Silver Linings: Reimagining the Role of ADR Education in the Wake of the Great Recession

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“Was I deceiv’d, or did a sable cloud / Turn forth her silver lining on the night?”

—John Milton¹

“Every cloud has its silver lining, but it is sometimes a little difficult to get it to the mint.”

—Don Marquis²

I. Introduction

The past few years have seen widespread condemnation of legal education. Critics charge that there are too many law schools,³ too many law students,⁴ and—not to put too fine a point on it—too many

lawyers. What’s worse, many complain that this endless stream of lawyers is almost entirely unprepared for actual modern legal practice.

This final grumble about lawyer preparedness is hardly new. It has been a common refrain among legal educators and legal recruiters for decades. But the Great Recession of 2008 has brought it to the fore. With law firms, companies, government agencies, and non-profit organizations now shutting their doors to inexperienced recent graduates, many have asked: Are law schools teaching for this century and this economy? This question has now bubbled out of legal recruiting conferences into the mainstream. Law school anxiety has been covered by The New York Times and The Wall Street Journal, as well as by law professors in tell-all books and unemployed graduates on acerbic blogs.

American Bar Association leaders, law schools, and practicing attorneys do not agree about the appropriate number of law schools or lawyers. But one proposition does enjoy near-universal support: Law schools need to do a better job of teaching practical skills so that

7 Paul Brest & Linda Krieger, On Teaching Professional Judgment, 69 WASH. L. REV. 527, 527–28 (1994) (“[T]here is a gap between legal education and the legal profession . . . . While some law schools have seriously reconsidered their curricula in light of the changing demands of the profession, many others seem quite indifferent to those changes and, more fundamentally, to what their students do after graduation.”); see also Segal, supra note 4.
employers can more confidently hire recent graduates. Both litigation and transactional attorneys routinely report that young attorneys lack crucial interpersonal, counseling, and problem-solving skills. That complaint should hardly be surprising; law students spend the vast majority of their legal educations learning pure doctrine and focusing largely on federal appellate decisions. The question posed by a fury of recent conferences and studies is: How can we produce professional, practice-ready attorneys?

We argue that greater substantive and experiential training in alternative dispute resolution (ADR) is a crucial piece of the puzzle. ADR encompasses three broad, and very different, methods of


15 In the Fall 2012 semester alone, there were four major conferences examining the future of legal education with particular attention to experiential learning. On October 19, the University of Missouri Law School hosted “Overcoming Barriers in Preparing Law Students for Real-World Practice,” which explored new techniques in light of various constraints faced by law schools. On October 26–28, Northeastern University School of Law hosted “Experiencing the Future: Inaugural National Symposium on Experiential Education in Law,” which explored new methods of integrating clinical and doctrinal pedagogies. On November 9, George Mason University School of Law hosted “Unlocking the Law: Building on the Work of Professor Larry Ribstein,” which explored changing demand for legal services and lawyer competencies. And on November 16, the University of Connecticut hosted “Are Law Schools Passing the Bar?” which explored the sometimes-tense relationship between vocational and academic legal education.
solving human conflict: negotiation, mediation and arbitration. Progressive programs prefer the acronym “ADR” to stand for appropriate dispute resolution—that is, the art of solving a particular dispute by applying the process most likely to maximize benefit for the parties, or “fitting the forum to the fuss.” One reason that “alternative” is a somewhat bizarre description is that negotiation, mediation and arbitration are hardly unusual processes for resolving conflict. To the contrary, about ninety-eight percent of all cases filed are settled out of court. Jury trials and appellate proceedings, the numbers show, are the processes furthest from the mainstream. Indeed, binding private arbitration and court-mandated mediation are on the rise both

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16 Negotiation is any communication designed to persuade. The formalism of a negotiation can vary, encompassing discussions ranging from an argument with a significant other to a complex corporate merger. See ROGER FISHER & WILLIAM URY, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN xxvii (3d ed. 2011) (“Everyone negotiates something every day . . . . Negotiation is a basic means of getting what you want from others.”).

17 Mediation has many sub-models, but it can essentially be defined as a negotiation facilitated by a third-party neutral. JOSEPH B. STULBERG & LELA P. LOVE, THE MIDDLE VOICE: MEDIATING CONFLICT SUCCESSFULLY, 2D ED. 5 (2013) (“Mediation is a process in which a neutral intervener helps people in a dispute improve their understanding of their situation and one another and then develop solutions that are acceptable to them.”).


19 See generally FRANK E.A. SANDER & STEPHEN B. GOLDBERG, FITTING THE FRAME TO THE FUSS: A USER-FRIENDLY GUIDE TO SELECTING AN ADR PROCEDURE, 10 NEGOT. J. 49 (1994) (describing the principles of process choice and ADR systems design).

20 See generally FRANK E.A. SANDER & STEPHEN B. GOLDBERG, FITTING THE FRAME TO THE FUSS: A USER-FRIENDLY GUIDE TO SELECTING AN ADR PROCEDURE, 10 NEGOT. J. 49 (1994) (describing the principles of process choice and ADR systems design).


domestically and internationally. Increasing numbers of civil and criminal cases are settled through out-of-court settlements and plea bargains—which is to say, they are settled in negotiations.

Given these realities, one would think that negotiation, mediation, and arbitration might be, for example, required courses. One would think that, as two scholars have recently noted,

law schools [would] teach students such insights as: “facts are often contested,” “some disputes are not best resolved through litigation,” “not all disputes boil down to money,” “emotions should not necessarily be ignored,” and “other disciplines can be very helpful to attorneys,” [and] lawyers

See Edward Brunet, Arbitration and Constitutional Rights, 71 N.C. L. REV. 81, 110–12 (1992) (describing the general rise of private arbitration along with the Supreme Court’s increasing deference towards binding arbitral arrangements).

Lawyers have evolved their views. In a 2010 New York State Bar Association survey of nearly 500 litigators, 90% expressed a positive view of mediation, and 97% reported that they always or sometimes discuss mediation with their clients. More than 65% agreed that mediation produces settlements at earlier points in the litigation process. Richard S. Weil, Mediation in a Litigation Culture: The Surprising Growth of Mediation in New York, 17 DISP. RESOL. MAG. 8, 8–9 (2011).

The spread of ADR over the past two decades has both legal and practical dimensions. Courts have given increasing force to arbitration and mediation clauses in contracts, for example. See AT&T Mobility, LLC v. Concepcion, 131 S. Ct. 1740 (2011) (upholding the enforceability of contractual arbitration clauses that waive a consumer’s right to bring a class action); see also Rent-A-Ctr., W., Inc. v. Jackson, 130 S. Ct. 2772 (2010) (holding that when an agreement delegates the authority to determine the arbitrability of the agreement to the arbitrator, claims which challenge the enforceability and validity of an agreement as a whole will be determined by the arbitrator).

must be able to understand parties’ interests, communicate effectively, and develop options that may be acceptable to disputing parties.\textsuperscript{24}

This assumption is not as true as it should be. Yet all of these teaching objectives could be achieved with greater attention to dispute resolution theory and practice.

This paper examines ADR curricula generally and at our home institution, the Benjamin N. Cardozo Law School (Cardozo) to ask both where we are now with respect to such curricula and where law schools might ideally go.

