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It's Time to Get It Right: Problem-Solving in the First-Year Curriculum

Bobbi McAdoo
Sharon Press
Chelsea Griffin*

I. INTRODUCTION

In the fall of 2010, two of the authors taught a newly required first-year course: Practice, Problem-Solving and Professionalism, or P3 as it has come to be known at Hamline University School of Law (HUSL). In this Article, we will use the P3 course as a case study in legal education curricular reform. We contend that the problem-solving emphasis of the course and its placement in the first-year curriculum responds elegantly to the various calls for legal education reform over the last few decades.[1] Moreover, the course is fairly easily replicated, even in large first-year classes. Most importantly, we believe it should replace separate Alternative Dispute Resolution (ADR) courses which have proliferated in law school curricula.

In thinking about the experience of developing and teaching P3, we have given renewed attention to the paradoxically slow evolution of legal education as a whole, and the fairly rapid growth of ADR courses in the law school curriculum. Between 1992 and 2002, the number of pretrial skills courses being offered in law schools dramatically increased. ADR classes increased the most, with

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1. *See infra* Part II.

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mediation and negotiation classes not far behind.[2] Interestingly, during this time period, academic articles that complained about the purported take-over (co-optation?) of the ADR field—especially mediation—by the legal profession also increased.[3]

What might this imply? Have our students and the practice of law not been well served by separate ADR courses in the legal curriculum? Put another way, do our graduates practice the same old adversarial way even after taking an ADR course? Or, worse, is it possible that while ADR academics talk to each other a lot,[4] our

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2. John Lande & Jean 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, 266–77 n.101 (2010) (citing a 2004 American Bar Association survey of law school curricula between 1992 and 2002 which revealed that of the 151 law schools in 2002, 140 offered an ADR course and 120 offered separate mediation and negotiation courses). Lande and Sternlight's well-researched article supports many of the authors' ideas, particularly around the concept of teaching "real world lawyering." *See also* 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, 42 (2010) (In the 2007–2008 AALS Directory of Law Teachers, 342 faculty self-identified as teaching ADR courses; 92 self-identified as teaching negotiation courses and 66 self-identified as teaching mediation courses).

3. Carrie Menkel-Meadow used the term "co-optation" in 1990 to describe the "legalization" of ADR. Carrie Menkel-Meadow, *Pursuing Settlement in an Adversary Culture: A Tale of Innovation Co-opted or "the Law of ADR"*, 19 FLA. ST. U. L. REV. 1 (1990). The term "co-optation" is also commonly used by others in conjunction with changes occurring in mediation practices. *See* Nancy A. Welsh, *The Thinning Vision of Self-Determination in Court-Connected Mediation: The Inevitable Price of Institutionalization?*, 6 HARV. NEGOT. L. REV. 1, 79 n.324 (2001); Nancy A. Welsh, *All in the Family*, DISP. RESOL. MAG., Winter 2001, at 20; *see also* Barbara McAdoo & Nancy Welsh, *Does ADR Really Have a Place on the Lawyer's Philosophical Map?*, 18 HAMLINE J. PUB. L. & POL'Y 376 (1997); Sharon Press, *Institutionalization of Mediation in Florida: At the Crossroads*, 108 PENN ST. L. REV. 43 (2003); Timothy Hedeen, *Coercion and Self-Determination in Court-Connected Mediation: All Mediations Are Voluntary, But Some Are More Voluntary than Others*, 26 JUST. SYS. J. 273 (2005); Kimberlee Kovach & Lela P. Love, *Mapping Mediation: The Risks of Riskin's Grid*, 3 HARV. NEGOT. L. REV. 71 (1998). Professors Carrie Menkel-Meadow and James Alfini were early voices framing this debate. *See, e.g.*, James. J. Alfini, *Trashing, Bashing, and Hashing It Out: Is This the End of "Good Mediation?"*, 19 FLA. ST. U. L. REV. 47 (1991); Menkel-Meadow, *supra*.

4. This is purely anecdotal from the authors, but it seems that in the last two decades we have been participants in an endless array of conferences and discussions focused on how to get more ADR in the curriculum, bemoaning our less enlightened colleagues who do not see the light, and congratulating ourselves when ADR is found to be "above average" in size compared to the most common legal sub-disciplines offered in law schools. *See* Moffitt, *supra* note 2, at 30. As one specific example, in 2010 the ABA Section of Dispute Resolution established a Task Force to work on the broad topic of "integrating dispute resolution into the JD curriculum." Email from Sean Nolon to Bobbi McAdoo (May 21, 2010) (on file with authors). After an information gathering phase, a Task Force Report concluded that seventeen law schools had a required non-litigation dispute resolution course in their curricula. Missing from

separate ADR courses have produced exactly the opposite of what we intended: the conclusion that ADR is "soft" and divorced from the work of a "real" lawyer?

In the 1990s, Hamline Law School was one of six law schools to collaborate on a FIPSE grant awarded to the University of Missouri-Columbia and Professor Leonard Riskin.[5] The project concentrated on how to better integrate dispute resolution into law school curricula.[6] In a 1998 Florida Law Review symposium, *Dispute Resolution in the Law School Curriculum: Opportunities and Challenges*,[7] Professor Riskin began his description of the work accomplished at Missouri in this way: "Missouri systematically integrated the teaching of alternative dispute resolution into all standard first-year law school courses."[8] We suspect this first sentence caused most of the academy to stop reading the rest of the article excepting, of course, ADR professors.[9] Riskin's description of the central teaching goals for the Missouri program, however, articulates the much broader and important focus of his overall project:

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this data, however, were courses that the clinical and externship communities teach (e.g., litigation and non-litigation dispute resolution); and an array of required courses that are not under the (philosophical) rubric of "dispute resolution," but rather have course titles such as "problem-solving" and "lawyering." To develop a survey tool to capture this data is well beyond the scope of this Article, although Roundtable colleagues agreed it would be a useful cross fertilization project for the future. One of the many challenges will be the fact that course titles reveal very little about actual course content.

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

6. *See generally id.* at 735 (describing the curriculum changes implemented at Hamline University School of Law in connection with Riskin's "Missouri Plan"); *see also* Leonard L. Riskin, *Disseminating the Missouri Plan to Integrate Dispute Resolution Into Standard Law School Courses: A Report on a Collaboration with Six Law Schools*, 50 FLA. L. REV. 589, 601–06 (1998) (describing the efforts of six law schools, Hamline included, to integrate the "Missouri Plan" into the law school curriculum).

7. The symposium articles grew out of a program sponsored by the Section on Alternative Dispute Resolution of the AALS. Robert B. Moberly, *Introduction: Dispute Resolution in the Law School Curriculum: Opportunities and Challenges*, 50 FLA. L. REV. 583, 587–88, 581 (1998).

8. Riskin, *supra* note 6, at 590.

9. This is unfortunate because the integration Riskin went on to describe included incorporating a negotiation into a contracts class, a process choice exercise into a civil procedure class, and so forth. *Id.* at 591–94; *see also* LEONARD L. RISKIN ET AL., INSTRUCTOR'S MANUAL WITH SIMULATION AND PROBLEM MATERIALS TO ACCOMPANY RISKIN & WESTBROOK DISPUTE RESOLUTION AND LAWYERS (2d ed. 1998).

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> First, the students should understand that the lawyer's principal job is to help the client solve the client's problems. The idea of the lawyer as a problem-solver means that advocacy, inside or outside of litigation, is merely one of the lawyer's tools. . . .
>
> Second, students should understand the differences and relationships between adversarial and problem-solving orientations toward dealing with disputes and transactions. . . .
>
> Third, the students should understand the principal characteristics, and the advantages and disadvantages, of the various dispute-resolution processes, and develop a sense of the circumstances in which each method might be most appropriate.[10]

We submit that these broader teaching goals from the 1990s are central to the placement of ADR in the legal curriculum today. Law students must graduate with adequate knowledge about ADR processes and procedures; this is appropriate given the vast changes that have occurred in the legal profession over the last few decades.[11] But the context in which students learn this information is critical.

Where separate ADR courses still exist, they need to be replaced by courses with "problem-solving"[12] in the title and, more importantly, in the "minds" of law students and professors.[13]

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10. Riskin, *supra* note 6, at 594. Of course Riskin was not the only (or even the earliest) academic to understand the key importance of a focus on the problem-solving lawyer. *See* Carrie Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem Solving*, 31 UCLA L. REV. 754, 757 n.5 (1984) (listing excellent historical sources on problem-solving); ASSOCIATION OF AMERICAN LAW SCHOOLS, MINI-WORKSHOP ON ALTERNATIVE DISPUTE RESOLUTION (Jan. 4, 1986) (on file with authors) (describing initial efforts to integrate ADR with standard law school courses and focus on problem-solving). Still, this problem-solving focus does not seem to be the one that "caught on" the most in law schools.

11. *See* Moberly, *supra* note 7, at 584; JULIE MACFARLANE, THE NEW LAWYER: HOW SETTLEMENT IS TRANSFORMING THE PRACTICE OF LAW (UBC Press 2008) (an excellent source to promote an understanding of the evolution of the profession).

12. Some courses might have titles such as Lawyering Processes or something similar. As Professor Karen Tokarz commented at the Roundtable, it is the "silo" of the separate ADR course that we contend has not been helpful to legal education.

13. We don't believe that "Appropriate Dispute Resolution" or just "Dispute Resolution" is a useful substitution. The word "dispute" suggests a professional identity for the lawyer that is misleading and counterproductive. Furthermore, in our experience, these titles are now "code" for Alternative Dispute Resolution when "we" are trying to convince "others" of the

Otherwise, we fear that it is we who are contributing to the mindset that ADR is different (read: less important) than real lawyering work.

We do not advocate for the original Missouri model of total integration of ADR concepts into all first-year courses for both pedagogical and practical reasons. First, we believe that model is viable only for law schools with someone on the faculty as singularly focused as Riskin, and with grant money available to implement the model.[14] Second, the pedagogies of using simulations and even "adventure learning"[15] appropriate to a problem-solving course are not a good fit for most doctrinal professors. Third, the amount of coordination among and between very independent law faculty members required by a fully integrated model is simply too overwhelming.[16] Even Missouri has moved to requiring Lawyering: Problem-Solving and Dispute Resolution as a first-year course, instead of its original path-breaking approach in the nineties.

Part II of this Article briefly reviews some reforms in legal practice and legal education as they relate to ADR and problem-solving. Part III details the institutional genesis of the P3 course at Hamline. Part IV explains the actual design and implementation of the P3 course. In Part V, we critique the course and provide details for the revised spring 2012 iteration. Finally, in Part VI, we reiterate

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value of ADR. We admit, however, to some fear that the problem-solving concept has now been co-opted by the ADR field in such a way that it, too, has become "code" for ADR. Given its prevalence in the *MacCrate Report*, however, we do not think "problem-solving" has the same "silo" problem that ADR has, and we will continue to advocate for its use in the first-year curriculum. *See generally infra* notes 52–59 and accompanying text.

14. For example, Professor Riskin was able to pay doctrinal faculty for developing appropriate simulations to be used in their courses. Thus initial faculty interest was high, although difficult to sustain. Professor McAdoo directed the LLM program and taught at Missouri from 1998–2000 at a time when faculty interest was waning.

15. *See generally infra* notes 124–45 and accompanying text.

16. Our colleague in teaching P3, Professor Jim Coben, is a strong proponent of the full integration model, and we agree that this might be the perfect way to teach the law. What we propose in this Article, however, reflects our belief that teaching problem-solving in a separate first-year course is the best way to go for now. Law schools evolve, albeit slowly, and maybe the full integration model will emerge in the next generation of law schools. This model has not taken root over the last twenty years, however, and we think it is not a realistically viable one for most schools at this juncture. Professors Lande and Sternlight discuss an array of barriers to curricular reform. *See* Lande & Sternlight, *supra* note 2, at 273–75. Probably there are parallels to be found in the uphill battle that has occurred over whether and how to teach ethics by the "pervasive" model in law schools. *See* DEBORAH RHODE, PROFESSIONAL RESPONSIBILITY: ETHICS BY THE PERVASIVE METHOD (2d ed. 1998).

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our support for a problem-solving course in the first-year legal curriculum.

I. LEGAL EDUCATION REFORMS

A. Early Legal Education

Although the Jeffersonian purpose for a law school may have been to "teach law as a means of moral education,"[17] few would argue that such purpose gained lasting traction. Indeed, in the early 1870s, Christopher Columbus Langdell, the first dean of Harvard Law School,[18] introduced the concept of the "scientific model" of legal education. The Langdellian case method approach, by which law students since that time have been rigorously trained, emphasizes the fact that one learns to "think like a lawyer" in law school primarily through reading and being questioned about appellate cases.[19] Learning how to actually practice law takes place at law firms or other places of employment after law school.[20] Remarkably, this division of responsibility between law schools and the practicing bar continued for most of the nineteenth and twentieth centuries, despite occasional criticism that law students were not getting sufficient access to practical training while in law school.[21]

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17. "Jefferson derived his legal education model from the way ministers were trained, and his purpose for legal education was 'to teach law as a means of moral education.'" Talbot "Sandy" D'Alemberte, *Keynote Address*, *in* THE MACCRATE REPORT: BUILDING THE EDUCATIONAL CONTINUUM: CONFERENCE PROCEEDINGS 4, 5 (Joan S. Howland & William H. Lindberg eds., 1994).

18. Curtis Nyquist, *Single-Case Research and the History of American Legal Thought*, 45 NEW ENG. L. REV. 589, 590 (2011).

19. Shannon Smith, *The Need for Implementing ADR Into Traditional, Law School Courses*, W. VA. LAW., Dec. 2007, at 76 ("Langdell's method revolved around a Socratic dialogue about appellate cases, and for most professors, this means teaching students to think like a lawyer.").

20. D'Alemberte, *supra* note 17, at 9; *see also* Kristen Holmquist, *Challenging Carnegie* (U.C. Berkeley Public Law Research Paper, Aug. 15, 2010), *available at* http://ssrn.com/abstract=1659225. Holmquist challenges the idea that law schools successfully teach students how to think like lawyers. She argues that "new lawyers struggle with thinking in deeply contextual and sophisticated ways about how they might—or might not—use the law to help a client solve her problem." *Id.* at 6. Although the importance of Holmquist's challenge should not be understated, her argument goes beyond the focus of this Article.

21. Holmquist, *supra* note 20, at 3–4. As Holmquist notes, "With time, each iteration of this standard complaint either faded or found itself cabined into marginal positions within the academy." *Id.* at 4; *see also* Paul Brest & Linda Krieger, *On Teaching Professional Judgment*,

B. Change in Legal Education Follows from Changes in the Practice of Law

While legal education stayed mostly mired in its nineteenth century mold, the ADR movement emerged in the last quarter of the twentieth century amid questions whether the pursuit of justice was being stymied by the extensive costs and delays of the American court system.[22] Indeed, the reforms in legal practice, which launched the ADR movement, affected some reform in the legal academy as well.

In 1976, Chief Justice Warren Burger convened a conference in St. Paul, Minnesota (the Pound Conference) articulating these broad questions as the framework for the conference: (1) "[W]hat types of disputes can best be resolved by judicial action and what alternatives are superior[?]; (2) [H]ow can we serve the interests of justice with processes more speedy and less expensive?"[23] An address given by Harvard Professor Frank E. A. Sander suggested that the answers to Burger's questions might be found in the design of a courthouse where litigants could find a rich array of dispute resolution options from which to choose in order to engage in the most effective conflict resolution process for their dispute.[24] For example, Sander cited

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69 WASH. L. REV. 527, 527–28 (1994) ("There is a gap between legal education and the legal profession. . . . While some law schools have seriously reconsidered their curricula in light of the changing demands of the profession, many others seem quite indifferent to those changes and, more fundamentally, to what their students do after graduation."); Stephanie Francis Ward, *A Push for Problem Solving*, 5 No. 21 ABA J. E-REPORT 4, 4 (2006) ("The Socratic method teaches a student how to think like a lawyer, but not necessarily how to practice like one."); *see generally* AMERICAN BAR ASSOCIATION, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM 135 (1992) [hereinafter the MACCRATE REPORT]. Commonly referred to as the "*MacCrate Report*," this publication stimulated much conversation among the legal academy about the state of legal education in relation to the practicing bar. Even while writing this Article, a series of articles in the *New York Times* was published that illustrates the enduring nature of the theory/practice law school debate. *See, e.g.*, David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 20, 2011, at A1; Letters to the Editor, *Training Lawyers: Theory vs. Practice*, N.Y. TIMES, Nov. 22, 2011, at A28 (in response to David Segal's Nov. 20th article).

22. Lucy Katz, *Compulsory Alternative Dispute Resolution and Voluntarism: Two-Headed Monster or Two Sides of the Coin?*, J. DISP. RESOL. 1, 4–5 (1993) (describing the factors that generated growth in ADR, including the high costs of litigation).

