

## ACR-GNY & John Jay Roundtable Breakfast | September 7, 2023

### ZOOM MEETING PUBLIC CHAT TRANSCRIPT

- 01:09:18 Robin Beckhard (she/her) - NYC: Nice, Niki.
- 01:12:04 Niki Borofsky: Welcome to Professor Carrie Menkel-Meadow | <https://www.law.uci.edu/faculty/full-time/menkel-meadow/>
- 01:13:21 Niki Borofsky: Evolution of a Field: Personal Histories in Conflict Resolution | <https://www.amazon.com/Evolution-Field-Personal-Histories-Resolution/dp/1734956208>
- 01:14:37 Niki Borofsky: Please feel free to raise your hand, your virtual hand, or type your questions into the chat if you have them.
- 01:15:39 Mary Martuscello - NYC: define please " intergrationist"
- 01:17:19 Dr. Kishor Dere: What are the challenges before a successful mediator who is neutral as well as activist?
- 01:17:29 Niki Borofsky: Replying to "define please " inte..." Hopefully this will become clear as the presentation continues, but feel free to raise again.
- 01:29:01 Niki Borofsky: The CPR Institute (full disclosure, one of my former employers) has published bios of many of its panels' neutrals | <https://drs.cpradr.org/neutrals>
- 01:30:45 sethu nair: I really appreciate that you said that nobody is neutral... that recognition is so critical as we attempt to hear what parties need and we can help make happen
- 01:31:01 Mike Lampert- NYC: Rehnquist said judges are required to be impartial but not intellectual eunuchs
- 01:31:10 Niki Borofsky: A little recent peek into Professor Love on Professor Menkel-Meadow : The Amazing Carrie Menkel-Meadow and What Wins When Passions Collide | <https://scholarship.law.tamu.edu/lawreview/vol10/iss1/5/>
- 01:31:16 sethu nair: Reacted to "Rehnquist said judge..." with ❤️
- 01:31:41 Dennis McCoy: The best I can offer is to be impartial as to the process and the outcome.
- 01:32:32 sethu nair: Reacted to "A little recent peek..." with ❤️
- 01:35:19 sethu nair: Pracademic! Great phrase :)

- 01:35:23 Niki Borofsky: Earlier, we were talking about who can and should be "spokespersons" for mediation. Who has seen the Netflix film "Worth" featuring Ken Feinberg's experience : The Incredible Real Life Advocates Who Inspired Netflix's New Film Worth | <https://www.esquire.com/entertainment/movies/a37397310/worth-911-netflix-true-story-kenneth-feinberg-charles-wolf/>
- 01:35:29 Denise Williams on Tongva & Chumash lands, she/her: Yes! before you leave re process and tv/video/film. I would love to get Rommel Roberts in South Africa while he is still active working with parties live. He would be glad to do this, especially in some way to honor Bishop David who was killed early this year in Southern California. Rommel was Archbishop Bishop Tutu's right hand man during the key moments. People need to see what process skills can do!!
- 01:36:24 Leslie Treff: Reacted to "Earlier, we were tal..." with 👍
- 01:36:43 Dr. Kishor Dere: Can professional litigators really afford to be problem- solvers, especially when they benefit from creation and persistence of problems?
- 01:37:03 Denise Williams on Tongva & Chumash lands, she/her: Yes
- 01:37:11 Saima Haider: Reacted to "Earlier, we were tal..." with 👍
- 01:37:24 Saima Haider: Reacted to "Yes" with 👍
- 01:38:37 sethu nair: Reacted to "Earlier, we were tal..." with ❤️
- 01:38:38 Mike Lampert- NYC: Professional litigators with institutional clients can take a longer view - there will always be new matters. If your client thinks you fight when you should help settle, they won't keep using you
- 01:38:58 sethu nair: Replying to "Earlier, we were tal..." Wow! Didn't know this. Ken made mediators famous. :)
- 01:39:08 Denise Williams on Tongva & Chumash lands, she/her: We need to change the incentives. Sara's sacred and Carrie's magical experiences once understood really makes most attorneys more effective in all ways.
- 01:39:35 Nancy Kramer: Many litigators welcome mediation . Some have difficult cases and think they will do better at mediation. They also benefit from saving costs and effort when they are in house or have repeat clients.
- 01:39:38 Mike Lampert- NYC: Someone said the lawyers' job is settle the cases I can't win, win the cases I can't settle and know which is which
- 01:40:00 sethu nair: Reacted to "Can professional lit..." with 🙌

01:40:10 sethu nair: Reacted to "Yes" with ❤️

01:40:19 Niki Borofsky: Pracademic | <https://en.wikipedia.org/wiki/Pracademic>

01:40:40 sethu nair: Reacted to "Professional litigat..." with 🙌

01:41:08 Niki Borofsky: ODR | Online Dispute Resolution

01:41:22 Maria R. Volpe, NYC: ODR refers to Online Dispute Resolution

01:42:23 sethu nair: Reacted to "Pracademic | https://..." with ❤️

01:42:35 sethu nair: Replying to "Pracademic | https://..." Thank you.

