Florida Law Review

Volume 50 | Issue 4 Article 2

March 2022

# Disseminating the Missouri Plan to Integrate Dispute Resolution into Standard Law School Courses: A Report on the Collaboration with Six Law Schools

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

*Leonard L. Riskin**

I. PROJECT OVERVIEW ..... 590

II. PURPOSE ..... 590

III. BACKGROUND AND ORIGINS ..... 591
A. *The Missouri Plan: The Basic Outline* ..... 591
B. *The Missouri Plan: Substantive and Procedural Essences* ..... 597

IV. PROJECT DESCRIPTION ..... 598
A. *The Process* ..... 598
B. *Mentoring and the Change Process* ..... 598

---

* C.A. Leedy Professor of Law and Director, Center for the Study of Dispute Resolution, University of Missouri-Columbia School of Law, and Project Director of the grant from the U.S. Department of Education's Fund for the Improvement of Post-Secondary Education (FIPSE) that is the subject of this Article.

I am grateful to James Levin, Associate Director of the Center for the Study of Dispute Resolution, who served as Project Coordinator, for his comments on earlier drafts of this report. I also am grateful to the deans, faculty, and students at the University of Missouri-Columbia School of Law for their strong support of this program for 14 years, to the deans and faculty at participating law schools, and to Professor Ronald Pipkin, whose evaluations over the length of this project have contributed greatly to its success.

This is a slightly-updated version of the FINAL REPORT: INTEGRATING DISPUTE RESOLUTION INTO FIRST-YEAR AND OTHER LAW SCHOOL COURSES: DISSEMINATING A PROVEN REFORM (1998) [hereinafter 1998 FIPSE Report]. It was submitted—in accordance with FIPSE guidelines—in January 1998 to the U.S. Department of Education's Fund for the Improvement of Post-Secondary Education by the Center for the Study of Dispute Resolution, University of Missouri-Columbia School of Law. For that reason, it focuses primarily on accomplishments under that grant as of October 1997, when the "adapting" schools submitted their own reports. Subsequent developments and extensive analyses appear in the articles in this Symposium prepared by participating faculty at four of the "adapting" schools. Professor Ronald Pipkin's article in the Symposium, Ronald M. Pipkin, *Teaching Dispute Resolution in the First Year of Law School: An Evaluation of the Program at the University of Missouri-Columbia*, 50 FLA. L. REV. 609 (1998), takes a long look at the 14-year effort, based at the University of Missouri-Columbia, to integrate dispute resolution into first-year law school courses. My comments on his evaluation appear in Leonard L. Riskin, *A Response to Professor Pipkin*, 59 FLA. L. REV. 757 (1998).

V. EVALUATION AND PROJECT RESULTS ..... 600
A. *Overview* ..... 600
B. *Outcomes at Participating Schools* ..... 601

VI. SUMMARY AND CONCLUSIONS ..... 606

## I. PROJECT OVERVIEW

Beginning in 1985, the University of Missouri-Columbia School of Law systematically integrated the teaching of alternative dispute resolution into all standard first-year law school courses. That project, supported by two substantial grants from FIPSE (the U.S. Department of Education's Fund for the Improvement of Post-Secondary Education), produced law school course books, an instructor's manual, and a series of videotapes. Under the current (1995-97) grant, six other law schools (DePaul, Hamline, Ohio State, Inter-American, Tulane, and the University of Washington), with assistance from the Center for the Study of Dispute Resolution at the University of Missouri-Columbia, developed adaptations of the Missouri plan and produced new publications, teaching materials, and insights about teaching dispute resolution in law schools.

## II. PURPOSE

Traditional litigation, though appropriate in some cases, has given rise to a tide of dissatisfaction. Complaints include high cost, delay, emotional trauma for the parties, and inadequate remedies. Each of these deficiencies stems in part from the tendency of law school education to focus on litigation and the adversarial view of human relations on which it is based, a focus exemplified by the traditional reliance on the study of decisions by appellate courts. (This perspective also accounts for a good deal of the public's displeasure with lawyers, and for a good deal of job dissatisfaction among lawyers.) In response to problems surrounding traditional litigation, an array of programs have developed to foster alternative methods of dispute resolution, commonly called ADR, including negotiation, mediation, arbitration, and combinations of these (called "mixed" processes), such as the mini-trial and summary jury trial. This project helped six law schools develop adaptations of the Missouri plan that integrated dispute resolution into their curricula as a way to teach a variety of perspectives and skills necessary for modern law practice and to broaden the focus of legal education.

## III. BACKGROUND AND ORIGINS

### A. *The Missouri Plan: The Basic Outline*

In 1985, the University of Missouri-Columbia School of Law began a project to systematically integrate dispute resolution into first-year law school courses. With two previous grants from FIPSE and additional support from the National Institute for Dispute Resolution, we developed a program to teach dispute resolution (interviewing and counseling, negotiation, mediation, arbitration, "mixed" processes, and how to build or choose a process) in standard first-year courses on Contracts, Civil Procedure, Criminal Law, Criminal Procedure, Property, and Torts.[1] The project also produced law school course books[2] with an instructor's manual containing 35 exercises and other teaching materials prepared by 24 professors from 14 law schools,[3] a videotape series,[4] and a comparative evaluation.[5]

This is roughly how the program works in a typical first-year section.[6] Students buy a copy of *Dispute Resolution and Lawyers*[7] and take part in

---

1. For a description of the origins and early operation of the program see Leonard L. Riskin & James E. Westbrook, *Integrating Dispute Resolution into Standard First-Year Law School Courses: The Missouri Plan*, 39 J. LEGAL EDUC. 509, 509-14 (1998).

2. *See* LEONARD L. RISKIN & JAMES E. WESTBROOK, DISPUTE RESOLUTION AND LAWYERS (1987 & Supp. 1993); *see also id.* (abridged ed. 1987 & Supp. 1993).

3. *See* LEONARD L. RISKIN & JAMES E. WESTBROOK, INSTRUCTOR'S MANUAL WITH SIMULATION AND PROBLEM MATERIALS TO ACCOMPANY RISKIN & WESTBROOK DISPUTE RESOLUTION AND LAWYERS (1987).

