

The Catholic University of America, Columbus School of Law

## CUA Law Scholarship Repository

---

Scholarly Articles and Other Contributions

Faculty Scholarship

---

2016

### Law Student Mediators Wear a Triple Crown: Skilled, Sellable, & Successful

Laurie A. Lewis

*The Catholic University of America, Columbus School of Law*

Follow this and additional works at: <https://scholarship.law.edu/scholar>



Part of the [Dispute Resolution and Arbitration Commons](#), [Legal Education Commons](#), and the [Legal Profession Commons](#)

---

#### Recommended Citation

Laurie A. Lewis, Law Student Mediators Wear a Triple Crown: Skilled, Sellable, & Successful, 50 U.S.F. L. REV. 165 (2016).

This Article is brought to you for free and open access by the Faculty Scholarship at CUA Law Scholarship Repository. It has been accepted for inclusion in Scholarly Articles and Other Contributions by an authorized administrator of CUA Law Scholarship Repository. For more information, please contact [edinger@law.edu](mailto:edinger@law.edu).

## Articles

# Law Student Mediators Wear a Triple Crown: Skilled, Sellable, & Successful

By LAURIE A. LEWIS\*

### Introduction

**M**ORE THAN EVER BEFORE, law students must prepare carefully for their careers. In the current legal environment, potential employers demand practice-ready skills; a tight job market demands creativity; and law school debt demands repayment. Training and practicing as mediators can provide law students with enhanced skills, marketable experiences, and some income.

Over the last few decades, there has been increased emphasis upon practice-ready law graduates.<sup>1</sup> Law schools throughout the country have responded with curricula reforms to produce practice-ready

---

\* Clinical Associate Professor, the Columbus School of Law of The Catholic University of America. I would like to extend special thanks to Dean Daniel F. Attridge, Dean of the Columbus School of Law of The Catholic University of America, for providing a generous summer research and writing stipend which supported my work.

1. The concept of practice-ready, such that a graduating law student has sufficient skills to enter the job market prepared to practice, has been evolving for some time. See generally Roy Stuckey et al., *Best Practices for Legal Education: A Vision and a Road Map* (2007). This report is based on the following premise:

There is a compelling need to change legal education in the United States in significant ways. . . . [and w]hile law schools help students acquire some of the essential skills and knowledge required for law practice . . . [i]t is generally conceded that most law school graduates are not as prepared for law practice as they could be and should be. Law schools can do much better.

*Id.* at 5. See *Legal Education and Professional Development—An Educational Continuum*, 1992 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO THE BAR 4–7 (criticizing law schools for using a more theory-oriented rather than practice-oriented educational model). Another term coined recently by a scholar is “practice aware.” Jay Gary Finkelstein, *Practice in the Academy: Creating “Practice Aware” Law Graduates*, 64 J. LEGAL EDUC. 622, 630–31 (2015) (“The graduate lawyer should have the true objective of being ‘practice aware,’ a term that is intended to emphasize that what the graduate needs is (i) to be introduced to practical skills, and (ii) to understand how doctrine relates to practice.”).

lawyers who have client-relationship skills.<sup>2</sup> These lawyers possess skill sets developed largely outside of traditional classroom settings. They often gain these practice-ready skills through live clinics and externship programs.<sup>3</sup> One such skill is mediation.<sup>4</sup> The recently revised ABA Standards and Rules of Procedure for Approval of Law Schools now includes a provision for mediation in Standard 304, Simulation Courses and Law Clinics: "A law clinic provides substantial lawyering

---

2. See generally Catherine L. Carpenter et al., *Interim Report of the Outcome Measures Committee*, 2008 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO THE BAR, available at <http://www.abanet.org/legaled/committees/OutcomeMeasures.doc> (underscoring the heightened importance of practical skills training for law students). Law schools are increasingly offering practical skills training through clinical programs and internships. See, e.g., Joel W. Barrows, *On Becoming a Lawyer*, 96 IOWA L. REV. 1511, 1511 (2011); John O. Sonsteng et al., *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303, 308 (2007). Washington & Lee University School of Law, for example, has designed its entire third-year curriculum to concentrate on practical skills training. *Your 3L Year*, WASHINGTON & LEE SCH. OF LAW, <http://law.wlu.edu/about-wandl-law/curriculum/third-year> (last visited Aug. 20, 2015). The Sturm College of Law at the University of Denver permits students to spend one year of law school in legal practice through its Experiential Advantage Curriculum. *The Experiential Advantage*, UNIV. OF DENVER STURM COLL. OF LAW, <http://www.law.du.edu/index.php/experiential-advantage> (last visited Aug. 20, 2015).

3. See, e.g., Margaret Martin Barry, *Practice Ready: Are We There Yet?* 32 B.C. J.L. & SOC. JUST. 247, 247 (2012) ("Schools must combine the traditional case method of teaching with experiential learning, where the curriculum focuses not just on doctrine but on training professionals."); Marie A. Monahan, *Towards a Theory of Assimilating Law Students into the Culture of the Legal Profession*, 51 CATH. U. L. REV. 215, 223 (2001) (stating that judges frequently discuss case resolution with their law student interns). But see Robert J. Condlin, *"Practice Ready Graduates": A Millennialist Fantasy*, 31 TOURO L. REV. 75, 78–81 (2014) (dismissing the practice ready concept as a "slogan" that is not helpful in light of many different types of practice and readiness levels, as well as the need for more than a law school semester to develop skill proficiency).

4. A definition of mediation approved by the American Arbitration Association, the American Bar Association Section of Dispute Resolution, and the Association for Conflict Resolution states: "Mediation is a process in which an impartial third party facilitates communication and negotiation and promotes voluntary decision making by the parties to the dispute." MODEL STANDARDS OF CONDUCT FOR MEDIATORS pmbl. (2005), available at [http://www.americanbar.org/content/dam/aba/migrated/dispute/documents/model\\_standards\\_conduct\\_april2007.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/dispute/documents/model_standards_conduct_april2007.authcheckdam.pdf). See also LAURENCE J. BOULLE ET AL., *MEDIATION SKILLS AND TECHNIQUES* 1 (2008) ("Mediation is unique because it is consensual and gives the parties the opportunity to make their own decision rather than have it imposed on them as happens in many other forms of binding dispute resolution such as arbitration or adjudication."); PETER LOVENHEIM, *BECOMING A MEDIATOR: AN INSIDER'S GUIDE TO EXPLORING CAREERS IN MEDIATION* 2 (1st ed. 2002) ("Mediation is a process in which two or more people in a dispute come together to try to work out a solution to their problem with the help of a neutral third person—the mediator.").

experience that involves advising or representing one or more actual clients or serving as a third-party neutral.”<sup>5</sup>

Mediation is an outgrowth of the modern Alternative Dispute Resolution (“ADR”) movement that emerged rapidly in the 1960’s and 1970’s.<sup>6</sup> ADR is now fully entrenched in our legal system, and mediation is at the top of commonly used ADR methodologies.<sup>7</sup> With the greatly expanded use of mediation in court-annexed and other contexts, all practicing lawyers must understand the mediation process to capably serve their clients.<sup>8</sup>

---

5. ABA STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 304(b) (2015), available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2015\\_2016\\_chapter\\_3.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2015_2016_chapter_3.authcheckdam.pdf).

6. See generally EDWARD BRUNET & CHARLES B. CRAVER, ALTERNATIVE DISPUTE RESOLUTION: THE ADVOCATE’S PERSPECTIVE (2001); STEPHEN B. GOLDBERG ET AL., DISPUTE RESOLUTION: NEGOTIATION, MEDIATION, AND OTHER PROCESSES (Richard A. Epstein et al. eds., 2d ed. 1992); LEONARD L. RISKIN & JAMES E. WESTBROOK, DISPUTE RESOLUTION AND LAWYERS (1987). See also Karen Tokarz & Annette Ruth Appell, *New Directions in ADR and Clinical Legal Education*, 34 WASH. U. J.L. & POL’Y 1, 2–3 (2010) (“ADR—an umbrella term for a range of dispute resolution processes outside the courts that includes negotiation, conciliation, mediation, dialogue facilitation, consensus-building, and arbitration—has emerged as a principal mode of legal practice in virtually every legal field and in virtually every country in the world.”). See, e.g., Jeffrey W. Stempel, *Reflections on Judicial ADR and the Multi-Door Courthouse at Twenty: Fait Accompli, Failed Overturn, or Fledgling Adulthood?*, 11 OHIO ST. J. ON DISP. RESOL. 297, 309–10 (1996) (explaining that the traditional or “old ADR” has existed for centuries, to include the passage of the Federal Arbitration Act in 1925, while the “new ADR” movement was triggered by the 1976 Pound Conference); Jean R. Sternlight, *ADR Is Here: Preliminary Reflections on Where It Fits in a System of Justice*, 3 NEV. L.J. 289, 289 (2003) (linking the birth of the modern ADR movement to the 1976 Pound Conference).

7. See Yishai Boyarin, *Court-Connected ADR—A Time of Crisis, A Time of Change*, 50 FAM. CT. REV. 377, 379 (2012) (“Instead of the hoped-for multi-door courthouse, most jurisdictions offer mediation as the *only* ADR service.”); Robert A. Baruch Bush, *Staying in Orbit, or Breaking Free: The Relationship of Mediation to the Courts Over Four Decades*, 84 N.D. L. REV. 705, 765 (2008) (suggesting that mediation as a process oriented toward producing agreements for conflict resolution will continue to play a pivotal role in serving the courts); Tracy Walters McCormack, Susan Schultz & James McCormack, *Probing the Legitimacy of Mandatory Mediation: New Roles for Judges, Mediators, and Lawyers*, 1 ST. MARY’S J. ON LEGAL MALPRACTICE & ETHICS 150, 152 (2011) (stating that the multi-door courthouse concept has been largely usurped by court rules and practices making mediation referrals automatic). But see FOREST S. MOSTEN, *MEDIATION CAREER GUIDE: A STRATEGIC APPROACH TO BUILDING A SUCCESSFUL PRACTICE* 155 (2001) (“Many states now require neutral courthouse facilitators to serve as counselors and ombudspersons to citizens, helping them select alternatives to litigation to resolve their disputes.”).

8. See Sharon Press, *Court-Connected Mediation and Minorities: A Report Card*, 39 CAP. U. L. REV. 819, 819 n.2 (2011) (defining court-connected mediations as those ordered by a judge or strongly encouraged within the context of the traditional court system); Leonard L. Riskin & Nancy A. Welsh, *Is That All There Is? “The Problem” in Court-Oriented Mediation*, 15 GEO. MASON L. REV. 863, 902 (2008) (stating that law schools as well as administrators of court-connected ADR programs are seeking to expand lawyers’ understanding of issues compatible with dispute resolution processes, including mediation); Jean R. Sternlight, *Separate and Not Equal: Integrating Civil Procedure and ADR in Legal Academia*, 80 NOTRE DAME

Many law students take courses that cover ADR generally and mediation specifically.<sup>9</sup> Mediation is premised on the voluntary agreement of parties to use a mediator as a neutral party to help resolve their conflict.<sup>10</sup> It differs from most ADR processes in that the parties retain the ultimate authority to determine the outcome of their dispute.<sup>11</sup>

An increasing number of students, however, seek not only to learn about mediation through coursework, but also to practice it. Law school live clinics provide students the opportunities to mediate,

---

L. REV. 681, 691–92 (2005) (emphasizing that most disputes are being directed toward private or court-connected ADR). See generally EDWARD J. BERGMAN & JOHN G. BICKERMAN, COURT-ANNEXED MEDIATION: CRITICAL PERSPECTIVES ON SELECTED STATE AND FEDERAL PROGRAMS (1998) (reviewing several federal district court and state court-annexed mediation programs); Dorcas Quek, *Mandatory Mediation: An Oxymoron? Examining the Feasibility of Implementing a Court-Mandated Mediation Program*, 11 CARDOZO J. CONFLICT RESOL. 479 (2010) (summarizing the expanded use of court-sponsored ADR, and cautioning against court-mandated mediation that could negatively impact the parties' effective participation).

