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Center on Negotiation and Mediation



Letter from Director

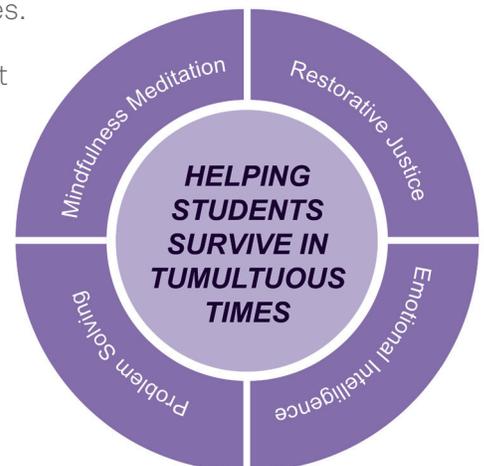
Lynn P. Cohn, Clinical Professor of Law,
Director, Center on Negotiation and Mediation

The extreme discord and barrage of conflicts and violence facing our students and communities is a constant call to remember the most basic lessons we convey in our courses on negotiation, conflict management, dispute resolution and restorative justice. We offer an incredible skillset for the difficult conversations and complex problems we face today.

The crux of our negotiation course is the concept that we need to identify our own interests and do the same for all other participants at the table. We caution our students to be aware that they are prone to making assumptions, often tainted by implicit bias, that should be tempered with self-awareness, information gathering and genuine curiosity. We encourage students to look for common interests that will serve as the basis for collaborative agreements and to identify different priorities that will allow for trade-offs.

We know that emotional intelligence will help our students understand themselves and their counterparts. The core concerns of “Autonomy, Appreciation, Affiliation, Status and Fulfilling Role” remind us that everyone — across political, religious, economic and geographic spectrums — has basic social needs that, when fulfilled, can create bonds that sustain us in difficult times.

We teach our mediation students that resolution is most likely when people feel heard and acknowledged and have their interests met. Moreover, imposing an agreement on others is contrary to the foundation of self-determination that contributes to the power of the mediation process.



Meditation allows us to be more centered and clear even in the eye of a storm. When emotions threaten to get the best of us, we can take stock of our feelings and make an intentional judgment call about our next move, ideally from the heart of our best self. Yet, even as a so-called expert in these skills, I am finding it increasingly difficult to answer the colleague who asks me what I, as a dispute resolution specialist, prescribe to fix this mess.

But then I remember what we teach in our restorative justice curriculum: We can't start with solutions. We must start with spaces for dialogue, within our law school, communities and on a larger scale. We first have to have the courage and willingness to understand and connect with others on a human level as we talk about hard issues concerning topics such as race and politics. The answers will come once we are in open-hearted discourse. For now, the focus must be on creating and participating in these dialogues. I accept that facing my white privilege in a dialogue on race will make me uncomfortable. I am striving to avoid the simplistic response of labelling individuals (including members of my immediate family) who support policies and politicians that I strongly disagree with, and in an effort to move beyond labels and assumptions, I am working on engaging those people. I will remain open to the possibility that the difficult times we are in may be necessary in order to evolve to a better place. And I will need to use every tool that we teach our students to do just this in my own corner of the world. At least in my lifetime, this has never been more vital than today.

Peace and love,
Lynn



Alumni Profile

Paul Fenstermaker (JD '14)

Not all basketball fans are lucky enough to watch their hometown team win a single NBA championship, let alone two in three seasons. Far fewer fans are lucky enough to celebrate their team's success in person. And there are only a handful of people like Paul Fenstermaker (JD '14), Assistant General Counsel for the Golden State Warriors.

The Bay Area native started his professional career as a Marketing Specialist at the NBA league office before attending Northwestern Pritzker School of Law. After graduation, Fenstermaker was a member of the corporate group and the sports and sports facilities industry team at Katten Muchin Rosenman LLP in Chicago, where he served as outside counsel to various professional sports franchises. In 2016, after working on several matters for the Golden State Warriors, he received a dream offer: to move in-house and join the Golden State Warriors legal team. While Fenstermaker feels lucky to have received the opportunity, he also acknowledges that the lessons learned from the Center on Negotiation and Mediation at Northwestern Law have proved invaluable to his career trajectory in the sports industry.