Our purpose here is to suggest that the Great Recession has given the legal academy the opportunity and impetus to reimagine the place of ADR—specifically experiential learning of ADR—in the traditional curriculum. As the legal community reassesses the importance of clinical education more generally in preparing young lawyers, innovative ADR training should be at the forefront of that movement. This will reflect its growth in actual legal practice. In Part II, we examine the evolution of teaching ADR in American law schools. Part III explores a unique impediment to expanding ADR pedagogy—that of negative branding. In Part IV we use the Cardozo experiment with building a dispute resolution program to illustrate one avenue to constructing a comprehensive ADR curriculum. Part V looks at select innovations of note in the expansion of a broad-based ADR awareness among law students. And Part VI concludes that the time is ripe for bold steps forward in terms of integrating process awareness, dispute resolution skills and a problem-solving mindset into the law school curriculum.

II. The Clinic and the Classroom: Where did ADR Come from and How is it Taught?

Since the nineteenth century, legal education has been dominated by the legacy of Christopher Langdell, the first dean of Harvard Law School.\textsuperscript{25} Initially, Langdell taught his courses “in a style and


\textsuperscript{25} Thomas C. Grey, Langdell’s Orthodoxy, 45 U. Pitt. L. Rev. 1, 1–2 (1983). Langdell taught contracts, partnership, and commercial papers. He is embodied, perhaps most famously, in the character of Professor Charles Kingsfield in
with materials common to law schools of the time.”26 He “lectured about rules, cited cases merely to illustrate the rules, and sporadically questioned his students about the assigned reading from a textbook.”27 But around 1870, he began teaching with a very different model. His students would read almost exclusively appellate decisions; he would then aggressively question them on the underlying facts, rules of law, and general doctrinal principles that could be discerned from each opinion. In his view, “the law was contained in the published opinion of the court. Historical background, social context, the identity of the parties, pre-trial skirmishing, and the vagaries of litigation would only distract students from the task of extracting general principles from court opinions.”28 Learning the actual practice of law took place “at law firms or other places of employment after law school.”29 This division of responsibility between law schools and the practicing bar continued for most of the nineteenth and twentieth centuries.30

Not surprisingly, this system developed critics. As current scholars of dispute resolution and most practicing lawyers would argue, the Langdellian premise of ignoring identity, history, and underlying issues between parties makes little sense if the goal is to overcome conflict. Clients usually seek professional counsel to get practical guidance about their personal situation and real-world options; they are not concerned about the “vagaries” of appellate interpretation except insofar as such interpretation might affect their result. Under the Langdellian approach, law students do not learn to interview, counsel, or interact with clients until well after their graduation. Moreover, missing entirely from the Langellian model are the global, transactional, and facilitative dimensions of modern legal practice. These concerns about mainstream pedagogy came to a head in the 1973 movie The Paper Chase. Professor Kingsfield would aggressively question his first-year students about the facts and doctrine underlying judicial options, answering questions only with more questions. His famous line was that students would enter law school with a “mind full of mush” and through the Socratic process, they would “leave thinking like a lawyer.” See The Paper Chase (Twentieth Century Fox 1973).

27 Id.
28 Id. at 591–92.
30 Nyquist, supra note 26, at 591–92.
1970s. The period saw significant concerns about the excessive costs of litigation and overcrowded court dockets. In 1976, Chief Justice Warren Burger convened a conference in St. Paul, Minnesota, commonly called the Pound Conference, asking broad questions about the civil justice system: “[W]hat types of disputes can best be resolved by judicial action and what alternatives [might be] superior? [H]ow can we serve the interests of justice with processes speedier and less expensive?”

The Pound Conference sowed the seeds for a vibrant rethinking of the justice system by many academics and practitioners. Most famously, the notion of the multi-door courthouse emerged—the idea that parties could enter a courthouse and “find a rich array of dispute resolution options from which to choose in order to engage in the most effective conflict resolution process for their dispute.” Court systems, particularly in Florida and Texas, responded with experimental mandatory mediation programs. Legal scholarship, too, began to appear in law reviews and journals in the 1980s. Some would date the true scholarly birth of the movement to the 1981 publication of Roger Fisher and William Ury’s classic book, Getting to Yes: Negotiating Agreement Without Giving In. As legal practice and at least some legal scholarship grew to embrace dispute resolution techniques in the 1980s, educational initiatives began to take root.

In 1992, the ABA assembled a Task Force on Law Schools and the Profession to “narrow the gap” between legal education and prac-

32 Id. at 68.
35 For a comprehensive review of the early academics surrounding the ADR movement, see Carrie Menkel-Meadow, Mothers and Fathers of Invention: The Intellectual Founders of ADR, 16 OHIO ST. J. ON DISP. RESOL. 1 (2000).
36 Fisher, supra note 16 passim (establishing a classic four-step approach to negotiation: 1) distinguish between interpersonal and substantive negotiation issues, 2) focus on interests rather than positions, 3) create options for mutual gain, and 4) use objective criteria to select among various options).
tice.\textsuperscript{37} The Task Force’s report—known as the MacCrate Report after its director Robert MacCrate—specifically listed “negotiation,” “problem-solving,” “communication,” and “alternative dispute resolution” among the core skills it advocated for legal education.\textsuperscript{38} Even lawyers who consider themselves to be purely litigators, the report said, “are frequently in a position of having to consider . . . dispute resolution [options] as possible [solutions] to a client’s problem, or to counsel a client about these options, or to factor the options into planning for negotiation.”\textsuperscript{39} In short, the Report asked law schools to do a better job of teaching problem-solving skills, including educating students on process choice,\textsuperscript{40} negotiation techniques, and counseling.\textsuperscript{41} Appellate reasoning, employers said, was not enough.\textsuperscript{42} Indeed, the subsequent fifteen years has seen the expansion of skill courses into the curriculum at most law schools.\textsuperscript{43}

Despite this shared history, different schools have embraced ADR to different extents.\textsuperscript{44} Some offer extensive coursework and clinics in all major ADR subject areas.\textsuperscript{45} Others offer only coursework but no clinical opportunities.\textsuperscript{46} Still others incorporate negotiation exercises into first-year legal writing or lawyering skills courses but

\begin{itemize}
\item \textsuperscript{38} \textit{Id.}
\item \textsuperscript{39} \textit{Id.}
\item \textsuperscript{40} “Process choice” is simply choosing the process most likely to resolve a particular dispute. Legal norms may or may not be an important factor in the process.
\item \textsuperscript{41} The MacCrate Report, supra note 37.
\item \textsuperscript{42} \textit{Id.}
\item \textsuperscript{43} Lande & Sternlight, \textit{supra} note 24, at 276–77 n.101 (citing a 2004 American Bar Association survey of law school curricula between 1992 and 2002 which revealed that of the 151 law schools in 2002, about 140 offered an ADR course and about 120 offered separate mediation and negotiation courses). The University Of Oregon Law School, on behalf of the ABA Section of Dispute Resolution, keeps an up-to-date listing of law school offerings related to dispute resolution. \textit{See ABA Directory, Appropriate Dispute Resolution Center, University of Oregon School of Law, http://adr.uoregon.edu/aba/} (last visited Nov. 28, 2012).
\item \textsuperscript{44} \textit{See generally} Michael Moffitt, \textit{Islands, Vitamins, Salt, Germs: Four Visions of the Future of ADR in Law Schools (and a Data-Driven Snapshot of the Field Today)}, 25 \textit{Ohio St. J. on Disp. Resol.} 25, 26 (2010) (surveying and categorizing the teaching of ADR in American law schools).
\item \textsuperscript{45} \textit{Id.}
\item \textsuperscript{46} \textit{Id.}
\end{itemize}
offer few or no advanced courses or clinics. There are philosophical differences as well. Some schools value the substance of ADR theory (e.g., the unique values of consensual, as compared to adversarial dispute resolution), while others emphasize the skills that ADR imparts (e.g., the interviewing and listening skills that come from negotiation and mediation training). Some schools value both equally.

