



MEDIATION AND MENTORING

*By R. Wayne Thorpe, Esq., Michael D. Young, Esq.,
and Robin H. Gise, Esq.*

Wayne Thorpe has been a full-time mediator and arbitrator with JAMS for 17 years, focusing on complex commercial, financial, health care, technology, and other business disputes. He is a former Chair of the ABA Dispute Resolution Section. He can be reached at wthorpe@jamsadr.com.

Michael D. Young is one of the founders of JAMS and since 1989 has been a full-time mediator and arbitrator, specializing in commercial, insurance coverage, professional liability, securities, and employment disputes. He can be reached at myoung@jamsadr.com.

Robin Gise is a mediator and arbitrator specializing in employment and commercial disputes. She joined the JAMS panel in March 2015 and is based in New York City. She can be reached at rgise@jamsadr.com.

WAYNE THORPE: Can you tell us how you went about making the transition from being a practicing lawyer to a full-time neutral?

MICHAEL YOUNG: About seven to eight years into my career as a lawyer, in 1985 or 1986, I was representing a large group of municipalities in the Manville asbestos-related bankruptcy. As part of the claims resolution process, I, along with the other lawyers involved, designed what we would today call a “Med-Arb” process. This experience made me very interested in the dispute resolution field, which was not nearly as visible a field as it is now. More importantly, it led to my being introduced to the leadership of EnDispute and, through a variety of serendipitous events, I joined EnDispute in 1989. At that time, we had a broadly defined dispute resolution practice; in other words, we did everything and anything we could related to dispute resolution to sustain ourselves, including training and partisan counseling on settlement as well as design of dispute resolution systems – and the occasional assignment as a neutral.

ROBIN GISE: As a first-year associate at a small firm, I attended a mediation for an employment case at JAMS. I wasn’t familiar with mediation. But I watched a sexual harassment case settle in one day, and I was amazed. I decided that I wanted to be a mediator. I sought advice from a number of lawyers and neutrals, and everyone uniformly said, “Get some experience, be a lawyer, and think about this later in your career.” So I did. I practiced labor and employment law for about nine years. When I was ready to make a change, I got introduced to Michael and began working with him. In addition to assisting Michael, I have developed an independent ADR practice and joined the JAMS panel in March.

THORPE: Both of you started to become neutrals in your mid-30s. Does that seem common to you?

GISE: Among the neutrals I know, that is uncommon. Most neutrals either come from the bench or tend to have more established law practices before becoming a neutral. Only recently have I encountered some people who practice a shorter amount of time before becoming a neutral.

YOUNG: I would agree with Robin. I think it is fair to say that the lawyer-consumers of our services do value neutrals having experience as lawyers and neutrals.

THORPE: The two of you have a unique perspective on our next topic, which is actually tied closely to the last topic about the age and experience of beginning neutrals. Robin, Michael has been serving as a mentor/senior partner to you for a while. Can you explain how the relationship works?

GISE: Michael was looking for help, and I was looking to get ADR experience. I started assisting him on his larger cases, and my role evolved over the years as I became more experienced. I participated more in the mediation sessions and played a larger role in follow-up work. It was a fantastic experience for me to work with an experienced mediator on complex commercial cases, which I would not have been able to do starting out on my own.

1.800.352.JAMS | www.jamsadr.com

*This article was originally published by Dispute Resolution Magazine
and is reprinted with their permission.*



YOUNG: The goal is to have the person working with me evolve so that he or she has his or her own practice and that when we work together it is more like co-mediators than it is mentor/mentee or senior/junior. I am very pleased that Robin has joined the JAMS panel in her own right.

THORPE: Can you identify any land mines out there that might blow up efforts like this?

YOUNG: In a mediation, as a lead mediator you have in your head certain things that you are hoping to do – certain points you are hoping to make, a sense for when you want to do certain things. When you have someone working with you, it's ideal if that person can contribute, but you don't want that person saying something or doing something that is inconsistent with your strategy or approach. The value of working together with someone over time is that the other person gets a sense of what I might want said or done at a given point in time, and I develop a level of trust in that person.

THORPE: Michael, you have been working as a mediator and arbitrator in business cases for more than 25 years. How has the field of commercial dispute resolution, including both mediation and arbitration, developed during that time?

YOUNG: When I started, the number of commercial mediations that were being conducted, at least in New York, could be counted on one hand. I don't think that neutrals or the legal community had a fixed idea of what mediation was. So the perspective we at EnDispute would bring to a dispute was to figure out a process that met the needs of a case. We were very flexible and creative. My perspective, even today, is that I want to look for a way to help the parties design what they want, but I hear from many people in the field that they try to fit everything into the standard mediation model as it has evolved. Also, when I started, there was a perceived dichotomy between facilitative versus evaluative mediation. More often than not, former judges were associated with evaluative mediations, and lawyers were associated with the facilitative type. That dichotomy no longer exists. I think that in order to be successful as a commercial mediator, you need to use both facilitative and evaluative methods. Lawyers often hire mediators precisely because they value a mediator's evaluative perspective on cases, although, of course, that does not mean that an evaluative mediator will necessarily offer some kind of evaluation in every case.

GISE: Many lawyers now share a fairly common view of what mediation is, but there is still often some confusion among some practicing lawyers between a mediation with a mediator who is fully prepared, after having talked with counsel and read written materials, and a quick-and-dirty "settlement conference" with a busy sitting judge.

THORPE: Michael, when you started as a neutral 25 years ago, I bet that most neutrals were older white males, many of them former judges. Can you talk about the changes in opportunities you have witnessed over the years for

minorities, women, younger neutrals, non-judges, et cetera, to act as neutrals?

YOUNG: I think that the field is changing, and not as quickly as it should, particularly as it relates to gender and race, although I will say to some extent that our dispute resolution field mirrors the litigation world—at least that's how I observe it in New York. I am in lots of commercial cases where there isn't a woman in the room in a senior capacity. To some extent, this is partly explained by our earlier discussion of how the consuming public values experience, which often translates to more opportunities for older neutrals, and, of course, for a variety of historical reasons there are fewer "senior" female and minority lawyers than younger ones. Also, where there is some perceived premium from somebody coming off the bench, until recently there have been more men coming off the bench than women. At JAMS we are making an effort clearly to diversify the panel from a gender and race perspective, and now even from a chronological experience perspective.

THORPE: Robin, can you talk about the opportunities available to younger women in this field and candidly describe both the challenges and opportunities?

GISE: I would agree with Michael that this field is changing—but slowly. As a mediator, I have had the experience of being the only woman in the room as well as the youngest, which was also the case as a lawyer. However, I am finding that people who are choosing mediators are starting to look more like me. I am in my early 40s, and many partners in law firms are now in their early 40s, and more of them are women. I think that makes a difference. That said, we have a ways to go in terms of racial diversity. As for the challenges—I think they are similar to the challenges that any female lawyer in the commercial field faces.

THORPE: What does each of you see as the next big innovation or challenge awaiting the field of dispute resolution?

GISE: Although the field is crowded now, older neutrals are going to start retiring, and there is a need to have both younger mediators and mediators that are more diverse in terms of gender and race. It is critical that this new generation of mediators gets sufficient training and mentoring from experienced neutrals.

YOUNG: Many neutrals recognize that mediation is becoming a global phenomenon. American industry needs to be confident in the dispute resolution processes around the world, so that is an opportunity for us in the field, even though we have not yet gotten to the point where there are lots of international mediations. Ideally, we will be ready when that happens. ■