23. THE POUND CONFERENCE: PERSPECTIVES ON JUSTICE IN THE FUTURE: PROCEEDINGS OF THE NATIONAL CONFERENCE ON THE CAUSES OF POPULAR DISSATISFACTION WITH THE ADMINISTRATION OF JUSTICE 6 (A. Leo Levin & Russell R. Wheeler eds., 1979).

24. *Id.* at 84. This became known as the multi-door courthouse concept.

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mediation as an example of a process that was likely to be "far more acceptable (and hence durable) for cases with long term relationships at stake."[25] Sander explained that his goal was to "reserve the courts for those activities for which they are best suited and to avoid swamping and paralyzing them with cases that do not require their unique capabilities."[26]

A broad variety of court initiatives in ADR followed the Pound Conference. The ABA sponsored three multi-door courthouse experiments in 1985.[27] In 1987, Florida and Texas became the first two states to adopt "comprehensive" court-ordered mediation statutes in the state courts.[28] By the end of the 1980s, court-connected mediation programs were appearing in federal courts,[29] and "[b]y the mid-1990s, more than half of state courts, and virtually all of the federal district courts, had adopted mediation programs for large categories of civil suits."[30] ADR basically produced a whole new growth industry—a new way to practice law—for the practicing bar.[31]

Meanwhile, scholarship in the 1980s[32] contributed to a view of lawyering that supported a less adversarial approach to negotiation

25. *Id.* at 74.

26. *Id.* at 85.

27. Sharon Press, *Court-Connected Mediation and Minorities: A Report Card*, 39 CAP. U. L. REV. 819, 822 (2011).

28. Sharon Press, *Institutionalization: Savior or Saboteur of Mediation?*, 24 FLA. ST. U. L. REV. 903, 907 (1997).

29. Press, *supra* note 27, at 823.

30. *Id.* at 823–24.

31. Moberly, *supra* note 7, at 584; Barbara McAdoo, *The Minnesota ADR Experience: Exploration to Institutionalization*, 12 HAMLINE J. PUB. L. & POL'Y 65, 69 (1991) ("During the 1980's the use of ADR techniques, especially mediation, increased exponentially in a wide-ranging number of areas."); Newton R. Russell, *Mediation: The Need and a Plan for Voluntary Certification*, 30 U.S.F. L. REV. 613, 613 (1996) ("During the last decade and especially since 1990 the growth of alternative dispute resolution ('ADR') has exploded into almost every area of society."). Query whether Professor Sander would think that the courts' "unique capabilities" are not needed in all the cases now going to ADR; but that's a different article. POUND CONFERENCE, *supra* note 23, at 85.

32. We have arbitrarily used just three exemplary works here. Notably missing is any discussion of the procedural justice research of the 1970s which provided key academic underpinnings for the growth of ADR. *See* Nancy A. Welsh, *Making Deals in Court-Connected Mediation: What's Justice Got to do With It?*, 79 WASH. U. L.Q. 787 (2001) (explaining the importance of procedural justice in successful ADR processes, specifically mediation); *see also* Menkel-Meadow, *supra* note 10, at 757 n.5.

and legal practice and provided theoretical support for the new ADR movement. Here are three examples:

1. In 1981, the book *Getting to Yes* by Roger Fisher and William Ury was published with its street smart promotion of steps for *principled* negotiation, not just *positional* negotiation: separate the people from the problem; focus on interests not positions; invent options for mutual gain; and insist on using objective criteria.[33] Although written for popular consumption, *Getting to Yes* provided a new paradigm for thinking about how to be an effective lawyer, with an emphasis on effective and efficient dispute settlement. It quickly became a popular and welcome skills book for casebook-weary law students.

2. In 1982, Professor Leonard Riskin articulated a concept of the "lawyer's philosophical map" that rests upon two limiting assumptions: 1) disputants are adversaries; and 2) that disputes must be resolved through application, by a third party, of a general rule of law.[34] Professor Riskin contrasted these with the assumptions which underlie mediation: "1) that all parties can benefit through a creative solution to which each agrees; and 2) that the situation is unique and therefore not to be governed by any general principle except to the extent that the parties accept it."[35] While not indicting the lawyer's philosophical map per se,[36] Professor Riskin advocated for mediation training for lawyers because of the potential for "good quality mediation–*cum*-legal services [to] help lawyers, the bar, and the law schools [to] fulfill the strong impulses—frequently shaded on the lawyer's standard philosophical map—to make law more responsive to the needs of individuals

33. ROGER FISHER ET AL., GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN (1981). Bruce Patton was added as an author in the second edition of the book.

34. Leonard L. Riskin, *Mediation and Lawyers*, 43 OHIO ST. L.J. 29, 44 (1982).

35. *Id.*

36. In fact, Professor Riskin notes its strengths such as promoting loyalty to clients and the encouragement of a vigorous presentation of competing positions and interests; and an "allegiance to the system of laws, which in turn serves to unify society, to provide a measure of security of expectations, and to keep open possibilities of fairness between persons. . . ." *Id.* at 58.

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and society."[37] Indeed, he noted the detrimental effects of "over-zealousness" in the adversarial role, leading to litigation that was "enormously time consuming, expensive, uncertain, and unpleasant. . . ."[38] Finally, recognizing that some students are repelled by the pervasiveness of the lawyer's philosophical map, Riskin asserted that mediation training could "do for law students what mediation can do for disputants: help them decide for themselves what they want to do with their lives."[39]

3. In 1984, Professor Carrie Menkel-Meadow cogently presented the concept of problem-solving negotiation as an alternative to the adversarial or zero sum approach usually considered all important (if not the *only* available approach) in legal negotiations.[40] Menkel-Meadow suggested that how one approached his or her purpose in negotiation was critical. "The orientation (adversarial or problem-solving) leads to a mind-set about what can be achieved (maximizing individual gain or solving the parties' problem by satisfying their underlying needs) which in turn affects the behavior chosen (competitive or solution searching) which in turn affects the solutions arrived at (narrow compromises or creative solutions)."[41] Believing that problem-solving negotiation at a minimum allows some "hope of systematically exploring what we are trying to accomplish in negotiation,"[42] Menkel-Meadow's influential piece gave strong voice to the theory of negotiation embraced by those advocating for mediation of legal disputes of every kind.

In his introduction to the Florida Law Review symposium referenced earlier, Professor Robert Moberly chronicled the institutional responses of the legal academy to the changing practice of law, including its various Task Forces and Commissions over the years.[43] Moberly noted that a 1983 ABA survey of law schools about

37. *Id.*
38. *Id.*
39. *Id.* at 60.
40. Menkel-Meadow, *supra* note 10, at 840.
41. *Id.* at 760.
42. *Id.* at 840.
43. Moberly, *supra* note 7, at 585–86. This included, of course the 1992 MACCRATE

their ADR offerings listed only forty-three schools offering ADR courses; by 1986 the number had grown substantially.[44] The ABA report noted that "a majority of the ABA approved law schools in America now offer courses or clinics on ADR. This is a significant achievement in a field that was barely known a decade ago."[45] The 1997 ABA report noted that "the expansion of ADR courses and clinical programs is dramatic, matching, if not surpassing, the growth in ADR generally."[46] Michael Moffitt's AALS 2007 data charts 569 ADR faculty; 342 of whom teach ADR; 92 teach negotiation; 66 teach mediation; and 52 teach arbitration.[47]

We, too, applaud the growth of ADR.[48] Significant to our thesis, however, is that the growth of ADR classes has been a distraction from the understanding and implementation of the significant lawyer-as-problem-solver role that we should have embraced and promoted.[49] Indeed, the growth of ADR classes may have fostered the mistaken belief that ADR is separate from good lawyering. In fact, the ADR course is not even the best way to introduce ADR to

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REPORT. *See supra* note 21.

44. Moberly, *supra* note 7, at 586 n.19 (citing Frank E.A. Sander, *Foreword* to STANDING COMM. ON DISPUTE RESOLUTION, ABA, DIRECTORY OF LAW SCHOOL DISPUTE RESOLUTION COURSES AND PROGRAMS (1986)).

45. *Id.* (The "decade ago" was 1976, the year of the Pound Conference).

46. *Id.* at 586 n.21 (citing Kimberlee N. Kovach & James J. Alfini, *Foreword* to SECTION OF DISPUTE RESOLUTION, ABA, DIRECTORY OF LAW SCHOOL ALTERNATIVE DISPUTE RESOLUTION COURSES AND PROGRAMS (2d ed. 1997)). The report listed 714 courses offered at 177 schools.

47. Moffitt, *supra* note 2, at 18.

48. We think our ADR credentials are quite strong. In 1991, Professor McAdoo founded the Hamline Dispute Resolution Institute and she is a well-known researcher and trainer in the ADR field. In 2009, Professor Press, after eighteen years as the Director of the Florida Dispute Resolution Center, became the Director of Hamline's Dispute Resolution Institute. Ms. Griffin served as a mediator prior to attending Hamline Law School and was actively involved in Hamline's ADR Student Organization, the International Commercial Mediation Competition, and was a research assistant for Hamline law school faculty.

49. Perhaps the separate ADR class was the best we could do thirty years ago. We certainly taught ADR with enthusiasm for many years. We analogize, however, to our earlier support for mandatory mediation in the courts. We have evolved. Mandatory mediation is something we no longer support and the separate ADR class has outlived its usefulness as well. An interesting question posed at the Roundtable by Professor Jennifer Reynolds was whether ADR faculty have "enabled" other faculty to shirk their responsibility to respond to the dictates of the *MacCrate Report* and the *Carnegie Report*. Although we can't speak for other institutions, we do not believe this is the case at Hamline given the longstanding commitment to excellent teaching widely embraced by the faculty. *See infra* notes 80, 87 and accompanying text.

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students. First-year students in particular need a framework for the rest of their law school education that can also serve them well in practice. Problem-solving can serve as that framework. If our students graduate with Riskin's "lawyer's philosophical map" intact—believing that ADR is perhaps something only those who do not intend to practice real law must know—then they are not prepared for the real practice of law.

C. The MacCrate Report

In 1992, the *MacCrate Report* suggested the need for dramatic shifts from the Langdellian legal education model and gave a significant impetus to the lawyer-as-problem-solver frame. A Task Force on Law Schools and the Profession, directed by Dean Robert MacCrate, identified the "fundamental skills and values that every lawyer should acquire before assuming responsibility for the handling of a legal matter."[50] These were: (1) **problem-solving**; (2) legal analysis and reasoning; (3) legal research; (4) factual investigation; (5) **communication**; (6) counseling; (7) **negotiation**; (8) litigation and **alternative-dispute resolution procedures**; (9) **organization and management of legal work**; and (10) recognizing and resolving ethical dilemmas.[51] Many legal educators, recognizing that legal education had not changed "to meet the needs of a changing society,"[52] took the *MacCrate Report* to heart and began discussing ways to transform the law school curriculum to include teaching the ten fundamental skills.

Figuring out how to teach problem-solving, the first of the *MacCrate Report* categories, as a fundamental lawyering skill has proved difficult.[53] Although problem-solving is an acknowledged critical lawyering skill, its sheer complexity makes it difficult to

50. MACCRATE REPORT, *supra* note 21, at v.

51. The five bolded were relatively "new" to modern legal education.

52. Paul Brest, *The Responsibility of Law Schools: Educating Lawyers as Counselors and Problem Solvers*, 58 LAW & CONTEMP. PROBS. 5, 5 (1996).

53. This is no doubt in part because aspects of problem-solving can be taught within virtually any course, or as a stand-alone course. In contrast, figuring out how to teach ADR procedures has been relatively easy. ADR has most often entered the curriculum as a separate upper level elective course (in ADR or Mediation Skills) and at least since 1985, there have been ADR and mediation textbooks available for these classes.

teach, measure, or master.[54] Many definitions of problem-solving exist.[55] The link among most of them is that they acknowledge that problem-solving facilitates a paradigm shift that can lead to more effective solutions.[56]

Paul Brest and Linda Krieger, pioneers in problem-solving curricula, may have best articulated the importance of the problem-solving frame in an article that post-dates the *MacCrate Report*:

> A client with a problem consults a lawyer rather than, say, a psychologist, investment counselor, or business advisor because he perceives the problem to have a significant legal dimension. But few real world problems conform to the boundaries that define and separate different professional disciplines. It is therefore a rare client who wants his lawyer to confine herself strictly to "the law."
>
> . . . .
>
> At their best, lawyers serve as society's general problem solvers, skilled in avoiding as well as resolving disputes. . . . They help their clients solve problems flexibly and economically, not restricting themselves to the cramped decision frames that "legal thinking" tends to impose on a clients' situation. Good lawyers bring more to bear on a problem than legal knowledge and lawyering skills. They bring

54. Stephen Nathanson, *Problem-Solving in Professional Legal Education*, 7 J. PROF. LEGAL EDUC. 121, 122 (1989).

55. In the *MacCrate Report*, problem-solving is defined as "the skills and concepts involved in: Identifying and Diagnosing the Problem; Generating Alternative Solutions and Strategies; Developing a Plan of Action; Implementing the Plan; Keeping the Planning Process Open to New Information and New Ideas." MACCRATE REPORT, *supra* note 21, at 121. Other definitional examples include: "Problem-solving involves perceiving that the world we would like varies from the world as it is and trying to move the world in the desired direction." Gerald P. Lopez, *Lay Lawyering*, 32 UCLA L. REV. 1, 2 (1984). Gari Blasi discusses problem-solving in terms of a search through a "problem space" for a solution path, which begins from an initial state and leads to a goal state. Linda Morton, *Teaching Creative Problem Solving: A Paradigmatic Approach*, 34 CAL. W. L. REV. 375, 376 (1998). "Creative problem solving . . . promotes a deeper and broader analysis of an existing or potential problem." *Id.* at 377. Stephen Nathanson defines problem-solving as "finding novel solutions to an endless variety of non-recurring problems encountered in practice." Nathanson, *supra* note 54, at 122.

56. Morton, *supra* note 55, at 377. "Creative problem solving offers a more useful, global approach, not only by the individual law practitioner in her relationship to her client, but also by the legal profession in its relationship to society." *Id.*

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> creativity, common sense, practical wisdom, and that most precious of all qualities, good judgment.[57]

Some contend that the *MacCrate Report* didn't result in much curricular change,[58] but that the advent of the 2007 *Carnegie Report*[59] has produced more curricular reforms in many law schools. Indeed, the cumulative effect of the *MacCrate* and *Carnegie Reports* was a strong impetus to the thinking at Hamline that led to P3.

D. The Carnegie Report

The *Carnegie Report* confirmed that the predominant teaching mode for American law schools continues to be the Langdellian case-dialogue method,[60] which "socializes" law students very quickly and inculcates an ability to "think like a lawyer."[61] The *Carnegie Report* noted that while the case-dialogue method does strengthen students' legal analysis skills, social needs and matters of justice are often treated as addenda to the cases. Students are encouraged to not let

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57. Paul Brest & Linda Krieger, *Lawyers as Problem Solvers*, 72 TEMP. L. REV. 811, 811–13 (1999). This articulation suggests to the authors that newer law school casebooks, which include an array of "problems" to be solved, albeit a good step forward, are teaching something different than the problem-solving we advocate. Going outside "legal thinking" to solve problems brings discomfort to many law professors, even though the exercise of "creativity, common sense, practical wisdom and . . . good judgment" might lead one to pursue the best *non-legal* solution to a client's problem. *Id.* at 812; *see also* Janeen Kerper, *Creative Problem Solving vs. The Case Method: A Marvelous Adventure in Which Winnie-the-Pooh Meets Mrs. Palsgraf*, 34 CAL. W. L. REV. 351 (1998).

58. Law schools have made a greater effort to include many kinds of skills training in the law school curriculum. *See* Patrick E. Longan, *Teaching Professionalism*, 60 MERCER L. REV. 659, 660 (2009). However, some argue that this has actually resulted in only minimal changes in legal teaching and curriculum. *See* Rachel S. Arnow-Richman, *Employment as Transaction*, 39 SETON HALL L. REV. 447, 447 n.3 (2009); *see also* Kristin Booth Glen, *In Defense of the Psabe, and Other "Alternative" Thoughts*, 20 GA. ST. U. L. REV 1029, 1036 (2004) (the "disincentives to wholesale change" in law school curriculum, such as costs and faculty resistance, may have trumped the call of the *MacCrate Report*).

59. The *Carnegie Report* detailed a two-year study of legal education. The field work for the study was conducted at sixteen law schools in the United States and Canada during the 1999–2000 academic year. The law schools included both public and private institutions and were selected for geographical diversity. The schools varied in their selectivity and student diversity makeup. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 3 (Summary 2007) [hereinafter CARNEGIE REPORT SUMMARY]. The *Carnegie Report Summary* was used for its conciseness and reliability in summarizing the *Carnegie Report*'s most important points.

60. *Id.* at 4–5.

