



University of Missouri
School of Law

Center for the
Study of Dispute Resolution

A photograph of six classical columns, likely the Columns of the University of Missouri, standing in a row on a grassy area. The columns are white with fluted shafts and Corinthian capitals. They are set against a background of lush green trees and a clear blue sky. The lighting suggests a bright, sunny day.

The Art of Teaching Dispute Resolution



From the Director

In 1984 the faculty at the University of Missouri School of Law identified what seemed like a missing piece in legal education: the amount of attention that law schools were paying to teach students how to be problem solvers.

The faculty realized that this gap was in part due to the lack of understanding regarding the theory and practice of how disputes were resolved outside the litigation context. While scholars and practitioners had started to study alternative dispute resolution processes, the field lacked a coherent core. With the support and encouragement of Dean Dale Whitman, the faculty embarked on a mission to shape the development of this nascent field of legal studies through the creation of the Center for the Study of Dispute Resolution, and a commitment to bring together scholars to teach and research in this area.

The spirit of innovation palpable in those early years led to the creation of a number of seminal programs in dispute resolution. Under the leadership of Professor Len Riskin, the inaugural director of the center, the law school faculty agreed to incorporate the teaching of different approaches to dispute resolution in all first-year courses. This plan, dubbed the “Missouri Plan,” became an important contribution to the field of dispute resolution and to legal education in general. Since then, the center has continued to play a significant role in nurturing dispute resolution scholars, training law students and developing the frontiers of the dispute resolution field.

The same innovative thinking behind the creation of the Missouri Plan continues to drive the faculty’s work today. The following pages contain a series of essays about the University of Missouri School of Law’s continuing efforts to teach dispute resolution theory and practice to students. The essays are written by the law school faculty, some of whom do all or most of their teaching in dispute resolution, and some who are incorporating dispute resolution concepts in their fields of expertise. The essays tell a rich story about innovative courses, creative teaching strategies and pioneering initiatives.

We hope you will find these essays of interest and helpful in your own teaching. We invite you to contact us if you are interested in receiving additional information about any of the courses and programs discussed here.

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Seminar on Life Skills for Lawyers



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In the late 1990s, Professor James E. Westbrook created a two-hour seminar called “Lawyering” for about two dozen third-year law students at the University of Missouri School of Law. He decided to teach this fall elective course because most of the law school curriculum emphasized doctrine and policy, without responding directly to students’ interest in the “real world” of private- or public-sector law practice, which most would soon enter.

Then, as now, some law school courses concerned such everyday practical skills as negotiation, mediation, client counseling and trial practice. These skills offerings, however, left much realism yet unexplored before students concluded their studies. In the 21st century, we take it for granted that law schools should deliver practical legal education, but Professor Westbrook was ahead of his time because he anticipated this expectation more than two decades ago.

As taught by Professor Westbrook, the Lawyering seminar examined anecdotal and survey results suggesting that some lawyers spent some or all of their lives unhappy with their career choice. The seminar was designed to help students anticipate what they would encounter after graduation and what choices they may have to make. The idea was that students would make better choices and be better lawyers with information about what awaited them after graduation. Professor Westbrook also sought to help students understand how to calibrate their professional choices and goals with their personal values.

To that end, during the seminar students heard from lawyers in private practice, those employed by corporations or governments and those who had chosen other career paths. The students were encouraged to reflect on their own experiences and their aspirations for the future. Each student wrote a paper that considered the issues and ideas discussed in the seminar.

I audited the seminar in the early 2000s and began co-teaching it with Professor Westbrook. In 2002, I began teaching the course by myself. It has evolved over the years, including a name change in 2006. When the law school created a required first-year course called Lawyering in 2005, some students found it confusing to have two courses with the same name. I asked the

2005 seminar students to rename the seminar and they selected, “Life Skills for Lawyers.” The name stuck and the course has been taught under that name since then.

Getting to Know Them

In Life Skills, a student’s seminar grade is based on a combination of several factors. Some are fairly traditional in the law school context, such as mandatory attendance and classroom participation, and some less traditional, such as a final autobiographical paper in which students are asked to look forward and backward about what he or she expects from life as a lawyer and as a person. In addition, students must also keep gratitude journals and separate acts of kindness journals with at least one daily entry. At the beginning of each class session, students initial a verification sheet to show that they have kept their journals, which no one but the student ever sees.

In preparation for the first class session, students are asked to prepare and share their life stories, including a listing of blessings and life mentors. I begin the class by telling the students my own life story. This first session sets the tone for the seminar because even though the students have known each other for at least two years, it is common for them to have shared very few intimate life details with their classmates. These student life stories frequently end with the storyteller and classmates in tears from such personal stories.

The Realities of Law Practice

The next few classes seek to focus the students’ attention on the realities of the practice of law. The students read articles concerning attorneys who have committed professional misconduct or crimes. The articles also address the stress and heavy workload that often accompany practice. Students discuss the articles and examine why some lawyers get into personal or professional trouble. They also discuss why so many attorneys remain unhappy or dissatisfied with their careers. Lastly, we talk about whether professional values are declining, and if so, why. Topics for this session include such ethical challenges as incivility, hourly billing, the public perception of lawyers and professional misconduct.

The next class session concerns the daily practice of law. Four to five relatively recent graduates talk with students about what attorneys really do and what the students should know before they enter the practice. To

spark conversation, a group of students submits questions in advance to the attorneys who speak to the students during the semester. This session tends to generate thoughtful and vibrant conversation as the students eagerly question the guest attorneys about their practices and what the students can and should expect about everyday life as an attorney. I ask students to follow up the class sessions with thank you notes to the guest attorneys.

As we enter the fourth week of classes and as the weather begins to cool, I take a break from the classroom and require students to participate in a team-building exercise – a ropes course. The University of Missouri has a variety of low- and high-rope structures designed for individual and group challenges. These ropes courses challenge the students intellectually, emotionally and physically in an uncertain environment where they experience success, failure, adventure and risk-taking. The goal is to encourage better group communication, teamwork, problem solving and leadership. The course is designed to be fun and challenging with participants emerging from the experience closer and more cohesive. Following the ropes course activities, there is focused reflection about the activity and a time for the group to pose questions and find connections from the rope exercise.

When we reconvene a week later we continue our discussion about the practice of law, this time with a focus on professionalism, ethics and civility within the practice. Two Missouri Supreme Court judges have graciously agreed each year to discuss these topics with the students. In a safe classroom setting, the students hear about what it takes to be an attorney from thoughtful judges who have mastered the practice and its challenges before ascending to the bench. The judges candidly discuss practicing before the court, as well as how to manage law practice most effectively and successfully. Students also hear how not to practice law, focusing especially on ethical concerns and lawyer-to-lawyer incivility.

The next few classes focus on a variety of selected topics, several of which I have incorporated at the suggestions of students or adopted to address topics of relevance to our times. We start with a class session on women and the law. I believe the course provides an environment particularly well-suited for discussing this issue for two reasons. First, over the years the class has attracted a significant number of female students. Second, the camaraderie that students have built by this point in the semester provides a safe environment for all students, but particularly female students, to share their concerns as they prepare to enter the profession. During the class session, students lead a discussion on women's issues related to the practice. The class explores how to balance practice with raising a family for women

After the seminar ends each year, I hear from students that writing their autobiography has helped them to focus on what truly matters to them and how they hope to achieve a balanced life marked by fulfillment, service and happiness.

who choose to do both. The class also examines the obstacles that confront women in a law firm environment.

The next class session considers the options open to graduates who do not desire to pursue the traditional practice of law. I invite several attorneys who have nontraditional practices to discuss the benefits and drawbacks of pursuing an alternative career path. This tends to generate conversation because even as they approach graduation, some students remain uncertain about what type of practice they want to pursue, or whether they want to practice law at all.

On Happiness

The next three class sessions explore the concept of happiness. One of the class sessions is a fairly open class format led by a group of students about being happy. Over the years, some sessions have included a game show on happiness, decorating pumpkins with preschool children at a local daycare center (the smiles generated in this class will remain with me for life), an outing to a crafts studio to paint, and a student poll and discussion on what makes the student happy. This class has consistently been fun and entertaining, but also very thought provoking.

Several years ago the students suggested having a class on personal finances. At first I was reluctant because I thought that finances were too self-explanatory and mundane. However, the years have demonstrated just how wrong I was. The students take copious notes on how to invest, when to invest, how to save, how to spend and how to prepare for retirement, which for them is decades away. The class shows them how saving today compounds their investment and helps secure their retirements. The class also explores debt payment, family finances and whether money can buy happiness.

As part of this section on happiness, I include a class session titled "Challenges." The class is led by a graduate who has endured more than his fair share of challenges. Our guest grew up in abject poverty and was raised in and out of foster homes and juvenile detention centers. When he was 16, he was shot and paralyzed. He finished high school, went to college and graduated from law school after four years of academic struggle. For almost two decades, he and his wife have been fulfilling his lifelong desire to work with

at-risk youths in his hometown of Kansas City. His riveting presentation always brings tears to the students' eyes and challenges the students to evaluate their own situations in life, to count their blessings and to consider how they can improve their own communities. The yearly seminar evaluations always mention this session as a student favorite.

Saying Goodbye and Giving Back

I use one of the final class sessions as an exit interview. This typically concerns whether and how to restructure the law school curriculum or the entire law school experience. Career services offerings routinely generate much animated discussion. The class permits the students to review their legal education and examine how, if at all, they would change their experience.

A week before the final class, I ask students to write their own eulogies. This exercise sounds morbid and the students' initial response tends to be slightly rebellious, but in the end they find the experience revealing. The students uniformly tell me that writing their eulogies requires them to consider the concepts discussed throughout the semester and ponder what they would like people to remember from their professional careers and personal lives.

Before the end of the term, students are asked to undertake a day of service with a project that they select.

For the past several years, the students have chosen to work on the annual Timothy J. Heinsz 5K Run/Walk held each spring at the law school to raise scholarship funds to honor our former dean who died unexpectedly while running in 2004. In 2014, students raised more than \$54,000 and attracted more than 400 participants.

The students' final papers tend to be quite personal, insightful, creative and introspective. Students routinely share personal concerns that they have not shared with anyone before. After the seminar ends each year, I hear from students that writing their autobiography has helped them to focus on what truly matters to them and how they hope to achieve a balanced life marked by fulfillment, service and happiness. The students uniformly note that family, friends, service and faith matter much more than material acquisitions.

Each year seminar enrollment closes in the first five seconds of online registration. The small size – 22 students – does more than promote open discussion that allows students to become much better acquainted; it also allows them an important and appreciated opportunity before graduation to consider how they want to structure and spend their careers and personal lives.

Embracing the Oxymoron: Emotional Intelligence for Lawyers



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Law students typically learn early in their first year that there is no place

for emotions in law. The lawyer's task is more clinical, even scientific. Lawyers, they are taught, must parse the raw facts, ascertain the relevant legal principles, and then weave them into an argument that will be persuasive even to the most hard-headed of courts. Save the emotions for the jury, counselor. Lawyers check theirs at the door.

There is, however, a fundamental problem with this time-honored command: It is literally impossible to do. Emotions are every bit a part of a lawyer's life as they are anyone else's. Ask any law student who has studied for an exam. Or any lawyer who has withstood a barrage of lies and insults from opposing counsel. Or any judge who has had to rule against a party when the law required but basic fairness would have compelled a different result. Or even any law professor who has had to fail a student she likes. Then there are the emotions of clients, office partners and staff, and the family back at home.

So if lawyers are going to be intellectually honest about emotions, we must acknowledge that the task with emotions is not so much to ignore them as it is to manage them effectively. Old school lawyers and professors might say that's what they really meant when they said to check their emotions at the door, but these two concepts are not the same. One calls for repression, which can be stressful and soul-eroding. The other calls for embrace, which can be stress-reducing and self-actualizing.

What is Emotional Intelligence?

Technically, emotional intelligence is the set of competencies that are associated with being able to identify and manage one's own emotions as well as the emotions of others. The pioneering work in this area was done by psychologist Peter Salovey, now president of Yale University, and his partner John D. Meyer. It was popularized by then *New York Times* science writer Daniel Goleman in the seminal work *Emotional Intelligence: Why It Can Matter More Than IQ* (1995).

As Goleman's title suggests, emotional intelligence stands in contrast to the traditional measure of intelligence, the Intelligence Quotient, or IQ. The fundamental premise

of emotional intelligence theory is that a good IQ simply isn't enough for success. Rather it also takes emotional intelligence – that is, ultimately, the ability get along with oneself and others. This may be obvious to anyone who has worked in social environments, but the empirical research bears out the importance of this human quality.

