PASS THE SALT: PROBLEM-RESOLUTION LAWYERING ACROSS THE TWENTY-FIRST CENTURY LAW CURRICULUM

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To everything there is a season.
Ecclesiastes 3:1

Where would we be without salt?
James Beard

ANOTHER ARTICLE ABOUT RESHAPING LEGAL EDUCATION?

We would be overjoyed to see an entire restructuring of law school learning within our careers. In our dream, it would embody comprehensive training in the use of law and lawyering skills to help address the real-world problems that real-world clients present to us—not the legal problems taught to us in school.[1] This would be a move toward what we might colloquially conceive as "Problem-Solving Across the Curriculum."[2]

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[1] Of course, we would really like to see other shifts as well, such as greater access to the legal profession, more value placed on service and justice, and so on—these are simply not the focus of this work.

[2] This is a conscious nod to the "Writing Across the Curriculum" initiatives introduced in many American colleges in the 1970s and '80s, and enjoying a window of expanded enthusiasm in law schools in the early 2000s. *See* Pamela Lysaght & Christina D. Lockwood, *Writing-Across-the-Curriculum: Theoretical Justifications, Curricular Implications*, 2 J. ASS'N LEGAL WRITING DIRECTORS 73, 73–107 (2004) (explaining how Writing Across the Curriculum efforts may not have fully taken hold in the legal academy, but have still been important harbingers of curricular reinvention and been influential in spawning calls for further across-the-

Must we then wait for some yet-to-exist, unnamed educational revolution to see this goal implemented? We certainly hope not.

From the time when legal education was first formalized, there seem to have been efforts to reform, reshape, or reimagine legal education. Christopher Columbus Langdell's case method, and its accompanying Socratic classroom techniques, were themselves introduced to revitalize a conventional book-bound approach to preparing future lawyers.[3] Ever since that late-nineteenth-century innovation took root in American law schools, there have been countless waves of movements to reshape what and how law students learn.[4] In recent generations, we have experienced a blossoming of clinical legal education.[5] Some developments include: the MacCrate Report;[6] critical theory[7]; problem method teaching[8]; the Carnegie Report;[9] Writing Across the Curriculum;[10] and flipped classrooms.[11] All of these developments have had a significant impact on how we teach and learn the law. Yet the

board integration of subjects such as storytelling and research-skills teaching.); Carolyn Grose, *Storytelling Across the Curriculum: From Margin to Center, From Clinic to Classroom*, 7 J. ASS'N LEGAL WRITING DIRECTORS 63, 63–86 (2010); Tenielle Fordyce-Ruff, *Research Across the Curriculum: Using Cognitive Science to Answer the Call for Better Legal Research Instruction*, 125 DICK. L. REV. 1, 1–46 (2020).

[3] ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S, 50–52 (1983).

[4] *Id.*

[5] *Id.*

[6] *See generally* Graham C. Lilly, *Skills, Values, and Education: The MacCrate Report Finds a Home in Wisconsin*, 80 MARQ. L. REV. 753 (1997).

[7] Important work in critical theory in legal education is far too numerous to cite, but for a convenient summary, see Lolita Buckner Inniss, *"Other Spaces" in Legal Pedagogy*, 28 HARV. J. RACIAL & ETHNIC JUST. 67, 68–73 (2012).

[8] *See*, *e.g.*, Myron Moskovitz, *Beyond the Case Method: It's Time to Teach with Problems*, 42 J. LEGAL EDUC. 241 (1992).

[9] *See generally The Carnegie Report*, GO BLUE, http://michiganintheworld.history.lsa.umich.edu/michiganathletics/exhibits/show/follow-the-money/the-carnegie-report (last visited Dec. 10, 2022).

[10] *See* Pamela Lysaght & Christina D. Lockwood, *Writing-Across-the-Law-School-Curriculum: Theoretical Justifications, Curricular Implications*, 2 J. ASS'N LEGAL WRITING DIRECTORS 73 (2004).

[11] Once again, there are too many articles on flipped classes in legal education to reference here, but for one examination of the technique by an experienced legal educator, see William R. Slomanson, *Blended Learning: A Flipped Classroom Experiment*, 64 J. LEGAL EDUC. 93 (2014).

conception of the basic law school curriculum remains stubbornly static.[12]

Are we very likely to see truly transformational change in the design of legal education that we would like? Perhaps not, although we still hope so! But skepticism about revolution never justifies stasis, especially not when, with a little effort, there may be ways to make things better, even if incrementally.

There is a lot that law professors can do *right now* to help implement a core lawyering-as-problem-solving mission in legal education. Rather than arguing extensively for overarching change in legal education—as so many with whom we agree have already done[13]—we write here to summarize the lawyers-as-problem-solvers reframing issue and offer a few concrete suggestions of places in the curriculum for immediate implementation to address the issue.

We build on the work of so many writers who have, for years, advocated for a greater emphasis on dispute resolution in law curricula.[14] We have come to believe, however, that we need to reconceptualize the purposes of legal work, and consequently of future lawyer training, more than we need to add on to the current legal curriculum. Even though viewing problem resolution as the purpose of lawyering originates from and mainly occupies alternative dispute resolution (ADR),[15] we believe that housing responsibility for this instruction exclusively, or even primarily, within that field is outmoded, constrictive, and not especially helpful in achieving broader goals both within and outside of the field.

Michael Moffitt's data-driven examination of the state of dispute resolution instruction in early-2000s law schools, which categorized curricular efforts as consisting of "Islands," "Vitamins," "Salt," or "Germs," inspires us.[16] However, we want to reframe dispute resolution as part of the broader goal of training students in

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[12] *See*, *e.g.*, Sara K. Rankin, *Tired of Talking: A Call for Clear Strategies for Legal Education Reform: Moving Beyond the Discussion of Good Ideas to the Real Transformation of Law Schools*, 10 SEATTLE J. FOR SOC. JUST. 11, 17–19 (2011).

[13] *E.g.*, Kathleen Elliott Vinson, *What's Your Problem?*, 44 STETSON L. REV. 777 (2015).

[14] There are simply too many to name and surveying this body of literature is not the objective of this short essay. For one example from a respected theorist, though, see generally Carrie Menkel-Meadow, *To Solve Problems, Not Make Them: Integrating ADR in the Law School Curriculum*, 46 SMU L. REV. 1995 (1993).

[15] Menkel-Meadow, *supra* note 14, at 1995–97.

[16] *See generally* Michael Moffitt, *Islands, Vitamins, Salt, Germs: Four Visions of the Future of ADR in Law Schools (and a Data-Driven Snapshot of the Field Today)*, 25 OHIO ST. J. ON DISP. RESOL. 25 (2009), discussed *infra* at Part I(A)(2).

the core skills of real-world lawyering—assisting clients to resolve, anticipate, and prevent the problems that prompted them to seek our help.[17] And, as committed gourmands,[18] we hope to offer significant justifications for refreshing current curricular entrées and provide samples of ways to add more seasoning to the current law school diet.

PROBLEM-SOLVING IS WHAT LAWYERS DO

Few law school graduates spend the bulk of their days resolving client problems inside courtrooms.[19] The vast majority of American lawyers rarely, if ever, take client problems to court for public adjudication.[20]

Rather, we listen intelligently to client concerns; ask probing questions to determine client priorities; assist clients in devising possible outcomes; articulate alternatives with a practical eye to costs, risks, and benefits; render business—or even personal—rather than exclusively legal advice; prepare clients to negotiate nuanced solutions; represent their interests before agencies, private counterparties, regulatory bodies, zoning boards, and other entities; and attempt to achieve outcomes that are as close as possible to client objectives. We help form, support, and dissolve family businesses, assist in estate planning, facilitate—or help to protect communities from—property transfer and development, and work

[13] The authors make no claims that we are originators of this insight. In this piece, we hope to bring together the ideas of those who have been thinking along these lines in divergent fields and provide illustrations that we hope some will find useful. *E.g.*, Katherine R. Krouse, Bobbi McAdoo & Sharon Press, *Client Problem Solving: Where ADR and Lawyering Skills Meet*, 7 ELON L. REV. 225, 226 (2015) (observing "the ADR movement has provided important justification and elaboration of the underlying commitment to client-centered problem-solving, which also animates much of the lawyering[-]skills literature that has arisen from clinical pedagogy"). We also want to note that much of the prior energy for a problem-solving curriculum has focused on first-year learning in law schools; for our part we hope to reach beyond that to look at the entirely of legal education. *Cf.* Bobbi McAdoo, Sharon Press & Chelsea Griffin, *It's Time to Get It Right: Problem-Solving in the First Year Curriculum*, 39 WASH. U. J.L. & POL'Y 39 (2012).

[18] Please contact the authors directly for recipes for Franklin's rib BBQ marinade or Phillips's "Tommy's Cookies."

[19] *See When Is Alternative Dispute Resolution Better than a Trial?*, EVANS KINGSBURY LLP, https://evanskingsbury.com/when-is-alternative-dispute-resolution-better-than-a-trial/ (last visited Dec. 10, 2022) ("In reality, approximately 95% of civil disputes are settled before trial by reaching an out-of-court agreement.").

