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TEACHING MEDIATION IN LAW SCHOOLS: TRAINING LAWYERS TO BE WISE

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This paper reports my experience in planning, executing, and reflecting upon a clinical program designed to train law students to mediate and to give them actual mediation experience. Much of the work in this program was shared by my colleague, Paul Spiegelman, and thus, this article will reflect our collective actions and thoughts where appropriate.¹ Our motivating concept was that intensive training in mediation could help law students gain the insight necessary to fulfill the high aspirations we held for the lawyer, that he or she might become a "wise" person, able to assist others in an empowering way.

We further believed that training students for this role required transforming their "standard philosophical map," as described by Len Riskin,² from its two dimensions of rule orientation and an adversarial approach to conflict, to a three-dimensional problem-solving orientation. Such a transformation would require more than a brief exposure to the concept of "win-win" solutions and a once-over-lightly survey of mediation.³ We believed that intensive instruction in mediation skills, practical experience in mediating, and careful reflection on these experiences were necessary to accomplish this formidable task. In other words, we were interested in applying clinical methodology to mediation training. A clinical grant from the Department of Education and support from our law school allowed us to test this theory.

Looking back at what we set out to do and what we accomplished has provided us with new insight about teaching mediation and about the process of mediation itself. Although we set out to train students to be

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1. I want to express my gratitude to Paul Spiegelman for his thoughtful contributions to and suggestions for this article as well as his collegiality and commitment to our work.

2. Riskin, *Mediation and Lawyers*, 43 OHIO ST. L.J. 29, 43-48 (1982).

3. Riskin asserts:

The unique satisfaction and frustrations of mediation; the personal and professional conflicts it raises; the tendencies inherent in both the legal and the mediational perspectives toward undermining the salutary contributions of the other; the willingness and ability of an individual lawyer to mediate or help determine whether a given case is suitable for mediation — each of these can be grasped better if the intellectual content is suspended in the gel of experience, even if that means running a mock mediation.

Id. at 50.

"wise," we now see that to a large extent, we were actually attempting to teach them a "party-centered" approach to problem solving, which is akin to the "client-centered" approach to interviewing and counseling.⁴ Though it is unlikely that we ever articulated this goal to our students in that terminology, it formed the theme of our program. The experience in teaching "party-centered" mediation has convinced us that our original hypothesis was correct—mediation is an ideal medium for providing insight to students about their creative potential in lawyering.

In addition to our ability to conceptualize the wise mediator as one who is able to conduct party-centered dispute resolution, we have gained a greater insight into the workings of student-centered teaching from this project. Again, this was not a concept we had formulated in our planning stages. While we had some vague notions of wanting the students to engage in self-directed learning consistent with the theme of our clinical program, we were unsure about our ability to inspire them to do so. What unfolded exceeded our expectations. Retrospectively, we can see that we had been thinking about a student-centered approach while never having attached that label.

The purpose of this article is to articulate the concept of mediation as party-centered dispute resolution and to describe our insights about student-centered teaching. It will first set out the background for our mediation project, then describe its goals, the implementation of the project, and whether the goals were met. Finally, the concepts of party-centered problem solving and student-centered teaching will be discussed.

I. BACKGROUND

The grant application we submitted to the Department of Education called for a mediation clinic that would provide mediation services to the city of San Diego for mediating disputes which arose within the context of city government. These disputes would range from quasi-criminal matters such as parking tickets and towed vehicles, to zoning violations, contract problems, housing matters and collections. We hoped to show that these kinds of problems were amenable to peaceful resolution outside of the adversarial system. The result would be to lighten the city's cumbersome litigation caseload while, at the same time, providing an opportunity for citizens to feel they had been heard and assisted in reaching a fair result.

The project was to be implemented over three trimesters. During the first trimester we would plan our training and establish relationships with

4. See D. BINDER & S. PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* (1977).

city agencies.⁵ During the second trimester we would train a small number of students and begin to mediate cases for the city. During the third trimester we planned to train more students and be fully involved in mediating cases for the city.

We wanted to integrate the mediation clinic into our Clinical Internship Program which places students in courts, agencies, and law offices where they work under the supervision of attorneys and judges. We would serve as the supervising attorneys for the mediation clinic as well as supervisors of the overall internship program. We saw this as an opportunity to introduce all of our interns to a wide range of problem solving by bringing our mediation students together with students who were working in more traditional settings.

II. PROGRAM GOALS

The program was designed to give mediation interns actual experience in mediating, and expose them to the possibilities that alternative dispute resolution (ADR) offered attorneys in daily practice. We believe that the skills of a mediator which include listening, being able to see the needs of parties to conflict as potentially compatible, and knowing how to transfer power from professionals to the parties so that they can resolve their own conflicts, are vitally needed by most lawyers. This includes those who never serve as mediators or advise clients engaged in the mediation process. The following sections explain the ways in which we hoped to draw forth the specific benefits lawyers could realize from being exposed to the mediation process.

A. *Creating a Model Which Would Draw Forth The Students' Wisdom and Creativity*

Our most ambitious goal was to develop a training/clinical experience which would help our students become wise lawyers. We perceive a wise person to be one who can listen to others and exercise professional judgment, knowledge, emotions, and concern in a nonpaternalistic way. A lawyer with such skills would best serve the needs of clients. This wise person would not be a prisoner of an adversarial or uncooperative nature, would not be locked into any single method of resolving disputes, but would be familiar with a whole range of possible means and resources to assist clients in achieving the results they sought. The lawyer would understand the context of legal, economic, emotional, and philosophical

5. Our grant proposal included a close working relationship with the city of San Diego. We hoped to offer mediation services to city agencies. We were given office space in the office of the city attorney and introductions to key personnel in agencies which dealt with disputes coming from the public sector.

concerns in which conflict is imbedded, and would be able to make this wisdom available to others in a useful way. Such an individual would be a *creative lawyer*.

B. *Changing the Lawyer's Philosophical Map*

As Len Riskin has eloquently expressed:

The philosophical map employed by most practicing lawyers and law teachers, and displayed to the law student—which I will call the lawyer's standard philosophical map—differs radically from that which a mediator must use. What appears on this map is determined largely by the power of two assumptions about matters that lawyers handle: (1) that disputants are adversaries—i.e., if one wins, the others must lose—and (2) that disputes may be resolved through application, by a third party, of some general rule of law.

...

On the lawyer's standard philosophical map, however, the client's situation is seen atomistically; many links are not printed. The duty to represent the client zealously within the bounds of the law discourages concern with both the opponents' situation and the overall social effect of a given result.

...

... This "reduction" of nonmaterial values—such as honor, respect, dignity, security, and love—to amounts of money, can have one of two effects. In some cases, these values are excluded from the decision makers' considerations, and thus from the consciousness of the lawyers, as irrelevant. In others, they are present but transmuted into something else—a justification for money damages.⁶

As Riskin has indicated, the "standard philosophical map" of lawyers has two dimensions: a belief in the efficacy of rules to resolve disputes and the assumption that conflict is a zero-sum game in which the interests of the parties are necessarily adversarial.⁷ He argues that by being exposed to the mediation process, law students could expand their philosophical maps to include the ideas that conflict may be resolved by tailoring the resolution to the peculiar needs of the parties, and that such resolutions might allow both sides to get what they need.

We share Riskin's belief that if lawyers were trained to consider the

6. Riskin, *supra* note 2, at 43-45.

7. *Id.*

possibility of cooperative resolution tailored to the needs of all parties, they would greatly increase the value of their services to their clients. This is not to say that lawyers should abandon litigation and adversarial representation, but only that they should add more cooperative dispute resolution mechanisms and styles to their lawyering tools.

We wished to add to Riskin's idea that fairly intensive training in the skills of a mediator was important to internalizing the lessons of mediation. Paul's experience in teaching alternative dispute resolution was that although role plays provided the primary means for teaching the course, the opportunity to develop a sophisticated understanding of mediation was not feasible within a few weeks of classes. True to our clinical biases, we believed that students needed actual experience in the role of mediator, combined with rigorous clinical processing of that experience.

C. *Increasing Lawyering Skills*

Experience as a mediator should have a demonstrable impact on the lawyering skills of law students. To accomplish this, we focused on two related skills: the ability to communicate with clients and adversaries in negotiations, and the ability to shift power to clients. This involves client participation in the decision-making process, as well as in making ultimate decisions.⁸

With respect to basic communication skills, an important role of the mediator is to listen to the parties and feed back to them what is heard. A student who developed and practiced these skills as a mediator would increase his or her ability to engage in client-centered interviewing and counseling. With respect to negotiating skills, we believe that being engaged as a mediator in the process of helping parties solve their differences will assist students in the ability to engage in integrative bargaining and cooperative negotiation. Moreover, experience as a mediator in observing the highly charged emotions which accompany conflict, and helping parties deal with those emotions, will help lawyers to relate more constructively to clients and adversarial opponents.

The ability to shift power to clients and to empower them is not a well recognized lawyering skill. In fact, except to the extent that this skill is taught in a client-centered interviewing and counseling course, it is probably not widely practiced. Yet if students learn to empower the parties in a mediation, they may transfer this skill to other situations. This, in turn, may bring new life to the concept of having clients make

8. For a further discussion of the concept of "empowering" parties, see *infra* text following note 30.

the important decisions in their cases.⁹ It would also help establish a new kind of relationship between client and attorney—a helping relationship.

D. Achieving Clinical Goals of Increased Self-Knowledge and Understanding of the Learning Process

Mediation is an event that takes place in a relatively short period of time. "Debriefing" among co-mediators and observers is a regular part of the community mediation model. Thus, clinical observation and reflection on the experience works well. Since our general clinical materials and written assignments place emphasis on the increased self-awareness and understanding of each individual's learning process, we believed our methodology would complement our concept of the mediator's need for self-awareness.

