

**Responding to Disruption in the Legal Profession:  
Teaching Interpersonal and Process Skills across the Curriculum**

Theory-of-Change Symposium

[indisputably.org/2019/12/theory-of-change-symposium-part-4](http://indisputably.org/2019/12/theory-of-change-symposium-part-4)

December 11, 2019



[Lisa Blomgren Amsler](#), J.D., argues that law schools should focus on the sophisticated knowledge that lawyers and their clients need and that technology cannot provide: interpersonal communication and voice about what matters to us as human beings. She is the Keller-Runden Professor in the Indiana University Paul H. O'Neill School of Public and Environmental Affairs.

**Disruption Is Happening All Over – Including in the Law**

It happens: “Disruption” by technology. It happened to taxi drivers. It happened to video stores. It happened to cable TV with streaming – big movie studios have new competition from Netflix. Social media have disrupted our democracy. Lawyers must face it, too. Technology and related outsourcing are disrupting the practice of law.

Black letter law – legal reasoning on how rules and cases evolve, or so-called “substantive or doctrinal law” – is increasingly subject to artificial intelligence (AI) and logarithmic analysis. Big data has changed discovery, making it both more complex and automatable. Technology is replacing lawyer jobs because anyone globally can access and analyze data. [Deloitte](#) reports that lawyers are slow to adapt to the “convergence of information, communication and artificial intelligence technologies,” including the cloud and blockchain (“self-verifying record of transactions between parties that requires no intermediaries and no institutional record keeper”).

Increasingly, clients can exercise agency without paying lawyers – they resort to affordable streamlined or automated alternatives on the internet. Some legal scholars argue this disruption of law practice may improve access to justice and have longer term benefits.<sup>1</sup> If people can get access to the law directly through technology, what else can lawyers offer them?

The disruption of law requires law schools to adapt their curricula by teaching material and skills that “Big Tech” cannot not easily automate. Law schools must make legal education more meaningful by teaching students that which is hard to do through big data, AI, blockchain, or outsourcing.

---

<sup>1</sup>E.g., Raymond H. Brescia, Walter McCarthy, Ashley McDonald, Kellan Potts, & Cassandra Rivais, *Embracing Disruption: How Technological Change in The Delivery of Legal Services Can Improve Access to Justice*, 78 ALBANY L. REV. 553 (2015).

## **Deficiencies in Law School Curricula**

Law schools train students to pass bar exams. Law school curricula generally do not reflect the fact that lawyers play key roles managing conflict related to government across the policy continuum: upstream in the legislative branch, midstream in the executive branch, and downstream in the judicial branch. Lawyers work in government or represent clients in relation to problems entailing government.

Law schools have substantial gaps in their curricula. They teach administrative law or code courses like tax and environmental law but there is little, if any, instruction on handling conflict upstream involving policymaking, public participation or comment, or dialogue and deliberation. Midstream there is conflict implementing policy through networks of public, private, and nonprofit actors or collaborative public management. Yet, despite the growth of collaborative governance, there is little focus on multiparty collaboration in law schools.

The training that law students get is mostly related to the downstream part of the policy continuum, for example, in family or civil mediation, commercial or international arbitration, and ADR programs in the quasi-judicial work of administrative agencies. Given the shrinking role of labor law in the curriculum, law students are less likely to learn anything about the employment relationship, a key arena for managing conflict.

Law schools fail to sufficiently teach students about human voice in conflict management. Instead, they primarily teach lawyers how to substitute their voice for that of their clients in advocacy, moot court, and legal writing and research courses.

## **Declining Role of ADR in Law Schools**

The 1970s to 1990s saw the growth of alternative or appropriate dispute resolution as a field of scholarship and teaching in law schools. Many law schools hired full-time tenured or tenure-track ADR faculty. However, since the Great Recession in 2008, many leading dispute resolution scholars like Frank Sander have retired from law teaching or passed on.

Law school faculty focusing on dispute resolution have worked long and hard to integrate hard-to-automate communication skill sets into their teaching and scholarship. Despite the fact that courts and the bar have institutionalized ADR across all areas of substantive law, law schools are hiring few, if any, new full-time tenure-track faculty in negotiation and dispute resolution. Increasingly, dispute resolution courses have been labeled “practice skills” instead of doctrinal or substantive law, and are taught by clinical professors or adjunct faculty. Moreover, ABA law school accreditation does not require ADR curriculum. At best, negotiation or mediation courses count toward clinical and experiential learning requirements.

## **Law Schools Should Teach the Great Value that ADR Offers: Human Voice**

Law schools should concentrate on what lawyers need and can market – and what ADR offers: human voice in conflict management and dispute resolution.

There is extensive scholarly literature in social and cognitive psychology, communication, and organizational behavior about human behavior and decision-making in negotiation, mediation, and adjudicative processes. This is substance, not “practice.” The outdated distinction between substance and practice in law is a false dichotomy, much like the mind-body distinction in psychology.

Decades of research on procedural and organizational justice have taught us that human voice in conflict matters. We are social animals. Whether members of our social group listen to us and treat us with dignity and respect makes a substantial difference in whether we experience justice. We can help law students and lawyers adapt to technology’s disruption of legal practice by requiring law students to learn the range of human communication skills in the increasing diversity of forums that legal clients can or must use.

For decades, negotiation and dispute resolution faculty have tried to incorporate ADR across the law school curriculum. ADR faculty offer courses in negotiation, mediation, and arbitration, new electives in dispute system design, and related intensive trainings. Law students face a forced choice between these and bar-exam related courses.

It is time to refocus and *make central* to what law schools offer the sophisticated knowledge lawyers *and their clients* need, and that technology cannot provide: interpersonal communication and voice about what matters to us as human beings.