

# Northwestern

## PRITZKER SCHOOL OF LAW

### Center on Negotiation and Mediation

Fall 2021



**Sara Buffett, Len Riskin, Alyson Carrel, Lynn Cohn, Daniel Gandert, Annie Buth**

# Moving Forward with Reflection & Intention

## Co-Directors Letter

This semester has marked a return to the classroom, but not a return to “normal.” With the support and prompting of our students and colleagues, we have been doing a lot of reflecting and soul searching to figure out how to best move forward in the face of so many challenges, asking questions such as: what do we need to change to create a more anti-racist and democratic classroom as well as how did the shift to remote learning enhance our student engagement and learning.

We have learned so much from the past twenty months that it would be a missed opportunity, and a shame, to just return to a pre-Covid world. Let us move forward. Let us take what we’ve learned from the past twenty months. Let us apply our problem-solving skills to the moment at hand and create something new and better.

We applaud the efforts of our dispute resolution community to begin to address the many challenges we face. As a community, we support each other with efforts like Stephanie Blondell and Toby Guerin’s Mediation Clinic Think Tank created in the midst of our shift to remote learning. And we challenge each other as seen in Whitney Benn’s [article](#) on using negotiation techniques for social change and Sharon Press and Ellen Deason’s [article](#) on embedded assumptions of whiteness in mediation. Without you, our conversations wouldn’t be as thoughtful, provocative, or transformative.

In this newsletter, we highlight a few ways our center has explored these questions over the past year: co-hosting a national retrospective on legal education, exploring new low-tech approaches to remote learning, and partnering with the James B Moran Center for Youth Advocacy to develop Evanston’s Restorative Justice Community Court. We also take time to celebrate the incredible work of our students: their successes in the negotiation competition, their impact on the larger conversation taking place in higher education about the lack of diversity in tenured faculty, and their leadership in developing cross-racial dialogue. Last, we take the opportunity to share with you our own celebrations and ways in which we managed to thrive in the face of these challenges.

We all have a lot of work to do. But in a community like ours and with the transformative power of engagement, reflection, and dialogue, we’d like to think progress is possible

-Lynn & Alyson

Co-Directors, Center on Negotiation and Mediation



**Lynn Cohn & Alyson Carrel**

## Endeavors

### Legal Education Retrospective



The work of the Center on Negotiation and Mediation is grounded in the power of people coming together. This summer Alyson Carrel collaborated with Cat Moon (Vanderbilt Law School) and Dennis Kennedy (Michigan State University College of Law) to create a space for connection and learning. They developed the [TRB \(Thorn, Rose, and Bud\) Retrospective for Legal Education](#), which provided the opportunity for a diverse group of people to share their lived knowledge from the pandemic year with one another.

In small working groups — made up of law students, legal educators, law school administrators, and education experts — we engaged in an intentional retrospective exercise using a thorn - rose - bud format to identify lessons learned and opportunities for growth and iteration from the past 18 months.

The differences in participants' roles, identities, and experiences contributed to deep learning about the need for change, exciting innovations, and potential for growth in legal education. The TRB Retrospective inspires the Center to continue to engage in reflective and reflexive practice and encourage our students to do the same.

Featured speakers included Dean Hari Osofsky and Professor Meera Deo. To learn about one professor's experience in the workshop, click [here](#) to read a blog post by Loyola Professor Morgan Rosenberg.

### Racial Equity & Community Partnership



In June 2021, Northwestern University funded 21 projects to advance racial equity in Evanston and Chicago, IL. We are honored to be a recipient in partnership with James B. Moran Center for Youth Advocacy and the Northwestern Prison Education Program. Executive Director of Northwestern University's Office of Neighborhood and Community Relations Dave Davis, announced, "We could not be more excited to announce the inaugural grant recipients of the Racial Equity and Community Partnership Grant. We launched this program in the midst of a reckoning with racial injustice in this country, and we acknowledge that the process of healing is far from over, but today, we wish to rejoice in the next chapter of equity in our community." Annie Butth will be leading this collaborative effort for the Center. The goal of the project is to prepare and build capacity for a restorative justice community "court" based on the needs and interests of the Evanston Community. This involves minimizing the role of the criminal legal system and equipping the community to repair harm. In partnership, Annie and our restorative justice students will work with others to reimagine what safety, repair, and healing can look like. To read more about Northwestern's Racial Equity & Community Partnership grants, click [here](#).