61. *Id.* at 5.

such matters cloud their judgment. Thus an unintended consequence of cynicism toward the law is created.[62]

The *Carnegie Report* authors also noted the continued conflict between the legal academy and the practicing bar due to the fact that most law schools do not train students how to use their legal thinking in actual legal practice.[63] Consequently, newly graduated attorneys continue thinking more like students upon entering legal practice than they do attorneys consulting real clients.[64] Additionally, law schools generally fail to provide adequate resources and support for students to develop ethical and social skills.[65] Despite being pioneers of case teaching, law schools only occasionally use real case studies to help students reflect upon the responsibilities of legal professionals.[66]

The *Carnegie Report* makes broad and far-reaching recommendations for legal education derived from the authors' observations. Here we will mention those especially germane to our P3 deliberations:

1. "Offering an integrated curriculum."[67] The *Carnegie Report* authors suggest a three-part curriculum: (a) the teaching of legal doctrine and analysis; (b) introduction to the several facets of practice included under the rubric of lawyering; and (c) exploration and assumption of the identity, values, and dispositions consonant with the fundamental purposes of the legal profession.[68]

2. Joining lawyering, professionalism, and legal analysis from the outset of law school.[69] Learning legal doctrine should be seen as prior to practice chiefly in the sense that it provides the essential background assumptions and habits of thought that

62. *Id.* at 6.
63. *Id.*
64. *Id.*
65. *Id.*
66. *See id.*
67. *Id.* at 8.
68. *Id.*
69. *Id.* at 9. This recommendation supports our development of P3 as a first year course; we advocate for continued placement of a course like this in the first year.

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students need as they find their way into the functions and identity of legal professionals.[70]

3. Designing a curriculum that can make better connections between theory and practice.[71]

4. Embracing a vision of legal education that has as its purpose the formation of competent and committed professionals.[72]

Perhaps the *Carnegie Report* can be viewed as a culmination of decades of calls for change in the legal academy; the report definitely stimulated dialogue about curricular reform among law school faculty. Indeed, some scholars believe that the *Carnegie Report* is finally inspiring real curricular change, not just conversation, among law school faculty.[73] The expansion of experiential skills programs after the *Carnegie Report* may have occurred in part because of the proposition that effective problem-solving, a skill needed by all lawyers and enhanced by these programs, has finally taken root. Perhaps the "tipping point" for a better skills-doctrine balance has been reached.[74] As part of this thinking, law schools have been

70. *Id.*

71. *Id.* at 9–10.

72. *Id.* at 10.

73. *See, e.g.*, Rachel S. Arnow-Richman, *Employment as Transaction*, 39 SETON HALL L. REV. 447, 447 (2009) (stating "unlike past indictments, the *Carnegie Report* stands poised to be the first to inspire concrete changes in curriculum and pedagogy"). The recent series of articles, op-eds, and letters in the *New York Times* addressed the need for more relevant legal education and responses from law school professors often referred to the legal academy's meaningful responses to the recommendations of the *Carnegie Report*. *See, e.g.*, *supra* note 21. Professor Lande pointed out at the Roundtable that it is also possible that economic shocks to the business/legal world in recent years have themselves created change in legal educational models.

74. MALCOLM GLADWELL, THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE (2000) (explaining how change gains widespread acceptance by a critical mass, using the analogy of the spread of epidemics). Change is now discussed throughout legal education. *See, e.g.*, Leslie A. Street & Amanda M. Runyon, *Finding the Middle Ground in Collection Development: How Academic Law Libraries Can Shape Their Collections in Response to the Call for More Practice-Oriented Legal Education*, 102 LAW LIBR. J. 399 (2010) (providing examples of how the *Carnegie Report* ushered in sweeping reforms in clinical education at several law schools); Stefan H. Krieger, *The Effect of Clinical Education on Law School Reasoning: An Empirical Study*, 35 WM. MITCHELL L. REV. 359 (2008) (describing the results of an empirical study on the effect of clinical education on law school reasoning). Many law schools have added an experiential component to legal research and writing courses. A 2008 Association of Legal Writing Directors survey revealed that twenty-eight schools have undergone legal research and writing curricular reform to comply with the

creating more first-year courses designed to get students thinking more intentionally about the skills they will need in legal practice.[75]

II. INSTITUTIONAL GENESIS OF THE P3 COURSE

In the ever-evolving story of law school curriculum reform, the history of an individual law school and the context within which reform at that school is suggested and implemented, always matters. So, too, with the conception and implementation of the Hamline P3 course.

Hamline University School of Law began in 1972 when a group of local practitioners believed that there was a need for a "different type of formal legal education."[76] HUSL started as a free standing institution, and then beginning in 1976, became a part of Hamline University.[77] There has always been tremendous support for a public

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Best Practices and the *Carnegie Report* and that an additional eighty schools were exploring the possibility. ASSOCIATION OF LEGAL WRITING DIRECTORS, LEGAL WRITING INSTITUTE, 2008 SURVEY RESULTS, at ix (2008), *available at* http://alwd.org/surveys/survey_results/2008_Survey_Results.pdf; *see also* Lisa T. McElroy & Christine N. Coughlin, *Failure is Not An Option: An Essay on What Legal Educators Can Learn from NASA's Signature Pedagogies to Improve Student Outcomes*, 75 J. AIR L. & COM. 503, 508 n.22 (2010) (using astronaut education and problem-solving techniques as a model for how legal education should train law students). A dramatic change post-Carnegie hails from Washington and Lee University School of Law where a third-year program was adopted which is "entirely experiential, comprised of law practice simulations, real-client experiences, the development of professionalism, and the development of law practice skills." Street & Runyon, *supra* note 74, at 406. *See generally* Institute for the Advancement of the American Legal System (IAALS), EDUCATING TOMORROW'S LAWYERS, http://educatingtomorrowslawyers.du.edu (last visited Feb. 1, 2012) (promoting and encouraging significant institutional commitment to legal education reform along the lines proposed in the *Carnegie Report*).

75. A few schools with required first-year classes, many added in the last few years, include Case Western Reserve University (CORE Lawyering Skills); University of Connecticut (Lawyering Process); Drexel University (Introduction to Interviewing, Negotiation and Counseling); Harvard University (Problem-solving Workshop); Indiana University (The Legal Profession); University of Minnesota (Practice and Professionalism); University of Missouri-Columbia (Lawyering: Problem-solving and Dispute Resolution); NYU (Lawyering); Northeastern University (Legal Skills in Social Context); Northwestern University (Lawyer as Problem Solver); UCLA (Theory and Practice of Lawyering Skills); University of the Pacific McGeorge (Global Lawyering Skills); USC (Law, Language, and Ethics); Washington University in St. Louis (Negotiation); and, of course, Hamline University.

76. DAVID W. JOHNSON, HAMLINE UNIVERSITY: A HISTORY (1854–1994) 282 (1994); *see also* Len Biernat, *Hamline University School of Law History*, 23 HAMLINE L. REV. XXIII (2000). The school started as "Midwestern School of Law" and initially operated out of a People's Church in North Minneapolis. *Id.*

77. Hamline University is Minnesota's oldest university. *About Hamline: Hamline*

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law mission among HUSL's faculty.[78] In the 1980s, the idea of "a private school with a public mission" was promoted as one way to articulate what distinguishes Hamline from the other Twin Cities law schools.[79] HUSL has been a fertile place for individual faculty to pursue big ideas with passion, despite the small size and limited resources of the law school.[80]

Teaching excellence is highly valued at Hamline, and its geographical location in the Twin Cities has ensured an ability to tap

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History, http://www.hamline.edu/about/history.html (last visited Nov. 19, 2011). Hamline was originally founded in 1854. *Id.* Hamline University has strong "roots in the traditions and values of the United Methodist Church." *About Hamline: Mission and History*, http://www.hamline.edu/about/mission.html (last visited Feb. 1, 2012).

78. The career services office confirms that HUSL graduates routinely find employment in government service and non-profit work. Faculty and alumni are actively involved in pro bono and community service activities. *See* Johnson, *supra* note 76, at 290–93 (chronicling many of the public interest activities of individual faculty members and the values statements developed for the law school over the years). In addition, HUSL requires twenty-four hours of student pro bono work as a requirement of graduation. Donald M. Lewis, *Pro Bono Requirement*, HAMLINE UNIVERSITY SCHOOL OF LAW EXPERIENTIAL LEARNING (2009), http://law.hamline.edu/experiential/pro_bono.html.

79. For example, over the years Hamline has had several different programs to admit students that might not otherwise be able to attend law school. The current program, the Founders Enrollment Program is described as follows:

> The Founders Enrollment Program is based on Hamline Law's founders' vision that despite low statistical predictors, certain applicants should be given a chance to attend and excel in law school. The program is offered to applicants who have objective risk elements in their application (e.g., low LSAT and/or low undergraduate grade point average) while having strong subjective indicators (such as professional experience, letters of recommendation, excellent personal statement, etc.). Each year, 20 seats are available in our weekday section for the Founders Enrollment Program students who are selected through the regular admission process. These students are offered outright admission.

Special Admission: Founders Enrollment Program, http://law.hamline.edu/admissions/special.html (last visited Nov. 19, 2011).

80. For example, "[t]he Journal of Law and Religion was initiated in 1982 as a collaborative effort of the Council on Religion and Law and the Hamline University School of Law." ABOUT THE JOURNAL OF LAW AND RELIGION, http://law.hamline.edu/jlr/about.html (last visited Nov. 20, 2011). The Dispute Resolution Institute (DRI) was founded in 1991, and has consistently ranked in the top five by *U.S. News and World Report*. *See* ABOUT THE DISPUTE RESOLUTION INSTITUTE, http://law.hamline.edu/dri/about.html (last visited Nov. 20, 2011); DISPUTE RESOLUTION AND HEALTH LAW INSTITUTES RANKED HIGH AGAIN BY U.S. NEWS VOTERS, http://law.hamline.edu/Newssummary.aspx?id=2147505113 (last visited Mar. 8, 2012). A new Health Law Institute (HLI) was founded in 2006 and quickly reached the top twenty in *U.S. News and World Report*. *See id.* Recently, the newest Center of Excellence at Hamline, the Business Law Institute (BLI) was launched.

into a deep pool of loyal and superb adjunct professors.[81] The last decade has seen phenomenal growth in the scholarship output of the faculty, while commitments to teaching and service remain strong. Over the years, close to two-thirds of Hamline's graduates have found work in clerkships (15 percent), government (15 percent), public interest (8 percent), or private firms of 2–10 attorneys (23 percent), and not in bigger law firms.[82] This probably contributes to the fact that HUSL's overall commitment to the value of experiential learning has been consistently strong[83] and recent efforts to discuss and implement meaningful learning outcomes for law school classes have met with some success.[84]

A few details about how the Dispute Resolution Institute ("DRI") developed during its first decade will provide one more piece of background before we move to a discussion of how the P3 course came to fruition. In its 1991 beginning, Professor McAdoo, founding director of DRI, saw DRI as a way to more systematically institutionalize law school coursework that would prepare law students for the advocacy skills needed in arbitration, mediation, and negotiation. Coincidentally, her work in the larger Minnesota ADR community thrust DRI into a major supporting role to the courts in policy development, training, and evaluation for new statutes mandating the consideration of ADR in all civil cases in Minnesota.[85]

Additionally, Hamline was one of six schools nationwide to participate with the University of Missouri-Columbia program to develop course work to integrate dispute resolution into the standard curriculum.[86] By 1997, Hamline's Professor (and DRI Director from 2000–2009) Jim Coben had initiated the first mediation representation clinic in the country in concert with the EEOC.[87] What

81. Although regular faculty members always teach required and first year courses, our adjunct faculty teach key upper class electives that add to the richness of Hamline's offerings. In addition, nationally and internationally known adjuncts teach for our Dispute Resolution and Health Law Institutes in J-term and summer courses.

82. Data from Hamline Career Services Office (on file with authors).

83. HUSL clinical and externship offerings are now sufficient to guarantee a placement to each student who desires such experience.

84. The learning objectives for the law school, as adopted in 2008, are attached at app. B.

85. Three HUSL professors were actively involved in the training of Minnesota lawyers and all Minnesota judges.

86. *See supra* note 6.

87. Coben, *supra* note 6, at 748.

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is significant about these details is that Hamline's dispute resolution "history" was grounded upon the integration of ADR knowledge and skills with the traditional advocacy role of the lawyer.[88] *Our* big picture was always to promote the lawyer-as-problem-solver; whether our colleagues and our students always saw it that way is probably less certain.

It would be fair to say that the *MacCrate Report*, the *Carnegie Report*, and various other emphases on the concept of the lawyer-as-problem-solver fell on fertile soil at Hamline and gave particular life to the Hamline curricular changes that emerged in 2009.[89]

In 2008, then Dean Jon Garon appointed a faculty task force with the following charge (among others): "To revise and improve the first year curriculum by . . . adding a first semester course designed to inspire students and provide them with more up-front knowledge about the role of lawyers in society and the context in which legal problems arise. . . ."[90] Additionally, the charge included: "To introduce *the theme of problem solving* as a distinctive part of a Hamline education. . . ."[91]

The recommendations of the Task Force proposed reallocation of credit requirements for some courses, as well as the following: (1) the

88. Although Hamline developed a Certificate in Dispute Resolution in 1996, that certificate now is only available to non-HUSL students. In 2008 a new certificate, exclusively available to HUSL students was created. The twenty-two credit Certificate in Advocacy and Problem-Solving (CAPS) was designed to highlight the importance that law students graduate with knowledge and skills in advocacy and problem-solving and not just with knowledge about ADR processes. In addition to requiring completion of courses such as evidence, litigation and advocacy practice, the required mediation skills course was expanded to ensure that sufficient advocacy in mediation would be covered. Finally, in 2010, a Practice Perspectives requirement was added to the CAPS certificate. In order to earn the CAPS certificate, students must complete a series of activities in advocacy, problem-solving, and professional education in order to further emphasize the link between theory and practice. *See Certificate in Advocacy and Problem-Solving*, HAMLINE UNIVERSITY, http://law.hamline.edu/certificates/advocacy .html# Curriculum (last visited Jan. 3, 2012).

89. The *Carnegie Report* was particularly influential. After its publication a faculty retreat developed by Hamline's associate dean was held in 2007 to promote good law school teaching on the part of both adjuncts and regular Hamline faculty. And, a faculty colloquium was held to garner faculty support for a curriculum overhaul according to the dictates of the *Carnegie Report*. The fact that the first P3 class occurred in September 2010 is testament to how long it can take to effect curriculum change even with a supportive dean and faculty.

90. Memorandum from Jon Garon to the Faculty of Hamline Law School (May 2008) (on file with authors).

91. *Id.* (emphasis added).

addition of a first year Lawyering in Context course;[92] (2) the addition of a first year International/Comparative Law course; and 3) the addition of a third semester of Legal Research and Writing. For purposes of this Article, we are focusing on the Lawyering in Context recommendation, but the other recommendations also have been implemented at Hamline.

After a series of small group faculty meetings, it was agreed that the Lawyering in Context course would:[93]

- center on the lawyer as a problem-solver
- draw upon our DR reputation for substantive content
- incorporate specific skills development
- reinforce topics of the lawyer as a professional
- counter the litigation-centric focus of the rest of the first year curriculum

Three professors closely associated with ADR[94] were given the assignment of developing and teaching P3 which, despite our clear preference and design, probably promoted an ADR reputation for the course, rather than the more general and important lawyer-as-problem-solver reputation.[95]

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92. This course became P3.

93. Even the title of the course, Practice, Problem-Solving and Professionalism, was decided upon by a faculty vote.

94. The three professors were Bobbi McAdoo and Jim Coben (former DRI Directors) and Sharon Press (current DRI director). Two Roundtable comments are worth repeating here: (1) Professor Lande mentioned that this phenomena of ADR professors teaching a Lawyering course has also occurred at Missouri; and (2) Professor Reynolds asked why it seems like it is ADR professors who often take up the *MacCrate Report/Carnegie Report* challenge, and she asked if we are letting other professors "off the hook," so to speak. At Hamline, the choice was primarily related to time and course commitment trade-offs, although in hindsight, it is probably fair to say that the discomfort many doctrinal faculty feel with simulation courses contributed to this choice. *See also* Lande & Sternlight, *supra* note 2, at 269 (discussing barriers to curricular reform).

95. *See infra* Part V. In some ways, this misguided ADR reputation gave birth to the thinking behind this article.

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III. THE DESIGN AND IMPLEMENTATION OF P3

The professors charged with designing the P3 course took the goals articulated by the full faculty and developed a two-credit course with the following description:

> Lawyers assume many leadership roles as professionals in today's society, all of them grounded in problem-solving: advocate, counselor, negotiator, transactional architect, and many others. This course will foster an understanding of the lawyer's role as a problem-solving professional and provide an overview of the range of dispute resolution processes lawyers use to resolve client problems, such as negotiation, mediation and arbitration. Law students will be introduced to the key skills of effective communication and negotiation; and will explore the breadth of career possibilities available for lawyers. Student learning will be enriched throughout the course by a variety of experiential strategies to promote practical skill development.[96]

The course was designed to be taught in three weekday sections,[97] each by a tenured or tenure-track professor with an alumnus adjunct professor who was described to the students as "providing practice perspective and small group facilitation."[98] The intent was to create a small class feel by dividing the class into two groups: one led by the professor, and one by the adjunct. In the first offering of the class, for a variety of reasons, the class did not regularly meet in two groups. During the 2012 offering, the class was frequently divided into two groups.[99]

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96. The four sections of P3, while taught by three different professors, all used the same syllabus, power points and course activities.

