

Interview with AFCC Plenary Speaker Robert Mnookin

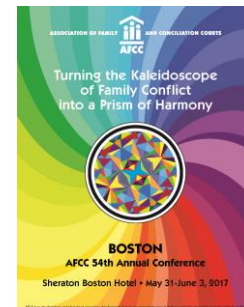
Robert Mnookin is the Samuel Williston Professor of Law at Harvard Law School, the Chair of the Program on Negotiation at Harvard Law School, and the Director of the Harvard Negotiation Research Project. A leading scholar in the field of conflict resolution, Professor Mnookin has applied his interdisciplinary approach to negotiation and conflict resolution to a remarkable range of problems, both public and private. Professor Mnookin has taught numerous workshops for corporations, governmental agencies, and law firms throughout the world and trained many executives and professionals in negotiation and mediation skills. Professor Mnookin has written or edited ten books and numerous scholarly articles, including the co-authored book, *Dividing the Child* with Eleanor Maccoby. In his most recent book, *Bargaining with the Devil: When to Negotiate, When to Fight*, Mnookin explores the challenge of making such critical decisions. Professor Mnookin will present a keynote address at the AFCC 54th Annual Conference in Boston, May 31-June 3, 2017. [Read more.](#)

AFCC Family Court Services Resource Guide

Have you heard about the Family Court Services Resource Guide? The Guide is a collection of services, programs, practices, and processes which provides assistance to families who are involved in a family court process such as divorce, separation, never married, adoption, and paternity issues. This Resource Guide was compiled by the AFCC Access to Family Court Services Task Force to widen the accessibility to, and options for, family court-related non-profit or public sector services, and to serve as catalyst for the development of new ideas within the family court community. New applications are welcome [here](#). Each month, the AFCC

MONTHLY E-
NEWSLETTER
VOL. 12 NO. 3
March 2017

Upcoming AFCC Conferences



[AFCC 54th Annual Conference](#)

Turning the Kaleidoscope of Family Conflict into a Prism of Harmony
May 31-June 3, 2017
Sheraton Boston Hotel
Boston, Massachusetts

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Essential toolkit for co-parenting

eNEWS will be highlighting an excerpt from the Resource Guide to spark your innovative and creative ideas! [Read more](#).

Motivational Interviewing Doubles Likelihood of Full Settlement in Family Mediation

Jennifer Shack, Director of Research, Resolution Systems Institute

An experiment in Australia found that when mediators used motivational interviewing (MI) during the mediation, the parties were twice as likely to reach a full agreement. However, this technique does not reduce psychological distress, child adjustment problems, or co-parental conflict. MI is a counseling technique designed to induce clients to change their behavior by exploring and resolving their ambivalence toward change. It has been found to be effective in a variety of contexts, including reducing aggression in intact couples. [Read more](#).

AFCC 54th Annual Conference

Turning the Kaleidoscope of Family Conflict into a Prism of Harmony

May 31-June 3, 2017, Sheraton Boston Hotel

Fulfill Your Continuing Education Requirements

Attend the AFCC conference and earn up to 20.5 hours of continuing educations for psychologists, lawyers, social workers, mediators, custody evaluators, and mental health professionals.

[Important Conference Information](#).

[Register now to attend](#).


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AFCC Chapter Conferences

[Washington Chapter Annual Conference](#)

Parents Come in All Sizes and Forms

March 25, 2017

Seattle, Washington

[Missouri Chapter Annual Conference](#)

How Coaching Matters for Family Matters

April 6-7, 2017

St. Louis, Missouri

[Oregon Chapter Annual Conference](#)

The Full Spectrum of Transitioning Families Interdisciplinary Resources and Their Coordination

April 14, 2017

Portland, Oregon

AFCC Webinar Series

LGBTQ Clients and Family Law in a Post-Obergefell Era

Allan Barsky, JD, MSW, PhD

June 20, 2017 1:00pm Eastern

Donate to the Silent Auction

Donate items and attend the AFCC Silent Auction at the 54th Annual Conference, on Friday evening, immediately preceding the Annual Banquet. Enjoy cocktails with colleagues and bid on some wonderful items. If you cannot attend, you can still donate an item. [Donate an item](#).