Before considering how schools can further bolster ADR education, we should begin by understanding where we are now. The most detailed and data-driven snapshot of the field’s recent history within the legal academy comes from Michael Moffitt, Dean of the University of Oregon School of Law, in his 2010 article, Islands, Vitamins, Salt, Germs: Four Visions of the Future of ADR in Law Schools. Moffitt divides law schools into four colorfully-named categories. First, a handful of schools are “Islands” of ADR: institutions with “much richer curricular and co-curricular offerings than their competitors” that value those offerings as “part of [their] distinctiveness.” Moffitt suggests that there are probably around two-dozen law schools that fit that description. Second, some schools treat ADR as a “vitamin,” forcing students to take a certain dosage—usually one “stand-alone [course], consumed outside of the context of the traditional law school curriculum.” Third, some schools treat ADR as “salt,” a seasoning to mix into other more “substantive” doctrinal courses. This model

47 Id.
48 Id.
49 Moffitt acknowledges that
[t]hese four models are not, of course, mutually exclusive. One might find variations on each of these themes occurring at a single school. But the theoretical underpinnings of each are distinct enough that examining them separately may shed light on some of the curricular decisions law schools face today about ADR.

Id. at 27.
50 Id. at 26.
51 Moffitt uses several metrics to identify the “Island” schools. At least five schools offer LL.M. programs exclusively in dispute resolution: Cardozo, Marquette, Missouri, Pepperdine, and Oregon. At least five law schools publish journals focused on dispute resolution: Cardozo, Harvard, Missouri, Ohio State, and Pepperdine. And finally, seventeen law schools list themselves as offering certificates in dispute resolution (courses of study undertaken alongside the J.D.): Appalachian, Baltimore, Cardozo, Capital, Cincinnati, Drake, Maryland, Nebraska, Ohio State, Oklahoma City, Oregon, Penn State, Pepperdine, Quinnipiac, Texas, Washington, and William Mitchell. Id. at 55
52 Id. at 26.
53 Id.
“incorporate[s] small doses of ADR throughout the curriculum” but does not generally have students take independent courses in negotiation, mediation, and arbitration.\textsuperscript{54} Fourth, some law schools treat ADR as a “germ” that individual professors incorporate into a handful of courses “[a]cting not as part of a concerted, school-wide effort but rather from an individual conviction about ADR’s importance.”\textsuperscript{55}

Although there are only a handful of “Island-level” schools, data seems to suggest that ADR faculty and course offerings have been generally spreading over the past two decades.\textsuperscript{56} Analyzing 2007–2008 American Association of Law Schools (AALS) data, Moffitt notes that 569 faculty members (tenure track and non-tenure track) self-identify as teaching dispute resolution. When compared to most sub-disciplines, this number places ADR as “average in size, perhaps somewhat above average.”\textsuperscript{57} Moffitt observes that just a few decades ago, only a “tiny number of law schools offered even one course in materials that would today be characterized as ADR.”\textsuperscript{58} The Pound Conference clearly resulted in something of a “big bang” for the legal academy, catapulting dispute resolution from “virtually nothing to an average-sized area of legal study” over the 1980s and 1990s.

But despite the proliferation and institutionalization of ADR in law schools (albeit to varying degrees), the ABA and practicing attorneys remained unsatisfied with the problem-solving abilities of young graduates. The 2007 Carnegie Foundation Report on Educating Lawyers confirmed that much work was still left to be done.\textsuperscript{59} The Report

\textsuperscript{54} Id. at 27.
\textsuperscript{55} Id. at 28.
\textsuperscript{56} Id. at 26. Moffitt admits that data in this area is tricky. Short of examining course descriptions, syllabi, and enrollment numbers at the roughly 200 American law schools, the best information comes from faculty self-reporting to AALS on whether they consider themselves to be ADR instructors. The problem with self-reported data in this area is that each individual might measure ADR differently; some who teach Commercial Arbitration or Representation in Mediation, for example, may or may not include themselves.
\textsuperscript{57} Id. at 30.
\textsuperscript{58} Id. at 30.
\textsuperscript{59} The Carnegie Report detailed a two-year study of legal education. The fieldwork for the study was conducted at sixteen law schools in the United States and Canada during the 1999–2000 academic year. The law schools, which varied in their selectivity and student diversity, included both public and private institutions and were selected for geographical diversity. SULLIVAN ET AL., supra note 14, at 3. The Carnegie Report Summary was used for its conciseness and reliability in summarizing the Carnegie Report’s most important points.
noted that “most law schools give only casual attention to teaching students how to use legal thinking in the complexity of actual law practice.”\textsuperscript{60} Unlike other professional schools, legal education typically pays relatively little attention to direct training in professional practice. The result is to prolong and reinforce the habits of thinking like a student rather than an apprentice practitioner, conveying the impression that lawyers are more like competitive scholars than attorneys engaged with the problems of clients.\textsuperscript{61}

Note that this Report was released the year before the Great Recession began. Its critiques were only magnified when legal employers slashed their hiring and major clients began to complain about footing the bill to train young associates.\textsuperscript{62} So if employers desire the skills associated with ADR training—an observation made in the MacCrate Report, Carnegie Report, and through overwhelming anecdotal information\textsuperscript{63}—then what exactly is the hold up? Why has emphasis on teaching ADR been limited to only a handful of “Islands,” and how can we give these invaluable and marketable skill sets to more law students?

III. The Challenge of Branding

One of the problems with advancing ADR education may be branding. The 2012 ABA Section on Dispute Resolution Annual Conference hosted a session on careers in legal academia moderated by Jennifer Reynolds, an assistant professor of law at the University of Oregon.\textsuperscript{64} Reynolds recounted a mentor early in her career cautioning

\begin{itemize}
  \item \textsuperscript{60} Id. at 6.
  \item \textsuperscript{61} Id.
  \item \textsuperscript{63} Such anecdotes were central to the discussion at the “Experiencing the Future” conference hosted by the Alliance for Experiential Learning in Law and the Northeastern University Law Journal on October 26–28, 2012. Particularly relevant were the comments of Ariel Cudkowitz (Boston Managing Partner, Seyfarth Shaw LLP), Stephen Rosales (Partner, Rosales & Rosales), and Gabriel Cheong (Partner, Infinity Law Group).
  \item \textsuperscript{64} The ABA Section of Dispute Resolution Fourteenth Annual Spring Conference was held in Washington, DC, on April 19–21, 2012. See ABA Section of Dispute Resolution, AMERICAN BAR ASSOCIATION, http://www.americanbar.org/groups/dispute_resolution.html (last visited Nov. 30, 2012).
\end{itemize}
her about the lowly place of dispute resolution in the academy: “In
the castle of legal academia, the kings and queens are Constitutional
Law and Jurisprudence; the earls and dukes, Copyright and Antitrust;
below those are Evidence and Civil Procedure, as they do all the real
work; and way, way below those are legal writing . . . clinics . . . and
ADR.”65 So too for young lawyers who identify themselves with ADR,
Reynolds suggested.66

In an article in the Cardozo Journal of Conflict Resolution titled The
Lawyer with the ADR Tattoo, Reynolds dissects stigmas and stereotypes
about having dispute resolution on one’s resume as an aspiring attor-
ney or aspiring law professor. She presents the fundamental question
of the ADR brand as follows:

Should newly graduated lawyers list ADR-related creden-
tials on their resumes when looking for jobs? In today’s
highly competitive market for legal talent, does highlighting
alternative competencies help young lawyers distinguish
themselves, or does it actually harm their chances of get-
ing an interview?67

