and has been credited as the inspiration behind the film *Jerry Maguire*.

A Few Words From Our Director

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



The Center on Negotiation and Mediation has enjoyed a remarkable year. Thanks to a significant gift from the M. R. Bauer Foundation, Professor Leonard L. Riskin has been awarded the Harris H. Agnew Visiting Professorship of Dispute Resolution. Len is a thought leader in our field, and we look forward to supporting his work. See his article in this issue regarding mindfulness tools, including Taking STOCK.

In addition, this gift has allowed us to hire Annalise Butth as the M. R. Bauer Foundation Clinical Fellow in Dispute Resolution. Annie will focus on the center's restorative justice initiatives, which reflect the strong need for healing processes in our most vulnerable populations, including school children, ex-offenders, and communities facing scarce resources and increasing violence. We plan to connect our students to placements in the Chicago area that would benefit from restorative justice collaborations.

Lastly, this gift will allow us to expand our dispute resolution course offerings in the clinical setting by starting a new Mediation Advocacy Clinic. Students will work with clients in a limited representation capacity, helping parties prepare for and negotiate during a scheduled mediation session at various Chicago agencies.

I have recently returned from a project at Israel's Tel Aviv University Law School with Professors Paul Chadha and Daniel Gandert. The center received a grant allowing us to send faculty and students to work with a group of TAU law students in an International Business Law and Negotiations course. The students negotiated a single complex transaction in detail. It was wonderful to see the student negotiators from each school move beyond the challenges of cross-cultural negotiations. The trip was educational and a lot of fun. We welcome opportunities for our students to negotiate with groups outside Northwestern Law, particularly on an international basis.



Center Faculty and Staff celebrating the M.R. Bauer Foundation gift: Nancy Flowers (Program Coordinator), Professor Daniel Gandert, Professor Lynn Cohn (Director), Annalise Butth (M. R. Bauer Foundation Clinical Fellow in Dispute Resolution), Professor Leonard L. Riskin, and Professor Alyson Carrel.

Professor Alyson Carrel continues to explore the integration of emerging technology in the classroom. Through an A2J Author Course Project Fellowship from the Center for Access to Justice & Technology and the Center for Computer-Assisted Legal Instruction, she will direct her clinic students in creating interactive preparation guides for pro se parties scheduled to attend a mediation using the A2J Author software platform. In addition, Carrel received a grant from the Northwestern Online and Distance Learning Faculty Group to explore using wearable cameras to videotape negotiation simulations. See the article regarding this new grant on pages 3–4.

In November the center will host the ABA Regional Negotiation Competition. We look forward to welcoming our colleagues to our campus in beautiful Chicago.

Student Perspective— Reflection on the International Business Law and Negotiations Course in Israel

Ngozi Nezianya

This summer's International Business Law and Negotiations course was my first formal training in complex negotiations, and I could not imagine a better way to have learned so many essential negotiating frameworks, skills, and techniques so quickly.

The course began with two days of classes at the Northwestern Law campus here in Chicago. During that time, our Northwestern student team began to decipher the underlying materials that paired us—the legal team for the Malundian Cassava Corporation (MCC) in Malundi, a fictitious West African country—with law students from Tel Aviv University (TAU), representing KJH Pharmaceuticals, a fictitious American company. In an unlikely partnership, KJH sought an abundant supply of cassava for its potential arthritis cure, and MCC sought to attract foreign corporations to Malundi to help develop the country's economy.

One of our first days in Tel Aviv was spent in a crash course in negotiation best practices, led by Professor Lynn Cohn. The lecture stressed the need to distinguish between “negotiating positions” and underlying “interests” when conceiving potential terms of an agreement; although this was something I had learned experientially from my career prior to law school, I found this framework for articulating that distinction incredibly useful. Something I had never quite understood before this course was how to develop different bargaining positions, and the lecture explained the need to reason through and prepare justifications for one's aspirational, target, and reservation points—in advance of the negotiation.

That particular lesson proved invaluable. When we began negotiating with the TAU students the next day, we had nominally agreed to enter into a joint venture, but we quickly

Continued on page 4

Alumni Profile

Ram Padmanabhan (JD '93)



The Center on Negotiation and Mediation is proud to share insights from alumnus and former Negotiation Workshop adjunct professor Ram Padmanabhan, currently general counsel and vice president of financial for the Chicago Bulls. One of the most important takeaways from his

time with the center is the importance of establishing and maintaining a positive reputation. Padmanabhan finds this lesson so important that he recommends it as a focus for anyone interested in a career in the sports world. According to Padmanabhan, “People quickly establish reputations that follow them wherever they go.” Padmanabhan remembers how students in the center's Negotiation Workshop began to anticipate each other's negotiation style based on past experiences. The small world of the classroom translates directly into the larger legal community, where everyone knows everyone else's reputation before sitting down at the bargaining table. Padmanabhan considers this even more important today than it was in the past because of the frequency and ease of Google searching to learn as much as possible about everyone involved in a negotiation.