Exhibit Space is Filling Up Fast

If you would like an onsite presence at the 54th Annual Conference, the time is now! Space is limited, so register today. [Read more about the opportunities](#) or contact [Corinne Bennett](#) with details.

Hotel Rooms Are Selling Out. Reserve Today!

The AFCC room block at the Sheraton Boston Hotel is almost sold out. Register for the conference and also make your hotel reservation by booking [online](#).

AFCC Regional Conference in Milwaukee

Beneath the Surface of High Conflict and Troubled Families

November 2-4, 2017

Hyatt Regency Milwaukee

Call for Proposals

The AFCC Conference Committee is seeking proposals for 90-minute workshop sessions. Share your work with the interdisciplinary community of family law professionals who attend AFCC conferences. Proposals must be received using the online form by May 15. The program brochure and online registration will be available July 2017.

[View the call for proposals](#). [Submit online](#).

Donate to the AFCC Scholarship Fund

The AFCC Scholarship Fund helps colleagues attend the annual conference, to hear from world renowned speakers in their field, and network with other professionals. This year, AFCC is giving more than 50 scholarships to deserving applicants! If you have not already given this year, please

Save the Date

[AFCC-AAML Conference](#)

Advanced Issues in Child Custody: Evaluation, Litigation and Settlement
September 14-16, 2017
Westin San Diego
San Diego, California

[AFCC Regional Conference](#)

Beneath the Surface of High Conflict and Troubled Families

November 2-4, 2017

Hyatt Regency Milwaukee
Milwaukee, Wisconsin

Are you an AFCC member? [Join](#) or [Renew](#)

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Editor:

Leslye Hunter
lhunter@afccnet.org

Associate Editor:

Corinne Bennett
cbennett@afccnet.org



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Give the Gift of an AFCC Membership to a Student

AFCC is made up of a diverse, interdisciplinary community of professionals dedicated to the resolution of family conflict. Do you have a student or mentee who would benefit from the AFCC membership network? Do you want to contribute to growing the next generation of AFCC? Consider purchasing a student membership for them. Buy 4 student memberships for just \$100! Call the AFCC office, 608-664-3750, or mail a check with the membership applications to AFCC, 6525 Grand Teton Plaza, Madison, Wisconsin 53719

Save the Date

AFCC-AAML Conference

Advanced Issues in Child Custody: Evaluation, Litigation and Settlement

September 14-16, 2017

Westin San Diego

San Diego, California

In Memoriam, Linda Doi Fick

Lyn Greenberg, PhD, Los Angeles

Shortly after the AFCC-CA Chapter conference, our profession lost a true luminary. Lynda Doi Fick, M.A., MFT was a pioneer in treating the most troubled and struggling families. [Read more](#).



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The Hampden Probate and Family Court Mediation Program: A Successful Collaboration Between a Probate Court, Law School, and a Community Mediation Program

Oran Kaufman, JD, Amherst Mediation Services

In January of 2016, we began an experimental mediation clinic at the Hampden County Probate and Family Court. The clinic was a collaboration between the Hampden Probate and Family Court, Western New England University School of Law (WNEU), and the Mediation and Training Collaborative (TMTC), a court-approved, community mediation center in Greenfield. The clinic built upon a pilot mediation program which had been running at the Hampden Probate Court since the fall of 2014, and was administered by TMTC. Under this pilot, the court referred 4 cases per month (2 cases on 2 separate dates). TMTC scheduled mediators to conduct the sessions, and conducted intakes and screening in each case prior to the scheduled date. [Read more.](#)

The 7th World Congress on Family Law and Children's Rights

Save the date and join other AFCC members at the 7th World Congress on Family Law and Children's Rights, June 4-7, 2017, at the Convention Centre Dublin. Many AFCC members will be flying to Dublin to take part in this conference, directly following the AFCC 54th Annual Conference.

[More information.](#)



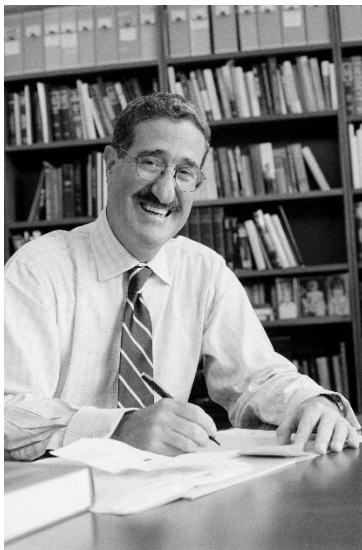
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AFCC: Where did you grow up?