9. Approximately 185 U.S. law schools offer courses in ADR, twenty-three of which self-report as having ADR class requirements. See *ABA Directory*, UNIV. OF OR. SCH. OF LAW, <https://law.uoregon.edu/explore/aba-directory> (last visited Aug. 21, 2015). See Robert A. Baruch Bush, "What Do We Need a Mediator For?": Mediation's "Value-Added" for Negotiators, 84 OHIO ST. J. ON DISP. RESOL. 1, 1 (1996) (pointing out the need for law schools to prepare students for informing and counseling clients about ADR processes); Michael Moffitt, *Island, Vitamins, Salt, Germs: Four Visions of the Future of ADR in Law School (And a Data-Driven Snapshot of the Field Today)*, 25 OHIO ST. J. ON DISP. RESOL. 25, 41–42 (2010) (finding that the four most common ADR courses are an ADR survey course, arbitration, mediation and negotiation). For additional information regarding the importance of teaching future lawyers about ADR processes, including mediation, see JAY FOLBERG ET AL., *RESOLVING DISPUTES: THEORY, PRACTICE AND LAW* (2005); RISKIN & WESTBROOK, *supra* note 6.

10. See, e.g., Carol Izumi, *Implicit Bias and the Illusion of Mediator Neutrality*, 34 WASH. U. J.L. & POL'Y 71, 125 (2010) ("Neutrality is a core concept of mediation. Within the profession, there is widespread consensus about the vital importance of neutrality. Neutrality, along with consensuality, gives the mediation process legitimacy.").

11. Self-determination appears as a key element of mediation in the Model Standards of Conduct for Mediators:

Standard 1. Self-determination

A mediator shall conduct a mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome. Parties may exercise self-determination at any stage of a mediation, including mediator selection, process design, participation in or withdrawal from the process, and outcomes.

MODEL STANDARDS OF CONDUCT FOR MEDIATORS, *supra* note 4.

See also Bush, *supra* note 9, at 31 (linking self-determination with the increased likelihood that parties' unique concerns will be resolved on terms they themselves believe best); Kimberly C. Emery, *Assisting Indigent Families in Conflict: A Pro Bono Test Drive for a Family Alternative Dispute Resolution (ADR) Clinic*, 34 WASH. U. J.L. & POL'Y 239, 241 (2010) (explaining that the parties' self-determination is crucial to the mediation process).

sometimes in collaboration with community agencies and courts.<sup>12</sup> Such clinics have the added advantage of built-in faculty supervision and case review for reflective learning.<sup>13</sup>

The law student's mediation experiences, however, can go beyond the school's clinic walls and into the community. Many community mediation programs offer basic mediation training, usually twenty-five to forty hours in length.<sup>14</sup> After training, students often participate in apprentice mediation before doing solo mediation.<sup>15</sup> In most jurisdictions, completion of apprentice mediation qualifies the novice mediator to practice in certain settings; in other jurisdictions, it is sufficient for certification, thereby enabling the mediator to accept court-connected referrals.<sup>16</sup>

No certification is needed, however, if one wants to hang out a shingle and conduct a private mediation practice.<sup>17</sup> Unlike for lawyers and medical doctors, no state has licensing requirements for mediators.<sup>18</sup> Thus, a law student who obtains basic mediation training can pursue job opportunities as a mediator while still in school. He or she can find work, for example, in community centers and small claims courts, which can help defray law school costs.<sup>19</sup>

---

12. About forty U.S. law schools have live ADR clinics, seventeen of which are referenced specifically as mediation clinics. See *ABA Directory*, *supra* note 9.

13. See generally Donald A. Schon, *Educating the Reflective Legal Practitioner*, 2 CLINICAL L. REV. 231, 244–50 (1995) (suggesting that the student-attorney who reflects upon his or her actions in working with clients benefits from self-learning). See *infra* notes 71–72, 81–85 and accompanying text.

14. See, e.g., KELLY M. FEELEY & JAMES A. SHEEHAN, *MASTERING ALTERNATIVE DISPUTE RESOLUTION* 31–32 (2015); LOVENHEIM, *supra* note 4, at 102; MOSTEN, *supra* note 7, at 53. Community mediation programs include two basic types: government-sponsored and community-based. See DANIEL MCGILLIS, *COMMUNITY MEDIATION PROGRAMS: DEVELOPMENTS AND CHALLENGES* 8 (1997). While initially such programs in the 1960's and early 1970's were developed to handle minor criminal cases, community mediation expanded rapidly thereafter, to include small claims processing, conflict resolution in schools, custody and visitation arrangements, and public policy disputes for a variety of organizations. *Id.* at 25–30.

15. See LOVENHEIM, *supra* note 4, at 109 (explaining that the apprentice would begin as a silent observer of several mediations; then act as a co-mediator with a practiced mediator; followed by acting as a solo mediator with an experienced mediator sitting in; and finally as a solo mediator handling cases alone). See *infra* notes 116–17 and accompanying text.

16. See LOVENHEIM, *supra* note 4, at 124. See *infra* notes 116–17 and accompanying text.

17. See MOSTEN, *supra* note 7, at 191 (“Growing out of society's need for options to the legal system, you could hang a shingle to mediate without a state license—actually without any training at all.”).

18. See LOVENHEIM, *supra* note 4, at 124; MOSTEN, *supra* note 7, at 13.

19. See LOVENHEIM, *supra* note 4, at 61 (discussing some prosecutor mediation programs involving minor criminal complaints where law students are paid a modest stipend for mediating cases during weekend and evening hours).

The newly minted law graduate who has mediation experience has an advantage in a tight legal job market. He or she has a proven skill set and has developed valuable connections in the mediation field.<sup>20</sup> Moreover, with the increasing number of court-mandated mediation programs, the law graduate mediator has a competitive edge because of his or her greater understanding of the legal system and specific areas of the law, such as family law.<sup>21</sup>

This Article considers several trends that converge to make it a highly favorable time for law students to obtain mediation training and work as mediators prior to graduating. Part I summarizes a brief history of the modern ADR movement, and mediation's emergence as the ADR methodology of choice. Part II discusses the proliferation of live clinics in law schools, with a special emphasis upon mediation clinics and their role in teaching unique practice-ready skills. Part III focuses on the practicalities of community mediation training as well as state requirements for mediators. Finally, Part IV considers the tight legal job market and expanding job opportunities for mediators and suggests that law students obtain training and work as mediators while in school, to gain a competitive edge. As law school graduates, they will possess enhanced practice-ready "head" and "heart" skills; be poised to utilize mediation skills and connections developed while working as mediators; and can more readily embark on a path toward

---

20. See, e.g., Bennett G. Picker, Keynote Address at the Succeeding in Mediation Conference in Florence, Italy: How to Become a Successful Mediator (July 23, 2015), available at <http://www.mediate.com/articles/PickerAddress.cfm> (emphasizing the importance of networking to achieve success as a mediator, and to take every opportunity to become involved in mediation, such as through community mediation clinics).

21. See Leonard L. Riskin, *Mediation and Lawyers*, 43 OHIO ST. L.J. 29, 36–37 (1982) (distinguishing family mediation as calling for the involvement of a lawyer, who may serve not only as a mediator for some cases but also as an advisor to one or both of the parties in other cases). The author describes the advantage of having a lawyer-mediator as follows:

[I]nformation about what a court would do can be integrated into the mediation process in a way that suits the needs of the parties. Because he is an expert on [divorce] law, the lawyer-mediator can help the parties free themselves, when appropriate, from the influence of legal norms so that they can reach for a solution that is appropriate to them.

*Id.* at 40–41. Divorce mediation is in strong demand. See LOVENHEIM, *supra* note 4, at 68 (estimating that in many cities, around 25% of divorcing couples participate in mediation). The benefit of a legal education in enhancing mediation, however, is not confined to family cases. See, e.g., Bush, *supra* note 7, at 707 (offering contexts for the use of mediation outside of the court system, such as resolving conflicts among staff and clients in businesses in the private and public sectors; handling administrative claims with regard to special education and health care; and addressing public policy disputes and instituting public policy); Stempel, *supra* note 6, at 383 (“[M]ediation, like any form of disputing, probably works better when lawyers (the world’s leading dispute resolution specialists) are part of the process.”).

a fulfilling and prosperous legal career. In short, they will be skilled, sellable, and successful.

## I. Mediation Emerges as the ADR Method of Choice

In one form or another, ADR has existed for thousands of years.<sup>22</sup> The traditional view of ADR originates from Confucian ethics in China, where mediators were used to promote natural harmony.<sup>23</sup> In the Western World, ADR can be traced back to the use of arbitration in Greek mythology and subsequently in Athenian courts.<sup>24</sup> In the United States, ADR has Puritan roots, but its birth in "semi-modern" form dates from 1925, the year both the American Arbitration Association was founded and the Federal Arbitration Act was passed.<sup>25</sup> Since then, many methods of ADR have evolved, with the most popular being negotiation, arbitration, and mediation. Over the past several decades, mediation has risen above all others as the preferred method in most legal contexts.<sup>26</sup>

### A. Modern Movement of Alternative Dispute Resolution

Most ADR scholars view the modern movement as having emanated from the 1976 Pound Conference.<sup>27</sup> There, Professor Frank

---

22. See generally JEROME T. BARRETT WITH JOSEPH P. BARRETT, A HISTORY OF ALTERNATIVE DISPUTE RESOLUTION: THE STORY OF A POLITICAL, CULTURAL, AND SOCIAL MOVEMENT (2004) (examining connections between ADR work in the current century and that of previous centuries, and providing illustrations of how modern day ADR practitioners are influenced by their predecessors).

23. *Id.* at 6 (discussing how Confucius (551–479 B.C.E.) emphasized that natural harmony should prevail, adversarial proceedings thwarted ongoing harmony, and all governmental administrations since the Western Zhou Dynasty two thousand years ago have had mediators).

24. *Id.* at 6–7. (explaining Aristotle's (384–322 B.C.E.) assertion that all men served as a public arbitrator during their sixtieth year, resolving civil cases; while parties could choose whether to take their dispute to an arbitrator, serving as an arbitrator was not a matter of choice).

25. See Stempel, *supra* note 6, at 309 n.32, 310. In the 1600's, for example, Puritans in Dedham included informal mediation in their covenant; Dutch colonists in New Netherland formed a nine-person board to serve as "friendly mediators and arbitrators;" and the colonial Virginia legislature encouraged parties to resolve conflict through means other than litigation. See LOVENHEIM, *supra* note 4, at 7.

26. One reason for this trend is that both federal and state courts and administrative bodies are requiring disputants to mediate. See, e.g., Sternlight, *supra* note 6, at 290–91. See *infra* notes 46–51 and accompanying text.

27. See BARRETT, *supra* note 22, at 182 ("Roscoe Pound, a celebrated Harvard law professor and highly regarded scholar, had earned a reputation for promoting court reform and improvements in the administration of justice . . . In 1976, a conference used his name to emphasize a similar interest in seeking improvement in courts and administration of justice. Chief Justice Warren Burger called the Pound Conference of lawyers to examine



Sander suggested that cases should be handled via alternative processes depending upon the nature of the dispute, the parties' relationship, the amount in dispute, and both the efficiency and cost of a process.<sup>28</sup> Sander maintained that courts should offer a number of choices at intake in addition to traditional litigation, to include negotiation, conciliation, mediation, and arbitration.<sup>29</sup> His introduction of the "multi-door courthouse" concept at this conference was a catalyst for more ADR involvement by the courts.<sup>30</sup>

Any method of resolving a dispute outside of litigation is generally considered ADR.<sup>31</sup> Among the most well known methods are negotiation, arbitration, and mediation.<sup>32</sup> Over the past fifty years, these three ADR methods have become more prevalent as they have increasingly been accepted as effective processes for resolving disputes outside of the formal court system.<sup>33</sup>

---

and discuss the inefficiencies of the justice system." ). See also KIMBERLEE K. KOVACH, *MEDIATION: PRINCIPLES AND PRACTICE* 21 (1994) (linking the Pound Conference with the birth of the modern ADR movement); Stempel, *supra* note 6, at 309 ("Many view the 1976 Pound Conference as the birth, or at least the kickoff, of the modern Court Reform/Alternative Dispute Resolution movement." ).

28. Frank E. A. Sander, *Varieties of Dispute Processing: Perspectives of Justice in the Future*, Address at the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice: Varieties of Dispute Processing (Apr. 7-9, 1976).

29. *Id.* Although Sander used the terms mediation and conciliation interchangeably, he noted "in some settings conciliation refers to the more unstructured process of facilitating communication between the parties, while mediation is reserved for a more formal process of meeting first with both parties and then with each of them separately." *Id.* at 115 n.14. See also Deborah R. Hensler, *Our Courts, Ourselves: How the Alternative Dispute Resolution Movement Is Re-Shaping Our Legal System*, 108 PENN. ST. L. REV. 165, 174-75 (2003) (describing Sander as being "in favor of courts that would provide a variety of dispute resolution techniques to citizens").