[20] *Id.*

to seek consensus and enact legislation. Even the minority of attorneys who do engage in litigation settle most of their cases,[21] and the percentage of court cases privately resolved has only increased over time.[22]

It is fair to conclude that we are a professional services industry, like plumbers, pedicurists, and physicians. Just like doctors, our core activity is engaging clients who suffer from problems from which they seek professionally informed relief. Familiarity—even mastery—of cognitive legal principles is only a prerequisite to identifying those problems and counselling clients on how to approach them.[23] In addition to a broad base of foundational knowledge, we must also practice the clinical and interpersonal skills needed to effectively resolve the problems presented to us.[24] We must look beyond the law and see the client.

Therefore, the challenge of legal education is, as it has been, how we should teach lawyers-in-training the fundamental skills of lawyering.

THERE IS ALREADY IMPETUS TO EXPAND TEACHING AND LEARNING ABOUT HOW LAWYERS SOLVE PROBLEMS

Even the bar exam is poised to move toward recognizing that rules of law and lawyering skills operate in tandem.[25] We contend that legal education must make a concomitant shift. In doing so, we want to consider ways to move further toward a substantive curricular swing with a mindset that lawyering means solving problems for clients.

By and large, legal training does not provide nearly the kind of pervasive reinforcement of problem-solving skills, nor the enhanced doctrinal comprehension, that would be attained by

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[21] TABLE C-4–U.S. DISTRICT COURTS–CIVIL FEDERAL JUDICIAL CASELOAD STATISTICS, UNITED STATES COURTS (Mar. 31, 2022), https://www.uscourts.gov/statistics/table/c-4/federal-judicial-caseload-statistics/2022/03/31.

[22] *See generally* Paul Brest & Linda Krieger, *Lawyers as Problem Solvers*, 72 TEMPLE L. REV. 811 (1999); Carrie Menkel-Meadow, *When Winning Isn't Everything: The Lawyer as Problem Solver*, 28 HOFSTRA L. REV. 905 (2000).

[23] Krouse, McAdoo & Press, *supra* note 13, at 226.

[24] *Id.*

[25] *See generally About the NextGen Bar Exam*, NAT'L CONF. BAR EXAM'RS, https://nextgenbarexam.ncbex.org/ (last visited Dec. 10, 2022); DEBORAH JONES MERRITT & LOGAN CORNET, BUILDING A BETTER BAR: THE TWELVE BUILDING BLOCKS OF MINIMUM COMPETENCE, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYST. (Dec. 2020), https://iaals.du.edu/projects/building-better-bar-capturing-minimum-competence.

coupling legal rules with client-centered problem resolution. We can do more if we conceive of most classes as teaching students not how to pass tests in that field, but rather what it means to be a lawyer who counsels clients in that field. This article is our means of advocating for the legal-education world we want to see, part of which is already nascently constructed, and much more of which could be propagated if we tried.

We are heartened that there already exists a proliferation of lawyering-skills courses in law schools.[26] Many institutions offer full-fledged lawyering programs for first-year law students in place of courses that were once focused almost exclusively on the rudiments of legal research and writing (LRW).[27] Most law schools include clinical instruction for some upper-level students (both in the form of supervised live client representation and simulation).[28] Almost all law schools provide at least some coursework intended to introduce students to dispute resolution.[29]

But these innovations principally expand the core first-year program and add an important elective law school curriculum. The remainder of the instruction remains largely untouched. As a result, the separation of doctrinal from practical courses ensures that today's law students continue to learn legal doctrine in the same way as generations of lawyers who preceded them have.[30] Thus, "skills instruction" usually remains a discrete add-on, separated from the more hidebound learning in traditional doctrinal law classes, while the core classes in legal rules that most American lawyers remember

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[26] *See, e.g.*, Courtney Lee & Tim Naccarato, *Legal Skills for Law School & Legal Practice*, PACIFIC MCGEORGE SKILLS HOUR SERIES, https://law.pacific.edu/sites/default/files/users/user242/week-oe-legal-skills.pdf (last visited Dec. 10, 2022). What is also encouraging is the raft of scholarship devoted to rethinking law school curriculum to move toward greater integration of cognitive learning and skills development. *See, e.g*, Adam Lamparello & Charles E. MacClean, *Experiential Legal Writing: The New Approach to Practicing Like a Lawyer*, 39 J. LEGAL PROF. 135, 139–40 (2015).

[27] Although some scholars once viewed teaching a wide range of lawyers' professional skills in competition with teaching focused only on legal research and writing, that view has largely subsided. For examination of the tension, and an argument that the approaches are actually complementary, see Debra Harris & Susan D. Susman, *Toward a More Perfect Union: Using Lawyering Pedagogy to Enhance Legal Writing Courses*, 49 J. LEGAL EDUC. 185, 198–200 (1999).

[28] John Lande, *They Should Call It Negotiation School, Not Law School*, BEST PRACTICES FOR LEGAL EDUC. (Oct. 5, 2020) https://bestpracticeslegaled.com/2020/10/05/they-should-call-it-negotiation-school-not-law-school/.

[29] And yet still probably not enough. *See id.*

[30] Harris & Susman, *supra* note 27, at 200.

taking stay more or less unchanged in substance, pedagogic methodology, and assessment of ultimate fitness for the bar.[31]

As many practitioners and legal educators—clinical and otherwise—have explained, the role of attorneys as working-with-clients-to-resolve-challenges inevitably must transform our ideas of the fundamental skills that emerging lawyers need to be prepared to enter the profession.[32] The legal academy can do more to develop future lawyers' problem-resolution skills that they need as they enter the professional services industry.

Simultaneously, most students learn more effectively how legal rules operate in the context of a client-presented problem.[33] Using legal doctrine to work on realistic problems generates richness and nuance of comprehension that simply do not tend to occur when the same material is studied more abstractly.[34]

Thus, approaching much of law school learning from the perspective of lawyers-helping-clients-resolve-problems serves two objectives. Plainly speaking, this approach prepares law students to develop the wide range of intellectual and interpersonal competencies that attorneys actually use in their work.[35] Because legal rules do stem from real-life problems, studying them in the context of their applicability to realistic client-based work promotes deeper, more meaningful, and more intuitive command of relevant doctrine.[36]

This paper advocates for a shift in the focus of legal education toward greater emphasis on solving client problems throughout the curriculum, and ways to get there.

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[31] We do not mean in any way to dismiss the meaningful reforms many law schools have begun to implement or ignore the hierarchy and status concerns that are intertwined with this bifurcation—we only wish to recognize that there remains static teaching in law schools.

[32] Harris & Susman, *supra* note 27, at 202.

[33] Susan J. Hankin, *Bridging Gaps and Blurring Lines: Integrating Analysis, Writing, Doctrine, and Theory*, 17 J. LEGAL WRITING INST. 325, 344 (2011). Indeed, the law itself might be characterized as a means of resolving problems. That is to say, law can be understood as a set of rules developed by a culture to govern itself with stability, predictability, and ingenuity.

[34] *See id.* at 343.

[35] Hence the twenty-six skills identified as key for lawyers' professional success in the groundbreaking Schultz–Zedeck study. *See* Marjorie M. Schultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admissions Decisions*, 36 LAW & SOC. INQUIRY 620, 630 (2011).

[36] Hankin, *supra* note 33, at 343.

I. PROBLEM-SOLVING AND THE CURRENT LAW SCHOOL CURRICULUM

While not all lawyers resolve disputes, we nevertheless start by considering how the contemporary curricular regime teaches dispute resolution. ADR experts often claim the mantle for lawyering as problem-solving,[37] so we will begin our examination in that field. However, we certainly do not mean to contend that legal problem-solving is solely the purview of ADR as an academic field. We therefore turn briefly to consider problem-solving as a focus in other curricular areas in turn: LRW, clinical teaching, and traditional podium-taught casebook courses in legal doctrine.[38]

It does make sense to acknowledge that ADR is a primary locus for problem-solving approaches to lawyering. There is a close association between recognizing problem resolution as a—or *the*—pivotal objective of lawyers' client work, and the subject matter commonly seen as falling within the ADR ambit: transactional negotiations, settlements (whether by unmoderated give and take among parties and counsel, or with the assistance of third-party mediation), and arbitration.

A. INCORPORATING ADR

With the advent of ADR as a distinct discipline,[39] legal educators began to actively encourage teaching non-judicial conflict resolution processes as components of legal curriculum. Not all

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[37] *See, e.g.*, *Lawyer as a Problem Solver: A Collection of Lawyer as Problem Solver Exercises*, AM. BAR. ASS'N, https://www.americanbar.org/groups/dispute_resolution/resources/lawyer_problem_solver/ (last visited Dec. 12, 2022).

[38] *See* discussion *infra* Part I, Sections B, C & D.

