



COURSE SYLLABUS

Faculty:	Professor James Coben
Course:	Practice, Problem-Solving and Professionalism (section 3)
Semester:	Fall 2010
Meeting Schedule:	Fridays, 10:00-11:50 a.m.
Room:	103
Office Hours and Communication:	I will set formal office hours after week one of the semester (when I know the full schedule for the students in all of my first year courses). In the meantime, feel free to stop by whenever my door is open (I am generally on campus Monday-Wednesday 8-4:30; and Friday from 8:00-12:00). I am glad to schedule appointments whenever needed (just give me a call or email – 651-523-2137; jcoben@hamline.edu).
Alumni Adjunct Professor:	Cary Miller-Dolan, HUSL '95 (providing practice perspective and small group facilitation)

Introduction

Welcome. You should plan to have fun in this course while together we undertake the very serious task of examining the practice of law and the lawyer's professional identity. To this end, I begin by sharing Carrie Menkel-Meadow's set of "precepts" to ground our work together this semester:

Eight Guiding Principles

1. Conflict can be good and a potential source of creativity. It is not always to be resolved or squelched. Conflict handled appropriately can put the parties (and the rest of us) in a better position than we were before or than we might be in if left to our own devices (or litigation).
2. Good resolutions of conflicts and problems in the law can occur when people realize that valuing different things differently is good. Money need not be a proxy for everything, an assumption that can lead to bitter zero-sum games and distributive or unnecessary compromise outcomes. More issues and more trades enhance the likelihood of both the number and quality of possible resolutions.

3. Different dispute resolution processes produce different kinds of outcomes. Where there is a need for a decision, with a reasoned and reported basis, adversarial argumentation may be more important to framing the resolution. Where there is more than one party or more than one issue (“polycentric” disputes), however, single decision outcomes may not be wise, and mediation, or a negotiated consensus, rather than a single issue, externally imposed decision may be better.

4. Settlements or mediated solutions do not have to be compromises or “split the difference” outcomes. By exploring different values and underlying interests, creative solutions and integrative outcomes may be possible.

5. Institutionalized choices about processes facilitate an appropriate range of public and private participation in different kinds and levels of matters and may legitimate both individual cases and the larger legal and political system in which those cases are handled. Different dispute institutions will have their own special competencies, expertises, and morality for handling particular kinds of matters, which may change over time, developing a kind of “process integrity.”

6. Processes produce different kinds of outcomes—there are no universal processes that will always be better, fairer, or more efficient than others. Dispute processes are part of the larger culture in which they are embedded and also help create a community's sense of self. Different kinds of disputes will call for different kinds of “handling,” “managing,” or “resolution.”

7. Variations and choices in processes used to resolve particular matters or to plan future arrangements or transactions in a society are likely to increase participation in and legitimacy of the outcomes reached.

8. The human conditions under which peaceful collaboration and cooperation versus conflict and aggression exist are variable, and we continue to need more theory and more practice to elaborate when we mortal actors can influence each other's behavior.

Carrie Menkel-Meadow, *Mothers and Founders of Invention: The Intellectual Founders of ADR*, 16 OHIO ST. J. ON DISP. RESOL. 1, 36-37 (2000)

Class Materials

- Roger Fisher, William Ury & Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving In* (1991) (helpful background for the entire course; please complete no later than class seven)
- Class-by-Class Reading Assignments (available on the course TWEN site)
- Thomas Kilman Inventory (to be given out in class 1)

Course Description

Lawyers assume many leadership roles as professionals in today's society, all of them grounded in problem-solving: advocate, counselor, negotiator, transactional architect, and many others. This course will foster an understanding of the lawyer's role as a problem-solving professional and provide an overview of the range of dispute resolution processes lawyers use to resolve client problems, such as negotiation, mediation and arbitration. Law students will be introduced to the key skills of effective communication and negotiation; and will explore the breadth of

career possibilities available for lawyers. Student learning will be enriched throughout the course by a variety of experiential strategies to promote practical skill development.

Learning Outcomes for the Course

In this course, you will:

- 1) be introduced to the many different ways (formal and informal) that lawyers serve as problem-solvers;
- 2) explore the factors that go into choosing an appropriate problem-solving process;
- 3) broaden your understanding of effective communication and negotiation, with a special emphasis on listening skills;
- 4) gain an appreciation of how understanding the perspectives of others is vital to effective problem-solving; and
- 5) examine questions of professional identity and begin the networking that all law students must do to build a satisfying career.