### Cross-Racial Dialogue: Overcoming the Croson Effect



Ishani Chokshi (JD '22) recently led a cross-racial dialogue workshop for Northwestern Law faculty and staff based on her forthcoming article "[The Croson Effect on People and Policy: Did the Supreme Court Already Kill multi-Racial Unity?](#)" (forthcoming 2021, Nw. J.L. & Soc. Pol'y). Below, we summarize her paper and share insights from the workshop she led.

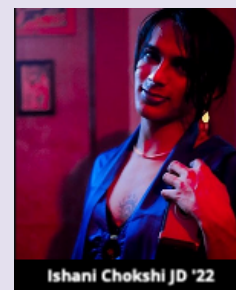
In her paper, Ishani argues that when the Supreme Court cases *Wygant v Jackson Board of Education* (1986) and *City of Richmond v J.A. Croson Company* (1989) made it so that any mention of any race in any legislative bill would have to pass the strictest of scrutiny in order to be deemed constitutional, the Court "effectively neutered affirmative action policy, and ... made cross-racial coalition building amongst lay people (but especially amongst policy-makers) strained, tense, and largely unworkable. Croson institutionalized color-blind rhetoric (which is largely comfortable for racial majorities) while rendering color-conscious rhetoric (which is largely comfortable for racial minorities) to the dustbin. It has institutionalized the practice of racial groups speaking past one another, and racial majorities bulldozing over racial minorities. We simply are not all on the same page." She calls this the "Croson Effect."

To combat the "Croson Effect," Ishani suggests that "we should allow and support the effected people to work through their problems; all the state needs to do is support and create spaces for dialogue, and empower the speakers to trust each other by working together on solutions that come from themselves."

She points to examples such as California's Assembly Bill 617 which mandates direct engagement with local community members in the planning of air pollution reduction policies. She writes that "an October 2020 study on California's 'climate policy experiment' with AB 617 concludes that 'it seems clear that a legislative mandate to directly engage community members in the planning process is helping to mitigate some of the barriers that have historically stood in the way of community involvement.'"

During our cross-racial dialogue workshop, Ishani demonstrated one way of fostering direct engagement among community members using Augusto Boal's Theater of the Oppressed. Theater of the Oppressed is a means for participants to shift from spectator to "spect-actor" and actively engage in the dialogue taking place. Ishani set the stage with a skit about the efforts by the student group, Concerned Students, seeking to increase the hiring and retention of BIPOC faculty at Northwestern Law. She used a form of Boal's Theater of the Oppressed called Image Theater to role play discussions and brainstorm potential solutions from varying points of view. One administrator who attended the workshop compared her experience to a similar diversity workshop she had just attended immediately prior and said "This one hour workshop was more engaging and helpful than that three hour workshop where we just focused on definitions and terms. That was absolutely exhausting and this was actually productive!"

Ishani feels such exercises are crucial for the modern legal world, where our clients are ever-increasingly diverse. She wrote about it in her article about the merits of the [Delta Model](#), and its focus on "the People," on Professor Carrel's [Design Your Delta](#) blog [here](#).



## Student Perspectives: Putting Theory Into Action

Below we feature two students describing how they are putting negotiation theories to practice. We begin with Edward Saint Vil (JD '21) who was interviewed about his experience on the Negotiation Competition team, and then Sofia Orelo (JD '22) who presented at the ABA-Dispute Resolution Section's annual conference (along with fellow student Meredith Bennett-Swanson (JD '21) and professors Lynn Cohn and Annie Buth) about using classroom concepts to effectively engage administration about enacting change.