97. The weekday sections (approximately sixty students per section) were held on Fridays at three different times. Hamline also runs a part-time weekend law program. The first-year weekend students (approximately forty students) met on Saturday.

98. Course Syllabus (2010–11) (on file with authors).

99. Based on this experience we believe the idea of large sections assisted by adjunct faculty is a sound and an effective way to implement the course in an economically feasible way.

The syllabus provided to the students included the following learning outcomes for the course:[100]

Learning Outcomes for the Course

In this course, you will:

1. [B]e introduced to the many different ways (formal and informal) that lawyers serve as problem-solvers;

2. [E]xplore the factors that go into choosing an appropriate problem-solving process;

3. [B]roaden your understanding of effective communication and negotiation, with a special emphasis on listening skills;

4. [G]ain an appreciation of how understanding the perspectives of others is vital to effective problem-solving; and

5. [E]xamine questions of professional identity and begin the networking that all law students must do to build a satisfying career.[101]

The syllabus also included the following description of what was to be accomplished in the class:

Through exercises, simulations, short lectures, panel presentations, and small group activity, I hope to improve your ability to:

1. [E]ngage in the level of effective self-critique/reflective learning necessary to excel in law school (and later, as a lawyer);

2. [R]emain conscious of the biases you bring to your work;

3. [E]ffectively interview and counsel clients, with special focus on choice of problem-solving alternatives;

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100. Course Syllabus (2010–11) (on file with authors). Roundtable participants asked the authors to include the syllabus in this Article. Given the number of changes made to the 2011–12 syllabus, we decided that it made more sense to attach the 2011–12 syllabus to this Article. See app. C. for the syllabus. All P3 classes use the same syllabus.

101. *Id.*

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4. [P]repare and implement appropriate negotiation strategies; and

5. [E]mbrace your most deeply held values as part of your work as a problem-solving professional.[102]

In addition to responding to aspects of legal education reform discussed in Part II above, P3 was intentionally designed to incorporate many different teaching methods to involve students in their learning. These included traditional role play simulations and small group discussions, as well as less commonly used activities such as interviews with alumni, alumni panels, and "adventure learning."[103] In this section, we will make connections from the *Carnegie Report* and the *MacCrate Report* to some of the specific activities incorporated into P3. Our focus will be on our use of the more innovative activities, rather than the more commonly used role play simulations[104] and in-class small group discussions.[105]

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102. *Id.*

103. Adult learners respond best in environments in which they have an active role. *See* MALCOLM S. KNOWLES, ELWOOD F. HOLTON & RICHARD A. SWANSON, THE ADULT LEARNER: THE DEFINITIVE CLASSIC IN ADULT EDUCATION AND HUMAN RESOURCE DEVELOPMENT (6th ed. 2005) (espousing the theoretical framework for understanding adult learning issues); Bobbi McAdoo & Melissa Manwaring, *Teaching for Implementation: Designing Negotiation Curricula to Maximize Long-Term Learning*, 25 NEGOTIATION J. 195, 204 (2009) (emphasizing the importance of encouraging adult students to make connections between their real-life negotiation experiences and simulated exercises in class); Melissa L. Nelken, *Negotiating Classroom Process: Lessons from Adult Learning*, 25 NEGOTIATION J. 181, 182 (2009) ("Adult learners . . . respond to an environment in which they are active participants in structuring their own learning, in terms of subject matter, pacing, and goals . . . .").

104. There are a number of articles that promote the use of simulations. *See, e.g.*, Robert G. Vaughn, *Use of Simulations in a First-Year Civil Procedure Class*, 45 J. LEGAL EDUC. 480 (1995) (describing the benefits of using simulations in civil procedure classes); Paul S. Ferber, *Adult Learning Theory and Simulations—Designing Simulations to Educate Lawyers*, 9 CLINICAL L. REV. 417 (2002–03) (providing insight on designing simulations that encourage law students and lawyers to be more reflective practitioners). An interesting discussion on the possible overuse of role play appears in the *Rethinking Negotiation Teaching* series, *available at* http://law.hamline.edu/dri/projects/press.html#Venturing (last visited Mar. 31, 2012); *see also* Nadja Alexander & Michelle LeBaron, *Death of the Role Play*, *in* RETHINKING NEGOTIATION TEACHING: INNOVATIONS FOR CONTEXT AND CULTURE 179 (Christopher Honeyman, James Coben & Giuseppe De Palo eds., 2009); Michelle LeBaron & Mario Patera, *Reflective Practice in the New Millennium*, *in* RETHINKING NEGOTIATION TEACHING: INNOVATIONS FOR CONTEXT AND CULTURE 45 (Christopher Honeyman, James Coben & Giuseppe De Palo eds., 2009); Melissa Manwaring, Bobbi McAdoo & Sandra Cheldelin, *Orientation and Disorientation: Two Approaches to Designing "Authentic" Negotiation Learning Activities*, *in* VENTURING BEYOND THE CLASSROOM: VOLUME 2 IN THE RETHINKING

A. Alumni Interviews

1. Context[106]

In recognition that every lawyer must be able to problem solve, regardless of practice type (and in non-practice jobs as well) students formed groups on the first day of class[107] in order to interview a graduate of Hamline University School of Law[108] with at least five years experience as a lawyer. Students were encouraged to identify someone whose career was not focused on trial work to meet the goal of broadening their perspectives on the various types of work in which lawyers participate and problem-solve, and the variety of ways someone can use a law degree beyond serving as a litigator.[109] The

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NEGOTIATION TEACHING SERIES 121 (Christopher Honeyman, James Coben & Giuseppe De Palo eds., 2010).

105. Also not included is a discussion of how Hamline introduces mediation into the first semester of the legal research and writing course. *See* Mary L. Dunnewold & Mary B. Trevor, *Escaping the Appellate Litigation Straitjacket: Incorporating an Alternative Dispute Resolution Simulation into a First-Year Legal Writing Class*, 18 LEGAL WRITING (forthcoming 2012).

106. The students were assigned the following readings for the Alumni Interview: Julie Macfarlane, *The Evolution of the New Lawyer: How Lawyers are Reshaping the Practice of Law*, 2008 J. DISP. RESOL. 61 (2008), an excerpt from Paul Brest & Linda Hamilton Krieger, *Lawyers as Problem Solvers*, 72 TEMP. L. REV. 811 (1999), and an excerpt from Leonard Riskin, *Mediation and Lawyers*, 43 OHIO ST. L. J. 29 (1982). In addition, the students had already been assigned the readings associated with the alumni panel. *See infra* note 147.

107. In the first class in 2010–2011, students were asked to work in groups of three or four to introduce themselves to each other with their name, an interesting piece of information about themselves, and one sentence about what they thought it meant to be a lawyer. Then they imagined that the four of them had decided to go into practice together. As a group they had to design a logo for their firm representing the kind of practice that they would have. Students were also asked to form a different group of three or four people in order to complete the alumni interview assignment. In the 2011–2012 iteration of the class, we did not use the introductory group activity but retained the alumni interview assignment. Given that the class was moved to the second semester, students already knew each other which lessened the need for this type of ice-breaker activity. In addition, we believed it was more important to start the class by immediately setting the context via a discussion of the 35W Bridge collapse. *See infra* note 195 and accompanying text.

108. The focus on Hamline University School of Law alumni was part of a larger law school goal of helping our students to engage more with alumni. The career services office had recently launched a new mentoring program and our students mostly used that program to identify alumni who fit the identified criteria.

109. The *Carnegie Report* recognizes that legal education prepares its graduates for a great diversity of careers. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 44–45 (2007) [hereinafter CARNEGIE REPORT]. "Today . . . most young lawyers begin their careers in private practice; the majority begin in firms, though a small percentage strike out solo. Today, however, 16 percent enter government service, with

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assignment was designed in part for students to hear from practicing lawyers to counter the litigation-centric mode of the typical first-year curriculum.[110] An additional goal for this assignment was to "force" students to begin the networking process, which is necessary to be successful.[111]

2. Connection to the *Carnegie Report* and the *MacCrate Report*

Most of the identified P3 learning objectives were accomplished in this assignment. Specifically the activity supported (1) the introduction of the lawyer-as-problem-solver, (2) effective communication (especially listening) skills and (3) an examination of professional identity, with a start in developing the networking skills that law students must do to build satisfying careers. These objectives were consistent with and supported by the following *Carnegie Report* recommendations: (1) an integrated curriculum to include specific foci on an "introduction to the several facets of practice included under the rubric of lawyering" and "exploration and assumption of identity [and] values . . . consonant with the fundamental purposes of the legal profession;"[112] (2) joining lawyering, professionalism, and legal analysis from the outset of law school;[113] and (3) making connections between theory and practice.[114] In order to effectively complete this assignment, students were required to use professionalism skills which will serve them well as future attorneys. Specifically, they had to contact the professional, arrange for the interview, prepare questions, and conduct themselves appropriately in

two-thirds employed by state and local government and the remainder in federal employ. Nearly 10 percent of law graduates go to work directly for businesses, and 2 percent either do not practice law in any form or proceed directly to law teaching." *Id.* at 44.

110. On the question of when problem-solving needs to be taught, we contend that the problem-solving course needs to occur during the first-year of law school because otherwise, law students become "habituated" to a particular teaching method (appellate case analysis) which is misleading and quite limited. *See* Kerper, *supra* note 57, at 354 ("Educational research demonstrates that once learners become habituated to a particular teaching method, it becomes difficult to introduce new methods."). "[T]he case method over-focuses students on judge-centered thinking and . . . we ought to do more to expose students to lawyers' roles and thinking processes." Holmquist, *supra* note 20, at 3–4.

111. *See supra* notes 67–72 and accompanying text.

112. *See* CARNEGIE REPORT SUMMARY, *supra* note 59, at 8.

113. *See id.* at 9.

114. *See id.*

the presence of another professional. Thus, this activity also embraced the *Carnegie Report*'s recommendation that legal education has as its purpose the formation of competent and committed professionals.[115] This also supports the *MacCrate Report*'s identification of "problem-solving" and "communication" as two of the "fundamental skills . . . that every lawyer should acquire. . . ."[116]

3. Logistics

As a group, the students were instructed to conduct an interview to: (1) gain an understanding of the "professional identity" of the lawyer they interviewed, focusing specifically on why s/he wanted to become a lawyer; why s/he chose the specific career s/he is in now; how s/he prepared for this career; what does this career look like day-to-day; what major challenges does this career (and a career in the law generally) present; what adds the most to life satisfaction from this career choice; and (2) uncover the skills especially important to master in order to do well in the interviewee's career.[117] This assignment was discussed on the first day of class in order to give students time to form groups, choose and make contact with an interviewee, and arrange for a mutually convenient interview time. However, it was not due until class five. As a result, prior to the students' submission of individual essays, they had been exposed to the range of roles lawyers play in conflict situations, the impact of conflict style (through the completion and discussion of the Thomas Kilmann Inventory), and an introduction to process choice.

4. Assessment

After the interview, the students were required to write a short, individual essay to integrate their own career/life goals with what they learned in the interview. The goal was, in part, to encourage the development of self-reflection.[118] Students were provided with the grading rubric that was used for all of the written assignments.[119]

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115. *See id.*
116. *See* MACCRATE REPORT, *supra* note 21, at V.
117. Course Syllabus (2010–11) (on file with authors).
118. One of the major limitations noted by legal education critics is its "failure to complement the focus on skill in legal analyses with effective support for developing ethical

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As expected, the students reported that many of the lawyers identified "problem-solving" as the most valuable skill. The lawyers also stressed the importance of strong communication skills, including excellent listening skills.[120]

5. Student Feedback[121]

Student feedback for this activity was very positive. Many described it as the "most valuable project in the class."[122] Of the 182 students who participated in an optional post-course evaluation, over 68 percent rated the assignment as helpful for achieving one or more of the learning outcomes[123] and overall, it was the second highest rated activity of the course.

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and social skills." CARNEGIE REPORT SUMMARY, *supra* note 59, at 6. "Students need opportunities to learn about, reflect on and practice the responsibilities of legal professionals." *Id.* The CARNEGIE REPORT calls for an effort on the part of law schools to offer as many opportunities for reflective moral judgment as the opportunities offered for acquisition of legal knowledge and traditional legal skills. *Id.* at 7.

119. *See* app. A.

120. The *Carnegie Report* notes that practical legal skills regarding client relations and ethics take a subordinate place in law school curriculum. CARNEGIE REPORT SUMMARY, *supra* note 59, at 7. The development of these skills is critical to bridging the gap between legal education and the practicing bar. The *Carnegie Report* recommends that law schools expand opportunities for the development of practical lawyering skills by offering small-group settings where such skills can be explored and honed. *Id.* at 10. The interview assignment in P3 was in line with this recommendation.

121. Since this was the first offering of the P3 course, we were very interested in obtaining feedback. In addition to collecting comments throughout the semester, and reviewing the standard course evaluations which students complete for all courses at Hamline, we designed an additional and more detailed "Survey Monkey" instrument that students were invited to complete. We also held two focus groups, one for weekday students and one for weekend students. The Survey Monkey included (a) an opportunity for the students to rank each of the course activities on a five point scale—from (1) not at all helpful to (3) somewhat helpful to (5) definitely helpful in achieving one or more of the learning outcomes articulated for the class (the outcomes were provided to the students in the course syllabus and also in the Survey Monkey instructions); (b) open-ended questions asking the students to identify readings that they found "particularly insightful/helpful/relevant" or "not at all insightful/helpful/relevant" to their learning; (c) an opportunity for the students to provide comments; (d) optional identification of their section and their gender. The activities ratings were helpful. The questions on the readings yielded strong reactions on articles students liked and disliked, but there was little consistency. Every article identified as particularly insightful/helpful/relevant by one student, was identified by another student as "not at all insightful/helpful/relevant" and vice versa. *Survey Monkey Results* (on file with authors).

122. *Id.*

123. Students were asked to rate each of the P3 activities on a five point scale. The percentage reported reflects a combination of the two highest categories with over 40 percent

6. Future of the Assignment

This assignment was very effective in responding to the *Carnegie Report's* recommendations and in achieving the P3 learning objectives articulated above.[124] In addition, it was popular among the students. A possible modification for future offerings is to restructure how the groups are formed. Options include random groupings or groupings based on student self-identified areas of interest. An advantage of random assignments is that students may be exposed to a career possibility that they had never heard of or considered. Either way, during the classroom debrief students were grouped with students who interviewed attorneys from different practice areas in order to attain the goal of introducing students to a range of career options.

B. Adventure Learning

1. Context[125]

Inspired by the work done as part of the Rethinking Negotiation Teaching Project,[126] the P3 instructors included two activities which fall into the category of "Adventure Learning." Adventure Learning involves "direct, active, and engaging learning experiences that involve the whole person and have real consequences."[127] Unlike role

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rating the Alumni Interview a "5". *Id.*

124. A second-year student who participated in this activity in 2011–12 reported to her professor that she believes that as a result of the alumni interview she was able to get an internship this year.

125. For this class, the students read excerpts from the following articles: Carrie Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem Solving*, 31 UCLA L. REV. 754 (1984); Andrea Schneider & Nancy Mills, *What Family Lawyers Are Really Doing When They Negotiate*, 44 FAM. CT. REV. 612 (2006); and Gary Goodpaster, *A Primer on Competitive Bargaining*, 1966 J. DISP. RESOL. 325 (1996). They were also assigned *Getting to Yes.*

126. *See Rethinking Negotiation Teaching*, *supra* note 104; RETHINKING NEGOTIATION TEACHING: INNOVATIONS FOR CONTEXT AND CULTURE (Christopher Honeyman, James Coben & Giuseppe De Palo eds., 2009), *available at* http://law.hamline.edu/dri/rethinking_negotiation.html; VENTURING BEYOND THE CLASSROOM: VOLUME 2 IN THE RETHINKING NEGOTIATION TEACHING SERIES (Christopher Honeyman, James Coben & Giuseppe De Palo eds., 2010), *available at* http://law.hamline.edu/Content.aspx?id=2147484100.

127. DICK PROUTY, JANE PANICUCCI & RUFUS COLLINSON, ADVENTURE EDUCATION: THEORY AND APPLICATIONS 127 (2007).

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play simulations, Adventure Learning takes place outside of the traditional classroom setting,[128] involves some element of real or perceived risk,[129] and involves the "whole person" not just the cognitive.[130]

2. Connection to the *Carnegie Report* and the *MacCrate Report*

This activity was aimed primarily at developing effective communication and negotiation skills,[131] and helping students to appreciate how understanding "other" perspectives is vital to problem-solving.[132] Also embedded in this activity were lessons in creativity, reflective learning, and relationship building.[133] The

128. Manwaring, McAdoo & Cheldelin, *supra* note 104, at 127.

129. *Id.* at 128.