Thus Reynolds extends Moffitt’s inquiry about the current place
of ADR in law school curricula, scrutinizing the relationship between
ADR and marketability. She finds that students are surprised to learn
of the paucity of jobs available in wholly ADR-related endeavors
immediately following law school.68 Moreover, although the skills
encompassed by ADR are desired by clients and legal employers, par-
ticularly negotiation and dealmaking,69 the brand itself (“ADR”) is
seemingly not so desirable. Advertising oneself as ADR-identified—
as practitioner, sympathizer, or even scholar—may turn off employers
who “may wrongly assume that ADR-identified people are part of an

65 Jennifer Reynolds, The Lawyer with the ADR Tattoo, 14 Cardozo J. Conflict
66 Id. passim.
67 Id. at 397.
68 “[T]here is no doubt that even the most traditional lawyers use ADR tech-
niques and processes all the time, from client counseling to negotiation to
mediation to arbitration—even if those same lawyers profess no need for ADR.”
Id.
69 See, e.g., Robert H. Mnookin et al., Beyond Winning: Negotiating
To Create Value in Deals and Disputes (2000) (reworking interest-
based negotiation precepts in modern legal dispute resolution and dealmaking).
undesirable counterculture of non-competitive, non-assertive, passive, anti-law types.”

A survey of her classmates from Harvard Law School (currently practicing successfully in a range of legal careers) showed that a resume focused on solely ADR-related endeavors could eliminate a candidate from consideration. Most respondents agreed that having a dispute resolution certificate or credential did not hurt an applicant’s chances, so long as that applicant also demonstrated traditionally elite credentials such as journal or moot court participation. Our own experience confirms this observation. Anecdotal reports from graduates of Cardozo’s Mediation Clinic suggest that traditional law firm employers value ADR credentials as indicative of emotional intelligence and real world savvy, though such graduates were generally able to get in the door because of the so-called “elite credentials” on top of ADR competency.

Reynolds posits a few potential solutions to this ADR branding challenge. Citing Nancy Welsh, she proposes literally changing the field’s name to “procedural law.” Since the major areas of ADR “are taught in law school as part of a lawyer’s toolset when engaging in procedure, [Welsh] advises including them in the broad umbrella of procedural law, which also includes civil and criminal procedure.” This approach situates ADR within recognized, and already valued, legal disciplines. Additionally, Reynolds argues, “for those who suspect that ADR is code for ‘not good at/interested in regular law,’ removing the ADR label and replacing it with a more law-like label may alleviate that concern.”

Strategically re-naming a discipline might seem an extreme, perhaps crude fix. But the overall branding challenge may be important in properly elevating the place of ADR in the law school curriculum. The economy is demanding better prepared young lawyers, and there seems to be consensus that the skills taught in dispute resolution programs are desirable in applicants for legal jobs. At the same time, as Reynolds points out, “alternative dispute resolution” feels

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70 Reynolds, supra note 65, at 397.
71 Id.
72 Id. at 414 n.58 (citing Professor Nancy Welsh, The ADR Brand, Roundtable at the International Law & Society Annual Meeting (June 8, 2012).).
73 Id. at 414–15.
74 Id. at 415.
somehow “unsavory” or “soft” to many who do legal hiring—both in academia and in practice. While we take no position on a name change for the field, we sympathize with the underlying issue. One way or another, as the place of ADR is reconsidered, so too must practitioners and academics rethink stereotypes and branding. In some ways, the shift that Reynolds advocates is slowly happening through the morphing of the tag “ADR,” standing for alternative dispute resolution, to appropriate dispute resolution, or to just dispute resolution dropping of the “A” altogether. At the same time, new labels for aspects of ADR like “problem-solving,” “deal-making” and “dispute system design” are gaining currency. Such terms may be appealing to the traditional lawyer and may enhance the field’s acceptance and growth.

IV. Characteristics of an “Island” School: Cardozo as a Case Study

Given the genesis and current state of clinical and classroom ADR teaching, as well as the reputational issues that ADR faces, how can more schools become “Islands”? What are the characteristics of a school in this category? We examine Cardozo’s Kukin Program for Conflict Resolution in this Section to offer a case study of the offer-

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75 Id.
76 In some ways, “alternative dispute resolution” is a useful moniker, since it does effectively remind parties that it represents an alternative to traditional litigation. In some forms, it can also represent a unique theory of justice emphasizing party collaboration and self-determination. A title such as “procedural law” does not quite get at those connotations.
77 For example, the ABA Section of Dispute Resolution gives the annual Lawyer as Problem Solver Award. The Award “recognizes individuals and organizations that use their problem-solving skills to forge creative solutions [and have] exhibited extraordinary skill in either promoting the concept of the lawyer as problem-solver or resolving individual, institutional, community, state, national, or international problems.” Lawyer as Problem Solver Award, Am. Bar Ass’n, http://www.americanbar.org/groups/dispute_resolution/awards_competitions/lawyer_as_problem_solver_award.html (last visited Jan. 14, 2013).
ings, pedagogy, and culture of one institution deeply committed to experiential learning through ADR.\textsuperscript{79}

The core of any academic program is the courses offered to students. Each semester students at Cardozo can choose from courses in negotiation, mediation, arbitration, and dispute resolution processes.\textsuperscript{80} Additionally, specialty courses are regularly offered in, for example: bioethics mediation, collaborative family law, divorce and family mediation, international dispute resolution, labor and employment ADR, international commercial arbitration, and representation in mediation.\textsuperscript{81} These courses are open to 2L and 3L JD and all LL.M. students.

At the heart of the school’s dispute resolution program are three clinics: a Mediation Clinic (full year), a Divorce Mediation Clinic (one semester, offered in both fall and spring), and a Securities Arbitration Clinic (full year). These clinics keep Cardozo students vitally connected to the challenges and opportunities in the real world. This includes building relationships with alumni in these fields, ultimately resulting in jobs—to provide one example of taking a “silver lining” to the mint (referring to the opening quotation).\textsuperscript{82} The mediation clinics provide students with the additional professional identity of being knowledgeable about the role of a neutral, and in fact, some students move on to practice as mediators directly after law school.\textsuperscript{83}

An ADR Competition Team and an Arbitration Practicum at Cardozo, which involve coursework, writing, and extensive moot- ing, take students to various competitions in the United States and

\textsuperscript{79} We hope readers will forgive the fact that we have chosen our own institution for this overview. We know this institution best and felt a snapshot of the ADR program here would be helpful.


\textsuperscript{81} Id.

\textsuperscript{82} See Marquis, supra note 2.

\textsuperscript{83} While it is notoriously difficult to become a mediator right out of law school, it is possible with proper preparation. For example, a number of Cardozo alumni have developed successful practices in the family and divorce area. Adam Berner (MEDIATION OFFICES, http://www.mediationoffices.com/ (last visited Dec. 18, 2012)), Catherine Hannibal (MEDIATION WORKS, http://mediationworksny.com/ (last visited Dec. 18, 2012)), and Pamela Zivari (PAMELA ZIVARI, LINKEDIN.COM, http://www.linkedin.com/pub/pamelazivari/14/a04/193 (last visited Jul. 14, 2012)) provide three models. Cardozo alum- nus Jed Melnick (Melnick, JAMSADR.COM, http://www.jamsadr.com/melnick/ (last visited Jan. 14, 2013)) is the youngest mediator practicing at JAMS.
abroad (Paris, Toronto, Hong Kong and Vienna).\textsuperscript{84} Such competitions (and congratulatory notices on school bulletin boards for competition winners) raise the profile of the dispute resolution program, as it offers a sister program to Moot Court, allowing for travel, résumé-building opportunities, and—most importantly—the refining of key lawyering skills.

