

# THE ROLE OF LAW SCHOOLS IN IMPROVING ACCESS TO JUSTICE: THE STORY OF THE SOUTHERN ILLINOIS UNIVERSITY SCHOOL OF LAW AND THE FAMILY MEDIATION PROGRAM

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## I. INTRODUCTION

Law schools across the nation can significantly contribute to improving the public's access to the justice system. During the 2000–01 year, the Association of American Law Schools' President, Elliott Milstein, challenged law schools and law faculty members across the nation to provide equal justice to all.<sup>1</sup> One way to provide equal justice to all is through a cooperative effort among academia, courts, and practitioners. A prime example of one such cooperative effort is that of the Southern Illinois University School of Law (School of Law)<sup>2</sup> and the First Judicial Circuit of Illinois, which collaborated

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Professor Schmitz's assignment at Southern Illinois University School of Law is supervising the school's Alternative Dispute Resolution Clinic. The ADR Clinic, through the students enrolled and Professor Schmitz, offers a mediation service to the campus, community, and area courts. She also teaches "Introduction to ADR," a survey course on mediation, arbitration, and other forms of ADR. Additionally, she was selected as Chair of the ADR Section of the Association of American Law Schools for 2003.

1. Letter from Elliott Milstein, President, Association of American Law Schools, to Deans of Member and Fee-Paid Schools (Feb. 2, 2000), at <http://www.aals.org/00-5.html>. The Illinois State Bar Association and the Chicago Bar Association jointly commissioned a study identifying a severe deficit in the number of individuals who needed access to the justice system and in the number of individuals actually obtaining access. The Illinois Legal Needs Study reported that available legal services for the poor meet only 20% of the need. The most pressing areas of legal need are family and domestic problems. See THE SPANGENBERG GROUP, ILL. ST. B. ASS'N & CHI. B. ASS'N, ILL. LEGAL NEEDS STUDY 2 (1989) (on file with author).
2. The Southern Illinois University School of Law is a public law school composed of over 30 full-time faculty members. S. ILL. UNIV. SCH. OF LAW, FACULTY & STAFF, at <http://www.law.siu.edu> (last visited Oct. 10, 2003). The current student enrollment is approximately 350 students. It is located in Carbondale, Illinois. S. ILL. UNIV. CARBONDALE

to create the First Judicial Circuit Court-Referral Family Mediation Program (Family Mediation Program).<sup>3</sup>

Mediation programs enable more people to experience justice. Through family mediation parents make decisions about their children after the divorce. Although mediation is not a substitute for independent legal advice, it does help divorcing couples work together to reach agreements about their children. Through family mediation, divorcing couples shape a resolution appropriate to their situation. These agreements can be reviewed by legal counsel and submitted to the court for approval.

The School of Law has assisted the Family Mediation Program in numerous ways. This aid from the School of Law has included guidance in the design of the program, delivery of the program's services, and the continuing support of the program on many levels. By lending its expertise to the Family Mediation Program, the School of Law has helped this program flourish and thereby has helped the citizens of Southern Illinois. This article will discuss these contributions in the hope of encouraging other law schools and their faculty members to work toward the creation of a more equal justice system.

## II. RESEARCH AND PLANNING ASSISTANCE

When the organizers of the Family Mediation Program began an inquiry into the potential benefits of the use of mediation in family cases over ten years ago, the School of Law helped to shape the program by offering these individuals expertise through consultations and guidance. This group of lawyers, judges, and mental health professionals, who worked in the First Judicial Circuit, formed a planning committee to examine the possibility of creating a mediation program to help divorcing parents resolve disputes about

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INSTITUTIONAL RESEARCH & STUDIES, FACTBOOK 18 (15th ed. 2001). The School of Law currently has four clinical programs: the civil

practice clinic serving the elderly, the Alternative Dispute Resolution (ADR) Clinic, the Domestic Violence Clinic, and the externship program. S. ILL. UNIV. SCH. OF LAW, CLINICS/PUBLIC SERVICES, at <http://www.law.siu.edu> (last visited Oct. 10, 2003).