This finding by itself is significant because of the heavy weight that society places on IQ – and its component parts of verbal and mathematical intelligences. These narrow measures are the keys to academic success from the youngest ages through graduate education, and often determine a person's career opportunities.

The emotional intelligence research tells us it takes more than IQ to be successful. It takes emotional intelligence as well. Indeed, although the scholarship is still relatively young, and researchers still debate its quantitative metrics, it appears that EQ may be more important to success than IQ, at least in some circumstances. Equally significant, perhaps, it also suggests that unlike IQ, EQ is something that can be taught and learned.

Why I Teach It

I believe that law is one of those circumstances where emotional intelligence can make a significant difference for all participants. The research on misery and suffering throughout the legal profession, from the first year of law school forward, is well-chronicled and personally known by many who have worked in that environment. It is a tough field, rife with conflict, difficult personalities, fierce internal and external pressures, and a zeitgeist of brutish machismo that repels the very concept of personal support.

Emotional intelligence will not change legal culture, but it can help law students and lawyers deal with it more effectively than such traditionally acceptable coping mechanisms as booze, drugs and other behaviors that become addictive and destructive all too often. That is to say, if lawyers do *not* check their emotions at the door, and rather come to understand them – what triggers them, the feeling and effect of being engulfed by them, etc. – then they will be in a better position to manage them. While the research is yet to be done specifically on lawyers, the larger body of emotional intelligence research suggests that lawyers who embrace their emotional worlds in this way will be happier, more productive and

... if lawyers do not check their emotions at the door, and rather come to understand them – what triggers them, the feeling and effect of being engulfed by them, etc. – then they will be in a better position to manage them.

more effective, to the benefit of their clients, partners, families and society. In therapeutic terms, emotional intelligence provides attorneys with constructive rather than destructive coping skills for responding to the emotional challenges of the legal environment.

How I Teach It

Structure

In a law school environment, the Emotional Intelligence course can certainly be taught as a theory course, much akin to other doctrinal courses.

I prefer to teach it as a skills course, however, because to me the value of knowing the theory is to be able to apply it in practice. I require a few basic textbooks – Goleman's *Emotional Intelligence*, Richard and Bernice Lazarus' *Passion and Reason* (1994), and Roger Fisher and Daniel Shapiro's *Beyond Reason* (2006) – as well as several other articles and book chapters. The first few times I taught it, I offered it as a two-hour class. But we always ran out of time, to the students' frustration as well as mine, and I now teach it as a three-hour class.

I also require mindfulness training as part of the class, generally 15 minutes or so at the end of class, and I do so for two reasons. First, I know of no better way to help them get in touch with the actual emotions they are experiencing than by intentionally observing them. Second, self-awareness lies at the heart of emotional intelligence, and mindfulness training is a wonderful way to cultivate self-awareness at virtually no cost. I do not require them to meditate outside of class, but most of them end up doing so.

I could easily use an exam for grading, but this is an experiential course, and one of my goals is to help the students tie their coursework to their personal experience. I therefore require students to write weekly in confidential journals reflecting on the readings, class discussions and most importantly, how the materials relate to what is going in their lives. I also have them do a longer reflection paper at the end of the semester pulling together the entire course and what they have gotten out of it, as well as how they would improve it. The reflection papers are more work for me because I provide comments on all of them by the end of the semester, but it's also a much better

learning experience for them, and it helps me connect with the students and see the materials through their eyes.

Content

The content of the course can be divided into three basic parts: orienting to the topic, focusing on particular emotions and skill development in working with emotions (especially when interacting with others).

In the first classes, we try to define just what an emotion is – without using the word “feeling.” This is no easy task, but it forces the students to think hard and concretely about just what we are talking about. We also go over the physiology, which helps students understand why emotions can't simply be ignored; they are hard-wired into our human anatomy as part of our fight or flight response. We also consider the universality of emotions, which helps students realize that emotions are not culturally derived, although their triggers certainly can be.

We spend the next several weeks focusing on particular emotions, both the negative ones, such as anger and shame, as well as the positive ones, such as joy and relief. While it is a little older, I use the Lazarus book for this piece because it breaks down individual emotions well and provides for a rich source of discussion. I generally figure about a week per emotion, but often that isn't enough because by this point in the semester because student discussions are quite robust. Through it all, I am constantly challenging students with such questions as: What is your felt experience of this emotion? What triggers it for you? How do you normally respond when this emotion arises? The point is, again, to enhance their self-awareness of their own emotional terrain.

The last part of the course is mostly about skill development, and for this component I use Fisher & Shapiro's *Beyond Reason*. The book was written for the world of dispute resolution, but offers an excellent model for synthesizing knowledge about emotions into a useful tool. It's called the Five Core Concerns, and the basic idea is that we all have basic needs – appreciation, affiliation, autonomy, status and role – that can trigger emotions when they are met and when they are not met. Working with these concerns allows students to be able to put their newfound knowledge about emotions to work in the sometimes difficult task of managing the emotions of others.

Student Reaction

Unlike many skills courses, students are uniformly positive about the course, even those students who have difficulty with emotions or connecting to the topic. They are glad to have learned more about emotions, even if that's as far as it goes for them. As one student put it,

“I’m 31 years old and have been in school all of my life and I can’t believe I never learned anything about this.”

Some students find themselves strongly affected by the course, gaining a deeper understanding of who they are and more confidence in how they will handle themselves in the future. They often note in their journals that the class should be a required course for all law students, and comment about how it could be helpful especially if offered in the first year, when the students are at the front end of what for many is a three-year emotional roller coaster ride.

Finally, it’s worth mentioning how the students relate to the meditation component. Initially most are pretty skeptical, although occasionally some will have some experience with this practice or something similar like yoga, or just be curious. But they do find it relaxing and refreshing, and about halfway through the class often start writing about it in their journals. Sometimes they start their own practices at home or draw on the technique at particularly anxious moments during the day. One student at this point of the semester noted in his journal something to the effect of, “My wife notices that when I come home from this class that I am not as stressed out as I normally am when I get home from school. She’s glad I am taking it, and I think it’s the meditation. It just changes your frame of mind.”

A Few Words of Advice

I close with a couple words of advice for those interested in teaching the course. First, you must be comfortable with emotions generally, and with your emotions in particular. As with your students, many of your best examples will come from your personal experience. You need to be honest and open enough to share them, and receptive enough to embrace the emotions the students are sharing as well. This is more important than knowing the material, and if you can’t do this, you really shouldn’t teach the course.

On the other hand, if you can do it, you may well find the course one of the most rewarding experiences of your professional career. It is wonderful to watch your students’ sense of self-awareness grow every week, and to witness their steady cultivation of emotional intelligence – a tool that may help them for the rest of their lives. You will benefit, too. The class is fun, but it will push you in many ways as a teacher and as a person, in particular compelling you, too, to become more self-aware and to learn more deeply about your own emotional terrain. In this way, it is truly a shared learning experience, challenging for all, but well worth the effort for those who take it seriously.

“Less Salt, More Vitamins” – Teaching Dispute Resolution to First-Year Law Students



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For three decades, the University of Missouri School of Law has been a leader

in educating law students about the range of ways that lawyers help clients solve legal problems. We are especially well-known for our efforts in introducing all students during their first year of law school to dispute resolution.

In 1985, we began incorporating instruction in dispute resolution in all of the first-year courses. In 2004, we changed our approach by concentrating this instruction in our Lawyering: Problem Solving and Dispute Resolution course. This is currently offered as a two-credit course during the fall semester to all first-year students. It is designed to provide students with an introduction to critical lawyering skills, an overview of the alternative processes that a lawyer can employ to resolve a client’s problem and an understanding of the lawyer’s role as a problem solver.

We have experimented with different approaches to introduce students to the concepts of lawyering, problem solving and dispute resolution. The recent debates in the legal academy about providing law students with instruction in these areas highlight the importance of our experience. We hope that our experience will be of interest to other schools seeking to find creative ways to expose students to the theory and practice of lawyering.

A Brief History of the Course

In 1984, the law school hired dispute resolution expert Leonard Riskin to lead its curriculum design efforts, leading to the adoption of the “Missouri Plan,” which systematically integrated dispute resolution into all required first-year courses. The law school’s Center for the

Study of Dispute Resolution trained all faculty members in dispute resolution, encouraged interested professors to devise dispute resolution exercises and videotapes for their courses, and offered coaching and other assistance. Professor Riskin and Professor James Westbrook authored a pioneering textbook, *Dispute Resolution and Lawyers*, which helped faculty teach dispute resolution in their courses.

Writing four years after the start of the Missouri Plan, Professors Riskin and Westbrook noted that the basic approach had been institutionalized – the first-year faculty was familiar with dispute resolution processes, and that related exercises were common occurrence in most first-year courses. They also commented that the program had been successful in providing students with a solid foundation of dispute resolution skills, knowledge and perspectives. Still, Professors Riskin and Westbrook noted areas of concern and emphasized the need for continuing self-reflection and self-assessment, given the enormity of the task at hand.

The Missouri Plan continued to move forward over the next decade. In 1995, under Professor Riskin’s leadership, the center obtained a grant from the U.S. Department of Education’s Fund for the Improvement of Post-Secondary Education to help six other law schools (DePaul, Hamline, Inter-American Law School in Puerto Rico, Ohio State, Tulane and the University of Washington) develop their own adaptations of our project to integrate dispute resolution into standard first-year courses. These efforts led to the development and adoption of a variety of approaches to integrating the teaching of dispute resolution skills in the law school curriculum and the creation of centers, clinics and programs related to dispute resolution teaching and scholarship at several of these schools. Throughout this period, and while working with other schools in

developing their programs, our law school continued to adopt new initiatives in our own curriculum, such as creating the first LLM program in dispute resolution.

As the Missouri Plan hit its mid-teens and as we turned to a new century, there was a sense that it was time to rethink our model. In the context of reviewing the first-year curriculum, the faculty considered new ways of introducing students to the concepts and practice of dispute resolution.

In 2004, the law school revised the first-year curriculum to require all first-year students to take a three-credit course which sought to provide an overview of lawyer-client relationships, interviewing, counseling, negotiation, advocacy in mediation and arbitration, and selection of dispute resolution processes. Unlike the Missouri Plan in which dispute resolution concepts were dispersed throughout the first-year courses, the approach adopted in 2004 concentrated the teaching of these concepts into one course. In terms of Michael Moffitt's typology, in adopting the Lawyering course, Missouri shifted from "salting" all the required first-year courses with dispute resolution instruction to requiring all first-year students to receive this instruction in an integrated "vitamin" course (*Islands, Vitamins, Salt, Germs: Four Visions of the Future of ADR in Law Schools*, 2010). With a relatively few changes at the margin, the course has remained fundamentally unchanged.

The Current Format

We currently offer Lawyering as a two-credit course during the fall semester. We have offered as many as five sections in any given year, which has allowed us to keep each section to a very manageable size of 30 to 40 students, about half the size of the doctrinal first-year courses. The course continues to closely follow the goals adopted in 2004. The following description is taken from a current syllabus:

This course will examine lawyers' roles and help students understand how you want to act when practicing as lawyers. It will help students: (1) understand lawyers' roles and relationships with clients generally; (2) understand the distinction between problem-solving and traditional legal adversarial approaches to lawyering; (3) develop basic skills in interviewing and counseling clients and negotiation; (4) understand basic alternative dispute resolution (ADR) procedures and their strengths and weaknesses; (5) understand how to analyze cases to assess appropriateness of different dispute resolution approaches and procedures; and (6) improve analytical skills. Good analysis involves identifying problematic issues and alternative perspectives about the issues. It also involves making

In the tradition of the Missouri Plan, the Lawyering course challenges conventional wisdom by introducing students to the concept of the lawyer as problem solver.

sound generalizations based on theory and one's own experience to develop appropriate strategies.

This course focuses primarily on the roles of advocates with some discussion of the roles of neutrals (such as mediators and arbitrators). Students will analyze how lawyers can help clients select and participate in efficient, just, and appropriate methods of managing and resolving conflicts.

