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Boyd School of Law Establishes Saltman Center for Conflict Resolution

Most lawyers and judges agree that litigation is often not the best way to settle disputes or conflicts. Abraham Lincoln famously stated: "Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often the real loser — in fees, expenses, and waste of time."² Judge Learned Hand similarly remarked, "I must say that, as a litigant, I should dread a lawsuit beyond almost anything else short of sickness and death."³

Certainly it remains true today that while litigation may be the appropriate or exclusive recourse for some kinds of disputes, such as those requiring the development of public precedents, clients are often best served by those lawyers who help them to avoid disputes in the first place or resolve them amicably when they do arise.

The fact that practicing lawyers, judges, and clients are well aware of the drawbacks of litigation (including high cost, slowness, and emotional drain) helps explain why so few disputes are actually taken to trial these days. Only a minute percentage of disputes result in the filing of lawsuits, and far less than five percent of litigated matters are ultimately tried. While some of the litigated matters that are not tried are resolved on motions, most are settled, whether through traditional negotiation, mediation, or arbitration. The Nevada Eighth Judicial Circuit is at the forefront of this move toward alternative dispute resolution, with its innovative emphasis on non-binding arbitration and short trials. The Nevada Supreme Court and the Federal Ninth Circuit Court of Appeals similarly require that appellants try to resolve their disputes through settlement or mediation.

Notwithstanding all these developments, the traditional law school curriculum at most schools looks much as it did hundreds of years ago and continues to emphasize litigation over other forms of dispute resolution. Most programs focus almost exclusively on litigation and have students spend most of their time reading appellate court decisions.

From the outset, the Boyd School of Law at UNLV has tried to be different. We offer a first year course in civil procedure and alternative dispute resolution, rather than focusing exclusively on the former. While we recognize that the mastery of the law contained in

appellate cases is an important part of a lawyer's education, we also believe that future lawyers need to be prepared to counsel their clients in other ways as well. Transactional attorneys need to be able to help their clients craft deals that will avoid conflicts, and "litigators" need to be able to help their clients resolve disputes through means, including but not limited to, litigation. Many firms have now renamed their "litigation" departments as "litigation and ADR" departments, and we are trying to follow their lead.

Now, thanks to the great generosity of local philanthropists Michael and Sonja Saltman, the Boyd School of Law will be able to build an even more impressive program in conflict and dispute resolution, the Saltman Center for Conflict Resolution ("SCCR").⁴ By providing an initial gift of a million dollars, the Saltmans have enabled us to greatly enhance our course offerings. This year and next, we will be offering new courses including a survey on alternative dispute resolution, as well as specific courses on negotiation, mediation and arbitration. Students will also have the opportunity to "learn by doing," by participating in competitions relating to both negotiation and client interviewing and counseling. Also, we will be bringing in a series of exciting guest speakers, attracting leading scholars to contribute to an issue of the *Nevada Law Journal*, and co-sponsoring a series of notable events. Last fall, we hosted the American Bar Association Regional Negotiation Competition. This spring, a newly formed student organization, the Saltman Dispute Resolution Society, hosted a forum in which local mediators explained their work to students. Later this spring and summer, we will hear presentations from professors around the country on such subjects as uses of alternative dispute resolution in criminal law, uses of apologies in civil litigation, and the relationship between consensual policymaking and democratic theory.

We will also co-sponsor a mediation training with the Mediators of Southern Nevada and provide our students with opportunities to network with arbitrators attending the annual convention of the National Academy of Arbitrators.

By emphasizing alternatives to litigation, SCCR aims to help change the mindset of law

Professor's Corner



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students and even practicing attorneys. Too often law students and even practicing lawyers see the world in purely adversarial win/lose terms. Yet, many of us have learned that by working together and by focusing on the underlying interests of all parties, we can move beyond a world that appears to require win/lose solutions. By looking outside disputants' expressed demands and positions to focus instead on their background needs and interests, we can often devise creative resolutions that are better for everyone concerned.

Transactional attorneys have long recognized the importance of working together to build long-lasting mutually desirable agreements, and it turns out that disputes can often also be effectively resolved in this manner.

While these ambitions of changing lawyers' mindsets may sound bold, SCCR aims to do even more in the long term. Lawyers have the ability and responsibility to be peacemakers, not only with respect to their own cases, but also on the global stage. Although some have criticized lawyers for causing or worsening conflicts, many lawyers have, and many more can contribute to the world of conflict resolution in a far more positive fashion. Senator George Mitchell provides a wonderful example. Using both his legal and political skills, Senator Mitchell played a key role in helping to bring about the Good Friday agreement in Northern Ireland.

Perhaps the most famous lawyer and peacemaker was Mahatma Gandhi, who drew on his lawyering background to achieve major social change in a peaceful manner in both South Africa and India. Discussing the appropriate use of dispute resolution on a smaller scale, Gandhi describes a case in which he persuaded his own client, who had prevailed in an arbitration, to accept installment payments rather than insist on the lump sum payment that would have bankrupted the opposing party:

"My joy was boundless. I had learnt the true practice of law. I had learnt to find out the better side of human nature and to enter men's hearts. I realized

the true function of a lawyer was to unite parties driven asunder. The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby — not even money, certainly not my soul."⁵

While few lawyers have achieved the renown of Mitchell or Gandhi, others have and can work toward resolving conflicts amicably on both small and large stages. Litigation is desirable and appropriate in some cases, but not all. Thus, the SCCR boldly aspires to help achieve greater peace in this troubled world whether locally, nationally, or even perhaps internationally, and welcomes the interest and assistance of Nevada lawyers in this endeavor. ■

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Endnotes

1. Saltman Professor of Law and Director Saltman Center for Conflict Resolution. Professor Sternlight can be contacted at jean.sternlight@ccmail.nevada.edu.
2. Abraham Lincoln, Notes for Law Lecture (July 1, 1850), in 1 Complete Works Of Abraham Lincoln 162, 163 (J. Nicolay & J. Hay eds. 1894).
3. Learned Hand, The Deficiencies of Trials to Reach the Heart of the Matter, Address Before the Association of the Bar of the City of New York (Nov. 17, 1921), in 3 Lectures on Legal Topics 89, 105 (1926).
4. More information on the SCCR can be obtained at <http://www.law.unlv.edu/saltman.html>.
5. Mohandas Karamchand Gandhi, Gandhi's Autobiography: The Story Of My Experiments With Truth 168 (Public Affairs Press, Washington, D.C. 1954).

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