terns of classroom interaction between the professors and students. Despite strong differences in the teaching and participation patterns among the classes, the study finds a similar underlying decontextualised orientation to human conflict, authority, morality, and text across all of the classrooms.

As law professors teach students to read and discuss legal texts, the students learn to ask new questions and to focus on different aspects of language than they had previously. Indeed, legal education pushes students to direct their attention toward textual and legal authority, casting aside issues of 'right' and 'wrong,' of emotion and empathy—the very feelings most likely to draw the hearts of lay readers as they encounter tales of human conflict. Instead, legal educators rigorously urge law students, as initiates into the legal system, to put aside such considerations – not to stifle them entirely, but push them to the margins of the discourse.

On the one hand, reading legal texts for legal authority offers the student a potentially liberating opportunity to step into an impersonal, abstract, and objective approach to human conflict. On the other hand, erasing many of the concrete social and contextual features of human conflict can direct attention away from grounded moral understandings, which some critics believe to be crucial to achieving justice. Moreover, this step out of social context provides the law with a 'cloak' of apparent neutrality, which can conceal the ways in which law participates in and supports unjust aspects of capitalist societies. This approach also gives the appearance of dealing with concrete and specific aspects of each conflict, thereby hiding the ways that legal approaches exclude from systematic consideration the very details and contexts that many would deem important for moral assessments.

As a result, the alienation experienced by some law students during legal training may be an unavoidable consequence of a process in which increasingly instrumental and technical appeals to legal authority blunt moral and contextual judgment. We can find another example of this process in legal pedagogy's approach to social context and the person.

Perhaps the most ubiquitous form of contextualised identity found in these classrooms occurs when professors invite students to play the roles of legal personae – of parties, lawyers, and judges – and make legally relevant arguments. When asked to play the roles of litigants or other legal actors, students 'become' abstracted individuals within a removed and 'acontextual' context. While role-playing in the classroom attempts to bring students to the level of actual people, the particular roles played omit many of the social particulars that shape not only social interactions, but also moral assessments of those interactions.

This study tracked a number of features of classroom participation, including length and number of turns in which each student and professor participated. The resulting picture is complex, but some patterns are tentatively identifiable. When we examine these findings in the light of the fact that white male professors still dominate the first-year curriculum in most US law schools, we find yet another kind of cultural invisibility/dominance problem emerging in the teaching of law. If students of colour and female students tend to be more silent in these classrooms, then any differences these students bring with them in experience or background are not given voice in classroom discourse. To the extent that these differences in experience reflect race, gender, class, or other aspects of social identity, we again see aspects of social structure and difference pushed to the margins of legal discourse. Thus, across diverse areas of inquiry within the study of legal education, this study suggests the value of studying cultural frameworks as they are enacted and expressed in language.

What should we teach in ADR courses?: Concepts and skills for lawyers representing clients in mediation
S Schmitz
6 *Harv Neg L Rev*, pp 189-210

Published in the mid to late 1980s, the first textbooks for use in Alternative Dispute Resolution (ADR) survey courses were intended to teach law students about dispute resolution processes. More than a decade later, ADR educators are facing 'the second generation of ADR training' – teaching lawyers about their roles as advocates, rather than their roles as neutrals. A question for legal educators is whether the materials available understate the importance of the lawyer's role as ADR counsellor and advocate, while simultaneously focusing too much on the lawyer's role as mediator. In practice, lawyers will most often find themselves in the roles of adviser, counsellor, representative and advocate. It is time to examine teaching materials to determine if there are better methods of preparing lawyers to be effective counsellors and advocates in resolving disputes.

This article examines the approach to mediation taken by three ADR textbooks. The examination is limited to mediation because mediation is a widely used ADR process in which the lawyer's role differs most from that in litigation. The three textbooks addressed are Goldberg, Sander, and Rogers' Dispute Resolution, third edition, 1999 ('Goldberg'); Riskin and Westbrook's Dispute Resolution and Lawyers, second edition, 1997 ('Riskin'); and Murray, Rau, and Sherman's Processes of Dispute Resolution: The Role of Lawyers, second edition, 1996 ('Murray').