30. Quek, *supra* note 8, at 479. See also Boyarin, *supra* note 7, at 379 (stating that the process of institutionalizing ADR began in the wake of the Pound Conference); Andrea Kupfer Schneider, *Building a Pedagogy of Problem-Solving: Learning to Choose Among ADR Processes*, 5 HARV. NEGOT. L. REV. 113, 115 (2000) ("The current concept of ADR in the United States emerged from the 1976 Pound Conference focusing on the weaknesses of the adversarial system."). The closest ADR has come to a national court embrace was through the Civil Justice Reform Act of 1990, which "required all federal district courts to develop plans implementing procedures for ADR to combat cost and delay in civil litigation." Civil Justice Reform Act of 1990, 28 U.S.C. §§ 471-482 (2012). Consequently, by the mid-1990's, virtually all federal district courts and the majority of state courts had instituted mediation programs for most civil suits. See Press, *supra* note 8, at 823-24.

31. In contrast to ADR, litigation is governed by rules and takes place in a courtroom setting, with a judge or jury as the decision maker and lawyers usually representing the parties. See LOVENHEIM, *supra* note 4, at 2-4.

32. See, e.g., FEELEY & SHEEHAN, *supra* note 14, at 3-4.

33. See FOLBERG ET AL., *supra* note 9, at 455.

In negotiation, parties participate voluntarily without a third party facilitating the conflict resolution process; the parties themselves control process and outcome.<sup>34</sup> Negotiation fundamentals appear in Roger Fisher and William Ury's *Getting to Yes: Negotiating Agreement Without Giving In*, where the authors urge moving away from positional bargaining to negotiating on the merits around four basic points.<sup>35</sup> First, separate the people from the problem; second, focus on interests rather than positions; third, brainstorm numerous possibilities before deciding what to do; and finally, reach a result that is based on an objective standard.<sup>36</sup> Ultimately, however, the success of a negotiation will be based upon the parties' abilities to communicate effectively by expressing their feelings and fully listening to one another.<sup>37</sup>

In contrast to negotiation, arbitration is like a private court and usually occurs because parties to a contract agree that any future dispute regarding the agreement will be resolved through this process.<sup>38</sup> Parties can either handle administrative details themselves or hire an agency to do so.<sup>39</sup> Arbitration is often employed in labor and commercial disputes, wherein a neutral third party, the arbitrator, holds a hearing and issues a legally binding decision.<sup>40</sup> Usually arbitrators

---

34. See DWIGHT GOLANN & JAY FOLBERG, *MEDIATION: THE ROLES OF ADVOCATE AND NEUTRAL* 11 (2d ed. 2011).

The authors contrast negotiation with litigation as follows:

Negotiation and trial are polar opposites. Parties who opt for trial have relatively little control over either the process or outcome: The proceeding is a formal and public one, conducted under detailed procedural and evidentiary rules, with a judge in control. By contrast, the process at the other end of the spectrum—negotiation—gives parties maximum control over both the process and its outcome. Direct bargaining is an informal process, generally conducted in private and without set rules.

*Id.*

35. ROGER FISHER & WILLIAM URY, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* 10 (Penguin Books 2d ed. 1991) (drawing upon the work of the Harvard Negotiation Project and offering a straightforward, step-by-step, proven method for reaching mutually acceptable agreements in all types of conflict).

36. *Id.* at 10–11 (explaining that people should be guided to attack the problem rather than each other).

37. See FEELEY & SHEEHAN, *supra* note 14, at 7.

38. It was not until 1998 that courts in all states enforced arbitration awards and required parties to use arbitration if they had an agreement to do so. See BARRETT, *supra* note 22, at 73–74.

39. See FEELEY & SHEEHAN, *supra* note 14, at 53 (“Arbitration can be mandatory or voluntary and binding or non-binding.”).

40. See LOVENHEIM, *supra* note 4, at 3–4.

must be lawyers or law school graduates who have undergone requisite training and certification to appear on state-approved lists.<sup>41</sup>

Unlike arbitration, in mediation there is a third party known as a mediator who facilitates—but does not impose—a resolution between parties.<sup>42</sup> Mediation can be defined as a “process in which a disinterested third party (or *neutral*) assists the disputants in reaching a voluntary settlement of their differences through an agreement that defines their future behavior.”<sup>43</sup> While mediation encompasses many models, styles, and approaches, neutrality is pivotal to its success.<sup>44</sup>

## B. Mediation Practice Soars as the ADR Frontrunner

Of these three widely used ADR methods, mediation is the most rapidly growing field, in part due to its flexibility in being applied to both litigated and non-litigated conflicts.<sup>45</sup> Many courts require parties to participate in mediation before permitting the parties’ cases to be litigated.<sup>46</sup> Even in jurisdictions where mediation is not mandatory,

---

41. See FEELEY & SHEEHAN, *supra* note 14, at 64.

42. See LELA P. LOVE & JOSEPH B. STULBERG, *THE MIDDLE VOICE: MEETING CONFLICT SUCCESSFULLY* 5 (2d ed. 2013).

43. JOHN W. COOLEY, *MEDIATION ADVOCACY* 2 (2d ed. 2002) (stating that the primary ingredients of traditional mediation are: “(1) its voluntariness—a party can reject the process or its outcomes without repercussions—and (2) the mediator’s neutrality, or total lack of interest in the outcome.”). See also PICKER, *supra* note 20 (defining mediation in only one word, opportunity). “The [mediation] process offers the parties an opportunity to telescope issues in hours that might take years in litigation, to forge solutions based upon underlying interests, to preserve relationships and, quite obviously, to avoid the time, expenses and distractions of litigation.” *Id.*

44. See, e.g., IZUMI, *supra* note 10, at 77 (stressing that neutrality is critical to the process and that mediators must avoid even the appearance of partiality or prejudice throughout the mediation process); LOVE & STULBERG, *supra* note 42, at 5 (clarifying that what distinguishes a mediator is the personal and institutional duty to intervene without any preference for resolving a dispute in a certain way). See also FORREST S. MOSTEN, *Lawyer as Peacemaker: Building a Successful Law Practice Without Ever Going to Court*, 43 FAM. L.Q. 489, 492 (2009) (suggesting that the mediator who is a peacemaker goes beyond acting neutrally and, rather, makes peace by restoring harmony between parties in conflict).

45. See, e.g., Riskin & Welsh, *supra* note 8, at 870 (discussing the trend in state and federal trial and appellate courts to mandate or offer mediation in many civil non-family cases, and that lawyers currently voluntarily choose mediation for their cases, including in-house counsel who favor mediation over arbitration). See generally BOULLE ET AL., *supra* note 4; COOLEY, *supra* note 43; GOLANN & FOLBERG, *supra* note 34; KOVACH, *supra* note 27 (discussing the evolution of mediation); LOVE & STULBERG, *supra* note 42.

46. Courts in the early 1980’s began to mandate mediation in several areas, particularly custody disputes in divorce cases. See, e.g., Michele Desi, *California’s Answer: Mandatory Mediation of Child Custody and Visitation Disputes*, 1 OHIO ST. J. ON DISP. RESOL. 149, 176–77 (1985); Emery, *supra* note 11, at 241; Linda Silberman & Andrew Schepard, *Court-Ordered Mediation in Family Disputes: The New York Proposal*, 14 N.Y.U. REV. L. & SOC. CHANGE 741, 745–48 (1986). See also PICKER, *supra* note 20 (emphasizing the rapid rise in the use of

judges are likely to refer parties to mediation before setting the case for trial.<sup>47</sup> It may be, however, that mediation is the ADR frontrunner because of its many benefits.<sup>48</sup>

One of mediation's primary benefits is that it enables parties to engage in problem solving geared toward the future rather than dwelling upon past conflict.<sup>49</sup> An impartial third party usually assists parties to reach an agreement; the neutral can, however, focus on other things, such as helping parties improve and strengthen their relationship.<sup>50</sup> Indeed, the growing array of mediation services is simi-

---

mediation, and pointing to jurisdictions such as Texas, California and Florida where almost every case is mediated).

47. See, e.g., McCormack, Schultz & McCormack, *supra* note 7, at 152. The authors criticize automatic court referrals to mediation, whether through rules or common practices, and suggest such referrals dilute the traditional roles of judges. Indeed, taking automatic referral to the extreme, they imagine the development of the following rule:

A mediator will refer to the courts for trial only those cases that the mediator has decided are suitable for a trial in court. Otherwise, all cases will be required to be scheduled for mediation. In their sole discretion, mediators may refer a case to the courts for trial upon the parties' showing that their case would best be served by an adjudicated outcome.

*Id.*

48. Mediation and other ADR third-party processes are alternatives not simply to traditional litigation, but rather, unassisted settlement activities, such as party-to-party, lawyer-to-party, and lawyer-to-lawyer negotiation. Bush, *supra* note 9, at 6. The author describes the benefits of mediation over simple negotiation as follows:

[A mediator] can help you understand your situation—and your options and each other—better and more fully than you do now, and better than you will if you continue working on your own . . . . [R]esearch and experience has shown that gathering reliable information and analyzing it accurately is much easier when parties are working with a mediator . . . . And if you understand the situation, options and each other more completely and accurately, you will be able to make better decisions on what you want to do—to see if there is a deal that can be made; if there is one, to see how to move towards making it; and if not, to see what your other options are . . . . The bottom line: a mediator's assistance will help you make the best possible decisions for yourselves—which means a better chance of reaching settlement, and on better terms.

*Id.* at 14.

49. See BOULLE ET AL., *supra* note 4, at 3. The authors explain:

Specifically, the benefits of mediation can be grouped as follows: (1) greater participant control over the proceedings and outcome; (2) greater likelihood of preserving and enhancing the relationship of the participants; (3) greater access to creative and adaptable solutions; (4) quicker resolutions for participants; (5) less expensive proceedings for participants; and (6) conservation of court resources.

*Id.* Yet another often recognized benefit of mediation is the ability to restore meaningful relationships. See, e.g., Sander, *supra* note 28, at 33–35; Riskin, *supra* note 21, at 33.

50. See GOLANN & FOLBERG, *supra* note 34, at 89 (distinguishing mediation from negotiation in its involving a third party neutral, and from adjudication by virtue of its being informal, consensual, and generally private). Parties can improve their relationship through the process of transformative mediation, which can equip them to not only resolve

lar to a smorgasbord, with offerings designed to appeal to a wide variety of tastes.<sup>51</sup>

Irrespective of a particular type of mediation, two aspects of this ADR process are key to its ongoing popularity: mediator neutrality and parties' self-determination. First, it is precisely because of the neutral third party that disputing parties can achieve justice.<sup>52</sup> The neutral's behavior does not favor one disputing party over the other; a commitment to neutrality means that the mediator acts as a facilitator who neither voices an opinion about the case nor suggests how the conflict should be resolved.<sup>53</sup>

Second, self-determination is what many disputing parties value most about mediation.<sup>54</sup> The parties have the opportunity to control their own destiny.<sup>55</sup> Through the facilitated mediation process, the parties participate fully and express their views both to the mediator and to each other. Indeed, even when no agreement is reached, or a

---

their current dispute but also to handle future conflicts. See Robert A. Baruch Bush & Joseph P. Folger, *The Promise of Mediation* 52 (2005).

51. Three primary mediation models exist: facilitative, evaluative, and transformative; these models' features are sometimes combined, resulting in yet more mediation typologies. See Boulle et al., *supra* note 4, at 12–14 (“[F]ew mediators can be neatly associated with a single form of mediation.”). See, e.g., Robert A. Baruch Bush, *Mediation Skills and Client-Centered Lawyering: A New View of the Partnership*, 19 CLINICAL L. REV. 429, 439–45 (2013) (describing the transformative model as supporting the parties' qualitative change in their interaction through the mediator's reflecting their comments); COOLEY, *supra* note 43, at 19 (discussing the evaluative model whereby the mediator provides his or her assessment or recommendation as to settlement or some other solution). See *infra* note 53 and accompanying text.

52. See Joseph B. Stulberg, *Must a Mediator Be Neutral? You'd Better Believe It!*, 95 MARQ. L. REV. 829, 830 (2012) (explaining both that justice demands a neutral mediator and that mediation is designed as a process to promote justice).

53. See COOLEY, *supra* note 43, at 18 (explaining that the facilitative mediator encourages information sharing between parties to promote the parties' creative problem-solving, whether or not an agreement is reached).