In the tradition of the Missouri Plan, Lawyering begins with a discussion about the role of lawyers. The goal is to challenge conventional wisdom by introducing the concept of the lawyer as a problem solver whose primary goal is to help clients solve their problems. The conventional wisdom is reflected in Professor Riskin's classic concept, the "lawyer's standard philosophical map," which is based on the assumptions that "(1) that disputants are adversaries—i.e., if one wins, the other must lose—and (2) that disputes may be resolved through application, by a third party, of some general rule of law" (*Mediation and Lawyers*, 1982). The perspective of lawyer-as-problem-solver requires lawyers to be aware that litigation is but one of the tools available to lawyers, and that good lawyers should also consider alternative approaches.

Having presented the student with an alternative "philosophical map," the course introduces students to some of the necessary skills to help solve clients' problems, starting with client interviewing and counseling. While client interviewing may seem like a daunting task for a first-year law student, this early exploration impresses upon students the importance of understanding clients' goals and perspectives. The hidden curriculum in legal education often teaches students that listening to clients is irrelevant and that the only thing that is important is making smart legal arguments based on the facts as given in appellate case reports. This section of the course, which usually takes about five weeks, includes exercises on active listening and client interviewing.

The remainder of the course seeks to accomplish the other major goal of the Missouri Plan – to help students understand the key features of the various dispute resolution processes and to provide them with the tools to evaluate when it makes sense to use them.

In this section of the course, students discuss materials on negotiation, mediation and arbitration. Lawyering faculty use a variety of exercises, videos and simulations both to convey key principles and to give students experience with lawyering skills related to these processes.

Reflections on Thirty Years of Teaching Lawyering

As with the original Missouri Plan, our current approach to teaching dispute resolution skills to students is not perfect. As compared with our original approach which “salted” all the first-year courses with a pinch of exposure to dispute resolution processes, the current approach concentrates all the required discussion in just one course.

While the current approach allows for more intensive discussion on those topics, it also decontextualizes the discussion on dispute resolution by taking it out of the context of specific courses and undermines perceptions of some students that it is “real law.” Similarly, while the current approach allows for easier coordination among the faculty, it also results in less interaction with the broader faculty which in turns can lead to other faculty being less

aware of what goes on in the course. And while the faculty who teach the course support the current structure, they recognize its shortcomings and thus are engaged in continuing conversations about how to improve it.

Still, there is something to be said for the current format, which we believe makes the course an important part of our curriculum. First, we believe that the course provides a valuable experience to the students by exposing them to an alternative way of thinking about the practice of law. Second, we believe that this experience is particularly beneficial during the students’ first year because it prompts them to reflect on the lawyer’s standard map before it is deeply engraved in their professional mindset. Finally, we believe that our current approach is consistent with the growing recognition in the legal academy about the need to better prepare law students for the practice of law.

By challenging students to think about the role of the client in the day-to-day life of a lawyer and exposing students to the problem-solving role of lawyers at the outset of their law school careers, the course provides the foundation on which our students build a solid legal education and an enriching law career.

Teaching Dispute Resolution Beyond the Law School: Dispute Resolution in South Africa



Larry Dessem
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The best learning experiences engage students, present them with new ideas that challenge their preconceptions and leave them seeing the world through a somewhat different lens.

Well-constructed dispute resolution courses often satisfy all of these preconditions for an exciting learning experience. These courses may require direct student participation through simulated exercises, in-class dialogue or team projects. The course material is frequently something that the students have not previously encountered or about which they have not systematically thought. Once they are presented with it, their view frequently shifts as they notice opportunities to apply dispute resolution techniques to the world around them on a regular basis.

Imagine, then, the opportunity to co-teach dispute resolution in South Africa, a nation that experienced decades of conflict and adopted different forms of dispute resolution in an effort to end this conflict and heal the nation and its peoples. Since 2004, the University of Missouri School of Law has partnered with the University of the Western Cape to co-sponsor an annual Summer Program in South Africa. Since its inception, the program has been led by Professor Rodney Uphoff, a fellow of the law school's Center for the Study of Dispute Resolution. Numerous law school faculty, most of whom are center fellows, have taught in this program, including Professors Rafael Gely, Phil Harter, John Lande, James Levin, Michael Middleton and me.

One of the three courses offered every year in the South Africa program is Comparative Dispute Resolution. This course, and the summer program of which it is one part, have changed both the students who have participated in the program and the Missouri faculty who have co-taught the course over the last 11 years.

It would be difficult to think of another country that has more successfully moved from intense conflict to a functioning democracy in as short a time as has South Africa. Apartheid did not end in South Africa until 1991, and the first multi-racial democratic elections were held in 1994. The country therefore presents a remarkable case study of a nation's movement from conflict to constructive

national dialogue. This history is very recent and continues to unfold as South African democracy matures.

Not only is South Africa an amazing country in which to study and teach dispute resolution, but the University of the Western Cape is a unique partner with which to undertake such a program. Originally founded as a university for people classified as "Coloured," the university and its faculty were in the vanguard of the efforts to end Apartheid and establish a multi-racial democracy. Current UWC faculty not only have lived through these historic changes, but helped to bring about such change.

Teaching a new course is a wonderful learning experience for the faculty member who has the opportunity to do so. Being able to co-teach a course with another faculty member is even more rewarding. But designing and co-teaching a new course with a colleague who has lived and contributed to the changes that are the subject of the course is the best learning experience of all. Just as the law school faculty who have taught the course in Comparative Dispute Resolution have changed over the years, so too have the participating UWC faculty. Two of these UWC faculty, Ivan Rugema and Hakim Salum, were known to law school faculty because they earned an LLM in Dispute Resolution at the University of Missouri. Other UWC faculty who have taught in the summer program have visited the University of Missouri, and these developing relationships between the two faculties have made for a better and richer program over the years.

Not only have the UWC faculty been wonderful co-teachers of the dispute resolution course, but UWC faculty have attracted other unique individuals. These have included a former member of the South African Truth and Reconciliation Commission, a UWC history professor who served as a staff member of that commission, local experts on restorative justice and a senior professor from the University of Cape Town who engages the students in a class on negotiation. Over the years the course has considered conflict, apology and forgiveness, dispute resolution system design, mediation in the United States, South African labor mediation, the Rwandan Gacaca courts, traditional African dispute resolution processes, negotiation, the South African Truth and Reconciliation Commission, and restorative justice. Those co-teaching the course have called upon faculty and other experts in all of

Imagine, then, the opportunity to co-teach dispute resolution in South Africa, a nation that experienced decades of conflict and adopted different forms of dispute resolution in an effort to end this conflict and heal the nation and its peoples. Since 2004, the University of Missouri School of Law has partnered with the University of the Western Cape to co-sponsor an annual Summer Program in South Africa.

these areas, and they have been able to share with students outstanding videos such as the documentary on the Truth and Reconciliation Process, *Long Night's Journey into Day*.

As in many domestic dispute resolution courses, students in the South African Comparative Dispute Resolution course participate in several simulations. Such simulations are a different experience for the South African students, who particularly enjoy hands-on mediation role plays and negotiation simulations. To the extent that pre-existing American simulations have been used in the course, they have been appropriately modified for both South African and American students. Thus, in using the “Mason-Dixon Carton Contract” simulation from the text *Dispute Resolution and Lawyers*, an explanation is included for the students about the Mason-Dixon Line. However, it had not occurred to a law school professor using this simulation that the South African students would presume that references to “Birmingham” in the simulation were to Birmingham, England, rather than to Birmingham, Alabama. The best simulations therefore have been the ones that Missouri and UWC faculty have jointly drafted and that are set in Cape Town.

Not only has the co-teaching of this course by American and South African faculty made this a special course, but the course has been even richer because of the participation of both African and American students in the course each summer. There typically have been 15 to 20 American students in this course and about the same number of UWC students. The UWC students have brought a wonderful variety of backgrounds and experiences to classroom discussions. Classes on traditional African resolution processes have been enriched by the insights of the UWC co-teachers of the class. One of the students in the course one summer was a South African tribal leader, which made classroom discussion even more interesting

for both faculty and students. In recent years, classes on transitional justice and reconciliation efforts in South Sudan have been added to the course. These classes allow for focus on the cultural aspect of dispute resolution system design, considering why, for example, Gacaca courts work in Rwanda but might not have worked in similar situations such as the conflict in nearby South Sudan.

One of the features of the South Africa Program that the American students rate most highly each year is the learning that they experience – both in and out of class – from their interactions with South African students. On her program evaluation form, one student commented on this opportunity as follows: “I would not have traded that experience for the world. It would be a waste to go to another country and not experience the company, thoughts and ideas of the people living there.”

In addition to the course in Comparative Dispute Resolution, the South African summer program has included courses in Comparative Issues in Criminal Justice Administration and Comparative Constitutional Law each year. The American students take all three courses, as do many of the South African students. A series of field trips also involve both American and South African students. Some of these field trips are particularly relevant to the course in Comparative Dispute Resolution, such as a visit to the District 6 Museum (telling the story of an area of Cape Town from which more than 60,000 residents were removed after District 6 was declared a “whites-only” area) and Robben Island (where Nelson Mandela and other leaders of the anti-Apartheid movement were imprisoned). As with the classroom sessions, these field trips are particularly meaningful when undertaken with South African faculty and students. These activities and the program more generally have given center faculty a set of common friendships and experiences. Law school faculty inside and outside the center look forward to talking each year with those returning from South Africa about the summer’s experiences and common friends at UWC.

Students and faculty have brought back memories, friendships, and new insights and perceptions on dispute resolution from teaching and learning in South Africa. This background, and the South African experience with dispute resolution, have not only made American faculty better teachers of dispute resolution but have changed them personally. The Center for the Study of Dispute Resolution has been involved in many exciting projects over the last 30 years. By any measure, the development of a course in Comparative Dispute Resolution in the UWC-University of Missouri Summer Program in South Africa must be at the top of that list.

First in the Nation LLM in Dispute Resolution: Innovation and Internationalization



Paul Ladehoff

Director of the LLM in Dispute Resolution Program and Campus Mediation Services

BS with distinction (1986), University of Nebraska

MS (1988), University of Michigan

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In 1999, the University of Missouri School of Law established the first LLM program in the

United States focused exclusively on dispute resolution. Now in its 15th year, the program has attracted attorneys from across the nation and more than 30 countries. There have been changes in curriculum, faculty and student body. However, the goal has always remained the same: to provide practitioners and scholars with a deeper understanding of theoretical, practice, public policy, program design and ethical issues in dispute resolution.

About the Program

Designed for those with an interest in serious study and practice beyond the JD degree, the LLM in Dispute Resolution program meets the needs of those with backgrounds as advocates, neutrals, law-trained court administrators and government agency attorneys, among others. The program requires 24 credit hours of study. A minimum of 12 credits are required courses in dispute resolution with the remaining 12 credits in dispute resolution electives tailored to individual student interests. Full-time students complete the requirements in two semesters. Part-time students typically take two or three academic years to complete the requirements.

To provide a firm foundation in dispute resolution, all LLM students are required to take Non-Binding Methods, Dispute System Design and Arbitration, and to write a major research paper.

Non-Binding Methods focuses on the theory, strategy, skills and public policy issues involved in using non-binding methods of dispute resolution. It addresses the role of attorneys in unassisted and mediated negotiation as well as the role of mediators. The course considers the professional responsibility of advocates negotiating for clients and of mediators.

Dispute System Design provides an analysis of system design principles and the management of multiparty complex disputes. An underlying theme is issues of program quality. Students review scholarly work evaluating the dispute resolution field and study basic research and evaluation methodologies.

The LLM Arbitration Seminar covers law, policy and practices relating to the arbitration in the United States under modern arbitration statutes as well as arbitration of international commercial disputes under international conventions and arbitral rules. The major research project requires LLM students to develop and present a substantial research paper on a current topic in dispute resolution under the supervision of a faculty member in the law school's Center for the Study of Dispute Resolution.

Students may select from a wide array of dispute resolution elective courses, including Cross-Cultural Dispute Resolution, International Commercial Arbitration, Emotional Intelligence and the Law, and Public Policy Dispute Resolution. Many of the LLM courses involve practical training such as graded simulations of mediations, arbitrations and negotiations.

In addition to coursework, LLM students are encouraged to gain practical experience through externships, practicums and the Mediation Clinic.

The LLM Externship allows students the opportunity: to observe and, to the extent possible, participate in the dispute resolution activities of neutral dispute resolution professionals; and to participate in the dispute resolution system design or implementation activities of a court, administrative agency, educational system or company. Examples of recent externship placements include the Office of the United Nations Ombudsman and Mediation Services and the Center for Conflict Resolution in Chicago. Through the generous support of Husch Blackwell in Kansas City, Mo., each summer one of our LLM students pursues an externship at either the American Arbitration Association or the International Institute for Conflict Prevention and Resolution in New York.

