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ESSAY

TRAINING A NEW BREED OF LAWYER: CALIFORNIA WESTERN'S ADVANCED MEDIATION PROGRAM IN JUVENILE HALL

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Approximately seven years ago, we conceived of an idea called the “Pro Bono Mediation Project” at California Western School of Law. As newly trained mediators, we were enthusiastic about the mediation process, and we wanted to share our positive feelings about mediation with students at the law school. Although initially we simply wanted to provide our students with the opportunity to mediate conflicts, as time passed, we realized this was just not enough. Our ultimate goal became to train a new breed of lawyer—one who values relationships with people—and gradually we reshaped our project to meet our new objective. Thus, the Advanced Mediation Program at California Western School of Law emerged.

Although a number of objectives permeate our program, the strongest one is our desire to train a new breed of lawyer.¹ We recognize that knowing the law, analyzing a case, and dissecting facts are critically important legal skills. We wanted, however, to add to that repertoire another essential component of “good lawyering”—emotional intelligence.² This “emotionally in-

* Professors, California Western School of Law. We would like to thank Kara Williams and Erika Erlenbach for their help in organizing and maintaining our statistics. We would also like to thank Karen Miller for her administrative assistance with this article. Additionally, we greatly appreciate the support given to our program by Dean Steven Smith, Associate Dean Barbara Cox, and Associate Dean Janet Bowermaster of California Western School of Law, as well as the staff and residents of Juvenile Hall and the Girls Rehabilitations Facility, and in particular, Polly Merickle, Deputy Chief Probation Officer, whose bold vision enabled us to initiate and maintain this program.

1. For a thorough discussion of the increasing emphasis on relational lawyering, see generally Thomas D. Barton, *Therapeutic Jurisprudence, Preventive Law, and Creative Problem Solving: An Essay on Harnessing Emotion and Human Connection*, 5 PSYCHOL. PUB. POL'Y & L. 921 (1999).

2. Peter Salovey and John Mayer define emotional intelligence as “the subset of social intelligence that involves the ability to monitor one’s own and others’ feelings and emotions, to discriminate among them and to use this information to guide one’s thinking and actions.” Peter Salovey & John D. Mayer, *Emotional Intelligence*, 9(3) IMAGINATION, COGNITION, AND PERSONALITY 185, 189 (1989-90). According to Salovey and Mayer, the mental processes in-

telligent” lawyer would be one who focuses on relationships with people, rather than one who concentrates solely on facts and law. This lawyer would be one who has command of “the essential human competencies, such as self-awareness, self-control, and empathy, and the arts of listening, resolving conflicts, and cooperation.”³

To enhance these competencies, we seek to use the classroom as a laboratory for discussing relationships—conflicted or otherwise—that students experience in their mediation work. These relationships include those between disputants, those between disputants and mediators (incarcerated juveniles and law students), and those between Juvenile Hall staff and law students.

The mission of the class is to teach law students to become effective mediators and creative problem solvers. Through extensive training and classroom discussion, we teach the students to become better communicators and better listeners. Additionally, we seek to have them become more comfortable dealing with their own emotions, as well as those of others. Through their practical experience in the community and their exposure to different people and different environments, we hope our students will learn to empathize with the disputants. We expect this will transform the students from polarized adversaries into effective facilitators and creative problem solvers in their future endeavors.

This desire to focus on relationships with people brought us to the door of Juvenile Hall⁴ in San Diego. From our background in criminal defense, we

volved in emotional intelligence include “a) appraising and expressing emotions in the self and others, b) regulating emotion in the self and others, and c) using emotions in adaptive ways,” including flexible planning, creative thinking, redirected attention, and motivation. *Id.* at 190-91. For a more in depth discussion of the topic, see generally Daniel Goleman, *Emotional Intelligence*, 9(3) IMAGINATION, COGNITION, AND PERSONALITY 185 (1989-90). For a discussion of emotional intelligence in law students, see generally Marjorie A. Silver, *Emotional Intelligence and Legal Education*, 5 PSYCHOL. PUB. POL’Y & L. 1173 (1999).

3. Goleman *supra* note 2, at xiv. Disparaging education’s emphasis on academic achievement alone, Goleman states:

And that is the problem: academic intelligence offers virtually no preparation for the turmoil—or opportunity—life’s vicissitudes bring. Yet even though a high IQ is no guarantee of prosperity, prestige, or happiness in life, our schools and our culture fixate on academic abilities, ignoring *emotional* intelligence, a set of traits—some might call it character—that also matters immensely for our personal destiny. Emotional life is a domain that, as surely as math or reading, can be handled with greater or lesser skill, and requires its unique set of competencies. And how adept a person is at those is crucial to understanding why one person thrives in life while another, of equal intellect, dead-ends; emotional aptitude is a *meta-ability*, determining how well we can use whatever other skills we have, including raw intellect.