4. The Dispute Resolution and Lawyers Videotape Series includes four tapes.

> Videotape I: Dispute Negotiation: Thompson v. Decker: A Medical Malpractice Claim (West 1991); Videotape II: Transaction Negotiation: The Carton Contract (West 1991); Videotape III: Mediation: The Red Devil Dog Lease (West 1991); Videotape IV: Overview of ADR: The Roark v. Daily Bugle Libel Claim (West 1991).

An Instructor's manual accompanies each videotape. *See* LEONARD L. RISKIN, DISPUTE RESOLUTION AND LAWYERS'S VIDEOTAPE SERIES: INSTRUCTOR'S MANUALS WITH TRANSCRIPT AND SIMULATION MATERIALS TO ACCOMPANY TAPES I, II, III, & IV (1992).

5. *See* Ronald M. Pipkin, Project on Integrating Dispute Resolution Into Standard First-Year Courses: An Evaluation (1993) (Final Report to the University of Missouri-Columbia School of Law) (unpublished report, on file with Center for the Study of Dispute Resolution, University of Missouri-Columbia School of Law).

6. The precise practices vary from section to section and from year to year.

7. LEONARD L. RISKIN & JAMES E. WESTBROOK, DISPUTE RESOLUTION AND LAWYERS (abr. 2d ed. 1998) [hereinafter DISPUTE RESOLUTION AND LAWYERS ABR. 2d ed.]. We used the 1987 abridged edition until the second abridged edition was published in early 1998.

the following sequence of dispute resolution activities:

> *Early September—Legal Research and Writing: ADR Overview and Choosing Dispute Resolution Process (1-2 class hours).* Students read about ADR and how to choose a process, watch a videotape of a mediation,[8] and write an opinion letter in which they evaluate several methods of dispute resolution.[9]
>
> *Early October—Torts: Negotiation (1.5 class hours).* Students read about negotiation and conduct a negotiation exercise designed to help them understand the differences between adversarial and problem-solving negotiation and the importance of knowing the client's situation and interests.[10]
>
> *Mid-October—Contracts: Transaction Negotiation (1 class hour).* Students observe and discuss a videotape of a transaction negotiation that highlights the differences between adversarial and problem-solving negotiations, the importance of trust, and the impact of misrepresentation.[11]
>
> *Early November—Civil Procedure: ADR Overview and Mediation (3 class hours).* Students participate in two exercises.[12] The first helps them distinguish between adjudication and mediation, and the second puts them in a mediation role-play.
>
> *Early December—Torts: Dispute Negotiation (1-2 class hours).* Students negotiate to settle a medical malpractice

---

8. *See* Videotape: The Neighborhood Spat (Rogers-Salem Video Library 1987) (available from Richard Salem, Evanston, Ill., telephone: (897)869-2244).

9. *See* Melody Richardson Daily, *The Shattered Mirror: A Writing Exercise to Evaluate Dispute Resolution Options, in* LEONARD L. RISKIN ET AL., INSTRUCTOR'S MANUAL WITH SIMULATION AND PROBLEM MATERIALS TO ACCOMPANY RISKIN & WESTBROOK DISPUTE RESOLUTION AND LAWYERS 270 (2d ed. 1998) [hereinafter INSTRUCTOR'S MANUAL].

10. *See* David Fischer, *The Angry Neighbor: A Two-Part "Simple" Negotiation for Torts, in* INSTRUCTOR'S MANUAL, *supra* note 9, at 412.

11. *See* Videotape II: Transaction Negotiation, *supra* note 4. In some years we ask the students to conduct a negotiation simulation based on the facts of the case in the videotape before they see the tape. *See* William H. Henning, *The Mason-Dixon (Product) Line (a.k.a. The Carton Contract): A Transaction Negotiation for Contract Law in* INSTRUCTOR'S MANUAL, *supra* note 9, at 190.

12. *See* Carl Esbeck, *Dirty Pool: A Mediation Roleplay Exercise for Civil Procedure or Contracts, in* INSTRUCTOR'S MANUAL, *supra* note 9, at 100; Nanette K. Laughrey, *The Burning Sailboat: An Adjudication-Mediation and Overview Exercise, in* INSTRUCTOR'S MANUAL, *supra* note 9, at 93.

claim,[13] then watch a videotape of real lawyers negotiating the same case, with clients present for parts of the negotiation.[14] The tape is designed to demonstrate a good adversarial negotiation that has significant problem-solving aspects, and to demonstrate and raise issues concerning client participation.

*Mid-January—Property: Negotiation and Mediation (1-2 class hours).* Students negotiate to settle a dispute involving the breakdown of a commercial lease agreement.[15] Then they observe a mediation of the same dispute on videotape.[16]

*Late February—Property: Interviewing and Counseling (1 class hour).* Students interview and counsel clients in a dispute over the use of property.[17] The exercise teaches students about different approaches to lawyer-client relations and about practical difficulties that make litigation an unattractive approach for resolving some disputes.

*Early March—Contracts: Arbitration (1 class hour).* Students read about arbitration law and practice and discuss a problem that raises several issues in arbitration law.[18]

*Early April—Criminal Law: Negotiation (1 class hour).* Students playing defense lawyers and prosecutors negotiate over the decision to charge, then engage in plea bargaining.[19]

*Late April—Civil Procedure: Client Counseling and Selection of Dispute Resolution Process (1 class hour).* Students read about and discuss whether a lawyer has, or should have, a duty to discuss dispute resolution options with clients. Then they watch a videotape that shows a lawyer interviewing a client, advising the client about dispute

13. *See* Robert M. Ackerman, *The Case of the Weary Hand, in* INSTRUCTOR'S MANUAL, *supra* note 9, at 421; Deborah J. Doxsee, Thompson v. Decker *Medical Malpractice Claim Negotiation: A Negotiation Exercise for Torts and Professional Responsibility, in* INSTRUCTOR'S MANUAL, *supra* note 9, at 434.

