

Preparing Law Students for the Real World Through Mediation Advocacy Training and Realistic Negotiation Simulations

Theory-of-Change Symposium

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[Debra Berman](#) encourages continued efforts to expand mediation advocacy course offerings and opportunities for students to engage in more real-world negotiation training. She is assistant professor of clinical studies and director of the Frank Evans Center for Conflict Resolution at South Texas College of Law Houston.

Importance of Training Students in Mediation Advocacy

Many law students are eager to become mediators. I know this because countless students have told me that they “drank the mediation Kool-Aid” and would love to develop a career as a mediator. I am always very upfront about how difficult it is to enter into the field. It is common knowledge that most successful mediators in civil cases are retired judges or attorneys with significant experience. Most aspiring mediators cannot even get opportunities to mediate for free let alone get paid for their services. Markets are saturated with mediators (particularly in large cities), and mediators compete even to do volunteer mediations at community dispute resolution centers.

Considering the realities of the market, we should be cautious not to train a generation of students with unrealistic expectations about the potential for getting work as a mediator, especially soon after they graduate.

Instead, we should focus on training students on the skills they will need in their day-to-day practice, which inevitably includes representing clients in mediation. Of course, law schools should continue to train students in the extremely valuable skills of serving as neutrals in mediation. However, law schools should also emphasize advocacy in mediation courses. In addition to focusing on advocacy skills in mediation courses, basic mediation advocacy could be incorporated into various classes where mediation is common practice such as family law, employment law, and probate. Certainly, clinics should include a similar component.

Although negotiation is a standard course at most law schools, the skills needed for effective advocacy in mediation are more nuanced than in unmediated negotiation. First and foremost, there is a glaring difference in client involvement. Client counseling and preparation is a critical component of any effective mediation. In mediation, clients must be prepared for what to expect about the roles of mediators, attorneys, and parties. For example, in mediation, there is the issue of whether clients will participate in a joint session (if any). What questions

should clients be prepared for? How much information should be divulged? Moreover, attorneys need to know how to effectively use mediators to their advantage. For example, when is the right time to suggest a bracket or a mediator proposal? Drafting an effective pre-mediation submission also is an important skill that differs considerably from what students learn in negotiation as well as legal writing and pre-trial advocacy classes.

If law schools have the budget, students also should be encouraged to participate in mediation advocacy competitions such as the ABA Representation in Mediation Competition, the ICC Mediation Competition, and the St. John's Securities Dispute Resolution Triathlon.

Importance of Using Realistic Negotiation Simulations

Many of the simulations that law students do in their negotiation courses aren't as realistic as they might be. Students primarily practice negotiation skills by engaging in face-to-face simulations during a narrow time frame of a short class with students they know (and are often friends with). The structure is similar in extracurricular competitions.

In real life negotiations, lawyers generally don't negotiate by sitting down across the table from one another for the entire negotiation. They don't have artificially tight time frames as in our simulations. They generally aren't negotiating with their friends. They aren't trying to "get points" for things like using the blackboard, being first to make an agenda, or having a scripted self-analysis.

In real life, lawyers do the majority of their negotiations via email or on the phone, over a significant period of time, and with clients and opposing counsel they may not necessarily know. Yet we ask our students to engage in negotiation skills training that does not necessarily reflect reality.

For students to get more realistic training, they should engage in exercises with people they don't know, without overly stringent time restrictions, and across various modes of communication. This should be a regular component of all negotiation skills courses.

This concern prompted me to initiate a nationwide program that provides students this exact opportunity. Instructors can use this approach without much extra work. [Click here for more information about this program.](#)