Students can also compete to participate on the \textit{Cardozo Journal of Conflict Resolution}. Founded in 1998, the \textit{Journal} publishes three issues per year and also hosts a major annual symposium.\textsuperscript{85} Through its symposium and other events, the \textit{Journal} brings ABR professors and practitioners to Cardozo and helps build the field by offering a conduit for scholarship to become widely disseminated.\textsuperscript{86}

Cardozo offers both a Certificate in Dispute Resolution for J.D. candidates, as well as an LL.M in Dispute Resolution & Advocacy.\textsuperscript{87} Both of these programs require substantial credits for coursework covering competency areas of negotiation, mediation, arbitration, counseling, and dispute resolution processes, together with a scholarly paper and an externship or clinic.

Cardozo’s faculty sees two broad pedagogical values to ADR. First, courses on negotiation, mediation, and arbitration are increasingly important areas of practice, and thus increasingly relevant, arguably necessary, areas of study for law students. Instances illustrating this growing relevance in specific arenas include: an increasing number

\begin{itemize}
\item Cardozo students regularly participate in the American Bar Association (ABA) Negotiation Competition, the ABA Representation in Mediation Competition, the ABA Client Counseling Competition, the ICC International Commercial Mediation Competition (Paris), the International Competition for Mediation Advocacy (Toronto), Jeffry S. Abrams National Mediator Competition (Houston, TX), Robert R. Merhige, Jr. National Environmental Negotiation Competition (Richmond, VA), St. John’s Annual Securities Dispute Resolution Triathlon (New York, NY), and the Vis Moot Court Arbitral Competitions (Vienna and Hong Kong). See \textit{Competitions}, \textit{CARDozo SCHOOL OF LAW}, http://cardozo.yu.edu/programs-centers/kukin-program-conflict-resolution/competitions (last visited Jul. 23, 2013).
\end{itemize}
of courts are referring complex probate matters to mediation; an increasing number of commercial negotiations are the result of online bargaining; and the management of the e-discovery process, a ballooning aspect of all types of civil litigation, has led to courts and parties employing neutral e-discovery arbitrators. Suffice it to say, negotiation, mediation and arbitration are no longer “sideshows” to the American legal regime, if they ever were. It should now be commonly accepted that a working knowledge of the dispute resolution spectrum is crucial for lawyers representing businesses and individuals. This relevance alone justifies more related coursework.

But the faculty also acknowledges a second value to ADR offerings beyond the substance of those courses. Training in counseling, negotiation, and mediation provide crucially important skills that are applicable to virtually every area of legal practice. A centerpiece of Cardozo’s ADR program—the year-long eight-credit Mediation Clinic—is a perfect example of these twin goals of ADR: specific substance and transferable skills. By way of background, the Mediation Clinic has three essential components: an intensive training program prior to the start of the school year, a four-hour weekly mediation session, and a three-hour weekly classroom seminar. Mediations occur through partnerships with the New York Peace Institute, which

90 Allison O. Skinner, Alternative Dispute Resolution Expands into Pre-Trial Practice: An Introduction to the Role of E-Neutrals, 13 Cardozo J. Conflict Resol. 113 (2011–2012); see also Daniel B. Garrie & Edwin A. Machuca, E-Discovery Mediation & the Art of Keyword Search, 13 Cardozo J. Conflict Resol. 467 (2012).
92 The training program is co-taught by Professors Lela Love and Joseph Stulberg. The trainers, and hence the program, are certified by the NYS Court Unified Court System ADR Office, qualifying students to become community mediators (after the completion of an apprentice program). At the end of the twenty-four-hour training, students lead mock mediations and are observed and critiqued by various outside mediators. See Mediation Clinic, Cardozo Law (Dec. 7, 2007), http://www.cardozo.yu.edu/MemberContentDisplay.aspx?cmd=ContentDisplay&ucmd=UserDisplay&userid=10402.
operates in New York’s Civil Court and Small Claims Court and in community dispute resolution centers in Manhattan and Brooklyn. The Clinic also mediates cases for the Equal Employment Opportunity Commission.

In the weekly seminar portion of the clinic, the work is varied. Students engage with scholarship on issues related to the full spectrum of dispute resolution models and processes. Academics and practitioners often give guest lectures, and the class remains engaged with dispute resolution events around the city, for example, by taking class trips to such places as the New York City Bar Association Mediation Settlement Day, JAMS, and the Red Hook Community Justice Center. Importantly, a number of the seminar’s specific topics of study are particularly relevant to young lawyers. These include training in representation in mediation, domestic violence awareness in family disputes, and legal negotiation. To train students in a current problem negotiating attorneys face—special considerations for executing successful online negotiations—students participate

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93 In New York State, the Civil Court has jurisdiction over claims up to $25,000. Small Claims Court has jurisdiction over claims up to $5000. In Small Claims, both parties are generally unrepresented by counsel; in Civil Court, representation varies. See SMALL CLAIMS http://www.nycourts.gov/courts/nyc/smallclaims/ (last visited July 14., 2013).


95 Cardozo’s Mediation Clinic has partnered with the EEOC for more than a decade mediating cases referred by Administrative Law Judges at the federal EEOC. See Mediation Clinic, CARDOZO SCHOOL OF LAW, http://cardozo.yu.edu/clinics-professional-skills/clinics/mediation-clinic (last visited July 23, 2013).


97 JAMS is one of the largest private providers of dispute resolution services in the world. See About the JAMS Foundation, JAMS ARBITRATION, MEDIATION, & ADR SERVICES, http://www.jamsadr.com/jamsfoundation/xpqGC.aspx?xpST=JAMSFoundation (last visited Jan. 13, 2013).

in complex Internet-based negotiations with counterparts from other law schools.99

The philosophy of the Clinic and seminar is clear: Mediation is a “distinct paradigm” of justice, fundamentally different from litigation.100 Students are taught to place a high value on parties’ self-determination and ability to collaboratively problem-solve.101 The resulting mind-set that is developed is one of lawyers as problem-solvers—a mindset that, for many students, has a romantic appeal comparable to that of lawyers as zealous advocates.

From the student perspective, the Clinic is about much more than learning to mediate. Sitting in the mediator’s chair grants exposure to raw human conflict. For many students, mediating presents the first opportunity to interact directly and deeply with “clients,” that is, people ensnared in conflict who require professional assistance. Unlike many law school clinics where students might get hands-on experience in legal work but never (or rarely) interact with the individuals they serve, student mediators dig deep. Mediation allows students to directly engage with parties’ business models, family structures, attributes, emotions, and human strengths and weaknesses. The process allows students a unique window into the ways that communication can break down and mistrust, bitterness, and anger can fester. Some might see all of this as tangential to training students to provide legal services. To the contrary, close insight into the practical problems that affect clients, to clients’ interests and the issues they become embroiled with, is bedrock upon which all professional and legal counsel is based. Participants in the Mediation Clinic leave the experience with broad exposure to varieties of conflicts and solutions, as well as an appreciation of the dynamics of conflict and conflict resolution for disputing parties. Seeing conflict from the neutral’s perspective also has the advantage of injecting, early on, the perspective that there tend to be two sides to controversies—a helpful lesson for attorneys.

In their second semester of the Clinic, students write scholarly papers connected with their study of dispute resolution and give

99 For an overview of the increasing importance of and attention to digital negotiations in pedagogy, see generally Melissa Nelken, Evaluating Email Negotiations, 3 Rethinking Negotiation 205 (2012).
101 Id. at 739.
community presentations. The development of a scholarly paper and the construction of an engaging presentation mean that students pull together what they have learned in the spring semester of the year-long program and, essentially, give it back to others. Publishing the paper and getting an audience that can benefit from a presentation are stressed.