3. The First Judicial Circuit consists of nine counties in the southern-most part of Illinois. STATE OF ILL., CIRCUIT COURT, at [http://www.state.il.us/court/CircuitCourts/Judges\\_1st.asp](http://www.state.il.us/court/CircuitCourts/Judges_1st.asp) (last visited Sept. 22, 2003). It is a largely rural area located approximately 330 miles south of Chicago, Illinois and approximately 110 miles southeast of St. Louis, Missouri. The planning for the Family Mediation Program in the First Judicial Circuit began around 1992 when Judge Stephen L. Spomer, who was then Chief Judge of the First Judicial Circuit, agreed to explore the possibility of a family mediation program for parenting issues.

their children. One of the planning committee members was the Director of Clinical Programs at the School of Law.<sup>4</sup>

Coincidentally, at this same time the School of Law was initiating a new Alternative Dispute Resolution (ADR) Clinic to focus on mediation.<sup>5</sup> The ADR Clinic personnel assisted in the study being conducted by the First Judicial Circuit planners by gathering and summarizing the rules and standards for mediation being used in circuits throughout Illinois.<sup>6</sup> The ADR Clinic staff also prepared drafts of various necessary documents for use in the program.

Although the members of the planning committee were familiar with the concept of family mediation, none of them had been trained as a family mediators and none of them had conducted any mediations for divorcing parents.<sup>7</sup> Once again, the needs of the ADR Clinic coincided with the needs of the planning committee. The ADR Clinic needed faculty members who were knowledgeable about and skilled in mediation. It is for this reason that two faculty members were trained as the first family mediators in the area.<sup>8</sup> These faculty members then lent their newfound knowledge to the Family Mediation Program's planning efforts. When the committee was ready to implement the program, the School of Law sponsored a family mediation training session for those interested in becoming family mediators. The ADR

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4. The Clinical Director, Mary Rudasill, is well-known to area judges and lawyers because she is a graduate of the School of Law and had practiced law, including family law, in the area before joining the faculty. Further, she directs the School of Law's externship program that places law students in public law offices. Rudasill looks for ways to link the School of Law with the needs of Southern Illinois. As Clinical Director, she was a major force behind creating the ADR Clinic at the School of Law.
  5. The School of Law has offered a survey course in ADR, which includes mediation, since 1988. In 1991, the School of Law expanded its offerings in the ADR field by planning for an ADR Clinic focused on mediation. In 1992 the School of Law received a grant from the U.S. Department of Education and then hired a clinical faculty member, a part-time secretary and a law student worker. The School of Law expanded its ADR course offerings and the clinic began operation in January of 1993. Originally, the ADR Project Coordinator was a staff position, however, today the Coordinator holds a clinical faculty position.
  6. The planning committee members were judges, lawyers, and mental health practitioners with full-time responsibilities who did not have the time to investigate other mediation programs. They benefitted by having the Clinical Director, the ADR Project Coordinator, the ADR Clinic secretary, and a law student worker perform the preliminary research regarding other mediation programs.
  7. Few of the planners or potential mediators for the Family Mediation Program could afford the time and money to undergo family mediation training unless the Family Mediation Program was to be implemented. Further, because there was no training program in Southern Illinois, anyone seeking to become a family mediator had to incur the additional time and expense of travel to the distant training locations.
  8. The Clinical Director and ADR Project Coordinator traveled to Michigan to undergo training because there were no local family mediation training programs immediately available.