### Interview of Edward Saint-Vil (JD '21) by Shaun Sun (JD '22)

*Q: What were some of the most important skills you gained through participation in and preparation for the competitions?*

A: Some of the skills I'll highlight are communication skills. Active listening skills: learning how to listen to your counterparty and parse out what their interests are. Learning how to categorize those interests and list them out in terms of importance. Teamwork: working aside another negotiator and figuring out how to communicate with each other even in the midst of a negotiation. Strategy: learning when is the best time to call a caucus, when to put forth an offer. And of course, in terms of preparation, learning how to analyze a set of facts and figure out what's most important to your client.

Also, staying calm under pressure, staying collegial, learning to negotiate based on the merits rather than on emotion. I'm very grateful to the center, grateful to the course offerings at Northwestern Law - the skills I learned, I think are really gonna help when I'm at a law firm.

*Q: Are there any key pieces of advice that you think would be helpful for future negotiations students to hear?*



**Competition Partners**  
**Ramia Mitchell (JD '21) &**  
**Edward Saint-Vil (JD '21)**

A: I'd say prepare, prepare, prepare. Take it seriously but have fun. The more time you put on the front end, use a structured approach. My competition partner Ramia Mitchell (JD '21) and I, the second year, we started using a very systematic and structured approach for our negotiation and it really helped immensely. We had an outline where we inserted the interests; we inserted key facts; we inserted what our first offer, second offer, third offer would be; we had our opening statements planned out; we had our Pre-Negotiation Analysis outlined.

We also kind of memorized things because there was one judge who didn't like how it looked when we kept looking down. Even in person, I remember judges were impressed when students didn't have to look at their notes when they were doing their pre and post negotiation analysis. I would definitely say that preparation is key and preparation will definitely add to your confidence. It's gonna be like a reflex when the opposing party brings up a certain issue.

And also, pressing things that are important to Northwestern - if you can avoid starting off on the wrong foot, if you can seize the momentum by setting the agenda early, managing the negotiation, putting out the first offer, calling the caucus, summarizing things at the end - those are concrete and structural things that would be very advantageous to any negotiator, especially in the competition setting because it's scored by points.

### Concerned Students: A Case Study, by Sofia Orelo (JD '22)

Negotiation courses do not always have to look to hypotheticals to teach negotiation concepts, they can look inside or just outside the classroom.

As part of our negotiation class final project, my group (comprised of Meredith Bennett-Swanson, Charlie Sprayregen and Kathleen Kennedy) did a [case study](#) on the Northwestern Law administration's past, current, and ongoing negotiations with students, and more specifically a group called Concerned Students (led by Cyerra McGowan (JD'21), McKayla Stokes (JD'20) and others) regarding the hiring and retention of BIPOC faculty.

Our project illustrated the importance of applying negotiation concepts to our immediate environments. It is important to not only introduce students to negotiation for the purposes of interacting with future clients and fellow lawyers, but also to create change in their communities, in law school and beyond.

Our analysis covered a wide range of topics, including organizational, informational, and moral power as well as the power that derives from the identities of parties. Most importantly, our paper made "Suggestions for the Future," outlining ways Northwestern Law students can recognize power dynamics between the administration and the student body and leverage their power to advocate for change.

To learn more about the efforts of Concerned Students at Northwestern Law, click [here](#) to read an article by the Chicago Sun Times.



**Sofia Orelo (JD '22)**

## Remote Learning with No-Tech/Low-Tech

by Lynn Cohn

[The Northwestern Prison Education Program \(NPEP\)](#) offers liberal arts education to incarcerated students in Illinois. The NPEP program is currently offered at both the Logan Correctional Center and the Stateville Correctional Center. Like prisons all over the United States and beyond, due to the pandemic, these facilities imposed quarantines, lockdowns and restrictions on gatherings of any kind among individuals in custody, including NPEP students.