RM: I am really a true Midwesterner. I was born in Kansas City, Missouri, and lived there until I went away to college. Both of my parents were born there too, and growing up all four of my grandparents also lived in Kansas City. I went to my neighborhood public elementary school

and then to Pembroke County Day School for my high school years. My wife, Dale, by the way is also a Midwesterner – from St. Louis. We met when we were 15. She went off to the University of Michigan and I went to Harvard but she transferred to the Boston area and we got married just before our senior year in college. We've now been married 53 years, and have two grown daughters and four grandchildren.

AFCC: What was it like going from Kansas City to Harvard?

RM: I had a wonderful time at Harvard. Harvard gave me the opportunity to make friends who had a remarkable range of backgrounds and interests. For those from the coasts, there was something of a social division between those who had gone to public high schools as opposed to prep schools. As a friendly Midwesterner who went to a private day school I was right in between. My pals included a small town kid from South Carolina who was the first in his high school class to take the College Board exam and worldly boarding school grads who spent weekends going to debutante parties in Manhattan and had summer homes in Europe. While not as racially diverse as it is today, Harvard broadened my horizons intellectually and socially. I majored in economics, planned to eventually get a PhD and become an academic.

After graduation, Dale and I went to the Netherlands. I was awarded a Fulbright Scholarship to study econometrics with a famous Dutch economist. That year, I co-authored an article but decided that economics was becoming increasingly focused on mathematical modeling and not human behavior and policy. So I decided instead to study law back at Harvard. I loved law school. I was Associate Editor of the *Harvard Law Review*, and taught a section of the introductory economics course to Harvard undergraduates. After graduation, I clerked in Washington, D.C. for two years, the first year with Judge Carl McGowan of the U.S. Court of Appeals, and the second with Justice John Harlan of the U.S. Supreme Court.

AFCC: Coming out of Harvard and a Supreme Court Clerkship you probably had plenty of options. How did you end up in the family law arena?

RM: After clerking I originally planned to work for the government and find a way to help make national policy. But I finished clerking in the summer of 1970 and the environment in government was not what I had hoped for -- Richard Nixon was President and John Mitchell was Attorney General. We ended up moving across the country to the Bay Area. I still intended to go into academia, but wanted to practice first and I started with a wonderful small firm in San Francisco doing tax work and some appellate litigation.

After about a year, I was invited to interview – and offered a tenure track position – at the University of Chicago Law School. We were living in Berkeley with two young children at the time and Dale did not want to leave the Bay Area. So I contacted the law schools at Berkeley and Stanford and got a tenure track offer from Berkeley to teach law and become Director of the Childhood and Government Project. It was an interdisciplinary project funded by Ford and Carnegie that was on the cutting edge of litigation efforts directed at school finance reform, attacking the use of property taxes to fund public schools.

This is when I started doing research on children and families. I thought it would be interesting to teach a course about children and the law that didn't simply focus on the juvenile court system but instead broadly examined how law allocated power and responsibility for children in our society. This resulted in my casebook, *Child, Family and State*. I also studied the foster care system and wrote my first article as a law professor in a symposium issue of the *Harvard Educational Review* entitled, "Foster Care: In Whose Best Interest?" This led to my interest in child custody issues generally. As an aside, just recently some colleagues and I interviewed Secretary Hillary Rodham Clinton as part of a project where we are interviewing former Secretaries of State. I gave her as a gift a framed copy of that same symposium issue because it also contains her first publication – an article on the rights of children.

AFCC: How did you first connect with AFCC?

RM: I believe it was through [former AFCC President] Hugh McIssac. After I wrote *Bargaining in the Shadow of the Law: The Case of Divorce* I received a gracious letter from him indicating that he found my article incredibly valuable. Hugh was the long-time director of the Los Angeles Conciliation Courts and a driving force in the growth of mediation in California and nationally. Hugh suggested that my article helped him to better understand what he was doing, and what his work was all about. It allowed him to conceptualize things and understand them in a new way. Needless to say, I was flattered and thrilled. As a law professor, I have always aspired to writing articles and books that prove valuable both to professionals and scholars.