Clinic engaged a national expert to conduct a training session and provided its facilities at no cost. Participants of this training session were charged only a cost-recovery fee, thereby making the program convenient, affordable, and thus more attractive to the potential family mediators.<sup>9</sup> Over the next few years, the School of Law hosted two more family mediation training sessions and ultimately qualified a total of six faculty members and over sixteen other professionals as court-approved family mediators. Over the years, the court-approved family mediator roster has lost some members due to attrition and gained others who have received family mediation training from other sources. However, the School of Law's sponsorship of the first three training programs was critical to encouraging the initial family mediators.<sup>10</sup>

### III. PRO BONO MEDIATION SERVICES

As the need for pro bono mediators became apparent,<sup>11</sup> the needs of the Family Mediation Program and the interests of the School of Law faculty members once again coincided. Several faculty members, including those from the doctrinal faculty, as well as those from the ADR Clinic and from the law library, had become very interested in the School of Law's fledgling ADR program.<sup>12</sup> These faculty members agreed to mediate several family cases

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9. Initially, the nearest site for family mediation training was located in St. Louis, MO. Training at this location required a two-hour drive and out-of-pocket travel costs in addition to the cost of the training. The time away from their practice, the drive, the tuition, and travel costs were impediments to potential mediators unsure of their ability to recover costs. By bringing the training to Southern Illinois and making it more cost effective, the School of Law made the investment in family mediation training far more attractive to local mediators. The School of Law included selected faculty members and law students in the first training.
  10. Of the 36 persons currently on the court's roster, at least 21 received training through a program sponsored by the School of Law.
  11. In 1993, the chief judge of the circuit entered an administrative order requiring, subject to certain exceptions, couples seeking a hearing concerning child visitation or custody matters to participate in mediation. The order was limited to two selected counties. Administrative Order Requiring Mandatory Family Mediation (1993) (on file with court). In 1999, the chief judge rescinded the earlier order and made divorce mediation discretionary with the judge presiding in a particular case in all counties in the circuit. Administrative Order Rescinding Mandatory Family Mediation (1999) (on file with court). Although the program has been referred to as "divorce mediation," courts have made the mediation mandatory in many non-divorce situations, such as paternity cases involving the custody or visitation of children. Although parties may willingly choose to mediate any other issues associated with divorce, the court will make the mediation mandatory only for parenting issues. The ADR Clinic offers free mediation upon referral by the court for parenting issues.
  12. Among those interested in family mediations were one law librarian, two doctrinal faculty members, and three clinical faculty members. (Over the years, another law librarian, two other doctrinal faculty members, and three additional clinical faculty members have become

each year on a pro bono basis.<sup>13</sup> These faculty members participated in the mediator training sessions hosted by the School of Law. The faculty members' willingness to offer pro bono family mediation sessions has encouraged potential mediators to invest in the cost of the training.<sup>14</sup> Further, the faculty members who were interested in mediation had an opportunity to mediate without incurring the expenses included in mediation practice.<sup>15</sup> The original list of pro bono mediators has changed over the years and now includes several volunteers from outside the School of Law.<sup>16</sup>

The ADR Clinic has absorbed the administrative work connected to the pro bono cases, and thereby further lightens the workload of the volunteer mediators. Upon referral of a case from the court,<sup>17</sup> the ADR Clinic solicits a volunteer mediator, gathers the required intake information, screens the participants for conflicts, schedules the mediation, provides clerical support, and maintains the case files and records concerning the mediation. The volunteer mediators who are faculty members believe mediation is an attractive way to provide pro bono services. They have found that with the

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interested in mediation. Some of them assist in family mediation while others participate in other types of mediation.) The faculty members wanted to learn to mediate but did not wish to compete with private mediators for cases generating a fee. Such competition would have discouraged the private mediators and retarded the growth of the program.

13. The School of Law was not the only local source of pro bono mediators. The area Lutheran Social Services provided mediators who charged fees on a sliding scale, which were often less than the typical fees charged in the area. Several other local mediators also agreed to take some mediations on a reduced fee or on a pro bono basis.
14. Many court-referred programs require those seeking to become court-approved mediators accept a specified number of pro bono cases. ILL. CT. R. 16th Cir. R. 15.22(d)(6), ILL. CT. R. 18th Cir. R. 14.17(c). Such a means of ensuring pro bono mediators is widely implemented by courts. However, most family mediation programs require an investment of five days away from practice at considerable costs (usually \$800 or more) for the training. When the School of Law's faculty members agreed to accept the area pro bono cases, many potential mediators were encouraged to attend the family mediation training because those interested could often recoup their investment more quickly without being overwhelmed by requests for pro bono mediation services.
15. This arrangement permits the faculty members to learn and practice mediation while providing a community service. They are able to do this without competing for private cases. Also, the faculty members are spared the need to have private insurance and to handle the clerical tasks associated with mediation. The ADR Clinic is responsible for these matters.
16. The community volunteers are trained to conduct family mediations. For a variety of reasons they have chosen not to conduct private mediations. Through the ADR Clinic, they mediate one or two pro bono cases per year.
17. The determination of financial eligibility lies with the court. This determination spares the ADR Clinic time spent in financial aid testing.