Goleman, *supra* note 2, at 36.

4. Through our research we found only one other law school in the United States—Franklin Pierce College of Law—that offered a mediation program in a juvenile detention facility. That program began in 1993 and ended in 2000, when its funding expired. We learned

knew that Juvenile Hall's population desperately needed conflict resolution services. We also knew that our students could benefit tremendously from their interaction with, and service to, these juveniles. The vast majority of our students had never seen the inside of a jail, much less spoken to an incarcerated juvenile. We believed that not only could the students learn, as we had, invaluable interpersonal and mediation skills from dealing with the juveniles, but hopefully, they could also teach the juveniles how to resolve their own conflicts better. In this article, we describe the evolution and substance of our mediation program in Juvenile Hall and the Girls Rehabilitation Facility. We include in this discussion, the techniques we use to cultivate emotional intelligence in our students as they mediate in these facilities. Lastly, we attempt to analyze the success of our program, through both statistical and anecdotal evidence.

I. HISTORY OF CALIFORNIA WESTERN'S MEDIATION PROGRAM IN JUVENILE DETENTION FACILITIES

Our path to Juvenile Hall was indirect, yet enlightening. Through the process, we learned the importance of finding a placement that provided consistent, manageable disputes and personnel, who were engaged and collaborative.

A pro bono project, begun in the fall of 1994,⁵ served as the foundation for the Advanced Mediation program at California Western School of Law. Through this project, we trained law students who then volunteered to mediate disputes at a local public middle school.

Approximately two years later, we decided to "institutionalize" the pro bono project and convert it to a three-unit class—Advanced Mediation. Our decision was based on our belief that we could build a stronger and more consistent program if we converted it to a traditional class. We believed we could enhance the students' educational experience if we added an academic component to the fieldwork, including a formal, intensive training at the beginning of the semester that would be followed by weekly training exercises and de-briefings in class. Thus, our weekly classes would provide the students an opportunity to, not only discuss and dissect what they had experienced during their mediations in the public schools but also, learn new mediation techniques.

We began the course by having our students mediate at the same public school we had used for our pro bono mediation program. As more students enrolled in the course, we sought to expand our mediation sites. We set out

of two other non-law school mediation programs in juvenile detention facilities—The Burnett-Bayland Home Program in Houston, Texas and The Decker Lake Youth Center Program in West Valley City, Utah.

5. For a general description of this pro bono project, see Ellen J. Dannin, *Reaching the Unreachable? A Law School Outreach Program for "At-Risk" Junior High Students*, 42 J. LEGAL EDUC. 599 (1992).

to find conflicts wherever we could find them—public schools, small claims courts, prosecutors' offices, university dormitories, probation departments, juvenile court and residential treatment facilities for adolescents. Our goal at the time was to find consistent, real and manageable disputes for our students to mediate. We sought sites that had an ongoing flow of actual and straightforward disputes.

We were frustrated in our attempts to find mediation sites in the community. Some sites were concerned that our students were inexperienced; others already had mediators; others were wary of the concept of mediation. One attorney-mediator told us that there were not enough disputes for "real mediators," let alone, student mediators who were just learning what to do. Another mediator in the community warned us, "too many peacekeepers, not enough wars" In view of these obstacles, we chose to expand our program to three more public schools, which welcomed our student mediators.

Unfortunately, the public schools proved to be a poor fit for our students. It was important that the placement provide a flow of disputes that could be mediated at times consistent with our students' schedules. Public schools did not provide this match in schedules. Many schools have their own trained mediators on campus. Because school officials are reluctant to wait until an outside facilitator arrives on campus, the schools' own mediators mediate the school disputes as soon as they occur. Additionally, the constant staff turnovers and changes in budget allocations in public schools, made it difficult to maintain our partnerships with these schools.

Through our experience in the public schools, we also learned that the disputes had to be "real," not contrived. Occasionally, disputants fabricated conflicts, frustrating law students, who felt they were wasting their time.