14. *See* Videotape I: Dispute Negotiation, *supra* note 4.

15. *See* Dale A. Whitman, *The Missing Tenant: A Negotiation Exercise for Property Law, in* INSTRUCTOR'S MANUAL, *supra* note 9, at 332.

16. *See* Videotape III: Mediation, *supra* note 4.

17. *See* Dale A. Whitman, *Lakeview Estates: An Interviewing and Counseling Exercise for Property Law, in* INSTRUCTOR'S MANUAL, *supra* note 9, at 319.

18. *See* William H. Henning, *The Case of the Barbering Pirates: An Arbitration Problem for Contract Law, in* INSTRUCTOR'S MANUAL, *supra* note 9, at 196.

19. *See* Edward H. Hunvald, *A Case of Indecent Exposure: A Negotiation Exercise for Criminal Law, in* INSTRUCTOR'S MANUAL, *supra* note 9, at 239.

resolution options, and proposing a dispute resolution process to opposing counsel.[20]

Our program has three central teaching goals. 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. The lawyer's mission should be to help the client select the best method for dealing with a problem. Sometimes that is litigation, but a lawyer should not assume off-handedly that litigation is invariably the most appropriate method.

Second, students should understand the differences and relationships between adversarial and problem-solving orientations toward dealing with disputes and transactions. Adversarial approaches emphasize how to divide a scarce resource; whatever one party wins, the other must lose. Problem-solving approaches stress underlying interests (the needs or goals that motivate the parties to assert specific claims or positions) and seek to reach a wise agreement that is as satisfactory as possible for all the concerned parties. Each approach interferes with the other, so a lawyer must learn to manage the tension between adversarial and problem-solving approaches.[21]

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.[22] To us, ADR should mean "appropriate dispute resolution."[23] In short, we hoped to present a more realistic picture of lawyering than is conveyed by traditional first-year curricula, to give students a nodding acquaintance with a certain set of information, perspectives and skills, and to set in motion a process that might help broaden perspectives in legal education.[24]

---

20. *See* Videotape IV: Overview of ADR, *supra* note 4.

21. *See* DAVID A. LAX & JAMES K. SEBENIUS, THE MANAGER AS NEGOTIATOR 32-35 (1986); Robert H. Mnookin, *Why Negotiations Fail: An Exploration of Barriers to the Resolution of Conflict*, 8 OHIO ST. J. ON DISP. RESOL. 235, 239-40 (1993).

22. We also emphasize the great variations in the way processes that bear the same name are carried out.

23. The first use of that expression of which I am aware was in Albie M. Davis & Howard Gadlin, *Mediators Gain Trust the Old-Fashioned Way—We Earn It!*, 4 NEG. J. 55, 62 (1988). Attorney General Janet Reno used it in a recent address. *See* Janet Reno, Address to the Society of Professionals in Dispute Resolution (Oct. 25, 1996), *in* LEONARD L. RISKIN & JAMES E. WESTBROOK, DISPUTE RESOLUTION AND LAWYERS 76 (2d ed., 1997).

24. Many law schools that did not participate in this grant have adopted portions of our program by introducing dispute resolution into standard first-year courses. During the 1997-98 academic year, for instance, Marquette University School of Law, using books and materials developed under earlier grants for this project, introduced dispute resolution into contracts, criminal law, civil procedure, property, and torts. *See* Facsimile from Professor Andrea Kupfer Schneider,

Law schools have taken other approaches to teaching Dispute Resolution.[25] A few have introduced ADR in the first year through either a required first year course in Dispute Resolution[26] or through a Lawyering Process course.[27] Most schools have advanced courses in Negotiation, Mediation, or Dispute Resolution,[28] and at least forty now operate Mediation Clinics.[29] Because our first-year dispute resolution teaching is broad but not deep, we also offer separate advanced courses in Arbitration, Interviewing and Counseling, Negotiation, Mediation (and a Mediation Clinic), and Dispute Resolution.[30]

---

Assistant Professor of Law, Marquette University Law School, to Leonard Riskin, Professor of Law, University of Missouri-Columbia School of Law, (Dec. 19, 1997) (on file with author). Canadian law schools also have introduced ADR into first-year courses. Just prior to the grant, the University of Ottawa, also using our materials, integrated dispute resolution into property and contracts classes. In addition, it gave students 40 hours of mediation training. *See* Ellen B. Zweibel, Conflict Resolution Program for First-Year Law Students: Fall Schedule (Jan. 20, 1996); Instructor's Materials (Nov. 9, 1996); Conflict resolution Supplement for Use in Conjunction with First Year Property and Contracts, University of Ottawa Faculty of Law, Common Law Section (1996-97) (on file with author). The University of Saskatchewan College of Law is considering a recommendation for a substantial effort to integrate dispute resolution into its curriculum. *See* Michaela Keet, Alternative Dispute Resolution Curriculum Review Project: A Report to the University of Saskatchewan College of Law (Feb. 1997) (on file with author). Both the hardcover and paperback editions of *Dispute Resolution and Lawyers* have been used at many U.S. and Canadian law schools in advanced courses on dispute resolution, negotiation, mediation, and client interviewing and counseling. Exercises from the instructor's manual are used freely by law school professors who have not adopted the books and in continuing legal education and dispute resolution training programs.

25. The most comprehensive listing of law school dispute resolution courses appears in the SECTION OF DISPUTE RESOLUTION, ABA, DIRECTORY OF LAW SCHOOL ALTERNATIVE DISPUTE RESOLUTION COURSES AND PROGRAMS (2d ed. 1997) [hereinafter ABA DIRECTORY].

26. Texas Tech and Willamette both require first year students to take Dispute Resolution.

27. Washington and Lee and William and Mary have required lawyering process courses that include dispute resolution. The University of Michigan Law School has introduced first-year students to negotiation and related ethical issues as part of a week-long "bridge" program that focused on legal ethics. *See* Heidi Li Feldman, *Enriching the Legal Ethics Curriculum: From Requirement to Desire,* LAW & CONTEMP. PROB., Summer/Autumn 1995, at 51, 52.