Part of Fenstermaker's role with the team involves being at the bargaining table with potential clients. Whether he is negotiating suite licenses for the Chase Center (scheduled to open in 2019) or potential sponsorship agreements, a class lesson that has proven true time and time again is that preparation is paramount. When it comes to understanding each party's BATNA and identifying ways to expand the pie for everyone involved, "you can't wing it," he says. If you shirk on doing your prep work for a negotiation, Fenstermaker explains, you risk missing out entirely on what could have been a slam dunk deal.

Successful sports attorneys must also recognize that how they carry themselves is as important, if not more so, than the information they wield at a bargaining table. Despite the NBA's huge popularity in the United States and abroad, a relatively small cast of characters populates the league's front offices. The same holds true for the world of sports law in general, and as a result, one's reputation around the industry is key. Echoing one of the Center's essential mantras, Fenstermaker stresses that "it's not a one-shot world." Many job openings are filled not through a nationwide search or an open posting but through trusted recommendations. Simply put, if you want to move up in the sports world, make sure your reputation doesn't keep you down.

Fenstermaker says he found one of the Center's newer classes—Dispute Resolution in Sports—to be helpful to his career with the Warriors. In this class, he learned the basics of labor law in sports and about the relationship between sports leagues and their players unions. Having this solid foundation allows Fenstermaker to navigate the collective bargaining agreement on a regular basis and to contribute new ideas for the organization.

As a final word of advice, Fenstermaker tells aspiring sports attorneys that they must be able to articulate how their skillset satisfies the needs of potential future employers. Simply being a sports fan is not enough. Your education and experience can help you stand out as a candidate who can practice all aspects of sports law, and the classes offered through the Center on Negotiation and Mediation help develop that ability.

The Center is proud of Fenstermaker's many accomplishments and wishes him continued success

Student Profile

Richard Scinteie (JD '17)

In his first two years of law school, Richard (Rich) Scinteie (JD '17) learned about formal adversarial legal procedures for addressing conflict. But the lessons didn't resonate with him, so he searched for other tools. In Scinteie's third year, the Center on Negotiation and Mediation opened his eyes to new ways of handling conflict.

Scinteie was a student in five center courses over two semesters. In these classes, he discovered dispute resolution processes and skills that encourage collaboration, deep listening, dialogue, compassion, and creativity. Learning to

focus on interests over positions provided Scinteie with a way to think creatively about problem solving. He realized that conflict does not have to be a win-lose situation and that there are processes like mediation and peacemaking circles that can transform conflict.

The center provided Scinteie an opportunity for real-world experience through the Mediation Advocacy Clinic and Restorative Justice Practicum. He will never forget watching an employer moved to tears when a mediation client shared the emotional impact of an experience. And he will always carry the lessons he learned from the LGBTQ at-risk youth with whom he worked in a violence prevention program that he helped implement. These experiences changed Scinteie's understanding of conflict.



The center courses taught him not only about dispute resolution but also about himself. Restorative justice required deep introspection about his role as an interconnected community member. The practice of mindfulness helped Scinteie better understand his own reactions, and it enables him to present in the midst of conflict.

In learning about the power of dialogue, self-determination, empowerment, interconnection, and mindfulness, Scinteie discovered a passion for dispute resolution. He is grateful for the way in which the center humanized the law and taught him transforming conflict and repairing harm — skills he will carry with him in his professional and personal life.



Healing Our Justice System: Restorative Justice and the Law

On March 10, 2017, more than 300 people gathered in Lincoln Hall, the oldest lecture hall at Northwestern Pritzker School of Law, for the symposium, “Healing Our Justice System: Restorative Justice and the Law.” Activists, organizers, educators, community advocates, police officers, probation officers, social workers, therapists, and others joined lawyers and law students to reflect on justice and healing. The Center on Negotiation and Mediation collaborated with the Northwestern Journal of Law and Social Policy to bring together a diverse group to explore restorative justice.