The LLM Practicum on Dispute Resolution Training and Education provides students an opportunity to extend their theoretical and practical understanding of dispute resolution practices by assisting law professors incorporate dispute resolution concepts into first-year and upper-level courses, and assisting JD students by serving as judges and advisors in student competitions as well as other activities that promote education of law students about dispute resolution.

The law school's Mediation Clinic gives LLM students an opportunity to develop and refine their mediation

The LLM in Dispute Resolution program brings talented international lawyers to our campus for advanced study and thereby enriches campus life and strengthens cross-cultural understanding. It fosters interaction between domestic and international students, exposing domestic JD students to international perspectives in law and helping prepare them to serve diverse clients in a global economy.

skills in cases referred by the U.S. District Courts of Missouri, the Missouri Commission on Human Rights, the Missouri State Personnel Advisory Board, small claims cases filed in the 13th Circuit of Missouri in Boone County and cases referred by private parties.

LLM students are encouraged in a variety of ways to take advantage of research, networking and other academic opportunities provided through the Center for the Study of Dispute Resolution. The center's faculty and administration take affirmative steps to involve LLM students in the various programs sponsored by the center. LLM students enhance their professional and personal development by participating with JD students in programs and activities, and intellectual, cultural and volunteer opportunities. For example, LLM students have consulted with the JD student editors of the law school's *Journal of Dispute Resolution* on articles, served as judges during JD student competitions such as Representation in Mediation and networked with JD student members of the Alternative Dispute Resolution Organization. LLM students have also served as "parties" for JD student "attorneys" in simulated mediations as part of a unit on advocacy in a JD mediation course and, in the early years of the program, by assisting law school faculty incorporate dispute resolution experiences throughout the JD curriculum.

Changes to the Program

Perhaps the biggest change in the program has been the increasingly international nature of our student body. We typically enroll an average of 12 students. We intentionally keep the class size small and are very selective in the application process. We prize the close-knit scholarly community that develops as a result. In the early years, the student body was primarily composed of attorneys from the United States with only a few attorneys educated outside

of the United States. As the program became more widely known, more and more foreign-trained attorneys applied. Currently, about three-quarters of our students in a typical year received their first law degree in a foreign country.

The increasing proportion of international students in the LLM program has brought many benefits. According to its *One Mizzou: 2020 Vision for Excellence*, the University of Missouri seeks to "[p]repare graduates and faculty for the interconnected global environment by providing curricular and extra-curricular experiences with diverse cultures and languages." The LLM in Dispute Resolution program brings talented international lawyers to our campus for advanced study and thereby enriches campus life and strengthens cross-cultural understanding. It fosters interaction between domestic and international students, exposing domestic JD students to international perspectives in law and helping prepare them to serve diverse clients in a global economy. It helps prepare the LLM students to work with U.S. clients in the students' home countries or with foreign clients doing business in the U.S.

Over the years, we have expanded our set of course offerings. For example, Professor Ilhyung Lee teaches Cross-Cultural Dispute Resolution, a popular elective with both JD and LLM students. The enhanced diversity brought by the international LLM students gives all students first-hand experiences in cross-cultural dynamics and underscores the theoretical substance of the course. As dispute resolution practice becomes increasingly diverse and globalized, practicing attorneys need skill and experience with diverse clients and an international perspective. Professor Lee's Cross-Cultural Dispute Resolution course is just one example of the interactions involving our international LLM students that promote cultural exchanges and understanding.

Our growing pool of LLM alumni working with U.S. clients in foreign countries or with foreign clients doing business in the U.S. also leads to greater employment opportunities for JD students and enhanced opportunities for international commerce within the state of Missouri. It also creates and strengthens relationships with international alumni and institutions abroad. For example, each year we have one or more students from South Africa's University of the Western Cape in the program. The University of Missouri and the University of the Western Cape have a remarkable and longstanding partnership, of which UWC law graduates attending our LLM in Dispute Resolution program is just one aspect.

Growing international interest in our program has also fostered exchanges with new partners. In 2009, the University of Missouri initiated a relationship with Huazhong University of Science and Technology (HUST) to promote cooperation between the law

schools generally, and to foster participation of HUST law graduates in our LLM program specifically. Over the last five years we have had 14 LLM students from HUST. Interest in the LLM in Dispute Resolution program has fostered similar discussions with schools such as the Free University of Tbilisi in Georgia, for example.

What LLM in Dispute Resolution Students Do after Graduation

Graduates pursue a wide variety of employment and professional activities after earning their LLM in Dispute Resolution degree.

Dispute Resolution Practice

Some graduates work as private mediators or arbitrators, either as their primary practice or as a component of their legal practice. Some work in dispute resolution organizations as providers or administrators. For example, one of our graduates works as a mediator with the Federal Mediation and Conciliation Service. Another directed a statewide Federal Agricultural Mediation Program.

Teaching

Many graduates teach, either full time or as adjuncts. LLM in Dispute Resolution graduates are currently teaching full time in eight U.S. law schools and several outside the U.S. Our graduates also teach as adjuncts at many more prestigious law schools and serve as administrators and teachers in higher education outside law school, teaching dispute resolution in departments such as management and legal studies or applying the skills themselves from the dean's office.

Dispute System Design

Some graduates serve as trainers and consultants, both privately and as resources within organizations. Many

work to improve the justice system or create dispute resolution options, in the United States or abroad. For example, a mid-career family lawyer wrote a proposal in the Dispute System Design course to do an evaluation of the use of parenting coordinators in the St. Louis area, where she practices. Parenting coordinators perform a combination of services in high-conflict family cases, including education, mediation and essentially arbitration. She then did an independent study where she actually conducted the evaluation (with institutional review board approval). Since graduating, she has worked steadfastly with the courts, attorneys, the local Association of Family and Conciliation Courts chapter and others to implement changes and provide training around the use of parenting coordinators.

Practice Law

Some of our graduates continue in the work they did before the program, as lawyers, administrative law judges, program administrators, etc., and use what they learned to enhance the quality of their work.

Continuing Education

A few enroll in other educational programs after getting our LLM degree. For example, one graduate completed a PhD in journalism after receiving an LLM. Another pursued an SJD. Yet another, a PhD in public affairs.

Vibrant and Ready

Over the course of 15 years of refinement and innovation, including contributions from many distinguished faculty and highly talented students, the University of Missouri School of Law's LLM in Dispute Resolution program is vibrant today and ready to educate future practitioners and scholars for success in the ever-changing field of dispute resolution.

Promoting Use of Multi-Stage Simulations in Law School Courses



John Lande
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AB with high distinction (1974), University of Michigan
JD (1980), University of California at Hastings
MS (1991), PhD (1995), University of Wisconsin-Madison

At the University of Missouri, I have developed and promoted the use of multi-stage simulations (MSS) to give law students a much more realistic experience in learning about legal practice.

Use of Simulations in Legal Education

Simulations can be useful elements in teaching about important aspects of lawyers' work. In contrast to lectures and class discussion, simulations require students to enact the role of a lawyer or someone working with a lawyer, such as a client. Simulations require students to "get into" an important role and apply relevant knowledge and skills. One of the major benefits of simulations is that they create dynamic interactions that are not predictable simply based on the facts and law because students must also cope with the moves of independent actors.

Simulations do not provide all the benefits of dealing with real clients and cases, as is the case in clinic and externship courses, but they simulate that experience under controlled conditions. In simulations, there is no risk of harming actual clients and thus simulations provide a safer environment to make mistakes. Indeed, making mistakes in simulations can lead to some of the best learning experiences because students can experiment with techniques and gain insights about approaches they may not want to use when working on real cases.

Thus simulations can be very valuable elements in particular courses and an overall curriculum. Indeed, most law school curricula include simulations of litigation activities such as interviewing and counseling clients, conducting depositions, trying cases and making appellate arguments. Simulations are a staple in alternative dispute resolution courses, where students regularly participate in simulated negotiations, mediations and arbitrations.

Many simulations require students to enact a single stage of a process and some courses use simulations of multiple stages in the same matter. MSSs can be particularly helpful in focusing students' attention on particular aspects of the process. For example, in a negotiation course, some stages might include:

- conducting an initial client interview
- negotiating and drafting a retainer agreement
- developing a good professional relationship with the counterpart lawyer
- working with the counterpart to plan the negotiation process
- conducting discovery and/or other factual investigation
- resolving discovery disputes
- conducting legal research
- preparing the client for negotiation
- conducting the final negotiation
- engaging a mediator
- mediating the matter
- drafting a settlement agreement

Most faculty would not include all these stages in a single simulation.

Faculty can use a large number of single-stage simulations in a course, providing multiple opportunities for students to enact different roles and focus on different issues. A disadvantage is that these simulations usually are fairly brief and thus students may have a hard time getting into their roles and simulating realistic dynamics. Single-stage negotiation simulations typically involve only the final negotiation and often do not provide a realistic feel of how the matter reached that point and how the relationships between the individuals affect the negotiation.

MSSs make it easier for students to get into their roles, enable them to deal with more complex situations, focus on specific stages in a process, see the connections between various stages and generally have a more realistic experience. In my classes, the quality of the interactions and student learning seemed to be exponentially higher than in the single-stage simulations because students got into their roles to a greater extent and had much more realistic lawyering experiences.

One student wrote, "The extended setting allowed us to spend time outside of class thinking out the objectives of our client as well as our own. I think that the reflection time that we had out of class not only led to more focused discussion in class, but also a stronger relationship among the attorneys and their clients." Students playing lawyers found that "dealing with clients [can be] as hard as dealing with the other side because the assumption is that you and your client are always on the same wavelength."

When students played clients, they got some of their best insights. One student said, “I did not truly understand how important the counseling part of representation is until I became the client.” Although students can get these insights from single-stage simulations, they are more likely to really “get it” from the intensity of well-designed MSSs.

Of course, MSSs take more time and may involve more complex logistics. In particular, using MSSs may reduce the total amount of material covered. With planning and practice, faculty can manage these challenges to reach the optimal balance of different types of simulations for accomplishing their teaching objectives in a course. In general, there is a value to providing a mix of teaching methods because this may increase students’ learning as there may be diminishing returns from using a single method. Thus faculty may wish to use a combination of both single-stage and multi-stage simulations in a course.

Faculty sometimes have students do simulations in a “fishbowl” or improvisational format. In this format, one set of students does a simulation in front of the rest of the class, which provides the opportunity for immediate feedback and discussion. In addition, it provides students with the opportunity to redo scenes that did not work optimally or that might have had different dynamics if certain facts or negotiation techniques changed. This is often done with a “round-robin” process in which certain students would do a scene, the class would discuss it and then other students would replace them to do the next scene. Often the action would pick up where the last scene left off, though sometimes the next group would start over or change the facts in some way. A big advantage of the improv format is that the entire class sees the same interactions and discusses the same thing. The countervailing disadvantage is that most students don’t get to do the simulation themselves. Faculty can use the improv format for stand-alone exercises or for certain stages of MSSs.

Experience with Multi-Stage Simulations at the University of Missouri

I have used MSSs in a Negotiation course and a Family Law Dispute Resolution course. The first half of both courses was devoted to class discussion, single-stage simulations and guest speakers. The second half of each course was devoted to two multi-stage simulations. Doing two MSSs enabled every student to play both a lawyer and a client, which was important so that students could feel what it is like for clients to work with lawyers. In Negotiation, doing two MSSs gave students the opportunity to experience extended negotiation of both a dispute and a transaction and they noticed significant differences in the dynamics between the two.

Single-stage negotiation simulations typically involve only the final negotiation and often do not provide a realistic feel of how the matter reached that point and how the relationships between the individuals affect the negotiation. MSSs make it easier for students to get into their roles, enable them to deal with more complex situations, focus on specific stages in a process, see the connections between various stages and generally have a more realistic experience.

In the Family Law Dispute Resolution course, one simulation focused on child custody and the other focused on property division and child support. In one of these simulations, the parties were quite contentious and in the other simulation, the parties were more cooperative.

Each MSS in my courses consisted of six stages. Each stage took place during a 75-minute class. For the first five stages, the class began with a discussion of the task for that day, including the lawyers’ (and sometimes the clients’) goals at that stage. After that discussion, the simulations of each stage typically took 15 to 30 minutes. After students completed the simulated task for the day, they completed a brief self-assessment form and then the class debriefed the experience together. The sixth stage was devoted completely to negotiation and in the following class, we debriefed the entire simulation.