01:42:38 Niki Borofsky: A little background on the Wellington Agreement | <https://www.lawinsider.com/dictionary/wellington-agreement#:~:text=Wellington%20Agreement%20means%20the%20Agreement,p arties%2C%20including%20the%20appendices%20thereto.>

01:44:01 Niki Borofsky: The Mediation Alternative: Process Dangers for Women | [https://openyls.law.yale.edu/bitstream/handle/20.500.13051/8616/62\\_100YaleLJ1545\\_April1991\\_.pdf?sequence=2](https://openyls.law.yale.edu/bitstream/handle/20.500.13051/8616/62_100YaleLJ1545_April1991_.pdf?sequence=2)

01:44:56 Niki Borofsky: What Trina Taught Me: Reflections on Mediation, Inequality, Teaching and Life | <https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1966&context=mlr>

01:46:03 Denise Williams on Tongva & Chumash lands, she/her: (And possibly to protect her kids from some behaviors and illnesses while nurturing their healthy relationship with him)

01:46:46 sethu nair: Replying to "The Mediation Altern..." Goodness. I didn't know about this. So many resources here. Thank you niki and maria for always bringing all these gifts to us.

01:48:25 Robin Beckhard (she/her) - NYC: If one party hasn't articulated that they want an apology but I get the sense it would make a difference in helping the parties find resolution, I'm never sure about suggesting/asking if that would help?

01:48:47 Mary Martuscello - NYC: we see more apologies in Medical Malpractice matters

01:51:06 Denise Williams on Tongva & Chumash lands, she/her: It is huge in USA too these last 15 years

01:52:17 Niki Borofsky: Supporting Online Justice: Enhancing Accessibility, Participation, and Procedural Fairness | <https://www.law.ox.ac.uk/SupportingOnlineJustice>

- 01:52:46 sethu nair: Replying to "If one party hasn't ..." I wouldn't say if a party is just hasn't arrived to an apology or what sounds and feels like an apology... then not to incline them towards it as a mediator. But there are many ways (verbally/non-verbally) people express remorse, regret, sadness of having caused some negative impact... when that is coming through ... then i would inquire into what I'm hearing, and if they respond generally well to it... it may be just as valuable as an actual apology
- 01:53:29 Nick Schmitt: Quality Internet IS an access to justice issue now
- 01:53:45 Denise Williams on Tongva & Chumash lands, she/her: Yes! Smart phone full access is vital!
- 01:53:55 Marquita James: Reacted to "Quality Internet IS ..." with +
- 01:54:29 Leslie Treff: I have never had a computer go out on me in three years online and my online rate of settlement in court annexed cases when there is only money issues is over 70 percent
- 01:54:44 Denise Williams on Tongva & Chumash lands, she/her: Both work
- 01:56:11 Nick Schmitt: That's great, Leslie! But is not everyone's experience. Many people even in the City don't have quality Internet access....
- 01:56:28 Niki Borofsky: Reacted to "Quality Internet IS ..." with +
- 01:56:29 Cheryl Prewitt: I feel like there is plenty of benefit to both options. I have some parties that will do a hybrid of both. I work in primarily in divorce mediation.
- 01:57:16 Leslie Treff: Replying to "That's great, Leslie..." My cases all have attorneys, but I do understand that there are folks in NYC without reliable access.
- 01:57:57 Nick Schmitt: Reacted to My cases all have at... with "👍"
- 01:58:24 Nicholas Rigby: Question to Carrie - Do you agree that in dispute resolution it is important to focus on the high value to A at low cost to B? Apologies are an important high value/ low cost item of course.
- 01:58:52 sethu nair: Question: what would you say we as practitioners do or do well, to cultivate flowers so they don't have to go anywhere?
- 02:01:19 Mary Martuscello - NYC: ZOOM and online is very different when all lawyers are involved - different for lay persons and pro se litigants - the former seems easier and effective -- with individuals it is not so effective and satisfying