Due to these shortcomings, we continued our search for a site that would meet our objectives. Our first experience mediating disputes involving detained juveniles came through a personal contact with the supervisor of a local residential facility for troubled adolescents—Project Oz. The supervisor, Kim Morgan, a mediator and alumna of California Western School of Law, understood the benefits of mediation and was enthusiastic about establishing a partnership between her facility and the law school. We realized that because the adolescents lived at Project Oz, our students could mediate at times consistent with their schedules. Moreover, the adolescents' disputes—*theft of personal property, gossip, roommate problems*—were appropriate to our students' skill levels.

Our experience at Project Oz enlightened us to the value of mediating disputes among this population. Not only did the students encounter consistent, manageable disputes, but they also experienced significant personal growth through their dealings with this population. We noticed that the students were inspired to go beyond a mere recitation of the facts, techniques, and resolution of the mediation. Instead, work with this juvenile population motivated the students to discuss the emotional content of the conflicts and their personal reactions to each situation.

Interested in expanding sites where our students could continue to experience such personal growth, we began exploring the possibility of establishing our program at other detention facilities. Consequently we contacted Juvenile Hall,⁶ a detention facility for juveniles. We wanted to establish a program there because we thought we could simultaneously benefit the juvenile detainees as well as our law students. We believed we could provide the juveniles with much-needed conflict resolution services while exposing our students to a population with whom most of them were unfamiliar and, perhaps, even somewhat uncomfortable. While the students served as mediators, they could also serve as role models for the juveniles. At the same time, the juveniles could teach the law students, that although incarcerated, the juveniles are still "just kids." The law students could also learn about the harsh conditions under which juveniles in this country are confined. This interrelationship between the law students and the juveniles—between mediators and disputants—would allow us to dissect the relationships between people in a way that few other venues would permit.

Approximately one year after our initial contact, a new and innovative supervisor of the facility, Polly Merickle, invited us to establish a pilot program in one of the facility's units.

II. OUR CURRENT PROGRAM

A. Mediation Placements

In the summer of 1998, we sent our first group of law students to Juvenile Hall to mediate conflicts between female residents in a designated unit. When the program proved to be a success, we expanded to mediate conflicts between young males in another unit⁷. Because the supervisors at Juvenile Hall felt that the program was valuable, they invited us to add another placement to our list—the Girls Rehabilitation Facility (GRF). The law students have been mediating disputes there since the spring of 1999.⁸

In the fall of 1998, we discontinued the program at Project Oz because we were finding that it could not provide a consistent flow of conflicts. If conflicts at the facility did emerge, the staff and the residents (who lived at the facility for only fourteen days) wanted them resolved immediately. Be-

6. Juvenile Hall is a detention facility in San Diego, California which houses juveniles charged with delinquency. For various reasons, including risk of harm to self or others, or risk of flight, the juveniles cannot be released to their parents or to the community pending the adjudication of their delinquency cases. Instead, the juveniles are placed in the custody of the San Diego Probation Department and are housed in the Juvenile Hall pending the outcome of their delinquency cases.

7. We are indebted to Juvenile Hall Officer Kim Broderick, whose encouragement and collaborative efforts enabled the success of our pilot program in Juvenile Hall.

8. The Girls Rehabilitation Facility is populated by 35 female juvenile offenders, between the ages of 11 and 18, who have been adjudicated to be delinquent and have been placed in this facility by the Juvenile Court for a period of 90 to 240 days.

cause the Project Oz staff had all been trained in mediation themselves, they felt that they could resolve the disputes themselves, just as well as, and more promptly than, our student mediators.

Currently, students mediate disputes at Small Claims Court and Juvenile Hall (Girls' and Boys' Units) or GRF. Every student mediates alternately during the trimester, at both Small Claims Court and one of the juvenile facilities. We decided to have students mediate at both sites so they could experience two different mediation styles—the more “evaluative” approach at Small Claims Court and the more “facilitative” approach at Juvenile Hall.⁹

Although the enrollment in the class varies, there have been between 5-20 students in the class each trimester. For one half of the trimester, paired law students mediate one night per week, at either the Girls' Unit or the Boys' Unit at Juvenile Hall, or at GRF. The disputants range in age from 10-19 years. The disputes between the juvenile residents include name-calling, theft of personal property, and gang-related issues. They do not involve any aspect of the juveniles' delinquency matters so as to avoid a constitutional and/or ethical violation of their attorney-client relationship. In fact, we strongly admonish the law students not to discuss any aspect of the juveniles' cases with the juveniles while mediating the conflicts at Juvenile Hall. To date, we have never had any such transgression.