130. *Id.* at 127.

131. Communication and Negotiation are listed as two of the fundamental lawyering skills identified by the *MacCrate Report*. *See* MACCRATE REPORT, *supra* note 21, at 135.

132. The *MacCrate Report* identifies "Assessing the Perspective of the Recipient of the Communication" as a subpoint of the Communication skill set. *Id.* at 139. It also identifies "Counseling the Client About the Terms Obtained From the Other Side in the Negotiation and Implementing the Client's Decision" as a subpoint of the negotiation skill set. *Id.*

133. In the many definitions of problem-solving, these are the concepts that emerge as important. *See* Jayashri Srikantiah & Jennifer Lee Koh, *Teaching Individual Representation Alongside Institutional Advocacy: Pedagogical Implications of a Combined Advocacy Clinic*, 16 CLINICAL L. REV. 451, 457 (2009) ("Broadly defined, 'problem-solving' refers to the ability to take into account the context in which legal problems arise, identify creative solutions, and carry them out while remaining cognizant of potential legal and non-legal barriers."); Barbara A. Blanco & Sande L. Buhai, *Externship Field Supervision: Effective Techniques for Training Supervisors and Students*, 10 CLINICAL L. REV. 611, 635 (2004) (emphasizing the importance of impressing upon law students "the role of reflection and self-assessment in legal problem-solving"). Creativity is often seen as necessary to problem-solving. *See, e.g.*, Andrea L. Johnson, *Teaching Creative Problem Solving and Applied Reasoning Skills: A Modular Approach*, 34 CAL. W. L. REV. 389, 390 (1998) (defining creative problem-solving "as a process by which people are empowered to devise win-win solutions to problems based upon communication, consensus, understanding, and respect"); Brian J. Foley, *Avoiding a Death Dance: Adding Steps to the International Law on the Use of Force to Improve the Search for Alternatives to Force and Prevent Likely Harms*, 29 BROOK. J. INT'L L. 129, 155 (defining creative problem-solving as "a method of problem-solving where one defines the problem, generates a wide variety of possible solutions and then, using reason and experience, chooses the best among them"); *but see* Linda Morton, *A New Approach to Health Care ADR: Training Law Students to Be Problem Solvers in the Health Care Context*, 21 GA. ST. U. L. REV. 965, 969 n.12 (2005) (quoting Steven Smith as saying that creative problem-solving will always elude precise definition). Creativity itself has been defined "as the capacity to solve problems through insights that are arrived at independently and that are—at least to the problem-solver—novel." Richard K. Neumann, Jr., *A Preliminary Inquiry Into the Art of Critique*, 40 HASTINGS L.J. 725, 744 (1989).

concept of Adventure Learning is completely consistent with the *Carnegie Report*'s recommendation that curriculums should better integrate theory and practice;[134] and the *MacCrate Report*'s focus on negotiation as a fundamental skill of a lawyer.[135]

3. Logistics

At the conclusion of class seven (during which students had engaged in several short negotiations), the students were asked to form groups of three to four people, preferably including students with whom they had not previously worked.[136] The group was instructed to create and participate in an external negotiation on a topic of their choice.[137] The students were given some examples for what they might negotiate, e.g., something to eat at a market, a table in a restaurant, a rate for a service, and were told a little bit about the multi-year, cross disciplinary, international project to study negotiation pedagogy in which all of the P3 professors were involved.[138]

134. *See supra* note 72.

135. *See supra* notes 50–51.

136. Since this class was offered the first semester of their law school experience, the students did not already know each other and a side benefit of the P3 activities was the opportunity for the students to meet others in their section. One student stated, "I really liked the group exercises . . . because I met more classmates than [in] any other exercise or event during my first semester in school. A lot of students I would never have known or spoke [sic] to because they were very quiet, but through the exercises I was also able to speak to them." *Survey Monkey Results* (on file with authors).

137. The adventure learning assignment also included a second part in which the students were asked to produce a photograph that the group agreed reflected the intersection of the secular and the sacred. For a variety of reasons, future students will be asked only to complete the "negotiate for something" portion of the activity so the photo portion will not be discussed. For more information on using the photo activity, see Jim Coben, Christopher Honeyman & Sharon Press, *Straight off the Deep End in Adventure Learning*, in VENTURING BEYOND THE CLASSROOM 112 (Christopher Honeymoon, Chris Coben & Giuseppe De Palo eds., 2010); Sharon Press & Christopher Honeyman, *A Second Dive into Adventure Learning*, in VENTURING BEYOND THE CLASSROOM (Christopher Honeymoon, Chris Coben & Giuseppe De Palo eds., 2010).

138. One of the outgrowths of this project is the belief that the best way to learn negotiation is to do negotiation in a real setting with appropriate reflection and debrief. *See* Alexander & LeBaron, *supra* note 104, at 186–88 (advocating for adventure learning activities in negotiation classes); Manwaring, McAdoo & Cheldelin, *supra* note 104, at 139–40 (explaining the benefits that come from authentic negotiation exercises).

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The in-class debriefing discussion (class nine) included reports from each of the groups on the subject of their negotiations; the intra-group dynamics relating to decision making and planning; and the students' overall reaction to the assignment done in an attempt to draw out emotional as well as cognitive reactions. The professors also attempted to draw the students' attention to key themes in the negotiation literature, including interests and relationships, culture, gender, agency, and ethics.

4. Assessment

The students had approximately two weeks to complete the assignment. In addition to completing the negotiation, each member of the group was responsible for an individual written reflection on the activity. The essay assignment asked for student feelings, reactions, observations, and judgments during the assignment and asked the students: "What relevance do you believe this assignment had, if any, to being a law student or lawyer?"[139] The grading rubric[140] rewarded those students who integrated insights from the readings into their papers.

5. Student Feedback

Although some students did not understand how the Adventure Learning activity related to the work of a lawyer, many were able to make meaningful connections once the professors provided guidance during the in-class debriefing discussion.[141] A key student insight was how prevalent negotiation is in everyday life.[142] Specifically, even the

139. The assignment was written to provide the students with maximum flexibility but they wanted more direction from the professors. In addition, because the papers were limited to three pages, it was extremely difficult for students to reflect in a meaningful and focused way.

140. *See* app. A.

141. The students had the most difficulty making the connection between the photo assignment and their future work as lawyers. Since the "negotiate for something" portion of the activity also requires an internal negotiation, nothing will be lost in having the students complete only the less oblique activity.

142. The *Carnegie Report* notes that the result of teaching law students through appellate case dissection conveys to students "that lawyers are more like competitive scholars than attorneys engaged with the problems of clients." CARNEGIE REPORT SUMMARY, *supra* note 59, at 6. This creates narrow-mindedness about what lawyers actually do in their day-to-day work.

internal decision making process of the group about what to do to complete the assignment was understood as a negotiation.[143] On the final course evaluation, some students reported that they most appreciated the "outside activities such as . . . [the] Adventure Learning assignment."[144]

6. Future of the Assignment

Participating in a "real" negotiation outside of the classroom has value and it was retained as a course activity.[145] Since the students have to agree on the subject of the negotiation, they must engage in both an intra-group negotiation as well as an inter-group negotiation, thus enabling the instructors to discuss issues related to both internal and external negotiations. In order to improve this assignment, the professors provided clearer instructions to the students, specifically articulating how the assignment relates to negotiation and to the work of a lawyer.[146]

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143. Manwaring, McAdoo & Cheldelin, *supra* note 104.

144. Course Evaluations, Nov.19, 2010 (on file with authors).

145. Adventure Learning activities are an excellent way for law professors to provide "real" short term experiences for law students as recommended by the Carnegie Report. *See* CARNEGIE REPORT, *supra* note 109, at 12 (noting that the experience of practice is one of the two components of legal knowledge).

146. "Novices in any subject need both the discovery and the telling for deep understanding." Melissa Nelken, Bobbi McAdoo & Melissa Manwaring, *Negotiating Learning Environments*, *in* RETHINKING NEGOTIATION TEACHING: INNOVATIONS FOR CONTEXT AND CULTURE 223 (Christopher Honeyman, James Coben & Giuseppe De Palo eds., 2009) (citing Daniel L. Schwartz & John D. Bransford, *A Time for Telling*, 16 COGNITION & INSTRUCTION 475, 502–03 (1998)). There may be a synergistic relationship between differentiating one's own knowledge of a phenomena and being provided with a framework that articulates the significance of the phenomena. *Id.* "In short, the organizing lecture can bring clarification and understanding to bear on the disequilibrium created by an experiential exercise and can help the student to develop a more sophisticated mental schema for the material being studied." *Id.*

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C. Alumni Panels

1. Context[147]

In keeping with the goals of inspiring students and broadening their perspectives on the various types of work in which lawyers participate, in 2010, two class sessions were devoted to alumni panel presentations.[148] The first panel, which took place during the third class session, focused on legal careers and featured a panel of alumni who "traveled different career paths since graduation."[149] The second panel took place on the second-to-last class session. The focus of this panel was on "emerging trends in the practice of law."[150]

2. Connection to the *Carnegie Report* and the *MacCrate Report*

This activity was designed primarily to introduce students to the different ways that lawyers serve as problem solvers; to encourage students to examine questions of professional identity; and to help students begin the networking that all law students must do to build satisfying careers. These objectives support the *Carnegie Report*'s recommendation that the curriculum should include an introduction to the different facets of practice included under the rubric of lawyering as well as an exploration of the identity, values, and dispositions consonant with the fundamental purposes of the legal

147. In preparation for the first panel on legal careers, the students were assigned: Stephen Easton, *My Last Lecture: Unsolicited Advice for Future and Current Lawyers*, 56 S.C.L. REV. 229 (2004); Forrest S. Mosten, *Lawyer as Peacemaker: Building a Successful Law Practice Without Ever Going to Court*, 43 FAM. L.Q. 489 (2009); MARJORIE M. SHULTZ & SHELDON ZEDECK, FINAL REPORT: IDENTIFICATION AND VALIDATION OF PREDICTORS FOR SUCCESSFUL LAWYERING 26–27 (2008) (students read a brief outline prepared by the FINAL REPORT authors). In preparation for the second alumni panel, held towards the end of the semester, the students were assigned: Julie Macfarlane & John Manwaring, *Reconciling Professional Legal Education with the Evolving (Trial-Less) Reality of Legal Practice*, 2006 J. DISP. RESOL. 253 (2006); Forrest S. Mosten, *Unbundling: Current Developments and Future Trends*, 40 FAM. CT. REV. 15 (2002); John Lande, *The Movement Toward Early Case Handling in Courts and Private Dispute Resolution*, 24 OHIO ST. J. ON DISP. RESOL. 81 (2008); and John W. Allen, *Lawyers as Healers*, 80-OCT. MICH B.J. 42 (2001).

148. In 2012, the course included only one alumni panel. *See infra* note 161.

149. *See supra* note 107 and accompanying text.

150. *See* Course Syllabus (2010–11) (on file with authors); *see also* MACFARLANE, *supra* note 11.

profession.[151] It also supports the recommendation that legal education has as its purpose the formation of competent and committed professionals.[152] During the course of the discussions, the panelists confirmed points made in the *MacCrate Report* that the "fundamental skills and values that every lawyer should acquire . . . include: problem-solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling, negotiation, litigation and alternative dispute resolution procedures, organization and management of legal work and recognizing and resolving ethical dilemmas."[153] Hearing this from successful professionals had a tremendous impact on the students who internalized this information in a way that would not have been possible had "just" their professors made the same points.

3. Logistics

The class with the alumni panel on legal careers began with brief introductions of the panelists[154] followed by short presentations by each. The panelists were asked to focus on their pre-law school career and professional orientation, their focus while in law school, and their search for the "right" job. The professor began the question and answer time by asking the panelists to reflect on the skills and competencies that were most important to their work, what surprised them most about the legal profession, how they balanced their career and personal lives, what is most and least fulfilling about their current

151. CARNEGIE REPORT SUMMARY, *supra* note 59, at 8; *see also* CARNEGIE REPORT, *supra* note 109, at 132 (students need to be made aware, "not only of the various sorts of lawyer they might become but also of the various kinds of approaches they can take toward lawyering itself").

152. CARNEGIE REPORT SUMMARY, *supra* note 59, at 10.

153. *See supra* notes 50–51.

154. For the first panel on legal careers, the panelists included: Laura Tubbs Booth, a 1987 graduate who had worked in both a large firm and her own firm, and served as the Director of Human Resources for a school district where she specialized in special education and employment. See http://boothlavoratolaw.com/aboutus.html for a complete biography; Chris Carlisle, a 2001 graduate who is a partner in a large firm and advises companies in corporate finance, mergers and acquisitions, joint ventures, and negotiation strategies. See http://www.gpmlaw.com/professionals/christopher-a-carlisle.aspx for a complete biography; and Frank Harris, a 1975 graduate who serves as the executive director of Minnesota CLE and was the recipient of a Minnesota Lawyer Outstanding Service to the Profession Award. See http://facesofmn.com/?p=184 for additional information.

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positions, and reflections on having a mentor and networking. For the last portion of the class, the students asked the panelists questions. Each session concluded with an opportunity for each panelist to share a brief final thought or offer a piece of advice to the students.[155]

The panelists on the second panel on emerging trends in the law[156] spoke about their career paths and touched on many of the themes that had been introduced throughout the class.[157] Given that this was near the end of the semester, the students had a lot of context in which to place the panelists' remarks. A quotable moment was from a 1985 graduate who shared her shock as a new lawyer when she realized that when a client comes in, s/he is not interested in the lawyer's ability to spot the issues; what the client wants is help in resolving a problem. As was done with the first panel, after some initial statements by the panelists, students were invited to ask the panelists questions. The class period ended with some closing thoughts from each of the panelists.

4. Assessment

The assignment associated with the first panel was the following journal prompt: "Based on what you heard (explicitly or implicitly) from the panelists, what five 'effectiveness factors'[158] do you believe are most important to the practice of law? Explain your reasoning."[159] Once again, the rubric that was provided to the students was used to

155. Despite the same panel members participating in each of the sections, the content varied based on the questions asked by the students.

156. The second panel included: John J. Choi, a 1995 graduate who had just been elected Ramsey County (Saint Paul area) Attorney; he previously served as the City Attorney for Saint Paul and worked in a law firm. See http://www.co.ramsey.mn.us/Attorney/Johnsbio.htm for additional information; Kenneth W. Morris, a 1992 graduate who is an entrepreneur having created and led a range of innovative companies. Currently he is the president/CEO of a "global medical supply chain firm that develops leading edge inventory management solutions for medical device companies and hospitals." See www.corcardia.com for additional information; and Susan Rhode, a 1985 graduate who began her career as a clerk for an appellate judge and still works for the law firm she joined after completing her clerkship. Her area of focus is family law and she chairs one of the judicial district ethics committees. See http://www.moss-barnett.com/Bio/SusanRhode.asp for a full biography.

157. The panel also explicitly discussed the significant obligation that lawyers have to provide service to their communities and to their profession and how each of them fulfills this commitment. *See supra* note 78.

158. *See* SHULTZ & ZEDEK, *supra* note 147, at 26–27.

159. *See* Course Syllabus (2010–11) (on file with authors).

grade the journal. A journal prompt was not assigned for the second panel.

5. Student Feedback

The alumni panels received the highest student ratings. The students appreciated that they were hearing from "real lawyers" about what the practice of law was "really like."[160] Using alumni in this role also helped the students envision their possible career trajectory. In addition, the panelists were very inspirational while still providing a very realistic overview of their lives as lawyers.

6. Future of the Assignment

The use of panelists will be retained for future iterations of this class. In the first and second iterations of the class, the same panelists participated in all four sections. To avoid asking for such a large commitment, alternatives would be to invite different panelists for each section, to record the discussion, or to combine the sections for these special programs. Clearly, viewing a recorded session is neither as helpful nor as interesting as having the ability to interact with live panelists. Further, the combined section option would be difficult to schedule and would pose a logistical problem in terms of securing sufficient space for all of the students. Thus, our present plan is to invite more panelists when necessary.[161]

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160. Law school generally fails to give students a precise idea about legal practice. *See* CARNEGIE REPORT, *supra* note 109, at 60 ("[S]ocialization to law school provided through the case-dialogue method may result in a confusing and even distorted socialization to the profession and its requirements.").

161. Laura Booth, Kenneth W. Morris, and Susan Rhode once again participated as panelists in 2012. Joining the panel this year was Daniel McIntosh, a 2001 graduate who currently serves as the County Attorney for Steele County, Minnesota. Given the large number of Hamline graduates who go into public service, we wanted to include someone who could share insights on a public service career.