- 02:01:32 Niki Borofsky: Is ODR ADR? Reflections of an ADR Founder from 15th ODR Conference, the Hague, the Netherlands, 22-23 May 2016 | [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2893919](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2893919)
- 02:01:43 sethu nair: Reacted to "Is ODR ADR? Reflecti..." with ❤️
- 02:01:52 Nick Schmitt: Much research has been done about computer mediated communication (CMC) and the trade offs that come with it. It is not the same as being in person, and one of things we need to make sure to do is acknowledge the difference and work as mediators to eliminate the negatives and maximize the positives
- 02:02:22 sethu nair: Reacted to "Much research has be..." with ❤️
- 02:03:13 Harvey Newman New York City: How do you believe AI could be useful in the evolution of mediation?
- 02:03:20 Wendy: Reacted to "Much research has be..." with 👍
- 02:04:19 Nick Schmitt: Replying to "How do you believe A..." This is a huge quest...
- 02:04:38 sethu nair: Reacted to "How do you believe A..." with 🙌
- 02:04:50 Nick Schmitt: Reacted to Much research has be... with "❤️"
- 02:06:08 sethu nair: While I don't appreciate how being online allows parties to be easily distracted, I have found that many times it helps people self-regulate many emotions and help themselves show up better in the mediation room
- 02:06:22 Richard Brigham, ACR Wisconsin: Today's ACR 2023 Conference Schedule includes a presentation regarding AI: Responsible Use of Artificial Intelligence (AI) in Dispute Resolution with Amy Schmitz
- 02:06:48 sethu nair: Reacted to "Today's ACR 2023 Con..." with 🙌
- 02:09:59 Maryann: Reacted to "While I don't apprec..." with 👍
- 02:10:16 Nick Schmitt: Reacted to While I don't apprec... with "👍"
- 02:10:35 sethu nair: This has happened to me (family members prompting a party)
- 02:11:11 Mary Martuscello - NYC: in litigation we are often asked to sign stating no one else is in the room -- no private texts etc
- 02:11:35 Maryann: Only the host can hit the wrong button re: breakout rooms.
- 02:11:42 Emily Skinner she/her - NJ: Reacted to "Only the host can hi..." with ❤️

- 02:11:57 Dr. Kishor Dere: Encryption is often a recipe for disaster because it is replete with distortions and blunders.
- 02:12:10 Jonathan Honig: Direct communication inaction often increases fight
- 02:12:52 Niki Borofsky: ...on the point of excellent spokespeople: Learn more about Chris Kwok in this article | Spike Lee Interviews AABANY Board Director Chris Kwok | <https://blog.aabany.org/2021/03/15/spike-lee-interviews-aabany-board-director-chris-kwok/>
- 02:12:53 Denise Williams on Tongva & Chumash lands, she/her: Video
- 02:13:05 Maryann: I think we need to be more flexible about allowing participants to bring a support person "in the room" or join the virtual space so that people do not feel that they have to hide a support person.
- 02:13:15 Denise Williams on Tongva & Chumash lands, she/her: Rommel, you, John Paul, Ron....
- 02:14:04 Nick Schmitt: Reacted to I think we need to b... with "👍"
- 02:14:16 Robin Beckhard (she/her) - NYC: Reacted to "I think we need to b..." with 👍
- 02:14:57 Dr. Kishor Dere: Professors may be better mediators than full-time mediators due to their economic independence.
- 02:16:02 Verlyn Francis: Reacted to "Professors may be be..." with ❤️
- 02:16:23 Denise Williams on Tongva & Chumash lands, she/her: And it might highlight real skills
- 02:16:49 Verlyn Francis: Reacted to "And it might highlig..." with 👍
- 02:18:47 Niki Borofsky: Mediation in the 9th Circuit | <https://www.ca9.uscourts.gov/mediation/>
- 02:18:50 Leslie Treff: Replying to "Professors may be be..." If the mediator is willing to be flexible with charging, it may result in a better success rate. I know that I have settled some cases where I agreed to charge a smaller amount when we were close.
- 02:19:17 sethu nair: Reacted to "Professors may be be..." with ❤️
- 02:20:19 Wendy: Do you know whether there are longitudinal studies regarding party satisfaction with mediated agreements? I'm thinking of family disputes, but perhaps in other areas too.