One of the major changes Padmanabhan has found in negotiations today compared with when he graduated is the decrease in face-to-face meetings. According to Padmanabhan, “Back then attorneys would talk about getting everyone in the room at the same time for marathon sessions. Today people negotiate more over the phone or through online written communication.” In Padmanabhan's experience, people tend to mistakenly find email somewhat insulating and consequently are less civil online than in person. Often people do not consider the broader impact of their communications; he recommends never putting something in writing if you cannot say it in front of the other party, noting that “many sources of embarrassment come from people stating things in written communication that would be better left unwritten or unsaid.” The Center on Negotiation and Mediation now teaches students the importance of caution in the current age of negotiation through electronic communication.

Ram Padmanabhan reflects the ideals and concepts that the center strives to impart to our students. Recognizing the importance of reputation and being intentional in all communication, whether face to face or via an electronic medium, fosters negotiation success. The center is proud of Padmanabhan's accomplishments and appreciates his sharing these insights.



Northwestern Law and Tel Aviv University students at the International Business Law and Negotiations Course.

Teaching Tech

How can law professors better engage their students while also preparing them for their careers? For Alyson Carrel, meaningful incorporation of technology into the classroom accomplishes both.

Carrel, clinical assistant professor of law and assistant director of the Bluhm Legal Clinic's Center on Negotiation and Mediation, has earned widespread recognition for using technology in legal education—and two new grants will allow her to continue her inventive work.

Carrel quickly realized when she started teaching that “there are all of these new initiatives stemming from technology that are changing legal services. Unless students are well versed in what technology can do, they're not prepared for the changing landscape, which really motivated me.”

Carrel contacted Kara Young, digital services and emerging technologies librarian at the Law School's Pritzker Legal Research Center, and the two have been working together ever since to match technologies with specific needs and objectives.

“You always want to start with the learning outcomes,” said Young. “What do we actually want students to learn? Then you apply the technology on top of that and select ones that work.”

Pioneering uses of “wearable tech”

Carrel and Young's most recent grant, through Northwestern's Faculty Distance Learning Workgroup, will fund the use of wearable cameras in the law school's Negotiation Workshop course.

Videotaping mock negotiations is a typical part of the curriculum. Students review the videos and receive feedback from their instructors and peers. The wearable cameras will allow students to review their interactions from a second-party perspective, rather than the third-party perspective of a stationary camera or laptop at the side.

“The wearable cameras will provide exactly what we need in dispute resolution,” said Carrel. “They will give better insights into your body language and how you're communicating face-to-face.”

Carrel and Young piloted different camera options in the spring and will expand the program in the fall. “This is a true emerging-tech field,” said Young, noting that they could find only a few examples of wearable tech in education and none in legal education. Carrel adds, “We don't know of anybody who's doing this yet.”

Improving dispute resolution

Carrel began incorporating technology into the classroom to engage her students and prepare them for their careers, but she was surprised to find that it also offered ways to improve the practice of dispute resolution. “I think that historically, dispute resolution has been antitechnology because we're all about face-to-face communication. In mediation, we always talk about how the best practice is to have the parties at the table.”

Thinking about how technology can improve dispute resolution, Carrel has begun exploring the use of crowdsourcing to capture settlement data from private mediations. She was also recently awarded an Access to Justice (A2J) Author Course Project grant from IIT Chicago–Kent College of Law and the Center for Computer-Assisted Legal Instruction, which will both help her students master material and create a valuable mediation resource.

A2J Author is a software tool for creating user-friendly web interfaces that help self-represented litigants prepare for a variety of civil procedures. In the past it has been used for tasks like changing a name or determining eligibility for disability benefits, but Carrel believes it can be useful in preparing individuals for mediation.

“This fall, students are going to be creating an A2J Author–guided interview that walks the user, a self-represented litigant, through questions to think about in preparation for a mediation,”

Reprinted from the Summer 2015 issue of the *Northwestern Law Reporter*.



Professor Alyson Carrel (center) takes students Adrienne Kaufman (JD '15) (left) and Kathleena Kruck (JD '15) through a feedback session, reviewing video of a mock negotiation filmed with wearable cameras.



A recent grant allowed Carrel and Young to test different types of wearable cameras this spring, before they expand the program this fall.

she explains. “I think it’s a unique way of using this technology—which others have been using in more traditional legal services—in dispute resolution.”