The center’s M.R. Bauer Foundation Fellow Annalise (Annie) Butth (JD ’07) provided an introduction to the philosophy, which views wrongdoing as a violation or breakdown of relationships and community rather than a violation of rules or law. The symposium challenged participants to reflect on repairing harm, understanding the context surrounding harm, and empowering those affected by harm so that they can repair it.

The Symposium highlighted the importance of stories and, throughout the day, people shared their personal experiences. The International Indigenous Youth Council Chicago Chapter opened the day acknowledging and honoring the indigenous roots of restorative justice. There were a broad range of perspectives from the criminal justice system, government, education, community organizations, and different Chicago neighborhoods. Symposium participants observed Center Director Lynn Cohn (JD ’87) facilitate a circle with a group of Chicagoans who are serving their communities in powerful ways.

The Symposium featured two national leaders in restorative justice. Dr. Fania Davis, founder and director of Restorative Justice for Oakland Youth (RJOY) and long-time social justice activist, scholar, professor, and civil rights attorney, was the keynote speaker. Dr. Davis shared stories of RJOY students who were empowered by restorative practices, and she talked about her own journey of becoming lawyer, warrior, and healer. She charged the audience with embracing intersectionality and challenging systemic harms in order to create radical, profound, and inclusive communities.

Dr. Mark Umbreit, a professor and founding director of the Center for Restorative Justice & Peacemaking at the University of Minnesota School of Social Work, provided insights from his leading work in victim-offender mediation and dialogue. He focused on trauma-informed practice, developing healing space, being mindfully present, and taming egos. The speakers raised many critical issues, cultivating conversations that will hopefully continue into the future.

The beauty of the day was in seeing people with a broad array of experiences, strengths, and backgrounds come together and connect in the law school as they considered what justice should look like. Hearing about restorative work in a variety of different areas provided hope for healing and moving beyond the narrative of violence. The Symposium reflected the potential of restorative justice and processes that build and foster relationships.

Managing the Negotiation Within: Internal Family Systems Training for Mediators and Lawyers Conference

This summer, the Center welcomed Boston Law Collaborative Institute (BLC) Founder and John H. Watson, Jr. Lecturer on Law, David Hoffman, and Founder of the Internal Family Systems (IFS) Model of Psychotherapy, Dr. Richard Schwartz, to lead a pioneering training on the relationship between IFS and mediation. IFS is a conceptual framework in therapy to help individuals explore and comfort their conflicting parts of the mind and uncover their valuable insights. Applied in the mediation setting, this framework provides another tool for exploring

emotions and helping parties transition from positions to interests.

Individuals from across the country attended this two-day training, conducting role plays that integrated the IFS framework into the mediation process with the helpful guidance and support of IFS and mediation experts as coaches. Participants remarked on the depth of personal understanding this framework provides, both for the parties and for themselves as mediators. Enthralled with IFS and grappling with how it fits in their mediation practice, participants maintained incredible engagement – undistracted by the boats sitting on glistening water just outside the training room during a coveted summer weekend in Chicago.

With Len Riskin's leadership, law students in our courses have been exploring some of these concepts, both by reading Riskin's article "Managing Inner and Outer Conflict: Selves, Subpersonalities, and Internal Family Systems" (Harvard Negotiation Law Review 1-69 (2013)) and by discussing how our conflicting parts may impede otherwise effective negotiation and conflict management through experiential exercises. While David Hoffman wrote about IFS and mediation in his article "Mediation, Multiple Minds, and Managing the Negotiation Within" (16 Harvard Negotiation Law Review 297-330 (2011)), this training is one of the first times the public was able to explore the actual skills of incorporating IFS into dispute resolution.



New Appointment for Center's Assistant Director



Alyson Carrel, Assistant Director of the Center on Negotiation and Mediation, was recently appointed as the Law School's first Assistant Dean of Law & Technology Initiatives in recognition of her endeavors in the tech space. In 2013, Carrel was featured in *Above the Law* for her innovative approach to incorporating technology in the classroom and has presented nationally on these approaches at both the AALS annual and clinical section conferences.