28. *See* ABA DIRECTORY, *supra* note 25.

Paul Brest and Linda Krieger have developed the idea of a set of courses, a "complementary curriculum" designed to teach "professional judgement," which includes many of the concepts that we teach under the rubric of dispute resolution, as well as an array of other kinds of knowledge and skills. *See* Paul Brest, *The Responsibility of Law Schools: Educating Lawyers as Counselors and Problem Solvers*, LAW & CONTEMP. PROB., Summer/Autumn 1995, at 5, 5; Paul Brest & Linda Krieger, *On Teaching Professional Judgement*, 69 WASH. L. REV. 527, 532 (1994).

29. *See* CHERYL MCDONALD, ADR CLINIC DIRECTORY (1996).

30. We also offer, intermittently, three courses that teach journalistic skills that will help students bring dispute resolution issues into focus for themselves and the public: Legal Journalism. Case Studies and Biographical Profiles (a joint Journalism School-Law School course), Lawyering and Biography, and Dispute Resolution case studies. Beginning in Fall 1999, we also will offer an

We chose, however, to emphasize systematic integration into all first-year courses, with substantial reliance on simulations, for several reasons. During the first year, students are highly impressionable and form their visions of what it means to be a lawyer. We use simulations because we believe that some of the content we want to get across, such as elementary skills of negotiation and mediation, can be learned only though relatively direct experience. We teach dispute resolution in *all* first-year courses so we can show students the applicability of a dispute resolution perspective in virtually any area of law, and to not excessively burden individual professors. We decided that the various dispute resolution activities should be conducted primarily by the professors assigned to these first-year courses, rather than by specialists, because we wanted our entire first-year faculty to become familiar with dispute resolution knowledge, skills, and perspectives. We hoped that they would, consequently, infuse such material more extensively into their first-year courses and into their advanced courses.

The Missouri plan, of course, has its drawbacks. First, professors may resist participating in such an effort for any of several reasons. Some worry that dispute resolution teaching takes away time necessary for full course coverage. Others are reluctant to give up the control that goes with traditional teaching. Others simply do not see the relevance of teaching dispute resolution. Second, most of the professors teaching the dispute resolution modules lack depth in dispute resolution issues; this ensures that the dispute resolution instruction will be superficial, and that some professors will experience discomfort.[31] Third, high student-faculty ratios make feedback and supervision impracticable;[32] and the students and faculty still focus the vast bulk of their energy on traditional legal analysis. Fourth, the project requires something approaching a school-wide commitment, a core of faculty with background in dispute resolution (and time to work on such a project), widespread cooperation, and a great deal of management and coordination.[33] These conditions have been present at

---

LL.M. program in dispute resolution, which will include a series of more advanced dispute resolution courses.

31. Production of the Dispute Resolution and Lawyers Videotape Series, *see supra* note 4, was intended to alleviate such discomfort.

32. Two of the adapting schools, Ohio State University and the University of Washington, have had great success in introducing dispute resolution into small first-year sections. *See* Sarah Rudolph Cole et al., *Sustaining Incremental Expansion: Ohio State's Experience in Developing the Dispute Resolution Curriculum*, 50 FLA. L. REV. 667, 668 (1998); Lea B. Vaughn, *Integrating ADR into the Curriculum at the University of Washington School of Law: A Report and Reflections*, 50 FLA. L. REV. 679, 692 (1998). At the University of Missouri-Columbia, we plan to involve LL.M. students in the first-year curriculum in order to provide feedback and facilitate learning.

33. There is another, substantive problem: as the project has progressed, dispute resolution teaching has not spread as rapidly as we had hoped to other portions of the first-year courses or to

Missouri since the project began. At most schools, however, some of these conditions are lacking. We intended, through this grant, to promote, or take advantage of, such conditions at six other law schools.[34]

### B. *The Missouri Plan: Substantive and Procedural Essences*

As soon as I began working with our partner schools, I realized that most of them were unlikely to achieve an integration into first-year courses that was as systematic or extensive as that at Missouri. For this reason, we had to address, early on, the issue of how much, and in what ways, the adapting schools could depart from the original model. This led us to distinguish between the procedural and substantive essences of the Missouri plan. The *substantive essence* is to teach certain information, perspectives, and skills associated with dispute resolution.[35]

The *procedural essence* involves two components. One is integrating the teaching into standard courses. Although the Missouri plan is known principally for its integration of dispute resolution into standard *first-year* courses, we had always hoped and expected that we would eventually integrate dispute resolution into advanced courses, and this has happened to a limited extent. The other part of the procedural essence has to do with learning by doing; specifically, we tend to use simulations heavily in our dispute resolution teaching.[36]

The current project intended principally to foster activities that followed both the procedural and substantive essences—by systematically introducing dispute resolution knowledge, perspectives and skills into traditional (especially first-year) courses using simulations. Yet, it became clear that the project also would help foster dispute resolution teaching efforts that did not involve integration of dispute resolution into standard courses. These might include, for instance, separate courses on dispute resolution and live-participant clinical activities. We thought these activities would be valuable.

---

advanced courses.

34. We also hoped it would re-invigorate our efforts at Missouri and help us extend the dispute resolution perspective into other parts of first-year courses and into advanced courses. As Section D of this paper will show, it has succeeded, at least partially, on both counts.

35. *See supra* text accompanying notes 21-24.

36. We also emphasize legal and policy issues and theoretical approaches to dispute resolution; we find that using simulations enhances the discussions of such issues.

## IV. PROJECT DESCRIPTION

### A. *The Process*

In order to select schools to participate in this project, I wrote letters to the dean and a professor at each of about a dozen law schools at which I knew there was substantial interest in integrating dispute resolution into the standard first-year curriculum. (I had given presentations or workshops for faculty at most of these schools.) The six schools that ultimately participated each submitted a brief proposal, signed by the dean and a university official. Under the terms of the grant, each of the adapting schools would receive $10,000 for each of two years. The adapting schools showed varying levels of preparation for and commitment to this project. My notion was to work with the unique circumstances presented at each school, hoping that the activities required under the grant would provide support, motivation, and synergy, so that each school could progress in its own way.