In sum, the Mediation Clinic is an intensive academic and practical experience that exemplifies the twin aims of Cardozo’s approach to ADR generally. Students learn the substance of dispute resolution processes (e.g., the difference between arbitration and mediation, and how choice of process affects available outcomes), and also learn wholly transferable skills (e.g., how to glean information from parties, how to present ideas in a way that maximizes the other’s receptivity to the message, how to negotiate and how, at the same time, to develop trust and rapport).

Lela Love, who teaches the Clinic, stresses that students should pay attention to four “Ps” to succeed in the Clinic—and the field generally. First, the importance of Practice to success as a professional; second, the importance of Participation in the life of our times (e.g., engagement with local and national dispute resolution personalities, programs, and initiatives); third, the importance of writing and scholarship—Papers assigned by the Clinic reflect this goal; and finally, the importance of Presentations—hence the course requirement that students make a presentation to a community group or a class in the second semester.\(^{102}\)

Since clinics cannot service the larger population of students, the fact that all ADR courses at Cardozo incorporate significant experiential components is helpful. One example is “ADR in the Workplace,” a simulation-based course that examines the use of arbitration and mediation in labor and employment disputes. In addition to a doctrinal introduction focused on the substantive areas involved, there are in-class exercises through which students learn to analyze fact patterns, make arguments, and issue arbitral rulings. Later in the semester, students conduct two simulated arbitration hearings, two simulated mediations, and also write an arbitral decision based on

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\(^{102}\) For example, students regularly make presentations on mediation and alternative dispute resolution processes to high school and college students, religious congregations, law student classes and groups, lawyers (often lunch-time programs in firms), and other community groups, such as mediators, the police, gay organizations, and the like.
an assigned fact pattern. The simulation format allows students to learn and apply case analysis and presentation skills in a safe and controlled environment.\textsuperscript{103}

Additionally, a curriculum that embraces dispute resolution leads to students taking initiatives on their own to simultaneously contribute to the field and build their résumés. The Cardozo Dispute Resolution Society (CDRS) is an extraordinarily active student group that is a student chapter of the American Bar Association Dispute Resolution Section. CDRS broadens educational and professional opportunities for students by creating programs that complement the curriculum, including skill-developing workshops, film festivals, brown bag lunches, and panels with experts who explore specialized areas or respond to current events. Beyond Cardozo, the CDRS is active in the greater ADR community, working closely with such organizations as Mediators Beyond Borders (MBB), the New York State Bar Association, and the New York City Bar Association to help with initiatives where student research can make a difference.

Importantly, this ADR program does not exist in a vacuum. This brings us to one final point about what makes “Island” schools special: a cultural recognition of dispute resolution. Schools educate not just through their clinical and curricular offerings, but also through subtle clues they give to their students. What do we mean by clues? No administrator at Cardozo, or at most institutions we suspect, specifically instructs students on the importance of law journal participation. Yet somehow, through the grapevine, first-year students quickly realize that they should take their writing competition seriously. Students modify their behavior and priorities to the institution’s culture and values. “Island” schools effectively communicate ADR’s tremendous value. Cardozo, for example, boasts its ADR offerings in its admissions materials and alumni communications. It hosts numerous events on dispute resolution each year and those are publicized vigorously through the school’s communications office. In addition to standard lectures and panel discussions, events include the Journal’s annual day-long symposium\textsuperscript{104} and the annual presentation of the International Advocate for Peace Award.\textsuperscript{105} That Award has

\textsuperscript{103} Course information on file with the instructor, Professor David Weisenfeld.
typically been given to a high-profile figures, such as former Presidents Bill Clinton and Jimmy Carter,\textsuperscript{106} and Desmond Tutu,\textsuperscript{107} and the ceremony is a major yearly event for the entire school to rally around a peacemaker.\textsuperscript{108} Cardozo and other “Island” schools not only implement the twin aims of ADR education, but also foster a culture that encourages the study of dispute resolution. That culture rejects the stereotypes that Reynolds identifies, which cast ADR as an “anti-law” tattoo, marking a student like a scarlet letter.\textsuperscript{109} A student at an “Island” school who tells her friends that she plans to take a negotiation course will be in good company.\textsuperscript{110}

As law schools consider best practices in experiential learning, deans and faculty should give experiential ADR a closer look. As Cardozo’s program demonstrates, these offerings expose students to both increasingly important areas of law and to problem-solving skills that are useful in a myriad of legal settings.

V. Merging Islands into Mainland

If every law school offered ADR programs on par with the so-called Island schools, young lawyers would be far better prepared for real-world practice. But an even grander vision is to reimagine the landscape entirely. Here we propose more radical alterations to

\begin{footnotesize}
\begin{enumerate}
\item[106] Id.
\item[109] Reynolds, supra note 65, at 397.
\item[110] The Cardozo Dispute Resolution Society (CDRS), a student club dedicated to ADR, is one of the largest of the 55 student organizations at Cardozo. In 2011–2012, CDRS hosted a dozen events, organizing speaker and event series to supplement the academic program. See \url{http://www.cardozo.yu.edu/student-life/student-organizations/cardozo-dispute-resolution-society} (last visited July 13, 2013).
\end{enumerate}
\end{footnotesize}
traditional law school curricula. Again, we believe that the Great Recession has created the context for dramatic reform.

For nearly 150 years, despite great innovation in advanced coursework, the foundational first-year curriculum has gone largely unchanged. Students at nearly every law school in the country take Civil Procedure, Contracts, Constitutional Law, Criminal Law, Legal Writing, Property, and Torts. Though much has been written about various amendments to this core, it has escaped most efforts at reform. We propose a new required course focused on dispute resolution processes and skills.

Practically speaking, the addition of a new course would require credit hour reductions in two or three of the other required first-year courses. Different schools might approach this juggling of credits differently, reducing the number of credits allocated to the other doctrinal courses. But the result would be the same: a new course in the curriculum to show students that lawyering is about more than appellate decisions and doctrine. Students would, from the get-go, view their study of law as an exercise in learning to solve problems. This would directly address the concerns articulated in the 2007 Carnegie Report, which strongly recommended that “doctrinal instruction [should not] be the exclusive content of the beginner’s curriculum.” Rather, lawyering, professionalism, and legal analysis should be joined from the start.

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112 This general assertion is subject to creative tinkering at various schools. At Cardozo, for example, Legal Research and Writing and Elements of Law are part of the first-year curriculum. The latter class is a half-semester overview of the cannons of construction and the basic hierarchy of legal authorities. There is a negotiation exercise in the Legal Writing course, and, depending on the teacher, some ADR may be introduced in Elements of Law.