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D. Client-Centered Activities

1. Context

Throughout the semester, a series of client-centered activities were utilized. These included: process choice activities which focused on the individual client's interests and needs; an interviewing and counseling activity which highlighted the lawyer's role in learning sensitive information from a client; a series of mini-negotiation exercises to highlight the lawyer's role in both distributive and integrative negotiations; and an activity in which the students had to deliver bad news to a client.

The activities were designed as a progression:

a. Introduce students to the concept of process choice and the range of options available to clients;[162]

b. Focus on the communication skills necessary in order to learn what is important to the client so that the appropriate process can be chosen;

c. Negotiate on behalf of a client in order to achieve what the client wants/needs; and

d. When necessary, confront the challenge of delivering bad news to a client.

2. Connection to the *Carnegie Report* and the *MacCrate Report*

The primary learning outcomes for these activities were to: explore the factors that go into choosing an appropriate problem-solving process; highlight the many different ways (formal and informal) that lawyers serve as problem-solvers; broaden

162. For many students it was surprising that very few cases actually go to trial, even if one limits the inquiry to those in which a lawyer has been contacted. *See* Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. EMPIRICAL LEGAL STUD. 459, 509 (2004) (demonstrating that only 5.6 to 8.7 percent of all cases filed in state courts result in a trial). While litigation is one option (and obviously the one covered most often in the majority of the first year curriculum), other options exist including negotiation, mediation, arbitration, pursuing legislative changes, or not pursuing the claim at all.

understanding of effective communication and negotiation, with a special emphasis on listening skills; and gain an appreciation of how understanding the perspectives of others is vital to effective problem-solving.[163]

Given the imperative to expand the students' litigation-centric perspective, introducing them to the concept of appropriate "process choice" early in their law school career was an important element of the P3 course.[164] These client-centered activities were also consistent with the *Carnegie Report*'s recommendation relating to making clearer connections between theory and practice. While the legal theory of the case is important, the practical implications for the client are often missed when students exclusively study appellate cases. These activities present firmly grounded legal issues in the context of real people from whom a lawyer must gather information. In addition, students are introduced to the concepts of developing a theory of the case, negotiating with opposing counsel, and conveying offers to the client which often are lower than expected and thus, feel like "bad" news.

3. Logistics

Class 4: Process Choice[165]

During class four, the students were introduced to the concepts of positions[166] and interests,[167] and the basic differences between

163. *See* Course Syllabus (2010–11) (on file with authors).

164. *See* MACCRATE REPORT, *supra* note 21, at 191 ("In order to effectively employ, or to advise a client about, the options of litigation or alternative dispute resolution, a lawyer should have an understanding of the potential functions and consequences of these courses of action in relation to the client's situation and objectives.").

165. Prior to class, students read Frank E. A. Sander & Lukasz Rozdeiczer, *Matching Cases and Dispute Resolution Procedures: Detailed Analysis Leading to a Mediation-Centered Approach*, 11 HARV. NEGOT. L. REV. 1 (2006); Leonard Riskin, *Mediation and Lawyers*, 43 OHIO ST. L.J. 29 (1982) (students read only an excerpt); Frank E. A. Sander, *Varieties of Dispute Processing*, (Proceedings from the Pound Conference), 70 F.R.D. 79 (1976) (same).

166. The assertions, demands and offers made during the negotiation. *See generally* ROGER FISCHER, WILLIAM L. URY & BRUCE PATTON, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN 1–14, 95–144 (upd. rev. ed. 2011).

167. The wants, needs, and fears that negotiators really want satisfied. Knowledge of interests allow for multiple options for resolution. *See* ROGER FISCHER, WILLIAM L. URY & BRUCE PATTON, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN 40 (2d ed. 1991).

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negotiation, mediation, arbitration, and litigation. The students also participated in a small group exercise[168] to decide the appropriate dispute resolution process for several potentially litigious hypotheticals.[169] At the conclusion of that class, students were given the following assignment:

> Choose a case from a doctrinal course[170] and be prepared to discuss the following questions (and later address them as a journal entry after class):
>
> - What were the interests of the different parties in the case, named or not?
> - Was there a better process than litigation to satisfy the parties' interests?
> - What solutions, other than those ordered by the court, might have resolved the conflict among all interested parties?

During the next class (class five), the students were divided into groups based on the case chosen and asked to discuss the assignment questions.[171]

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168. The exercise "Senate Table" was used to illustrate the differences. In this simple exercise, a neutral first acts as an arbitrator and then a mediator in a fact pattern about dividing a prized table when two lawyers split up their practice. The discussion after the activity highlights the pros and cons for facilitative, evaluative, and adjudicative processes, including discussion about negotiation and litigation. LEONARD L. RISKIN ET AL., INSTRUCTOR'S MANUAL WITH SIMULATION AND PROBLEM MATERIALS TO ACCOMPANY RISKIN & WESTBROOK DISPUTE RESOLUTION AND LAWYERS 60–63 (2d ed. 1998).

169. The hypotheticals included a personal injury situation between strangers, a contractual dispute between businesses in an on-going relationship, and a disagreement between parents and their son's school district regarding novel accommodations sought for his autism.

170. The assignment explicitly drew attention to the fact that in their first-year classes, students spend a lot of time using IRAC (issue, rule, analysis, conclusion) to help them develop their ability to "think like a lawyer," yet IRAC ignores any consideration of the interests of the parties involved in a lawsuit. The *Carnegie Report* notes that one of the disadvantages of the case-dialogue method of teaching ignores "the rich complexity of actual situations that involve full-dimensional people, let alone the job of thinking through the social consequences or ethical aspects of the conclusions." CARNEGIE REPORT SUMMARY, *supra* note 59, at 6.

171. In order to create smaller groups for the larger debriefing session, half of the groups remained in the classroom and half went to another classroom with the alumni adjunct professor. While split into two rooms, each small group reported on their discussions to the other groups and were encouraged to identify insights gained from this activity.

Class 6: Interviewing and Counseling

In class six,[172] students were introduced to interviewing and counseling, including the centrality of emotions. A variety of exercises were utilized during class to highlight how a lawyer can capture both content and emotion effectively while interviewing a client.[173] This included a fishbowl exercise of a workplace conflict in which the instructor acted as the client for student interviewers and culminated in an exercise in which the students paired up as attorneys and clients for a challenging initial interview in which the client had damaging information which s/he would be reluctant to disclose unless the attorney created a safe space and demonstrated a willingness to hear and understand the full extent of the client's story.

Class 7: Negotiation and Class 9: Delivery of Bad News

Class seven focused on the basic concepts and skills of negotiation and also on what a lawyer must consider when negotiating on behalf of a client.[174] One of the exercises involved a negotiation between two agents (not the principals in the dispute) in order to enable the students to gain an appreciation of negotiation conceptually and also of the attorneys' role in representing a client in negotiation. The final "client centered" activity in P3 took place during class nine and involved the delivery of bad news to a client in the form of conveying a settlement offer which was significantly lower than what the client expected (based on the client having read a newspaper article about a similar case in another jurisdiction). In

172. In preparation for the class, the students read an excerpt from Jean Sternlight and Jennifer Robbenolt, *Good Lawyers Should be Good Psychologists: Insights for Interview and Counseling Clients*, 23 OHIO ST. J. ON DISP. RESOL. 437 (2008); Daniel L. Shapiro, *Untapped Power: Emotions in Negotiations*, *in* THE NEGOTIATOR'S FIELDBOOK: THE DESK REFERENCE FOR THE EXPERIENCED NEGOTIATOR 263–70 (Andrea Kupfer Schneider & Christopher Honeyman eds., 2006).

173. *See* MACCRATE REPORT, *supra* note 21, at 173–74 ("To communicate effectively, a lawyer should be familiar with . . . attending to emotional or interpersonal factors that may be affecting the communications.").

174. *See supra* Part IV.B; *see also* CARNEGIE REPORT, *supra* note 109, at 113 (noting that negotiation skills is a highly attractive service in the legal market); MACCRATE REPORT, *supra* note 21, at 185 ("In order to negotiate effectively, a lawyer should be familiar with the skills, concepts, and processes involved in preparing for a negotiation, conducting a negotiation, counseling a client about the terms obtained from the other side in a negotiation, and implementing the client's decision.").

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preparation for this activity, the students were presented with a quick review of decision tree analysis and then used the analysis to assess the offer.[175] Based on this analysis, the students participated in a fishbowl activity where several students attempted to deliver the news to the client (played by the professor) that the offer, while significantly lower than what the client wanted and expected, was one worth considering.

4. Assessment

The journal assignment for the class on process choice was an individual reflection on the doctrinal case based on the three questions posed above. After class six (interviewing and counseling), the students were asked to write an individual reflection on their listening skills.[176] In addition to the Adventure Learning paper, the students also completed a journal entry about negotiation in which they reflected on the in-class negotiations.[177] After the class on delivering bad news, the assigned journal prompt was to reflect on what gave the student the most concern about performing the common lawyering role of delivering bad news.[178]

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175. For this class, the students read Jeff Senger, *Analyzing Risk*, *in* THE NEGOTIATOR'S FIELDBOOK: THE DESK REFERENCE FOR THE EXPERIENCED NEGOTIATOR 445–54 (Andrea Kupfer Schneider & Christopher Honeyman eds., 2006) and an excerpt from Linda F. Smith, *Medical Paradigms for Counseling: Giving Clients Bad News*, 4 CLINICAL L. REV. 391 (1998).

176. Those who participated as the lawyer in the exercise were asked to reflect on what they did to be "a good listener," identify behaviors that were counterproductive to good listening and what evidence did they have for each. Those who participated as clients were asked to provide concrete examples of what their lawyer did or said that demonstrated good listening skills and which actions or words taken by the lawyer inhibited them from sharing information. Course Syllabus (2010–11) at 8–9 (on file with authors); *see also* MACCRATE REPORT, *supra* note 21, at 173–74 ("To communicate effectively, a lawyer should be familiar with . . . the general prerequisites for effective written or oral communication, including . . . accurately perceiving and interpreting the communications of others . . . ; reading, listening and observing receptively; and responding appropriately.").

177. The students were asked to identify and describe two things they did well in the negotiation and two things they would do differently in order to improve the negotiation.

178. The journal entries for this topic were particularly strong as students expressed their deep understanding of this difficult role and the importance of being able to share "bad" information with a client empathetically and clearly.

5. Student Feedback

On the five point scale students used to rank their feedback as to how helpful the activities were for achieving the P3 learning objectives, 64.1 percent of the students reported that the Senate Table Process Choice activity[179] was "somewhat to definitely" helpful (a smaller 28.7 percent rated it in the top two categories). For the case analysis exercise, 70.3 percent ranked it as "somewhat to definitely" helpful (with 34 percent ranking it in the top two categories).[180] Also, 84.6 percent of the students responding ranked the interviewing exercise as "somewhat to definitely" helpful, with 61.9 percent ranking it in the top two categories.[181] The in-class negotiation exercises were similarly highly rated with 87.8 percent ranking it "somewhat to definitely" helpful and 63.2 percent ranking it in the top two categories. The decision tree analysis exercise was similarly successful with 74 percent ranking it "somewhat to definitely" helpful, and 44.2 percent ranking it in the top two categories. Finally, the exercise on delivering bad news received 75.7 percent in the "somewhat to definitely" helpful categories and just over 50 percent ranking it in the top two categories.

6. Future of the Assignment

The learning outcome to explore the factors that go into choosing an appropriate problem-solving process is important and was retained. Both the simple Senate Table process choice introductory exercise and the case analysis exercise were utilized in 2012. The introductory exercise has been tested in a variety of settings and is an effective way to quickly illustrate the similarities and differences between different processes. The case analysis activity is very effective in helping the students draw the connection between P3 activities and discussions and their doctrinal classes. In addition, it frames the importance of thinking about the people behind the cases

179. *See supra* note 168.

180. Also, 62.5 percent rated the process choice hypotheticals exercise as somewhat to definitely helpful with 21.2 percent rating it in the top two categories.

181. Some students expressed disappointment that in each pair only one of them was able to act as the lawyer. Initially, the instructors had hoped to provide a follow-up exercise in which they would be able to change roles, but time did not permit the use of this follow-up activity.

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and highlights the lawyer's role in helping a client choose a process wisely. During the class debrief, many students commented on the new appreciation they had for the futility of a lawsuit if the client really wanted quick closure or an apology.[182] For the first time students realized that some clients are left with little more than a paper judgment despite years of court proceedings and appeals.[183]

IV. GENERAL COURSE CHALLENGES AND MODIFICATIONS

During the course, the P3 instructors met on a regular basis to discuss how the course was proceeding and to make minor mid-course corrections. These discussions included developing grading rubrics and clarifying assignments. Since the syllabus contained all of the readings and all of the written assignments and their weights, these aspects were not changed.

Based on the reflections of the professors (and the adjunct professors) along with the input from the student surveys and focus group meetings, concerns were identified in the following categories: Course timing, Grading, Course focus, and Reading assignments.

A. Course Timing

As discussed above, the addition of P3 to the first-year curriculum was one of a number of changes that were implemented beginning in fall 2010.[184] For the class that entered in 2010, their first semester they took:[185] P3, Civil Procedure, Torts, Criminal Law, Legal Research and Writing, and Contracts. Despite the faculty decision to

182. *See, e.g.*, Jennifer K. Robbennolt, *Attorneys, Apologies, and Settlement Negotiation*, 13 HARV. NEGOT. L. REV. 349, 350 (2008) ("This research has generally found that apologies influence claimants' perceptions, judgments, and decisions in ways that are likely to make settlement more likely."); Jonathan R. Cohen, *Advising Clients to Apologize*, 72 S. CAL. L. REV. 1009, 1015–19 (1999) (outlining the benefits to clients when they apologize); Jennifer K. Robbennolt, *Apologies and Legal Settlement: An Empirical Examination*, 102 MICH. L. REV. 460 (2003) (detailing empirical research around apologies and litigation).

183. *See* CARNEGIE REPORT, *supra* note 109, at 187 (recognizing that social needs and matters of justice are usually treated as secondary issues).

184. *See supra* note 92 and accompanying text.

185. The part-time weekend students were required to take: P3, Legal Research and Writing, Civil Procedure, Criminal Law and Contracts. The *number of classes* for weekday and weekend students was greater than previous years even though the *number of credits* remained the same.

reduce Civil Procedure and Contracts credits (by one each) to accommodate the P3 course, students were still responsible for *six* classes during their first semester of law school.

Understandably, the students were very focused on learning how "to think like a lawyer." While P3 had value, the combination of being overwhelmed with a new method of learning and the sheer volume of the work generated by six classes, the students perceived P3 to be less important than their doctrinal classes. In addition, since many did not know what the traditional lawyer's practice looked like, they had trouble relating to the concept of the "new lawyer." Finally, without sufficient knowledge of doctrinal law, the students struggled with having sufficient context on which to hang the activities, readings and discussions of P3.

For the second offering of P3, the faculty opted to move the course to the second semester and lessen the number of classes (but not the number of credits) that the students were taking at the same time. We believe that these revisions substantially improved the students' ability to engage in the class.

B. Grading

We received a lot of feedback from the students in this area. Among the areas of concern: the grades were too subjective; the grading rubric was not provided far enough in advance of when their first papers were due to be of assistance; the required paper length was not sufficient to fully cover what was asked; and more feedback on the assignments was needed sooner.

Since the students took P3 during their first semester, the first grades the students received as law students were from P3. Therefore, the full shock that not all students in law school receive "A's" fell on the P3 instructors. In the evaluations provided at the end of the term (prior to their having taken doctrinal finals and receiving grades in those classes), the students mistakenly believed that their P3 grade would lower their GPA.[186]

186. In fact, the Registrar eventually had to post the "correct" information on a Facebook page when it became available. This confirmed that the P3 grade point average was 3.1; the average for first semester bar courses was only 2.8. Email correspondence from Colleen Clish to Bobbi McAdoo (Jan. 5, 2011) (on file with authors). Of course it is possible that the problem

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While we do not believe that P3 is graded more subjectively than other law school courses, for the 2012 class we provided the detailed grading rubric at the beginning of the course—well in advance of the due date for the first assignment. In addition, the assignments were reconfigured to be both clearer about what should be included and to ensure that the "call of the question" was not too broad and could be completed in the allotted page number.[187]

Finally, in the first offering of P3, the assignments included two papers (one on the alumni interview and one on the Adventure Learning activity) and seven journal entries. The papers were turned in during the semester and were graded and returned to the students. The journal entries were assigned after specific classes but were not

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of having too many courses did affect some student GPAs. *See supra* note 185 and accompanying text.

187. For example, the 2010 Adventure Learning assignment included the following instructions:

> Form groups of three or four students. Together outside of class: 1) negotiate something and 2) produce a photograph that reflects the intersection of the secular and the sacred. After you complete both tasks, discuss the assignment with your adventure learning group. Then write an individual reflection (not to exceed three pages) about your feelings, reactions, observation and judgments during the assignment. What relevance do you believe this assignment had, if any, to being a law student or lawyer?

Course Syllabus (2010–11) (on file with authors). In addition, the grading rubric alerted the students to integrate class work and reading assignments into their paper. *See* app. A. for a copy of the grading rubric.