As the whole world pivoted to high-tech remote delivery of education, NPEP was compelled to resort to correspondence learning; all classes would rely predominantly on written materials moving back and forth from the professor to the students. The students cannot use computers to complete their weekly submissions. Rather, they must handwrite their answers and ideas. NPEP copied and delivered the professor's materials and feedback to the students and vice-versa.

I was scheduled to teach a conflict resolution class for NPEP at Logan over the summer 2021 term. When I learned that this course would be conducted completely via correspondence, I doubted whether the class could be effective. While I am senior enough to remember grading handwritten assignments completed via the infamous bluebooks, I have never taught a class that did not have any in-person or live communication component. How would we connect? How would I explain a particularly complex idea to people from a variety of backgrounds without a live class? After finally getting my groove on using technology to deliver remote teaching, I needed to work on mastering my teaching skills at the other end of the spectrum: low-tech teaching with zero direct communication.

To establish connection and familiarity, I wrote weekly letters that shared information about my own identity and life experiences. I also asked the students to share a significant amount of their own life experiences including their hopes, fears, and talents. The questions ranged from lighthearted: Would you rather win an Oscar, Grammy, or Gold Medal and why? to soul searching: How would your own life change if you could forgive or be forgiven?

The foundation of our written relationship became the sharing of stories. I know that my students' responses to my stories made me feel seen and understood and I hope that they felt the same.

I worried that the topic of conflict resolution would be triggering for students like mine who have experienced great trauma or abuse. To minimize the possibility of retraumatizing my students, I began the class by sharing several wellness tools including designing your own safe space that you can go to when needed and meditation and breathing techniques. I also told them that they could decide which conflicts and experiences to analyze and diving into the most painful memory was not necessary or even helpful.

A third challenge was the fact that they were not able to learn from their peers since no class gatherings were possible. To address this, I would share student insights and ideas in my weekly letters and allow for comments. I missed the ability to encourage the peer learning that comes from bouncing opinions and ideas within a group in a spontaneous setting.

Finally, while some conflict experiences are universal, I am not an authority on the best practices for the types of conflict my students face in a women's correctional center. I stated this up front and advised the students that they were the experts on whether the tools shared made sense in their living situation. One example is the tool of strategic avoiding a heated situation until people cool down. This can be challenging when you don't have the ability to move freely in your space.

Since the course is now complete, I have had time to consider what I will take with me from this unique teaching opportunity. First, I absolutely formed a strong connection with most of my students despite never seeing them. I attribute this to both the time spent on sharing stories in the weekly assignment and my own sharing of both wonderful and difficult situations in my own life. Over time, the stories created a bond that I simply can't get with every student in either online or live teaching. Furthermore, because I read every student's submission without any other way of building a relationship, every student received an equal share of my attention and support.

There may even have been an upside to getting to know them without meeting them. I was less influenced by the implicit bias that we all have in terms of our quick judgments about those we meet based on physical characteristics. When I received photos of the students later in the course, I felt that I already knew them well and was delighted to see their beautiful smiles.

I did need to check myself for assumptions about students in a prison setting. To the extent that I underestimated my students' ability and commitment, I was wrong. For these students, my class was a gift that gave their lives profound meaning and worth, and I quickly realized that I needed to treat this class as a sacred space.

Of course, low-tech did not equal no-tech in this course. Grading their handwritten assignments using my Apple pencil made that job so much more efficient. NPEP used BOX to deliver and receive my materials.

My trepidation about teaching a correspondence course was like that I felt when I learned that my law school classes would all be offered via ZOOM. I needed to expand my capacity as an educator. Somehow, with intention, trial and error, and a willingness to adjust along the way, all of the course delivery methods worked. While I truly cherish the possibility of gathering safely in a classroom with all of the energy that brings, there are gifts and challenges in every teaching model.