In Negotiation, the first MSS involved a simple probate dispute between two siblings over the estate of their recently-deceased mother, which was colored by relationships and events within the family. The central legal issue is whether the mother’s will was executed under undue influence. In the first stage of the case, the lawyers interviewed their clients after receiving instructions to develop good relationships with the clients; elicit key information about the case, including the clients’ interests; and decide what additional information they needed. Shortly after the first stage, the lawyers submitted to me a list of additional information that they wanted to receive, which prompted them to think realistically and strategically about developing their cases. Soon afterward, I provided additional information based in part on the students’ requests.

In the second stage, the lawyers developed a good working relationship with each other by pretending to have lunch

to get to know each other personally. The assigned reading describes how developing a good working relationship with counterpart lawyers can make a big difference in the process and outcome of a case. Although conducting a simulation of lawyers having lunch together may sound very strange for a law school class, students really understood the value of this process during that class and throughout the simulation.

In the third stage, in a round-robin, improv format, counterpart lawyers had a conversation about the applicable law. The purpose of this stage was for the students to learn how to argue the law effectively in a negotiation context as distinct from an adjudication context. In general, the lawyers' goal was to persuade their counterparts that the most likely outcome in court was not as favorable or certain as their counterparts thought it was.

In the fourth stage, the lawyers met to plan the negotiation process while I talked with all the students playing clients as a group, to reflect on what they learned from playing clients. In the fifth stage, the lawyers met with their clients to prepare them for the negotiation based on their conversation with their counterparts. The entire sixth class was devoted to negotiation of the ultimate issues in the case.

The second MSS involved six stages of a negotiation of a simple partnership agreement between two friends to run a new restaurant. The stages were similar to the probate dispute, so I won't repeat them except to note the variations.

The second stage involved the negotiation of a fee agreement that might take place toward the end of an initial client interview. It is appropriate to include this issue in modern curricula because law firms increasingly offer alternative fee arrangements, which can have a significant effect on the lawyer-client relationship, how a matter is handled and clients' satisfaction with their lawyers. The students explored these issues in an improv format and struggled with what they typically find to be an awkward conversation. This exercise prompted excellent discussions about tensions in lawyer-client relationships and strategies for dealing with the tensions.

In the third stage, the lawyers planned the agenda and other procedural matters for the final negotiation. While the lawyers met, the clients met separately to discuss the business aspects of the deal, such as the restaurant cuisine, location, hours, etc. The clients' discussion was important because it laid the groundwork for their role in the final negotiation. In general, clients play a larger role in transactional negotiations over matters like partnership agreements than clients typically do in negotiations to settle litigated disputes. This is because clients often know more about transactional issues than litigation issues and often engage in ongoing activities together after the negotiation.

The fifth stage involved a discussion between the lawyers to plan for dispute resolution processes to be used in the

operation of the business. The fact pattern used for this case involves uncertainty and differences in perspectives that could easily lead to disputes. I used an improv format, beginning with conversations between two lawyers on the same side, in which one student played a lawyer handling the case who sought advice from another student, who played a senior partner in the same firm. After these preparatory scenes, lawyers from both sides met to plan dispute prevention and management. In this discussion, students anticipated types of disputes that may arise, planned ways to manage the disputes informally and considered dispute resolution provisions for the partnership agreement.

The MSSs in the Family Law Dispute Resolution course generally involved the same stages as in the Negotiation course. The one stage that was different was in the child custody case, where the lawyers met with the judge (me) in chambers to discuss the case, which we did in an improv format.

Developing and Sharing Multi-Stage Simulations

For several decades, faculty teaching dispute resolution have developed and used single-stage simulations. By contrast, use of MSSs is relatively new and very few have been written. I have been working to encourage faculty to develop, use and share them. I have written several MSSs and shared them with colleagues and have given presentations about them at the Legal Educators Colloquium at the American Bar Association Section of Dispute Resolution conference as well as the annual Southeastern Association of Law Schools Conference. I have solicited colleagues to write about their experiences with MSSs and write summaries of MSSs that they would share with colleagues. We created a special section of the University of Missouri's Dispute Resolution in Legal Education webpage devoted to sharing these materials.

A History of Innovation and Leadership

The University of Missouri School of Law has a long history of innovation and leadership in legal education about dispute resolution. The law school's project of developing and sharing MSS resources is yet another valuable contribution to legal education.

This article is adapted from John Lande, "Teaching Students to Negotiate Like a Lawyer," 39 *Wash. U. J.L. & Pol'y* 109, 124-36 (2012); John Lande, "Lessons from Teaching Students to Negotiate Like a Lawyer," 15 *Cardozo J. Conflict Resol.* 1, 14-23 (2013); John Lande, "Suggestions for Using Multi-Stage Simulations in Law School Courses" (2013), which is part of the University of Missouri School of Law Legal Studies Research Paper Series.

Information about various multi-stage simulations is available at law.missouri.edu/drlr/.

Incorporating Substantive Law into Dispute Resolution Courses: An International Example



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Academics specializing in dispute resolution have long

struggled between the need to convey general theoretical principles and skills that are applicable in any setting and the need to locate analysis and discussion within a particular substantive context. Most instructors have traditionally chosen to emphasize the general nature of dispute resolution, resulting in the use of relatively simple simulations that can be understood by students without any deep-seated knowledge of the underlying law. Though useful in demonstrating the broad applicability of the principles of dispute resolution to various areas of law, this approach can hinder students' ability to appreciate how dispute resolution techniques interact with deep substantive analysis.

Most specialists in dispute resolution feel that their courses already comply with the recommendation of the American Bar Association (ABA) that students be better prepared for real-life practice (see American Bar Association Task Force on the Future of Legal Education, Report and Recommendations, 2014). However, practicing lawyers are required to integrate skills and substance in a much more full-some manner than is seen in most dispute resolution courses, which suggests that a stronger connection between dispute resolution skills and doctrinal coursework would be useful.

Some of my colleagues have attempted to make student analysis more rigorous, and thus more true to life, by using multi-stage simulations, which use a relatively complicated fact pattern for more than one student exercise. The rationale is that using a single set of facts allows students to develop a more sophisticated understanding of how dispute resolution principles operate, particularly with respect to the different phases of the dispute resolution process. Although this model has its benefits, it does not necessarily require a deep-seated understanding of how the underlying substantive law fits in with different dispute resolution techniques.

Fortunately, there is a way to incorporate substantive law into standard dispute resolution courses without losing the ability to focus on general skills and theory. This solution involves pairing students from a dispute resolution class with students in a complementary doctrinal course to conduct a group research project and simulation. This type of assignment not only overcomes the traditional dichotomy

between skills and substance, it also provides a number of other pedagogical benefits, as described more fully below.

Because I teach both dispute resolution and doctrinal classes, I have the luxury of being able to combine two of my own classes. This approach is of course easiest, because it gives me total control over grading, timing and structure. However, it is also possible for two professors teaching compatible classes to work together on an exercise like this.

At this point, my primary experience has been in pairing students in international commercial arbitration with those in comparative law. However, this technique does not need to be limited to the international realm. Instead, the cross-cutting nature of dispute resolution suggests that partnerships could be formed with a number of different substantive courses. Thus, in the coming years I might pair up students in Trusts and Estates with students in International Commercial Arbitration.

Structure of the Exercise

The structure of exercise is relatively straightforward and requires students to conduct independent legal research and present their findings in both written and oral form. The assignment is based on a detailed fact pattern concerning an international commercial dispute that needs to be resolved in two phases, one relating to the governing law and various jurisdictional objections and the other involving the merits of the dispute. The precise questions to be answered are outlined in the Terms of Reference (a document required in arbitrations falling under the International Chamber of Commerce Rules of Arbitration), which is one of the documents provided to the students as part of the assignment.

Students are broken into various teams, with at least one comparative law student and one international commercial arbitration student on each team. Although comparative law students are considered the substantive experts and international commercial arbitration students are considered the procedural specialists, the nature of the problem presented requires students to work together if the research is to be conducted properly.

Bifurcating the hearings is useful for several different reasons. First, bifurcation avoids certain practical problems associated with the need to schedule hearings

Fortunately, there is a way to incorporate substantive law into standard dispute resolution courses without losing the ability to focus on general skills and theory. This solution involves pairing students from a dispute resolution class with students in a complementary doctrinal course to conduct a group research project and simulation. This type of assignment not only overcomes the traditional dichotomy between skills and substance, it also provides a number of other pedagogical benefits.

outside of normal class time. Because it is difficult and often counterproductive to require students to attend a special session for more than three hours at a time, having multiple hearings is necessary.

Second, it is not unusual for an international tribunal to hold a preliminary hearing on jurisdiction, so the procedure used in the exercise mirrors actual practice. Bifurcated proceedings present a number of interesting strategic challenges that are difficult to appreciate in the abstract, so it is useful for students to try to work through these issues in a simulated environment. While the students can assume a particular outcome from the jurisdictional dispute (because they know it is unlikely that the second hearings will not go forward, given that this is a graded exercise), the issues presented are relatively self-contained, which allows students in the second group to proceed with their research without having to wait for the results of the first hearing.

Finally, bifurcating the hearings gives students the opportunity to learn from the first proceeding and, if necessary, alter their strategic approach. Learning occurs on both the substantive level (in that students better understand the facts or law relevant to the dispute) and the procedural level (in that students gain a deeper appreciation for the types of arguments and authorities that are persuasive to a tribunal). Because this type of learning also takes place in real-life practice, bifurcating the proceedings therefore helps students better understand the iterative nature of the dispute resolution process.

Approximately one week before each oral hearing, team members are required to submit a written document

outlining the positions and legal authorities on which they will rely. This submission takes the form of a “skeleton argument,” which is a type of document originally developed by English barristers for use in litigation. However, advocates from England and various Commonwealth nations also use skeleton arguments in international arbitration.

Although it is unlikely that U.S. law students will be required to draft a skeleton argument after graduation, I nevertheless find this device useful because it requires students to adapt their writing style to reflect international, rather than domestic, norms, something that is extremely important in international legal practice. Furthermore, skeleton arguments are quite short (I set a three-page limit, single spaced) and therefore do not require students to spend a great deal of time drafting – an important factor given that the group research project does not make up the students’ entire grade for the class. Nevertheless, skeleton arguments require good writing skills, since students must make optimal use of the space available.

Skeleton arguments are primarily used to advise the arbitral tribunal and opposing counsel of what can be expected during oral argument. However, these documents also limit the opportunity for gamesmanship because they are exchanged simultaneously, as is often the case in international practice. Because each team is only allowed to introduce new authorities on rebuttal, there is no possibility of a party changing its position to rely on information or arguments introduced in other teams’ submissions. Simultaneous exchange of submissions also helps expedite the pre-hearing process, which is important given the length of the academic term.

All written submissions are circulated to the entire class. This approach encourages students to compare the different ways to approach the same issues and allows those who are not arguing a particular matter to prepare themselves to act as arbitrators.

Hearings are scheduled for several consecutive hours on either a weeknight or weekend, depending on student availability. I prefer to separate the two hearings by one or two weeks to allow teams to make any necessary adjustments to their presentations while the first proceeding is still fresh in their minds. However, it is possible to allow more or less time between the hearings, depending on the needs of the participants.

Each team is given a set amount of time in which to present their arguments. Hearings are held in a small classroom rather than the moot courtroom so as to simulate the type of conference room proceedings that are common in arbitration. Because the space is much more intimate, students have to adapt their presentation style to suit their surroundings. This is an important

learning experience for students who might otherwise be tempted to use standard courtroom techniques.

My class sizes have been such that I have usually had two sets of argument on each issue. (In other words, hearing date one involves arguments on the preliminary issues from teams A and B as well as teams C and D, while hearing date two involves arguments on the merits from teams A and B and teams C and D.) Students whose teams are not currently arguing sit with me as co-arbitrators. Thus, teams C and D act as tribunal members while teams A and B argue, and vice versa. As chair of the panel, I control the proceedings. However, my co-arbitrators have some leeway in whether and to what extent they ask questions of the advocates.

After argument has been completed, the presenting teams leave the room, leaving the arbitral tribunal to decide the issues presented. The deliberation process is very exciting for students because they seldom have the opportunity to judge oral and written submissions. Deliberation also helps students understand how some presentation styles and legal arguments are more persuasive than others, a lesson that they can use both in practice and in their other law school courses. I also provide feedback on students' performance as arbitrators to help them understand the differences between litigation and arbitration and to underscore the distinctions between domestic and international practice.