Most recently, she spoke at TEACHx, an event showcasing and sparking innovative teaching, to discuss her student projects as part of the Mediation Advocacy Clinic. As a one semester clinic, Alyson asks students to not only identify best practices as an attorney representing clients in mediation, but to also identify challenges facing self-represented parties when the clinic is not in session. With these challenges in mind, students then explore and design tech-based solutions to enhance parties' experiences in the mediation process. This past semester, students designed a web-based interactive form that presents questions for parties to consider when preparing for a mediation. The questions presented are based on the parties' previous answers, so that the experience is not only interactive, but tailored to the individual's situation. After completing the questions, the program then sends an automatic email to the party, summarizing their answers in a form similar to an attorney's representation plan. With this plan in hand, parties will feel more prepared, more confident, and ready to discuss options based in objective criteria as well as non-monetary interests.

Negotiation, Outside-In and Inside-Out: On the Level or Therabout

By Leonard L. Riskin



This poem originally appeared in the Ohio Northern University Law Review – Vol. XLIII, Issue 2 (June 2017). To read the poem in its entirety, including footnotes, visit law.onu.edu/current_students/onu_law_review

INTRODUCTION

A mountain serves as metaphor,
which helps convey a little more.
This mountain has levels within,
and at the top we will begin.

I. POSITIONS

Near the peak's where we seek our positions,
which we find there in any conditions.
As for mine, I am quick to proclaim them.
And for yours, I will claim to disdain them.

Sometimes, when our outlook's positional,
our counterpart seems oppositional.
Discussions, therefore, might get stuck
and then, of course, we're out of luck,

II. NEEDS AND INTERESTS

unless we look beneath positions,
there to find our deeper missions.
Practicing prospecting underground
can yield discoveries quite profound.

As the pathway for getting to yes,
Roger Fisher et al. clearly stress
attending to interests, more than positions,
so to foster ripe conditions

in which you can generate options
and evaluate them for adoptions,
which could lead to agreement success—
Pareto-ly optimal, which they say is the best.

And although "You can't
always get what you want,"
should wisdom succeed in exceeding greed,
perhaps you will want just what you need.

III. THE FIVE CORE CONCERNS

Sources of interests and positions
may include our dispositions.

When core concerns are unfulfilled
our spirits get distinctly chilled.

You see, we need appreciation,
recognition of our station,
freedom, belonging, a meaningful role—
these will soothe a tender soul.

And so, each person's heart does burn
to satisfy a core concern.
Else they may feel emotions negative,

and may require a calming sedative.

So if you're soaked with negativity—
though that's not your main proclivity—
it might come from a core concern,
or several, for which you yearn.

Unmet concerns, if they're galore,
can leave you looking like a boor.
You may appear, well, too competitive,
using language too loud and too repetitive.

Besides, your judgment goes kerplunk,
so others wonder what you think,
and you can't get your interests met.
You may not try, but just forget.

IV. THE THREE CONVERSATIONS

For more insight on tough situations,
consider the three conversations.

Facts and feelings, you can see.
The third one is identity.

This model's for helping you learn
from those you might otherwise spurn,
to avoid attributions erroneous,
and thus build solutions harmonious.

V. INTERNAL FAMILY SYSTEMS

Considering conflict within,
it's hard to know how to begin.
When you're deciding what to do,
Query: Who (or what) is "you"?

To deal with that, I now suggest
a model known as IFS.

It can highlight your subpersonalities,
so the "Self" might undo their dualities.
It can help you manage more inside,
so you're not controlled by Parts that ply.
Profoundly perplexed about an offer?
IFS could be best that I can proffer.

VI. MINDFULNESS

The practice of mindful attention
delivers a different dimension.
For managing conflict, within and without,
it's almost essential, there's nearly no doubt.

It keeps us calm and helps us think
and more, provides a needed link
for using constructs named above,
and doing so with kindly love.

Center on Negotiation and Mediation Sponsored Events

The Journal of Law and Social Policy's 10th Annual Symposium, Healing Our Justice System: Restorative Justice and the Law. March 10, 2017.