AFCC: Perhaps your best known work among AFCC members is your book, *Dividing the Child*.

RM: *Dividing the Child* came out of an empirical, longitudinal study I did with Eleanor Maccoby, a distinguished developmental psychologist. We followed about 1000 divorcing families for several years to see how they resolved child custody issues. There were several important findings. First, we found just how few cases were actually decided by judges, literally 15 to 20 out of 1000. We also found that even though judges were deciding few cases, a significant number involved some pretty intense conflict. These cases were either resolved through negotiation or mediation. Second, we unpacked what was underneath the legal labels and explored how families were in fact dividing child rearing responsibilities following divorce. Joint legal custody was commonplace but had little actual impact on parental behavior. More surprising was our finding that in most cases where the parents agreed on joint physical custody, the child was not in fact spending equal time with each parent – typically the father had significant time but much less than the mother. Third, we found three basic patterns of co-parenting following divorce: (a) co-operative parents who communicate regularly with each other and who insulate their children from parental conflict; (b) parallel parenting which involves little direct communication between parents; (c) conflicted parents who stay in contact with each other but whose conflict remains active. The children of the first group do best; those in the third group do worse. The children whose parents avoid each other and engage in parallel parenting are in the middle.

AFCC: What are your thoughts about dispute resolution with intense levels of conflict?

RM: My most recent book, *Bargaining with the Devil*, addresses this question and it is something I will be talking about at the AFCC Annual Conference in Boston in June. *Bargaining with the Devil* poses the question of whether to negotiate or fight with someone who you perceive as being evil or someone who has done you wrong in the past. This book explores conflicts of all sorts: international conflicts between nations; commercial conflicts between businesses; and family conflicts. Demonization occurs in all three domains and similar traps interfere with clear thinking.

AFCC: Your keynote in Boston will look at our field since you wrote *Bargaining in the Shadow of the Law* in 1979 until today. What are the most striking changes?

RM: Three changes are striking. First, we have seen enormous expansion in the development of mediation and third party involvement in dispute resolution. It began earlier in the family than in other areas, but it is now very broad. We have also seen the growth of collaborative dispute resolution processes, informed by mediation, such as collaborative law. Second, things have become increasingly interdisciplinary. Of course, this was always the case within AFCC, but the interdisciplinary approach has grown. So now, it is not just lawyers, but financial experts, mental health professionals, and others. Finally, and unfortunately, I think the gender wars continue. When I began working in this area, the maternal presumption was starting to fade, but still existed. Now, in terms of formal law it is gone, and things are changing somewhat. But in most intact families, the mother tends to be more involved, and that tends to carry over when there is a divorce.

AFCC: What advice would the 2017 Robert Mnookin give to a younger version of yourself as you were graduating from law school or college?

RM: I would say to find work that you really enjoy doing, something that you feel passionate about. Find work that allows you to use your talents to make a contribution that helps heal the world. Finally, make sure you learn how to learn. The world is changing ever more rapidly. While the knowledge and skills you learn in school matter, lifelong learning has never been more important.



The AFCC Family Court Services Resource Guide

Have you heard about the *Family Court Services Resource Guide*? The Guide is a collection of services, programs, practices, and processes that aid families who are involved in a family court process such as divorce, separation, never married, adoption, and paternity issues. This Resource Guide was compiled by the AFCC Access to Family Court Services Task Force to widen the accessibility to, and options for, family court-related non-profit or public sector services, and to serve as catalyst for the development of new ideas within the family court community. New applications are welcome and can be made directly through this link: <https://www.afccnet.org/services/>.

Each month, the AFCC eNEWS will be highlighting an excerpt from the Resource Guide to spark your innovative and creative ideas!

Simple Phi Lex is a three-way collaboration among the Arizona Superior Court for Pima County, the University of Arizona Rogers College of Law, and the University of Arizona English Department. The Project began in 2012 in response to the rising number of people who represent themselves in family court, in cases ranging from paternity and child support to division of property after divorce. The primary objective of Simple Phi Lex is to make family law related forms and their instructions simple and accessible to self-represented people in Pima County. Materials are organized in individual packets according to a party's needs. The packets are provided at no charge on the Pima County website at <http://www.sc.pima.gov/?tabid=119> and also in the Pima County Superior Court Law Library.

