

Integrating Non-Litigation Dispute Resolution into the Core Legal Curriculum: Theory and Practice

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Abstract

Starting more than thirty-five years ago, a small number of U.S. law schools began offering courses in non-litigation dispute resolution such as arbitration, mediation and negotiation. Today, most, if not all, law schools offer at least one course on non-litigation dispute resolution. There are approximately forty law school centers dedicated to the subject. Many professors integrate the core concepts of negotiation, mediation and arbitration into their doctrinal courses. Some law schools require one of these courses for graduation and others have integrated these concepts into the core JD curriculum. While much has been written explaining these changes and suggesting improvements, there has been little, if any, research on how the two-hundred ABA accredited law schools teach non-litigation dispute resolution. How many schools require a dispute resolution course? How many schools integrate dispute resolution into the core JD curriculum? What range of processes are taught? In order to answer these questions and improve law schools' ability to train skilled advocates, more thorough research must be conducted. This presentation will outline the author's effort to answer one of these questions – which law schools have integrated non-litigation dispute resolution into the core curriculum and how have they done it? In this presentation, we will discuss some of the challenges that are anticipated and encourage others to conduct similar research. Given the nature of this “Works-In-Progress” conference and the early stage of this research effort, the author is hoping for significant feedback from the conference participants.

Outline

- I. A Brief History of How Law Schools Teach Dispute Resolution
- II. What we Know and Don't Know about Teaching Non-Litigation Dispute Resolution (NLDR)
- III. Vermont Law School Experience
 - A. 1980s - Stand alone courses & early integration
 - B. 1990s - “Lawyering” approach
 - C. 2000s - Core Curriculum Integration
- IV. The Need for Research on NLDR Curricular Initiatives
- V. Vermont Law School Survey
 - A. Purpose
 - B. Method
 - C. Organization
- VI. Discussion

Vermont Law School Study: Integrating Dispute Resolution into the Core JD Curriculum

Purpose: To identify law schools with current initiatives to integrate non-litigation dispute resolution into the core JD curriculum and to describe each approach.

Questions:	Faculty Responses:	
1. Law school		
2. Faculty name and contact information		
3. Which statements apply to your law school, if any? (Please check all that apply.)		a. Has a program, institute or center for non-litigation dispute resolution – if “yes” please insert the name below _____
		b. Offers non-litigation dispute resolution courses for JD credit (e.g. mediation, negotiation, arbitration, ICN, ADR, restorative justice, etc.)
		c. Integrates non-litigation dispute resolution into other courses
		d. Integrates non-litigation dispute resolution into the core curriculum for all JD students
		e. Completion of JD requires a non-litigation dispute resolution course to be taken
4. Please list the non-litigation dispute resolution courses offered by your school and the associated credit.		

<p>5. Does your law school offer experiential opportunities (e.g. clinics) in:</p> <p>Mediation?</p> <p>Arbitration?</p> <p>Other? Please specify.</p>	<div style="border: 1px solid black; height: 20px; width: 100%;"></div> <div style="border: 1px solid black; height: 20px; width: 100%;"></div> <div style="border: 1px solid black; height: 60px; width: 100%;"></div>								
<p>6. Are there other dispute resolution or conflict management classes offered in other departments or colleges at your university that law students may take for JD credit?</p>	<div style="border: 1px solid black; height: 100%; width: 100%;"></div>								
<p>7. Is non-litigation dispute resolution incorporated into other courses in the law school?</p> <p>If not, please move to # 8.</p> <p>If yes:</p> <p>a. Which courses? (e.g. contracts, employment law, civil procedure, etc.)</p> <p>b. How is non-litigation dispute resolution incorporated into these courses? (In other words, is non-litigation dispute resolution a stand-alone subject, or is it discussed consistently throughout the course?)</p>	<table border="1" style="width: 100%; text-align: center;"> <tr> <td style="width: 25%;"></td> <td style="width: 25%;"></td> <td style="width: 25%;"></td> <td style="width: 25%;"></td> </tr> <tr> <td>Yes</td> <td><input type="checkbox"/></td> <td>No</td> <td><input type="checkbox"/></td> </tr> </table> <div style="border: 1px solid black; height: 100px; width: 100%;"></div> <div style="border: 1px solid black; height: 100px; width: 100%;"></div>					Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Yes	<input type="checkbox"/>	No	<input type="checkbox"/>						