We launched the project with a conference in Columbia in December 1995, attended by a team of two to four professors from each of the adapting law schools and about fifteen Missouri faculty members. At this meeting we reviewed the Missouri program, the situations, aspirations and obstacles—and means of overcoming these obstacles—at the adapting schools. Each team prepared a strategic plan that would guide its work during the year. We also established a listserve and tried to create groups of participating faculty in accordance with teaching interests. The highlight of this conference was a presentation by a third-year student about the value of this project. The second conference, held a year later, followed a similar format, with an emphasis on exchanging information and planning for the second year and beyond. The highlight of this conference was a discussion about promoting our agenda by developing new ways to brief and analyze cases that take account of underlying interests.[37]

### B. *Mentoring and the Change Process*

My mentoring strategies followed the collaborative model that underlies much of the dispute resolution teaching in this project. During the first conference in Columbia, I tried to ensure that everyone understood the substantive and procedural essences of the Missouri program, and then asked them to prepare a strategic planning document that would serve to structure their work. I emphasized that adaptations had to respond to local

37. This discussion, which led to two publications on new ways to brief or analyze cases, is summarized *infra* in section V.B. Daniel Ish, Acting Dean of the University of Saskatchewan School of Law, also attended this conference.

circumstances and that unique circumstances at Missouri allowed for the extensive nature of our program.[38] We established a listserve (which was rarely used), and tried to form groups of professors from the participating schools with common teaching interests (which turned out to be useful primarily for teachers of legal research and writing). After the conference, I maintained telephone and e-mail contact with the project directors and encouraged their efforts with sympathy, praise, and lots of suggestions. At the second conference, we emphasized sharing problems and accomplishments and planning for the final year and beyond. Throughout, I emphasized dissemination of our work through publications that would be accessible to other law teachers.

I made "mentoring" visits to most of the adapting schools each year. In preparing for these visits, I asked the adapting project directors to take the lead in designing the agenda in accordance with local circumstances, so my work differed from school to school. At the University of Washington, for instance, I debriefed a negotiation exercise that students conducted in the Basic Legal Skills course, conducted a workshop on negotiation for the faculty, and met extensively with members of the adapting team, other members of the faculty, and the dean. At DePaul, I held a series of individual and small group meetings. At Ohio State, I gave a faculty colloquium on the Missouri plan and met with the adapting team, the curriculum committee, and numerous individual faculty members. At Hamline, I met with high-level university officials and with deans of other schools within the University. At each school I met with the law school's dean and associate dean to stress the importance of this project, the attention it would likely get, and the value of the deans' support. The length of the visits ranged from four hours to two days.

My general approach in both individual and group discussions was to learn about aspirations, obstacles, and ways to overcome the obstacles, and then offer numerous suggestions. I stressed the importance of responding to local circumstances and developing plans collaboratively.

The prospect of publishing exercises in the *Instructor's Manual for Dispute Resolution and Lawyers*[39] appealed to some faculty members at each school. My colleague, James Levin, and I reviewed and commented on drafts of virtually all the exercises. At some participating schools, the local project directors reviewed numerous drafts.

Most of the mentoring strategies seemed to do some good. The conferences in Columbia provided excitement, some camaraderie, and strategic plans. The visits helped induce substantial numbers of faculty at each school to take the project seriously.

---

38. *See* Riskin & Westbrook, *supra* note 1.
39. *See* INSTRUCTOR'S MANUAL, *supra* note 9.

The adapting teams at each school faced different circumstances and so developed different goals and deployed different strategies and techniques. In all cases, there was some attempt to achieve an overall consensus on the value of integrating dispute resolution into numerous standard courses. Several adapting teams despaired of getting a broad consensus, and, instead, worked for incremental change, focusing on colleagues who seemed receptive. At most schools, the implementation of the project required one-on-one negotiation with colleagues. In one case, the adapting project director did most of the implementation because, for a variety of reasons, very few colleagues were willing to participate. Uses of subcontract funds also varied: they included replacing faculty salaries, supporting faculty travel to take dispute resolution training, paying faculty to design and test simulations and prepare them for publication, purchasing books and videotapes, and arranging for experts to conduct short courses or workshops.

## V. EVALUATION AND PROJECT RESULTS

### A. *Overview*

Nearly all of the materials produced under the two previous FIPSE grants focused on standard first-year courses, but none were prepared for Legal Research and Writing courses.[40] Under the current grant, we produced for publication eight exercises for advanced courses (Bankruptcy,[41] Business Associations,[42] Remedies,[43] Environmental Law/Hazardous Waste,[44] Family Law,[45] Real Estate Transactions,[46] and

40. Before the current grant started, the University of Missouri-Columbia formally introduced dispute resolution into its Legal Research and Writing course, and into an advanced course on Hazardous Waste, though we did not publish the teaching materials. In addition, dispute resolution issues often arose in other advanced courses.

41. *See* Paul Barron, *In re* Simon: *A Negotiation Exercise for Bankruptcy Law, in* INSTRUCTOR'S MANUAL, *supra* note 9, at 475.

42. *See* Philip S. Ashley, *Deadlock at the Bowl-A-Rama: A Mediation Exercise for Corporate Law*, INSTRUCTOR'S MANUAL, *supra* note 9, at 486.

43. *See* Margit Livingston, *The Disappointed Condo Buyer: A Mediation Exercise for Remedies or Consumer Law, in* INSTRUCTOR'S MANUAL, *supra* note 9, at 494.

44. *See* Jerome M. Organ, *Fall Creek Superfund Site: A Complex Negotiation Simulation for Environmental Law or Hazardous Waste Course, in* INSTRUCTOR'S MANUAL, *supra* note 9, at 504; Nancy Welsh & Barbara McAdoo, *Blast!: A Three Party Negotiation Exercise for An Environmental Law Course, in* INSTRUCTOR'S MANUAL, *supra* note 9, at 571.

45. *See* Barbara B. Bressler, *Breaking Up is Hard to Do: A Mediation Exercise for Family Law, in* INSTRUCTOR'S MANUAL, *supra* note 9, at 581.