"MANLAW" theatre production, February 7, 2017 (Play examining the toll of racism and stereotyping in black and white communities) with Chicago Police Department, Chicago Community Members, and Northwestern Pritzker Law Faculty and Student post-play circle discussion.

Managing the Negotiation Within: Internal Family Systems Training for Mediators and Lawyers. Co-sponsored with Boston Law Collaborative and featuring Richard Schwartz, developer of the IFS Model & David Hoffman, Mediator & Lecturer on Law at Harvard Law School. July 8-9, 2017.

Publications, Presentations, and Leadership and Committee Member Appointments

ANNALISE BUTH

Presentations

"Restorative Justice 101," Journal of Law and Social Policy Symposium, March 2017.

"Restorative Justice," Mental Health Juvenile Justice Conference, May 2017.

ALYSON CARREL

Presentations

"Technology Enhancing and Disrupting ADR," Jed D. Melnick Symposium, Cardozo School of Law, November 2016.

"Artificially Intelligent Mediator: Future Proofing ADR," ABA-DR Annual Conference, April 2017.

"Using Technology to Unlock Engagement and Learning," AALS Annual Conference, January 2017.

Appointments

Assistant Dean of Law and Technology Initiatives, Northwestern Pritzker School of Law

Conference Planning Committee, AALS Technology Law & Legal Education Section

Affiliated Professor, Mitchell Hamline School of Law

Section Council Member, ABA-DR Section

Chair, Standing Conference Committee, ABA-DR Section

LYNN COHN

Publications

"A Model for the Use of ADR to Efficiently Distribute a Significant Settlement Fund in Mass Claims Litigation Without Sacrificing an Individualized Assessment of Claims," Cardozo Journal of Conflict Resolution, Spring 2017.

"Anatomy of a Settlement Fund: How ADR Helped Establish and Deploy a Mass Claims Distribution," International Institute for Conflict Prevention and Resolution, April 2017.

Presentations

"A Vision of Restorative Healing and Community," *panelist, Journal of Law and Social Policy Symposium, March 2017.*

"Mediation of Civil Rights Disputes," 7th

Circuit Court of Appeals, April 2017.

Appointments

Special Master, Slaughter v. Wells Fargo.

Special Master, Creighton, et al., v. Metropolitan Life Insurance Company.

DANIEL J. GANDERT

Publications

"The World Anti-Doping Code: Optimal on Paper," Maryland Journal of International Law (forthcoming 2017)

Presentations

"World Anti-Doping Code: Doping Among Athletes," Maryland Journal of International Law Symposium Corruption in International Sports, October 2017.

"Dispute Resolution Practices and Techniques that Help Students Survive Tumultuous Times," AALS Conference on Clinical Legal Education, May 2017.

Appointments

Committee Member, Committee of Integrity, Security and Safety on Sports Competition, International Association.

LEONARD L. RISKIN

Publications

"Negotiation, Outside-In and Inside-Out: On the Level or Thereabout," Ohio Northern University Law Review, June 2017.

Presentations

"Practical Mindfulness: Clear and Calm in the Heat of Conflict", Pepperdine University School of Law, June 2017

Appointments

Member, Board of Advisors, Mindfulness in Law Society.

Northwestern

PRITZKER SCHOOL OF LAW

Bluhm Legal Clinic

Center on Negotiation and Mediation

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Chicago, Illinois 60611

www.law.northwestern.edu/legalclinic/negotiations

Faculty

Lynn P. Cohn, Director and
Clinical Professor of Law

Alyson Carrel, Assistant Director, Clinical
Assistant Professor, and Assistant Dean of
Law and Technology Initiatives

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

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 Clinic

Mediation Practicum

Mediation Process and
Advocacy

Negotiation Workshop (12–15
sections per year)

Restorative Justice
Practicum

Restorative Justice Seminar

Center on Negotiation and Mediation Awards

Annalise Buth, Student Funded Public Interest Fellowship Program Award for Commitment to Public Interest Law, March 2017.

Kevin Agnew, Adjunct Professor, 2017 Outstanding Adjunct Professor Award Northwestern Pritzker School of Law.