c. If incorporated in a stand-alone manner, is the non-litigation dispute resolution segment taught by the instructor or by a guest lecturer?	
d. Is any one of those courses required to complete a JD degree?	
<p>8. If your school requires a non-litigation dispute resolution course to complete a JD degree, please answer the questions below. If not, please move to # 9.</p> <p>If yes:</p>	
a. What course(s) can fulfill this requirement?	
b. Do you know of any other law schools that required a non-litigation dispute resolution course for graduation?	
9. Number of full time tenured or tenure-track professors teaching non-litigation dispute resolution courses at the law school	
10. Number of full time contract professors teaching non-litigation dispute resolution courses at the law school	
11. Number of adjunct professors teaching non-litigation dispute resolution courses at the law school	

Bibliography: Articles Dealing with Teaching Dispute Resolution in Law Schools

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Douglas S. Adams, *Alternative Dispute Resolution Programs in Law School Curricula—What’s Next?* (August 24, 2001) (unpublished manuscript, available at <http://www.abanet.org/dispute/adampaper.pdf>).

Rachel Arnow-Richman, *Teaching Transactional Skills in Upper-Level Doctrinal Courses: Three Exemplars*, 2009 TRANSACTIONS: TENN. J. BUS. L. 367 (2009).

M.E. Barken, *Integrating Contract and Property Fundamentals with Negotiation Skills: A Teaching Methodology*, 9 J. LEGAL STUD. EDUC. 73 (1990).

Paul Barron, *Essay, Can Anything Be Done to Make the Upper-Level Law School Courses More Interesting?* 70 TUL. L. REV. 1881 (1996).

Anita Bernstein, *Essay, Pitfalls Ahead: A Manifesto for the Training of Lawyers*, 94 CORNELL L. REV. 479 (2009).

Beryl Blaustone, *Training the Modern Lawyer: Incorporating the Study of Mediation into Required Law School Courses*, 21 SW. U. L. REV. 1317 (1992).

Paul Brest, *The Alternative Dispute Resolution Grab Bag: Complementary Curriculum, Collaboration, and the Pervasive Method*, 50 FLA. L. REV. 753 (1998).

Paul Brest & Linda Krieger, *On Teaching Professional Judgment*, 69 WASH. L. REV. 527 (1994).

Warren E. Burger, *Isn’t There a Better Way?*, 68 A.B.A. J. 274 (1982).

EFFECTIVE LEARNING AND TEACHING IN LAW (Roger Burrige et al. eds., 2002).(In Great Britain)

Robert A. Baruch Bush, *Using Process Observation to Teach Alternative Dispute Resolution: Alternatives to Simulation*, 37 J. LEGAL EDUC. 46 (1987).

Paul D. Carrington, *Civil Procedure and Alternative Dispute Resolution*, 34 J. LEGAL EDUC. 298 (1984).

James R. Coben, *Summer Musings on Curricular Innovations to Change the Lawyer’s Standard Philosophical Map*, 50 FLA. L. REV. 735 (1998).

Sarah Rudolph Cole, Nancy H. Rogers, & Joseph B. Stulberg, *Sustaining Incremental Expansion: Ohio State’s Experience in Developing the Dispute Resolution Curriculum*, 50 FLA. L. REV. 667 (1998).

Nancy A. Coleman, *Teaching the Theory and Practice of Bargaining to Lawyers and Students*, 30 J. LEGAL EDUC. 470 (1980).

Charles B. Craver, *Clinical Negotiating Achievement as a Function of Traditional Law School Success and as a Predictor of Future Negotiating Performance*, 1986 MO. J. DISPUTE RES. 63 (1986).

Melody R. Daily, Chris Guthrie, & Leonard L. Riskin, *Damages: Using a Case Study to Teach Law, Lawyering, and Dispute Resolution*, 2004 J. DISP. RESOL. 1 (2004).

Jessica Dopierala, *Note, Bridging the Gap Between Theory and Practice: Why Are Students Falling off the Bridge and What Are Law Schools Doing to Catch Them?*, 85 U. DET. MERCY L. REV. 429 (2008).

Katheryn M. Dutenhaver, *Dispute Resolution and its Purpose in the Curriculum of DePaul University College of Law*, 50 FLA. L. REV. 719 (1998).