E. Remaining Open and Actively Participating In the Learning Process

Another goal for this project was to retain our openness to learning about mediation. As professors, we often focus on our primary mission—the training of students. In this instance, we were determined to include ourselves in that training and to actively observe and learn from the process. We felt that the mediation clinic provided an opportunity to test various models, techniques, and theories we had studied. We could do this by actively participating in the role playing, usually as parties, or by keeping ourselves open to questions on the very theories, models, and techniques we were presenting to the students. Much of what we learned, and what is included in this article, is the result of this commitment.

III. OUR IDEA OF THE WISE MEDIATOR

The hypothesis which we determined to test was: "it is possible to train people to be 'wise.'" We considered a wise person to be creative and Solomonic, with the ability to approach a situation determined by its unique needs. Exactly how we, or our students, would achieve this wisdom was unknown. It seemed that it might be acquired if we could teach our students to be sensitive to people, to understand the dynamics of communication, and to trust their inner voice.

In order to accomplish this, we decided not to teach any particular model of mediation. Instead, we would focus initially on communication, especially listening skills. Later, we would introduce various models and

9. MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 7-7 (1981); MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.2(a) (1989).

hope that our students would be able to select the appropriate model for each situation.¹⁰ We felt that if the students had a command of several different models they would be able to move comfortably among them. In the early stages of this project, this was our shared understanding of what it meant to be creative—to be facile at moving between models and/or proven techniques.

To implement our training, we broke down the concept of the wise person into several components: listening, holistic approaches toward problem solving, understanding over form, and appreciation of ongoing learning.

A. *Listening*

Listening skills are the key to mediation training. On one level, listening is necessary to the mediator's understanding of what the parties *believe* their dispute to be. On a more sophisticated level, listening is essential to the discovery of what the dispute is *really* about. This comes by *noticing* what the parties say and what they don't say. This may also be discerned by awareness of nonverbal statements such as body language, eye movement, and tone. The mediator must also model listening skills for the parties if they are to move beyond the old patterns of communication which may inhibit resolution of the dispute.

Although listening is essential to almost every lawyering function, it is not usually taught in law school except in a small number of elective courses, such as interviewing and counseling, negotiation and mediation. This is partly due to an assumption that we all know how to listen. This assumption is based on the idea that listening merely means the physical act of hearing the words someone is saying. To the best of our knowledge, there are no empirical studies that prove lawyers and law students are better or worse listeners than the general population. The fact is, most people do not know how to listen. We do not "pay attention" in the fullest sense.

So much is involved in real listening that we have seen students become frustrated, angered, and depressed upon discovering how poorly they listen. These feelings occur even before we present the students with more advanced theories and techniques such as neurolinguistic

10. In our own training in and study of mediation, we had been exposed to a variety of models. These ranged from the loosely structured stages presented by Gary Friedman, to the tightly structured models used by community mediation programs. We had observed how a focus on structure might limit the creativity and intuitive expression of mediators and we wanted to introduce such structures only after our students had developed an ability and appreciation for applying listening skills. We believed that an adeptness with listening skills required a good deal of understanding about people and the ability to be present and genuine.

programming (NLP).¹¹ Simply being "other-centered" and paying full attention to another person is an incredible challenge for most people. For our purposes, we wanted our students to learn the frustrations, barriers, and victories of true listening. The question was whether we would be able to facilitate real learning, i.e., the ability to effectively apply the theory and to go beyond what we presented.

B. *Holistic Approach*

We also wanted to approach this training in a multidimensional fashion, to allow for different learning styles as well as to ensure incorporation of the subject, rather than intellectual understanding alone. We were interested in using psychological models for understanding the dynamics of communication and relationship. This involved the use of two instruments, the Management-of-Differences test by Thomas and Kilmann¹² and the Kiersey-Bates Temperament Sorter¹³ which is an adaptation of the Myers-Briggs inventory.¹⁴

We also included theater models for understanding and communicating. Paul has long believed that dramatics training would be extremely useful for all law students. His theory is that legal training, through its focus on intellectual activity and outgoing communication, provides law students with little training or development of skills in receiving incoming communication. This also includes nonverbal cues such as body language, tone of voice, and neurolinguistics. Since a major component of dramatics training is teaching actors to become more aware of their own nonverbal communication, such training heightens awareness of nonverbal communication generally.

Moreover, by expanding students' consciousness from the purely intellectual realm of law to the integrated world of intellect, emotion, and body in which actors function, acting training may yield other intangible benefits. This includes the ability to relate to others, to be more in touch with feelings, and to be more creative. Since conflict is the essential building block of drama, dramatics training has great potential to expand

11. See generally Barkai, *A New Model for Legal Communication: Sensory Experience and Representational Systems*, 29 CLEV. ST. L. REV. 575 (1980).

12. K. Thomas & R. Kilmann, *Management-of-Differences Exercise*, and K. Thomas, *Interpreting Your Scores on the Management-of-Differences Exercise* (1972) (unpublished study).

13. D. KIERSEY & M. BATES, *PLEASE UNDERSTAND ME: CHARACTER & TEMPERAMENT TYPES* (1984).

14. In the 1950s, Isabel Myers and her mother, Katherine Briggs, devised the Myers-Briggs Type Indicator. The foundation for the sixteen types identified in this measurement tool is the notion that there are four basic temperament types. This idea dates at least as far back as the ancient Greeks and has been a repeated theme in spiritual and psychological literature. I. MYERS, *MANUAL: THE MYERS-BRIGGS TYPE INDICATOR* (1962).

the sophistication of law students' understanding of the dynamics of conflict which animate disputes in which lawyers become involved.

The benefits of some dramatics training seem especially applicable to law students seeking to learn mediation skills. Although all lawyers would benefit from improving their skills in processing the information they receive from clients, witnesses, jurors, and opposing counsel, the ability to read nonverbal communication is essential for effective mediators. Mediators must be able to interpret all available cues, verbal and nonverbal, to understand what is happening in a mediation. They must be able to function not merely on the substantive level of disputes, but on the emotional level as well. They must relate directly to the parties in the mediation, not just analytically to the issue. Considering that the principal training tool for a mediator is role playing, which is the essence of dramatics training, the utility of Paul's theory is evident.

A wise mediator should have some understanding of the nature of conflict and human behavior in conflict situations. At the beginning of the project, we were aware only of the significance of the nature or process of mediation that responded to conflict. Though unsure of how this worked, we felt that this project provided an excellent opportunity to test some ideas.

C. *Understanding Over Form*

A sensitive, facilitative communicator can create his or her own form for mediation by understanding what needs to happen next. Mediation is merely a name for a problem solving activity which involves people talking with each other. We wanted the students to combine that understanding with their newly acquired listening skills and their personal styles and individual talents. My experience of many years of teaching interviewing and counseling has demonstrated to me that students tend to latch onto the *form* of the process without internalizing its *purpose*. Students want to have rules to follow about interacting with others rather than seeing the interaction as the end in itself, with the techniques being merely possible means to the end. We hoped that, by participating in many role playing scenarios, the students would develop the motivation and interest to discover available techniques and create their individual mediator personality. We envisioned the students experimenting, as in a laboratory, with new ways of communicating with others. In other words, we hoped that our students would actively engage in self-directed learning, the underlying theme of our clinical methodology.

On the other hand, we did not believe that our students would be able to respond comfortably to this challenge. Students feel most comfortable with structure and they may be frozen in their tracks if asked to perform without it. Thus, the question is how to focus on the development of those personal skills while still providing enough structure

for some degree of comfort among the students. While not an easy task, we met it with some success and learned something important about the interplay between understanding and competence in clinical teaching.

D. *Appreciation for Ongoing Learning*

A wise person is one who is open to the idea that there is always something new to learn. Clinicians are quite comfortable with this idea, since the commitment to learning from experience and teaching students how to learn is at the core of clinical methodology.¹⁵

For the most part, this dimension of the concept of wisdom is similar to that in any clinical model. The special quality of the wisdom necessary to function in the mediation process is the ability to recognize the relevance of a broad range of inputs. This means not merely a willingness to experiment to see what "works," but also a readiness to embrace the concept that human beings interact on all levels—intellectual, emotional, spiritual, and physical. Acceptance of this multidimensional approach to human interaction, not merely tolerance of alternative interpretations, is a critical component of the type of wisdom we hoped to stimulate.

IV. TEACHING THE MEDIATION CLINIC: FROM THEORY TO REALITY

A. *The Fall Trimester*

The grant proposal required this trimester be spent in research and development for the program. We spent most of our time preparing materials, discussing our plans for the training, and speaking to many city employees about our intentions.

Because our goal was first to train our students in personal skills and then to give them the support of structure, we collected materials from a variety of training programs. We gathered reading materials and exercises, and attempted to combine them in a way which would not cause our students to think there was one particular model they should follow. The result may have been a set of materials lacking a single theme, apart from the general theme of mediation.

The main focus of our energy in this trimester was our contact with the various departments of the city of San Diego. We had encouragement and support from the city attorney's office and the office of the city manager. Our project was allocated office space, desks, and telephones at the city attorney's office. We met with the city manager's staff to explain

15. See generally Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284 (1981).

our program and were assigned to one of his chief assistants for continuing coordination. This was our opportunity to speak with other city departments. During the fall trimester we met, corresponded with, and spoke to dozens of city employees. We held meetings with staff members where we explained mediation, the purpose of the project, and how they might use mediation services in their work. Generally, we received warm receptions and even enthusiastic approval, as well as promises of support.