Although the juveniles request some of the mediations, others are mandatory—required by the staff of the unit. The mediations at Juvenile Hall are conducted in an open room, with the staff of the facility present. In GRF, the law students are given a private room with a closed door to conduct the mediations. On average, the mediations last from twenty minutes to two hours.

B. Classroom Instruction

Before enrolling in the Advanced Mediation class, the law students take a course in Mediation, Alternative Dispute Resolution (ADR), Negotiation, or Creative Problem Solving.¹⁰ At the beginning of the semester we provide

9. In his groundbreaking article, Professor Leonard Riskin theorized that mediation includes approaches that are both “evaluative” and “facilitative.” The evaluative mediator “assumes that the participants want and need *her* to provide some guidance as to the appropriate grounds for settlement—based on law, industry practice or technology—and that she is qualified to give such guidance by virtue of her training, experience and objectivity,” while the “facilitative mediator assumes that his principal mission is to clarify and to enhance communication between the parties in order to help *them* decide what to do.” Leonard L. Riskin, *Understanding Mediators' Orientations, Strategies and Techniques: A Grid for the Perplexed*, 1 HARV. NEGOT. L. REV. 7, 24 (1996) (emphasis added). This classification has sparked considerable debate. See, e.g., James J. Alfini, *Evaluative Versus Facilitative Mediation: A Discussion*, 24 FLA. ST. U. L. REV. 919 (1997); Kimberlee K. Kovach & Lela P. Love, *Mapping Mediation: The Risks of Riskin's Grid*, 3 HARV. NEGOT. L. REV. 71 (1998); Carrie Menkel-Meadow, *When Dispute Resolution Begets Disputes of Its Own: Conflicts Among Dispute Professionals*, 44 UCLA L. REV. 1871 (1997).

10. We have found that students who take Negotiation or Creative Problem Solving first have an adequate understanding of the skills of mediation, despite not having had the formal

an intensive fifteen hours of mediation training for those enrolled in the class. After the training, paired law students videotape themselves conducting a simulated mediation. We meet with each pair of mediators to view their videotape. We critique their performances and answer their questions and concerns. The students then mediate real disputes in the community.

We use the structure of the course to develop students' emotional intelligence and reflective thinking.¹¹ Ultimately, students are graded on their abilities to self-evaluate and reflect upon their learning (as demonstrated by students' journals and class discussion), not on their actual mediation skills.

In order to mentor the students on what we mean by these terms, we begin the course by discussing our own paths from litigation to mediation and the personal rewards this transition has brought us. Through various collaborative exercises during the training, we also spend time ensuring that the students get to know one another on a more personal basis. Before students begin their mediations, we bring Juvenile Hall officers into the classroom to describe their own experiences, as well as to explain more about the residents at Juvenile Hall. The students also tour Juvenile Hall. We then spend some time in class discussing their emotional reactions to the institution, as well as any concerns they might have about mediating disputes there. With this immediate immersion in matters outside of case law analysis, we seek to encourage students to feel more comfortable discussing personal responses—non-traditional law school matters—in our classroom.

The first day of class, we ask students to record their expectations and goals for the course. This brief exercise—the beginning of their reflective process—is repeated at mid-trimester, as well as at the end of the term. The recordings are part of the weekly journal each student is required to maintain. Our instructions to the students regarding their journals are very clear—we are seeking self-evaluation in their writing, not simply descriptions of their mediations each week. For example, when they write about their mediations, we ask them to explain techniques they used and their results; but, more importantly, we want to hear how the mediation affected the disputants and the student mediators, and what the students learned from the process. We ask them to tell us how the process has (or has not) enhanced their mediation and lawyering skills, as well as perhaps, affected them per-

instruction on the structure of the mediation process.

11. Some commentators have noted that lawyers and law students may lack emotional intelligence and may be uninterested in dealing with the emotional content of problems. Moreover, these commentators suggest that law students cannot learn to be more empathetic or caring. See, e.g. Chris Guthrie, *The Lawyer's Philosophical Map and the Disputant's Perceptual Map: Impediments to Facilitative Mediation and Lawyering*, 6 HARV. NEGOT. L. REV. 145, 158-59 (2001). Nonetheless, Professor Guthrie concludes his article by imploring law professors to encourage their students "not only to think like lawyers but also to *feel* like lawyers." *Id.* at 185 (emphasis added). He notes two reasons for the importance of feelings in the law—emotions play a critical role in the development of legal doctrine and clients seek legal assistance for problems about which they feel deeply. Consequently, Professor Guthrie urges law schools to teach students "to embrace the emotive aspects of law and lawyering in the classroom." *Id.* at 185-86.

diation and lawyering skills, as well as perhaps, affected them personally. Our class debriefings focus on these more emotive aspects of their experiences, to reinforce their emotional intelligence and self-reflection in their journal writing.