support of the ADR Clinic family mediations are manageable on an academic schedule.<sup>18</sup>

The demand for the faculty pro bono mediators, though low during the first several years, has grown quickly.<sup>19</sup> This has led the ADR Clinic to seek additional grant funding for a student worker from the School of Law to conduct the in-take and offer telephone preparation for mediation to the parties.<sup>20</sup> Due to the increased demand, the ADR Clinic is also asking private mediators to accept some pro bono cases and is providing travel expenses to them.<sup>21</sup> Private mediators are now likely to accept these pro bono mediations because the Family Mediation Program has proven itself and the ADR Clinic simplifies the process by handling the necessary in-take and scheduling requirements. Further, because of the grant funds, the student worker has been able to generate educational materials for participants to read prior to the family mediation. The worker has also been able to design a client satisfaction survey to be used after the family mediation. When these projects are finalized, they will be shared with all the court-referred mediators in the First Judicial Circuit.

#### IV. ADDITIONAL SUPPORT OFFERED BY THE LAW SCHOOL

In addition to the role described thus far, the School of Law has also supported the Family Mediation Program through education. The School of Law has educated the bench, the bar, and the public, spearheaded continuing education programs for mediators, coordinated its efforts with professional organizations, and developed its library collection of mediation materials.

The School of Law has provided support to the Mediation Association of Southern Illinois (MASI), which was formed to educate the bench, the bar, and

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18. Mediating two or three cases per year is much more time-effective on an academic schedule than are typical pro bono cases. Most mediations involve three hours of time with the parties and one or two hours of preparation and report writing. Interview with Jill Adams, Associate Professor, S. Ill. Univ. Sch. of Law, in Carbondale, Ill. (Spring, 2001).
  19. Initially, the requests for pro bono mediation were seven per year and since have expanded to over thirty per year, in 2002. The four faculty members and the three other volunteers usually accept two or three cases each year and the ADR Clinic Coordinator accepts more. Law students are able to observe the family mediations.
  20. A grant from the Illinois Equal Justice Foundation has permitted the employment of a law student to conduct in-takes, provide pre-mediation education to the parties, prepare educational and other materials, and provide travel funds for the private mediators who agree to accept the pro bono cases.
  21. The funding for the travel expenses, which are typically mileage, is provided for from the Illinois Equal Justice Foundation grant. While only a small incentive, in a rural area where mediators often have to travel, the mileage expense is welcomed.

the public about family mediation. This organization also offers continuing education to family mediators and assists the court in managing the program.

Education about mediation is high on the list of priorities for MASI and the School of Law. MASI and the School of Law faculty members have shared the responsibility of speaking to the bench, the bar, and the public. They often will send the private lawyer-mediators to speak to other lawyers and the academics to speak to other groups. They have also presented several continuing education programs dealing with mediation to professionals in the area.<sup>22</sup>

The ADR Clinic has prepared and assembled educational materials for area lawyers. One of the ADR Clinic faculty members and one of the MASI members co-authored a brochure used to educate parties about family mediations. Law students in the ADR Clinic have prepared a packet about family mediation made available to the public through the Self-Help Legal Center, which is also located in the School of Law.<sup>23</sup>

Additionally, the ADR Clinic faculty members have contributed to the continuing education of the area mediators. For a number of years, one of the ADR Clinic faculty members has served as the continuing education chair for MASI. This faculty member has organized three to four programs per year and has kept members aware of developments in family mediation at the state and national level. Law students assist by researching issues and summarizing legislation and rules regarding mediation for the MASI mediators. Recently, MASI launched a quarterly newsletter created for its members by the ADR Clinic.