Clarity in communication is invaluable in serving the public's needs, and Simple Phi Lex tries to ensure that the instructions and forms are easy to read and understand. Staffing is done through the efforts of student interns from the University of Arizona English Department and the James E. Rogers College of Law, as well as volunteer time from judges and professors. Generally, these students work in interdisciplinary teams to create the initial draft of the documents. All interns, the supervising judges, and the liaison law professor meet approximately once a week or every other week to read through the packets line by line. The packets are circulated among Superior Court personnel as a final step to ensure that they are as error-free as possible. This project has given a greater sense of confidence to self-represented people by providing a better grasp of the law and a clearer sense of what is expected of them.

At the same time, Simpla Phi Lex introduces Law and English students to the justice system and how it affects people's lives on a practical basis. This hands-on approach and unique collaboration, allows the students to not only learn the law and legal procedures to be able to pass that knowledge along to others, but to feel that the changes they suggest result in real world changes that benefit the community.

Last year, the Volunteer Lawyer Program used the packets in working with 1500 clients in their self-help clinics and through direct advice. The Law Library sold 20,136 packets and distributed an additional 19,900 for free, in addition to those packets downloaded from the Superior Court website. This program can be duplicated easily in other areas where there is a college or university English and Law Department willing to collaborate with the court for this purpose. *For more information, click here:* [AFCC Family Court Services Resources](#)

Inclusion in AFCC Family Court Services Resource Guide does not imply endorsement of programs or services by AFCC. Inclusion in the resource guide indicates that the program meets the criteria, based on information provided by the program. AFCC cannot warrant the accuracy of information about these programs or services and shall not be liable for any losses caused by such reliance on information. The AFCC Family Court Services Resource Guide is provided for convenience, and all users of this guide are encouraged to do independent research in choosing a program or services.



Motivational Interviewing Doubles Likelihood of Full Settlement in Family Mediation

Jennifer Shack, Director of Research, Resolution Systems Institute. This article first appeared in the January 2017 edition of RSI's newsletter, [Court ADR Connections](#).

An experiment in Australia found that when mediators used motivational interviewing during the mediation, the parties were twice as likely to reach a full agreement. However, this technique does not reduce psychological distress, child adjustment problems or co-parental conflict. [Motivational interviewing](#) (MI) is a counseling technique designed to induce clients to change their behavior by exploring and resolving their ambivalence toward change. It has been found to be effective in a variety of contexts, including reducing aggression in intact couples.

This study, undertaken by Megan Morris as part of her PhD thesis ([Motivational Interviewing and Family Mediation: Outcomes for Separated Families](#), 2016 (see Chapter 4)), is the first to examine the use of MI in family mediation. To determine the impact of MI on mediation outcomes, Morris randomly assigned 177 separated families to either the treatment group (n=94), in which the mediator used MI, or the control group (n=83), in which the mediator did not. The mediations were conducted over the phone and recorded and coded by multiple trained coders as to the integrity of the MI treatment. In all, 108 sessions were recorded, including 68 intake sessions and 40 joint sessions by 15 mediators. Eight of the mediators were randomly assigned to be trained in MI before the study; the other seven were offered training after the study was completed. Those trained prior to the study incorporated MI into their mediations during the study, while the other group continued to use their usual mediation techniques.

Recordings of intake interviews and joint sessions indicated that mediators trained in MI techniques ranked much higher on the MI Treatment Integrity Scale than those who were not, demonstrating that there was a difference in the services provided to the treatment and control groups. Parents in the treatment group were twice as likely to reach full agreement as those in the control group (33% v 16%) and less likely to reach no agreement (33% v 42%). There were no other statistically significant differences in satisfaction with the mediation, psychological distress or child adjustment.

Although the research was well-designed, it suffered from technical and logistical issues, including problems with recording equipment that significantly reduced the number of recorded sessions and families who were accidentally provided the wrong

service for at least one of their sessions. Further, there was a high attrition rate for the study: of those who agreed to participate, only 26% completed the post-mediation satisfaction surveys and psychological assessment instruments. This may have affected the research findings. In particular, the high attrition rate may have masked differences in outcomes that existed between the two groups, leading to the erroneous finding that there were no differences in the long-term outcomes (i.e., psychological distress and co-parental conflict).