[39] Familiarly understood as the practice by lawyers of private non-adjudicative processes such as negotiation and mediation, and private adjudicative processes such as arbitration and mini-trial. *See What is ADR? Defining the Alternative Dispute Resolution Spectrum.*, JAMS, https://www.jamsadr.com/adr-spectrum/ (last visited Dec. 12, 2022). The birth of ADR is broadly dated from Frank Sander's presentation at the 1976 National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice entitled "Varieties of Dispute Processing." 70 F.R.D. 79, 111–34 (1976) (quoted in THE POUND CONFERENCE: PERSPECTIVES ON JUSTICE IN THE FUTURE 65 (1979)). In fact, Prof. Sander was advocating supplemental capacities within courts, not the establishment of extra-judicial institutions. *Id.* at 130–31 ("What I am thus advocating is a flexible and diverse panoply of dispute resolution processes, with particular types of cases being assigned to differing processes (or combinations of processes), according to some of the criteria previously mentioned.").

these attempts were documented or critically studied, but we can find useful insight by contrasting two of those that have been.[40]

1. EARLY EFFORTS

In 1984, the Advisory Committee of the University of Missouri-Columbia School of Law's Center for the Study of Dispute Resolution "met to consider how the law school should teach dispute resolution."[41]

According to Leonard Riskin and James Westbrook, primary drivers of the initiative, two complementary but distinct concerns provoked the faculty's consideration: a desire to better equip students to develop the skills expected by clients to meet their needs, and a perception that traditional legal education suffered from an emphasis on doctrinal substance at the expense of sophisticated and nuanced procedural competence that better reflects the true nature of non-adversarial human relations.[42] The inquiry reflected the perception that, contrary to the impression one might get from the law school curriculum, "the lawyer's overriding function is problem[-]solving and . . . advocacy—inside or outside of litigation—is simply one approach to dealing with a problem."[43]

The method of achieving these goals that the faculty adopted was "to integrate dispute resolution into *all* standard first-year courses."[44] Among the considerations informing this decision was "to disperse the dispute resolution teaching so that no one teacher would feel overburdened; all teachers would become familiar with ADR; and students would see its relevance in many areas of law."[45] All faculty teaching first-year courses agreed to participate;

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[40] *See* Lisa A. Kloppenberg, *Training the Heads, Hands and Hearts of Tomorrow's Lawyers: A Problem Solving Approach*, 2013 J. DISP. RESOL. 103, 123–25 (2013) (describing the introduction of the "Lawyer as Problem Solver" curriculum at the University of Dayton School of Law in the late 2000s). There are certainly others that have been examined in the academic literature, and we do not mean to diminish their importance. We have simply chosen to focus on the two discussed in the text because they have been subject to external review, and both have been considered especially instructive to other law schools.

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

[42] *Id.*

[43] *Id.* at 510.

[44] *Id*. at 511 (emphasis in original). For a variety of reasons, the idea of framing a standalone first-year course was rejected, as was the proposal to insert ADR modules into a single doctrinal course such as Civil Procedure. *Id.* at 510–11.

[45] *Id*. at 511.

materials were developed, faculty training conducted, and the program was launched.[46]

The ADR modules that were developed for insertion into the first-year doctrinal courses were carefully developed simulation exercises and were staged in a coordinated way throughout the year.[47] In early October, the Torts course devoted one and a half fifty-minute segments to a dispute resolution simulation differentiating between adversarial and problem-solving negotiation.[48] The distinction between adjudication and mediation was illustrated in a three-class exercise in Civil Procedure in early November.[49] Mediation—as opposed to adjudication—was the topic of a late-November two-period exercise in Property.[50] Then, in early February, Contracts students negotiated a supply contract for one class period.[51] In late February, Property students simulated client interviewing and counseling to assess whether litigating was the most promising way to achieve the client's objectives.[52] Similar client-counseling skills were the subject of a Torts exercise settling a medical malpractice claim over two class periods.[53] Three further ADR modules took place in April: one class period in Contracts introducing students to private adjudication through arbitration; another class period in Criminal Law concentrating on the lawyer's role in plea bargaining; and a final class period in Civil Procedure engaging students in selecting the most appropriate process to assert a client's interest in a defamation claim against a newspaper.[54]

The initiative was deemed valuable, even if not wholly triumphant.[55] External review of the program well after it was established found students at least somewhat receptive.[56] But the

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[46] *Id.* at 511–12. The agreement of all the faculty to execute this initiative was both vital and, in our understanding, uncommon. *See id.*
[47] *Id.* at 512.
[48] *Id.* at 512–13.
[49] *Id.* at 513.
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] *Id.* at 513–14.
[54] *Id.* Many factors were considered critical to the success of this approach, one of the most important being the leadership and availability of a full-time, tenured Director of the Center for the Study of Dispute Resolution. *Id.* at 515 ("Without the Center director's activities, would the project gradually fall into disuse?").
[55] *Id.* at 520.
[56] Ronald M. Pipkin, *Teaching Dispute Resolution in the First Year of Law School: An Evaluation of the Program at the University of Missouri-Columbia*, 50 FLA L. REV. 609, 631–39 (1998) (considering student and alumni outcomes in the Missouri program as compared to students and alumni in two comparable law schools with far less extensive dispute

lessons students took away seemed to have more do with the high costs of litigation than with learning what it meant to serve future clients.[57] At the close of their integrated dispute resolution program, students "identified very strongly with [the] program's salient label of problem-solver,"[58] but the first-year program alone had not "penetrated analytical styles" sufficiently to become an automatic or reflexive part of their thinking.[59]

As for faculty, contemporaneous reflections on the program by Riskin and Westbrook noted that both student and faculty engagement was irregular.[60] Examinations by Missouri's external evaluator supported those conclusions.[61] Because the pedagogic process chosen in all these modules was based on active simulation rather than traditional lecture and Socratic dialogue, some teachers ended up feeling disadvantaged in terms of both competence and comfort.[62]

Nevertheless, the program founders were firmly convinced that "most of our students [were] now sensitive to the idea that in most cases lawyers should review available alternatives with their clients"[63] and, presumably, became literate in those alternatives.[64] If the goal was to achieve an introduction to dispute resolution as an undercarriage for legal work and law itself, then it seems the Missouri curriculum initiative was quite a success.

Conversely, many of the attributes contributing to the relative success of Missouri's curricular change were absent at the University of Washington School of Law when, in 1995, it embarked on a similarly large-scale project to integrate ADR into

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resolution offerings). We should note, however, that it is somewhat oversimplifying to describe this article as *the* review of the Missouri program. In fact, Pipkin himself provided an initial unpublished review to the institution itself shortly after the Missouri program was introduced, and Robert B. McKay and Jack P. Ethridge conducted a subsequent review the following year. *See* Riskin & Westbrook, *supra* note 41, at 516 nn.32 & 34.

[57] Pipkin, *supra* note 56, at 642.

[58] *Id*. at 633.

[59] *Id*. at 633–34.

[60] Riskin & Westbrook, *supra* note 41, at 515.

[61] Pipkin, *supra* note 56, at 639–41.

[62] Riskin & Westbrook, *supra* note 41, at 518.

[63] *Id.* at 517.

[64] The Missouri program seems to have transmogrified since its introduction. After about two decades in existence, the Missouri program switched from incorporating dispute resolution throughout the 1L year to a requirement that all students take a similarly themed course, Lawyering: Problem-Solving and Dispute Resolution. *See* John Lande, *Reforming Legal Education to Prepare Law Students Optimally for Real-World Practice*, 2013 J. DISP. RESOL. 1, 2–3 (2013).

its curriculum.[65]

To start with, the effort was part of a broad reexamination of curricular reform to develop a core curriculum.[66] Thus, dispute resolution was only one aspect of an institution-wide assessment of such initiatives as clinical education and required public service.[67] That scheme was generally unsuccessful and "many faculty were discouraged and leery" of future efforts at further curriculum reform.[68] Amid this background of some discontent, Missouri professor Leonard Riskin visited to offer a demonstration of an ADR exercise in a basic-skills class; thus inspired, a course in ADR was introduced.[69] A survey was conducted among the faculty—with individual follow-up—to assess what approach might be most welcome and useful in integrating ADR into their teaching, and pedagogic materials were compiled and catalogued.[70]

But efforts to integrate ADR skills such as negotiation into first-year classes were uncoordinated and left to the individual instructor, yielding unsatisfactory results (except in the case of Legal Skills, where the director of the program ensured that every student was at least exposed to mediation and negotiation).[71] Some—but not all—Civil Procedure sections were exposed to some—but not all—ADR materials.[72] One Torts section engaged in a negotiation exercise, another had a discussion of ADR, and a third had no coverage of the material.[73] No Constitutional Law section engaged in the material.[74]

In subsequently reviewing the Washington program, Riskin concluded that it foundered due to a variety of factors: lack of institutionalization for the program;[75] the absence of a first-year faculty working group that had the authority to monitor uniform

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[65] Lea B. Vaughn, *Integrating Alternative Dispute Resolution (ADR) into the Curriculum at the University of Washington School of Law: A Report and Reflections*, 50 FLA. L. REV. 679, 682 (1998).
[66] *Id.* at 684.
[67] *See id.* at 682–85.
[68] *Id.* Confounding matters, the law school entered a major fundraising campaign to build a new building. *Id*. at 682. The school initiated a strategic planning process, but then the dean of the school unexpectedly resigned. *Id*. at 682–83. New appointments were made, and the cohesiveness that innovation would demand gave way to a "culture of anomie," with little co-teaching, collaboration, or indications of faculty support for one another's efforts in the classroom. *Id*. at 683.
[69] *Id.* at 687.
[70] *Id.* at 688.
[71] *Id.*
[72] *Id.* at 691.
[73] *Id.*
[74] *Id.*
[75] *Id.* at 692.

first-year learning goals;[76] and faculty indifference or—in some cases—resistance.[77] Reasons for faculty reluctance to participate in the ADR integration project included a sense that there was too much doctrinal substance to cover already in the time allocated; that what the instructor is doing now works; that exercises do not work in large classes; and that the instructor is either unfamiliar with ADR or is skeptical of its place in the classroom.[78]

Yet Riskin himself remained committed to the idea of integrating dispute resolution into standard doctrinal courses.[79] He continued in the 1990s to work with other law schools to expand on the successes of the Missouri plan.[80] Meanwhile, whether embedded in the most traditional law classes or introduced as self-contained subjects, the field of ADR continued to grow.[81]