For 2011–12, we asked the students only to complete a negotiation and not to produce the picture. The instructions included the following:

> In assigned groups of four, you will discuss and decide on a negotiation to conduct outside of class, prepare to conduct the negotiation, and then conduct the negotiation as a group. After the negotiation is completed, write an *individual* 4–5 page paper about the whole experience. Topics to write about include (you may have other topics in addition to these that you wish to write about if you have space in your 4–5 pages):
>
> The planning process used both to choose the negotiation "subject" and to conduct the negotiation;
>
> The approach (adversarial or problem-solving) you used in the assignments;
>
> Any ethical issues that surfaced in the negotiation;
>
> Ways in which the "theory" covered in readings and class discussions were (or were not) helpful;
>
> The relevance of this assignment to being a law student or lawyer.

See app. C. In addition to providing more guidance, the length of the paper was increased from three pages to four to five pages and the weight was increased from 20 percent to 30 percent of the students' grade. *See* app. C.

collected and graded until the end of the term. The last journal entry was a review of the first six entries with the addition of "a short paragraph (formatted in *italic font* immediately after the initial entry) explaining how [the student's] perspective has shifted since [the student] first wrote the entry." The use of journals raised several issues: first, the students did not perceive the writing of a journal as an appropriate activity for a law student; second, the students did not receive any specific feedback on their journals until after the semester ended; and finally, there was no incentive for the students to stay current with their journal entries.[188]

For the second offering of P3, we reframed the assignments from two papers and seven journal entries to five graded writing assignments which were collected, graded, and returned in a timely fashion during the term. Four of the assignments were designed to be completed in groups. Two of the group assignments culminated in a group paper[189] for which all students in the group received the same grade.[190]

We also changed the case analysis paper from an individual reflection (it was a journal prompt in 2010) to a memorandum to a client about the client's options for proceeding consistent with his or her interests.[191]

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188. The fact that many students completed all of the entries at the end of the term became obvious when we read the journals. It was very difficult to be reflective about what had been written earlier when the time between the initial writing and the reflection was mere hours. For information on the value of using journal assignments, see Bobbi McAdoo *Reflective Journal Assignments in Teaching Negotiation*, *in* ASSESSING OUR STUDENTS, ASSESSING OURSELVES, VOLUME 3 IN THE RETHINKING NEGOTIATION TEACHING SERIES (DRI Press) (forthcoming 2012).

189. The Case Analysis assignment (15 percent of the grade) and the final assignment (15 percent) was submitted in groups with all members of the group receiving the same grade. *See* app. C. Given the importance of learning how to work in teams, we believe this is a valuable experience for the students. It also made grading somewhat more manageable.

190. The Alumni Interview and the Adventure Learning activity were completed in a group, but the students submitted individual papers. The Thomas-Kilmann Reflection was completed individually and submitted as an individual paper. *See* app. C.

191. The writing assignment included slightly revised questions than were used in 2010, but the "answers" were evident in the client memo which assumed a time period prior to the filing of the lawsuit. The 2012 version included: "What were the interests of all interested parties, named or not? What process was likely the best one to satisfy those interests, *and why*? What result, other than the outcome achieved in the judicial decision, might have better resolved the conflict among all interested parties, named or not?"

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C. Course Focus

Despite clear direction from the faculty and commitment from the course professors, the class had more of an ADR feel than anyone intended. This happened partly because of an intentional decision to try to sequence P3 with the students' Legal Research and Writing (LRW) course. The benefit of doing this was to make our assignments due on days that were "lighter" for LRW and to avoid overlapping with their heavy assignment periods. The LRW classes also incorporate a mediation exercise into their curriculum so that the students would have the opportunity to see (and for some participate) in a mediation of the case for which they submitted a closed-research memo.[192] Because the timing of the LRW activity did not coincide with when we would have naturally covered mediation as part of process choice, we covered it early in the term and then re-visited it in more detail after the LRW mediation. This translated into our spending more time on mediation than the P3 curriculum warranted.[193]

Another issue was our decision not to discuss trial or appellate work given that the students were spending so much of their first year experience focusing on cases. Unfortunately, the message students received from this was that we were devaluing that work. In addition, because so many of the readings on the changing practice of the law discuss the role of ADR (and are written by ADR enthusiasts), the message received was that the course was an ADR course, rather than a lawyering course.[194]

For the 2012 offering of the course, we used many of the same activities as the 2010 offering but we recast the class to more intentionally highlight the many roles that lawyers play as problem-

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The memo was to be written as a group and "should evidence that you have integrated class work, reading, and your deliberations on the questions above" but since it is a client memo, no endnotes were required. *See* app. C.

192. *See* Dunnewold & Trevor, *supra* note 105.

193. By moving the class to the second semester, we avoided this issue. The students had already been introduced to mediation through LRW, and we were able to limit our further discussion of mediation as part of our coverage of process choice.

194. An additional insight we received in 2012, was that since most students are unfamiliar with what ADR means, they wrongly assume that anything different from their doctrinal classes is ADR.

solver (from litigator, to negotiator, to problem-solver) and the many contexts in which lawyers work. The organizing theme for the 2012 iteration of the course was the 35W Bridge Collapse.[195] We chose this for many reasons:

- It was a riveting event that took place locally—nearly everyone knows about it and many were personally touched by the event;
- The situation highlights the many different roles that lawyers play e.g., litigating, working on legislation, counseling clients, negotiating, and serving as special masters;
- Alumni from Hamline University School of Law played prominent roles in representing the plaintiffs, in securing legislation to create a compensation fund, and even serving as one of the special masters for the compensation fund.

There were many key case documents that fit within the course design and were assigned. In addition, we opened the first day with the students viewing a seven minute video on the bridge collapse, produced by the Plaintiffs Consortium for trial.[196] The video is very impactful and it drove home the point that behind every case there are real people with real interests and concerns. The video was followed by a discussion with two of the lead attorneys for the plaintiffs (and Hamline Law School alumni), Chris Messerly and Phil Sieff. In preparing for the first class, Chris shared with us the story of how he got involved. He was driving home when he heard the news that the bridge had collapsed. His immediate reaction was "what can I do to help?" He thought about going to give blood but then thought, "I am a lawyer. What can I contribute in that capacity?" From there, Chris and Phil split up the major work—one figuring out why the bridge came down and the other figuring out how those who were injured

195. The bridge collapsed on August 1, 2007, during rush hour. *See* Mike Steenson & Joseph Michael Saylor, *The Legacy of the 9/11 Fund and the Minnesota I-35 Bridge-Collapse Fund: Creating a Template for Compensating Victims of Future Mass-Tort Catastrophes*, 35 WM. MITCHELL L. REV. 524 (2009).

196. Video produced by Robins, Kaplan, Miller & Ciresi, L.L.P., on file with Chris Messerly.

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could be compensated. We believe that this story provided an appropriately inspirational start to the class.[197]

In addition, since the case has run its course, we had access to many of the court documents and pleadings so the students were able to follow the case from beginning to end to develop a more complete understanding of the work of the lawyer while still covering the learning outcomes we had previously defined.[198] Finally, by using a real case and beginning with lawyers who define themselves as litigators, and who *settled* this heart-wrenching case, we believe that the students will understand that P3 is relevant for *all* law students and not just those who are seeking "alternative" careers.[199]

D. Reading Assignments

A significant concern with the class was that we were overly ambitious with our reading assignments—both in terms of what the students could realistically read for each class[200] and what we were able to discuss in class.[201] While the student feedback was not very

197. *See* CARNEGIE REPORT, *supra* note 109, at 158 (explaining that the law school experience is enriched when students can interact with practicing attorneys, judges, and others in the legal community with reputations for "exceptional integrity and commitment").

198. We also were able to add a video element in 2012 which enriched the course learning outcomes. With assistance from the Robins, Kaplan, Miller & Ciresi, L.L.P. law firm, the students were able to hear from a client in the 35W Bridge Collapse Case (discussing the importance of having a lawyer who listened and understood what was really important to the client), the judge in the case (discussing professionalism), four attorneys involved in the case either as part of the plaintiffs' consortium or as the mediator (discussing negotiation tips), the legislator who authored the bill that created the special fund for victims, and one of the special masters for the compensation panel.

199. At the point we did the final edit on this piece, the course had just ended and final evaluations had not yet been received.

200. We created a TWEN site for the students which contained all of the readings rather than produce a reader for them to purchase. We did so with the intention of trying to save them some money. We did, however, make a full set of the readings for each of the professors and adjuncts and immediately saw that we had been overly ambitious. None of us ever brought our book with all of the readings to class so as to avoid the visual image of just how many we had assigned. Perhaps this should have been expected when you design a course with three professors, but, as Professor Tim Hedeen pointed out to us at our presentation on this course at the ABA Section of Dispute Resolution, we also were subject to "group think" which prevented any one of us from stopping the proliferation of assigned readings.

201. We were overly ambitious not only in the assigned readings, but how much material we wanted to cover in each class. As a result, we rarely talked specifically about the articles which had been assigned. Our expectation was that they would serve as the backdrop both for the class activities and the written assignments, but as the students reported in the post-class

clear as to which articles were most effective,[202] the students were unanimous in their comments about the amount of reading.

For 2012, we pared down the number of articles assigned to eighteen (from thirty-one).[203] In keeping with the new course focus, we also assigned some court documents from the 35W Bridge Collapse so that the students had the opportunity to see how an actual case unfolds and to further tie P3 to the work of lawyers.[204] We assigned *Getting to Yes* again and we used it early in the course in order to provide a problem-solving framework for the class. Finally, the design of each class session allowed for discussion of all of the readings so that we were able to enforce their relevance and importance to a successful legal career.[205]

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survey, once they caught on that we were not discussing them in class, they "really slacked off on [the reading] because [they] knew it was fat [they] could trim from [their] workload." *Survey Monkey Results* (on file with authors).

202. Many students specifically referenced *Getting to Yes* and *My Last Lecture: Unsolicited Advice for Future and Current Lawyers* as being particularly insightful/ helpful/ relevant. *See supra* notes 33 and 147. Beyond that, there was little consensus. Many students reported that the ADR articles and those which related to psychology and the lawyer were particularly helpful; while other students reported those articles were "not at all insightful/helpful/relevant." While many articles did not appear on either list, Lawrence S. Kreiger, *What We're Not Telling Law Students—and Lawyers—That They Really Need to Know: Some Thoughts-in-Action Toward Revitalizing the Profession from its Roots*, 13 J.L. & HEALTH 1 (1998–99) drew many responses on both sides. There were some who found the article to be "an important reading for 1L's, especially at the beginning of the semester when students are stressed and fearful of being in a new environment . . . " others found it "depressing" and one even suggested "it almost made me drop out of law school." *Survey Monkey Results* (on file with authors). As a result, we decided not to include this reading in 2012. Instead, we incorporated into the class discussions the important insights from this and other readings which are not specifically assigned.

203. Many of the articles in 2010 were excerpted, but there were still too many. In limiting the number of articles in 2012, we especially eliminated redundancy. While we found each article to be worthy on its own, the students were correct that many had similar themes and messages. Rather than assigning all of them, we believe the students were better served by assigning fewer and talking about each of them during class. We were able to bring into class many of the concepts from other articles not specifically assigned.

204. For the first day, the students were assigned the Summons and Complaint for the bridge collapse; for class seven (professionalism), the students read some pleadings from the case in which charges of inappropriate conduct were made by each side; and for class ten (Lawyer's Role in Legislative and Administrative Processes), the students reviewed the 35W bridge collapse statute and the reported court opinion in the case. *See* app. C.

205. In addition, for the 2012 offering of the class we were more intentional with the graded assignments to make clear that integration of readings were important.A significant portion of the grade for each paper was determined by "[a]ppropriate integration of readings, simulations, and class discussions." *See* app. A.

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V. CONCLUSION

One doesn't have to agree with all of the recent negative press about legal education[206] to conclude that change is needed in order to prepare students for "today's complicated professional world."[207] In fact, there is growing evidence that faculty and law school administrators have concluded that Langdellian legal analysis training is not sufficient to prepare our students to be committed legal professionals. Given that changes to legal education occur slowly and incrementally, rather than quickly or comprehensively, there is a continuing need for creative thinking about how to deliver a legal curriculum that adequately prepares our students for contemporary legal practice.

ADR courses that were introduced to the academy in response to changes in legal practice seemed to be one positive incremental change in the last quarter of the twentieth century. The Washington University Law Review Roundtable titled New Directions in Negotiation and Dispute Resolution,[208] however, presented the authors with the opportunity to think more deeply about whether the stand-alone ADR course at many law schools adds value to the education of today's law students. We have concluded that separate ADR courses may have contributed to the undesirable impression that the lawyer who practices the skills taught in ADR courses is doing something other than the work of a "real lawyer." This, of course, is false and could be damaging to clients. Moreover, it tells us that today's ADR courses are not the change that we need in legal education.

To support the recommendations of the *Carnegie Report* and its predecessor reports calling for reform in legal education, this Article suggests an incremental change that is relatively easy to implement: the addition of a course in problem-solving, like Hamline's first-year P3 course detailed in this article. First, its placement in the first year ensures that lawyering, professionalism, and legal analysis are joined

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206. *See supra* note 21 and accompanying text.

207. *See* CARNEGIE REPORT, *supra* note 109, at 138.

208. NEGOTIATION AND DISPUTE RESOLUTION PROGRAM HOSTS SCHOLARSHIP ROUNDTABLES, http://law.wustl.edu/adr/ (last visited Mar. 14, 2012).

from the outset.[209] Second, the content of a course like P3 ensures that students will be introduced to the broad facets of practice included under the rubric of lawyering;[210] and that they will explore issues of professional identity right from the start of law school.[211] Finally, teaching a problem-solving approach to law students in their first year helps students embrace a mind-set committed to a professional life that rests on a search for the best, most creative way to help their clients solve problems and resolve disputes. A course like P3 will enlarge the lawyer's philosophical map[212] and will ensure that our students are taught a more complete and realistic approach to the practice of law.

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209. *See* CARNEGIE REPORT SUMMARY, *supra* note 59, at 9.
210. *Id.* at 8. The rubric of lawyering of course includes ADR.
211. *Id.*
212. *See* Riskin, *supra* note 34.

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APPENDIX A

Grading Rubric[213]

Responsiveness to the assignment 30 points

(Were the questions posed in the assignment thoroughly discussed and answered? Sometimes this includes some reflection on the process you took to get to the answer, e.g., on assignment one, how did your group preparation help you develop your "answer" for this assignment?)

Inclusion of specific evidence/concrete examples to support reflections 15 points

(Were your conclusions supported with specific examples? i.e., on assignment one, not " I *feel like* a family lawyer needs great compassion" but rather, "lawyer Jones spoke about how difficult it is to hear stories about children going hungry, and this leads me to conclude that. . . .")

Appropriate integration of readings, simulations, and class discussions 25 points

(Did you make appropriate references and connections between the assignment and the readings, simulations, and class discussions? i.e., on assignment one, Lawyer Jones spoke about the importance of xxxxx. The is similar to the point made in Macfarlane about xxxxx)

Proofreading 15 points

(Did you spell check? Were words missing or misplaced? Was your paper the correct length?)

Writing and organization 15 points

(Did your paper include an appropriate opening and conclusion? Was it organized coherently? Was it well written?)

213. The grading rubric for 2011–12 is included here; the grading rubric for 2010–11 is on file with the authors.

While we will reward papers that demonstrate integration of course readings, you do not need to use proper legal citation. When you mention a specific reading, simply state the author's name and page if appropriate (i.e., "As Sternlight points out on page xx, ..."). Thoughtful analysis, regardless of perspective or conclusion, is valued. You should feel free to disagree (indeed, we encourage dissent) with course readings and/or with what you believe our particular perspective on any point might be; just be sure to back up your opinion.

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APPENDIX B

LEARNING OUTCOMES FOR LAWYER ACHIEVEMENT*

GOAL #1 (KNOWLEDGE): Acquire the conceptual frameworks and substantive knowledge needed for competent professional service as a new attorney and as a basis for lifelong learning.

HUSL graduates should be able to . . .

1. Demonstrate competence in key foundational areas of U.S. law, including areas of substantive law tested on bar examinations. (University Outcome #6, see below)

2. Demonstrate competence in other student-elected areas of substantive law. (University Outcome #6)

3. Demonstrate knowledge of the structure, components, and functioning of the U.S. legal system, including the markets for legal services. (University Outcome #6).

4. Demonstrate an understanding of the operation of law in a global context. (University Outcome #3)

5. Demonstrate an understanding of the ethical rules that govern the legal profession. (University Outcome #2)

GOAL #2 (SKILLS): Learn, practice, and apply the skills and methods that are essential for effective lawyering.

HUSL graduates should be able to . . .

1. Identify and apply strategies to discover and achieve client objectives. (University Outcome #6)

2. Master appropriate strategies and technologies to retrieve, use, and manage research materials and information effectively and efficiently. (University Outcome #4)

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* As adopted by the law faculty on May 8, 2008.