Emotionally intelligent beings are not only self-aware, but they are able to interpret the emotions of others. Furthermore, they use these interpretations to guide their own thinking. To this end, we spend a good deal of time in class discussing the students' experiences working with cultures different from their own and that of the law school. These "cultures" include the institutional environment—the staff and the officers, the incarcerated juveniles and the ethnic backgrounds of the juveniles. For the vast majority of students, this is their first time working with delinquent youth. It is often several weeks before the students are comfortable interacting with a culture so different from their own. Their gradual comfort comes, in part, from learning to discern their own emotional reactions to the disputes from the juveniles' emotional reactions to those disputes. The subjects of the disputes in Juvenile Hall are particularly conducive to deepening students' and disputants' relational skills. The majority of disputes involve malicious rumors, "turf" issues, property concerns and interpersonal misunderstandings. These type of disputes invite the disclosure of many emotions by the disputants and allow the students to consider and interpret these emotions.

In addition to the above cultures within the institution, we also discuss the lawyer-as-mediator culture. Every student must observe at least one mediation of a litigated case by an attorney-mediator. Students are often struck by the lack of emotional content of these mediations, which usually follow a more evaluative, "settlement conference" model. After having mediated in the highly emotional environment of Juvenile Hall or GRF, some students are very disturbed by the rather "cut and dried" approach of commercial mediations. So we make every effort to invite attorneys to the classroom to speak to the students about their mediation practices and the personal rewards they achieve through this version of conflict resolution.

Class time is spent debriefing experiences—again, a time in which we emphasize what students are learning professionally and personally, in addition to reviewing what happened during the mediation process. During each class we also train our students in advanced mediation techniques, such as methods of changing positions to interests, dealing with difficult disputants, using caucus effectively and encouraging empathy between the disputants. In addition to the journal requirement, every student must conduct a class presentation and discussion on an issue or a problem related to the mediation process, which they have resolved through a number of creative problem solving techniques we teach them.¹² Midway through the semester, we meet

12. For a discussion of approaches one may use to teach Creative Problem Solving, see Linda Morton, *Teaching Creative Problem Solving: A Paradigmatic Approach*, 34 CAL. W. L. REV. 375 (1998).

privately with each student to discuss his or her personal progress, as well as to answer any concerns the student might have.

At the last class, students submit their journals. We are consistently gratified and moved by what the students share with us in their writing. They tell us that this course has changed the way they will practice law and how they will approach conflict in the future:

I feel confident about including creative problem solving techniques in my future legal work. This could include a caring empathetic approach with the objective of finding solutions that re-frame the parties' disputes, improve relations between them and expand options. . . What impacted me most about this course was what I learned about people's personality types, communications abilities and potential to decide solutions when facilitated by a mediator. I appreciated this insight because my law school classes have mostly taught doctrine, yet this course emphasized that law involves helping people. . . I will strive to maintain this people-centered emphasis in my work as a lawyer and in my personal dealings with people.¹³

As a result of the entire Advanced Mediation experience, I feel that I have actually gained a whole different perspective on how I will approach disagreements with others. Before this semester, I would always try to make others see things my way by explaining to them my thinking process and rationale. Although this method did work sometimes, it certainly was unsuccessful equally as often. I have learned to adapt to my audience and attempt to understand their perspectives, needs and characteristics. Not only will this lesson benefit me as a mediator or even a lawyer, but more importantly as a person.¹⁴

Others report that having spent ten weeks mediating, they now understand the profound value of this process and the critical importance of listening:

The most valuable lesson I learned today and throughout my mediation experiences is the importance of listening. Most of the problems I have encountered throughout my mediations originated in one way or another through miscommunication. Parties are usually not willing to be reasonable unless they feel their position has been communicated and understood by somebody else.¹⁵

While I am by no means a professional mediator, I feel extremely comfortable and confident in helping two disputants try to find common ground as a basis for an agreement. One of the biggest things I have learned is that while in court it is important to back up your argument with the law, and all the proper elements of that law, in the mediation setting it is feelings, interests, and emotions that matter. While I still want to liti-