46. *See* Katheryn M. Dutenhaver, *Freddie First and Sandy Second: A Mediation Exercise for Property or Real Estate Transactions, in* INSTRUCTOR'S MANUAL, *supra* note 9, at 382.

Remedies[47]) and the first-year courses (Contracts,[48] Property,[49] and Legal Research and Writing[50]).

The grant has also produced for publication new materials on briefing and analyzing cases. These materials evolved from discussions at the second annual conference in which we recognized that teaching about underlying interests was fundamental to the entire enterprise. Teaching about dispute resolution is a way to get faculty and students to take account of underlying interests. And once they begin to think about underlying interests, the importance of choosing appropriate methods of dispute resolution becomes obvious. More important, attention to interests throughout the curriculum could greatly broaden legal education.

We also realized, however, that one important barrier to studying underlying interests was the formalistic way in which students learn to brief cases in many writing courses and to analyze cases in some standard first-year courses. Formalistic case briefing usually requires students to analyze an opinion in terms of the legal rules and legally-relevant facts and to ignore both the underlying interests of the parties and the impact of the decision on society. Subsequent to this discussion, Ken Fox of Hamline University prepared a short guide to briefing and discussing cases—applicable to virtually any course—that takes underlying interests into account,[51] and Kate O'Neill of the University of Washington prepared an extensive guide for the first-year research and writing course on how to brief cases in this way.[52]

### B. *Outcomes at Participating Schools*

Each of the participating schools made substantial progress. Some met their own expectations; others fell short of their expectations, yet accomplished much, given their circumstances. As required, separate reports from each of the adapting schools appeared in the Appendices to

---

47. *See* Livingston, *supra* note 43.

48. *See* Jonathan M. Hyman, *Closing the Circuits: A Negotiation Exercise of an Employment Agreement for a Contract Course, in* INSTRUCTOR'S MANUAL, *supra* note 9, at 183.

49. *See* Dutenhaver, *supra* note 46.

50. *See* Daily, *supra* note 9; Mary Dunnewold et al., Bartell v. King: *A Legal Writing Exercise and Mediation Simulation, in* INSTRUCTOR'S MANUAL, *supra* note 9, at 295; Kate O'Neill, *The Medi-Lab Case Simulation: A Negotiation Exercise for a Legal Writing Course, in* INSTRUCTOR'S MANUAL, *supra* note 9, at 282.

51. *See* Ken Fox, *Using Case Briefings to Explore Interests: An Exercise to Integrate Problem-Solving Concepts into the First-Year Curriculum, in* INSTRUCTOR'S MANUAL, *supra* note 9, at 91.

52. *See* Kate O'Neill, *Adding an "ADR" Perspective to a Traditional Legal Writing Course*, 50 FLA. L. REV. 709, 714-18 (1998) [hereinafter O'Neill, *Adding an "ADR" Perspective*]; Kate O'Neill, *Using an ADR Perspective to Teach Introductory Case Analysis, in* INSTRUCTOR'S MANUAL, *supra* note 9, at 258 [hereinafter O'Neill, *Using an ADR Perspective*].

the 1998 FIPSE report. More extensive reports on four of the schools appear in this Symposium. I will summarize the highlights.

*DePaul University* (Katheryn Dutenhaver, Project Director) began with a strong base of decanal support (which has remained intact through two transitions) and dispute resolution offerings and expertise. The program integrated dispute resolution into two first-year courses (one section of Torts and one section Property) and into five advanced courses (Professional Responsibility, Remedies, Federal Income Tax, Partnership Tax, and Bankruptcy). Four sets of teaching materials prepared by DePaul faculty appear in the *Instructor's Manual for Dispute Resolution and Lawyers*.[53] DePaul also created a new course on Negotiation and a new mediation component of its legal clinic, thereby increasing its ADR course offerings to provide every student an opportunity to elect at least one ADR course. It also launched a Dispute Resolution Center for the university, which offers certificate courses in negotiation and mediation for managers and lawyers. Finally, five full-time faculty completed the law school's course on mediation.[54]

*Hamline University* (James Coben, Project Director) also began with a cadre of experienced ADR teachers, a substantial list of ADR courses, and widespread faculty and decanal support. During this grant, Hamline provided a mediation simulation and writing experience to every first-year student through its writing program. It carried out a very extensive integration of dispute resolution in one of its three first-year sections (which included the creation of "law firms" and a bridge curriculum), and a more modest integration in its other two sections. In one section of Property, students learned a new way to brief cases that takes into account underlying interests as well as legal positions and arguments.[55] Hamline also developed and employed a mediation simulation for Tax I: Taxation of Individuals. Hamline professors contributed four simulations and other teaching materials to the *Instructor's Manual for Dispute Resolution and Lawyers*[56] and produced a large amount of other teaching materials. It also added new dispute resolution courses, started a certificate program in dispute resolution, and sponsored a symposium on "Dispute Resolution and the Religious Traditions." Finally, it has developed new clinical

53. INSTRUCTOR'S MANUAL, *supra* note 9; *see* Ashley, *supra* note 42; Bressler, *supra* note 45; Dutenhaver, *supra* note 46; Livingston, *supra* note 43.

54. For further information on DePaul's efforts, see Kathryn M. Dutenhaver, *Dispute Resolution and Its Purpose in the Curriculum of DePaul University College of Law*, 50 FLA. L. REV. 719, 722-30 (1998).

55. *See* Fox, *supra* note 51.

56. INSTRUCTOR'S MANUAL, *supra* note 9; *see* Dunnewold et al., *supra* note 50; Fox, *supra* note 51; Gary Weisman & Barbara McAdoo, *The Senate Table: An Introductory Adjudication/Mediation exercise*, *in* INSTRUCTOR'S MANUAL, *supra* note 9, at 60; Welsh & McAdoo, *supra* note 44.

opportunities through an arrangement with the EEOC under which law students represent discrimination claimants in mediations.