Jonathan L. Entin, *Scholarship About Teaching*, 73 CHI.-KENT L. REV. 847 (1998).

Trevor C.W. Farrow, *Dispute Resolution, Access to Civil Justice and Legal Education*, 42 ALTA. L. REV. 741 (2005).

Marc Galanter, *Worlds of Deals: Using Negotiation To Teach about Legal Process*, 34 J. LEGAL EDUC. 268 (1984).

Estee Garfin et al., *How We Got to Yes: Introducing an ADR Practicum at the University of Toronto Faculty of Law* (April 2001), available at http://fcj-fcjc.org/clearinghouse/drpapers/2001-dra/raphael_iscove.html.

Bryant G. Garth, *ADR and Civil Procedure: A Chapter or an Organizing Theme?*, 37 J. LEGAL EDUC. 34 (1987).

Eric D. Green, *A Comprehensive Approach to the Theory and Practice of Dispute Resolution*, 34 J. LEGAL EDUC. 245 (1984).

Stephen Gerst, *Professional Skills and Values in Legal Education: The GPS Model*, 43 VAL. U. L. REV. 513 (2009).

Jonnette Watson Hamilton, *The Significance of Mediation for Legal Education*, 17 WINDSOR Y.B. ACCESS JUST. 280 (1999).

Bethany R. Henderson, *Asking the Lost Question: What Is the Purpose of Law School?*, 53 J. LEGAL EDUC. 48 (2003).

Laurie C. Kadoch, *The Third Paradigm: Bringing Legal Writing "Out of the Box" and Into the Mainstream: A Marriage of Doctrinal Subject Matter and Legal Writing Doctrine*, 13 LEGAL WRITING: J. LEGAL WRITING INST. 55 (2007).

John C. Kleefeld, *Rethinking "Like a Lawyer": An Incrementalist's Proposal for First-Year Curriculum Reform*, 53 J. LEGAL EDUC. 254 (2003).

John Lande & Jean R. Sternlight, *The Potential Contribution of ADR to an Integrated Curriculum: Preparing Law Students for Real World Lawyering*, ___ OHIO ST. J. ON DISP. RESOL. ____.

A.M. Lerner, *Law & Lawyering in the Work Place: Building Better Lawyers by Teaching Students to Exercise Critical Judgment as Creative Problem Solvers*, 32 AKRON L. REV. 107 (1999).

Alain P. Lempereur, *Innovation in Teaching Negotiation: Towards a Relevant Use of Multimedia Tools*, 9 INT'L NEG. 141 (2004).

Lisa G. Lerman, *Teaching of Alternative Dispute Resolution*, 37 J. LEGAL EDUC. 37 (1987).

Raleigh Hannah Levine, *Of Learning Civil Procedure, Practicing Civil Practice, and Studying A Civil Action: A Low-Cost Proposal to Introduce First-Year Law Students to the Neglected MacCrate Skills*, 31 SETON HALL L. REV. 479 (2000).

J.W. Little, *Skills Training in the Torts Course*, 31 J. LEGAL EDUC. 614 (1981).

Robert MacCrate, *Yesterday, Today and Tomorrow: Building the Continuum of Legal Education and Professional Development*, 10 CLINICAL L. REV. 805 (2004).

Julie Macfarlane, *The Challenge of ADR and Alternate Paradigms of Dispute Resolution: How Should the Law Schools Respond?*, 31 L. TEACHER 1 (1997).

Julie Macfarlane, *What Does the Changing Culture of Legal Practice Mean for Legal Education?*, 20 WINDSOR Y.B. ACCESS JUST. 191 (2001).

Julie Macfarlane, *The New Advocacy: Implications for Legal Education and Teaching Practice*, in EFFECTIVE LEARNING AND TEACHING IN LAW, 173 (Roger Burridge et al. eds., 2002).

Carrie Menkel-Meadow, *To Solve Problems, Not Make Them: Integrating ADR in the Law School Curriculum*, 46 SMU L.REV. 1995 (1993).

Carrie Menkel-Meadow, *Aha? Is Creativity Possible in Legal Problem Solving and Teachable in Legal Education?*, 6 HARV. NEGOT. L. REV. 97 (2001).

Martha Minow, *Some Thoughts on Dispute Resolution and Civil Procedure*, 34 J. LEGAL EDUC. 284 (1984).