2. ADR EXPANSION IN THE 2000S

As law schools grew into the broad professional acceptance of ADR as a legal practice, and as the courts adopted mandatory ADR programs and members of the legal profession were increasingly able to maintain private practices limited to service as ADR neutrals, the academic discipline of dispute resolution instruction became increasingly robust and diverse.[82] In 2009, Michael Moffit provided a data-driven "snapshot" of ADR teaching in American law schools, and provocative speculation on the way ADR will fit into various schools' curricula as institutional experimentation settled into academic practice.[83]

Moffitt proposed that, in the fullness of time, four distinct institutional approaches to fitting ADR into law schools' curricula would emerge:

Islands.[84] These law schools offer ADR as a unique area of specialization, similar to Tax.[85] They provide LLM offerings,

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[76] *Id. See* Melissa J. Marlow, *Law Faculties: Moving Beyond Operating as Independent Contractors to Form Communities of Teachers*, 38 OHIO N.U. L. REV. 243, 246 (2011). Getting even very well-intentioned hardworking law faculty to coordinate their teaching is a common stumbling block to curricular innovation. *Id.* at 251–52.
[77] *See* Vaughn, *supra* note 65, at 688–89, 692.
[78] *Id.* at 692–93.
[79] Vaughn, *supra* note 65, at 696.
[80] *See* Leonard L. Riskin, *Disseminating the Missouri Plan to Integrate Dispute Resolution into Standard Law School Classes: A Report on Collaboration with Six Law Schools*, 50 FLA. L. REV. 589, 590 (1998).
[81] *Id.* at 607.
[82] Moffitt, *supra* note 16, at 46, 72.
[83] *Id.* at 26.
[84] *Id*. at 54–58.
[85] *Id.* at 56–57.

scholarly dispute resolution journals, competitive scholars on the faculty, certificates awarded for satisfaction of a certain number of ADR courses, and so on.[86] Moffit saw these schools' commitment to the field as necessitating "multiple full-time . . . faculty whose primary teaching responsibilities fall within ADR."[87] He further viewed these "islands" as institutions whose accomplishments made them rise above the elevation of the sea around them.[88]

Vitamins.[89] Schools in this grouping required their graduates to experience a standalone ADR course on the assumption that ADR is good for them—or inevitable in modern legal practice—and therefore a necessary attribute of a well-educated lawyer.[90] Moffitt acknowledged an inherent weakness in this approach baked into its structure: the tension between ADR as a "skill" and other required courses as "knowledge."[91] But he also recognized the value of communicating to all law students that learning ADR techniques was an important part of their legal training and analogized this approach to its instruction as accordant with research and writing instruction.[92] Both introduce necessary skills without which law graduates' competence would be compromised.[93]

Salt.[94] In this category, Moffitt placed law schools that intentionally introduce ADR concepts in a systematic effort to leaven or supplement traditional law courses.[95] For example, Civil Procedure courses might include consideration of Rule 16 settlement conferences.[96] The faculty "would not necessarily be experts in all aspects of ADR."[97] However, a negotiation teacher might act as an institutional resource in incorporating certain core concepts in otherwise unrelated courses.[98] Moffitt analogized this approach to the way cross-border legal concepts might be integrated in Contracts or Civil Procedure courses, or the way ethics can be raised throughout the substantive courses in the curriculum.[99]

Germs.[100] Finally, Moffitt predicted that some schools

[86] *Id.* at 55–57.
[87] *Id.* at 56.
[88] *Id.* at 54.
[89] *Id*. at 59–63.
[90] *Id.* at 59–60.
[91] *Id.* at 59–63.
[92] *Id.* at 61–63.
[93] *See id.*
[94] *Id*. at 63–67.
[95] *Id.* at 64.
[96] *Id.*
[97] *Id.*
[98] *Id.* at 65.
[99] *Id.* at 66–67.
[100] *Id.* at 68–71.

would structurally ignore the issue, leaving individual teachers "who really care most about ADR [to] wind up being the ones to teach it."[101] The influence of ADR-related pedagogy in such circumstances would be similar to the effect that germs have on an organism: the clandestine incorporation of ADR into non-ADR courses with related risks and benefits associated with non-institutionalized decisions by individual instructors.[102] Thus, ADR concepts might show up in all kinds of courses the way Critical Legal Studies or principles of Law and Economics might do, though they equally well might not appear in other instructors' versions of those same subjects.[103]

We find Moffitt's taxonomy exceedingly useful. More than a decade after his article appeared, we see many of the strains he predicted in current problem-solving curricular initiatives.

However, the difficulty we have with Moffitt's vision is how committed he seems to be to ADR as a discrete field of study. He views ADR programming as something to be built, perceived, sliced, sprinkled, distributed, and injected into other areas.[104] By contrast, we see skills in client receptivity and problem-solving as professional attributes not limited to practitioners in any one area of the legal profession, and not distinguishable from the work that non-ADR specialists engage in, but rather as an attribute to the very experience of lawyering.

Put differently, Moffitt refers to ADR as a collection of processes to resolve disputes[105]—we see it as a way to serve clients.

3. ADR: DOCTRINAL FIELD OR STATE OF MIND?

Many teachers of negotiation, when conveying to students the unconscious psychological heuristics that contribute to poor decision-making by lawyers and clients, have referenced the short film, *The Monkey Business Illusion*,[106] prepared by Daniel Simons. In that video, young people bounce several basketballs to each other, and students are asked to count the number of times players of one team passes the ball to other players of the same team.[107] Many students watching the video are so intent on that task that they do not see a gorilla walking across the basketball court while pounding

[101] *Id.* at 68.
[102] *Id.* at 69.
[103] *Id.* at 70–71.
[104] *See generally id.*
[105] *See generally id.*
[106] Daniel Simons, *The Monkey Business Illusion*, YOUTUBE (Apr. 28, 2018), https://www.youtube.com/watch?v=IGQmdoK_ZfY.
[107] *Id.*

its chest.[108] The film illustrates the phenomenon of selective attention and, more broadly, that we see only what we look for[109]—or, as Henry David Thoreau observed, that "a man receives only what he is ready to receive."[110] The framers of the Missouri Plan placed their work in that context when explaining the utility of exposing young lawyers to client-centered problem-solving skills:

> We want . . . to affect the "lawyer's standard philosophical map," which often determines what we see and do not see in law school. The [prevailing] map is based on assumptions that (1) disputants are always adversaries—what one wins, the other must lose; and (2) cases are to be decided by reference to a rule of law applied by a third party. Such a philosophical map makes it difficult not only to recognize the value of some dispute resolution methods but also to perceive that nonmaterial interests, such as yearnings for equality, recognition[,] or security are vitally important. It crowds out notions of shared interests and interconnections. The map shows only well-known, well-traveled thoroughfares.[111]

This entreaty beautifully captures the weakness of equating problem resolution solely with ADR, and with counting as ADR courses only those addressing negotiation, mediation, arbitration, or related nonjudicial conflict resolution modalities.[112] The nominally defined ADR field unquestionably concentrates on lawyers working with clients to resolve problems.[113] Yet, non-courtroom dispute resolution processes are hardly the only arena within the legal

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[108] *Id.*
[109] *Id.*
[110] HENRY D. THOREAU, I TO MYSELF: AN ANNOTATED SELECTION FROM THE JOURNAL OF HENRY D. THOREAU 420 (Jeffrey S. Cramer ed., Yale U. Press 2007).
[111] Riskin & Westbrook, *supra* note 41, at 520.
[112] Moffitt himself acknowledges this when he notes that negotiation may or may not be considered an ADR course because it "also underlies much of deal-making, contract formation, and various other forms of private ordering that would never describe themselves as part of dispute resolution." Moffitt, *supra* note 16, at 29. This trenchant observation reinforces our contention that ADR belies an approach to problem-solving, rather than a substantive set of legal rules; is broadly relevant to learning how to be a lawyer; and is applicable to the widest conceivable swath of legal education.
[113] Marjorie O. Rendell, *ADR Versus Litigation*, 55 DISP. RESOL. J. 69, 69 (2000).

profession in which that takes place,[114] the most obvious of which being litigation.[115]

Arguably *all* lawyers work to resolve problems—or, in the case of much transactional and in-house legal work, to prevent them from arising in the first place.[116] Interviews, legal research, fact development, and record making are all components of the same client-centered problem-solving process.[117]

Therefore, we want a far more ambitious paradigm shift than simply including ADR training in the law school curriculum, no matter how thoroughly. The thing that dispute resolution practitioners and scholars call ADR is not comparable to what law teachers call Torts or Property. It is not a defined and bound cognitive category, susceptible to being "sprinkled," "injected," or even "isolated," as Moffitt propounds.[118] Rather, an approach to client problem-solving is pervasive to, and key to success in, all legal arenas.[119] Perhaps, framing this as primarily the purview of just ADR was part of the perceptual problem all along.[120]

Lawyers' problem-solving is a panoply of processes.[121] Or, even more acutely, it is an *attitude*.[122] It is consistent with what we currently teach—though perhaps it substantially alters the focus of some classes.[123] We believe it would be salutary if a problem-solving mindset pervaded all corners of legal education.