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In Memoriam: Lynda Doi Fick, M.A., MFT (Nov. 11, 1948-Feb. 19, 2017)

Shortly after the AFCC-CA Chapter conference, our profession lost a true luminary. Lynda Doi Fick, M.A., MFT was a pioneer in treating the most troubled and struggling families. She was a gifted evaluator, therapist, author, speaker, advocate and consultant, as well as a treasured friend and colleague. She helped families heal who would never have been able to do so otherwise. A former teacher, Lynda brought with her to family therapy the core understanding of children's developmental needs and the importance of giving children and parents the tools they need to function and form relationships. She was intervening with parent-child dyads, including very young children, long before today's more widely-known models were developed. Her "therapeutic monitoring" model, a progenitor of today's parenting coaching or in-vivo parenting training, embodied concepts decades ahead of their time. She contributed to statewide guidelines and task forces on parent education and treatment of traumatized children, some of which are still in use.

A cross-cultural expert, Lynda lived, breathed, and taught systemic perspective. There was always another possibility, another lens to look through, another way of understanding a parent's decisions or a child's reactions - combined with a consistent emphasis on accountability and learning the tools to do better. She constantly emphasized that children don't live in a binary reality, and that we should endeavor to grasp at least as much complexity as they were living with. No child, family, caseworker, therapist, attorney or judicial officer was unchanged by having her involved in a case. In recent years, Lynda was excited to see our models for *Child Centered Conjoint Therapy* and *Early Intervention with Resistance-Refusal Dynamics* evolve from decades of notes scrawled on fast-food napkins, or in late night emails, to fully developed models that we hoped would be teachable to others. Although many of you were just beginning to know her through those articles and presentations, her absence leaves a devastating hole in our local court systems and professional community at large. She poured her heart and soul into everything we wrote and taught, creating pictures with her words, finishing my thoughts and sentences, and making every piece, and every life she touched, better. She had two chapters in preparation for our upcoming book, which will now be dedicated to her. Much as I will endeavor to carry on her legacy, I can never fill her shoes. Hopefully some new readers will also come to know her through the gifts she leaves us.

Lynda was the victim of a homicide.



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The Hampden Probate and Family Court Mediation Program: A Successful Collaboration Between a Probate Court, Law School, and a Community Mediation Program

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Starting in January 2016, the court referred two cases per week to the clinic. The litigants were required to attend the clinic, which provided free mediation to the participants. I was the mediator charged with conducting each session. I supervised two WNEU law students who had previously taken a semester-long family mediation class I teach at the law school, and although they had had a great deal of experience with role play mediation, this was the students' first experience with "real life" mediation situations. In addition to participating in the court mediations which occurred every Wednesday, the students also worked with Betsy Williams, Clinic Coordinator with TMTC on the intakes for the cases. Prior to the mediations, TMTC called and spoke with each participant to give them information about mediation, screen for domestic violence or other issues that could make mediation inappropriate, and to obtain relevant background information for the mediation.

Although attendance was mandatory, theoretically the litigants could have attended the mediation, sat down for 5 minutes and ended the session and they would have been in compliance. In practice, not only did this never happen but in almost all the cases mediated, whether high or low conflict, the parties actively participated in the mediation to its conclusion. The clinic was a success on multiple levels and resulted in many surprises and unexpected results.

First, from the standpoint of the students, there is nothing like real world experience. Students experienced clients with strong emotions, clients with little affect or emotion, clients with mental illness, clients struggling with poverty, clients with high conflict, and clients with seemingly no conflict, clients who were highly articulate and other clients who were difficult to understand. Initially, they observed me mediating. Each Wednesday, following the mediation, we met for an hour to debrief about the mediations. The students were also required each week to submit a self-reflection paper with their observations about that week's mediations. As the semester progressed, students took on a more active role, starting with making the opening statement to the parties, explaining ground rules, confidentiality, voluntariness etc. The students then progressed to information gathering and issue spotting. By the end of the semester, each week the students would alternate taking the lead as co-mediator under my supervision. There was a similar progression for students' involvement with the intake process. They began by listening in on the intake/screening calls being conducted by Betsy (with full knowledge of their presence by the clients), then started providing some of the opening information, and ultimately were charged with conducting the intake altogether, with Betsy still on the call to fill in any gaps, as necessary.