54. See Bush, *supra* note 9, at 28 (explaining that the value of self-determination reflects parties' beliefs that they know what is most helpful for themselves in conflict just as they do in other life experiences); Robert A. Baruch Bush & Joseph P. Folger, *Reclaiming Mediation's Future: Re-Focusing on Party Self-Determination*, 16 CARDOZO J. CONFLICT RESOL. 741, 742 (2015) (describing self-determination as empowerment, through which party choice is revered above all else). See generally MODEL STANDARDS OF CONDUCT FOR MEDIATORS, *supra* note 4 (stating that mediation promotes voluntary decision making by the parties to the dispute).

55. See FEELEY & SHEEHAN, *supra* note 14, at 38. The authors describe this opportunity in the context of a mediator's opening statement setting the tone for mediation:

You have an opportunity today to take your case out of the hands of those third parties [either a judge or a jury] and end the uncertainty. You most likely will not get everything you want. Both sides have to give. But, if I do my job and you do your job, you will leave here with a settlement you can live with.

*Id.*

mediated settlement results in a less favorable outcome than might be obtained in court, most parties still characterize mediation as highly valuable.<sup>56</sup>

Mediators similarly value the benefits of mediation. It is the desire to serve<sup>57</sup> as well as to enjoy intrinsic satisfaction<sup>58</sup> that could draw law students toward mediation. These benefits, coupled with the ABA's recent incorporation of mediation into its revised Standard 304 relating to law clinics,<sup>59</sup> suggests that mediation will increasingly be employed in law school live clinics. Moreover, in keeping with the emphasis upon skills instruction, it is also likely that law schools will continue to expand their live clinic programs.

## II. Law School Live Mediation Clinics Are on the Rise and Offer Students Unique Practice-Ready Skills

Some law schools have had live clinics for more than forty years,<sup>60</sup> while others are just beginning to incorporate them into their programs.<sup>61</sup> Law schools are responding to employers who are clamoring

---

56. See Bush, *supra* note 9, at 19–20. Some scholars are critical, however, of coercion tainting the mediation process, particularly in the context of court-ordered mediation. See generally McCormack, Schultz & McCormack, *supra* note 7, at 152 (arguing that mandatory mediation is inconsistent with the traditional role of judges, and enables repeat players to create a justice system that fails to protect litigants); Nancy A. Welsh, *The Place of Court-Connected Mediation in a Democratic Justice System*, 5 CARDOZO J. CONFLICT RESOL. 117, 139 (2004) (emphasizing that court-connected mediation has diluted citizens' voices and reconciled them to the institutional reality of the court system). In federal and state courts, for both civil and criminal cases, coercion has been documented as either explicit or implicit. See Timothy Hedeem, *Coercion and Self-Determination in Court-Connected Mediation: All Mediations Are Voluntary, but Some Are More Voluntary Than Others*, 26 JUST. SYS. J. 269, 273 (2005). Explicit coercion exists when a reluctant party is persuaded to participate in mediation for fear of prosecution otherwise; implicit coercion exists when judges who make referrals to mediation state they will dismiss a case if successful mediation occurs. See *id.*

57. See, e.g., LOVENHEIM, *supra* note 4, at xi (emphasizing a mediator's strong motivation to be of service); MOSTEN, *supra* note 7, at ix (stating that there is no more noble and worthwhile profession than being a mediator, particularly in consideration of the millions of unresolved conflicts that exist today).

58. See, e.g., LOVENHEIM, *supra* note 4, at xi ("Most people, after doing their first mediation, levitate for a time. Your hat grows three-fold, you feel wonderful and want to do nothing but mediate for the rest of your career."); Picker, *supra* note 20, at 6 (stating that mediating and resolving a dispute provides enormous personal satisfaction).

59. See ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, *supra* note 5.

60. See Karen Sloan, *Clinics Let Students Get Real*, NAT'L L.J. (May 18, 2015) ("Live clinics" refers to students working with "live clients" with real disputes, rather than engaging in simulations.); Cynthia A. Savage, *Recommendations Regarding Establishment of a Mediation Clinic*, 11 CARDOZO J. CONFLICT RESOL. 511, 513 n.6 (2010).

61. See Savage, *supra* note 60, at 512 n.4 (noting that the proliferation of law school mediation clinics both adds to and illustrates the growing number of lawyer mediators). See

for new law graduates who can immediately apply skills based on “real-world” training.<sup>62</sup> Such training is premised on experiential learning,<sup>63</sup> which includes learning to practice law in live clinic settings.<sup>64</sup> Six law schools require students to participate in at least one clinic, and forty law schools guarantee a clinic spot for all of their students.<sup>65</sup> Hand-in-hand with the proliferation of law school clinics is the in-

---

also Stephen Daniels et al., *Analyzing Carnegie’s Reach: The Contingent Nature of Innovation*, 63 J. LEGAL EDUC. 585, 609 (2014) (finding that new clinic initiatives were especially prominent in the wake of the 2007 report of the Carnegie Foundation for the Advancement of Teaching); Moffitt, *supra* note 9, at 42 (suggesting that the number of law school mediation clinics is “far greater” than the AALS data indicate); Riskin, *supra* note 21, at 31 (“[I]n the last decade, mediation programs have proliferated at a breathtaking rate in this country.”); James H. Stark, *Preliminary Reflections on the Establishment of a Mediation Clinic*, 2 CLINICAL L. REV. 457, 458 (1996) (explaining that although some mediation clinics date back to the mid-1980’s, “most are of much more recent vintage”).

62. See Sloan, *supra* note 60. See also Daniels et al., *supra* note 61, at 628 (“Law schools are being challenged to bridge the ‘skills gap’ between traditional doctrinal education and practical skills.”); Tokarz & Appell, *supra* note 6, at 2 (“Many legal educators believe . . . curricular reforms are essential if we are to prepare graduates to practice in a legal world in which negotiation, mediation, and other forms of dispute resolution are everyday occurrences.”). Differences of opinion exist, however, as to whether law students with more practical training will be significantly more successful in obtaining jobs. Compare Neil J. Dilloff, *Law School Training: Bridging the Gap Between Legal Education and the Practice of Law*, 24 STAN. L. & POL’Y REV. 425, 427-28 (2013) (“[T]hose law schools that are able to turn out ‘finished’ work-ready graduates will move to the head of the pack, and their graduates will have a leg-up in this uncertain job market.”), with Jason Webb Yackee, *Does Experiential Learning Improve JD Employment Outcomes?* (Univ. of Wisc. Sch. of Law Legal Studies Research Paper Series, Paper No. 1343, 2015), available at <http://ssrn.com/abstract=2558209> (“[T]here is not much evidence that law schools that provide greater opportunities for skills training have substantively better employment outcomes than do those law schools that provide fewer opportunities.”).

63. The ABA mandates that all law students must have at least six hours of experiential learning as part of their legal education. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 303(a)(3). California is going further; it requires fifteen hours of experiential learning to sit for the California bar. New York, Illinois and other jurisdictions are considering similar mandates; California and New York together include over twenty-five percent of all lawyers admitted to the bar. See Finkelstein, *supra* note 1, at 629 n.21. See also Karen Sloan, *Legal Education Due for a Makeover: ABA’s House of Delegates Prepares to Vote on a Sweeping Revision of Its Accreditation Standards*, NAT’L L.J. (Aug. 4, 2014) (quoting Dean David Yellen of the Loyola University Chicago School of Law: “If there was a theme to what the comprehensive [ABA] review accomplished, it moved legal education into a 21st century model . . . requiring more practical skills training.”).

64. See Finkelstein, *supra* note 1, at 639 (“Clinics are an integral part of training law students in practical skills and a pairing of clinical and experiential learning presents a highly compatible approach to creating the ‘practice aware’ law graduate.”) The author cautions, however, that clinics are restricted both by the types of conflicts their clients present and the capabilities of the law students to mediate such conflicts. *Id.*

65. See Sloan, *supra* note 60.

crease in faculty-supervisor positions in such clinics; the number increased from 154 in 2010 to 176 in 2013.<sup>66</sup>

### A. Clinic Students Learn “Head” Mediation Skills

Live clinics provide law students with a unique experience. Students take on a case from its inception, interview the client and gather information about a dispute or court claim, negotiate or mediate settlements, and possibly appear in court on the client’s behalf. All of these activities occur while the student is under the guidance of experienced legal experts.<sup>67</sup> As opposed to a practicum course, where clients are the primary responsibility of another group or attorney, in live clinics the clients are solely the responsibility of the law school students and their supervising attorneys.<sup>68</sup> These supervisors typically guide students in a graduated process to learn and develop the requisite skills for representing clinic clients at all stages of litigation or assisting them in an ADR process, including mediation.<sup>69</sup>

Effective teaching and learning within the context of a mediation clinic is related to a concept over 400 years old: “Tell me and I will forget; show me and I may remember; But, involve me and I will understand!”<sup>70</sup> Professor Donald A. Schon, well known as one of the primary proponents of reflective learning, summarized how students learn in a speech in 1992 to the American Association of Law Schools.<sup>71</sup> Professor Schon emphasized that students: (i) learn by doing; (ii) in the company of a senior practitioner; (iii) with others who

---

66. *See id.*

67. Live clinics are integral to experiential learning, which is key to developing professional skills. *See, e.g.,* Finkelstein, *supra* note 1, at 625–26 (stating that experiential learning deepens learning, enhances retention and facilitates application to new situations).

68. *See* Delece Smith-Barrow, *Consider Practicums When Deciding on a Law School*, U.S. NEWS & WORLD REPORT (May 7, 2015), <http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2015/05/07/consider-practicum-offerings-when-deciding-on-a-law-school>.

69. *See* Savage, *supra* note 60, at 528–29. The author describes the following four steps as an ideal approach to teaching students to conduct mediation:

First, students begin by observing a mediation/conflict resolution intervention and debrief, reflect and discuss just as they will when they actively participate in later cases. Second, the student co-mediate with their supervisor. Third, students co-mediate with each other while the supervisor observes and intervenes if necessary. Finally, if and when the supervisor feels the student is ready, the student mediates solo while the supervisor observes and intervenes if necessary.

*Id.*

70. C. Michael Bryce, *ADR Education from a Litigator/Educator Perspective*, 81 ST. JOHN’S L. REV. 337, 367 (2007) (“Conflicting anecdotal information suggests that either Confucius, Lao Tsu, or Native American sages may be credited with this quotation.”).

71. *See* Schon, *supra* note 13, 243–48; *see also infra* notes 81–85 and accompanying text.



are learning; (iv) in a virtual world representing the practice.<sup>72</sup> A law school mediation clinic embodies all of these aspects, providing an ideal setting in which law students learn to think, actively listen, and practice like attorney mediators.<sup>73</sup>

Law school clinics incorporate a number of approaches to mediation, with the most prevalent being facilitative, evaluative, transformative, and narrative.<sup>74</sup> Of these, the facilitative or "problem-solving" mediation process is the most common.<sup>75</sup> In facilitative mediation, "the mediator conducts the process along strict lines in order to define the problem comprehensively, focusing on the parties' needs and concerns and helping them to develop creative solutions that can be applied to the problem."<sup>76</sup> While the facilitative mediator may question and use other techniques to probe a solution's quality and practicality, he or she does not offer any opinions as to its suitability or viability.<sup>77</sup>

The variety of disputes law school mediation clinics address is considerable. Disputes cover both civil and criminal contexts, and arise in community and court settings.<sup>78</sup> Cases can involve, for example, landlord-tenant, truancy, civil rights, small claims, education, civil, torts, criminal and consumer cases, as well as community and neighbor conflicts.<sup>79</sup> Some law school mediation clinics partner with local

---

72. See Schon, *supra* note 13, at 248; see also Finkelstein, *supra* note 1, at 625.

73. An important clinical instructional component for effective mediation is active listening, in which students learn to reflect back to what they hear clients say. See DAVID A. BINDER & SUSAN C. PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* 20-37 (1977) (identifying active listening as the key to client-centered counseling). See also Laurie A. Lewis, *Winning the Game of Appellate Musical Shoes: When the Appeals Band Plays, Jump from the Client's to the Judge's Shoes to Write the Statement of Facts Ballad*, 46 WAKE FOREST L. REV. 983, 988-91 (2011) (emphasizing the importance of actively listening and being "present" to a client to hear and tell his or her story fully and accurately); Stark, *supra* note 61, at 478-79 (characterizing active listening as a particularly critical skill given the heightened emotions during most mediations). See generally DOUGLAS E. ROSENTHAL, *LAWYER AND CLIENT: WHO'S IN CHARGE?* (1974) (arguing that the power should be shared between the lawyer and the client in the interview process).

74. See Savage, *supra* note 60, at 517 (summarizing some of the main orientations and suggesting that exposing students to several mediation models is best). But see Stark, *supra* note 61, at 485 ("I do not know whether introducing students to . . . contrasting visions of mediation will empower students to make their own choices or simply confuse them.").