At times, we came away from these meetings believing we would have far too much mediation work for the limited size of our clinic. At other times, we became concerned about the lack of follow up after these meetings. As the fall trimester drew to a close, we were still uncertain about the likely sources and size of our mediation caseload. Once enthusiastic staff people did not return our calls. When finally able to reach them, we could not get definite referrals. Yet, we remained optimistic that when the students were ready to mediate, the cases would be there.

The final challenge of the fall trimester preparation period was to recruit students for the clinic. We circulated articles in the school newspaper and Paul made an appearance in the ADR class to inform students of the opportunity. We interviewed ten applicants for the clinic and selected eight. All the students who applied seemed well-qualified in terms of interest, maturity, and experience. When the date came for students to make their commitments to a particular clinic, we were left with five students, the other three having selected other internship placements.

B. *The Spring Trimester*

1. Building the Foundation

During the first week of the spring trimester, Paul familiarized the class with listening exercises and observation assignments. It is integral to the program that students have some exposure to other forms of dispute resolution to better assist them in mediating. For instance, it is often important for the mediator, as well as the parties, to understand the consequences of not reaching an agreement. We thought that our students might need this perspective when performing the intake function for potential cases, so we sent our students to a variety of courts and arbitrations, and gave them guidelines for observation and note-taking.¹⁶ During the following week, we discussed their observations and focused

16. For a discussion of direct observation mechanics, see Bush, *Using Process Observation to Teach Alternative Dispute Resolution: Alternatives to Simulation*, 37 J. LEGAL EDUC. 46 (1987).

on how those forums deal with people's feelings, relationships, and empowerment.

We also had the students spend time at the city parking violation department to practice active listening skills in handling complaints. During the second week of the training, we staged active listening exercises, most of which I adapted from my course in interviewing and counseling. We pointed out to the students how these skills were important to an attorney-client working relationship.¹⁷

We moved on to a very brief overview of negotiation, believing it would be useful for students to see mediation as a form of negotiation. This would help them to understand the dynamics between the parties and facilitate the work the parties needed to do. Next, the students participated in an exercise in interviewing clients and negotiating the matter. As anyone who has taught negotiation knows, one exercise evokes so much material for discussion that it was rather frustrating having to move through this exercise quickly. By the third week, however, the students were becoming anxious to learn mediation, and we were feeling somewhat pressed for time, knowing that we needed to have students ready to handle real mediations within a couple of weeks. The result was that both listening skills and negotiation, as mediums for studying interactive dynamics, were given too little attention.

2. Moving into Structure and Actual Mediation

Our first mistake was in attempting to demonstrate mediation by using a very complex fact situation. This was our introduction to the intense and personal ways in which our students would play their roles throughout the trimester. Not only did we not reach a resolution after three hours of mediation, but we were so unable to get the parties to move that there was no point in continuing the exercise. This taught us the importance of selecting a simple experience for a first demonstration. This initial exercise may have set a tone of pessimism which remained with the students for some time. After all, if we couldn't "do it," how could they?

At this point we introduced structure. Before our mediation classes began, both of us had attended a number of different mediation trainings, including training from Gary Friedman at the Center for Mediation and the Law, from the San Diego Community Mediation Program, and Paul's training from the Community Board of San Francisco. The trainings presented a spectrum ranging from Gary Friedman's, which puts

17. Also during this week, we lost one of our five students. We did have with us though, a deputy city attorney who had been assigned to participate in our training. We found her to be a wonderful addition to our class, as the "real world" examples she gave were highly credible to our students.

substantial emphasis on the relationship between the mediator and the parties as the primary force ordering mediation, to the Community Mediation Program's, which places heavy emphasis on the six stages of mediation: introduction, uninterrupted time, exchange, brainstorming, agreement, and closing, as the steps to be followed in conducting a mediation. Somewhere in between was the Community Board approach, which places emphasis on listening skills, but also focuses on the stages of mediation as the ordering process.

Friedman's approach was consistent with our goal of developing wise people as mediators. We were concerned that by placing emphasis on a formal structure of mediation, we ran the risk of students being preoccupied with "doing it the right way" which would interfere with their ability to relate naturally and empathetically with the disputants.

Shortly before the internship trimester began, Paul worked as small group "coach" for Professor Michelle Hermann's continuing legal education training in mediation for members of the New Mexico Bar, as well as University of New Mexico law students.¹⁸ The New Mexico training placed heavy emphasis on the stages of mediation. The role plays were built around a four-stage model of contracting (helping the parties decide whether they wanted to engage in mediation), story telling (giving the parties a chance to tell their side), identifying and exploring issues, and reaching agreement. The training process consisted of a lecture on the relevant stage followed by a role play and critique. Two hypothetical disputes were used throughout the training. This allowed the role players to focus on what was occurring at each stage of the mediation, while still getting a feeling of continuity by handling the same dispute all the way through. This continuity was enhanced because the parties and the mediators remained the same for the whole dispute. After each stage was completed there were a series of role plays in which the whole dispute was mediated, without any breaks for stages.

A heavy emphasis on structure provided participants the security to mediate in a way that they would be unable or unwilling to do without the structure. Professor Hermann's experience with practicing lawyers indicated that they were often resistant to the ideas and behaviors that she was trying to teach. By focusing on structure she was able to cut through this resistance and expand their viewpoints beyond structure after they had gotten a feel for what the process was like.

Paul felt that these methods might be especially useful as a learning tool if, after some exposure to the stages of mediation, the students were asked what skills they thought they needed. Based on their experience in

18. Paul met Professor Michelle Hermann when she acted as a coach for Gary Friedman's role plays and found her to be an excellent practitioner of methodology in Friedman's less structured setting. See *supra* note 10.

the role plays, students would identify skills and knowledge that they felt they needed to work more effectively as mediators. Ideally, students would perceive a need to empathize with parties, to help parties express their feelings, to understand their own emotions and behavior during the mediation process, and understand the dynamics of conflict better. Students would be more open to lessons in nonjudgmental and active listening, psychology, and theories of conflict resolution when they were presented in response to class requests, rather than when teachers dictated the essential background needed to mediate.

Intrigued with what we might be able to accomplish by giving students the structure early, we decided to try a modified version of the New Mexico approach. We already placed emphasis on listening skills as the core of the mediation process and we next used the role plays designed for the stages of mediation using the same format.

For many weeks thereafter, we engaged in numerous mediation exercises. We played parties and then led the processing of the exercises. Because we had five students, they were always participating in the exercises as mediators or parties. Sometimes one of us would observe, other times, we would divide into two groups and both play parties.

However, the students were not reaching resolutions in their exercises. It is unclear whether this was due to a true lack of skills or because of the unrealistic attitudes they took as parties. They became frustrated and disheartened. The students relied heavily on structure, in some ways so bound to it that they seemed to be unable to act when the parties' behaviors were inconsistent with the mediator's perception of what "stage" they were in. As we reached the sixth week, we had a breakthrough and the mediations began to reach resolution. The atmosphere changed dramatically as the students appeared to gain self-confidence. Soon the students expressed a strong, unanimous desire to cut back on the training sessions and begin to do real mediations.

3. Moving into the "Real World"

The students' desires to do real mediations presented a problem. Despite all of the promises and support we had received during the fall trimester, we received *no* referrals for mediations from anywhere in the city government. Naturally, we continued to call and let people know that we were ready to go, but nothing materialized.¹⁹

The solution came in sending our students to work with Jerry Parker, the dispute resolution officer at the city attorney's office. Within a short time, the students were able to conduct interviews of alleged victims of

19. This was a valuable learning experience, reminding us that people are generally fearful of change and slow to make changes.

crimes and potential defendants. When a case appropriate for "mediation"²⁰ arose, he allowed the students to co-mediate. The students were excited about the experience and Parker was very impressed with their skills. The work in the dispute resolution office (DRO) was a success for both ourselves and the students.

4. Integrating the Traditional Adversary Process

As the students became more involved in the city attorney's office, we had them spend time in the criminal division, handling traffic ticket cases. We integrated the mediation clinic students and those students involved in litigation-oriented internships. The last two group meetings for our clinical program (all students enrolled in clinical internships) focused on dispute resolution. All the students took the Management of Differences profile and we discussed how these traits might affect the students as lawyers. At the final meeting, our mediation students demonstrated a short mediation and we had a lively class discussion.

5. The Creative Dramatics Approach

Believing that dramatics training would help law students and developing a program to give them that training are two different things. On the practical level, although Paul has had some acting training, neither of us has had any training in teaching acting. Thus, one barrier to using dramatics training was our own lack of background knowledge and skills. Another barrier was time. Even with a twenty-hour week internship, the need to give students concrete skills in running a mediation and the pressure of getting them ready made it difficult to allocate time to exercises possessing more intangible benefits. Finally, there was the problem of resistance. Although as a group, mediation trainees are probably more receptive to different ways of learning, the idea of asking law students to engage in the kind of play and physical

20. We use the term "mediation" liberally here. The mediations that are done at the dispute resolution office (DRO) are not the truly voluntary and balanced problem solving sessions that we think of when we use the word "mediation." At DRO, some leverage is used on potential criminal defendants to encourage them to make amends to the victim. Of course, on one hand, this could be seen as the mediator's role in testing reality: "If you don't compensate this victim, criminal charges will probably be brought against you." At the same time, similar leverage is sometimes used with the alleged victim to encourage a settlement, and this can similarly be seen as the mediator's function: "If you don't settle this matter, you'll have to bring a civil action because the city attorney has decided not to prosecute this case." Given the setting in the city attorney's office and the parties' knowledge that a criminal action is being considered, the balance of power is questionable. However, the students have been able to use this element of reality testing to bring balance to the dialogues and have felt they were using the mediation skills they learned.

activity customary in acting training proved to be difficult.