The ADR Clinic faculty members belong to state and national family mediation associations and attend state and national conferences. This enables them to share national developments with the local group and to act as liaisons with these mediation associations. The faculty members' professional contacts across the state and nation also allow them to host nationally recognized

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22. Some of the continuing education programs have been offered by the Southern Illinois University School of Social Work for social workers. In this way, the School of Law serves not only the bench, bar, and the public, but also another group of professionals in cooperation with another academic unit.

23. The Self-Help Legal Center at the School of Law provides educational materials on-line and at the School of Law's library. *See* S. ILL. UNIV. SCH. OF LAW, SELF-HELP LEGAL CTR., at <http://www.law.siu.edu/selfhelp>. The School of Law's Self-Help Legal Center also assists the public, specifically those who cannot afford an attorney and are not eligible for free legal services, in accessing the justice system by offering literature and classes to the public. The Self-Help Legal Center is another example of the role law schools can play in meeting the public's need of equal access to the justice system.

experts for continuing education programs. The ADR Clinic also sustains MASI by offering clerical support, use of the School of Law's facilities for programs, and by encouraging willing faculty members to serve as officers of MASI.<sup>24</sup> Additionally, when the court desired to survey area mediators and lawyers concerning the program, the ADR Clinic again lent its expertise and clerical assistance in developing, compiling, and administering the survey.

The School of Law's library has also assisted in the growth of the Family Mediation Program in the First Judicial Circuit. When the School of Law began the ADR Clinic, the law library began collecting numerous mediation resources, including those on family mediation, for use in the ADR Clinic. Many of those resources have been used for continuing education programs.

#### V. BENEFITS TO THE SCHOOL OF LAW

The School of Law faculty members and students have gained perhaps as much as they have contributed from their relationship with the Family Mediation Program. First, the School of Law faculty members have enriched their teaching through their mediation experiences. The ADR Clinic faculty members who teach ADR and who supervise student mediators are better mediators and better teachers of mediation because of the practical experience and the research performed for the Family Mediation Program. Further, among the volunteer mediators are a professor who teaches family law,<sup>25</sup> one who teaches property law, and one who teaches civil procedure. All three of these professors have incorporated the teaching of ADR into their courses. The Clinical Director, who also serves as the Associate Dean, reports a reliance on mediation skills in working out student and faculty problems.<sup>26</sup>

The members of the law faculty have gained from the Family Mediation Program in other ways as well. They have the opportunity to observe the impact of the law on the lives of people in mediation, especially in the area of family law. Additionally, these faculty members hear the attitudes and beliefs held by some members of the public about the law and the legal profession.<sup>27</sup>

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24. Currently the treasurer of MASI is the Associate Dean and Director of the Clinical Program at the School of Law. MASI's Continuing Education chair is the author. *See* MEDIATION ASSOCIATION OF SOUTHERN ILLINOIS, MASI HOME PAGE, at <http://www.mediatenow.org/index.htm> (last modified May 29, 2003).

25. This professor also teaches family law to family law judges throughout Illinois. She has included instruction about family mediation in the judge's curriculum.

26. Interview with Mary Rudasill, Associate Dean and Clinical Director, S. Ill. Univ. Sch. of Law, in Carbondale, Ill. (Spring, 2001).

27. Frequently during the mediation sessions, the parties express their frustrations about the effects that the law and the legal procedures have on their lives.

Finally, they experience the impact of poverty on the disputants. Their experiences add to their understanding of the law, and accordingly enhance their teaching.

The law students also benefit greatly from Family Mediation Program. Those who participate in the ADR Clinic have the opportunity to observe family mediations and assist with the in-take process. Through those experiences, students see the impact of the law on people, hear popularly held beliefs about the law, and realize the impact of poverty. They also learn the potential and the limits of the court system and of mediation. They learn to appreciate the skills and traits needed to be a good mediator. They are exposed to the ethical problems arising in mediation and are made aware of the need for standards of practice for these professionals. The students also benefit from the faculty members' examples of commitment to community service.