75. See Bush, *supra* note 51, at 436 (stating that the "facilitative" or "problem-solving" mediation process is the most prevalent in law school clinics).

76. BOULLE ET AL., *supra* note 4, at 12.

77. See *id.* at 13.

78. See Stark, *supra* note 61, at 464 (summarizing some of the most common types of disputes law school clinic mediators handle).

79. See *id.* Cases involving custody and other related family disputes are also handled by clinics, but to a lesser extent as "family relationships are more complex legally, factually

public schools and universities to mediate disciplinary actions and other types of education-related cases.<sup>80</sup>

Despite certain programmatic differences, mediation clinic programs universally include developing reflective practice skills.<sup>81</sup> Such skills are implemented both during an intervention, known as “reflection-in-action,”<sup>82</sup> and after the fact. “Reflection in action is a process of explicitly thinking about an action in the midst of the action in order to experiment with a new action.”<sup>83</sup> Reflection after the fact permits a thorough review of an action and assists in stimulating a

---

and psychologically.”; Savage, *supra* note 60, at 525. See also Stark, *supra* note 61, at 471 n.20 (quoting a law student who said, “I am very uncomfortable with the Family Court forum. I really don’t feel qualified or able to do the things that are most important in the family setting.”).

80. See, e.g., *Course Catalog: Mediation Clinic*, UNIV. OF MD. FRANCIS KING CAREY SCH. OF LAW, [https://www.law.umaryland.edu/academics/program/curriculum/catalog/course\\_details.html?coursenum=533C](https://www.law.umaryland.edu/academics/program/curriculum/catalog/course_details.html?coursenum=533C) (last visited Sept. 3, 2015) (providing mediation clinic students the opportunity to mediate “small claims” civil cases in the Baltimore City District Court and employment discrimination cases, and assisting with mediation through the School Conflict Resolution Education Program for K-12 public schools in disputes involving students, staff and parents); *Mediation Clinic*, UNIV. OF PENN. SCH. OF LAW, <https://www.law.upenn.edu/clinic/mediation/> (last visited Sept. 3, 2015) (offering students mediation experience in civil litigation, criminal, domestic, campus student discipline and international child custody disputes and employment discrimination matters); *Mediation Clinic*, UNIV. OF WASH. SCH. OF LAW, <http://www.law.washington.edu/Clinics/Mediation/> (last visited Sept. 3, 2015) (mediating employer-employee, buyer-seller, landlord-tenant, consumer-business, housemates-roommates, students-staff, consumer-business, co-workers, and neighbors conflicts); *Mediation Clinic*, N.Y. UNIV. SCH. OF LAW, <http://www.law.nyu.edu/academics/clinics/semester/mediation> (last visited Sept. 3, 2015) (offering students the opportunity to mediate in NYC Small Claims Courts, New Jersey Small Claims and Civil Court, New Jersey State Court Foreclosure Mediation Program, New York City Office of Administrative Trials and Hearings, and NYU Residential Life Conflict Management Program); *Community Mediation Clinic*, UNIV. OF MINN. LAW SCH., <http://www.law.umn.edu/current/alphabetical-course-list/details.html?courseNumber=7040> (last visited Sept. 3, 2015) (affording students opportunities to participate in wide-ranging facilitative community mediation in housing, family, juvenile, criminal, school, business, elder and employment arenas, and law students who successfully complete the fall course become eligible to be listed on the Minnesota Rule 114 Roster of Qualified Neutrals).

81. See Sayantani DasGupta & Rita Charon, *Personal Illness Narratives: Using Reflective Writing to Teach Empathy*, 79 ACAD. MED. 351, 351–52 (2004) (“Reflection is a ‘process of examining and exploring an issue of concern, triggered by an experience, which creates and clarifies meaning in terms of self, and which results in a changed conceptual perspective.’”) (quoting Sue Atkins & Kathy Murphy, *Reflection: A Review of the Literature*, 18 J. ADVANCED NURSING 1188, 1189 (1993)).

82. See Schon, *supra* note 13, at 244.

83. See Savage, *supra* note 60, at 515. See generally DONALD A. SCHON, *THE REFLECTIVE PRACTITIONER: HOW PROFESSIONALS THINK IN ACTION* (1983) (providing an in depth examination of reflective learning processes).

model for reflecting-in-action.<sup>84</sup> Both reflective processes are essential tools in clinical teaching and vital skills for students to bring with them in their later conflict resolution work.<sup>85</sup>

While all clinics incorporate reflective practice into their programs, in mediation clinics students have an unparalleled opportunity to assist in conflict resolution early on in disputes, before parties' positions harden.<sup>86</sup> Because the emphasis in mediation is not on determining "who is right and who is wrong, or who wins and who loses,"<sup>87</sup> students are encouraged to treat each conflict as unique.<sup>88</sup> They can help parties "brainstorm"<sup>89</sup> and be creative in fashioning solutions suited to the parties' particular interests and needs.<sup>90</sup> For example, in mediating family custody disputes, students can help parents agree on a custody plan that works best for them and their children, rather than being court-ordered to follow an imposed regimen.<sup>91</sup>

---

84. See, e.g., Victoria J. Marsick & Alfonso Sauquet, *Learning Through Reflection*, in THE HANDBOOK OF CONFLICT RESOLUTION: THEORY AND PRACTICE 384 (Morton Deutsch & Peter T. Coleman eds., 1st ed. 2000).

85. See Savage, *supra* note 60, at 515–16.

86. See Bryce, *supra* note 70, at 338.

87. See Riskin, *supra* note 21, at 34.

88. See *id.*

89. Mediation training draws upon "brainstorming" to elicit new ideas and to get the parties to view solutions from a number of perspectives. See, e.g., Harold I. Abramson, *Problem-Solving Advocacy in Mediations*, 59 DISP. RESOL. J. 56, 61 (2004). A related concept is "thinking outside the box," which generally is considered critical to successful mediation. See Charles B. Craver, *The Negotiation Process*, 27 AM. J. TRIAL ADVOC. 271, 323 (2003).

90. For a similar legal dispute, different parties may desire different resolutions. See DAVID A. BINDER ET AL., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* 3 (1991), where the authors explain:

[I]dentifying and helping clients resolve problems requires more than knowledge of relevant legal principles. You also need to know about clients' individual circumstances if you are to help them shape satisfactory solutions. Thus, two clients may have the same 'legal' problem, but a solution that satisfies one may be unthinkable to the other.

*Id.*

91. When I practiced as a family mediator, I often posed this question to parents: "Would you rather have a stranger in a black robe dictate when and where you will see your children, or would you rather determine that yourselves?" Indeed, most domestic relations cases are better handled in forums other than courtrooms. See Elizabeth Barker Brandt, *The Challenge to Rural States of Procedural Reform in High Conflict Custody Cases*, 22 U. ARK. LITTLE ROCK L. REV. 357, 358 (2000) ("[Mediation] mirrors more effectively the behavior necessary for good on-going family relations than does the adversary system."); Bill Ezzell, Comment, *Inside the Minds of America's Family Law Courts: The Psychology of Mediation Versus Litigation in Domestic Disputes*, 25 LAW & PSYCHOL. REV. 119, 127 (2001); One family law judge frames it this way:

What we know . . . is that a litigation process to resolve family issues doesn't work, because there is nothing cooperative about it. It depends upon an authority figure imposing orders on parents that they don't like, and so they resist them. . . .

## B. Clinic Students Learn “Heart” Mediation Skills

Along with providing unique skills instruction,<sup>92</sup> mediation clinics offer students an orientation absent the adversarial mentality that pervades legal education.<sup>93</sup> Classroom discussions focus on legal rules and analyzing how those rules apply to numerous hypothetical situations.<sup>94</sup> Such discussions frequently view client relationships in the abstract<sup>95</sup> rather than as something to cultivate.<sup>96</sup> In contrast, a mediation clinic instructs students on the critical importance of devel-

---

[L]itigation only escalates these disputes rather than resolving them. . . . That is what litigation is about and that is how lawyers are trained. I can say a million times from the bench that I'm not interested in snide remarks and digs at the other lawyer and your transference on your client. . . . That kind of routine behavior by lawyers feeds into whatever anger and turmoil the litigants are already in. I watch this series of escalations occur in my court. . . . [C]hildren suffer most. If you care at all about kids, you've got to hate this system.

Pauline H. Tesler, *Donna J. Hitchens: Family Law Judge for the Twenty-First Century*, 2 COLLABORATIVE Q. 1, 3 (2000).

92. For a comprehensive listing and explanation of skills embodied in a mediation clinic's program, see, e.g., Stark, *supra* note 61, at 473–76 (summarizing them in five categories, including communication, impartiality, agenda development, problem-solving, and drafting).

93. See, e.g., Riskin, *supra* note 21, at 48 (stating that ninety percent of what transpires in law school revolves around litigation in which disputes are resolved through application of rules by third parties).

94. See Kristin B. Gerdy, *Clients, Empathy, and Compassion: Introducing First-Year Students to the “Heart” of Lawyering*, 87 NEB. L. REV. 1, 32 (2008) (explaining that students are taught a text-based rather than a client-based orientation to law); Riskin, *supra* note 21, at 43–44. The author contrasts the “lawyer's philosophical map” with how a mediator approaches working with clients:

What appears on this map is determined largely by the power of two assumptions about matters that lawyers handle: (1) that all disputants are adversaries—i.e., if one wins, the others must lose—and (2) that disputes may be resolved through applications, by a third party, of some general rule of law. These assumptions, plainly, are polar opposites of those 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.

By being exposed to mediation in law school, students can enrich their “philosophical maps” and expand their understanding of what lawyers can do. See *id.* at 51.

95. See V. Pualani Enor & Lois H. Kanter, *Who's Listening? Introducing Students to Client-Centered, Client-Empowering, and Multidisciplinary Problem-Solving in a Clinical Setting*, 9 CLINICAL L. REV. 83, 87 (2002).

96. As ADR is deeply entrenched within our legal system, all law students should be taught how to develop meaningful client relationships. See, e.g., JULIE MACFARLANE, *THE NEW LAWYER: HOW SETTLEMENT IS TRANSFORMING THE PRACTICE OF LAW* 15 (2008) (emphasizing the disconnect between law school instruction and the skills required by students to thrive in an environment of dispute resolution and the accompanying change in client expectations).

oping relationships with their clients.<sup>97</sup> While using their minds to understand and practice the law, student mediators also use their hearts to demonstrate empathy toward their clients.<sup>98</sup> Mediation practice encourages a student to “understand both sides of a case—not just with his [or her] head but with his [or her] heart as well.”<sup>99</sup>

Mediation is fraught with emotions. Communications are often in the context of emotionally laden nonverbal behavior.<sup>100</sup> Wrapped up in every parties’ dispute is a host of emotions, such as shame, rage, confusion, despair, hate, embarrassment and guilt.<sup>101</sup> In learning to be empathic, students can begin to understand that legal rules are not all that matters; “values such as recognition, cooperation, civility and forgiveness often matter as much or more [than] . . . justice.”<sup>102</sup>

On the other hand, mediation practice is not for everyone. Ideally, students should be adept at recognizing and reading nonverbal behavior and comfortable in handling others’ emotions. Teaching students the value of empathy in working with clients is one thing, but “[i]t is questionable how much we can teach students to be em-

---

97. See, e.g., Savage, *supra* note 60, at 524–25 (describing different areas of conflict and some of the types of client relationships clinic participants are apt to mediate, noting that those involving families can be particularly challenging due to their complexity). See generally Enor & Kanter, *supra* note 95; Gerdy, *supra* note 94; Riskin, *supra* note 21; Stark, *supra* note 61.

98. See Gerdy, *supra* note 94, at 23 (explaining that demonstrating empathy requires trying to experience the world from the client’s viewpoint).

99. Riskin, *supra* note 21, at 58. Because mediation embraces a process involving the heart, healing can sometimes result. See, e.g., Susan Daicoff, *Law as a Healing Profession: The “Comprehensive Law Movement,”* 6 PEPP. DISP. RESOL. L.J. 1, 4 (2006) (discussing the transformational potential of law as a healing profession that could make the “legal system a more inspiring, humane, and hospitable place for clients, lawyers, judges, and indeed society as a whole”).