13. Suzanne Gelb, student journal for Advanced Mediation class (Summer 2001) (on file with authors).

14. Brian Icenhower, student journal for Advanced Mediation class (Summer 2001) (on file with authors).

15. Claudia Flores, student journal for Advanced Mediation class (Spring 2001) (on file with authors).

gate, I see a tremendous value in mediation. . . . The biggest thing I want to take from this class is to always listen. Too often, I think attorneys lose sight of the client and argue the issue. I saw this first-hand in my attorney mediation observation. It was disturbing to see and I hope that I never fall into that trap. Even in law, feelings and emotions matter.¹⁶

III. ASSESSING OUR SUCCESS

As we have discussed, our main objectives in the evolution of our course have been two-fold. Initially, we sought manageable, consistent disputes that our students could successfully resolve. As we evolved as teachers and mediators, our second goal became to cultivate emotional intelligence and self-reflection in our students. The following sections discuss the degree of success we have had with each objective:

A. The Resolution of Consistent and Manageable Disputes

In the three years we have spent mediating at Juvenile Hall, we have been pleased with both the consistent flow and the manageable subject matter of the disputes. "We, the law students, the juveniles and the staff at Juvenile Hall are also pleased with the number of disputes the students successfully resolve. Although we recognize that obtaining an agreement is not the hallmark of a qualitative mediation, successful resolution is encouraging to novice mediators. As one law student reported, "[I liked] knowing that at least some of the kids' peer problems would be solved because they [the juveniles] were very serious about a solution and participating in the process."¹⁷

Since we initiated our mediation program in juvenile detention facilities, we have maintained statistics for a three-year period on the number of mediations we have conducted and the resolution rate of those mediations. Of the 1037 mediations the law students conducted, they resolved 898, or 86.5%. The following table details this information:

SUMMER 1998:	Total Juvenile Hall Mediations:	85
	Number Resolved:	65
FALL 1998:	Total Juvenile Hall Mediations:	119
	Number Resolved:	111
SPRING 1999:	Total Juvenile Hall Mediations:	111
	Number Resolved:	94
	Total GRF Mediations:	26
	Number Resolved:	23

16. Rich Borkum, student journal for Advanced Mediation class (Spring 2001) (on file with authors).

17. Anonymous, Law Student Mediator, Juvenile Hall, Group 1, Survey 17 (Spring 2001) (on file with authors).

SUMMER 1999:	Total Juvenile Hall Mediations:	43
	Number Resolved:	37
	Total GRF Mediations:	21
	Number Resolved:	20
FALL 1999:	Total Juvenile Hall Mediations:	116
	Number Resolved:	110
	Total GRF Mediations:	24
	Number Resolved:	21
SPRING 2000:	Total Juvenile Hall Mediations:	111
	Number Resolved:	105
	Total GRF Mediations:	67
	Number Resolved:	61
SUMMER 2000:	Total Juvenile Hall Mediations:	26
	Number Resolved:	22
	Total GRF Mediations:	10
	Number Resolved:	09
FALL 2000:	Total Juvenile Hall Mediations:	31
	Number Resolved:	24
	Total GRF Mediations:	26
	Number Resolved:	16
SPRING 2001:	Total Juvenile Hall Mediations:	63
	Number Resolved:	49
	Total GRF Mediations:	12
	Number Resolved:	08
SUMMER 2001:	Total Juvenile Hall Mediations:	92
	Number Resolved:	74
	Total GRF Mediations:	54
	Number Resolved:	49

B. Training a New Breed of Lawyer

We believe that we have made progress towards accomplishing our mission of training a new breed of lawyer—an emotionally intelligent one who better understands the role of human relationships in the resolution of legal problems. Our anecdotal evidence¹⁸ indicates that, through their participation in this program, the law students have learned that communicating, listening and caring, help to resolve disputes.

Every semester during the weekly class discussions, our students report that their interactions with the juveniles have changed them as aspiring lawyers and as people. They recount how they have learned to listen in a new and different way—to focus on what lies beneath the words and the bravado

18. Each year we have circulated anonymous surveys to our students soliciting their comments on their mediation experiences at Juvenile Hall. A copy of one such survey is attached as Appendix A.

that the juveniles initially present. They have learned that the juveniles are not just one-dimensional "delinquents" who can easily be cast aside as social misfits. They now realize that many of the juveniles, albeit troubled, are smart, complicated individuals, who are capable of thoughtful insights and mature reflection. The students' view of "juvenile criminals" has changed forever. Many of our students have re-considered their career options and wish to devote a portion of their practice to juvenile law. Others have been sobered by the harsh reality of the juvenile detention facilities where they must mediate and they want to spend part of their professional lives improving or changing those facilities. Others have learned from the experience that, although they do not want to work with juveniles, they value the power of negotiation and reconciliation between individuals who undertake serious conflict resolution.