Hamline also evaluated the impact of its dispute resolution teaching efforts on students' beliefs about the extent to which lawyers should maintain an adversarial or problem-solving orientation. The study revealed that women entered the program with more adversarial attitudes than men, but became more problem-solving during the course of the year. Men developed more adversarial attitudes despite the ADR teaching.[57]

*Inter-American University* (Doel R. Quinones-Lopez, Project Director) also began with pervasive faculty and decanal support and extensive background. It developed and implemented, in the first-year Research, Analysis, and Writing Skills I course, two writing exercises dealing with advising clients about informal methods of dispute resolution. For the Criminal Procedure course, it produced a mediation demonstration tape and an exercise. In addition, Inter-American University institutionalized its Negotiation and Mediation Clinic, conducted a series of dispute resolution training programs for students and professionals, and created the Institute for Conflict Resolution, through which members of the law faculty will provide dispute resolution services.[58]

*Ohio State University* (Nancy H. Rogers, Project Director) also began with very strong, widespread commitment to and expertise in dispute resolution. During the grant, Ohio State taught segments on dispute resolution in four first-year courses (Civil Procedure, Torts, Legal Analysis and Writing, and Property) and five advanced courses (Family Law, Administrative Law, Professional Responsibility, Business Associations, and the Civil Litigation Clinic).[59] It also added a series of short courses on dispute resolution topics. Most important, the faculty decided to make a major commitment to teaching dispute resolution, and the College of Law received a substantial budget enhancement from the university's administration in order to hire two additional professors who will focus on dispute resolution. This will lead to a substantial increase in dispute resolution course offerings. Beginning in Fall 1998, law students will teach conflict resolution to students in elementary and secondary schools, using materials purchased under the grant.

---

57. For further information on Hamline's efforts see James R. Coben, *Summer Musings on Curricular Innovations to Change the Lawyer's Standard Philosophical Map*, 50 FLA. L. REV. 735, 749-50 (1998).

58. For further information on Inter-American, see Doel R. Quinones, Adapting Project Final Report, Inter-American University of Puerto Rico School of Law (Nov. 20, 1997), *in* 1998 FIPSE Report, *supra* note *, app. at V (on file with the Center for the Study of Dispute Resolution, University of Missouri-Columbia School of Law).

59. Shortly after the grant ended, Professor James Brudney of Ohio State University added a negotiation exercise to his employment law course. Conversation with James Brudney (Dec. 18, 1997).

Shortly before the grant began, Professor Timothy Jost trained his first-year Property students in mediation skills. During the grant, he and Professor Laura Williams followed these students and a control group to measure the impact of this training. Preliminary findings suggest that the group that received training is now more inclined to use mediation than the control group.[60]

*Tulane University* (Paul Barron, Project Director) began its project, in the midst of a dean search, without a consensus about the importance of dispute resolution teaching, yet it accomplished a great deal. It integrated dispute resolution in several places in the first-year curriculum. All students saw a mediation demonstration in the required first-year course on Professional Responsibility. In one section of the second-semester Contracts course, students were exposed to a range of dispute resolution instruction. Contracts professors currently are discussing the possibility of including such instruction in all sections. In addition, Professor Paul Barron developed a mediation exercise for his Bankruptcy course[61] and published an article dealing with the use of simulations in law school teaching.[62] Tulane also is seeking funding to establish an Institute for Public Policy Dispute Resolution.[63]

*The University of Washington* (Lea Vaughn, Project Director) also began this project in the midst of a dean search. The adapting team decided early that it would not be feasible to achieve a consensus about the value of integrating dispute resolution into a broad spectrum of traditional courses. Accordingly, they decided on an incremental strategy and a one-on-one approach with colleagues. This strategy produced great progress. The University of Washington integrated dispute resolution into three first-year courses: one section of Civil Procedure, one section of Contracts, and all sections of Basic Legal Skills[64] (in which each first-year student received systematic exposure to mediation and negotiation). In the Basic Legal Skills course, students observed a mediation involving a case about which they had written a legal memorandum, then discussed that mediation.[65] Each legal writing instructor has prepared a dispute resolution exercise. This effort produced numerous teaching materials for local use

60. For more information on Ohio State's efforts, see Cole, et al., *supra* note 32.

61. *See* Barron *supra* note 41, at 475.

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

63. *See* Paul Barron, Tulane Law School Adapting Project Report (Nov. 21, 1997) *in* 1998 FIPSE Report, *supra* note *, app. VIII (on file with the Center for the Study of Dispute Resolution, University of Missouri-Columbia School of Law).

64. This is comparable to a Legal Research and Writing course. At Vermont Law School the first-semester research and writing course is called "Dispute Resolution" and includes interviewing, counseling and negotiation.

65. Hamline has developed a similar approach. *See* Coben, *supra* note 57, at 744-47.

and two publications by Kate O'Neill: a negotiation exercise for a Legal Writing course[66] and an essay for how Legal Writing instructors can teach case briefing with a dispute resolution perspective.[67]

Professor Lea Vaughn integrated dispute resolution into advanced courses on Labor Law and Street Law. Some discussion of ADR occurs in Environmental Law and International Law, and conversation is ongoing about introducing ADR into Professional Responsibility. The University of Washington also created a "Dispute Resolution Track" (which includes litigation-oriented courses) and added two more sections of Negotiations and one new section of Alternative Dispute Resolution.[68]

At the University of Missouri-Columbia, the existence of the grant and other factors contributed to significant developments in dispute resolution teaching at the "mentoring institution." Most notably, we received substantial budget enhancement from the university in order to create an LL.M. program in dispute resolution, which will commence in Fall 1999 under the direction of Professor Barbara McAdoo. We also added other new faculty to teach dispute resolution, stabilized our Mediation Clinic, and enhanced our offerings of advanced dispute resolution courses. LL.M. students will assist in teaching dispute resolution in first-year courses.