One of the biggest surprises of the clinic was the fact that not a single participant ever objected to the students' participation. Participants were gracious about the law students' presence. At times it even felt that having the students in the room added some lightness to the atmosphere. The students' presence seemed to calm the clients a bit. There were times when after we had reached an agreement and I had gone upstairs to check in with the clerk about the agreement, I came back and the law students and clients were talking casually. Participants were asked to fill out evaluations after their session. In addition to the evaluations being almost universally positive, no mention was made in any of the evaluations complaining or negatively commenting on the students' participation.

From an educational perspective, I believe the students received an experience that in many ways exceeds what they can get in a classroom. While I ultimately would have liked for them to have had more experience being the lead mediator, we also had to be mindful of the fact that this program was also for the benefit of the court and the litigants, and needed to uphold the quality standards for the provision of ADR services in a court-referred case. So, the education that the students received, including possibly the education of blowing a mediation completely (which has its benefits didactically) had to be balanced with the fact that ultimately, we were trying to help the clients settle their cases successfully. Nevertheless, the students experienced having to think on their feet and come face to face with the real-life problems clients faced. As is the case with experienced mediators, students learned how to balance being facilitative and directive when necessary.

From the court's perspective, I can only assume that the program on many levels was helpful and successful. We had 13 weeks of cases with 2 cases per week. Although I was not keeping a tally of success and failure, my general recollection is that we helped settle approximately 22 or 23 out of 26 cases. In almost all cases, we were able to write up an agreement during the session and parties saw the judge that afternoon and their

agreement was approved or the agreement was approved administratively. In one case, a divorce action, the parties reached an agreement on most of the aspects of their divorce, we wrote up an agreement following the mediation, sent it via email to the parties and after a few minor edits, they had the agreement approved as part of their divorce. So, as a result of the clinic there were 23 fewer cases that needed pre-trials, case management conferences, trials, judges' time, clerks' time, and the court's time.

Much of the success was due to the choice of cases sent to the clinic by the judges and judicial case managers. The cases that did not settle often involved a client or clients who were dug in. Or, in several cases we were dealing with a client who was likely suffering from mental illness or drug abuse. In one case, one client simply did not care, was not interested in engaging with his ex-partner and was absolutely unwilling to engage in the mediation in any productive way.

Many of the cases that did settle had certain similarities. They often involved young parents who were never married and had a young child together. Many of these cases involved two young people who simply were not good at communicating with one another. A common element was a new boyfriend or girlfriend and animosity between the parent and the other parent's new partner. When given a chance to have a conversation in a safe setting, facilitated by a neutral third party, these litigants almost always resolved the issue which had brought them to court. Sometimes it was hard to even think of them as litigants. What they needed was a forum where they could be heard, where they were given full attention, and where they had more than the five minutes they would receive in a busy motion session. Many times, the young parents just needed some ideas (some of which seemed so basic and commonsensical) about how to communicate with each other. "He never answers my texts;" "Her boyfriend is sending me nasty text" , "She is badmouthing me on social media." Many of these cases involved the mediators helping the clients come up with communication protocols and ground rules.

Most of the cases we had were not complex financial cases or high conflict child custody cases. They were cases that probably never should have been in court in the first place but for the fact that as a result of poor communication, the parties had no other way to resolve their dispute. On the other hand, we only had 2 hours with the parties so the cases that were most amenable to mediation were cases where there was one or maybe two issues. Although we were able to help two couples reach a full divorce, full divorces were the exception. Most of the cases involved unmarried couples who had a parenting issue.

From my perspective as a full time private mediator, I had an opportunity to work with a population that I rarely see in my private practice. The vast majority of the cases involved unmarried parents, usually under age 30, most of them at or below the poverty line. I appreciated the challenge of working in unfamiliar territory including poverty, disability and mental illness. In addition, the vast majority of cases I handle as a private mediator are not already in litigation but rather result in an agreement which is then filed as a 1A divorce. Cases that are already in litigation have a different flavor and require different approaches which I had the opportunity to try out. As a teacher, I struggled with, but appreciated the challenge of balancing my desire to give my students

experience and opportunity to succeed and fail, with my internal pressure to get the case settled for the court. Finally, this was the first time I had the experience of having people other than my clients see me conduct a mediation. It was a wonderful learning experience to hear from my students what they observed me doing, what worked and what didn't.

