“NEGOTIATION IS AN ACQUIRED SKILL. IT DOESN’T RESIDE IN PEOPLE AT BIRTH.”

That’s a point that Adjunct Professor F. Peter Phillips ’87 stresses frequently, whether addressing students in his Negotiation: Theory and Practice class or a boardroom full of distinguished lawyers who form the Advisory Committee of New York Law School’s new Alternative Dispute Resolution (ADR) Skills Program.

Professor Phillips is the Director of the new Program, announced in November 2013, which emphasizes practical experience. The Program begins with introductory courses focusing on ADR generally, and the specific skills involved in negotiation, mediation, and arbitration. Students then choose from a selection of electives, which offer doctrinal and clinical opportunities in a variety of areas, ranging from the Dispute Resolution Team to a mediation clinic to an externship placement in an ADR-related organization. Students who complete the program will receive a Certificate in Alternative Dispute Resolution.

The new program is a natural outgrowth of the Law School’s existing curriculum, Professor Phillips said. He began to teach as an adjunct at NYLS in 2009 and was impressed by how many of the courses already focused on ADR: the program was already there, he said, with the notable exception of a course on negotiation. ADR is “a very sexy field,” he said. “A lot of students are drawn to it.” His goals for developing the Skills Program were twofold, he said: to have a program sufficiently distinct from those at other law schools and to set it up without having to raise money. He wanted the “offerings to be experiential within the meaning of clinics.”

He talked to Professors Lawrence Grosberg and Stephen Ellmann about his idea for the Program, and they were both “extraordinarily open and excited about it.” Dean Anthony W. Crowell and Associate Dean Deborah N. Archer were also very enthusiastic about the Program, he said.

There is also a community-oriented aspect to the ADR Skills Program, which aspires to NYLS hosting ADR-related speakers and conferences. “The name of the game is to get word out in the street,” he said, adding that, from an alumni point of view, there are lots of opportunities.

Professor Phillips was in his mid-30s when he enrolled at NYLS. He had studied at the Royal Academy of Dramatic Art in London and was an actor on “All My Children” at the time he began his legal education. But attending NYLS proved to be a transformative experience, he said, and his interests “very abruptly changed.” He left the world of soap opera and devoted his energies to the law.

After graduating, he joined the litigation department of Cahill Gordon & Reindel, later moving to Schulte Roth & Zabel. After 11 years as a litigator Professor Phillips became increasingly uncomfortable that traditional litigation was adding value to his clients. He jumped at the opportunity to work for the International Institute for Conflict Prevention and Resolution (CPR Institute), a think tank where law firm and corporate lawyers study ways to obtain better client outcomes to disputes and to decrease costs of the dispute resolution process. For example, he said, in a dispute between a franchisor and a franchisee, the goal should be “to improve the relationship between the two and maximize their economic results rather than designate one side or the other the ‘winner.’” He now works through his
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Dean Anthony W. Crowell

On November 13, 2013, the Advisory Committee to the ADR Skills Program met for the first time, in the NYLS boardroom. Its members include Deborah Masucci ’80, Chair of the International Mediation Institute; Hon. Elizabeth S. Stong of the U.S. Bankruptcy Court for the Eastern District of New York; James Tricarico ’77, General Counsel of Edward Jones; and Eric Touchmann ’94, Corporate Secretary and General Counsel of the American Arbitration Association.

Dean Crowell opened by observing that the ADR Skills Program is another example of the Law School aligning itself with the changing legal marketplace, one of the goals of the NYLS Strategic Plan released last July. The School, he said, must “harness all that we have. That means bringing in practitioners and key speakers, and creating programs.”

Professor Phillips then outlined the proposed Program. He said that the role of the Advisory Committee is to help identify opportunities in the various markets in which committee members operate for the School and its students to become engaged; to indicate how the Program can have a real impact on the stakeholders of dispute management and resolution; and to help the Program avoid activities that are either redundant to those of other schools, irrelevant, or impractical. There followed a broad-ranging discussion focused on such topics as ways to optimize experiential learning in ADR and ways to change the culture of lawyering by putting the emphasis on a network of relationships that are in distress and need to be rectified.

That following Monday, November 18, Professor Phillips began his evening Negotiation class by reviewing videotapes of role-playing negotiation sessions that pairs of students had engaged in the previous week. The topic for the week was “difficult conversations.” Students took on the role of either the dean of students at a college or a fraternity president. The difficult conversation concerned whether the fraternity should be punished for the rape of a student by a fraternity pledge. After showing the class the video of one negotiation, he praised the student playing the dean of students for being upfront about her position and setting an agenda, and the student playing the frat president for acknowledging and affirming the dean’s position before setting forth his position. Professor Phillips observed that, from then on, the two started brainstorming together, and the rest of the negotiation was “all sliding easily.” He contrasted this negotiation with another, in which the two participants could “never get to a place of agreement even on the basic premise of the conversation.”

The ADR Skills Program is now up and running, with 16 elective courses in addition to the introductory required courses. In the spring semester, the Program hosted a March 5 discussion by Delaware Vice Chancellor Donald F. Parsons about recent trends before the Delaware Court of Chancery, including the Court’s mediation and arbitration programs, and a May 28 discussion by a group of in-house counsel about their experiences seeking nonjudicial resolution of disputes with companies in foreign jurisdictions.

“The goal,” said Professor Phillips, “is to have a distinctive curriculum in a very crowded field.”

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