100. See Gay Gellhorn, *Law and Language: An Empirically-Based Model for the Opening Moments of Client Interviews*, 4 CLINICAL L. REV. 321, 348 (1998) (“[Mediators] should expect and be prepared to see, hear and accept emotion. . . . The critical piece is to recognize and explicitly . . . acknowledge emotional content.”). It is perhaps not surprising, therefore, that “many mediators in court-connected settings are . . . health professionals, including social workers and psychologists.” James Alfini & Debra Berman, *Lawyer Colonization of Family Mediation: Consequences and Implications*, 95 MARQUETTE L. REV. 887, 894 (2012).

101. See, e.g., ROGER S. HANCOCK & PETER B. KNAPP, *LAWYERING PRACTICE AND PLANNING* 59 (2d ed. 2003) (“All clients arrive . . . with some kind of emotional stake in the matter. . . . A client may feel concern and anxiety, pain and outrage, happiness and joy, or sadness and depression.”).

102. Stark, *supra* note 61, at 502. The author states that effective mediation requires being “able to work comfortably at the intersection of thought and feeling.” Mediation also offers students the potential for witnessing parties being able to heal their personal and professional relationships. See Riskin & Welsh, *supra* note 8, at 869.

pathic.”<sup>103</sup> Moreover, students who are not attuned to the deeper relational needs of the parties are unlikely to have success in facilitating truly satisfying solutions to conflicts.<sup>104</sup> Yet, even for those students for whom mediation practice is not a good fit, arguably all students should study and observe mediation given its place as the ADR method of choice.<sup>105</sup>

Upon completion of a mediation clinic, those students who are attracted to mediation are poised well to move outside the law school clinic walls and explore mediation training and practice opportunities in the community. Students likely will have already developed some connections in the field through their clinic experiences.<sup>106</sup> Some may be inclined toward a certain type of mediation model or case. The time is ripe for the skilled law clinic student mediator to consider more training and experience both in light of his or her interests and relevant state requirements.

---

103. Stark, *supra* note 61, at 495. See also Urska Velikonja, *Making Peace and Making Money: Economic Analysis of the Market for Mediators in Private Practice*, 72 ALB. L. REV. 257, 278 (2009) (“A mediation trainer cannot . . . ‘teach empathy.’ She cannot teach the natural instinct and intuition.”). While perhaps it is difficult to teach students to be empathic, interdisciplinary education offers students the opportunity to merge law and psychology. See generally Amy G. Applegate, Brian M. D’Onofrio & Amy Holtzworth-Munroe, *Training and Transforming Students Through Interdisciplinary Education: The Intersection of Law and Psychology*, 47 FAM. CT. REV. 468 (2009) (describing a joint training of law students and psychology students at Indiana University-Bloomington involving a divorce mediation clinic and academic coursework); Robin Ballard & Mary Nyman, *Interdisciplinary Law and Psychology Training at Indiana University*, 47 FAM. CT. REV. 485 (2009) (illustrating the experience of a third-year law student who was also a first-year clinical psychology student who took advantage of Indiana University’s interdisciplinary program).

104. See Emery, *supra* note 11, at 239 (exposing students to various types of dispute resolution is a vital component of the law school curriculum); Stark, *supra* note 61, at 504 (“[A] mediation clinic . . . is the only clinic that I could conceivably imagine *requiring* of all law students if I were the czar of a law school.”).

105. See David Dominguez, *Equal Justice from a New Perspective: The Need for a First-Year Clinical Course on Public Interest Mediation*, 2006 UTAH L. REV. 995, 1015 (2006) (emphasizing the importance of teaching mediation and other problem-solving skills to effectuate equal justice).

106. As all law school clinics work with live clients with live disputes in one form or another in the community, student mediators will have already been exposed to various persons and organizations in the mediation field. Even if a student does not practice mediation in a law school clinic, he or she may have had the benefit of some other experiential learning providing a bridge to obtaining community mediation training. The student may also have been introduced to mediation through the law school curriculum. See, e.g., A. G. Harmon & Olivia Farrar, *Lawyering Outside Lawsuits: Incorporating Negotiation, Settlements, and Mediations into the Legal Writing Curriculum*, 19 PERSP.: TEACHING LEGAL RES. & WRITING 42, 43 (2010) (employing simulated mediation with first-year students involving their spring research and writing problem, using an experienced mediator while students play the roles of parties, attorneys and witnesses).

### III. Community Mediation Training and State Requirements for Mediators

As mediation continues to soar in popularity, so do the opportunities for community-based mediation training.<sup>107</sup> Basic training is sometimes supplemented by specialized training, such as a program to become court-certified to conduct family mediation. While most states impose minimum educational and experiential mediator requirements to practice in certain settings, and some require certification to mediate in court-connected cases, no state mandates that a mediator be licensed to conduct a mediation practice.<sup>108</sup> Because there is such wide variation across states as to mediator qualifications, however, aspiring mediators must look to the state rules where they hope to practice.

#### A. Basic and Advanced Mediation Training

Basic mediation training is offered in such settings as community mediation centers, universities, and private dispute resolution organizations.<sup>109</sup> For the law student seeking to do mediation while still in law school, a community mediation center's training is most likely the optimal avenue through which to do so.<sup>110</sup> Traditionally, such centers primarily handled neighborhood-related disputes, but now their mediators routinely mediate a "mix of neighborhood, consumer, small-business, assault, harassment, victim-offender-reconciliation, and family disputes."<sup>111</sup> Although trained volunteers often mediate disputes, some centers pay mediators a modest stipend.<sup>112</sup>

Basic mediation training typically involves a twenty-five to forty-hour program.<sup>113</sup> A basic course will cover such things as an overview

---

107. See LOVENHEIM, *supra* note 4, at 101 ("As mediation has grown in popularity, mediator training has become a good-size industry."); see also Savage, *supra* note 60, at 534 n.66 (offering an example where a law school clinic mediation clinic partnered with a state's continuing legal education entity to provide a forty-hour basic mediation course to a mixed group of lawyers and law students).

108. See *infra* notes 122-24 and accompanying text.

109. See LOVENHEIM, *supra* note 4, at 101.

110. See *id.* at 53, 103 (describing the rapid increase in the number of community mediation centers as well as the inexpensive cost of undertaking mediation training in this environment).

111. See *id.* at 103.

112. See *id.* at 54.

113. See MOSTEN, *supra* note 7, at 53; see also FEELEY & SHEEHAN, *supra* note 14, at 31 (stating that a forty-hour program is usually required); LOVENHEIM, *supra* note 4, at 104 (explaining that twenty-five hours was customary years ago, but now forty hours is the norm given the addition of such topics as mediator ethics and cross-cultural differences).

of mediation's values, functions, and interpersonal skills; active listening and communication skills; nature and types of conflicts; roles of the parties; issues of neutrality and confidentiality; nuts and bolts of starting a mediation practice; drafting agreements; handling diversity, such as gender and cultural differences; and overall trends in the mediation profession.<sup>114</sup> Just as in the mediation law clinic, a trainee observes experienced trainers conduct mediations, and then participates in simulated experiences where he or she role-plays as a mediator and a party to the mediation, as well as a fact witness, an expert witness, and a lawyer.<sup>115</sup>

Following basic training, trainees become apprentices. Community mediation centers customarily require each of the following for several mediations before a trainee can mediate on his or her own: (1) silent observation of experienced mediators conducting mediation; (2) co-mediation with experienced mediators; and (3) solo mediation with experienced mediators as observers.<sup>116</sup> An apprenticeship-type graduated process is also required of certified mediators.<sup>117</sup>

Advanced mediation training could be an option for the post-graduate law student. Categories of advanced training include: process and skills courses; substantive courses; practice development courses; and policy and trends.<sup>118</sup> Divorce mediation is a popular area for advanced training because of a strong and ongoing demand.<sup>119</sup> Other specialized areas for training include health care, environment, public policy, employment, real estate and securities.<sup>120</sup> Another rapidly emerging field for specialized training is online mediation.<sup>121</sup> Some mediators take specialized training to meet requirements for state certification.

---

114. See, e.g., Mosten, *supra* note 7, at 53–54.

115. MOSTEN, *supra* note 7, at 55 (“Your colleagues in the training room may be your best trainers. You will talk with each other about difficult concepts, share the experience of being critiqued, and even critique each other.”).

116. See LOVENHEIM, *supra* note 4, at 104 (contrasting this preparation process with lawyers who, after being admitted to the bar, may practice in court without ever having set foot in a courtroom or handling a case under the supervision of an experienced attorney).

117. See, e.g., FEELEY & SHEEHAN, *supra* note 14, at 31–32.

118. See MOSTEN, *supra* note 7, at 61–63 (providing examples of the different broad categories of advanced training).

119. See LOVENHEIM, *supra* note 4, at 110 (“[M]ost people who make a full- or part-time career in mediation today do so as divorce mediators.”).

120. See *id.* at 115–17.

121. For an overview of on-line mediation and the training involved, see RESOLVE MEDIATION SERVICES, INC., <http://www.mediators.com> (last visited Mar. 1, 2016), MEDIATE.COM, <http://www.mediate.com> (last visited Mar. 1, 2016), or contact on-line private dispute resolution companies.



## B. State Mediator Qualifications and Certification

While no state requires that a mediator be licensed, most states have minimum educational and experiential requirements for mediators to mediate certain types of cases in specific settings.<sup>122</sup> Other states require certification, particularly in court-connected cases such as family disputes. Certification has dual purposes: “(1) to establish qualifications for mediators who receive funding from state government or who receive referrals from the courts or other agencies; and (2) to provide information about mediator qualifications for parties, attorneys, courts, and members of the public as they exercise free market choice among private mediators.”<sup>123</sup> Parties’ free choice in selecting mediators is driven primarily by reputational markets; success in the marketplace, however, does not necessarily equate with mediator quality.<sup>124</sup>

State statutes addressing mediation often conflict, particularly in defining mediation and identifying the scope of, and exceptions to, confidentiality.<sup>125</sup> The Uniform Mediation Act (“UMA”),<sup>126</sup> approved

---

122. See Boulle et al., *supra* note 4, at 305 (“[T]here is no formal process for review and approval of a mediator’s qualifications prior to his practicing mediation, at either the national or state level, although most states do have minimal requirements to serve as a mediator in court-connected disputes.”); see also Michael Moffitt, *The Four Ways to Assure Mediator Quality (And Why None of Them Work)*, 24 OHIO ST. J. ON DISP. RESOL. 191, 204 (2009) (“[G]overnment has no ability to exclude anyone from the general practice of mediation.”).

123. See *State Requirements for Mediators*, MEDIATION TRAINING INST. INT’L, <http://www.mediationworks.com/medcert3/staterequirements.htm> (last visited Jan. 11, 2016). Certification is often required for court-annexed mediation programs, but all states are not necessarily embracing more restrictive standards for mediators. See Moffitt, *supra* note 122, at 217 (“Florida maintained rules for almost twenty years that limited the pool of Circuit Court Mediators to members in good standing of the Florida Bar with at least five years of Florida practice. . . . The Florida Supreme Court recently dropped the requirement that these mediators be attorneys.”). Yet, most court-connected mediators have some minimal level of qualifications that includes training and experiential background. See Press, *supra* note 8, at 836.

124. See Moffitt, *supra* note 122, at 209–11 (cautioning against equating mediator reputation with quality of services given there exist: (1) few conspicuous indicators of quality; (2) severe restrictions concerning confidentiality of mediation processes; (3) primarily solo mediator practitioners or mediators in very small firms; and (4) few repeat players with multiple iterations to enhance the reliability of reputational markets). See also RESOLVE MEDIATION SERVICES, INC., *supra* note 121 (“No standards or qualifications should be imposed upon any person chosen and agreed to by the parties. These qualifications should not prevent parties having free choice of process, program, and the individual neutral.”) (quoting the Kansas Supreme Court, in Court Rule 902, addressing mediator qualifications for court referrals and state-approved mediation programs, and stating such language is typical of state statutes generally).

125. See BOULLE ET AL., *supra* note 4, at 306 & n.3 (stating that there were more than 2,500 different state laws bearing upon some aspect of mediation).

by the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) in 2001,<sup>127</sup> was an effort to bring some clarity and uniformity to the field of mediation.<sup>128</sup> In particular, the UMA’s core purpose was to preserve confidentiality of mediation proceedings.<sup>129</sup> Currently, twelve states have enacted the UMA.<sup>130</sup>

The Model Standards of Conduct for Mediators<sup>131</sup> also incorporate a provision for confidentiality, but are more broadly framed around ethical guidelines for mediators practicing in all contexts.<sup>132</sup> The standards “serve three primary goals: to guide the conduct of mediators; to inform the mediating parties; and to promote public confidence in mediation as a process for resolving disputes.”<sup>133</sup> They are aspirational in nature and often referenced by courts, legislatures, and administrative entities in establishing certification requirements.<sup>134</sup>

In 2011, the Association for Conflict Resolution drafted the Model Standards for Mediator Certification Programs.<sup>135</sup> These stan-

---

126. Uniform Mediation Act (Drafted by Nat’l Conference Comm’rs on Uniform State Laws) (last revised or amended 2003), *available at* [http://www.uniformlaws.org/shared/docs/mediation/uma\\_final\\_03.pdf](http://www.uniformlaws.org/shared/docs/mediation/uma_final_03.pdf).