## Celebrations

### Discussions in Dispute Resolution Interview Series: The Origin Stories



The Center on Negotiation and Mediation took March of 2021 to celebrate Art Hinshaw, Sarah Cole, and Andrea Schneider on the publication of their new book, *Discussions in Dispute Resolution: The Foundational Articles*. The book features 16 foundational writings in the field of dispute resolution, four pieces from each of the field's primary subfields--negotiation, mediation, arbitration, and public policy, and contemporary commentaries discussing "why is this work a foundational piece in the dispute resolution field?" We are incredibly proud that this book includes pieces by two faculty members of the Center: Professor Leonard Riskin's famous piece on the grid and a commentary on Professor Riskin's piece by Professor Alyson Carrel.

The Center's celebration of this book culminated in hosting a series of online events, one each Thursday in March, highlighting the origin stories of four of the foundational articles included in the book and their impacts on the respective subfield. These events included four amazing interviews with the foundational article's author. During each of these interviews, one of the book's editors discussed with the author the article, their motivations of writing it, what it was like to write the article in the time that they did, and their thoughts on the impacts and evolution of the article and its concepts since publication.

Here is a primer on each of the events and the incredible interviews that took place, linked to a video recording for you to watch at your convenience!

**On March 4th, Carrie Menkel-Meadow** was interviewed by Art Hinshaw about her article, *Pursuing Settlement in an Adversary Culture: A Tale of Innovation Co-Opted or the "Law of ADR."* This article discusses the institutionalization of ADR and the questions that needed to be answered to prevent ADR from being swallowed by the adversarial system.

**On March 11th, Jean Sternlight** was interviewed by Sarah Cole about her article, *Panacea or Corporate Tool?: Debunking the Supreme Court's Preference for Binding Arbitration*. This article discusses the flaw in arguing that binding arbitration is necessarily better for all parties and how such a system includes distributional inequities and injustice.

**On March 18th, Robert Mnookin** was interviewed by Andrea Schneider about his article, *Bargaining in the Shadow of the Law: The Case of Divorce*. In this article, Mnookin explores the impact of the legal system on negotiations and bargaining, using divorce as a case study, and how the "shadow of the law" affects behaviors of parties.

**On March 25th, for our final event, Leonard Riskin** was interviewed by Alyson Carrel about his article, *Understanding Mediators' Orientations, Strategies, and Techniques: A Grid for the Perplexed*. We also took this event as an opportunity to celebrate the overall impact and legacy of our colleague and friend, Professor Leonard Riskin.



## Faculty Activities

Below is a list of some of the faculty's more significant activities from the past twelve months. For a more detailed look at our activities, please check out our general activities & announcements page [here](#).



## Annalise Buth

Clinical Assistant Professor

### Publications

[\*Restorative Revelations\*](#), University of St. Thomas Law Journal, Volume 17, Issue 1, 2020 (co-authored with Monica Cosby)

### Presentations

"*Why Restorative Justice?*," & "*Restorative Justice in Schools*," Juvenile Justice Symposium, Illinois Judicial Council & The Criminal and Juvenile Justice Clinic at the University of Chicago Law School. April 24, 2021

"*From Abstraction to Application: Students Fighting Against Racism Case Study*," ABA Dispute Resolution Section 2021 Conference. April 17, 2021 (with Lynn Cohn, Sofia Orelo (JD '22), and Meredith Bennett-Swanson (JD' 21))

"*Restorative Justice, Transformative Justice, and Anti-Asian Hate Crimes*," Wellesley College, The Slater International Program Workshop. April, 2021

"[\*The Journey to Restoring Law School & More\*](#)," This Restorative Justice Life Podcast, Episode 14, December 17, 2020

## Alyson Carrel

Co-Director & Harry B. Reese Teaching Clinical Professor of Law

### Publications

[\*Negotiation and Lawyers\*](#), West Academic, 2021 (co-authored with Art Hinshaw, Leonard L. Riskin, Chris Guthrie, Richard Reuben, Jennifer K. Robbennolt, Nancy A. Welsh)

*Dismantling the "Facilitative" "Evaluative" Dichotomy: Reflecting on Riskin's Grid and Predicting the Future*, Discussions in Dispute Resolution: The Formative Articles (Hinshaw, Schneider, and Cole, eds.) (Oxford Univ. Press, 2021)