For the most part, these barriers kept us from doing much with dramatics training. About half way through the spring trimester, Paul attended a workshop on "Using Creative Dramatics to Teach Conflict Resolution."²¹ Inspired by this workshop, we decided to try at least one class of creative dramatics. The students and Paul joined in making a "moving sculpture" of the stages of mediation. They worked together to create a nonverbal representation, using their bodies and movement to illustrate each stage of mediation. The class was a success. By trying to decide what the "essence" of each stage was in visual terms, they achieved new understanding of each stage. This understanding had a more lasting impact than abstract, intellectual discussions. Their debriefing discussions of the exercise, run in the customary clinical methodology of practice, feedback, and reflection, were animated with a spirit of discovery. Paul also noted that the giggling and play which accompanied the exercise not only made the class fun, but also reordered the relationship of teacher and student on a much more equal, collaborative basis.

In spite of this success, we did not integrate more creative dramatics into our training. The end of the trimester was too fast upon us, and as a result, our course and class training took a different direction. Exercises like the "moving sculpture" have enormous potential to expand mediation training into intangible areas which include improving nonverbal communication skills and the ability to relate to parties, expanding creativity, and adding liveliness, fun, and deeper understanding to "substantive" points.

C. The Summer Trimester

1. Revising the Plan

I worked independently during the summer trimester. The first challenge came in the recruitment of students. No ADR course had been offered in the spring and newspaper articles were not effective in drawing interest. The timing for applying for the clinic may have coincided with a period of frustration for our first mediation students during the spring trimester, thus depriving the program of word-of-mouth recruitment. Of the six candidates interviewed, only two chose to participate.

Knowing that there would only be two students participating in the clinic created a training challenge. In response to this dilemma, a clinical-style simulation mediation course was opened for enrollment to the entire

21. This workshop was presented by the Minnesota Conflict Resolution Center at the North American Conference on Peace and Conflict Resolution in Montreal, Canada.

student body. Twenty-nine students enrolled in the course, including the two mediation clinic students and four students enrolled in other internship placements.²² Because of the need to train the two mediation clinic students in a relatively short time, the course was offered as an intensified seven week course.

The nature of this arrangement called for a substantial change in the materials. Having had a trimester's experience with our first set of materials and training, I formulated a theme for the course, and a syllabus and materials which followed that theme. Both of us had been dissatisfied with our inability to avoid structure during the early stages of our spring training. As mentioned above, we had felt some need to provide structure so the students would be ready to conduct mediations. For the summer group this would not be a necessity, so I focused on retesting the wise mediator theory.

The success of the arrangement with the DRO presented a new option for the mediation clinic and a long term clinical placement for mediation beyond the term of grant funding. We decided to terminate our pursuit of cases from other city departments and work solely with the dispute resolution officer in encouraging the expansion of the duties of that office. By the end of the spring trimester, it appeared likely that the Code Enforcement and Consumer Units of the city attorney's office would be referring more cases to the DRO, thus giving our students a greater variety of mediations.²³

2. Retesting the Theory of the Wise Mediator

This set of circumstances lent itself to another attempt to test our theory and model of the wise mediator. The course materials and exercises were organized around this theme. In fact, no particular or complete model of mediation was included in the exercises. Although the materials included descriptions of various models, in class they were used only in passing reference in answer to questions about form and structure. For example, in response to a student question about which party should speak first, the Community Mediation model would have the initiator of

22. Although originally planned for enrollment limited to eighteen students, the course was opened to everyone who was interested. This decision had both positive and negative effects. Obviously, given our interest in spreading an understanding of mediation, the more students who take the course, the better. On the other hand, anyone who has taught a simulation course knows that it is not possible to give truly effective personal feedback to everyone in each exercise in a class of that size.

23. Since the 1989 fall trimester, students who want to practice mediation are able to obtain that experience at DRO and also at a new environmental court placement at the city attorney's office. The latter is a project which attempts to ease the caseload of attorneys who handle matters dealing with land use (zoning, health and safety) violations, many of which are amenable to mediated settlements.

the mediation begin, while others might choose to assess the parties and their needs in making that determination. Students were encouraged to think about what factors they would consider in making this decision and then test these ideas in their exercises.

In teaching the summer course, the emphasis was primarily on the dynamics of the dispute, and how people feel and react in conflict situations. The stages of the mediation were identified not in terms of what would be done, but rather in terms of the parties' feelings and ability to relate to each other. In other words, the students'/mediators' focus was on the questions: "Are the parties hearing each other?" "Are there still unexpressed issues?" "Are they ready to see this as a mutual problem and to work together toward resolving it?" The information that was shared came not from lectures or readings, but from the students' own experiences in their role-played disputes and real-life conflicts.

a. The Students — Not "Self-Selected"

On the first day of class students were asked to honestly share why they had enrolled in the class. As correctly assumed, some students had signed up because the class was only seven weeks, others because it fit well into their schedules, and others because they had limited choices in the summer course offerings. Some of the students were truly interested in mediation and some had backgrounds in counseling. Thus, it was not a homogeneous group in terms of interest, enthusiasm, dedication, or experience.

b. Self-Directed Learning

During the first week of class, two students co-mediated a case. They were asked to do this with no information about how to do so, other than the common-sense they would use in helping others resolve a dispute. In processing this exercise, the class talked about how the mediators had pressured one party to make concessions, lost appearances of neutrality, and handled the situation as if some underlying legal principle demanded a particular resolution (in this case the payment of money). This helped the students to see that by this time in their legal education they had unknowingly narrowed their range of conceivable options for resolving disputes and had become very directive in dealing with others.

Following this exercise, the students were asked what they wanted to learn, and they responded, in many different ways, that they wanted to learn to listen to people, to be creative, and to be patient. They were also interested in techniques for helping people talk, and in knowing their appropriate role in suggesting possible terms for resolution to the parties.

3. Listening Skills as the Focus — Learning from Experience

For the second class, a short case was selected, and a mediation of the early stages was conducted to demonstrate listening skills. The next

several weeks involved a number of exercises and discussions about listening, feelings, and reactions. The class moved through the introduction and ground rules for the mediation process by considering what they thought would be useful, trying out those theories, and critiquing in the manner suggested by David Kolb's theory of learning from experience.²⁴

The class was asked to consider what they would like to learn. Interest focused on transitions and techniques for helping parties understand each other. This was followed by the dialogue phase of mediation with more exercises and class discussions. The course was fueled by the students' desire to learn.

The two students who were enrolled in the mediation clinic began working with the dispute resolution officer during the third week of the training. They observed victim and defendant interviews for one week and began conducting them the following week under supervision. They also began to participate in mediations. Both of the students reported a sense of self-confidence in using their listening skills in these situations. The assessment was confirmed by Jerry Parker, the dispute resolution officer.

V. MEETING OUR PROGRAM GOALS

Earlier, I set out the five goals we had established for this project: (1) creating a model which would draw forth the students' wisdom and creativity; (2) changing the lawyer's philosophical map; (3) increasing lawyering skills; (4) achieving clinical goals of increased self-knowledge and understanding of the learning process; (5) remaining open and actively participating in the learning process. These goals were ambitious, but we believe we were fairly successful in meeting them.

A. *Creating a Model Which Would Draw Forth the Students' Wisdom and Creativity*

We succeeded beyond our expectations in drawing forth inherent wisdom from our students. We observed real breakthroughs among almost all of our students in improving listening skills, in being able to shift power to parties to a dispute, and in adopting the attitude of a learner. What we did not fully anticipate was the degree to which this combination of skill, empathy, commitment to others, and humility were sufficient ingredients for increased wisdom.

Based on observations of our students, it is clear that they will approach clients, lawyers, and others with much more wisdom than they might have before they had this course. Their sensitivity to others and

24. See D. KOLB, *LEARNING STYLE INVENTORY, TECHNICAL MANUAL* (1976).

their ability to respond to the new range of inputs to which they have become open has increased markedly. We do not know how to measure these qualities quantitatively, but the differences in students were dramatic. This is not to say that there was a complete transformation. Our spring trimester students were better able to manage conflict in the mediation process than to respond creatively when interpersonal conflicts arose among the students about work assignments. It is fair to say, though, that the seeds of wisdom were planted.

In examining what appears to be evolving as our model, there are several elements which seem most responsible for the increase in wisdom: the emphasis on listening skills as the core of the mediation process; the focus on empathy and the relationship between the mediator and the parties (as the ordering principle in the mediation process); the extensive use of experience in the role of mediator and party; and the careful use of clinical reflection on that experience to emphasize the importance of listening, empathy, and the continual need to learn.

This model is far from complete, as a model which seeks to draw forth wisdom and creativity never could be complete. We are left with the strong feeling that there is a vast amount of knowledge from psychology, drama, anthropology, sociology, dispute resolution, spiritual training, and other fields which could be brought to bear in effective mediation training. We believe that our basic approach stressing understanding over form is a strong foundation on which to build.

B. *Changing the Lawyer's Philosophical Map*

If we examine our results in terms of changing this standard philosophical map among our students, their comments in the final course evaluation are pertinent. Before examining those comments, it is important to determine whether the students might have had the same comments before taking the course; in other words, were our students a self-selected group who had some inherent bias against the standard philosophical map and toward the values reflected in mediation.²⁵

In our first group of students, self-selection was apparent from the statements they made, their demonstrated attitudes toward the adversarial system, and the fact that they made the choice to participate in this particular clinical placement. The second group of students, the twenty-nine who enrolled in the mediation course during the summer session, were mixed, as stated earlier. Some of them had positions as clerks in large law firms and were engaged in the adversarial process in their work. In class discussions early in the trimester, the students reported a variety

25. See Riskin, *supra* note 2 and accompanying text.

of career interests and a varying degree of interest in mediation.²⁶ This class was not self-selected in terms of predisposition against the standard philosophical map.