Before turning to Part II to consider ways this mindset might enrich current teaching of core legal subjects, we address the ways that problem-solving is—and is not—a central focus in three key constitutive parts of most law schools' curricular design: LRW/lawyering programs, clinical legal education, and traditional casebook courses. Each of these has an important role in the

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[114] Or perhaps Riskin and Westbrook simply inveigh against a *presumption* of litigation, which in part is what the rise of ADR as a field was intended to counteract. *See id.* at 71 ("Currently, it seems that ADR is used as a reaction to costly, lengthy litigation. ADR is chosen not because it is, in and of itself, the optimal path, but, rather, because the path we might otherwise like to take—litigation—is just not worth the time and effort.").
[115] *Id.* at 69.
[116] *Id.*
[117] *Id.*
[118] *See* Moffitt, *supra* note 16, at 63.
[119] Rendell, *supra* note 113, at 69–70.
[120] This is entirely consistent with Pipkin's recommendations for "additional innovation" in the Missouri program. *See* Pipkin, *supra* note 56, at 655–56. Riskin himself concurred with this particular critique from Pipkin. Leonard L. Riskin, *A Response to Professor Pipkin*, 50 FLA. L. REV. 757, 757 (1998).
[121] Rendell, *supra* note 113, at 69.
[122] *Id.*
[123] Marlow, *supra* note 76, at 252.

problem-solving focus shift we envision, though perhaps only the first two currently understand that. We address why teaching problem-solving in these experiential arenas is unbelievably valuable but remains insufficient for the more comprehensive reframing of legal education we have in mind. We then consider why a problem-solving focus enriches the teaching and learning of even conventional legal doctrine.

B. PROBLEM-SOLVING IN WRITING & LAWYERING PROGRAMS

Most lawyering, legal practice, and LRW programs do terrific things—really, just grand. Under enormous mountains of feedback and grading, professors in this field inculcate crucial professional and analytical skills,[124] produce innovative pedagogy,[125] and they usually do, in fact, introduce beginning law students to methods of resolving client problems.

Most LRW problems begin at least indirectly from a problem-solving perspective: a client walks into your office with an issue; how will you help?

As we understand it, a primary difference between more traditional LRW coursework and more involved lawyering/legal practice classes[126] is the form in which those clients appear, and

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[124] Hence, the not-so-radical suggestion that legal doctrine and professional skills be incorporated into an overarching writing curriculum rather than the other way around. Adam Lamparello & Charles E. MacLean, *Experiential Legal Writing: The New Approach to Practicing Like a Lawyer*, 39 J. LEGAL PROF. 135, 137–40 (2015); *see also* Elizabeth Fajans, *Legal Writing in the Time of Recession: Developing Cognitive Skills for Complex Tasks*, 49 DUQ. L. REV. 613, 616–17 (2011) (outlining the cognitive and professional skills beyond first-year analysis potentially learned through upper-level legal-writing courses).

[125] For an entire volume dedicated to insights for effective teaching techniques spurred by legal-writing instruction, *see* SOPHIE SPARROW, LAWYERING SKILLS IN THE DOCTRINAL CLASSROOM: USING LEGAL WRITING PEDAGOGY TO ENHANCE TEACHING ACROSS THE LAW SCHOOL CURRICULUM (Tammy P. Oltz ed., 2010).

[126] They are, of course, distinguished by the credit load each bears, and perhaps the academic status accorded to their faculty. From 1960s-style brief- and memo-writing courses carrying little or minimal course credit and often with upper-level law students leading the courses, the LRW field has evolved to highly credentialed faculty primarily teaching these courses. Status issues in the profession nevertheless remain unresolved, and may have an adverse impact on student learning. *See generally* Kristen K. Tiscione & Amy Vorenberg, *Podia and Pens: Dismantling the Two-Track System for Legal Research and Writing Faculty*, 31 COLUM. J. GENDER & L. 47 (2015).

what students do once they have read and written about the legal issues that the clients generate. In other words: Is the client problem presented in a memo,[127] through a comprehensive case file,[128] or through an in-person meeting?[129][130] After completing some research and writing, do students go back to meet with and counsel the clients? Do they negotiate or advocate on their behalf? In an article positioning law and law schools as being about lawyers helping clients resolve problems, it should be unsurprising that we favor the latter approach over research-and-writing-only instruction. However, we do want to take care to recognize that both efforts move at least partway in the direction we advocate for all law teaching—approaching law as a service profession helping people through the application of legal doctrine and well-developed professional skills.

We are not satisfied, even if we fully credit that these programs are teaching problem resolution. Instead, we must recognize that these programs serve only as an introduction to the work lawyers do. They usually span only two semesters—occasionally three.[131] Do we then conclude that after that sequence most law students have fully absorbed the problem-solving method? That they are now "practice-ready?"[132] Of course not, because a mere introduction to problem resolution as a professional mindset is no more sufficient than exposing a beginning medical student to the concept of diagnosis. At best, these courses may implant the

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[127] Meaning, a standardized professor-prepared set of facts provided to undergird the students' assigned legal task.

[128] Requiring students to glean the factual setting for their assigned legal task through critical review of simulated documents.

[129] Thereby generating facts dialectically, constructed via the interaction between lawyer and client. This may be the only means of providing facts for case analysis in which the set of facts available might change depending on the student-lawyers' own skill.

[130] Suzanne E. Rowe, *Legal Research, Legal Writing, and Legal Analysis: Putting Law School into Practice*, 29 STETSON L. REV. 1193, 1194–95 (2000).

[131] *See* Adam Lamparello & Charles E. MacLean, *A Proposal to the ABA: Integrating Legal Writing and Experiential Learning into a Required Six-Semester Curriculum that Trains Students in Core Competencies, "Soft" Skills, and Real-World Judgment*, 43 CAP. U. L. REV. 59, 112 (2015) (urging the adoption of six-semester writing-intensive course sequences, though we are not aware of any U.S. law school that has fully embraced that model).

[132] *See* Sherri Lee Keene, *One Small Step for Legal Writing, One Giant Leap for Legal Education: Making the Case for More Writing Opportunities in the "Practice-Ready" Law School Curriculum*, 65 MERCER L. REV. 467, 492 (2014) (concluding that broader writing experiences in law school would better prepare law graduates for practice).

attitudes that we desire, but it is unreasonable to expect that law students can fully flesh out their many dimensions and concomitant skills.

Moreover, the most thoughtful intentions of the faculty teaching these programs may not fully overcome the myopia that their own students may bring. There is simply a lot of new content to learn in these classes: argument construction; inductive and deductive reasoning from legal rules; meticulous positioning of legal authority; deployment of facts; common genres of legal writing; legal research databases; reporters; Bluebook format; and, if taught, interactively working with clients, witnesses, and adjudicators, negotiation techniques, and so forth.[133] Professors could adopt a problem-resolution approach to teaching *all* of these subjects. Assuming they all did so, should we be confident that that is the students' takeaway?[134]

Students tend to leave what they learned in law school in a conceptual silo (or worse, in a sealed time capsule).[135] If these courses are the only—or primary—places in three years of law school that legal problem resolution is explicitly taught, is it any wonder that the message may become diluted?

C. CLINICAL PROGRAMS & SCHOLARSHIP

Law students engaging in supervised work with actual clients is the epitome of lawyers-work-with-clients-to-resolve-problems pedagogy. Clients present problems that are unique to them; student-lawyers join with clients to figure out what to do with those problems to achieve outcomes that the client sets. Distinct from law practice, clinical cases are often selected specifically for their educational value.[136] Yet, just as with the LRW and legal

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[133] Anthony Niedwiecki, *Prepared for Practice? Developing a Comprehensive Assessment Plan for a Law School Professional Skills Program*, 50 U.S.F. L. REV. 245, 249 (2016).

[134] *See generally* Tonya Kowalski, *True North*: *Navigating for the Transfer of Learning in Legal Education,* 34 SEATTLE U. L. REV. 51, 54 (2010). Only if students were able to fully transfer what they learned in each setting to others, both in law school and in practice. But transfer of learning is one of the biggest barriers for educators to overcome, and can never be entirely presumed. *See* Shaun Archer, James P. Eyster, James J. Kelly, Jr., Tonya Kowalski & Colleen F. Shanahan, *Reaching Backward and Stretching Forward: Teaching for Transfer in Law School Clinics*, 64 J. LEGAL EDUC. 258, 259 (2014).

[135] Mary Nicol Bowman & Lisa Brodoff *Cracking Student Silos: Linking Legal Writing and Clinical Learning Through Transference*, 25 CLINICAL L. REV. 269, 269 (2019).

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

education we applaud, we remain unconvinced that clinical instruction alone is sufficient to teach legal problem-solving.

First, even in clinical legal education settings, it is not clear that problem resolution is always a chief focus of student learning.[137] The sometimes-urgent requirements of what a client needs *right now* may instead draw students' narrowed attention. For example, helping to secure a protective order and safe housing for a domestic violence victim is problem-solving for that client, but it is not clear that legal students working on these matters understand it as such. With thoughtful guidance from their teachers, and the reflection that is often a hallmark of clinical teaching,[138] perhaps more students will understand their work as problem resolution. Still, we are not confident that most law students hold the kind of simultaneity of thinking to foreground problem resolution amid such immediate crises.

While problem resolution is pervasively interwoven with clinical methodology,[139] it is not always articulated as a core objective in quite the same way that it is in ADR. The premier text on clinical law teaching lists seven core goals of this instruction.[140]

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[137] *See generally* Stefan H. Krieger, *The Effect of Clinical Education on Law Student Reasoning: An Empirical Study*, 35 WM. MITCHELL L. REV. 359 (2008).

