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Dean's Column

BY RAYMOND W. PATTERSON, ASSOCIATE DIRECTOR OF
THE SALTMAN CENTER FOR CONFLICT RESOLUTION

FINISHING SCHOOL

I am often asked by potential students about the benefits of participating in the Strasser Mediation Clinic for future lawyers. This is an eminently sensible question, considering that most of my students will not be mediators, so let me articulate what I believe the advantages are for attorneys-in-training.

The first thing students begin to develop while in the mediation clinic is a comfort in dealing with complete strangers. Each week mediators must meet, greet and try to cultivate a speedy rapport with two people who are usually pretty angry with each other, while maintaining their equilibrium during the entire three- to four-hour session. Invariably, students report in their weekly journals that they were nervous or had butterflies in their stomachs upon meeting the parties involved in their first few mediations, even though experienced mentors were at the table with them. This stage fright is perfectly normal for law students used to spending most of their time with appellate cases and rulebooks. By the end of the clinic, 13 weeks later, those butterflies have disappeared, and students report they have banished those initial fears.

Of course, a key factor when it comes to losing those fears is developing confidence. Make no mistake, this is a daunting task for students. These 20- and 23-year-old students may be sitting at a table trying to help an elderly couple end a marriage, or trying to calm a furious driver who is spewing invective at an insurance company representative. Students wonder why these people (often their elders) would even deign to listen to what they have to say.

But they do listen. And that is the magical part, because as students learn to trust the process of mediation, they begin to exude competence. They forget that they're students, or young or inexperienced; they take on the role of mediator completely. Questioning

skills improve dramatically – an essential ability because the clinic provides facilitative mediation services and students may not give advice. Instead, they must elicit information and proposals from the parties by asking probing questions, and they must help these people use that information to reach a creative solution to the dispute.

This is a real-world version of issue spotting. People in the middle of a dispute can be highly voluble, but much of what is said is posturing and venting. Hidden within those fulminations are the inchoate proposals that could, with proper handling, be converted into creative solutions to the dispute. The student mediators learn how to tease these out. No lawyer should be without this skill.

There are, of course, times when the questioning needs to be incisive (read: “tough”) in order to penetrate the barriers which are erected by involved parties and preventing resolution. This can be difficult for students. They feel they might “step over the line,” wherever that line may lie, but they are also learning to speak in nonjudgmental language, which allows them to communicate some pretty difficult things in the nicest possible way, so that no one is offended.

Students do all of this within the short time period of four hours. This means that, while probing the origins of the dispute and helping the parties see areas where they can agree or make trades, students must also keep track of time. Maintaining an appropriate pace while working through an agenda is the key to running a good meeting, an invaluable skill for any future lawyer and exactly what is required of student mediators.

About half the cases in the Mediation Clinic involve representation, and having lawyers present is frequently an eye-opener for students. Many attorneys are incredibly helpful in pointing out what resolutions would not only be good for their clients but also for their opponents. They can also offer predictions of what might happen at trial or give their interpretations of the applicable laws. Sometimes, counsel is

gracious enough to share information of which an unrepresented adversary was unaware, helping to lead to settlement.

But there are also times when bad lawyering is evident and students are quick to see it. Perhaps the attorney is unprepared or is giving what is clearly wrong information (based on cases they've already done); possibly a counselor is not interested in helping her/his client reach resolution in mediation. These experiences are invaluable, too. Students begin to realize that, as in all professions, there are good practitioners and bad.

Most importantly, in the Strasser Mediation Clinic, law students work with both sides in a dispute. They learn that disputes are the result of choices and actions (or inactions) on both disputants' parts, that emotions must be considered because they often drive the dispute, that truth is rarely clear and that the application of the law sometimes becomes an impediment to what the parties truly want. ■

PROFESSOR RAYMOND W. PATTERSON

Joined the William S. Boyd School of Law in 2005. Before coming to Nevada, Professor Patterson was the director of mediation for New York City's Civilian Complaint Review Board (CCRB), a mayoral agency that handles complaints by civilians against police officers. He implemented and supervised the CCRB's mediation program. He was an original member of the City University of New York's Dispute Resolution Consortium Advisory Panel and an adjunct professor at both the Benjamin N. Cardozo School of Law and NYU's School of Continuing and Professional Studies.

CORRECTION: The Dean's Column in the September issue of the *Nevada Lawyer* incorrectly identified Professor Anne Traum as a current appellate lawyer representative to the Ninth Circuit Court of Appeals. Traum served as an appellate lawyer representative from 2009 through 2011. In addition to founding and directing the Appellate Clinic at the William S. Boyd School of Law, Traum teaches criminal procedure and federal courts.

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