Once the panel has reached its decision, the two teams are called back into the room and given a ruling as well as informal feedback on the presentations. Advocates are able to ask the arbitrators why certain arguments were or were not persuasive so as to better understand how the panel came to its conclusions. Once that process is complete, the second set of advocates makes its presentation, with the teams from the first proceeding acting as my co-arbitrators.

Arguments on the merits follow the same basic procedure. If possible, I like to have some or all of the students from the first set of hearings also argue the case on the merits because that allows students to incorporate what they have learned from the first round into their second set of written submissions and oral presentations. However, it is not always possible to have students argue again if one or both of the classes are particularly large.

Although students are graded on how well they work together as a team – the amount and quality of strategic cooperation is usually pretty evident from the submissions, and students can be trusted to let me know if someone is not fulfilling their basic responsibilities – I separate out individual performance as much as possible. Written submissions are graded on the quality of the research and persuasiveness of the skeleton argument, while oral presentations are graded on the persuasiveness and cohesion of the discussion at the hearing, as well as the ability to

anticipate and respond to issues raised by the opposite team. I also evaluate students on their ability to “internationalize” the substance and style of their presentations and conform to various arbitral norms.

Although the group research project constitutes a significant proportion of the students' final grade, the assignment is nevertheless intended to be limited in scope. Because we are meeting for 6-8 hours outside of normal class time, I typically cancel approximately the same number of regularly scheduled classes. I also expect that the amount of time that students put into researching and preparing their presentations will be about equal to what they would do for discussion for the cancelled classes. These calculations of course vary depending on how many students participate in the exercise and whether they argue once or twice, but on average students tend to believe the arrangements are equitable.

When giving this assignment, I always tell students that they are responsible for allocating their time appropriately. The project, though significant, does not reflect their entire grade for the class. Though some students find it difficult to gauge how much time they should spend on the assignment, learning how to allocate one's time is a key feature of legal practice and a skill that students need to learn as early as possible.

Pedagogical Purposes

When I created this exercise, I had several pedagogical purposes in mind. Three relate to the law school experience and three relate to skills associated with the practice of law.

The primary law school-oriented goal involved improving students' analytical and presentation skills. In this exercise, students are not only allowed to observe other students' written and oral submissions, they are required to critique these works as part of the deliberation process. As a result, students begin to see how certain types of arguments are more persuasive than others, either as a matter of substance or style, and can incorporate this learning into their other coursework.

This exercise also allows students to demonstrate proficiency in something other than standard timed examinations. Many students find law school examinations difficult for reasons that have nothing to do with the content of the material, and this assignment gives those students an opportunity to shine. Conversely, this project challenges students who may be good at exams but who lack other skills that are important in the practice of law.

Finally, this project improves students' understanding of both the substantive law and various dispute resolution skills by requiring students to dig deeply into the subject matter and by offering interim feedback and subsequent

opportunities to improve their work product. Although the process is most effective in cases where individual students can present more than once, improvements are still experienced when a team is given multiple opportunities to present.

The assignment also serves a number of pedagogical goals designed to address challenges that students will face after graduation. For example, practicing lawyers are often required to work with co-counsel or non-testifying experts who may be from other firms. This project helps students develop the ability to work cooperatively in a team setting and negotiate appropriate procedures with people who are relative strangers.

The exercise also teaches students how to maximize individual expertise on a team with varying levels of ability. Because students come from different courses, they come to the exercise with different skill sets, just as different lawyers and experts will on a large litigation team. Although students do some work independently, they must also work cooperatively with other team members, both to educate each other about certain issues that cut across multiple areas of specialization and to choose a dispute resolution strategy that is best for their client.

Finally, the project requires students to get up to speed quickly on a detailed fact pattern that requires both legal research and strategic thinking. Again, this process reflects actual practice, because lawyers working in dispute resolution typically need to become experts on complicated legal and factual issues on very short notice.

Logistics

Because this is a somewhat complicated assignment, it is necessary to remain on top of the logistics to avoid any last-minute surprises. For example, it is important to include as much information as possible about the parameters of the assignment on the syllabi of both classes so that students know what will be expected of them. I typically indicate what percentage of the student's final grade will be associated

with the simulation and how that grade will be broken down between the written and oral elements. I also specifically state that additional sessions will need to be scheduled outside of regular class time and that attendance is mandatory once those dates are set, except for a reason acceptable to a court.

Of course, some details, such as the size and makeup of the various teams, cannot be provided until after the add/drop period has closed. I typically provide that information along with the fact pattern as soon as possible after the class rosters are finalized.

It is also important to consider how the group research assignment works into the structure of the course overall. For example, it may be useful to provide at least a basic introduction to any procedural or doctrinal issues that will be covered in the group project before or as the students are conducting their research so as to help the students frame their research appropriately.

Finally, it is critical to provide students with the tools they need to succeed on this assignment. For example, it may be useful to provide training on how to conduct legal research on certain issues that may arise during the course of the simulation. These sessions, which can be incorporated into a regular class period or offered on a voluntary basis, can be taught by the professor(s) in question or by a librarian with special expertise in the field. When scheduling these sessions, instructors must bear in mind the need to offer the training early enough in the term to be useful to students.

Blending Skills and Substance

Dispute resolution courses have traditionally been considered distinct from doctrinal teaching. However, incorporating substantive law into skills courses carries numerous pedagogical benefits. Furthermore, instructors do not need to integrate substantive law into dispute resolution classes on all-or-nothing basis. Instead, it is possible to create partnerships between two different classes for a single limited research assignment, thereby providing an exciting and instructive blend of skills and substance.

The Case for Assigning Preparation Starters in Teaching Negotiation and Mediation



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It has become a common adage that when we fail to prepare, we prepare to fail. But can we go beyond

the adage to effectively teach students how to develop skills in the preparation stage of a negotiation or mediation? A variety of dispute resolution teachers have said yes and I have become an enthusiastic advocate for their position.

All students in the University of Missouri School of Law's LLM in Dispute Resolution program are required to take Non-Binding Methods of Dispute Resolution (NBM) during the fall semester. The class is both an orientation to negotiation and mediation theory for those without a dispute resolution background and an exercise in skill development for students across the spectrum in terms of academic background and practitioner experience in dispute resolution.

Recently, I have become convinced of the efficacy of assigning a Preparation Starter to aid students in the development of their negotiation and mediation skills throughout the course.

A brief overview of the class structure is necessary in order to place these assignments in context. Our current NBM course framework is the result of collaborations with dispute resolution colleagues at the School of Law and at other universities. We meet for a three-hour block each Monday. We begin the class by immediately jumping into a negotiation or mediation simulation, for which the students have prepared ahead of time. The simulations last anywhere from 30 minutes to two hours and grow progressively complex and lengthy across the semester.

Following the simulation, we engage in a class debrief, followed by lecture and discussion specifically directed at the skills and theoretical frameworks relevant to the simulation. At the end of class, the students are provided with reading and role play assignments for the following week. The reading assignments provide instruction in theory and skill development; the role play assignments provide an opportunity for the students to put those theories and skills into practice in our next class period. The students also are provided with two additional assignments. First, they are required to submit, by Thursday, an individual reflective analysis of the simulation they just completed. Second, they are required to submit, by Sunday, a completed Preparation Starter for the next week's simulation.

Assigned Preparation: Combining Theory, Skills and Application

One of the hallmarks of our LLM in Dispute Resolution program is our strong desire to help the students combine theory with practice in their work as negotiation and mediation practitioners and scholars. The first three years that I taught NBM, I encouraged students to prepare thoroughly for each week's simulation. I provided reading assignments on effective preparation and devoted class lecture and discussion to the topic. During the full class debrief, I often asked students how their preparations aided or hindered them during the simulation, and what they might continue to incorporate or do differently in future preparations. But it was not until my fourth year that I became convinced of the value of *requiring* students to prepare for their simulations by assigning to them a Preparation Starter to be completed prior to the next week's simulation.

Although every dispute is different, there are common preparations that can be useful in almost any dispute resolution setting. These common preparations, and the questions associated with them, have been highlighted well in negotiation texts such as Marty Latz's *Gain the Edge: Negotiating to Get What You Want* (2005); Roger Fisher, William L. Ury and Bruce Patton's, *Getting to Yes: Negotiating Agreement Without Giving In* (2d ed. 1991); and Robert H. Mnookin, Scott R. Peppet and Andrew S. Tulumello's *Beyond Winning: Negotiating to Create Value in Deals and Disputes* (2004).

It is these commonalities that I sought to include in the Preparation Starter as students prepared either to negotiate with another student or to take part as a party in a mediation. So, for example, no matter what the context of the specific dispute, I always ask students to outline both their interests and what they perceive to be the interests of the person on the other side. I ask them to consider not only what they know (or think they know) about the other side and their perspective on the dispute, but also what questions they need to ask. In other words, what information do they need to confirm and what information do they need to gain in the course of the simulation? I ask students to brainstorm options that would satisfy their own interests, and options that potentially could meet both sides' interests, even if to greater or lesser degrees. I ask students to identify their baseline requirements for agreement and to evaluate their alternatives away from the table.

For those teaching or practicing in the field of negotiation or mediation, these preparation questions will be very familiar and to consider them in advance of a negotiation or mediation may seem obvious. In fact, it was because of the seemingly obvious nature of these questions that I shied away from any form of assigned preparation during my first few years of teaching. I strongly encouraged students to prepare fully, but otherwise left them to their own devices. My reasoning for this was pedagogical: I wanted student preparation to be self-directed and, therefore, purposeful. I did not want preparation to be (or to become) a false exercise that consisted of students filling out a form that I provided, rather than students conducting their own careful analysis of the dispute and the possibilities for resolution. For students who chose not to prepare, I believed (and still believe) that faulty preparation or lack of preparation can be instructive in its own right.

Yet, over time, I began to see that the preparation steps that seemed obvious to me were not always so obvious to my students, and that even if they were obvious, the students were not always motivated, in the context of a classroom environment, to carefully prepare prior to conducting a negotiation or mediation simulation in class. At the very heart of the definition of a practitioner is the concept of practice, and I began to wonder if an assigned Preparation Starter could encourage students to practice the art of effective preparation in a way that my admonishments to prepare had not. As I began to ask this question, I was especially influenced by the role of assigned preparation in Marty Latz's innovative *ExpertNegotiator* software program and the ways in which Fisher, Ury, and Patton's 4-part method of principled negotiation applied to both the preparation and practice phases of the dispute resolution process.

To test my theory, I created a Preparation Starter of my own that consisted of the kinds of questions that I wanted my students to ask of themselves or their clients and the other side before attempting to resolve a dispute. I also included in each Preparation Starter questions that were unique to that dispute but that did not lead the students or otherwise give away information that they needed to discover on their own. I often included questions that built upon previous class debriefs or discussions about effective preparation. I used the term "Preparation Starter" to emphasize that the form was only a jumping-off point, and that I expected the students to go beyond the form in terms of creativity and analysis. Students received the Preparation Starter with their initial role play information at the end of Monday's class and they were required to return the completed Preparation Starter to me electronically by 5 p.m. on the following Sunday – the day before their next scheduled simulation.

My fear was that the Preparation Starter would end up being nothing more than a bit of busy-work, a sort of formulaic worksheet that the students would complete without much thought. My even greater fear was that students would see the mere filling out of the Preparation Starter as a replacement for, instead of a tool to be used toward, effective preparation. Although I believed in the importance of preparation, I did not have much hope that my experiment would substantially alter the quality or quantity of student preparation. To my surprise, I was wrong. The experiment was a success on three levels.

Assigning a Preparation Starter led to students conducting the kinds of preparations that I had been encouraging them to conduct all along. By their own reports in their Reflective Analyses, they began realizing ahead of time what they did not know – and yet needed to know – about the other person in the dispute. Students seemed to demonstrate a greater ability to identify the other side's interests and to more carefully articulate their own. They became more creative in brainstorming options, as they were encouraged to think not only about what they wanted out of the negotiation or mediation, but also about what kinds of agreements might be attractive to, and workable for, both participants in the dispute. There is nothing unique about the actual Preparation Starter form I created that led to these ends; the types of questions I asked had been included in my lectures and course readings all along. The causal factor seemed to be simply taking the extra step, as the instructor, of assigning it.