The spring trimester group of four students, having been basically predisposed to nonadversarial problem solving, made some progress in their self-awareness of how they deal with conflict. An almost unanimous comment from them, in response to the question, "What did you learn?" was how much they had learned about themselves.

In the questionnaire they were asked to complete at the end of the course, the second group of students clearly indicated that their ideas about conflict and the adversarial model had been affected. The following examples were responses to the question, "Have your ideas changed about any of the following: communication, people, conflict, the role of law in resolving conflict, attorneys and the role of the attorney?":

My ideas have changed about the role of law in resolving conflict and I wonder if parties really feel a sense of satisfaction after a favorable verdict as they would had they been successfully able to mediate their problem. . . . We are trained to be

26. Another possible indicator of the mix of students was the results on the Kiersey Bates Temperament Sorter. The four temperaments which serve as the basis for this test are drawn from Hippocrates — the Sanguine, Choleric, Phlegmatic, and Melancholic. Kiersey and Bates have given Greek names to these categories as follows: Dionysian (SP); Epimethean (SJ); Promethean (NT); Apollonian (NF). Very simplified, these types can be described as follows:

SP — impulsive, compulsive, need to be a "free spirit."

SJ — need to belong, to be useful, parental.

NT — desire for competency and the power it brings, compulsive desire to improve, self-critical.

NF — the letters NF stand for "intuitive-feeling" traits measured by the test. This may be the closest definition possible for the Apollonian types. Introspective and concerned with process ("becoming").

In the general population, the distribution of these types is approximately as follows:

SP — 38%

SJ — 38%

NT — 12%

NF — 12%

See D. KIERSEY & M. BATES, *supra* note 13, at 30-66, 155.

In the first group of four, we had one SJ (interestingly, our only male student) and three NFs. In the second group, of the students who had their test results on the day we examined them, we had fifteen SJs, eight 1/2 NFs, one 1/2 NTs, and zero SPs. Neither group reflected a normal distribution. The disproportionate number of NFs in both groups gives some indication that this type is more attracted to mediation, which seems logical given their valuing of feelings. Unfortunately, we have not had an opportunity to survey an entire law school population which would provide more interesting information about the distribution of types in the legal profession. It did not surprise us to find a disproportionately large number of SJs among the Summer trimester students who were not self-selected.

attorneys — aggressive and really uncaring of parties' underlying feelings. We want to win. But does a client win if his/her underlying feelings are not addressed?

My ideas have definitely changed towards clients as people, not cases.

This course has reaffirmed my belief that the law is a minimal standard which was not created to be readily adaptable to all situations. It therefore should be applied or used where the actions of parties leave no other alternative method of dispute resolution.

That a decision does not have to be reached based on how a court would decide. It hadn't occurred to me that mediation can use its own guidelines for what seems fair to the parties involved.

That a person's position is not really a full picture of their interest.

That applying the law does not always satisfy people. Puts a bandage on the real problem. Other ways to solve problems (lawyers forget that easily).

My ideas have changed about all the things. Basically, the bottom line is all about people, in the law. No matter what the rules, it's people who have the conflict and need their problem solved. I think sometimes lawyers forget about people.

The only change I have personally felt is that the judicial role is somewhat limited. My observations at the beginning of the semester²⁷ lead me to see that true litigation is not the best solution for many, if not most, disagreements that occur in today's courts.

Attorneys need to decide if they're in the game for strictly money or to help people resolve their problems.

The law doesn't do an adequate job resolving conflict. The law may settle the immediate dispute but very rarely gets to the

27. The summer students were also given an observation assignment. They were asked to observe other forms of dispute resolution and to comment on the role of the parties, feelings, etc. Most of the students observed superior court proceedings. All of the students commented that the observations were very useful to them in our later mediation work.

underlying conflict.

Statements such as these indicate an awareness of the problems presented by the standard philosophical map, and the desire to break free from it. Moreover, many of the students commented, in dismay, that it was difficult for them to alter this mindset, particularly after one or more years of law school training. Such internalization of the mediation training demonstrates that a real change was made. A further indication of their growth was their ability to shift power as discussed below.

C. Increasing Lawyering Skills

1. Listening Skills

As stated above, our goal was to focus on listening skills in the hope of building overall communication skills, sensitivity, and trust in intuition. In our first training, we began with listening exercises, but did not do enough of them. When we left them as the focus of discussion, students felt inadequate and uncomfortable. We felt a need to press forward because we had to train these students to conduct mediations. Although we dealt with listening skills during the entire training and the students became better listeners, we could have done more. By the end of the trimester we observed a notable difference in the quality of these students' listening.

The second group spent more time with listening skills. In fact, almost all of the explicit training in the course focused on listening. The questionnaire given to the second class asked, "How would you evaluate your listening skills in comparison to how they were before you took this course?" Answers exemplifying their responses include:

100% improvement.

I listen more attentively and carefully when speaking with people. I also watch people's body language more carefully.

More aware that I was not actively listening.

Much improved, or at least aware of problems to be aware of helps.

At first I made an effort to practice the listening techniques outside of class and gradually I noticed that I was using them at times without thinking. I've also gotten more sensitive to how other people listen.

Much better. I can now listen to people for more than a few minutes

without butting in.

Lots of room for improvement.

Improved 100% but I have to keep working on them. It's easy to slip back into the old routine.

I hear more from the same words. The way people say things, voice, non-verbal, all add up to the "total" of what the person is communicating.

If there is some concern that this question was leading and resulted in overzealous acclamation, some of the more nondirected responses to the question, "What did you learn?" are helpful.

The communication skills I learned in class will not only help me in mediation, but also litigation and relationships in general.

I learned to listen carefully to what people are really saying through their words and actions.

I learned that sometimes the best answer is no answer.

It was difficult to let the parties come to grips with the solution with only minimal help from the mediator.

Not only about the field of mediation, but about myself, i.e., I don't listen enough and I am a road blocker!

This course teaches you how to *listen* without always trying to relate it to something in your own life and then turning the conversation around to you instead of the person who wants some help, advice or just an ear to bend.

We observed the growth and struggles of our students in both classes and believe that almost all of them came away with improved listening skills. Their skills were clearly beyond those of the majority of interviewing and counseling students I have observed.

2. Shifting Power to the Parties

Having been trained in the usual adversarial model of lawyering, it is often difficult for students to surrender their role of the all-knowing and the all-doing. In interviewing and counseling classes, students fight the need to allow clients to engage in the decision-making process. The

very introduction of the idea of shifting power to clients upsets many students, running against their notion of the role of a lawyer. When we discuss the threat of future malpractice claims by parties who were not so engaged, they acquire only a grudging motivation for including their clients.

In mediation, it becomes readily apparent that both the decision and the dispute itself have to belong to the parties. Yet some resistance persists by both the parties and the mediators. Parties may look to a third person to provide an answer because it is the accepted norm in our traditional approach to problem solving. At the same time, as a neutral third party, it often seems easy for us to see what the parties should do and how they are impeding their own resolution. Much of this lies in the traditional roadblock of giving advice, somehow believing that others are not capable of working out their own problems.

We observed three factors which determine a mediator's ability to shift power to the parties: (1) the mediator's trust of the process; (2) the mediator's ability to empower the parties; and (3) the mediator's skill at modeling communication and openness. These skills are interrelated and difficult to teach or discuss as independent phenomena. If a student can gain some competence in the exercise of these skills, he or she will have gained an ability to shift power far beyond that which we have seen interviewing and counseling students display. Each of these skills is discussed below.

a. Trusting the Process

i. The Role of Experience

Trust of the mediation process comes principally through experience. Experience may be acquired through observation and practice of mediations. It is difficult for a student to acquire this experience before being trained to mediate, and thus, to develop the requisite trust in the process.

There is an additional element which allows the development of trust in the mediation process. I have not found a precise name for that element, but it includes insight, sensitivity, and self-awareness. When we know how people work and how they react to troubling situations, we have more of an understanding about why mediation works. We can trust it. There are students who come to law school with this kind of experience. For them, the mediation process makes sense. They can trust it. Other students develop this trust within a relatively short period of time, observing mediation and participating in the communication exercises.

What students do not develop for some time is a trust in themselves as mediators. Our message to them was that they can trust the process to

guide them as mediators. This apparently requires some experience to be realized. Once students gain this experience, however, they gain a self-assuredness and responsiveness that is invaluable in relating to clients.

ii. Trusting the Parties

The other aspect of trusting the process is a trust in the parties which stems from respect for their potential to work out their conflict. The process won't work without the parties' interest in and commitment to reaching a resolution. Yet, by believing that they are trained to be "experts," students act as if they are more capable than the parties to determine the "correct" solution to a problem. Of course, this is not a trait endemic to law students. It seems to be common among people in general to believe we are in the position to give advice about all kinds of matters. This is related to the subject of judgment and is a long-standing roadblock.²⁸ In addition to this common behavior, law students tend to bring a certain arrogance to their relationships, perhaps resulting from their professional training.

Students overcome this behavior at different rates. Those last to develop this trust and respect seem to be the students who feel the most need for control and structure. Seeing parties reach agreements that the students had not foreseen generally helps the students to develop new attitudes²⁹ which carry over to their dealings with clients.³⁰

b. Empowering the Parties

The ability to empower the parties depends, to a great extent, upon the mediator's ability to maintain ground rules of respect and safety. We

28. Roadblocks to communication tend to shut down communication on the part of the person seeking help. They include subtle messages of superiority on the part of the person in the "helper" position. See T. GORDON, *EFFECTIVENESS TRAINING* 41-44 (1970); T. GORDON, *LEADER EFFECTIVENESS TRAINING* L.E.T. 60-62 (1972); T. GORDON, *T.E.T. TEACHER EFFECTIVENESS TRAINING* 48-49 (1974).