[138] Justine A. Dunlap & Peter A. Joy, *Reflection-in-Action: Designing New Clinical Teacher Training by Using Lessons Learned from New Clinicians*, 11 CLINICAL L. REV. 49, 49–53 (2004) (characterizing self-reflective learning as a key skill for clinicians); *see also* ABA Standard 305(e)(7) (2013–2014), https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_standards_chapter3.authcheckdam.pdf (mandating self-reflection in learning outside the classroom); Anahid Garakhanian, *ABA Standard 305's "Guided Reflections": A Perfect Fit for Guided Fieldwork*, 14 CLINICAL L. REV. 61 (2007). Reflection as learning methodology is well-grounded in cognitive psychology, drawing from the work of researchers like Jerome Bruner and Lev Vygotsky. *See* Andrea McArdle, *Writing Across the Curriculum: Professional Communication and the Writing that Supports It*, 15 J. LEGAL WRITING INST. 241, 245–46 (2009).

[139] *See* Larry O. Natt Gant II, *The Pedagogy of Problem Solving: Applying Cognitive Science to Teaching Legal Problem Solving*, 45 CREIGHTON L. REV. 699, 701–02 (2012) (situating the expansion of clinical offerings in 1970s law schools as a direct attempt to foster greater problem-solving skills in law graduates).

[140] SUSAN BRYANT, ELLIOT S. MILSTEIN & ANN C. SHALLECK, TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY 14–29 (2014) (enumerated as: (1) developing a professional identity; (2) understanding how legal systems function in peoples' lives; (3) managing uncertainty and exercising good judgment while taking action; (4) expanding modes of legal thinking; (5)

While they are entirely compatible with lawyers' assisting in problem-solving, none is articulated so explicitly that they would ensure all law students' grasp the connection.

It is also worth noting that law school clinics are small by intention,[141] and do not scale well. Consequently, despite significant advances of clinical education in the legal academy, it remains true in most law schools that most graduates have not experienced intensive clinical training.[142]

Even in the best of clinical problem-resolution models, a single exposure to the notion of lawyers as problem-solvers—no matter how intensive and valuable an experience—is just not our goal. We want to see it everywhere, or we want to examine clinical instruction in law schools and, shamelessly borrowing from improv theater's actors, conclude, "Yes, and . . . ."[143]

D. TRADITIONAL LAW CLASSES: IMPARTING COGNITION OR PREPARING LAWYERS?

Doctrinal courses are not primarily designed to prepare lawyers directly for professional practice.[144] Instead, the authors of the Carnegie Report,[145] and other commentors, conclude that the primary purpose of traditional podium classes is to impart a lawyer's habit of mind.[146] The goal is to teach reasoning (rules of law applied

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building a lifelong commitment to continued learning in professional settings; (6) improving the interpersonal relations needed for law practice; and (7) building lawyering skills).

[141] Usually 6–12 students, with 8 or 10 being the mode. For a thorough consideration of the constraints and considerations in clinical/experiential learning more generally, see Deborah Maranville, Mary A. Lynch, Susan L. Kay, Phyllis Goldfarb & Russell Engler, *Re-Vision Quest: A Law School Guide to Designing Experiential Learning Courses Involving Real Lawyering*, 56 N.Y.L. SCH. L. REV. 517, 536–39 (2011/2012).

[142] *See* Deborah L. Rhode, *Legal Education: Rethinking the Problem, Reimagining the Reforms*, 40 PEPP. L. REV. 437, 448 (2013).

[143] *See generally* JEFFREY KRIVIS, IMPROVISATIONAL NEGOTIATION (2005); Jeffrey Krivis, *The Rules of Improvisation*, www.JeffreyKrivis/com/the-role-of-improvisation/ (last visited Dec. 20, 2022). We have it on good authority that Mr. Krivis has earned more in mediation than in stand-up.

[144] Lucia Ann Silecchia, *Legal Skills Training in the First Year of Law School: Research? Writing? Analysis? Or More?*, 100 DICK. L. REV. 245, 245–53 (1996).

[145] WILLIAM M. SULLIVAN, ANN COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 47–74 (2007) [hereinafter CARNEGIE].

[146] One author recalls an older friend's encouraging response to the prospect of entering law school: "Do it. It'll teach you to use your squash."

critically to facts) while introducing the domain-specific norms that attend each subject studied.[147]

But we have come to understand that these courses, as they are most traditionally led, are also not necessarily optimal even for the purpose envisioned.[148] Learning rules in the abstract is shallower and less effective than learning them in relevant problems' respective contexts.[149] Rules of law do not simply exist in the wild like mushrooms; they are developed by lawmakers—and in common law jurisdictions, refined though judicial interpretation—because we need principles that will help guide good decision-making and address genuine tensions that often have no one simple, easily-perceived outcome.[150]

This means that abstract legal study is often flat and incomplete.[151] Most people need a contextual framework to fully understand the law as an applied profession.[152] Immersion, debate, and role-play make for richer learning and deeper, more useful comprehension of doctrinal rules of law.[153] Do most lawyers remember the Rule Against Perpetuities? We will happily admit that we, at least, most definitely do not—though we admire those who do. But if either of us had worked with an estate planning client who wished to devise property in ways that would limit ownership options after the deaths of named heirs, we feel confident that we would have learned the concept more thoroughly[154]—and that it would have stuck.[155]

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[147] *See generally* CARNEGIE, *supra* note 145.
[148] Gerald Lebovits, *Legal Writing in the Practice-Ready Law School*, 85 N.Y. ST. B.J. 72, 72 (2013).
[149] CARNEGIE, *supra* note 145, at 3.
[150] Toni M. Fine, *American Legal Systems: A Resource and Reference Guide*, 3–18 (1997).
[151] *See id.*
[152] *See* CARNEGIE, *supra* note 145, at 173–74 (describing what some scholars of learning who draw from the work of Lev Vygotsky describe as a "scaffold").
[153] CARNEGIE, *supra* note 145, at 28–29.
[154] We choose this particular legal principal somewhat, but not entirely, at random. Any number of other legal norms might serve as exemplars. But of all the areas in the legal pantheon, the Rule Against Perpetuities is perhaps the most classic "only for the bar exam" or "only for this Property class" topic. Indeed, we were surprised—but not shocked—to learn that the July 2022 bar exam included not one but *two* questions on this abstruse legal principle. *See* Joe Patrice, *Bar Examiners Test Rule Against Perpetuities Because "Screw You, We're the Bar Examiners*," (July 28, 2022, 9:56 AM), https://abovethelaw.com/2022/07/bar-examiners-test-rule-against-perpetuities-because-screw-you-were-the-bar-examiners/.
[155] *See* Jennifer E. Spreng, *Spirals and Schemas: How Integrated Courses in Law Schools Create Higher-Order Thinkers and Problem Solvers*, 37

Learning law in the setting of client problems necessarily deepens law students' proficiency.[156] This stands to reason. Part of the central difficulty in learning to "think like a lawyer" lies in the challenge of taking seriously the many perspectives that can be brought to bear on most difficult questions.[157] Working from the position of addressing the actual issues that a person might wrestle with on any given legal topic almost automatically requires thinking through what those varying viewpoints might be.[158]

In short, we are confident that learning law as a process of solving problems makes for better learning of law itself. It contributes to a fuller understanding of the rules while showing what lawyers might do with those rules. And it is a critical part of instilling in law students a sense of the roles they may actually play by adding value to clients when they enter the profession.

II. JOINING CASE ANALYSIS WITH CONSIDERATION OF CLIENT ALTERNATIVES

We imagine a world in which current law school course structures do not constrain the ways we conceive of training future lawyers. We envision a more malleable, more inquisitive curricular approach. One that embraces a pedagogical world in which Moffitt's article seems no longer pertinent because, of course, all this "cool" stuff can be found everywhere, in every course. This is ineluctably so because it is intrinsic to the practice of law itself.

U. LA VERNE L. REV. 37, 47–48 (distinguishing between "deep" and "surface" learning, and noting that active engaged "deep" learning is more likely to be retained after assessment).

[156] This is so in part because it is a form of active learning, and in part because it requires deeper levels of processing that in turn promotes greater comprehension and better retrieval. *See* Linda S. Anderson, *Incorporating Adult Learning Theory into Law School Classrooms: Small Steps Leading to Large Results*, 5 APPALACHIAN J.L. 127, 130 (2006); Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347, 366 (2001).

[157] CARNEGIE, *supra* note 145, at 51.

[158] This goes beyond the "argue every side of the issue" advice that law students commonly receive. Countless law students have been told the same thing, and yet countless law professors have expressed frustration that this is not what most of their students do. That is probably because arguing from all possible perspectives actually requires incredibly sophisticated reasoning skills, and a form of layered cognitive empathy that is an important prerequisite to thoughtful legal decision-making. *See* MARTHA C. NUSSBAUM, UPHEAVALS OF THOUGHT: THE INTELLIGENCE OF EMOTIONS 444–45 (1st ed. 2001).

Once the invitation is extended to think of client objectives while conveying doctrinal principles, and once we presume that client-focused work builds comprehension in all law classes, teachers and trainers are almost unlimited in their opportunities. Certainly, there would be room for the introduction of new simulations and exercises that clinicians and ADR educators routinely use.[159] However, this is a labor-intensive investment, and by no means is it the only way to begin framing lawyers' work as resolving clients' problems.