Other students learn about mediation by researching issues of interest to the local mediation program and by writing short articles for local mediators. By assisting MASI, students learn about legislation and court rules, professionalism issues for mediators, the national organizations and resources available to mediators, and many of the practical problems of mediating. Students have also identified topics for research, for seminars, and for law review articles because of their work, the work of other students or faculty members.<sup>28</sup>

Lastly, the School of Law benefits as an institution. The School of Law fulfills its mission to promote the administration of justice and encourage the provision of services to those who cannot afford them or obtain them through existing channels.<sup>29</sup> The bench and bar in Southern Illinois look to the School of Law for many resources, including, but not limited to, the library, student and faculty research assistance, faculty members to serve on various committees, and the clinical programs that serve many in the community. The work of the School of Law faculty members and other personnel in assisting the First Judicial Circuit Court-Referred Family Mediation Program intensifies the already positive reputation of the School of Law. This combined effort

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28. The students are allowed to sit in on most of the mediations conducted by the faculty members and other volunteers. They assist the mediator with logistical matters and with note-taking. Typically, mediators spend time with the students after the mediation to answer the students' questions. Among other lessons, these students appreciate the differences between mediating family disputes and the other disputes they mediate. Plus, they observe different styles of family mediation as they observe more than one family mediator. They also learn to respect the difficulty of mediating family matters.

29. S. ILL. UNIV. SCH. OF LAW, SELF STUDY 2000 (2000) (on file with author).

contributes to the equal administration of justice throughout all of Southern Illinois.

## VI. FUTURE OPPORTUNITIES FOR THE SCHOOL OF LAW

Additional opportunities, primarily in research and scholarship, await law professors, students, and other academicians in regard to the Family Mediation Program. Law faculty members could write reflections about the pro bono mediations they have undertaken and the influence these mediations have had on their teaching. They could analyze some of the legal issues arising in connection with the practice of family mediation. Eventually, in association with other law professors, family mediators, and family law practitioners, they may suggest reforms of the family law system, and ultimately enhance the ability of the public to understand and access the justice system during divorce proceedings. The faculty members, especially those associated with the ADR Clinic, could make presentations to family mediation conferences about various topics, including delivering of pro bono family mediation services and the legal and ethical issues encountered in family mediations.

Further, after ten years of implementation, the court needs empirical data to evaluate the effectiveness of the program. This need creates the opportunity for doctoral students from other schools within Southern Illinois University to undertake data collection and to do this evaluation. Such empirical research may lead to scholarship by the faculty or students of the School of Law concerning the data collected. Undoubtedly, faculty members will seize some of these opportunities in the years ahead.

## VII. CONCLUSION

The efforts of the Southern Illinois University School of Law and the legal community of the First Judicial Circuit to develop the First Judicial Circuit Court-Referred Family Mediation Program is one of many stories worth telling about the role law schools can play in improving the justice system. This story is told here as a challenge to other law schools to respond to the needs of their communities.

Not every law school will have the unique opportunity presented to the Southern Illinois University School of Law. However, every law school has opportunities in its community. The challenge is to identify the needs of the community and to ask how the law school can respond through its faculty,

students, and other resources.<sup>30</sup> The Southern Illinois University experience demonstrates that a law school's efforts can take many forms, from direct service to research and scholarship. The reward to the institution can be better teaching as well as more inspired scholarship. Those leading the response can be the law school administration, the faculty members, or the students.

The needs of the public to equal access of the justice system are considerable. Each law school that plays a role in improving access makes a difference, not only to its community, but to the justice system as a whole.

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30. Law faculty members should not rely too heavily on clinical programs to spearhead these contributions. Although the ADR Clinic played a key role in the work of the School of Law, any faculty member could have served as a consultant or a coordinator of student efforts, and any non-clinical faculty members could have served and did serve as volunteer mediators.