115 Sullivan et al., supra note 14.
This proposal is not entirely new; it has been tried and suggested before in various forms at a handful of institutions, but has yet to achieve widespread implementation. Now is the moment to push for such implementation. There are two directions such a course could take. The first was attempted at the University of Missouri–Columbia School of Law in the late 1980s and 1990s, and the second began in 2010 at Hamline School of Law, located in Saint Paul, Minnesota. Both are “Island” schools in Moffitt’s terminology, offering robust clinical and academic opportunities in ADR.\footnote{Both are consistently ranked in the top ten dispute resolution programs in the United States by \textit{U.S. News and World Report}. See \citeauthor{Moffit}, \textit{supra} note 42.} Both schools have experimented with slightly different versions of this sort of first-year course.\footnote{A more limited version of this idea is to integrate ADR into the civil procedure course and “break down the artificial walls” between the two areas. \citeauthor{Sternlight}, \textit{Separate and Not Equal: Integrating Civil Procedure and ADR in Legal Academia}, 80 \textit{Notre Dame L. Rev.} 681, 722 (2005). Our concern with this proposal, compared to the Missouri and Hamline models, is that the already stuffed Civil Procedure curricula seem likely to crowd-out any focus on ADR. The result of integration might turn into a standard Civil Procedure course with a few days of ADR basics tacked on, leaving no time for either depth or creative, problem-solving role-plays.}

An early and innovative model was pioneered at Missouri-Columbia in 1985. The so-called Missouri Plan called for ADR concepts and training to be thoroughly integrated into first-year courses.\footnote{Leonard L. Riskin, \textit{Disseminating the Missouri Plan to Integrate Dispute Resolution into Standard Law School Courses: A Report on a Collaboration with Six Law Schools}, 50 \textit{Fla. L. Rev.} 589, 592–93 (1998).} For example, contracts students practiced model contract negotiations.\footnote{\textit{Id.} at 592.} Property students were required to interview and counsel clients on an estate matter.\footnote{\textit{Id.} at 593.} In criminal law, students acted as the prosecutor or defense counsel to negotiate a plea bargain based on the facts and legal circumstances.\footnote{\textit{Id.}} Professor Leonard Riskin developed this Plan, and wrote about its implementation in a 1989 article:

\begin{quote}
We teach dispute resolution in all first-year courses, so we can show students the applicability of a dispute resolution perspective in virtually any area of law . . . We decided that the various dispute resolution activities should be conducted primarily by the professors assigned to these first-year
\end{quote}
courses, rather than by specialists, because we wanted our entire first-year faculty to become familiar with dispute resolution knowledge, skills, and perspectives.122

Through a two-year grant from the Fund for the Improvement of Post-Secondary Education (FIPSE) that lasted from 1995–1997, Missouri partnered with six other law schools—DePaul, Hamline, Ohio State, Inter-American, Tulane, and the University of Washington—to see whether they could “export” the so-called Missouri Plan. Riskin, who until 2006 served on the faculty at Missouri-Columbia, led the effort and created customized videos,123 textbooks,124 and instructor’s manuals.125 The project was innovative but faced challenges. Riskin admitted that “the adapting schools showed varying levels of preparation for and commitment to this project.”126 Each presented unique circumstances, budgets, and faculty resources. Importantly, neither Missouri nor the six schools could sustain faculty support for the project once the grant money expired. Riskin himself left the University in 2006, and the full-integration scheme was no longer sustainable.127 Nevertheless, Missouri did continue in another direction. The Law School began requiring a one-semester course for first-year students entitled “Lawyering: Problem Solving and Dispute Resolution.”128 This course added to the traditionally sacrosanct

122 Id. at 596.
126 Riskin, supra note 118, at 598.
127 For an analysis of the Missouri experiment, see, for example, 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); Lea B. Vaughn, Integrating Alternative Dispute Resolution (ADR) into the Curriculum at the University of Washington School of Law: A Report and Reflections, 50 Fla. L. Rev. 679 (1998).
128 “This course is designed to provide students an introduction to critical lawyering skills; to give students an overview of the alternative processes that a lawyer can employ to resolve a client’s problem; and to offer students an understanding of the lawyer’s role as a problem solver. It includes an introduction to Interviewing, Counseling, Negotiation, Mediation, Arbitration, mixed dispute resolution processes and ways to choose or build a dispute resolution
first-year curriculum, broadening the conceptions of justice and problem-solving that students confront.

In 2010, Hamline University School of Law began to require a similarly innovative one-semester course entitled “Practice, Problem-Solving, and Professionalism,” or “P3” as students refer to it, in the first year curriculum. As the course descriptions show, the Hamline course is substantively similar to the required first-year course currently in place at Missouri. A crucial difference, however, is in the branding. Three professors leading this course—Bobbi McAdoo, Sharon Press, and Chelsea Griffin—believe that the title “dispute resolution” is toxic, “contributing to the mindset that ADR is different (read: less important) than real lawyering work.” Hamline rejects the Missouri model of the 1990s for the same reasons that Missouri itself eventually rejected it:

First, we believe that model is viable only for law schools with someone on the faculty as singularly focused as Riskin, and with grant money available to implement the model. Second, the pedagogies of using simulations and even “adventure learning” appropriate to a problem-solving course are not a good fit for most doctrinal professors. Third, the amount of coordination among and between very

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129 “Lawyers assume many leadership roles as professionals in today’s society, all of them grounded in problem-solving: advocate, counselor, negotiator, transactional architect, and many others. This course will foster an understanding of the lawyer’s role as a problem-solving professional and provide an overview of the range of dispute resolution processes lawyers use to resolve client problems, such as negotiation, mediation and arbitration. Law students will be introduced to the key skills of effective communication and negotiation; and will explore the breadth of career possibilities available for lawyers. Student learning will be enriched throughout the course by a variety of experiential strategies to promote practical skill development.” First Year Course Descriptions, Hamline School of Law, http://law.hamline.edu/course_descriptions.html (last visited Dec. 18, 2012).

130 McAdoo, supra note 29, at 43.

131 Adventure learning emerged as a response to a perceived over-reliance on fictional in-class simulations. Adventure-style assignments force students to utilize negotiation skills in real-world settings, reporting back to the class in the form of papers or presentations. See generally Sharon Press, Noam Ebner & Lynn P. Cohen, Assessing the Adventure, Assessing Our Students, Assessing Ourselves (2012).
independent law faculty members required by a fully integrated model is simply too overwhelming.\textsuperscript{132}

Despite these critiques of the Missouri Plan, McAdoo does believe that “First-year students in particular need a framework for the rest of their law school education that can also serve them well in practice.” Problem-solving, she argues, can serve as that framework.\textsuperscript{133}

The P3 course is still being developed, with amendments each semester based on student and faculty feedback. As it currently stands, the course meets three times per week and is co-taught by a tenured or tenure-track professor and an alum adjunct professor. The intent was to create “a small class feel by dividing the class into two groups: one led by the professor, and one by the adjunct.”\textsuperscript{134} The syllabus includes a variety of topics in pre-litigation advocacy and dispute resolution models.\textsuperscript{135} Negotiation, mediation, arbitration, and process choice generally are all introduced through articles, book chapters and role-plays throughout the semester. Students engage in “adventure learning,”\textsuperscript{136} which “take[s] place outside traditional classroom settings, involve[s] some element of real or perceived risk, and involve[s] the whole person (not just the cognitive).”\textsuperscript{137} There is also a significant alumni-practitioner component to the course. Alumni participate in role-plays, discussions, and activities with students. As stated, sections are co-taught by an alum who “[provides] practice perspective” to issues discussed.\textsuperscript{138}

The course emphasizes very real-world examples of how lawyers approach problems. Many of the negotiation assignments in the first iterations of the course were based on the collapse of a Minnesota bridge in 2007—an event with which many of the Minnesotan students were familiar.\textsuperscript{139} The situation highlights the many different

\begin{thebibliography}{9}
\bibitem{132} McAdoo, supra note 29, at 43 (internal citations omitted).
\bibitem{133} Id. at 50.
\bibitem{134} Id. at 60.
\bibitem{135} Id. at 68.
\bibitem{136} Press, Ebner & Cohen, supra note 131.
\bibitem{138} McAdoo, supra note 29, at 60.
\end{thebibliography}
roles that lawyers play, including: counseling clients, negotiating with opposing counsel and local officials, working on legislation, serving as special masters, and, of course, litigation. Hamline alumni—who were particularly involved in this bridge case—allow students to hear directly from the attorneys who worked in these various capacities.