Indeed, merely adjusting how traditional Socratic lectures pose hypotheticals may help achieve our goals. Challenges faced by Riskin at Missouri and Vaughn at Washington can be anticipated and co-opted by encouraging faculty to "own" the modulation of their courses.[160] Concerns like "I don't have any classroom time to fit new stuff in" can be transformed into: "If Mrs. Palsgraf wobbled into your office on crutches and told her story, what assistance would you understand her to be seeking, and what advice might you give her?" Have the conversation, and then assign the case. Then ask: Did the court grant the relief she sought? Was the litigation process ultimately a wise choice? How might that lawyer have better responded to obtain her objectives?

It should be lively for the professor to encourage investigation of a case as a real event that happened to real people, with real impacts, and perhaps not ideally handled by the lawyers involved. In *AT&T Mobility v. Concepcion*, why did the plaintiff's attorney initiate litigation to recover the client's $30.22, as opposed to applying for an online refund?[161] This technique is not intended to introduce new content, but rather to consolidate understanding of material already introduced, while using the crucial practice-based lens of inquiry regarding client objectives.

A. EXAMPLES OF PROBLEM-RESOLUTION PERSPECTIVES

To spur this desired perspective shift in legal education, we offer some examples of the kinds of inquiries that law schools may

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[159] *See, e.g.*, *Legal Education, ADR and Practical Problem Solving (LEAPS) Project*, AM. BAR ASS'N SECTION DISP. RESOL., https://web.archive.org/web/20181223032829/http://leaps.uoregon.edu/ (last visited Sept. 12, 2022) (archiving the ABA Section of Dispute Resolution's project to develop problem-solving materials and lessons with examples including simulated mediation between opposing parties in conflict, negotiated business transactions, draft regulations, *etc.*).

[160] Riskin, *supra* note 80, at 598–600; Vaughn, *supra* note 65, at 706 & n.75.

[161] *See generally* AT&T Mobility LLC v. Concepcion, 563 U.S. 333 (2011).

incorporate into their core subjects.[162] These are naturally non-exhaustive lists, but we hope they will generate further thinking by all law faculty.

Having urged a comprehensive conceptual adjustment in legal education, we naturally believe that the kinds of inquiries we include here would work best as part of a complete realignment of the goals of all coursework in a given law school. But we must not let unattainable perfection interfere with achievable improvement. It is certainly true that any of these or similar modifications might be introduced by individual teachers,[163] and we believe their students' learning would be the better for it.

1. BUSINESS ASSOCIATIONS

- What questions should lawyers ask clients to consider in determining whether to incorporate or form a partnership?
- What provisions might be incorporated in a limited partnership agreement to address the early identification, and the efficient—and private—resolution, of disputes arising between the partners?
- In a family-held close corporation, what are the likely causes for serious conflicts among shareholders? What advice might be offered in designing a shareholder agreement that anticipates generational transfers and possible family tensions arising from them?
- Two friends who have known each other since high school are now in their 50s; one owns a business, and the other is a senior executive. They have worked only in this business their whole lives and their spouses and children are very close. A dispute has arisen over the formula to determine the annual bonuses of a non-owner executive. How might the dispute have been avoided in the governance structure or employment relationship, and what are the

[162] Indeed, some law professors already consider this approach in their courses. We do not intend to suggest that these lists are wholly original. Rather, considering a great many problem-solving inquiries throughout the law school curriculum shows a great deal about what might be possible if the academy fully embraced lawyers-resolving-problems as a primary model of what law students are really striving to learn.

[163] Here we echo the resolution of pioneers like John Lande and Jean Sternlight, who similarly yearn for a comprehensive restructuring of legal education yet continue to offer ways that individual faculty members could implement their own incremental ways of providing practical instruction in law schools. *See* Lande, *supra* note 64 at 13 (referencing John Lande & Jean R. Sternlight, *The Potential Contribution of ADR to an Integrated Curriculum: Preparing Law Students for Real World Lawyering*, 25 OHIO ST. J. ON DISP. RESOL. 247, 276–90 (2010)).

most appropriate approaches to managing the personal and business relationships?

- It is a common practice for corporate mergers involving ongoing businesses to adjust the purchase price post-closing based on operational results. It is also common for the parties to disagree on the proper price adjustment. What mechanisms might be included in a merger agreement to address this anticipated conflict or to allocate the risk that the process contemplates?
- In the context of close corporations, what does the term "business divorce" portend?[164] How should the concept affect lawyers' advice to corporate clients?
- What is the optimal way in which to draft corporate bylaws?[165]

2. CIVIL PROCEDURE[166]

- How many clients walk into their lawyer's office asking to incur the expense, delay, diversion, and risk of a lawsuit? Isn't formal litigation one part of a broader civil dispute resolution framework (advising clients on dispute resolution options)? Perhaps litigation is not a default procedure, in the absence of alternatives, but rather one choice among others.
- What are the potential client costs of discovery pursuant to Federal Rule of Civil Procedure (FRCP) 26?[167] How might those anticipated costs present opportunities for a client representative's acquiring leverage in early discussions to resolve a dispute?
- What process is used to determine likelihood of success in summary judgment pursuant to FRCP 56,[168] and how do the probabilities of success enter the determination of the value of a claim—and thus standards for negotiated satisfaction of the claim—using traditional decision-tree value assessment?[169]
- In jurisdictions where discovery orders are appealable (such as via New York's Civil Practice Law & Rules (CPLR) § 5710(a)(2)),[170] how does the availability, cost, and delay of procedural decisions

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[164] *See generally* STEPHEN H. KNEE, BUSINESS DIVORCE: UNDERSTANDING ITS DYNAMICS AND FORMULATING SOLUTIONS (Am. Bar Ass'n ed., 2015).

[165] Students could respond to this prompt by participating in a simulated activity.

[166] *See generally* Jean R. Sternlight, *Separate and Not Equal: Integrating Civil Procedure and ADR in Legal Academia*, 80 NOTRE DAME L. REV. 681 (2005).

[167] *See* FED. R. CIV. P. 26.

[168] *See* FED. R. CIV. P. 56.

[169] *See*, *e.g.*, DWIGHT GOLANN, MEDIATING LEGAL DISPUTES 225–41 (2d ed. ABA 2021).

[170] *See* N.Y. CIV. PRAC. L. R. § 5710(a)(2).

influence the timing and content of settlement negotiations during litigation?

- What has been the response of employers and the business community to class action certifications pursuant to FRCP 23?[171] Has the increase of private adjudication of employment and consumer class claims prompted a body of procedural case law (interpreting the validity of contractual class action waiver) that may be inconsistent with the objectives of FRCP 23?
- Examining pre-trial procedures broadly, and keeping in mind that virtually all claims are terminated during that process rather than being tried,[172] what are the milestones of the process that influence the cost and advisability of settlement negotiations?
- What local federal court rules require settlement conferences and/or mandate mediation? What processes do those rules contemplate and what public policy concerns might they address?
- What procedural safeguards exist in private adjudicatory processes (*e.g.*, the American Arbitration Association's (AAA) Commercial Arbitration Rules[173] and Employment Due Process Protocol[174]) and how do they compare to similar safeguards in public adjudication (*e.g.*, FRCP,[175] NY-CPLR[176])?
- What are the basic provisions of an agreement to resolve, and withdraw with prejudice, a filed claim?

3. CONTRACTS

- In negotiating commercial contracts, in addition to terms such as quantity and price, how might commercial risks be allocated? What is the lawyer's role in helping a client to identify and allocate risk?
- In the event of unexpected intervening circumstances frustrating the execution of a contract, when are parties best advised to modify the

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[171] *See* FED. R. CIV. P. 23.

[172] *See* FEDERAL JUDICIAL CENTER, Table C-4—U.S. District Courts–Civil Statistical Tables for the Federal Judiciary (Dec. 31, 2021), https://www.uscourts.gov/statistics/table/c-4/statistical-tables-federal-judiciary/2021/12/31 (reporting for the year ending December 31, 2021, of the 260,298 civil cases filed in U.S. District Courts, 1,785—or 0.7%—reached trial).

[173] *See generally* COMMERCIAL ARBITRATION RULES & MEDIATION PROCEDURES, AM. ARB. ASS'N (Sept. 1, 2022), https://www.adr.org/sites/default/files/Commercial_Rules-Web.pdf.

[174] *See generally* EMPLOYMENT DUE PROCESS PROTOCOL, AM. ARB. ASS'N (May 9, 1995), https://www.adr.org/sites/default/files/document_repository/Employment%20Due%20Process%20Protocol_0.pdf.

[175] *See generally* FED. R. CIV. P.

[176] *See generally* N.Y. CIV. PRAC. L. R.

terms through negotiation, and when are they best counseled to seek damages for breach?
- What principles guide the negotiation of commercial contracts? What provisions might be inserted into contracts to (1) protect a client in the event of an untrustworthy counterparty and (2) manage the transaction costs of a dispute arising from nonperformance?
- What are the most common non-judicial forums for resolution of business disputes arising from breaches of contract?
- What is the optimal way to draft and negotiate a contract?[177]

4. CRIMINAL LAW & CRIMINAL PROCEDURE

- To what extent is justice served by exercise of prosecutorial discretion?
- Who are the legitimate stakeholders in plea bargaining? Are there putative stakeholders whose interests are not—at least theoretically—legitimate?
- What are the principles of restorative justice, and which of these principles either resonate or conflict with the goals of criminal law?
- Compare circle processes and restorative practices in American indigenous communities with practices in non-indigenous communities.
- How would notions of family change if we adopted purely functional legal definitions? Would adopting such definitions benefit family members or do some harm?
- How should we advise three or more prospective parents who would like to conceive and raise a child together?
- What can we do to ensure continuity of relations between children and involved nonparents such as stepparents or extended family members?
- Whose interests should we consider in planning for children's visitation and custody?
- Under what circumstances is it preferable or necessary to modify custody, visitation, or child support agreements?