Becoming “Tech Fluent”

Carrel and Young stress that incorporating technology into legal education doesn’t always require significant resources; some of Carrel’s and her students’ favorite technologies are free or inexpensive programs. She regularly uses Poll Everywhere, an app allowing students to answer questions during presentations and see their answers in real time. When students watch videos

or live streams of mediations, she uses the student response platform GoSoapBox to keep them engaged.

“I’ve always struggled with maintaining their attention without interrupting the flow of the demonstration or the video so they can really see the whole picture. GoSoapBox allows them—in real time—to comment, ask questions, have a conversation. It’s like they’re GChatting in class, but it’s focused on the actual event in front of them.”

For Carrel and Young, the ability and willingness to embrace new tools is more

important than learning any individual program or technology; they consider this “tech fluency” critical to success after graduation. “It’s not about mastering a specific platform,” said Carrel, “it’s that you become comfortable learning whatever new tool is presented to you.”

NEGOTIATION TEAM NATIONAL SEMI-FINALISTS

Congratulations to Accelerated Juris Doctorate students, Steven Jacobs and Richard Travis Simon, who won first place at the regional ABA Negotiation Competition and advanced to the national competition where they were named semi-finalists. The ABA Negotiation Competition gives students an opportunity to demonstrate their ability to advocate for their client’s needs in a professional and collaborative manner. Northwestern Law teams, coached by Professors Alyson Carrel and Daniel Gandert, have consistently performed well, advancing to the national level the last two years in a row.



Professor Alyson Carrel, Steven Jacobs (AJD '16), Richard Travis Simon (AJD '16), and Professor Daniel Gandert.

Student Perspective *Continued from page 2*

reached an impasse on how to share control and profits between our respective clients. Though we had enjoyed socializing with our TAU counterparts the night before, we had quite a bit of trouble persuading them to move away from a narrow negotiating position that favored their client with 90 percent of control and profits and significantly devalued our client’s contributions to the proposed venture. After some creative lawyering and a willingness to dive into the granularity of estimating a (minimum) market value of our client’s contributions, we were able to justify our client’s aspirational proposal and ultimately use those figures to reach an agreement for near 50-50 control of rights and profit sharing.

Fortunately, however, we did not spend all of our time working! We stayed at a hotel near the beach, where our team could be found when we weren’t preparing for the next day’s negotiations. We even stepped away from the negotiating table for a full day with our TAU friends to visit the historical marvel that is Jerusalem and to hear from the Israeli Ministry of Foreign Affairs’ legal director about negotiating public-private agreements across multiple countries.

If given the chance to take this course again, I would wholeheartedly pursue it, and I can only hope that future Northwestern Law students will have the opportunity to do so too.



Mindfulness in the Heat of Conflict

Leonard L. Riskin, Harris H. Agnew Visiting Professor of Dispute Resolution

Today's world is awash in dispute resolution education, training, and practice opportunities, and a substantial segment of U.S. law schools contribute mightily to this flow. Many people who take advantage of these opportunities develop a degree of mastery over some fundamental tools for managing conflict, such as various models of negotiation and mediation. You might think that, as a result, they would routinely deal skillfully with difficult conflicts in their personal or professional lives. But you would be mistaken.

Even people who understand and know how to use well-established tools for managing conflict sometimes fail to employ them appropriately—or at all—in the moment. Such failures often result from certain deficits in awareness, which we call the “Six Obstacles”:

- Excessively self-centered perspectives;
- Strong negative emotions;
- Automatic, habitual ways of thinking, feeling, and behaving;
- Sensitivity to emotions (too much or too little);
- Insufficient social skills; and
- Inadequate focus.

Mindfulness—a certain way of paying attention: deliberately, moment to moment, and without judgment—can help overcome these obstacles and improve decision making in negotiations and other conflict-related situations. But mindfulness is difficult to establish and maintain, especially in proximity to external conflict. To address that difficulty, Rachel Wohl (director of the Maryland Supreme Court Mediation and Conflict Resolution Office) and

I recently introduced three “tools of awareness” that can quickly establish and sustain mindfulness and foster skillful, appropriate behavior in relation to conflict.

The STOP exercise provides the foundation. It was developed by the Stress Reduction Clinic at the University of Massachusetts Medical School, which uses the exercise in its training. To quickly establish mindfulness when you need it, or might need it, this tool asks you to:

- Stop whatever you are doing;
- Take a breath;
- Observe emotions, thoughts, and body sensations; and
- Proceed—that is, continue with whatever you were doing.

We built upon the STOP exercise by creating two more tools: STOPSi and Taking STOCK.

STOPSi begins with STOP and adds another element: setting an intention for how you want “to be” going forward in the matter at hand. You might, for instance, decide to be kind or careful or thoughtful.