What separates the Hamline model of this course from Missouri is, again, branding. The course is “sold” to students not as “alternative” dispute resolution or dispute resolution, but rather as an introduction to law practice and problem solving. The substance—with the exception of the heavy alumni involvement—emphasizes the same fundamentals of an upper level general ADR introductory course or the current Missouri first-year course. The difference is in marketing and philosophy. The Hamline faculty argue that “separate [introductory] ‘ADR’ courses may have contributed to the undesirable impression that the lawyer who practices the skills taught in ADR courses is doing something other than the work of a ‘real lawyer’ . . . [which] is false.”140

Certainly a one- or two-credit introductory course in dispute resolution for first-year students will not provide the skills or depth of advanced clinics and coursework. But it would provide a theoretical foundation, within the exalted first year of law school, for the wider range of dispute resolution processes with which twenty-first-century lawyers engage. It is difficult to know the importance of the name or marketing of the course—whether it would be billed as a course in dispute resolution or a course on legal practice and counseling. That decision could be left to individual institutions. The bigger picture is that such a first-year course is surely a step in the right direction, particularly if added in conjunction with the “Islandizing” suggested in Section IV. From their first months in law school, students will understand the broad array of activities that lawyers confront, particularly process choice and counseling. Students will also engage in role-plays, solving detailed real-world problems with clients and adversaries. *Beginning* law school in this way (rather than tacking on an optional course in the second or third year) gives students an extraordinarily different framing for their professional lives. Additionally, for students who become excited about the field of dispute resolution, learning early on about the subject gives them much longer to explore related courses, clinics, competitions, and extracur-

140 McAdoo, *supra* note 29, at 90.
ricular activities. In this way, problem solving would be merged into the law school mainland.

VI. Conclusion: Finding the Silver Lining

The Mediation Clinic training at Cardozo begins with John F. Kennedy’s famous observation: “The Chinese use two brush strokes to write the word ‘crisis.’ One brush stroke stands for danger, the other for opportunity. In a crisis, be aware of the danger—but recognize the opportunity.”¹⁴¹ That is a valuable reminder in the context of heated negotiations and mediations. Warring parties are in turmoil, but by virtue of their sitting across the table from one another, they have the opportunity to address their dispute in a constructive manner. The same lesson applies to the current crisis in legal education. The Great Recession has revealed dangerous cracks in the system that many academic and industry leaders have long recognized.¹⁴² This is an opportunity to address them head on, forging a stronger system of legal education than existed before the recession began.

Most academics probably agree on a number of the problems, as well as some solutions to the current crisis in legal education. Three of the most frequently discussed (though largely unimplemented) reforms might include: 1) a decrease in resources allocated to redundant or overly-specialized law journals;¹⁴³ 2) an increase in the resources allocated to clinics to supplement doctrinal courses;¹⁴⁴ 3) and a decrease in the size of entering law school classes, both to

¹⁴² As noted in Part II, the legal education reform movement—which has roughly coincided with the period since the Pound Conference—has elicited fierce critiques of the Langdellian model. The 1992 MacCrate Report and 2007 Carnegie Report got the attention of many academics. But there is broad agreement that much more work still needs to be done. See generally, Russell Engler, The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow, 8 CLINICAL L. REV. 109 (2001).
¹⁴⁴ See, e.g., Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, Clinical Education for This Millennium: The Third Wave, 7 CLINICAL L. REV. 1 (2000).

We suggest that another area ripe for reimagining is the place of ADR in the curriculum.\footnote{One promising resource is available to educators by the Legal Education, ADR, and Practical Problem-Solving (LEAPS) Project. This endeavor of the ABA Section of Dispute Resolution’s Law Schools Committee was begun in 2010 to address the range of issues raised in this paper. Educators wanting new teaching techniques, coaching from ADR faculty veterans, curriculum models, or subject area resources can now go to the website maintained by the University of Oregon School of Law for a cornucopia of material. University of Oregon, \textit{Legal Education, ADR and Practical Problem Solving (LEAPS) Project}, http://leaps.uoregon.edu/ (last visited July 13, 2013).} A familiarity with the broad range of dispute resolution processes can no longer be cast aside as “soft” or “secondary”—or optional. Lawyers \textit{must} enter the profession ready to engage with negotiations, mediations, and arbitrations. Litigators will likely encounter all three broad areas well before setting foot in a traditional courtroom. Law school curricula need to reflect that reality. Looking at the current curricular landscape, we argue that this can be achieved in two ways.

First, per Part IV, schools should closely examine and replicate the work of the “Island” schools. This means a commitment to advanced coursework in ADR subjects. And it means offering clinics in mediation and arbitration. Mediation clinics in particular have enormous potential to expose students to a tremendous range of conflicts that future clients will face. Such clinics offer invaluable experience in developing interpersonal skills, interviewing, counseling, and negotiation—to say nothing of the specific skill of mediating. Clinics in Representation in Mediation are also a promising direction, insofar as the student learns representation in mediation but also learns to appreciate the mediator’s role and potential contribution.\footnote{Professor David White teaches a Representation in Mediation Practicum through Seton Hall School of Law, as well as a course on Representation in Mediation at Cardozo. \textit{David M. White}, \textit{Seton Hall University School of Law}, http://law.shu.edu/Faculty/fulltime_faculty/David-White.cfm (last visited July 23, 2012).}

Second, law schools should boldly rethink the seminal first-year curriculum by inserting a course on dispute resolution and problem solving. As Leonard Riskin noted in his reflections on the imple-
mentation of the Missouri Plan, “[d]uring the first year, students are highly impressionable and form their visions of what it means to be a lawyer.”148 Integrating bits and pieces of ADR into the traditional doctrinal courses, as Missouri attempted in the 1980s and 1990s, is certainly one possible path. However, as their 1995–1997 experiment with six other law schools revealed, this sort of change is arduous, since it requires both a rethinking of all syllabi and the agreement of all instructors. Moreover, Missouri had a large grant that allowed it to pay doctrinal faculty to develop appropriate simulations in their courses.149 A more practicable solution is to add an additional first-year course on dispute resolution processes and skills by reducing the credits allocated to the doctrinal courses. This model has been successfully implemented, most recently at Hamline University School of Law. We believe it would bolster students’ foundational understanding of lawyers as problem solvers, giving them comfort with the broad spectrum of dispute resolution processes and techniques. Undoubtedly, adding such a course to the sacrosanct first-year curriculum would be a large change, even for most of the “Island” schools. But it would be a change for the better.150

Together, these two moves would produce more practice-ready young lawyers. We would be using the crisis of the Recession as an opportunity to fix what’s broken. Students would benefit, legal employers would benefit, and law schools would benefit. In dispute resolution, we call that a win-win(-win).

148 Riskin, supra note 118, at 596.
149 In addition to funding Riskin and Missouri, the grant also gave $10,000 to each of the six collaborating schools. According to Professor Bobbi McAdoo, who directed the LL.M. program and taught at Missouri from 1998–2000, faculty interest waned once the funding dissipated. In short, the full integration solution was difficult to implement and even more difficult to sustain. McAdoo, supra note 29, at 43 n.14.
150 A third, interrelated goal will be to minimize the “tattoo” effect described by Reynolds, wherein ADR is seen as “weak” or “anti-law.” See Reynolds, supra note 65. This tattoo would be organically removed as practitioners begin to see the benefits of graduates with better problem-solving and interpersonal skills.