3. Comprehend and synthesize the reasoning and rules contained in legal authorities and apply them to a variety of client situations. (University Outcome #6)

4. Communicate effectively in writing and in speaking with diverse audiences in a variety of formal and informal settings. (University Outcome #5)

5. Demonstrate the capacity to understand and appreciate the diverse backgrounds and perspectives of clients, colleagues, adversaries, and others while dealing sensitively and effectively with the issues presented. (University Outcome #3)

6. Advocate, collaborate, and problem-solve effectively in formal and informal dispute resolution processes. (University Outcome #2)

GOAL #3 (PROFESSIONALISM): Develop the personal attributes, attitudes, and practices befitting an honorable and respected profession.

HUSL graduates should be able to . . .

1. Acquire the knowledge and skills required to competently represent one's clients (see the lists above).

2. Articulate the roles lawyers play in promoting justice, improving the legal profession, and serving the community. (University Outcome #1)

3. Exercise professional decorum consistent with a lawyer's professional responsibilities and leadership roles. (University Outcome #2)

4. Reflect on one's own work and professional development. (University Outcome #7)

5. Engage in effective time management. (University Outcome #4)

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HAMLINE UNIVERSITY LEARNING OUTCOMES

Implement learning outcomes that ensure a Hamline graduate will be able to . . .

1. Serve, collaborate, and lead in a community

2. Solve problems in innovative, integrative, analytical, and ethical ways

3. Work and create understanding across cultural differences locally, nationally, and internationally

4. Use information and technology competently and responsibly

5. Communicate effectively in writing and in speaking

6. Apply the theories and methods of a field of expertise

7. Engage independently and reflectively in lifelong learning

APPENDIX C

PRACTICE, PROBLEM-SOLVING AND PROFESSIONALISM/SPRING 2012

SYLLABUS

Introduction

This class will examine the practice of law and the lawyer's professional identity. Our work together will help you to develop a nuanced understanding of the work of a lawyer and where your own personal career goals might fit. It also will give you an opportunity to practice the skills that every lawyer uses on a regular basis.

Class Materials

- Roger Fisher, William Ury & Bruce Patton, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN (2nd ed. 1991 or 3rd ed. 2011). This book is background for the entire course; please complete it before class two.
- Class-by-Class Reading Assignments (available on the course TWEN site).
- Thomas-Kilmann Conflict Mode Instrument (to be given out in class 5).
- Strongly recommended (and available from the Career Services Office for $10): Kimm Alayne Walton, GUERILLA TACTICS FOR GETTING THE LEGAL JOB OF YOUR DREAMS (2d ed. 2008) (see class 5).

Course Description

Lawyers assume many leadership roles as professionals in today's society, all of them grounded in problem-solving: advocate, counselor, negotiator, transactional architect, and many others. This course will foster an understanding of the lawyer's role as a problem-solving professional and provide an overview of the tools lawyers use to assist clients. You will be introduced to the key skills of effective communication and negotiation; and also explore the breadth of career possibilities available for lawyers. Your learning will be enriched throughout the course by a variety of experiential strategies to promote practical skill development.

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Learning Outcomes for the Course

In this course, you will:

(1) be introduced to the many different ways lawyers serve as problem-solvers;

(2) explore the factors that go into choosing the appropriate problem-solving strategy for your client;

(3) broaden your understanding of effective communication and negotiation, with a special emphasis on listening skills;

(4) gain an appreciation of how understanding the perspectives of others is vital to effective problem-solving;

(5) examine questions of professional identity; and

(6) initiate the networking that all law students must do to build a satisfying career.

Through exercises, simulations, short lectures, panel presentations, and small group activity, we hope to improve your ability to:

(1) engage in the level of effective self-critique/reflective learning necessary to excel as a lawyer (and, of course, in law school);

(2) remain conscious of the biases you bring to your work;

(3) effectively interview and counsel clients, with special focus on choice of problem-solving alternatives;

(4) prepare and implement appropriate negotiation strategies; and

(5) embrace your values as part of your work as a problem-solving professional.

Course Expectations

HUSL Policies on attendance, lateness and preparation

The program of instruction at the School of Law is based on an active and informed exchange between instructor and student and between student and student. Regular, prepared class attendance helps develop skills essential to the competent practice of law. A student who violates the attendance policy, including the instructor's specification of class expectation described below, may lose his or her right to take the exam in the course, to receive course credit or may receive other penalties described below and in Academic Rule 108. Persistent or frequent lateness or unpreparedness may also be the basis for reduction of the grade awarded in a course. See Academic Rule 108 for further details.

Attendance Policies in this Course

We ask that you prepare for class, come to class, and actively participate in the discussion. We will circulate an attendance sheet each day; your initial on the sheet is your representation that you have been present during the entire class period. Class absence, lateness, and poor preparation will adversely affect your grade. If you miss a class, it is your responsibility to check with Professor McAdoo for any make-up assignments. We will consider more than two class absences to be excessive under the law school attendance policy. Absent exceptional circumstances, excessive absences will result in your removal from the class without make-up work alternatives.

Policy on Laptop Use in Class

Given the nature of this course, laptops are not to be used in class unless specifically authorized on a particular day.

Graded Writing Assignments

Papers and other written submissions should be double-spaced, 12-point Times New Roman type face with one inch margins all around. We expect them to be well-written and will mark down papers that have not been proofread. Generally the papers will require brief endnotes that reference readings and class discussions in support of the topic about which you are writing. These informal endnotes need not adhere to blue book format and will not be

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included in the required page count. Late submissions will result in a grade reduction.

The papers for P3 are not written in the style which you have been learning in Legal Research and Writing. We are not asking for things like "Question presented." A grading rubric for writing assignments will be placed on the class TWEN site. Please read it carefully. Note: P3 assignments are graded by name given the nature of the class and the assignments.

All assignments are to be turned in to the Registrar's office by 1:00 PM on the due date.

Alumni Interview (25% of your grade) Due 2/10 (class 4)

Form groups of three or four students and set up an interview with a graduate of Hamline University School of Law. Preference should be given to someone who graduated more than five years ago. Together, prepare for and interview the lawyer, formulating at least some of your questions on readings and class discussions, particularly the Macfarlane article (class 2). Try to gain an understanding of the professional identity of the lawyer you interview. For example, you might ask such questions as: why did s/he want to become a lawyer; what path did s/he take to end up in the specific career s/he is in now; what does this career look like day-to-day; what are the major challenges confronted in this career (and a career in the law generally); what adds the most to life satisfaction from this career choice. You should try to uncover skills especially important to master to do well in this career. After the interview, write a paper (3-4 pages) on what you learned about being a lawyer. The paper should integrate class work, readings, and the information you gained from the interview. We encourage you to discuss your interview with others in your group (as well as in your P3 class); your paper, however, must be an individual effort capturing your individual perspective on the experience.

Case Analysis (15% of your grade) Due 2/24 (class 6)

In your first year classes you spend time using IRAC (issue, rule, analysis, and conclusion) to help you develop your ability to "think like a lawyer." In assigned groups of four (4) students, using an assigned case, consider an additional "I" in the analysis and ponder the "interests" of the parties (named or not) involved in a lawsuit.

Using the assigned case, consider the following questions:

(1) what were the interests of all interested parties, named or not?

(2) what process was likely the best one to satisfy those interests, *and why*?

(3) what result, other than the outcome achieved in the judicial decision, might have better resolved the conflict among all interested parties, named or not?

Next, assume that you have conducted a fairly extensive initial client interview of the plaintiff in your case. *As a group*, write a three (3) page memo advising your client about his procedural options. Obviously, this requires you to back up and assume a time period before the case was filed in court. Only write one memo; each of you will receive the same grade on this assignment. The memo should evidence that you have integrated class work, readings, and your deliberations on the questions above. It will not require endnotes because these would not be appropriate for a client memo.

Additional information on this assignment will be posted on TWEN.

Thomas-Kilmann Conflict Mode Instrument (TK) assignment (15% of your grade) Due 3/13

After our discussion about the TK during class 6, write an individual 3-page paper answering the following questions:

(1) How did your scores on the TK correlate with any insights you gained from your Myers-Briggs results?

(2) What insights from TK support your assessment of the strengths you bring to your future career as a lawyer?

(3) Identify a situation in which over-reliance on your dominant TK trait could be detrimental to your being an effective lawyer?

As always, this paper should integrate class work and reading assignments (with endnotes).

Adventure Learning Assignment (30% of your grade) Due 4/13 (class 11)

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In assigned groups of four (4), you will discuss and decide on a negotiation to conduct outside of class, prepare to conduct the negotiation, and then conduct the negotiation as a group. After the negotiation is completed, write an *individual* 4-5 page paper about the whole experience. Topics to write about must include (you may have other topics in addition to these that you wish to write about if you have space in your 4-5 pages):

- the planning process used both to choose the negotiation "subject" and to conduct the negotiation;
- the approach (adversarial or problem-solving) you used in the assignment;
- any ethical issues that surfaced in the negotiation;
- ways in which the "theory" covered in readings and class discussions were (or were not) helpful;
- the relevance of this assignment to being a law student or lawyer.

Additional information on this assignment will be posted on TWEN.

Final writing assignment (15% of your grade) due May 16 (after classes end)

We are interested in your analysis of the ways that your assumptions about problem-solving, professionalism, and the practice of law have been confirmed or challenged by the P3 class.Write a three (3) page group paper that answers the following questions:

1. What were your assumptions about legal problem-solving, professionalism, and the practice of law coming into the course? What were the sources of those assumptions?

2. What specifically challenged those assumptions?

3. How do you now think differently (or not) about the practice of law?

You need to address all three (3) questions; however, your answer to question one (1) should be brief and the bulk of your analysis will concentrate on questions two (2) and three (3).

Be sure to use (and cite as endnotes) at least six (6) of the P3 articles in support of your analysis. Everything we read in the class is fair game for this.As always, endnotes do not count in the page limitation.

Assessment

There is no final exam. The assignments, due dates and proportion of grade for each assignment is below:

2/10 25% Alumni Interview (group assignment; individual paper)

2/24 15% Case Analysis (group assignment and paper)

3/13 15% Thomas-Kilmann Reflection (individual paper)

4/13 30% Adventure Learning Analysis (group assignment; individual paper)

5/16 15 % Final Writing Assignment (group assignment and paper)

I reserve the right to adjust your final grade by ½ step upward (e.g., B to B+) for consistently outstanding classroom participation, or ½ step downward (e.g., B to B-) if your classroom participation is consistently poor. In deciding grade bumps, I will take into account the quantity and quality of your contributions and insights in class. A quality comment usually possesses one or more of the following attributes:

- offers a unique and relevant insight
- builds helpfully on other comments
- contributes to moving the discussion and analysis forward
- demonstrates recognition of concepts we are studying and integrates these concepts with reflective thinking

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Detailed Class Topics and Reading Assignments

Class 1 – January 20

The many roles that lawyers play in situations of conflict: where do YOU fit in?
Readings:

- Newspaper articles relating to lawyers and the 35W bridge collapse
- Summons and Complaint for the 35W bridge collapse

For next class: Now that you have finished your first semester, take a few minutes to reflect on topics such as: the values that brought you to law school; the insights you have about the practice of law school; and what you wish you had known the first week of law school that you know now. Share your thoughts by writing a 1-2 page letter to students entering Hamline University School of Law in fall, 2012. Please put your name on the assignment and *bring it to class*. Give next year's students your best advice about preserving individual values and thriving in law school and beyond. Give thought to the audience, purpose, and tone of this communication.

Class 2 – January 27

The Lawyer-as-problem Solver framework
Introduction to effective listening, questioning and counseling
Readings:

- Julie Macfarlane, The Evolution of the New Lawyer: How Lawyers are Reshaping the Practice of Law, 2008 J. DISP. RESOL. 61 (2008)
- Excerpt from Jean Sternlight and Jennifer Robbennolt, Good *Lawyers Should Be Good Psychologists: Insights For Interviewing and Counseling Clients*, 23 OHIO ST. J. ON DISP. RESOL. 437 (2008)
- Getting TO YES

Class 3 – February 3

Client counseling continued
Introduction to process choice
Readings:

- Daniel L. Shapiro, *Untapped Power: Emotions in Negotiations*, in THE NEGOTIATOR'S FIELDBOOK: THE DESK REFERENCE FOR THE EXPERIENCED NEGOTIATOR 263-270 (Andrea Kupfer Schneider and Christopher Honeyman eds. 2006)
- Excerpt from: Linda F. Smith, *Medical Paradigms for Counseling: Giving Clients Bad News*, 4 CLINICAL L. REV. 391 (1998)

For next class:
Alumni Interview paper due date is next week.

Class 4 – February 10

Process choice (adjudicative, evaluative and facilitative processes)
The central concept of party *interests*
Case analysis discussion
Readings

- Excerpt from Frank E. A. Sander & Lukasz Rozdeiczer, *Matching Cases and Dispute Resolution Procedures*, 11 HARV. Negot. L. REV. 1 (2006)
- Excerpt from Janeen Kerper, Creative Problem Solving vs. the Case Method: A Marvelous Adventure In Which Winnie-the–Pooh Meets Mrs. Palsgraf, 34 Cal. W. L. Rev. 351 (1998)

Class 5 – February 17

Legal careers: panel of alumni who have traveled different career paths since graduation
Readings:

- 26 Effectiveness Factors
- Kimm Alayne Walton, GUERRILLA TACTICS FOR GETTING THE LEGAL JOB OF YOUR DREAMS 91-113 and other

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related pages of interest (2d ed. 2008). (Note: This book is available for purchase in the Career Services Office for $10, and CSO also has five copies available for short-term checkout from the CSO library.)

For next class:

Please complete and score the THOMAS-KILMANN CONFLICT MODE INSTRUMENT which will be distributed in class. Answer the questions posed in the inventory with reference to a work environment.

The Case Analysis group project is due the date of the next class.

Class 6 – February 24

Thomas-Kilmann Conflict Mode Instrument
Debriefs on alumni interviews
Readings

- Stephen D. Easton, My Last Lecture: Unsolicited Advice for Future and Current Lawyers, 56 S. C. L. REV. 229 (2004)
- Robert H. Mnookin, Scott R. Peppet, and Andrew S. Tulumello, *The Tension Between Empathy and Assertiveness*, 12 NEG. J. 217 (1996)

For next class:

Thomas-Kilmann writing assignment is due the date of the next class.

Class 7 – March 2

Professionalism
Readings:

- Excerpt from Paul Brest & Linda Krieger, *On Teaching* Professional *Judgment*, 69 Wash. L. Rev. 527 (1994)
- Excerpt from Thomas L. Shaffer & Robert F. Cochran, Jr., Lawyers *as Strangers and Friends: A Reply to Professor Sammons*, 18 U. Ark. Little Rock L. J. 69 (1995)
- 35W Bridge Collapse Consortium Plaintiffs' Brief to Assert Punitive Damages

- Defense Response to Punitive Damages Brief

Class 8 – March 16

Negotiation: basic differences between adversarial and problem-solving approaches to negotiation
Readings

- Excerpt from Carrie Menkel-Meadow, Toward Another View of Legal Negotiation: The Structure of Problem Solving, 31 UCLA L. REV. 754 (1984)
- Excerpt from Gary Goodpaster, *A Primer on Competitive Bargaining*, 1996 J. DISP. RESOL. 325

Class 9 – March 23

Creativity in Negotiation
Readings:

- Jennifer Brown, *Creativity and Problem Solving*, in THE NEGOTIATOR'S FIELDBOOK: THE DESK REFERENCE FOR THE EXPERIENCED NEGOTIATOR 407-414 (Andrea Kupfer Schneider and Christopher Honeyman eds. 2006)
- James Westbrook, *How to Negotiate With a Jerk* Without *Being One*, 1992 J. Disp. Resol. 443(1992)

Class 10 – March 30

Lawyer's Role in Legislative and Administrative Processes – *Guest Speaker*
Readings:

- Statute for 35W bridge collapse
- In re INDIVIDUAL 35W BRIDGE LITIGATION, 2011 WL 5964495.

For next class:
Adventure Learning assignment is due the date of the next class.

Class 11 – April 13

De-brief Adventure Learning
Emerging trends in the practice of law

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Readings:

- Excerpt from Leonard Riskin, *Mediation and Lawyers,* 43 OHIO ST. L. J. 29 (1982)

Class 12 – April 27

Professionalism and Justice

- Excerpt from Michael Moffitt, *Three Things To Be* Against *("Settlement" Not Included)*, 78 Fordham L. Rev. 1203 (2009)
- Excerpt from Mike Steenson and Joseph Michael Saylor, The Legacy of the 9/11 Fund and the Minnesota I-35W Bridge-Collapse Fund: Creating a Template for Compensating Victims of Future Mass-Tort Catastrophes, 35 WM. MITCHELL. L. REV. 524 (2009)
- Lawyers' Professionalism Pledges

Assignment details and due date for final group writing assignment TBA