Some things I learned and was surprised about:

1. If these cases were any indication, there are many cases clogging up the court system which simply do not belong or could be avoided with early intervention. Some of these cases really did not involve a conflict. Litigation, however, was the only way that one party could communicate with or force some action from the other party. I don't know how else to say it, but that's just crazy.
2. In a few cases we struggled with what to do in the cases where one party was pro se and one party had an attorney. We opted for allowing the attorney to sit in on the mediation. In both cases where that occurred, we asked the pro se party if he or she had an objection to the presence of the other party's attorney. In one case, the client and her attorney opted for not having her attorney in the mediation. When the attorneys did participate (even in the case where there were two attorneys) they were very helpful to the mediation. They helped give their clients a reality check when it was necessary. They were also helpful in explaining things that their clients were having difficulty understanding. As long as the ground rules were established at the outset and followed, having one or two attorneys in the room was very helpful.
3. I was surprised that despite the fact that the mediation had been ordered by the court, there was no resentment of that by the clients (except in one instance). Again, with perhaps that one exception, when the parties walked into the mediation room, they were ready to engage in the process rather than complain about it. The concept of mandatory mediation is still a subject of debate in the mediation community, with some practitioners opining that mandatory mediation is a contradiction in terms. Before this clinic, I probably would have agreed with that sentiment. I have a different view now. Most of the people we saw were below the poverty line. Most of the parties we saw had at most a high school education. Private mediation was out of reach for most of the participants because of the cost. Community mediation programs with sliding fee rates may have been an option but I suspect that other than through court, most of the litigants would have had no access to or knowledge about these community mediation options. Ultimately, at least in this small sample, the fact that the participants were being ordered to attend got them in the door. They all participated, not a single participant complained about being mandated to attend and there was a high settlement rate for the program. This was after clear communication at the beginning of each mediation that explained that although they were mandated to attempt mediation, settlement was voluntary and they were in control of the outcome.
4. No one ever complained about the fact that there were three of us in the room (the two students and myself). When setting up the program, I fretted over whether we should have both students in the room or just one student and me. No one seemed to

be bothered by having three extra people in the room and in fact, as stated above, it may have helped calm the mediation in an unexpected way.

Conclusion

This particular program came about as a result of a perfect storm of sorts. A law school that was interested in and committed to providing its students with externships and real-world experience connected with a busy probate court with many pro se parties and a judge who is committed to the expansion of alternative dispute resolution in the courts in general and in the Hampden Probate and Family Court in particular. In addition, we were fortunate to be able to partner with a community mediation organization that has a lot of experience providing mediation services in the probate court, the administrative skills necessary to run the program, and the flexibility to make the adjustments essential to make the program work. And finally, this was all combined with the willingness of the Chief of the Probate and Family Court who was prepared to give the program the go ahead.

In retrospect, while I cannot speak for others involved in the program, I recognize that I may have been somewhat naïve in structuring the program. That is, I agreed to plug the law school clinic into a mandatory mediation program before really understanding and exploring the pros and cons of the mandatory mediation model. As I have begun to read more about mandatory mediation programs around the country and about mandatory mediation in general, I realize that there were a number of issues that I did not consider. For instance, should there be sanctions for non-participation or should parties be entitled to opt out. Should cases referred to mediation be chosen randomly or be handpicked by the judge or court personnel? And how much information should the court have about what transpired in the mediation? This is in addition to the more philosophical and theoretical (but still important) questions like “Is mandatory mediation antithetical to the whole notion of self-determination of the parties?” There are a multitude of scholarly articles on the topic of mandatory mediation. An excellent article that delves into many of these issues is Peter Salem’s article entitled, “The Emergence of Triage in Family Court Services: The Beginning of the End for Mandatory Mediation?” 47 Fam. Ct. Rev. 371 (2009). On the other hand, sometimes ignorance is bliss. Had we tried to address all of these issues in the first year, we may never have gotten the program off the ground. From a purely anecdotal standpoint, it appears that the clinic was a great success. As we enter our second year, we will start to address some of the above issues and others as they become or appear appropriate. For now, our experiment has been a success in almost all respects. It has benefitted clients (as reported by the clients), benefitted the courts by reducing caseload, and benefitted the law students by providing real world experience mediating.