5. INCOME TAX

- How should a married couple with dual incomes and considerable assets best maximize its retirement savings for tax purposes?
- If your clients itemized deductions, what forms of charitable giving would best accomplish their philanthropic intentions while minimizing their tax liability?
- What changes in business structure would help a sole-proprietor

[177] Students could respond to this prompt by participating in a simulated activity.

client minimize obligations under the current tax code?
- Is the tax code morally neutral? Should it be?
- What changes to the current tax code might be implemented to incentivize pro-social conduct or disincentivize antisocial behavior?

6. PROFESSIONAL RESPONSIBILITY

- What type of attorney conduct would satisfy Colorado Rule of Professional Conduct (RPC) 1.2(a)'s requirement that a lawyer "shall consult with the client as to the means by which [the client's objectives] are to be pursued"?[178] What is the policy objective of RPC 1.2(a)?
- Which state ethics rules require that a lawyer counsel a client on all procedural choices to resolve disputes, not just litigation?[179]
- How does RPC 4.1 work in practice?[180] What decisions must one confront when negotiating on behalf of a client in a transaction to respect client autonomy but also follow RPC 4.1?[181]
- What are the ethical guidelines for attorneys serving as third-party neutrals such as mediators and arbitrators?[182] Are they the same for non-attorney neutrals?[183] Is service as a neutral the practice of law?[184]

7. PROPERTY

- Two neighbors have an escalating battle over the band practices by one that the other deems noisy and annoying. Aside from a nuisance claim, what options does a lawyer have to help alleviate the tension?
- Someone finds and cares for a runaway dog at some expense for medical care and provisions. When the initial owner finds out and asks for the dog back, what options does the finder have? What options are preferable to both parties (and to the dog)?
- How should regulatory officials zone a particular newly

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[178] COLO. RULES OF PRO. CONDUCT r. 1.2(a) (2018).
[179] *See*, *e.g.*, *id.* r. 2.1 ("In a matter involving or expected to involve litigation, a lawyer should advise the client of alternative forms of dispute resolution that might reasonably be pursued to attempt to resolve the legal dispute or to reach the legal objective sought.").
[180] *See id.* r. 4.1.
[181] Students could respond to this prompt by participating in a simulated activity.
[182] *See* Carrie Menkel-Meadow & Elizabeth Plapinger, *Model Rule for the Lawyer as Neutral*, INT'L INST. FOR CONFLICT PREVENTION & RESOL. (Nov. 2002), https://www.cpradr.org/resource-center/protocols-guidelines/ethics-codes/model-rule-for-the-lawyer-as-third-party-neutral.
[183] *See id.*
[184] *See id.*

incorporated part of the town? What questions do you want to ask, and who should provide this advice?

- Does mediation among community organizers, property owners, developers, and city agents in a proposed eminent domain action promote construction of affordable housing?
- What options are available to a landlord and tenant involved in a negotiation surrounding rent and repairs?

8. TORTS

- What is "litigation bias"?[185]
- When a client complains of an injury resulting from another person's negligence, what is the most direct and inexpensive first step in representing that client's interests and goals?
- What are "best practices" in determining the facts that caused a client's injury and assessing the options available to the client? How does one determine and effectively convey to a client both the risks and benefits of asserting a formal claim in state or federal court?
- Does the study of tort law present a norm of conflict or a norm of harmony? Does the study of tort law present a world of individual rights or a world of social accountability?
- What is the optimal way to settle a claim?[186]

B. CHANGE IS RARELY EASY, BUT IT IS POSSIBLE

Is it a bit unrealistic to presume that a bullet-point list of suggestions will catalyze a conceptual revolution in law teaching? Absolutely, especially when so many prior movements for change have not yet resulted in complete reformation of legal education.

But all have had their consequences, most of which have been beneficial to individual lawyers and the field at large.[187] For example, law schools *do* now routinely include more substantive and advanced writing instruction than was once the case.[188]

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[185] *See* Adam Eckart, *Litigation Bias*, 101 OR. L. REV. 51 (2022), SSRN: https://ssrn.com/abstract=4065819.

[186] Students could respond to this prompt by participating in a simulated activity.

[187] *See, e.g.*, Lande, *supra* note 64, at 13 n.102 (citing John Lande & Jean R. Sternlight, *The Potential Contribution of ADR to an Integrated Curriculum: Preparing Law Students for Real World Lawyering*, 25 OHIO ST. J. ON DISP. RESOL. 247, 276–90 (2010)).

[188] *See* ABA STANDARDS AND RULES OF PROC. FOR APPROVAL OF LAW SCHS. 2022–2023, INTERPRETATION 303-2, AM. BAR ASS'N 19, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2022-2023/22-23-standard-ch3.pdf (last visited Dec. 12, 2022) (including, as "[f]actors to be

Traditional podium courses are now clearer about their learning objectives than used to be expected, and they incorporate far more formative assessment than most law faculty likely encountered in their own law school courses.[189] Many professors teaching casebook courses use more exercises, more group work, and more problem application in their classrooms than was found a generation ago.[190] Legal-textbook publishers have responded to teaching innovations by introducing new series of adoptable casebooks that incorporate these instructional modalities.[191]

In other words, even within a somewhat stolid legal academy, movement is possible—if we want it.

CONCLUSION

The authors extend not so much an argument as an invitation. We assert certain propositions that seem to us entirely straightforward: Doctrinal principles will have more meaning to students if they are presented in the context of client counseling. Law graduates will have a more nuanced comprehension of material studied if they learn to think about it in a realistic professional context. Lawyers will be better prepared to advise clients if

considered in evaluating the rigor of a writing experience": the "number and nature of writing projects assigned to students," the "form and extent of individualized assessment of a student's written products, and the "number of drafts that a student must produce for any writing experience").

[189] *See* ABA STANDARDS AND RULES OF PROC. FOR APPROVAL OF LAW SCHS. 2022–2023, STANDARD 302, INTERPRETATION 314-1, AM. BAR ASS'N 17, 26, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2022-2023/22-23-standard-ch3.pdf (last visited Dec. 12, 2022) (summarizing key learning outcomes law schools should ensure for their students, and interpreting the concept of "formative assessment" of students). Compare these most recent Standards to those for, *e.g.*, 1995 and 2000, which lack similar provisions for assessment.

[190] *See generally* Alex Berrio Matamoros, *Answering the Call: Flipping the Classroom to Prepare Practice-Ready Attorneys*, 43 CAP. U. L. REV. 113 (2015) (discussing the "effectiveness of using a flipped classroom model in higher education courses," including "1) students independently engag[ing] with new instructional material before a class session at a time and place of their choosing, ordinarily via the Internet; and (2) classroom time [primarily being spent] working on active learning experiences or projects, often in small groups, with the instructor available to provide guidance and answer questions").

[191] *See, e.g.*, West Academic's BRIDGE TO PRACTICE series, available online at https://www.westacademic.com/series/Bridge-to-Practice (the largest purveyor of American legal textbooks).

counseling is a pervasive part of their training. Lastly, persistent emphasis on non-judicial solutions to client problems more accurately reflects the world of twenty-first-century American legal practice.

The analysis offered here sidesteps polarities and unnecessarily binary choices. Rather, we suggest that those of us who teach mediation, negotiation, arbitration, restorative justice, and other non-judicial methods of client problem-solving constitute an underutilized resource in our law school faculty, and have an important role in offering additional—and perhaps more robust—methods of pedagogy from limited casebook-only learning methods.[192] It is simply not the case that a professor must choose between teaching Torts and spending precious class time distracted by concepts of principled negotiation or client-directed lawyering. We are not two camps.[193]

We hope it is commonly held that "not every dispute has to end up in court, and that lawyers are the most important gatekeepers for access to the various forms of dispute resolution."[194] We suspect that it may not be commonly recognized, but it is nevertheless of common concern, that "in the process of learning to 'think like a lawyer,' [students] often lose the ability to feel like . . . caring and compassionate [people]"[195] equipped to recognize a client's underlying problem and assist in attaining the client's goals on the client's terms.

Joined as all law teachers are in the common pursuit of preparing lawyers to practice in a specific field with the ultimate goal of adding value to their clients, let us reframe our approach to that training and offer a more holistic, more integrated curriculum of legal practice with an eye to serving our clients with at least as much diligence as we serve the law.

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[192] *See* John Lande & Jean R. Sternlight, *The Potential Contribution of ADR to an Integrated Curriculum: Preparing Law Students for Real World Lawyering*, 25 OHIO ST. J. ON DISP. RESOL. 247, 276–90 (2010) (proposing integration of doctrinal, litigation, and ADR instruction throughout the curriculum).

[193] Abraham Lincoln, 2 ABRAHAM LINCOLN: SPEECHES AND WRITINGS 224 (Don E. Fehrenbacher ed., 1989) (quoting, "We are not enemies, but friends. We must not be enemies." A. Lincoln, *First Inaugural Address*, Mar. 4, 1861).

[194] Vaughn, *supra* note 65, at 696.

[195] *Id*. at 699.