Courts expect that lawyers will know about the various forms of ADR, explain them to clients, counsel clients about which method to select for any given case, and represent clients effectively using the chosen method. Numerous statutes and rules governing mediation have been enacted, some of which require or encourage the use of mediation. All of these developments have contributed to the widespread use of mediation

and to the expectation that lawyers will be knowledgeable about mediation.

Several studies show that a common obstacle to successful use of ADR is the lack of an informed bar. Many lawyers are unable to distinguish one ADR process from another and, as a result, are often ill prepared to advocate in the appropriate forum. Accordingly, studies recommend better legal education about ADR and underscore one basic premise of ADR courses – to introduce attorneys to the range of processes available and the nature of each. They also highlight the need for attorneys to learn the practical skills of representing clients in mediation and other processes.

The authors of all three textbooks set forth a similar goal, which is shared by ADR educators and practitioners: to educate future lawyers to help clients resolve disputes. Additionally, the authors believe that students learn best about dispute resolution processes through experiential methods. In short, the ADR textbook authors share the goal of preparing lawyers to represent clients effectively.

To assess how well the authors meet their stated goals of educating future lawyers about their roles in mediation, the textbooks' treatment of the role of the mediator was compared with that of the attorney in mediation. In addition to examining the mediation topics covered, the number of pages devoted to the various topics, the focus of the questions asked, the skills students were to master, and the nature of the simulations recommended were considered.

Another indicator of the authors' attention lies in the simulations - both in the skills the students are asked to master in the simulations and the presence or absence of lawyers in the simulations. Most simulations offered by the textbook authors, either in the textbooks or in the accompanying instructors' manuals, centre on the role of the mediator, almost to the exclusion of other lawyering roles performed by attorneys in mediation. Of the ten mediation problems recommended by Murray, only one asks students to consider any skill other than that of the mediator.

Of the nine mediation simulations in Goldberg's chapter on mediation, four provide for attorneys to be present at the mediation, two by implication and two by specifically assigning roles to attorneys. All three textbooks provide solid coverage of topics commonly addressed in mediation courses.

In summary, the materials presented are valuable to law students, whether they will be mediators, advocates, or both. The texts present an excellent overview of the theory of mediation and challenge students to address most of the legal issues and many of the ethical issues related to mediation. However, they share one missed opportunity. Despite the fact that most students will find themselves in the role of lawyer representative more often than in the role of mediator, the manner in which the authors present the material emphasises the role of the mediator rather than that of the lawyer representative. The texts need to focus on these lawyering roles so that students appreciate their importance.

The textbooks should challenge the students to be problem-solvers when considering mediation. After introducing students to the mediation process, stages, and techniques, the authors should challenge them to think about the value of each stage or technique for the client and the attorney. Additionally, students should determine when the choice of mediation is appropriate.

Texts should focus on practical skills, including articles by practitioners on preparing clients and cases for mediation. Simulations should challenge students to prepare clients for mediation in situations where the lawyers attend the mediation as well as those in which the lawyers will not attend. Additional simulations asking students to provide post-mediation counselling to the client would also benefit students. In analysing the issues of fairness and balance of power, students should consider what lawyers could do to create a 'more even playing field.' This discussion might encourage students to contemplate under what circumstances they would advise their clients against mediation.

In presenting issues for debate, the authors should help students evaluate from the perspective of the attorney. After presenting the materials on mediator qualifications and styles, the textbooks should provide five or six hypothetical disputes for which students should determine the appropriate mediator styles and backgrounds.

Many new developments are underway in the area of ethics, for both mediators and lawyers in mediation. The textbooks should discuss the duty of attorneys to advise clients about ADR processes and address the recent ethical debates, perhaps by presenting a series of problems exploring the ethical dilemmas faced by advocates in mediation.

An examination of the treatment of the lawyering roles in mediation and the practical skills lawyers need to fulfil these roles establishes that the three major ADR textbooks do a thorough job of preparing law students for the issues facing mediators, but they do not address as thoroughly those issues facing lawyer representatives or advocates.