29. For example, in the Burning Sailboat mediation, L. RISKIN & J. WESTBROOK, *DISPUTE RESOLUTION AND LAWYERS* (Instructor's Manual) 74 (1987), done as an exercise early in the trimester, the student mediators had been pushing for some kind of money settlement. The parties agreed to help each other repair the boat and to cooperate in other ways. The student mediators were humbled by the experience and saw that they could not have known what was best for the parties. In fact, the students began to see that because their legal training had so narrowed their vision in terms of dispute resolution, it was difficult for them to imagine anything other than monetary damages as appropriate remedies, and to consider factors other than legal rules in determining appropriate results.

30. See Davis, *The Logic Behind the Magic of Mediation*, 5 *NEGOTIATION J.* 17, 17-24 (January 1989). Ms. Davis lists six factors as the ingredients which make mediation work: attitude toward the parties (respect); attitude toward ourselves (humility); attitude toward the process (trust); attitude toward the conflict (positive and growth inducing); attitude toward the interplay of emotions and rational thought (lighten up); and attitude toward reconciliation (people yearn for it).

found that the students were sometimes reluctant to express their concerns to the parties, and to interrupt when it was necessary to protect the balance and tone or to bring the parties back to a difficult issue. This failure to safeguard the atmosphere and conditions of the mediation sets the process adrift: the more powerful party may attempt to control it by manipulation or hostility, or no one may be in control.

The sense of safety in the mediation setting is dependent upon the parties' perception that the mediator is neutral, concerned, trained, and able to establish and maintain an atmosphere which is conducive to cooperation. Thus, when students fail to express themselves during a mediation, they send a message that the ordinary ways of dealing (lack of respect, withholding, lack of trust) with others apply in mediation settings. This, in turn, sets the parties up for failure by placing the responsibility for the mediation upon them without providing the conditions required for success. Such an experience would be disempowering for the parties.

Because these skills are new to students, and because students feel uncomfortable and insecure in exercising them, ongoing practice and exposure is essential. We found that the students' skills increased during the course of the training. We believe that the experience of shifting power is an important skill students will carry with them to their relationships with clients.

c. Modeling Communication and Openness

The third factor in shifting the power to the parties is the mediator's skill at modeling a willingness to confront all issues, to be self-disclosing and honest, and to display an ability to listen and let the speaker know that he or she has been heard. As discussed above, these traits are useful throughout the mediation. To the degree students are willing to be open with the parties and to confront nonproductive behavior, they may shift the power to the parties. However, these characteristics seem to be so uncommon to everyday interaction with people that it is difficult for students to incorporate them. People find it uncomfortable to say what they are really thinking, and when they do say it, it is difficult to say it in a way that is empowering for the parties rather than destructive. Perhaps this is related to the Mystery-Mastery process,³¹ whereby we all conspire to hide our ignorance and weakness. Perhaps it is tied to concepts of politeness and social graces. In any event, we did observe an increased ability to be open as the students felt more secure in the process.

All of our students began to see their roles as attorneys in a new light. They became more sensitive to the feelings people have in times of

31. See W. TORBERT, *LEARNING FROM EXPERIENCE: TOWARD CONSCIOUSNESS* (1972).

conflict. They developed a new sense of respect for others and a willingness to relinquish tight control. It is exciting to consider the possibilities for compassionate and wise behavior represented by these changes.

D. Achieving Clinical Goals of Increased Self-Knowledge and Understanding of the Learning Process

Mediation training proved an ideal context in which to expand students' understanding of themselves and the learning process. Perhaps the strongest incentive for this was students' appreciation of the complexity of the mediation process and the inadequacy of purely intellectual approaches for dealing with it. Our students continually remarked that mediation was much harder than other skills they had learned in law school because it is not possible to predict what will occur during a mediation. An awareness of the complexity of human behavior, and the ability to react genuinely and immediately to what one is experiencing is required. The humility engendered by this realization seemed to spur our students to be students: to realize that they had much to learn and that they would always have to be ready to learn if they were to mediate effectively.

This humility and willingness to learn seem to be profound benefits of giving law students intensive exposure to the mediation process. Though we have not done follow-up studies, we believe that these qualities will carry over to students' other learning experiences both in and out of law school. Thus, we believe that our mediation training provided the ideal clinical experience: teaching students that they will have to be learners for the rest of their professional (and personal) lives, and giving them the tools to utilize in that process.

E. Remaining Open and Actively Participating in the Learning Process

This paper summarizes our one-year experiment in trying to draw forth wisdom. We began with a commitment to openness—to be ready to learn and to change. As our shift from the theory that less rather than more structure was needed, to the *practice* of more structure in the spring trimester, then back to the abandonment of structure in the summer trimester, illustrates we remained willing to experiment and make changes. In general, we were pleased with the openness we were able to maintain with ourselves and with our students.

VI. PARTY-CENTERED PROBLEM SOLVING

Although it did not occur to us at the conception of our project, nor during the first training, our approach to mediation and our methods of teaching mediation in many ways reflect the person-centered process of

Carl Rogers.³² To briefly summarize, the person-centered approach is based on the notion that the client knows what he or she needs. It requires the “helper” to set an atmosphere of trust and openness which is achieved primarily by being genuine (or congruent), accepting of the other (unconditional positive regard), and empathic. In this process, the experience of the participants is the highest authority. As a result of interacting in these circumstances, the parties become more self-directing, socialized, and mature, translating into attitudes of expansiveness and acceptance as Rogers proposed:

[T]he major barrier to mutual interpersonal communication is our very natural tendency to judge, to evaluate, to approve or disapprove, the statement of the other person, or the other group.

....

... Although the tendency to make evaluations is common in almost all interchange of language, it is very much heightened in those situations where feelings and emotions are deeply involved. So the stronger our feelings the more likely it is that there will be no mutual element in the communication. There will be just two ideas, two feelings, two judgments, missing each other in psychological space.³³

According to Rogers, this failure to communicate could be avoided by listening with understanding and seeing from the other's point of view. This doesn't happen often because it is a frightening thing to do and requires courage. He contends that there is a fear of feeling positive about the other person and their point of view—that we take the risk of being changed ourselves.³⁴ In this context, it is clear from Rogers' analysis how mediation works toward this end. “A third party, who is able to lay aside his own feelings and evaluations, can assist greatly by listening with understanding to each person or group and clarifying the views and attitudes each holds.”³⁵ We designed our training to reflect this concept of mediation, that the wise person—the person with effective listening skills, genuine interest, a nonjudgmental demeanor, who is open and direct—will be the best mediator.

In this person-centered approach to dispute resolution, we invite the parties to explore their issues and the meaning of those issues in the rather limited context of their relationship and the particular dispute. It

32. See generally C. ROGERS, ON BECOMING A PERSON: A THERAPIST'S VIEW OF PSYCHOTHERAPY (1961).

33. *Id.* at 330-31.

34. *Id.* at 52, 333.

35. *Id.* at 334.

is not an invitation to engage in therapy, although the mediator should be prepared to make a referral in appropriate circumstances. Because parties are asked to be their own monitors for questions of fairness, their own experience is their highest authority, unlike litigation which places this role in an authoritative external source, particularly the court or the "law."

The mediation we believe in is a process, not a technique. The process itself is trustworthy, since the mediator's job is not to manipulate or "fix" things.³⁶ We believe that getting students to understand this party-centered approach to mediation is perhaps the most significant benefit mediation training can give law students. Being party-centered enables students to listen empathetically and to shift power. It also presents these skills in a way that even client-centered interviewing and counseling courses do not. Being party-centered shifts students' focus from themselves to others. This is not a lesson that many interviewing and counseling students master. In interviewing and counseling, the students are still concerned with obtaining the facts, applying the law, and coming up with some "answer." Over the course of the training, we saw students gradually let go of the notion that they had to solve the problem for the parties. As they grew to enjoy the fact that the dispute belonged to the parties, the students felt free to express themselves and became more willing and able to empower the parties, making mediating more fun.

As the students became more relaxed in the process, we were able to focus on what we were learning about mediation. Our conclusions were drawn from our observations of the students and ourselves, as well as from discussions with our students. I examine some of these conclusions below.

A. The Role of Emotions in Party-Centered Dispute Resolution

Students quickly learned that mediation is a multidimensional process. Role playing gave them first-hand knowledge that feelings play a significant part in the process, and that the willingness and ability to express and hear feelings determined the extent of the progress they made. Students observed that when they thought they understood intellectually how a mediation should move along and attempted to control its pace, the process did not work. They found the pace of the mediation to be determined by the parties, not by the mediator or some imposed structure.

The need for the parties to feel safe underlies the pacing of a mediation. Every time we participated in a mediation as parties, the importance of this was reinforced for us. The atmosphere set by the

36. *Id.* at 21.

mediator, the sense of neutrality received by the parties, and pacing work together to create the possibility for creative work.

The need for a feeling of safety arises out of a sense of fear on the part of the parties. This fear may be of loss of friendship, peer approval, economic concerns, or perhaps some loss of respect from those in authority. In personal relationships, work and social settings, these concerns combine with social expectations and customs and act as a restraint on the full and honest expression of thoughts and feelings.³⁷ In party-centered dispute resolution, an understanding of and concern for these issues is essential.