127. *See* BOULLE ET AL., *supra* note 4, at 306 (describing the UMA as a collaboration between the NCCUSL drafting committee and an American Bar Association Section of Dispute Resolution drafting committee); *see Mediation Act*, UNIFORM LAW COMM’N, <http://www.uniformlaws.org/Act.aspx?title=mediation%20Act> (last visited Jan. 24, 2016) (describing how the UMA was amended in 2003 to facilitate state adoption of the 2002 UNCITRAL Model Law on International Commercial Conciliation).

128. *See* BOULLE ET AL., *supra* note 4, at 305–06 (describing the NCCUSL as an esteemed institution that has been responsible for many highly respected laws, including the Uniform Commercial Code).

129. *See Mediation Act*, *supra* note 127 (“Parties engaged in mediation, as well as non-party participants, must be able to speak with full candor for a mediation to be successful and for a settlement to be voluntary. For this reason, the central rule of the UMA is that a mediation communication is confidential.”).

130. *See id.* (identifying these states as Idaho, Illinois, Iowa, Nebraska, Ohio, South Dakota, Utah, Washington, New Jersey, Vermont, Hawaii, and Washington D.C. In 2015, the UMA was introduced in Massachusetts and New York).

131. *See* MODEL STANDARDS OF CONDUCT FOR MEDIATORS, *supra* note 4.

132. *See id.* (explaining that the standards were created in 1994 and amended in 2005 by the America Arbitration Association, the American Bar Association’s Section of Dispute Resolution, and the Association for Conflict Resolution).

133. *See id.*

134. *See, e.g.,* MOSTEN, *supra* note 7, at 193; *see also* Press, *supra* note 8, at 836–37 (suggesting that the Model Standards of Conduct for Mediators offer a consistent expectation for professional standards).

135. ASS’N FOR CONFLICT RESOLUTION, MODEL STANDARDS FOR MEDIATOR CERTIFICATION PROGRAMS (Oct. 10, 2011), *available at* [http://www.imis100us2.com/acr/ACR/Resources/Model\\_Standards/ACR/Resources/Model\\_Standards.aspx?hkey=315fc2bd-2cac-422b-82bf-b3160b6a1b08](http://www.imis100us2.com/acr/ACR/Resources/Model_Standards/ACR/Resources/Model_Standards.aspx?hkey=315fc2bd-2cac-422b-82bf-b3160b6a1b08).

dards were “written to guide entities which have or wish to institute certification programs . . . . These entities . . . can look to these standards to establish and maintain a high degree of credibility.”<sup>136</sup> The large variation of requirements embodied in state certification programs, however, suggests that these standards have yet to have much impact.<sup>137</sup>

No state, however, has requirements for the private practice of mediation.<sup>138</sup> Armed with law clinic mediation experience, the law student mediator can obtain basic mediation training and work in community mediation centers.<sup>139</sup> The student might receive a modest stipend. More importantly, he or she will have obtained more connections and experience in the mediation field, thereby becoming both skilled and sellable in a tight job market.

#### IV. Law Student Mediators Thrive in a Tight Job Market

Law students face one of the tightest job markets in history. Possessing practice-ready mediation skills, however, can open doors to opportunities in a rapidly growing field. Newly minted lawyers with such skills are poised well to embark on a successful mediation career path.

##### A. New Law Graduates Compete for Fewer Legal Jobs

Compared with 2013, law school graduates faced 1,200 fewer jobs in 2014.<sup>140</sup> There were also almost 3,000 fewer graduates compared

---

136. *Id.* at 2 (suggesting that another means of assuring quality of the mediation process could be a mechanism for de-certifying mediators). *See, e.g.*, Moffitt, *supra* note 122, at 218 (explaining that North Carolina has instituted a procedure for filing complaints against certified mediators which can result in de-certification).

137. States vary considerably as to the stringency of certification requirements. *See, e.g.*, MOSTEN, *supra* note 7, at 64 (“The California statutory requirements for a basic mediation training are considered minimal. . . . Virginia’s criteria for evaluating a mediator’s performance are considered state of the art but continue to evolve as they are upgraded.”). For a state-by-state breakdown of state requirements and lists of mediators, *see State Requirements for Mediators*, *supra* note 123. Family mediation has its own set of standards. *See* ASS’N FOR CONFLICT RESOLUTION, MODEL STANDARDS OF PRACTICE FOR FAMILY AND DIVORCE MEDIATION 1 (2001), available at [http://www.imis100us2.com/acr/ACR/Resources/Model\\_Standards/ACR/Resources/Model\\_Standards.aspx?hkey](http://www.imis100us2.com/acr/ACR/Resources/Model_Standards/ACR/Resources/Model_Standards.aspx?hkey). In addition to offering guidance to family mediators and promoting public confidence in family mediation, these models addressed a growing concern over power imbalances between the parties; Alfini & Berman, *supra* note 100, at 891–92.

138. *See* BOULLE ET AL., *supra* note 4, at 305–06; MOSTEN, *supra* note 7, at 64.

139. *See supra* notes 109–16 and accompanying text.

140. *Employment for the Class of 2014—Selected Findings*, NALP 1 (2015), <http://www.nalp.org/uploads/Classof2014SelectedFindings.pdf> [hereinafter *Selected Findings*].

with 2013, after reaching a record high in 2013.<sup>141</sup> Yet, the overall employment rate for the 2014 class was 86.7%, marking an increase of 2.2 percentage points over 2013 and also the first year that the rate has jumped since 2007.<sup>142</sup> The 2014 employment rate is not directly comparable with the rates for preceding classes, however, because for the first time employment status information was collected as of March 15 rather than February 15, as had been the case since 1996.<sup>143</sup> Thus, the employment rate could increase while the number of jobs for law graduates declined.<sup>144</sup>

Just over half, or 50.9%, of employed graduates obtained jobs in private practice, a number marginally lower than 51.1% in 2013.<sup>145</sup> “Hiring statistics confirm the dramatically lower numbers of new lawyers hired by large law firms.”<sup>146</sup> Between the combination of fewer jobs over all and a decreased percentage of jobs in law firms, the number of law firm jobs decreased by about 3.5%, compared with a cumulative increase of around 9% in 2012 and 2013.<sup>147</sup>

At the same time that the job market is shrinking relative to the pool of law graduates, law school debt continues to rise unabated.<sup>148</sup> In 2015, an ABA Task Force report on the Financing of Legal Education addressed issues such as declining law school enrollment, rising inflation-adjusted tuition, a weakening legal job market, and growing student borrowing and debt loads.<sup>149</sup> “[T]his is a critical time for legal

---

141. See *id.*

142. See *id.*

143. See *id.*

144. James Leipold, *Employment Rate for New Law School Graduates Rises by More Than Two Percentage Points—But Overall Number of Jobs Falls as the Size of the Graduating Class Shrinks*, NALP (2015), <http://www.nalp.org/uploads/Classof2014SelectedFindings.pdf> (“For the Class of 2014, the overall number of jobs secured was three percent fewer than the Class of 2013, but because the size of the graduating class itself was more than six percent smaller than the previous class, the overall employment rate went up. . . . [T]he size of the graduating class fell more steeply than the number of jobs fell, so the employment rate went up.”).

145. See *id.* (explaining that over the past forty years that NALP has collected employment data, the percentage of such jobs has been in the 55–58% range and fell below that only before 1981 and since 2010).

146. See Finkelstein, *supra* note 1, at 627–28.

147. See *Selected Findings*, *supra* note 140, at 3.

148. See Steven J. Harper, *Too Many Law Students, Too Few Legal Jobs*, N. Y. TIMES (Aug. 25, 2015), [http://www.nytimes.com/2015/08/25/opinion/too-many-law-students-too-few-legal-jobs.html?\\_r=0](http://www.nytimes.com/2015/08/25/opinion/too-many-law-students-too-few-legal-jobs.html?_r=0) (“Amazingly (and perversely), law schools have been able to continue to raise tuition while producing nearly twice as many graduates as the job market has been able to absorb.”).

149. See A.B.A., REPORT OF THE TASK FORCE ON THE FINANCING OF LEGAL EDUCATION (June 17, 2015), available at [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/reports/2015\\_june\\_report\\_of\\_the\\_aba\\_task\\_force\\_on\\_the\\_financing\\_of\\_legal\\_education.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/2015_june_report_of_the_aba_task_force_on_the_financing_of_legal_education.authcheckdam.pdf) [hereinafter REPORT

education as schools face declining enrollments and revenues, and their students face increasing tuition and debt along with a job market that has seen only modest recovery.”<sup>150</sup> Almost 90% of all law students take out loans to finance their education.<sup>151</sup> For students at private law schools, debt rose from \$102,000 in 2005 to \$127,000 in 2012; for those at public law schools, average debt increased from \$66,000 to \$88,000.<sup>152</sup> Given that law schools are heavily dependent upon tuition revenues, they “have a powerful incentive to maintain or increase enrollment, even if the employment outcomes are dismal for their graduates.”<sup>153</sup>

Salaries for 2014 law graduates remain flat and thus do little to make a dent in the rising school debt.<sup>154</sup> The national median salary for the Class of 2014 came in at \$63,000, just barely over the \$62,467 median for the Class of 2013; the current median is the same as it was in 2010.<sup>155</sup> Additionally, the national median salary for 2014 graduates working at law firms was \$95,000, unchanged from 2013.<sup>156</sup> It is against this bleak backdrop of a shrinking legal job market, an increasing debt load, and a flat salary trajectory that the new law school graduate must forge his or her way forward on a career path. A career in mediation beckons.

---

ON FINANCING LEGAL EDUCATION] (providing four suggestions, which include: 1) law schools should make better debt counseling available; 2) the Department of Education should develop “plain English” disclosure information about loans; 3) the A.B.A. should disclose information about how law schools spend money; and 4) the A.B.A. should support law school experimentation on curriculums); *see also* Harper, *supra* note 148 (criticizing the task force for avoiding issues that should have been the focus of its work).

150. *See* REPORT ON FINANCING OF LEGAL EDUCATION, *supra* note 149, at 1; *see also* Mark Hansen, *Tell Me More: ABA Task Force Urges Law Schools to Make More Information Available to Help Students Assess the Costs of Legal Education*, A.B.A. J. (Sept. 1, 2015), available at [http://www.abajournal.com/magazine/article/aba\\_task\\_force\\_urgues\\_law\\_schools\\_to\\_give\\_more\\_info\\_to\\_help\\_students\\_assess](http://www.abajournal.com/magazine/article/aba_task_force_urgues_law_schools_to_give_more_info_to_help_students_assess) (providing highlights from the June 2015 Report of The Task Force on the Financing of Legal Education).

151. *See* REPORT ON FINANCING OF LEGAL EDUCATION, *supra* note 149, at 8.

152. *See id.* at 7 (“Law schools are JD tuition-dependent for their revenues, and some are heavily—if not exclusively—tuition-dependent. Looking at all law schools, the average was 69% of revenue in AY2012-13, with 25% of schools receiving at least 88% of their revenue from tuition.”).

153. *See* Harper, *supra* note 148.

154. *See Selected Findings*, *supra* note 140, at 3.

155. *See id.* (showing that in 2008, the median salary had reached a high of \$72,000).

156. *See id.*

## B. Law Graduates Enjoy Success in the Expanding Mediation Field

Opportunities for mediation jobs are on the rise.<sup>157</sup> The National Jurist recently identified “alternative dispute resolution counselor” as one of the top hottest careers.<sup>158</sup> As mediation outpaces other ADR methodologies, it will account for a large portion of the 10% expansion for employment in arbitration, mediation, and conciliation projected from 2012 to 2022.<sup>159</sup> Although some court-ordered and community mediation programs suffered funding cuts in the wake of the 2008 recession, several conflict resolution leaders express confidence that programs are likely to be restored.<sup>160</sup>

Further, law graduates have a competitive advantage over other applicants seeking to fill mediation jobs.<sup>161</sup> “[I]t is axiomatic today that a law degree . . . is almost a sine qua non for success in the mediation marketplace—at least in those disputes that arise in the shadow of the law.”<sup>162</sup> Therefore, while mediators come from a number of educational and experiential backgrounds, lawyers dominate the mediation market, including domestic and commercial disputes.<sup>163</sup> Lawyers also dominate the mediator selection process because most parties will initially consult an attorney about pursuing a case rather than pursue mediation. Unless parties are court-ordered to mediate, lawyers are de facto gatekeepers of the mediation process; they decide whether and when a case will be mediated and who will mediate it.