Michael Moffitt, *Islands, Vitamins, Salt, Germs: Four Visions of the Future of ADR in Law Schools (and a Data-Driven Snapshot of the Field Today)*, ___ OHIO ST. J. ON DISP. RESOL. ____ available at <http://ssrn.com/abstract=1446989>.

Denton R. Moore & Jerry Tomlinson, *The Use of Simulated Negotiation To Teach Substantive Law*, 21 J. LEGAL EDUC. 579 (1969).

Catherine Morris, *The Molding of Lawyers: ADR and Legal Education*, 17 WINDSOR Y.B. ACCESS JUST. 271 (1999).

Kate O'Neill, *Adding an Alternative Dispute Resolution (ADR) Perspective to a Traditional Legal Writing Course*, 50 FLA. L. REV. 709 (1998).

Ronald M. Pipkin, *Teaching Dispute Resolution in the First Year of Law School: An Evaluation of the Program at the University of Missouri-Columbia*, 50 FLA. L. REV. 609 (1998).

Leonard L. Riskin & James E. Westbrook, *Integrating Dispute Resolution Into Standard First-Year Courses: The Missouri Plan*, 39 J. LEGAL EDUC. 509 (1989).

Leonard L. Riskin, *Mediation in the Law Schools*, 34 J. LEGAL EDUC. 259 (1984).

Leonard L. Riskin, *Disseminating the Missouri Plan to Integrate Dispute Resolution into the Curricula at Six Law Schools*, 50 FLA. L. REV. 589 (1998).

Leonard L. Riskin, *A Response to Professor Pipkin*, 50 FLA. L. REV. 757 (1998).

Leonard L. Riskin, *Teaching and Learning from the Mediations in Barry Werth's Damages*, 2004 J. DISP. RESOL. 119 (2004).

Arthur Sabin, *Pragmatic Aspects in the Teaching of Negotiations*, 11 LEGAL STUD. FORUM 337 (1987).

Albert M. Sacks, *Legal Education and the Changing Role of Lawyers in Dispute Resolution*, 34 J. LEGAL EDUC. 237 (1984).

Frank E.A. Sander, *Alternative Dispute Resolution in the Law School Curriculum: Opportunities and Obstacles*, 34 J. LEGAL EDUC. 229 (1984).

Frank E. A. Sander, Stephen B. Goldberg, & Nancy Rogers, *The Teaching of ADR in the 21st Century Law School*, 19 ALTERNATIVES TO HIGH COST LITIG. 29 (2001).

S. J. Schmitz, *What Should We Teach in ADR Courses? Concepts and Skills for Lawyers Representing Clients in Mediation*, 6 HARV. NEGOT. L. REV. 189 (2001).

Elizabeth N. Schneider, *Rethinking the Teaching of Civil Procedure*, 37 J. LEGAL EDUC. 41 (1987).

Paul M. Secunda, *"Arasoi O Mizu Ni Nagasu" or "Let the Dispute Flow to Water": Pedagogical Methods for Teaching Arbitration Law in American and Japanese Schools*, 21 OHIO ST. J. ON DISP. RESOL. 687 (2006).

John O. Sonsteng, Donna Ward, Colleen Bruce, & Michael Petersen, *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303 (2007).

Paul J. Spiegelman, *Civil Procedure and Alternative Dispute Resolution: The Lawyer's Role and the Opportunity for Change*, 37 J. LEGAL EDUC. 26 (1987).

Lea B. Vaughn, *Integrating Alternative Dispute Resolution Into the Curriculum at the University of Washington School of Law: A Report and Reflections*, 50 FLA. L. REV. 679 (1998).

Andrew S. Watson, *Mediation and Negotiation: Learning to Deal with Psychological Responses*, 18 U. MICH. J.L. REFORM 293 (1985).

Janet Weinstein, *Teaching Mediation in Law Schools: Training Lawyers To Be Wise*, 35 N.Y.L. SCH. L. REV. 199 (1990).

Janet Weinstein & Linda Morton, *Interdisciplinary Problem Solving Courses as a Context for Nurturing Intrinsic Values*, 13 CLINICAL L. REV. 839 (2007).

Ellen Zweibel, *Where Does ADR Fit in the Mainstream Law School Curriculum*, 17 WINDSOR Y.B. ACCESS TO