Participation in an unstructured mediation process ordered by the relationship between the parties, and between the parties and the mediator, sensitizes students to the critical roles of emotions and empathy. Students who are unaware of the emotional context of a dispute in which they are role playing or mediating, inevitably feel lost. Experience with the process teaches them to value the importance of understanding the emotions of the parties and the necessity of staying in touch with the parties. Thus, rather than looking at rapport as an item on a check list, as many interviewing and counseling students do, our mediation students understood what rapport with parties really meant. Moreover, rather than resisting exploring the emotional side of disputes as too "touchy-feely," our students knew that they would be lost without being in touch with emotions.

We discovered together that there is a certain process in which mediators must be engaged, although it varies from case to case in terms of timing and form. I refer to it as a "dance," much as birds and other animals in their natural environment participate in mating and ranking rituals. Basically, the parties seem to need to air their feelings related to the issues and to test each other and the mediator for a sense of safety.

An example of this became evident while role playing a party to a dispute. In the early stages of the mediation, it was sometimes important to us to defend our positions. This meant protecting ourselves against

37. Taking this even further, we can look to gender patterns of expression which reflect traditional roles between men and women, especially in regard to expressing particular emotions such as anger and sadness. The attraction of more women than men to mediation is reflective of the female role of caring, nurturing, etc., and women, as a generality, tend to be better at those skills, maybe because they have been historically free to take care of others' feelings. They have not been free to take care of their own feelings, as was demonstrated by our students. See S. JOURARD, *Some Lethal Aspects of the Male Role*, in *THE TRANSPARENT SELF* 34-37 (1971) (contending that women are more adept at expressive roles as they are trained toward motherhood and comforting functions). Carol Gilligan has described the differences between the "female" (Amy) and "male" (Jake) ways of perceiving and relating to life and others. See generally C. GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* 24-63 (1982) (Amy and Jake are eleven-year-olds who see the same dilemma as two very different moral problems.).

anything that might weaken or diminish our positions or our personal ability to maintain those positions. Thus, an active listening response from the mediator which truly penetrated to the core of a party's feelings, particularly if the feelings were sadness, hurt, or caring, might have to be rejected. In fact, such a response could cause us, as parties, to "dig in" deeper for self-protection due to a fear of becoming too vulnerable. While this kind of listening would be perfect later in the mediation, in some situations it came too early and had a negative effect.

These kinds of experiences in role playing showed us how important it is for the parties to feel safe, and that it takes varying degrees of time for that to happen. Further, it underlined the importance of staying "tuned in" to the parties rather than getting carried away by our own brilliant ideas about what is going on and what was needed. We must rely on the parties to give us the information we need to assist them. This phenomenon is also present when we engage in certain techniques such as role reversal. The acceptance of the other party's point of view, feelings, and concerns requires the admitting party to feel safe. Otherwise, it feels like giving up one's own position.

Exactly how to teach this kind of timing to our students is a puzzle. Our approach to the mediation training has generally been one of calling upon the students to examine human behavior and feelings. One surprising aspect of this approach has been the little resistance received from the students in discussions of the emotional realm, in comparison to my experience with students in interviewing and counseling classes. Perhaps this is because everyone feels that they know something about interviewing clients, while students come into a mediation course more open to learn. Once they have seen a demonstration of mediation, the students know that they will not be able to fall back on the rules of law and that their ability to get the parties working together will determine their mediation skill. This focus on the parties brings a new sensitivity and sense of timing.

1. Emotions and Listening

The interrelation between emotions and listening skills is apparent. In the larger summer group, students reported having felt "listened to" during an early listening exercise where the students were paired up and asked to share something from their personal experience. When questioned further, the students discovered that being listened to meant that the listener agreed with what the speaker said. The class had just studied barriers to communication and discussed why agreement can be a roadblock, and how it can be disempowering in a dispute resolution

context, at least in theory.³⁸ In practice, however, they discovered that it felt good to have another person agree. Although on a rational level it did not surprise us, the virtual unanimity of the experience was unexpected.

In a win/lose situation, having a third party agree creates a win. The students quickly saw that offering agreement would not only be disempowering, but that it would destroy the appearance of neutrality and fairness in the process. Knowing that parties will come into a mediation unfamiliar with the process and accustomed to battling in a win/lose situation, it is logical to assume that they will be looking for agreement. The students' actual experience of the inappropriateness of giving agreement was a powerful learning experience. It demonstrated the importance of allowing and acknowledging parties' feelings without bringing the mediator's personal agenda into the dispute. Students had no trouble relating this to interviewing and counseling situations.

2. Judging

Giving agreement is also connected to being judgmental. As attorneys, and perhaps as lay people, we have become accustomed to a critical mindset, always attuned to a decision of who is right and who is wrong. We judge people by their appearance, demeanor, work, economic status, and so on. We also judge people's actions. When we give genuine agreement to one party, or to a client, we are engaging in this same kind of judging. Having engaged in judging, we cannot provide a safe, nonjudgmental atmosphere in which the parties can resolve their dispute. The parties must feel entirely safe to express themselves, not fearful of how we, as mediators, will judge them. The students gradually became more aware of their personal biases and more conscious of the need to withhold judgment. Again, the students learned it is the parties' feelings, thoughts, and behavior that are important.

B. *The Role of Tone in Party-Centered Mediation*

Perhaps the most important benefit of being party-centered is that it requires students to be empathetic in precisely the way Carl Rogers and David Binder and Susan Price³⁹ advocate. Because students value emotions and understand their role in the mediation process, they listen closely for clues to the emotional context in which parties operate.

38. Agreement can serve as a "roadblock" to communication in several ways. By giving agreement, we reinforce the position of the client/party, in effect cutting off the need for further conversation. We eliminate the need for further consideration of that position, and thus the possibility that another position will be heard. Agreement also may be given in conjunction with pity or sympathy and may be condescending or demeaning.

39. See generally D. BINDER & S. PRICE, *supra* note 4; C. ROGERS, *FREEDOM TO LEARN* (1979).

Because students must process information and decide how to help the parties achieve their objectives, they become less concerned with judging the parties. Learning to mediate in this way will have profound effects on the ability of our students to be client-centered lawyers in the future.

This way of thinking is carried into the mediation as what I call "tone." By "tone" I mean a quality that is difficult to describe, however, a suggestion of my meaning is found through dictionary definitions:

3. a manner of speaking or writing that shows a certain attitude on the part of the speaker or writer, consisting in choice of words, phrasing, etc. . . .

5. (a) the prevailing or predominant style, character, spirit, trend, morale, or state of morals of a place or period . . .⁴⁰

The tone of a mediation is created by the setting, character and demeanor of the mediator and the parties, and the parties' commitment to working toward a resolution. The attitude that the mediator brings into the mediation is an important ingredient, having a direct impact on the quality of safety which the parties experience.

The mediator must be sensitive to the tone and trust her instinct to redirect it or question the parties when it seems chaotic or harsh. In processing our exercises, students often commented that they had thoughts about what was going wrong during a mediation but they didn't know what to say or do. We found if we can see the mediation at the level of its tonal quality, our precise words don't mean nearly as much as we think they do; saying the wrong words or saying something inarticulately doesn't matter, the parties will take care of it. When the "right words" don't come, the students learned that simply checking with the parties about what they are doing and letting them know how they, as the mediators, are feeling is helpful. The ability and willingness to do this depends on the mediator's trust of the process and respect for the parties, which are essential ingredients of the party-centered approach. We were pleased to see our students gaining that trust.

VII. STUDENT-CENTERED TEACHING⁴¹

One of the striking lessons we learned as teachers was that modeling the type of other-centeredness which we advocated for mediators was a key that unlocked the door to the kind of self-directed learning we had always wanted to accomplish as clinicians, but never felt we had. Teaching mediation gave us the opportunity to be open and empathetic with our students, to listen more than speak, and to consciously avoid being judgmental.

40. WEBSTER'S NEW UNIVERSAL UNABRIDGED DICTIONARY 1920 (2d ed. 1983).

41. See generally C. ROGERS, *supra* note 39.

This allowed us to accomplish much more in terms of reordering the teacher-student relationship than either of us had accomplished previously with the exception of some one-on-one conferences with student interns. The contrast was perhaps most striking in my comparison between my interviewing and counseling course and the summer mediation course. In interviewing and counseling, few students seemed to take on responsibility for their own learning. They waited to be told what to do next and then either accepted suggestions or rejected them, never dealing with the interviewing process on their own. It became apparent through hindsight that the emphasis on the structure of the interview may have set a tone of "right way" and "wrong way" of doing things that crippled students from using their own intuitive feel in conducting interviews.

The difference in the mediation students was striking. As indicated above, students attempted to conduct a mediation in the first class and then were asked what they thought they needed to learn in order to be effective mediators. The self-directed learning theme of our clinical program was fully evident in this mediation course. Perhaps this stems from our own curiosity about the process of mediation which allowed an attitude of exploration for the class. With an eager enthusiasm to learn as much about mediation as possible, we looked forward to questions, concerns, and new ideas from students. Thus, rather than presenting an agenda for learning, we went into the process as facilitators.

As Carl Rogers has observed, "anything that can be taught to another has little or no significant influence on behavior."⁴² Rogers stated that where the traditional lecture and demonstration approach succeeds, it causes the students to distrust their own experience. Thus, Rogers adopted what came to be known as a "non-directive" approach to teaching.

In both trainings we sought this kind of student participation. In the spring trimester, the students directed their learning less than we had hoped, primarily looking to us for direction. We assigned reading and made it clear that the students were expected to prepare for participation in class discussions. For the most part, the subject matter of these discussions was determined by us, generally because the students took little initiative when we tried to give it to them. On the positive side, perhaps we can see their requests for actual mediation experience as intentions to continue in their own direction.