Students reported that mediating at Juvenile Hall and GRF taught them to listen more closely for the emotional component of the conflicts:

"I became better at recognizing people's emotions. I'm more sensitive toward others' feelings and concerns. I find myself constantly looking for clues or hints of discomfort or boredom."¹⁹

"It made me realize how important emotional issues can be to resolving a mediation."²⁰

"The law doesn't have to be impersonal. A client has emotions and needs to be listened to."²¹

"I am a better listener, and am more focused."²²

"I now realize that not every subject and client will be only looked at with "\$" signs in my eyes, but more as to how I can help these people out for their best interest."²³

"[Participating in this program] made me realize that there are no trivial disputes. Every mediation brought forth underlying issues that were important to the disputants, even though the issues sounded basic to me."²⁴

19. Anonymous Student Survey, Law Student Mediator Juvenile Hall, Group 1, Survey 8 (Spring 2001) (on file with authors).

20. Anonymous Student Survey, Law Student Mediator Juvenile Hall, Group 1, Survey 3 (Spring 2001) (on file with authors).

21. Anonymous Student Survey, Law Student Mediator Juvenile Hall, Group 1, Survey 19 (Spring 2001) (on file with authors).

22. Anonymous Student Survey, Law Student Mediator Juvenile Hall, Group 1, Survey 24 (Spring 2001) (on file with authors).

23. Anonymous Student Survey, Law Student Mediator Juvenile Hall, Group 1, Survey 10 (Spring 2001) (on file with authors).

24. Anonymous Student Survey, Law Student Mediator Juvenile Hall, Group 1, Survey 23 (Spring 2001) (on file with authors).

"[Mediating at juvenile hall] brought me to a "check of reality" which you could say was a double-edged sword. I also liked interacting with the kids and talking to them regarding every day life and what was to them the biggest issue of all, and all of a sudden my own problems seemed like a dot on a map and nothing more. Also I found out so many [of the juveniles] were so smart, which was such a shame!"²⁵

Moreover, students, like the one reporting above, experienced fundamental changes in attitudes towards the incarcerated juveniles:

"I looked at the girls there differently and without the stigma I went in with."²⁶

"It made me sad to realize that so many young children live in such conditions that they end up thinking violence is the key to solving problems."²⁷

"I believe studying is not as hard as it has appeared at times because what is harder is getting two 14 year old boys to agree over anything when surrounded by razor wire and cooped up in a sterile environment 24/7."²⁸

"Yes I'm less judgmental. I sort of had the stereotypical impression that these kids were bad seeds. Not true at all—they are just regular kids with extraordinary problems who want help and guidance."²⁹ Furthermore, students reported that the experience of mediating disputes in Juvenile Hall altered their career paths, or, at a minimum, alerted them to the deficiencies of our juvenile justice system:

"It started me thinking about possibly going into juvenile defense work. Or when I go back east after graduation, implementing a similar program in my hometown."³⁰

"I am now going to do an internship in the Alternate Public Defender's Office. Before meeting these kids, I didn't think that there was anyone worth defending."³¹

"I've learned about these kids and their lifestyles which has made me thankful for my own luck and love. I've also decided that I would like to work sometime or other in my career, with juveniles. And my intuition

25. Anonymous Student Survey, Law Student Mediator Juvenile Hall, Group 1, Survey 10 (Spring 2001) (on file with authors).

26. Anonymous Student Survey, Law Student Mediator Juvenile Hall, Group 1, Survey 9 (Spring 2001) (on file with authors).

27. Anonymous Student Survey, Law Student Mediator Juvenile Hall, Group 1, Survey 3 (Spring 2001) (on file with authors)..

28. Anonymous Student Survey, Law Student Mediator Juvenile Hall, Group 1, Survey 4 (Spring 2001) (on file with authors).

29. Anonymous Student Survey, Law Student Mediator Juvenile Hall, Group 1, Survey 17 (Spring 2001) (on file with authors).

30. Anonymous Student Survey, Law Student Mediator Juvenile Hall, Group 1, Survey 12 (Spring 2001) (on file with authors).