[\*A Conversation about Whiteness and Mediation\*](#), Indisputably.org, July 29, 2021 (co-authored with Jasmine Atwell)

[\*Design Your Delta Blog\*](#), March 2021 (co-authored with Cat Moon)

### Presentations

"*How Assessments Impact Law Students*," Using Data Analytics, Artificial Intelligence, and Assessments in the Recruiting Process, NALP, October 7 2021

Moderator, [\*ADR as a First Career: It Is Happening\*](#), ABA Mediation Week, October 2021

"[\*The Future of Legal Education\*](#)," Convergence Podcast, Episode 6, August 12, 2021

Closing Keynote Presentation, "*The Delta Model: A Framework for Supporting and Guiding Attorneys in the Face of Change and Uncertainty*," The Association for Continuing Legal Education (ACLEA) 2021 Conference, July 2021

"*The Evolving Practice of Law*," North Carolina Bar Association's Ethical Practice in a Virtual World Program, December 2020 (with Cat Moon)

### Appointments

Committee Member, National Conference of Bar Examiners Content Scope Committee, August 2021

Harry B. Reese Teaching Chair, August 2021





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## Lynn Cohn

Co-Director & Clinical Professor of Law

### Presentations

*"Alumni Attorney Talks,"* University of Illinois College of Law Webinar, October 2021

*"From Abstraction to Application: Students Fighting Against Racism Case Study,"* ABA Dispute Resolution Section 2021 Annual Conference, April 17, 2021 (with Annalise Buth, Sofia Orelo (JD '22), and Meredith Bennett-Swanson (JD '21))

*"Real Conversations: Racism, Allyship and Police Reform,"* Summer 2020

*"Moving to Negotiation Mastery,"* La Universidad Nacional Autónoma de México International Online Program, November 2020

### Appointments

Special Master, *Bland v. Edward Jones* Settlement

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## Daniel Gandert

Clinical Associate Professor of Law

### Presentations

*"Olympics and the Law,"* Howard University, September 15, 2021

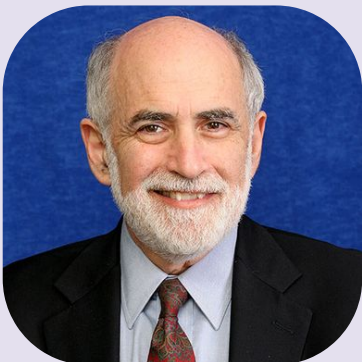
*"Incorporating Mindfulness Makes One a Better Professor,"* Association of American Law Schools 2021 Conference on Clinical Legal Education, April 29, 2021

*"Doping and Drug Testing in US Professional and Collegiate Sports,"* China University of Political Science & Law, March 27, 2021

*"Doping Control in US Sports: A Comparison with Doping Control in Olympic Sports,"* China University of Political Science & Law, October 17, 2020

*"Advanced Mediation Workshop,"* Chicago Bar Association, October 14, 2020

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## Leonard Riskin

Visiting Professor of Law

### Publications

*Negotiation and Lawyers*, West Academic, 2021 (co-authored with Art Hinshaw, Leonard L. Riskin, Chris Guthrie, Richard Reuben, Jennifer K. Robbennolt, Nancy A. Welsh)

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## Listen and Watch Our Faculty in Action



PODCAST: Convergence, Hosted by Oladeji Tihamiyu (Clinical Fellow at the Harvard Negotiation & Mediation Clinical Program)

Featuring Northwestern Dean Hari Osofsky and Alyson Carrel discussing the Future of Legal Education



PODCAST: This Restorative Justice Life, hosted by Amplify RJ founder David Ryan Barcega Castro-Harris

Featuring Annie Buth discussing the Journey to Restoring Law School

Celebration of Professor Len Riskin (part of the DDR Interview Series: The Origin Stories, 2020)



VIDEO: Celebration of Len Riskin during the *Discussion in Dispute Resolution Interview Series, The Origin Stories*





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