During the summer session, the students were given a syllabus with assigned reading, but they knew they would not be tested on it. It was a resource for their use. Some of the students read it and commented in their questionnaires at the end of the course that they would have liked to have had the time to discuss some of the materials in class.⁴³ Others

42. C. ROGERS, *supra* note 32, at 276.

43. Rogers found the same interest among students in one of his non-directive courses and concluded that in the future he would attempt to schedule separate time for discussion

probably didn't do the reading. If they ever have a desire to learn more, the information is available to them. Whether the materials actually might have aided the students in their mediations is unknown. Perhaps this would be determined by the learning style of the particular student.⁴⁴

The clearest demonstration of the success of the student-directed teaching approach in the summer trimester may have been the students' attitudes toward the required work. The primary work product for the summer course was a ten-page paper in which the students were to explore a topic relating to mediation and of personal interest to them. They were given very little direction about the paper other than to use it as an opportunity to learn and think about something of personal interest. In prior experiences of having assigned such unspecified work, students had reacted with concern, frustration, and hostility. In this instance, the student reactions were quite positive.

Students were encouraged to enthusiastically explore topic ideas, and some actually expressed surprise in finding that they would be permitted to do something they wanted to do. Examples of the topics selected by the students give a flavor of the personal dimension the students brought to the course. One student was interested in developing a mediation program for the school, to be used by students who had problems with administration, faculty, or other students. She wrote her paper on this proposal, conducted a student survey, and met with the dean to discuss how such a program could work. One student used the opportunity to explore her personality type in relation to conflict and wrote a wonderful, introspective paper entitled, "The Avoider in Me." Another student wanted to spend time examining more about international mediation and the impact that cultural differences might have. This example of student topics demonstrates how, when given the freedom and respect for their own process, students exhibit responsibility, intelligence, and enthusiasm for learning.

Another example of the way in which the students responded to the student-centered approach was demonstrated in their class discussion on the possible influences of dispute resolution styles in mediation, following the Management of Differences exercise. Students readily engaged in an exploration of how their personal styles and the styles of the parties could

of the materials. C. ROGERS, *supra* note 39, at 95.

44. Here we find ourselves caught in a theoretical dilemma: do we use the student-centered or paternalistic approach to teaching? If we have selected reading materials which we believe would be valuable to the students, should we require the reading? Given the fact that so many of the students are accustomed to being forced to "learn" in this way, perhaps that is the only way to ensure that the students receive what they should from the course. On the other hand, if the students' innate interest in learning can be reawakened, forcing the reading might be a lost opportunity for them to experience taking responsibility for their own learning.

impact the mediation. Students who scored high in competition stated that they saw the potential to lose sight of the win/win nature of mediation. Further, they saw the temptation to consider a "successful" mediation as a personal "win" and the accompanying danger of pushing and manipulating to achieve it. "Avoiders" recognized that their desire to avoid conflict might cause them to pass over underlying heated issues. "Accommodators" felt that they might be influenced by an aggressive party, while "compromisers" acknowledged that in their desire to get the parties to make a deal, they might rush the process and end with an unsatisfying agreement for the parties. These are only examples of the many insights the students gained about the relationship between human behavior and attitudes, and the mediation process. The degree to which the students were willing to personalize their insight was surprising.

VIII. QUESTIONS AND COMMENTS FOR FURTHER STUDY

A. *When Should Mediation Be Taught*

The success we felt in teaching mediation skills to students raises an interesting question. If we are correct in believing that mediation training has unusual power to make students wiser, more empathetic, and better listeners and learners, where in the law school curriculum should mediation be placed? We believe that it would be useful if some exposure to mediation were included in the first-year curriculum. Len Riskin's materials make this possible for any first-year teacher who wishes to try.⁴⁵

Our experience with the benefits of intensive training in mediation makes it clear that the necessarily brief look at mediation gained from such exposure is simply not enough to change philosophical maps or impart the kind of insights available to students trained to mediate. Before beginning mediation training, we thought that if students had prior exposure to listening and other communication skills in an interviewing and counseling course, it might be easier to train them to mediate. Given our conclusions about the effectiveness of mediation training in dramatizing the value of empathy and communication skills, we now wonder whether mediation shouldn't be a prerequisite or recommended course prior to other skill-based clinical offerings.

Some of our students thought that mediation was a perfect cap to their third year because they desperately needed to be reminded that there were other values than the rule of law, and factors other than those stated in the opinions of the courts. On the other hand, the benefits from a mediation course not only to students' communication skills and attitudes toward conflict, but also to their approach to learning, are

45. See L. RISKIN & J. WESTBROOK, *supra* note 29.

potentially so great that it is tempting to think that the earlier students can be exposed to the experience of mediation, the better off they will be. We urge clinicians to consider these potential benefits in reviewing overall structure of clinical curricula.

B. The Need for an Interdisciplinary Approach in Studying and Teaching Mediation

One of the important things we learned is that there is a need for an interdisciplinary approach in mediation. Clearly, it is important to have an understanding of basic psychology and human behavior. Further, it would be useful to study the nature of conflict and behavior in conflict situations. Sociology and anthropology could teach us about cultural norms which might influence mediation. Certainly, at least in training students to mediate, we would be assisted by some input from theater arts and voice training. From the traditional law school curriculum, a course in jurisprudence would be a useful background for discussions of fairness and the relationship of the individual to society.

The wonderful thing about mediation is that it lends itself readily to an interdisciplinary approach. It takes no stretch of imagination to see that input from each of these fields plays an important role in acquiring an understanding of the process and the skill to apply it. The challenge for those who teach mediation is to be open, committed, and courageous enough to seek out other disciplines and try incorporating them in training.

C. Are Certain Personality Types Naturally Better Suited to Be Mediators?

Our project did not provide a large enough sample to draw even a tentative conclusion to this question. As stated earlier,⁴⁶ the temperament types described in the Kiersey Bates Temperament Sorter may provide some insight. The NF type is defined by characteristics such as idealistic, charismatic, and "superbly empathic." Are these the kind of people who would naturally gravitate toward mediation as a dispute resolution process? Are they the best suited?

Due to the large number of students in the summer class, it was not possible to determine whether the NF's did, in fact, make better mediators, or whether they had an easier time learning the skills. Similar concerns about their abilities were expressed by most of the students, and at least one of the students known to be a solid SJ, showed a very strong interest and aptitude for becoming a professional mediator. The concern

46. See *supra* note 26.

that lingers with us, however, is that the underlying mindset of the SJ may cause these types to unknowingly use mediation skills to manipulate rather than facilitate. We have seen students engage in such behavior using the active listening techniques introduced in interviewing and counseling.

D. Can Mediation Be a True Alternative to Litigation?

Can mediation be an alternative on its own merits, beyond the fact that it may be faster and less expensive than litigation? Can it be selected for its own positive qualities so that the selection is a reflection of our personal and societal values rather than a mere expediency?

The consistent theme that appears in disputes is poor communication. The parties use roadblocks with each other and sometimes we as mediators use them, too. Can the mediator expect to model or otherwise teach the parties this communication behavior in the relatively short course of the mediation? In many ways, the ability to really listen requires the kind of separation from ego that is dealt with by spiritual gurus and is not in any way similar to our everyday behavior. For a party with emotional ties to the subject in dispute, how can this be accomplished? How can people be encouraged to expand their "worlds" to contain more than only their own point of view? The mediator must be unbiased and nonjudgmental, yet it seems that the parties must have something more to lose by not succeeding at the mediation process. The adversarial litigation process is an expensive and involved process which may help convince parties of the advantages in making the mediation process work. Can mediation be accepted on its own merits if communication skills and peace-making are not highly valued on a personal and societal basis? Do law schools have a role to play in shaping these values? These are among the many questions that have arisen and become increasingly important as a result of this experience.

IX. CONCLUSION

Mediation is all about assisting parties to arrive at a resolution to a dispute. It is not about law, rules, or submitting to authority. Mediation presents not merely an alternative to the traditional adversarial process, but an entirely new mindset or philosophical map. Training students in mediation presents an opportunity to re-awaken the idea of lawyer as counselor and problem solver in a new and creative way. We found that our students came away from the experience with a renewed sense of why they wanted to practice law—that the practice is about helping people. They also left the course with changed attitudes about the role of the law and their role as attorneys. This represents significant learning.

We expect that the training the students received in mediation will

affect their roles as interviewers, counselors, negotiators, and perhaps even as litigators. The stark contrast to the adversarial courtroom and classroom made a clear statement. It was surprising and frightening for students to ponder that the law, their valued set of rules, did not always provide the appropriate answer for each situation. Together, we re-examined our preconceptions of fairness, our personal biases, and attitudes toward others, and discovered that neither the law nor our perceptions were able to decide what was right for others. The law could be seen as an attempt to reach fairness by crystallizing past experiences into rules for future application. We saw how the legal system relies upon these experiences to formulate decisions for present problems because of the fear of the "rule of man," grounded in the assumption that there are no "wise persons" capable of deciding what is right in any given situation. What the law fails to recognize, however, is that the parties to a dispute, with the assistance of a safe forum and new communication skills, are often quite capable of being wise. Similarly, we discovered that our students, in a safe atmosphere, given respect and encouragement, are quite capable of being wise. As mediation trainers, we must engage in the same behavior necessary to be effective mediators, keeping eyes, ears, and minds open to the needs of our students.

Perhaps this paper and the approach Paul and I have taken to mediation and to teaching mediation are no more than reflections of two people engaged in the process of discovering. Certainly, having to articulate my thoughts about the project has been a learning experience. Hopefully, the tone of this paper carries that message. It is this kind of self-disclosure and open expression that I hope to model for my students.