31. *Id.*

from the beginning was correct—all they [the juveniles] need is guidance and love and support!”³²

“I have never had any experience with troubled youth—it was very alarming. I hope to do as much as possible in the future.”³³

“It opened my eyes and has raised questions in my mind about the juvenile justice system.”³⁴

“This experience opened my eyes to a world that I have not had much exposure to.”³⁵

Finally, their experiences at Juvenile Hall expanded the students’ perspective on problem solving:

“I learned that many problems can be cleared up so simply—just by talking about them.”³⁶

“Litigation or traditional courtroom approach is definitely [not] the only solution to resolve someone’s problem. Having mediated at Juvenile Hall, I became more alert to other alternative options in solving conflicts.”³⁷

This is not to say that every student had a positive experience mediating disputes at Juvenile Hall. Some students found it frustrating.³⁸ Others found it distressing.³⁹ But the overwhelming majority found it to be a positive, enriching experience—on both a professional and a personal level.

32. Anonymous, *supra* note 25.

33. Anonymous Student Survey, Law Student Mediator Juvenile Hall, Group 1, Survey 20 (Spring 2001) (on file with authors).

34. Anonymous Student Survey, Law Student Mediator Juvenile Hall, Group 1, Survey 21 (Spring 2001) (on file with authors).

35. Anonymous Student Survey, Law Student Mediator Juvenile Hall, Group 1, Survey 16 (Spring 2001) (on file with authors).

36. Anonymous Student Survey, Law Student Mediator Juvenile Hall, Group 1, Survey 1 (Spring 2001) (on file with authors).

37. Anonymous Student Survey, Law Student Mediator Juvenile Hall, Group 1, Survey 8 (Spring 2001) (on file with authors).

38. One student reported: “It seemed like I was mediating immature kid disputants!” Anonymous Student Survey, Law Student Mediator Juvenile Hall, Group 1, Survey 2 (Spring 2001) (on file with authors).

39. Another student commented: “I was surprised at my negative reaction to mediating at Juvenile Hall. I thought I would be deeply affected by the residents and their problems, but I usually left feeling frustrating [sic] and impatient.” Anonymous Student Survey, Law Student Mediator Juvenile Hall, Group 1, Survey 13 (Spring 2001) (on file with authors); Another reported: “I know I do not want to do juvenile justice. I learned that you never know if you are getting through to them but I like to think I reached one or two” Anonymous Student Survey, Law Student Mediator Juvenile Hall, Group 1, Survey 4 (Spring 2001) (on file with authors).

IV. CONCLUSION

When we conceived of our Advanced Mediation class, we had various goals. On the practical side, we wanted to teach students effective mediation skills which they could use to resolve actual disputes in the community. On the academic side, we sought to train a "new breed of lawyer"—an emotionally intelligent one who would focus on relationships with people and who would consider the intricacies of these relationships when solving problems and resolving conflicts. With these goals in mind, we have used numerous approaches to teach the students to become skillful mediators and empathetic listeners.

Although we believe we have made progress in accomplishing our goals, there is still much work to be done. First, we recognize that we teach only a small portion of the entire student population, so our current impact on the future of the legal profession is negligible. Furthermore, this is just one course in a sea of many traditional law school courses. Lastly, we have not tracked how our students are practicing law or conducting themselves after they have taken this course, so we cannot conclude that we have had a permanent effect on their professional lives.

We recognize that if we seek to have a significant impact on the profession we need to train more law students to become active listeners and empathetic counselors. Additionally we need to offer more courses that cultivate the emotional intelligence of the students. Moreover, we need to extend our research to determine whether our training has had a long-term impact on our students' professional lives.

Nonetheless, we are proud of our students' accomplishments and of the growth they undergo while taking this course. It is gratifying to watch as they evolve from anxious, hesitant students to poised, empathetic facilitators. They consistently tell us that they are changed by their experiences at Juvenile Hall—that they have learned to be better listeners and more caring individuals. It is our hope that this class marks the first small step in their path to becoming a new breed of lawyer.

APPENDIX A

QUESTIONS FOR THE LAW STUDENT MEDIATORS: JUVENILE HALL

1. Did the experience of mediating at Juvenile Hall change you personally in any way? If so, how?
2. How did mediating at Juvenile Hall change your approach to law and legal study?
3. What did you like most about mediations at Juvenile Hall?
4. What did you like the least about mediations at Juvenile Hall?
5. When you've become an attorney, are you likely to do mediation as part of your practice? In what way has the experience at Juvenile Hall changed your answer to that question?