Taking STOCK begins with STOPSi and includes additional elements for monitoring how well you have been following your intentions and for deciding whether to change your intentions and what to do next.

We have used these exercises in many continuing education workshops and law school courses involving conflict resolution. Our Northwestern colleagues Lynn Cohn, Alyson Carrel, and Daniel Gandert have enthusiastically joined in using and creatively extending these exercises in a number of dispute resolution classes and even in meetings of the

Center on Negotiation and Mediation. Students generally report that the exercises help them to manage stress and to focus and think more clearly—especially when attending class, studying, taking exams, and carrying out lawyering tasks.*

This draws heavily on Leonard L. Riskin and Rachel Wohl, “Mindfulness in the Heat of Conflict: Taking STOCK,” 20 *Harvard Negotiation Law Review* (forthcoming 2015).

*For one law student's experience in and after such a course at Northwestern Law, see Katherine Larkin-Wong, “A Newbie's Impression: One Student's Mindfulness Lessons,” 61 *J. Legal Educ.* 665 (2012).

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 Law
and Negotiations

Lawyer as Problem Solver

Mediation Advocacy Clinic

Mediation Practicum

Mediation Process and Advocacy

Negotiation Workshop
(12–15 sections per year)

Power, Status, and Negotiation

Restorative Justice Practicum

Center on Negotiation and Mediation

375 East Chicago Avenue
Chicago, Illinois 60611
www.law.northwestern.edu/legalclinic/negotiations

Faculty

Lynn P. Cohn, *Director and Clinical Professor of Law*
Alyson Carrel, *Assistant Director and Clinical Assistant Professor*
Christine Agaiby, *Adjunct Professor*
Kevin Agnew, *Adjunct Professor*
Todd Belcore, *Adjunct Professor*
Annalise Buth, *M. R. Bauer Foundation Clinical Fellow in Dispute Resolution*
Paul Chadha, *Adjunct Professor*
Zev Eigen, *Associate Professor of Law*
Nancy Flowers, *Center Coordinator*
Daniel J. Gandert, *Clinical Assistant Professor*
Stephen Goldberg, *Professor of Law Emeritus*
Janice Nadler, *Stanford Clinton Research Professor of Law*
Leonard L. Riskin, *Harris H. Agnew Visiting Professor of Dispute Resolution*
Edward D. Shapiro, *Adjunct Professor*
Susan L. Walker, *Adjunct Professor*

Publications, Presentations, and Appointments

Alyson Carrel

Publications

"Choosing ADR Careers at the Start: It Is Possible" *Dispute Resolution Magazine*, 30 (spring 2015)

Presentations

"Everything You Know about Dispute Resolution Is Wrong," with Noam Ebner, John Lande, and Jim Coben, ABA-DR Annual Conference, April 2015
"Can Today's Technology Answer Yesterday's Social Justice Questions about Mediation?" with Alan Boudreau, ABA-DR Annual Conference, April 2015
"Integrating Emerging Technology in Legal Education," with Kara Young, AALS Webinar, March 2015; AALS Clinical Conference, May 2015

Lynn P. Cohn

Presentations

"Effective Negotiation Strategies," Legal Assistance Foundation, Chicago, Illinois, January 2015

Appointments

Appointed as special master in \$160 million class action settlement for *McReynolds v. Merrill Lynch*

Daniel J. Gandert

Presentations

"The Spectrum of Questionable Behavior in Sports," International Association of Sports Law World Congress of Sports Law, December 2014
"What Is Sports Dispute Resolution?" AALS Clinical Conference Works-in-Progress, May 2015

Janice Nadler

Publications

"Social Psychology and the Law," with Pam Mueller, in Francesco Parisi (ed.), *Oxford Handbook of Law and Economics*, Oxford University Press (forthcoming)

Presentations

"The Power of Focal Points Is Pervasive: An Experimental Study of Strategy Labels in Coordination Games" with Richard

McAdams, Experimental Methods in Legal Scholarship Workshop, UCLA Law School, March 2015

Leonard L. Riskin

Publications

"Mindfulness in the Heat of Conflict: Taking STOCK," with Rachel Wohl, *Harvard Negotiation Law Review* (forthcoming 2015)
"Beginning with Yes: A Review Essay on Michael Wheeler's *The Art of Negotiation: Improvising Your Way to Agreement in a Chaotic World*," *Cardozo Journal of Conflict Resolution*, 605–24 (2015)
Preface to Gary J. Friedman, *Inside Out: Working Through Conflict* (ABA and Harvard Law School Program on Negotiation, 2014)
Presentations
"The 'Negotiation' within Understanding, Managing and Connecting Inner and Outer Conflict; Managing Inner and Outer Conflict in Mediation," Plenary Presentation, Oregon Mediators Association Annual Conference, November 2014