The timing of the Preparation Starter allowed room for reflection. This created a real benefit for several of my students. I required the students to submit the Preparation Starter to me the day before their simulation simply because that allowed me to review their work prior to our afternoon class on the following day. But what I soon realized was that requiring the Preparation Starter to be completed the day before the simulation provided the students with a chance to "sleep on" their preparations – and with terrific results. It became a common occurrence for students to contact me on Monday before class to tell me about a detail they had previously missed, a new angle that "just came to them" after they had submitted their Preparation Starter to me or a new question they realized they needed to ask. A roughly 24-hour lag time between the completion of the Preparation Starter and the negotiation simulation gave the students some much-needed mental space to mull over and then modify their own preparations so as to then negotiate or engage in the mediation more effectively. It was an unanticipated outcome, but to see the students' enthusiasm and sense of growth in their preparation skills in these moments was incredibly gratifying.

Most surprisingly, the Preparation Starter seemed to encourage a more robust reflection and performance analysis. This happened in both the class debrief immediately following the simulation and in the students' later Reflective Analyses of their own performances. It appeared that the Preparation Starter gave students a more specific starting point from which to gauge the effectiveness of their own preparations and the strategies they had adopted for the simulation. And, perhaps because they knew that I had read their Preparation Starters, students spoke more openly and explicitly about where their preparations had gone awry – where they had misperceptions and underlying assumptions, where they had missed key questions they ought to have asked, or where they had failed to make creative use of information provided to them that might have enabled them either to come to a resolution or to create a better deal.

The Force of Habit and Creative “Ease”

As the semester progressed, I began to see that, even as the simulations and the students' skills and skill development became more complex, there was something incredibly valuable in having them return, each week, to these same core questions through the assigned Preparation Starter.

The notion of continually practicing the basics so that they are not only mastered, but so that they also can begin to be exercised with the type of “ease” that comes from the force of habit is well known in a variety of performance-based endeavors. In other words, there is a reason why athletes run drills and musicians practice their scales: both are a type of repetitive engagement with skills that, at least at their basic levels, have already been mastered. The first time I trained for a 5K, I was surprised by the training guide, which alternated shorter runs and longer runs throughout the training period. I had signed up for the 5K with an end goal in mind: I wanted to run longer distances at a faster pace. I had assumed that the training guide would consist of increasingly long runs. What I found was that while the training guide did require me to consistently increase the length of my runs, it also consistently required me to come back to the shorter runs that I had mastered at the start. I found that the shorter runs, and then the increasingly longer runs, began to benefit from the “ease” that comes from engaging in repetitive behavior, freeing up more mental, physical and emotional energy for me to run longer, or faster or with better form. In other words, repetition of behavior mastered at the basic level led to greater mastery not only of those basic skills, but also of the more advanced skills for which the basics served as a foundation.

One of the most compelling reasons, to me, for requiring students to complete Preparation Starters is that, even as students grow in both the depth and breadth of their dispute resolution skills, they are required continually to come back

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to the beginning, so that some of the most foundational elements of resolving a dispute become well-developed skills that take on the form of a habit. What once felt forced or awkward becomes more natural and free-flowing. And that continual mastery of good preparation can then lead to a continual mastery of the dispute resolution skills that depend on preparation as a basis – such as asking the right questions, responding effectively and creatively to offers or counteroffers while in the midst of a negotiation or mediation, and knowing when and how to share information. Instead of my feared outcome – that assigned Preparation Starters would inhibit my students' ability to think creatively and prepare effectively for the upcoming negotiation or mediation – I found that, like the short runs in my 5K training guide, the Preparation Starter gave them a solid basis from which to stretch their analysis and creativity, to master preparation skills that would carry them through increasingly complex disputes, and to help foster the increasingly complex skills that the resolution of such disputes requires. Students not only prepared more fully across the semester, but also began to see the practical results of those preparations, both in the immediate context of the simulation and in the more distant context of their post-simulation Class Debriefs and Reflective Analyses.

Negotiation instructors have long upheld the positive benefits of preparation. My experience with Preparation Starters convinced me that we can train our students to be more effective and more creative in their dispute resolution preparation and that something as simple as assigning a Preparation Starter may be a strong pedagogical tool toward that end. Other possibilities for encouraging strong preparation, as utilized by my colleague Colleen Baker of the University of Illinois College of Business, include requiring students to prepare in pairs, which has the added benefit of exposing each student to another's perspective, and requiring students in team negotiations to conduct a mock negotiation within their own team prior to the actual negotiation. The possibilities are numerous and my hunch is that they are as varied as the instructors who are already incorporating an assigned preparation phase into their negotiation or mediation courses. If you have other ideas that have worked well for you, let me know! I would love to keep this conversation going.

Teaching Dispute Resolution Skills through the Mediation Clinic



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The Mediation Clinic at the University of Missouri School of Law serves two purposes:

to give students an opportunity to develop and refine their mediation skills by observing and participating in simulated and real mediations, and to explore the practical issues faced by attorneys engaging in mediation practice or representing clients participating in mediation.

History

In August 1988, the Center for the Study of Dispute Resolution started its first mediation clinic by creating the Community Mediation Service (CMS), a community-based mediation organization to resolve disputes among the residents and businesses of Mid-Missouri. CMS provided practical clinical opportunities for law students to manage caseloads and mediate cases involving real participants. The following year, CMS expanded to include a Victim-Offender Mediation Program which handled criminal diversion cases for the Columbia (Mo.) Municipal Court and the 13th Judicial Circuit of Missouri in Boone County. In its first two years, CMS opened more than 300 cases and students from the School of Law participated as mediators in 125 cases.

By the mid-1990s, despite high interest by students, the caseload for the clinic began to decline. I was hired as an associate director of the center in 1995 and became the clinic director in 1996. Before joining the center, I served for six years as the executive director of the Dispute Resolution Center, a nonprofit, community-based mediation center serving St. Paul, Minn., and its suburbs. I also was involved in the mediation field at a national level as I was among the founders and original board members of the National Association for Community Mediation. I also served as a board member for the National Conference of Peacemakers and Conflict Resolution during the mid-1990s.

Despite my extensive background in community mediation, I was determined to increase the clinic's caseload by de-emphasizing the community nature of the clinic and began to look for more reliable ongoing referral sources that focused on the types of legal issues that students would face in their future law practices. Within a few years, the Mediation Clinic (having dropped

the CMS moniker) began mediating cases for the Missouri Commission for Human Rights, the Missouri Public Service Commission and the Smalls Claims Court for the 19th Judicial Circuit of Missouri in Jefferson City.

In the fall of 2002, the School of Law had one of the first law school mediation clinics to handle cases referred by a federal court when the Central Division of the United States Court for the Western District of Missouri began referring cases as part of its early assessment program. Every year, the court refers up to 20 cases to the clinic, including cases involving workplace discrimination, contract disputes, product liability issues, foreclosures, §1983 actions and other civil cases litigated in federal courts. In addition to the federal cases, the clinic continues to receive regular referrals from the Missouri Commission for Human Rights, the Equal Employment Opportunity Commission, the Columbia (Mo.) Human Rights Commission, the 13th Judicial Circuit of Missouri Small Claims Court and local attorneys. The diversity of referral sources provides students with a vast array of cases in which the amount in dispute may range from several hundreds of dollars to multimillion dollar claims. Students may participate in cases in which parties appear *pro se* or they may interact with small town lawyers, small firm lawyers or lawyers from the largest firms in the Midwest. This diversity of cases provides a rich learning opportunity for our students. In recent years each student has participated in 2- 4 mediations per semester.

Course Structure and Methodology

The Mediation Clinic is offered in both the fall and spring semesters of the academic year. Up to six students can enroll each semester and the course is open to JD students and students enrolled in the LLM in Dispute Resolution program. The clinic is graded as a one- or two-credit pass/fail course. There are no course prerequisites for LLM students during the fall semester, but they must attend a concentrated training offered at the beginning of the semester. Students in the JD program must have previously taken, or be concurrently enrolled in, the three-credit mediation course offered to second or third year students.

Students enrolled in the clinic are responsible for developing cases (conducting case intakes and scheduling mediations) and co-mediating those cases with me or, occasionally, other faculty members with mediation

experience. Students also attend class for 75 minutes each week in which they discuss the cases they have mediated, participate in exercises and simulations, and take part in classroom discussions on ethical and practical issues that arise in mediation. Near the beginning of the semester, I also assign the students to conduct a recorded mediation simulation in which they serve as the mediators. I then schedule a two-hour session with each student in which I critique their mediation skills. Though not required, I offer the students a second chance to record a simulated mediation session that I will critique. Also, we spend considerable time in our class periods doing exercises and simulations that allow students to gain the experience and confidence they need to become mediators.

Challenges of Teaching a Mediation Clinic

Mediation clinics in law school settings began in the mid-1980s. Today there are more than 50 clinics among the nearly 200 law school in the United States. During my 18 years of experience with the University of Missouri School of Law's Mediation Clinic, I have found many challenges in teaching a mediation clinic that I am sure are familiar to other mediation clinicians. I will focus on two.

Different texts and scholarly works define mediation in various ways, often focusing on how broad or narrow the mediation process may be or how evaluative, facilitative or transformative the mediator may be. My definition of mediation is both simple and complex at the same time. It is simple in that my definition – mediation is a *facilitated negotiation* – is, in essence, two words long. It is complex, however, in that it fails to describe the multifaceted roles of a mediator or the varying expectations of scholars, practitioners and, most importantly, the parties and their lawyers regarding the mediator and the mediation process. I often liken a mediator to a blindfolded juggler riding a unicycle on ice while juggling 12 knives. In other words, you are doing many complex and conflicting actions at the same time you are establishing a trust in the parties (and attorneys) that you are a calm, competent mediator.

How do you teach such a practice? My approach, like many other clinicians, has been to focus on the skills essential to the mediation process and try to offer my students a variety of situations in which those skills can be applied. We spend considerable class time focusing on effective listening and speaking skills. In mediation, words matter. We also spend time on ways to build and maintain credibility and trust, as well as being patient, creative, flexible, interest-based and impartial. At the same time, I remind students about the importance of challenging the participants and their attorneys to look at their disputes through different, broader lenses. And

My approach, like many other clinicians, has been to focus on the skills essential to the mediation process and try to offer my students a variety of situations in which those skills can be applied. We spend considerable class time focusing on effective listening and speaking skills. In mediation, words matter. We also spend time on ways to build and maintain credibility and trust, as well as being patient, creative, flexible, interest-based and impartial.

of course, we focus on the ethical issues that may lurk in the shadows of the mediation process or neutrals.

I realize that most of my students will never become professional mediators, and that those who do so might not until later in their careers. Thus, I try to emphasize that the skills I teach in the Mediation Clinic are life skills that will serve students well in their personal lives (as spouses, parents, friends, etc.) and in their professional careers as advocates.

Another major challenge to running a mediation clinic is finding the proper balance between student autonomy during a mediation and providing a quality service to party participants (and their attorneys). This tension is particularly compelling when student are mediating high-value cases referred by the Missouri Commission for Human Rights, the Equal Employment Opportunity Commission or the federal court.

It is not uncommon, at least in the federal cases, for settlement discussions to include dollar values involving hundreds of thousands or millions of dollars. Attorneys and their clients often travel thousands of miles to attend these mediations and they expect the highest quality of service. Accordingly, in these cases, I serve as the lead mediator and encourage my students to think of themselves as co-mediators with free reign to ask questions and participate to the extent they feel comfortable.

Between caucuses, I spend a few minutes with the students reviewing what happened in the previous caucus session and ask what they would do in the upcoming caucus. Following the mediation, the students and I meet to debrief the mediation and discuss the teaching points that arose during the session. Our teaching points always focus on both the role of the mediator and the roles of the attorneys within the mediation context as I assume

most of my students, in their future professional roles, are more likely to be advocates in a mediation than serving as mediators. I then ask the student to present those points at the next class. In small claims cases, I expect the students to serve as lead mediators and I serve as the co-mediator.

Leaving With a Conceptual and Practical Framework

During the past 30 years, the use of mediation in judicial and non-judicial settings has skyrocketed as most state and federal courts have institutionalized mediation and other forms of dispute resolution into their existing court procedures. The challenges I discuss above are just two of the many challenges that mediation clinicians face in developing a meaningful practical experience for our students. Despite these challenges I feel I have succeeded if my students come away from the class with a better conceptual and practical framework as to how the mediation process fits in their roles as future advocates or neutrals.

