



New Institute at Creighton University Law School Will Broaden Dispute Resolution Options for Students, Community

[by Erica Winter]

Until recently, the discipline of dispute resolution at Creighton University Law School in Omaha, NE, has been, one could say, old-fashioned. With alternative dispute resolution becoming increasingly mainstream, Creighton has stood firm in the courtroom litigation corner. This tradition is about to change.

The Werner Institute of Dispute Resolution will open its doors in fall 2005 at Creighton Law School, thanks to a gift of more than \$4 million from Gail Werner, a law school alumna. The institute "will be in full swing" by the spring semester of next year, says Creighton's Dean, Patrick Borchers.

Recently, Arthur Pearlstein accepted an offer to become the new institute's director. Pearlstein will come to Creighton Law on May 10 after wrapping up his stint as General Counsel and Director of Alternative Dispute Resolution Programs with the Federal Mediation and Conciliation Service in Washington, DC. An expert in the field of alternative dispute resolution, Pearlstein brings "terrific qualifications to head up this new venture," says Borchers.

Gail Werner was the prime mover behind the institute, says Borchers, who began discussing the idea with her two years ago. One goal for the institute is for it to serve as an educational resource for law students and area lawyers. Also, in keeping with the law school's Jesuit foundation, the institute will provide a service to members of the community, helping them to manage their own disputes and avoid the courts when possible, says Borchers.

Specifically, the institute will take on some of the alternative dispute resolution courses now being offered at Creighton Law while also building new programs. Borchers envisions seminars for practicing lawyers on specific types of mediation (employment, environmental, or divorce cases). The most

growth will be on the continuing-education side, with a 50-50 split between programs for law students and Omaha-area attorneys, says Borchers.

There are several dispute-resolution options out there. Litigation is still the most common, for both criminal and civil cases. However, negotiation is often part of arguing that case in court, explains Professor Kenneth Melilli, who teaches negotiation, trial advocacy, and torts at Creighton Law.

Negotiation techniques can range from "power bargaining" to "problem solving," says Melilli, depending on the goal of the negotiation. Melilli was a federal prosecutor from 1982 to 1987. When negotiating pleas in that capacity, he usually tried to get defendants to agree to as much jail time as possible. Still, sometimes that desire was mitigated by wanting to have the defendant's testimony, and the negotiation technique would vary accordingly. In contrast, says Melilli, in a negotiation deciding a business issue, a lawyer may need to adopt a problem-solving method if the business relationship is going to continue.

Arbitration is another dispute-resolution method that is often mandated by the terms of a contract. It involves an impartial arbitrator or a panel of arbitrators hearing both sides of an issue and then making a binding ruling.

Then there is the other end of alternative dispute resolution (ADR)—mediation.

Mediation involves two sides of an issue and an impartial mediator. It is sometimes court-ordered, especially in family law cases such as divorce. It takes less time and is far less expensive than trying the same case in court. In its most essential form, mediation is mutually agreed upon problem solving. A lawyer can represent one side or could act as the mediator. Mediation can end any time either side decides to move on to litigation instead.

Borchers sees alternative dispute resolution as a reality of future legal practice, even though there is no formal mechanism right now in Nebraska courts (except on some family law cases) requiring an attempt at mediation before trial. But soon, Borchers predicts, "court-ordered mediation is coming" to the state.

Creighton's Professor Ron Volkmer, who teaches a mediation course, also sees this trend. "Mediation is becoming more and more prominent," he says. Most law schools are moving in the direction of offering ADR courses, so Volkmer thinks Creighton law is moving in the right direction with the launch of the Werner Institute.

Currently, Creighton has "outstanding trial advocacy teachers," says Volkmer. The Werner Institute will, he hopes, "provide a more balanced dispute-resolution concentration" at Creighton. Even as a law school prepares students to be litigators, those students will likely encounter mediations in their careers, says Volkmer. Also, the essential negotiation skills needed in mediation are "fundamental to being a lawyer," adds Volkmer.



As for lawyers serving as mediators themselves, Borchers says that in mediations with no legal components—such as disputes over a barking dog—lawyer-mediators are not needed. But if there are legal dimensions to the issue—a person has been fired and feels it was unjustified—then having a lawyer as the mediator is useful.

The parties involved in mediations meant to replace lawsuits or divorce court proceedings need a mediator who can tell participants about their real chances at a trial, says Borchers, and motivate them to reach a solution cooperatively.