During this two-year grant, I transferred the management of our first-year curriculum project to Joseph Stulberg and James Levin. A new faculty working group, which they led, is considering ways to better organize the teaching of dispute resolution in the first year. And Professors Wilson Freyermuth and Jerome Organ have nearly completed a property casebook that thoroughly incorporates dispute resolution skills and perspectives.[69] Our Legal Research and Writing faculty have developed and used several dispute resolution exercises,[70] and the director of our writing program, Professor Melody Daily, made a presentation about teaching dispute resolution through legal research and writing courses at the Annual Conference of the Association of Legal Writing Directors. We have added a very substantial Superfund negotiation exercise to the advanced course on environmental law.[71]

The grant also helped us produce the Instructor's Manual for the second editions of *Dispute Resolution and Lawyers*,[72] which includes some forty exercises prepared by 33 professors from 19 law schools, a federal district

66. *See* O'Neill, *supra* note 50.
67. *See* O'Neill, *Using an ADR Perspective*, *supra* note 52, at 258.
68. For more information on the University of Washington's efforts, see Vaughn, *supra* note 32.
69. *See* JAMES L. WINOKUR ET AL., PROPERTY AND LAWYERING (forthcoming 2000).
70. *See, e.g.*, Daily, *supra* note 9.
71. *See* Organ, *supra* note 44.
72. *See* INSTRUCTOR'S MANUAL, *supra* note 9.

judge, a court ADR administrator, and a journalism professor.

## VI. SUMMARY AND CONCLUSIONS

This grant was intended to provide structure and support to six law schools that wished to develop adaptations of the Missouri Plan to integrate dispute resolution into standard law school courses. Each of the six adapting schools produced unique activities that responded to its own culture and situation, and each will continue to develop its program. The project produced significant new materials for or about teaching dispute resolution in standard courses, many of which were published in the *Instructor's Manual for Dispute Resolution and Lawyers*.[73] These include new exercises for introducing dispute resolution into first-year courses in Contracts, Property, Torts, and Legal Research and Writing, and into advanced courses on Bankruptcy, Business Associations, Consumer Law, Remedies, Environmental Law/Hazardous Waste, Family Law, and Real Estate Transactions. Most of the schools also added new advanced courses in dispute resolution.

Each adapting project succeeded in the sense that it advanced its dispute resolution teaching activities. In absolute terms, as we expected, some achieved much more than others, partly because each began with a different set of endowments and obstacles. The grant cannot take credit for all new dispute resolution activities described in this report. The idea of teaching dispute resolution in law schools is "in the air," and several of the adapting schools were ready to move ahead without the grant. I believe, however, that many of the new teaching efforts would not have occurred without the structure and support—and the ready outlet for publishing teaching materials—that the grant provided.

Based on my experience in this project, and in working with other law schools, I think that certain requirements are necessary, but not sufficient, to support a broad-scale integration of dispute resolution into standard first-year and other courses. First, the school should have at least one "lead" faculty member who has knowledge of dispute resolution and ways to teach it, time and resources to work with colleagues to promote and manage the program, and a personal and professional commitment to seeing the project succeed. Second, the program needs a core of at least three other faculty members with knowledge about dispute resolution, and personal and professional commitments to seeing the project succeed. Third, the dean must strongly and openly endorse the effort.[74] The final requirement is a consensus—even a weak one—among faculty members

73. INSTRUCTOR'S MANUAL, *supra* note 9.

74. *But see* Vaughn, *supra* note 32, at 693-94.

that integrating dispute resolution into standard courses is worthwhile.[75]

Of course, the importance of these requirements will diminish as materials on dispute resolution appear in casebooks for standard courses and their teachers' manuals. It is easy to see the beginnings of this most promising trend, but we have a long way to go.[76]

Despite great progress, what my colleague Jim Westbrook and I wrote about this project in 1989 remains true today and seems an appropriate ending to this report:

> In one sense, we are trying to change the way law students—and some faculty—tend to view the world and the lawyer's role in it. We want, in other words, to affect the "lawyers' standard philosophical map...." The map is based on the assumptions that (1) disputants always are adversaries—what one wins, the other must lose; and (2) cases are to be decided by reference to a rule of law applied by a third party. Such a philosophical map makes it difficult not only to recognize the value of some dispute resolution methods but also to perceive that nonmaterial interests, such as yearnings for equality, recognition, or security are vitally important. It crowds out notions of shared interests and interconnections. The map shows only well-known, well-traveled thoroughfares. In our project, we have sketched in some back roads, "blue highways"[77] that have always been available, so that students and faculty can more easily choose to travel them. Someday—perhaps at this law school, perhaps at another—we hope that someone will widen the blue highways and turn them into interstates.[78]

---

75. *But see id.*

Since I prepared the report on which this article is based, my views have softened a bit. Considering the great success at the University of Washington and some other schools in this project that did not enjoy all the conditions I have outlined, I now think of these conditions as ideal, rather than necessary, and believe that, in less-than-ideal circumstances, devoted faculty members can achieve much through persistence, hard work and a collaborative spirit.

76. A number of casebooks for traditional courses now include dispute resolution, some in ways that integrate it into the book, and others that set it apart. *See, e.g.*, JOHN J. COUND, ET AL., CIVIL PROCEDURE: CASES AND MATERIALS 1305-50 (6th ed. 1993); ROBERT M. COVER ET AL., PROCEDURE (1991); RICHARD D. FREER & WENDY COLLINS PERDUE, CIVIL PROCEDURE: CASES, MATERIALS AND QUESTIONS 863-94 (2d ed. 1997); SANDRA S. JOHNSON ET AL., PROPERTY LAW: CASES MATERIALS AND PROBLEMS (1992); *see also* DAVID I. LEVINE ET AL., CIVIL PROCEDURE ANTHOLOGY 412-95 (1997); JERRY J. PHILLIPS ET AL., TORT LAW: CASES, MATERIALS, PROBLEMS (2d ed. 1997); GARY J. WATSON ET AL., CIVIL LITIGATION CASES AND MATERIALS 11-86 (4 ed., 1991).

77. Old highway maps showed the principal highways in red and the back roads in blue. WILLIAM LEAST HEAT MOON, BLUE HIGHWAYS (prefatory note) (1982).

78. Riskin & Westbrook, *supra* note 1, at 520-21 (citations omitted).