Skills Training at the Veterans Clinic: Lessons Learned



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I consider my greatest professional accomplishment to have been part of the launching the Veterans

Clinic at the University of Missouri School of Law in the spring of 2014.

After decades of private practice followed by teaching as an adjunct, I have the privilege to serve as the Veterans Clinic's supervising attorney and instructor. It is always exciting to be part of a new academic venture, whether that might be a new course, a program or a clinic. It has been particularly exciting to be part of this new project in part because of the law school's commitment to prepare students for the practice of law through the teaching of problem-solving skills.

A Few Words about the Clinic

The mission of the Veterans Clinic is to help veterans and their families secure disability-related benefits provided by the federal government. These benefits range from educational stipends to compensation for service-connected disabilities. Clinic services are offered to low income veterans and their dependents.

The clinic is designed to provide students with important practical experience. Because student work is done at each level of adjudication – from the regional office level to the Court of Appeals for Veterans' Claims – students learn the importance of making a good record and arguing the law. The practical skills introduced in the clinic include law firm and time management, client interviewing and counseling, problem solving, legal theory development, negotiation, data collection, witness statement preparation, medical record chronologies, appellate brief writing and argument. Importantly, the clinic highlights the importance of pro bono work in a lawyer's professional life.

All work is performed in a law firm-style atmosphere. Weekly debriefing conferences allow students an opportunity to present the substantive issues involved in their cases, as well as to review the evidence they have assembled. Collaboration is the hallmark of the clinic. Students are paired with their peers and encouraged to reach out to experts in the field.

What Works and What Did Not

As with any new project, the first semester of operation was educational both for the students and for me. Even though I taught for several semesters before starting the clinic and have practiced law for decades, I found that teaching the clinic required active adaptation to the circumstances. My teaching evolved in several ways during the course of our first semester, both in terms of deciding what materials to cover, and finding the right balance between the clients' immediate needs and the students' schedules and abilities.

Course Coverage

My students come to the clinic with little to no knowledge of federal veterans benefit law. This area of the law is highly regulatory. There are thousands of pages of regulations implementing the statutes which control the U.S. Department of Veterans Affairs (VA) benefits, and there are even more pages describing these regulations in the VA's adjudication manual and reported cases. At first blush, it is an overwhelming area of the law.

My original intention was to devote one hour of class each week to well-choreographed lectures beginning with the three requirements for disability compensation and ending with the ability to recover Equal Access to Justice Act fees. My hope was that by the end of the semester, my students would have a strong understanding of the fundamentals governing this area of the law.

The plan worked for one week. Almost immediately, I realized our clients had real legal issues that we all needed to comprehend quickly. There was simply no time to teach in a logical progression. Our cases presented a wide range of fascinating legal issues. These could have been taken right out of any today's headlines, from post-traumatic stress disorder arising from military sexual trauma, to highly technical and more obscure statutory question arising out of the Filipino Veterans Equity Compensation Act. These topics provided a rich environment for experiential learning at the substantive level, but wreaked havoc on my finely-honed syllabus with its logical progression of the ins and outs of key aspects of the law.

Fortunately, I found a solution that I used to teach students the importance of collaboration. I always urged my students not to hesitate to call experts in the field and to

In my 28 years of private practice in two law firms, I learned that certain people are better at some things than others — and I learned that everyone has a talent. I reached a similar realization with law students. Some students excel at brief writing; some students excel at running down witnesses. Some students do not blink twice at 4,500 pages of medical records and others would rather learn and then teach the clinic’s software program to their peers and technology-challenged instructor. Each of these talents is valuable and should be mined by the instructor for the good of the clinic, students and clients.

use those opportunities to build their professional network. We were very fortunate to find funding to send students to the National Organization of Veterans Advocates (NOVA) conference held in April. The NOVA conference served as an immersion class into veterans benefits law. All of my students who participated remarked that it would have been better to go sooner, rather than later, in the semester. Fortunately, NOVA has bi-annual conferences, and there is one each September. We now are planning to take all of the 2014-2015 Veterans Clinic students to the NOVA fall conference. Students who cannot travel to NOVA will do an online training program that provides an overview of the law in approximately eight hours. This is provided by the Veterans Pro Bono Consortium in Washington, D.C., and is used in connection with attorney training programs. The quality of the programming is top-notch and is a very efficient way to assimilate key information.

Through the use of these resources, it is my hope that students will be fully oriented prior to beginning their clinical work. More significantly, with the basics of the law out of the way, we will have the ability to dig into case-specific legal principles and nuances as the semester proceeds.

Managing vs. Mentoring

Having supervised many associates as a law partner, my initial plan was to supervise the students as a senior partner

in a law firm would supervise her staff: issuing edicts through task lists on each file we had in the clinic and then calling for reports at our weekly debriefing conference. For some students, this worked well. For other students, this curbed their enthusiasm to the point of bitterness, especially when they did not complete the task in a timely manner.

Missed deadlines should not be forgiven; in fact, missed deadlines are a major deduction in my grading equation. However, when it comes to weekly debriefings, I found the better approach was to have open discussion on the files in the larger group, without calling out each person’s progress on a particular task. If individual counseling with a student needs to be done, it is better to do it privately. I learned the best way to get actual work done is to provide guidance on a one-on-one basis.

In short, when it comes to clinical tasks, I was reminded that I was working with students and not with law firm associates. Just as I do not like to shame a student who answers a question incorrectly in a large class, I learned that in the clinical setting, even greater consideration of the student’s psyche is required especially when a client’s file needs work. By the end of the first semester, we had transitioned from a review of the task list in class to a review of the task list in weekly individualized conference calls. And, most importantly, all the work got done.

Finding Their Talents

In my 28 years of private practice in two law firms, I learned that certain people are better at some things than others — and I learned that everyone has a talent. I remember a legal assistant who could manage thousands of pages of paper in an antitrust multidistrict litigation proceeding, and find that one hot document immediately needed in trial in ten seconds flat. She was truly awesome, but did not understand a thing about personal injury law and ordering medical records.

I reached a similar realization with law students. Some students excel at brief writing; some students excel at running down witnesses. Some students do not blink twice at 4,500 pages of medical records and others would rather learn and then teach the clinic’s software program to their peers and technology-challenged instructor. Each of these talents is valuable and should be mined by the instructor for the good of the clinic, students and clients.

Building on Our Strengths

The law school’s emphasis on dispute resolution is very valuable to the Veterans Clinic students. A large portion of our work in the clinic revolves around one-on-one work with veteran clients. Client interviewing skills, to which our first-year law students are introduced in the Lawyering course, are necessary and critical. Without

proper interviewing, we would waste time chasing down witnesses with irrelevant information or securing medical records that have nothing to do with the current disability. Further, proper interviewing helps us maximize the veteran's disability rating. It is only through careful and attentive listening that we pick up on the nuances which may make a big difference to a rating examiner who is trying to determine whether to give a 10 or 20 percent rating to a specific disability. I am grateful my clinic students come to the clinic with this fundamental skill.

Client counseling is another important skill taught through the law school's Center for the Study of Dispute Resolution. It is well known that veterans suffer extremely long delays when in the VA system and the paperwork is often a byzantine maze of fine print. Students often have to explain the reasons for the paperwork and why a claim takes so long. Some veterans do not appreciate the different levels of review applicable to their claims, and often veterans do

not understand that a remand from the Court of Appeals for Veterans Claims is a "win," even though it does not give rise to an immediate disability payment. A remand, however, does allow for new evidence and argument, which is a very good thing. In short, managing client expectations, while explaining the process and procedures of a federal benefits program, is a difficult task for anyone. The client counseling skills to which our law students are introduced in their first year at the law school are important practical tools necessary to the success of our clinical work in our clients' eyes.

Learning With and From Students

In my mind, the greatest thing about teaching is that I learn with my students and from my students. Knowledge is not static, especially when it comes to veterans law. I look forward to continued learning and refined teaching in the Veterans Clinic.

Opportunity for Advocacy



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If the goal of dispute resolution is the successful conclusion of conflict through a meaningful process, good counsel and advocacy are vital to that goal. Students often enter law school with interest, desire and talent. But to be great advocates, they need opportunity – not just the opportunity to learn in the classroom, but the opportunity to put theory into practice.

We of course know the need for practice-ready students, for skills training. But what we often overlook is emphasizing the opportunity to teach skills using competition. What we often overlook is having faculty – from trial practice to doctrinal, from legal writing to administration – fully participating in the Board of Advocates.

At the University of Missouri School of Law, students have the opportunity to practice the skills we provide them in the classroom through various competitions offered by our student-led Board of Advocates (BOA). In addition to competing externally, BOA offers intramural competitions in client counseling, negotiation, mediation, arbitration, trial practice, appellate advocacy and transactional law. Practicing lawyers, acting judges and faculty members judge these competitions and teach the competitors the subtler points of doctrine, skill and advocacy. In short, they teach our students how to become attorneys.

Faculty Participation

A unique aspect of the University of Missouri School of Law's Board of Advocates unique is faculty buy-in. It is thanks both to the passion of our students and to the participation of our faculty that our teams strive in external

competitions. Though student-led, every competition team relies on expert faculty for coaching and guidance.

For mediation competitions the students have the assistance of a practicing mediator and founding member of the National Association for Community Mediation. For arbitration they turn to a governing board member of the National Academy of Arbitration. For mock trial the students are coached by a trial attorney with more than 20 years of experience in government and private practice. For transactional law, a doctrinal professor specializing in bankruptcy taxation coaches our teams. And for Moot Court the teams are given assistance by several former judicial clerks, including clerks from the United States Supreme Court, and from doctrinal professors specializing in whatever subject the students are faced with that year.

At the University of Missouri School of Law, BOA is not something isolated or autonomous from the classroom. It is part of our culture. We are proud that our students are learning – and applying – their dispute resolution skills in a wide-range of subjects. For that reason, we have a proud tradition of excellence in advocacy.

The proof is in the competition results. In the American Bar Association's annual arbitration competition, we regularly take one of the top honors in our region and compete successfully and proudly at the national level. In fact, we have sent teams to ABA National Competition for four years in a row, the longest streak in the country. Likewise, we regularly field teams in client counseling, mock trial, mediation and negotiation. Consistently, our teams win honors at their respective competitions.

Student Leaders

The true work of our BOA is completed by our students. Perhaps it is because the students do such an excellent and enthusiastic job handling every logistical detail of our competitions that our faculty are able to dedicate so much time to mentoring.

From reserving every hotel, to booking every van rental, to securing judges for every internal competition, our students – with their desire to compete – make our BOA function. And just like our faculty, upper-level students and alumni spend countless hours coaching our competitors.

Our BOA is not simply comprised of the teams being judged, it is comprised of dozens of students who dedicate themselves to creating opportunities for learning and advocacy. Thanks to this dedication, our students routinely run successful internal competitions.

One of the most unique and exciting opportunities provided to our intramural competitors culminates at the Supreme Court of Missouri. Over the summer, rising 2L and 3L students may take part in the Polsinelli Fall Moot Court. The students are given a case accepted for appeal, tasked with writing an appellate brief over break and then asked to present their oral arguments during the first week of the fall semester to a panel of judges. Most importantly, the final round of the competition takes place at the Supreme Court of Missouri, where students argue before three distinguished jurists, who give each student substantive feedback and award the top honors. For years, students brag about how they learned from the most esteemed judges in the state.

Learning Outcomes

The calls for creating practice-ready students originate not only in academic journals and policy centers. They also come from our students. In fact, our students demand it. And when they are actually provided with

The BOA is our most diverse academic student organization in terms of rank, journal status, and even race and hometown. In BOA competitions, success is built upon more than a singular exam. True application garners true results, and the students are able to build respectful relationships with other students who might not be readily known for their legal prowess.

the opportunity to apply what they learn in their doctrinal classes, students are energized and grateful.

Many alumni point to our BOA competitions as the highlight of their law school careers. Even more stress how the competitions prepared them for practice. Let us be clear: BOA competitions build practice-ready students.

Further, the students comprising our BOA and our competition teams are not merely the legal minds in the top ten percent of their class. The BOA is our most diverse academic student organization in terms of rank, journal status, and even race and hometown. In BOA competitions, success is built upon more than a singular exam. True application garners true results, and the students are able to build respectful relationships with other students who might not be readily known for their legal prowess.

Our students can, and regularly do, fantastic things. At the University of Missouri School of Law, we have built a tradition of excellence and a tradition of skills training based on the belief that our students can do more than they themselves know.

They compete. They win. They learn. They advocate. All they need is the opportunity.



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