- 02:20:24 Emily Skinner she/her - NJ: I find the consistent discussion of whether inperson or online ADR better as an obstacle to the field and maintaining relevancy moving towards the future. It is not about either or; its a tool we use to maintain relevancy, increase access, and provide service. Conversations about how to increase its value and effectiveness are valuable.
- 02:21:01 Nick Schmitt: Reacted to I find the consisten... with "❤️"
- 02:21:23 Richard Brigham, ACR Wisconsin: Reacted to "I find the consisten..." with ❤️
- 02:21:41 Nick Schmitt: Replying to "I find the consisten..." Totally agree! I've...
- 02:21:49 Emily Skinner she/her - NJ: Reacted to "Totally agree! I've..." with ❤️
- 02:22:37 Saima Haider: Reacted to "I find the consisten..." with 😊
- 02:22:47 Nick Schmitt: Replying to "I find the consisten..." Maybe we should star...
- 02:23:12 Emily Skinner she/her - NJ: Replying to "I find the consisten..." I'm in!
- 02:23:17 Robin Beckhard (she/her) - NYC: Reacted to "I find the consisten..." with 👍
- 02:23:17 Emily Skinner she/her - NJ: Reacted to "Maybe we should star..." with ❤️
- 02:23:24 Maryann: Reacted to "Maybe we should star..." with ❤️
- 02:23:25 Maryann: Reacted to "Totally agree! I've..." with ❤️
- 02:23:27 Maryann: Reacted to "I find the consisten..." with ❤️
- 02:23:51 Niki Borofsky: Scripts: What to Do When Big Bad Companies Won't Negotiate | [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2934430](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2934430)
- 02:24:15 Wendy: Reacted to "Maybe we should star..." with 👍
- 02:25:06 Debra Hamilton:What a wonderful presentation Carrie. I look forward to hearing more about your experiences. Hope to connect.
- 02:25:54 Niki Borofsky: Any final-ish questions? ...also feel free to raise your hand (or just jump in on the mic).
- 02:27:14 Marquita James: Replying to "I find the consisten..." Hal Gregersen who on innovation & leadership at MIT has one of the most compelling, refreshing takes on AI for folks in heart centered coaching/consulting/mediation-adjacent fields I've heard recently.

02:27:31 Niki Borofsky: Tomorrow's Lawyers - An Introduction to your Future - Third Edition | Richard Susskind <https://global.oup.com/academic/product/tomorrows-lawyers-9780192864727?cc=us&lang=en&>

02:27:42 Marquita James: Replying to "I find the consisten..." \*who works on

02:28:09 Harvey Newman New York City: My friend and colleague, Ted Schulman, just had his article on AI concerns and recommendations in "Impact Entrepreneur".

02:28:11 Claudia Frankel Grosman - São Paulo - Brazil: Great breakfast! Carrie, I am leaving very inspired. Thank you! A great day for everyone.

02:29:59 Debra Hamilton:Great question Jeff.

02:30:19 Mary Martuscello - NYC: enjoyed you immensely ! thank you for your expertise and insights!

02:30:47 Niki Borofsky: REMINDER: a recording of this program and a copy of the public chat transcript will be available online by next week at the following locations: <https://www.jjay.cuny.edu/DRC/EVENTS> and <https://acrgny.org/RTB-Videos>

02:30:57 Debra Hamilton:I have to leave at 10. What a great presentation

02:32:10 Dennis McCoy: Caucus only effectively can make the mediator the most powerful person in the dispute because the mediator has more information than either side --

02:33:07 Robin Beckhard (she/her) - NYC: Thank you so much for your contributions to the world, Carrie.

02:33:31 Nick Schmitt: Thank you!!!

02:33:44 Debra Hamilton:Thank you

02:33:46 Arnón Siegel: Thanks so much

02:33:53 Cheryl Prewitt: Thank you.

02:33:58 Dennis McCoy: Great program! Thank you.

02:34:00 Evelin Gerda Lindner: Thank you SO MUCH!

02:34:01 Leslie Treff: thank you

02:34:01 Nan Sparrow: Thank you!

02:34:01 Ronald Banks: Thank You!

02:34:04 Verlyn Francis: Thank you, Prof. Menkel-Meadow. Have been following your writing for my whole career.



02:34:08 Denise Williams on Tongva & Chumash lands, she/her: Thank you

02:34:21 Niki Borofsky: [cmeadow@law.uci.edu](mailto:cmeadow@law.uci.edu)

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Videos of ACR-GNY & John Jay Roundtable Breakfasts are available here:

ACR-GNY website | <https://www.acrgny.org/RTB-Videos>

John Jay College of Criminal Justice Dispute Resolution website | <https://www.jjay.cuny.edu/DRC/EVENTS>

Started in the aftermath of 9/11 by Professor Maria R. Volpe, the NYC-DR Monthly Roundtable Breakfasts are co-sponsored by the [Association for Conflict Resolution of Greater New York](#) and the [CUNY Dispute Resolution Center at John Jay College](#). The Breakfasts are organized and facilitated by Julie Denny, Matthew Lattimer, Niki Borofsky, Emily Skinner, Chloe and Maria Volpe and occur the first Thursday of each month from 8:30 – 10:00 am (New York Time).

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*Please note, the views and opinions expressed at Breakfast Roundtables and in the Chat Transcript are those of the speakers and participants and do not necessarily reflect the beliefs or position of ACR-GNY or John Jay College.*