---

157. See Picker, *supra* note 20 (stating that the future of mediation suggests that entering the field at a young age is now a viable option); see also MOSTEN, *supra* note 7, at 66 (explaining that although in the past many mediators did not have full-time jobs as mediators, the situation is changing due to the increased demand for mediation services in private and government sectors).

158. See Alyson Carrel, *Choosing ADR Careers at the Start*, 21 DISP. RESOL. MAG. 30, 30 (2015).

159. See Robert J. Rhudy, *Looking into Conflict Resolution's Crystal Ball: How Will People Build Futures in Our Field?*, 21 DISP. RESOL. MAG. 6, 6 (2015); *Occupational Outlook Handbook: Arbitrators, Mediators, and Conciliators*, U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, <http://www.bls.gov/ooh/legal/arbitrators-mediators-and-conciliators.htm> (last visited Jan. 24, 2016).

160. See Rhudy, *supra* note 159, at 7–8.

161. Lawyers have a keener appreciation for how parties would fare in court. See Riskin, *supra* note 21, at 40–41 (“Because he is an expert on law, the lawyer-mediator can help the parties free themselves . . . from the influence of legal norms so that they can reach for a solution that is appropriate to them.”).

162. Stephen B. Goldberg & Margaret L. Shaw, *Who Wants to Be a Mediator?*, 16 DISP. RESOL. MAG. 24, 26 (2010).

163. But see Velikonja, *supra* note 103, at 263 (“[M]ental health practitioners commonly serve as mediators in family disputes, human resources specialists commonly serve as in-house mediators for employment disputes, and diplomats commonly serve as mediators in international disputes.”).

Law graduates armed with both the law degree and mediation experience are well placed to obtain work.<sup>164</sup> Additionally, there are several practical things graduates can do to maximize their marketability.<sup>165</sup> They should keep mediation connections current and join mediation associations.<sup>166</sup> Before obtaining paying jobs, they can volunteer as mediators.<sup>167</sup> Joseph Stulberg, an esteemed law school professor and mediation trainer, has the following advice for new law graduates who desire to immediately go into mediation practice:

I identify . . . those organizations that have dispute resolution programs—community-based mediation programs, school systems, or universities with mediation programs—and I encourage them to get involved. If they can't get a staff position, I encourage them to explore whether there are volunteer opportunities with those programs. . . . Another terrific avenue for them to pursue are those family courts that hire mediators full time as staff people. A law student who has done concentrated study in mediation . . . is qualified for all of those types of positions, and the experience is invaluable in enabling them to enter and advance in the profession.<sup>168</sup>

Capitalizing upon specialized knowledge can also be useful in obtaining employment.<sup>169</sup> To establish credibility with prospective employers and mediation clients, aspiring mediators should demonstrate some level of subject-matter expertise.<sup>170</sup> “Although in theory a media-

---

164. See Andrew Schepard, *Law Schools and Family Court Reform*, 40 FAM. CT. REV. 460, 468 (2002) (recognizing that live clinic practice in interviewing and counseling provides transferable skills not otherwise available in traditional legal education). See generally Goldberg & Shaw, *supra* note 162, at 27 (identifying general agreement among thirty-one mediators, that keys to a successful mediation practice include training, mentoring, practice, marketing, and keeping up with developments in the field).

165. Establishing yourself as a mediator requires creativity as well as perseverance. See Carrel, *supra* note 158, at 31 (quoting Heather Kulp, Clinical Instructor at Harvard Law School: “[T]he entrepreneurial mindset that helps us be great problem-solvers is also what allows us to design our own career paths.”).

166. See, e.g., MOSTEN, *supra* note 7, at 200 (suggesting working with the Association for Conflict Resolution); Picker, *supra* note 20 (“Networking is one of the keys to success. It’s important to engage with others whether it be in bar associations, trade associations, ADR associations or Chambers of Commerce.”).

167. See LOVENHEIM, *supra* note 4, at 131 (“[D]on’t overlook volunteering at a community mediation center as a good way to start networking your way into the field—and toward a paying job.”). See also Goldberg & Shaw, *supra* note 162, at 27 (quoting Gail Bingham: “[B]e a volunteer mediator in a small claims court or community mediation setting, because . . . you need to figure out how you fit in the coat of a mediator.”).

168. Goldberg & Shaw, *supra* note 162, at 27 (quoting from an interview with Professor Stulberg).

169. See Velikonja, *supra* note 103, at 291 (“Aspirant mediators would be well-advised to specialize in a particular field, such as environmental issues or construction, and gain a solid reputation among lawyers and/or business people in that field before starting a mediation career.”).

170. See Goldberg & Shaw, *supra* note 162, at 26.

tor with good practice skills can handle any type of case, in the real world, parties choose a mediator with knowledge of the subject matter in dispute."<sup>171</sup> By focusing on a narrow niche in the market, the novice mediator can start a successful private practice.<sup>172</sup> "If you are fortunate to gain recognition for skill and [specialized] experience in an emerging market you will have an edge that can last a professional lifetime."<sup>173</sup>

Most novice mediators are unlikely to strike out on their own. Instead, law graduates can seek employment in a host of settings, including community mediation centers, court-connected programs, government programs, colleges and universities, private dispute resolution companies, nonprofit institutions, and agencies.<sup>174</sup> Opportunities are increasing in part because "mediation is being mandated by legislation, regulations, and administrative acts in municipalities, counties, states, and the federal government."<sup>175</sup>

Some well known federal government mediation programs have evolved over the past couple of decades following the passage of the Administrative Dispute Resolution Act of 1996. These include the Federal Mediation and Conciliation Service, Equal Employment Opportunity Commission, National Mediation Board, Community Relations Service, and the National Association of Securities Dealers.<sup>176</sup> The law graduate can contact a state's mediation office to learn about similar state government mediation programs.<sup>177</sup>

Mediation provider organizations are growing and offer employment opportunities as well; for example, nationwide companies include the American Arbitration Association, JAMS, and Mosten Mediation Centers.<sup>178</sup> Another growing source of mediation practice

---

171. LOVENHEIM, *supra* note 4, at 130 (emphasizing this point in the context of clients selecting mediators from a roster). *But see* Rhudy, *supra* note 159, at 8 ("The reality, however, is that many mediators and some other conflict service providers work as generalists, covering a range of substantive fields and providing a range of services.").

172. Picker, *supra* note 20, at 4 ("Consumers of mediation today are looking for subject matter expertise, especially in disputes involving issues of intellectual property, construction, and employment.").

173. *Id.* at 2.

174. *See, e.g.*, LOVENHEIM, *supra* note 4, at 128-29 (offering a table that succinctly summarizes opportunities in mediation); MOSTEN, *supra* note 7, at 69 ("The array of job possibilities for mediators in the nonprofit arena is truly staggering.").

175. MOSTEN, *supra* note 7, at 66-67 ("Not only are civil mediation programs that use a mixture of volunteers, private providers, and staff growing on the trial level, but many appellate courts have adopted mediation programs as well.").

176. *See* LOVENHEIM, *supra* note 4, at 135-40.

177. *See* LOVENHEIM, *supra* note 4, at 140-41.

178. *See* MOSTEN, *supra* note 7, at 70.



is online dispute resolution services (“ODR”). In 2015 “over 700 million disputes will be resolved online and that number will increase to in excess of 1 billion by 2017,” and mediators can have a “meaningful role” in providing such services.<sup>179</sup>

Regardless of the employment setting in which the law graduate mediator begins his or her career, a passion for mediation is critical to success.<sup>180</sup> “Most successful mediators view their mediation practices as a ‘calling,’ not just a job.”<sup>181</sup> What likely draws the law student initially to mediation, whether in a live school clinic or a community center training program, is also what likely will keep him or her committed to mediation practice.<sup>182</sup> The motivation for being a mediator “can be found in a deeply felt need to be of service, to use one’s skills to accomplish something of value, to connect with other people and to make a difference in their lives.”<sup>183</sup>

Most recent law graduates are Millennials, born between the early 1980’s and the early 2000’s.<sup>184</sup> Research suggests that these graduates want meaningful work and not just a large salary or career advancement in a huge firm.<sup>185</sup> In a recent survey conducted by the Case Foundation, “92% of Millennials reported that they prefer jobs that allow them to help people and communities or do ‘cause work.’”<sup>186</sup> Another study found “that a happy life as a lawyer is much less about grades, affluence, and prestige than about finding work that is interesting, engaging, personally meaningful, and focused on providing needed help to others.”<sup>187</sup>

---

179. See Picker, *supra* note 20 (interviewing Colin Rule, the “guru” of Online Dispute Resolution).

180. See Carrel, *supra* note 158, at 30 (“Overwhelmingly, people who chose to pursue a career in ADR early did so because they are passionate about the work and about helping others.”); see also BOULLE ET AL., *supra* note 4, at 315 (stating that the four fundamental categories of qualities for success are people, passion, excellence, and authenticity).

181. BOULLE ET AL., *supra* note 4, at 315.

182. The student is likely to have very strong interpersonal skills. See Velikonja, *supra* note 103, at 277–78 (“[T]he best mediators can ‘read’ people and have the intuitive ability to sense things that are not being said. They are compassionate and empathetic.”); Carrel, *supra* note 158, at 30 (quoting the manager of a consumer affairs dispute resolution program: “ADR is such a rewarding area of law to be in . . . instead of perpetuating the adversarial cycle that comes with litigation, I am able to help individuals overcome conflict and put an end to their disputes.”). See also *supra* notes 97–99 and accompanying text (discussing the understanding of conflict using the “heart” as well as the “head”).

183. LOVENHEIM, *supra* note 4, at xi.

184. See Carrel, *supra* note 158, at 30.

185. See *id.*

186. See *id.*

187. See Debra Cassens Weiss, *Lawyers in Prestige Positions Aren’t as Happy as Those in Public Service Jobs, Study Finds*, ABA J. (Mar. 17, 2014), <http://www.abajournal.com/news/>

When service-oriented law graduates choose a career in mediation, their passion and motivation for this work provides society with meaningful benefits. Engaged mediators offer persons with broken and suffering relationships the opportunity to heal. By helping to heal others, new lawyer mediators reap enormous benefits of intrinsic personal satisfaction. Indeed, in the words of Mahatma Gandhi, who mediated a dispute between parties concerning a method of payment:

[B]oth were happy over the result, and both rose in the public estimation. My joy was boundless. I had learnt the true practice of the law. I had learnt to find out the better side of human nature and to enter men's hearts. I realized that the true function of a lawyer was to unite parties riven asunder.<sup>188</sup>

## Conclusion

Today, graduating law students face a bleak job market, offering fewer jobs to offset their crushing school debt. Graduates also face employers who insist upon employees with practice-ready, real-world skills. Law schools are responding by increasingly focusing their curriculum on experiential learning, including establishing live mediation clinics. Students assist real clients with solving real disputes and gain a new perspective by stepping outside legal education's traditional adversarial environment. In a mediation clinic, students can achieve a deeper understanding of conflict, facilitating novel solutions by using their hearts in addition to their heads.

The law student who learns about and is drawn to mediation, whether through clinic work or some other avenue, can enter this noble profession while still in school. The student can take basic mediation community training to both hone practice skills and make valuable connections in the mediation field. As no license is required to mediate, following such training the law student can practice mediation while still in school, sometimes earning a modest stipend.

Upon graduation, the new lawyer mediator enjoys a competitive advantage in seeking mediation jobs. He or she is advantaged by virtue of the degree and mediation experience. Mediation jobs are on the rise and can help fulfill the graduate's desire for meaningful and service-oriented careers. Working to heal broken relationships and forge creative solutions to disputes is deeply intrinsically satisfying.

---

article/lawyers\_in\_prestige\_positions\_arent\_as\_happy\_as\_those\_in\_public\_service-job (focusing on responses from over 6,000 lawyers, judges and others in related positions across four states).

188. MOHANDAS K. GANDHI, AUTOBIOGRAPHY: THE STORY OF MY EXPERIMENTS WITH TRUTH 168 (Public Affairs Press 1948).

---

Thus, the newly minted lawyer mediator commences a career wearing a triple crown: skilled, sellable, and successful.