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

- 1) engage in the level of effective self-critique/reflective learning necessary to excel in law school (and later, as a lawyer);
- 2) remain conscious of the biases you bring to your work;
- 3) effectively interview and counsel clients, with special focus on choice of problem-solving alternatives;
- 4) prepare and implement appropriate negotiation strategies; and
- 5) embrace your most deeply held values as part of your work as a problem-solving professional.

Course Expectations

HUSL Policies on attendance, lateness and preparation

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

Attendance Policies in this Course

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

Policy on Laptop Use in Class

I encourage you to use laptop computers or other electronic devices in class to take notes and access course-related materials. However, use of electronic devices for purposes unrelated to class (such as checking email, participating in chat rooms, surfing the web, etc.) is prohibited – such use may result in not being allowed to use electronic devices in class for the balance of the semester and/or a grade reduction.

Written Assignments

Papers and other written submissions should be double-spaced, 12-point Times New Roman type face with one inch margins all around. I expect them to be well-written and will mark down papers that have not been proofread. Late submissions will result in a grade reduction. NOTE: The alumni interview and adventure learning assignments, both of which involve group activity, will be graded by name. The journal assignment will be graded anonymously.

Alumni Interview (20% of course grade)

Due date: *Friday, September 24 (bring to class). NOTE: Late submissions must be dropped off in the registrar’s office; please obtain a date and time stamp.*

Form groups of three or four students and set up an interview with a graduate of Hamline University School of Law. Preference should be given to someone who graduated more than five years ago and whose career is not focused on trial work. Together, prepare for and interview the lawyer. Your specific focus is to gain an understanding of the “professional identity” of the lawyer you interview: why did s/he want to become a lawyer; why did s/he choose the specific career s/he is in now; how did s/he prepare for this career; what does this career look like day-to-day; what are the major challenges confronted in this career (and a career in the law generally); what adds the most to life satisfaction from this career choice. You should also try to uncover what skills are especially important to master to do well in this career. After the interview, write an **individual** essay (not to exceed three pages) in which you seek to integrate your own career/life goals with what you learned in the interview.

Adventure Learning assignment (20% of course grade)

Due date: *Friday, October 29 (bring to class). NOTE: Late submissions must be dropped off in the registrar's office; please obtain a date and time stamp.*

Form groups of three or four students. Together, outside of class:

- 1) negotiate something; and
- 2) produce a photograph that reflects the intersection of the secular and the sacred.

After you complete both tasks, discuss the assignment with your adventure learning group. Then write an individual reflection (not to exceed three pages) about your feelings, reactions, observations and judgments during this assignment. What relevance do you believe this assignment had, if any, to being a law student or lawyer?

Journal (60% of course grade)

Due date: *Tuesday, November 23, no later than 4:30 p.m. (drop off in the registrar's office; please obtain a date and time stamp)*

There are seven required journal entries. Entries one thru six should be completed immediately after the class for which they are assigned (though you will not turn in the journal until the course is completed). Each should be no more than two pages long. Entry seven (described in the assignment below for class eleven) should be completed by the journal due date.

Assessment

There is no final exam. Your course grade will be based proportionally on the following:

- 20% Interview essay
- 20% Adventure Learning reflection
- 60% Journal (will be graded anonymously)

I reserve the right to adjust your final grade by ½ step upward (e.g., B to B+) for consistently outstanding classroom participation, or 1/2 step downward (e.g., B to B-) if your classroom participation is consistently poor. In deciding grade bumps, I will take into account the quantity and quality of your contributions and insights in class. A quality comment usually possesses one or more of the following attributes:

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

Detailed Class Topics and Reading Assignments

Class 1 – August 27

Introductions; the roles lawyers play in situations of conflict; the intersection between professional responsibility and individual integrity

Readings:

- Excerpt from Julie Macfarlane, *The Evolution of the New Lawyer: How Lawyers are Reshaping the Practice of Law*, 2008 J. DISP. RESOL. 61 (2008)
- Excerpt from Lawrence S. Krieger, *What We're Not Telling Law Students – and Lawyers – That They Really Need to Know: Some Thoughts-in-Action Toward Revitalizing the Profession from its Roots*, 13 J.L. & HEALTH 1 (1998-99)
- Paul Brest and Linda Hamilton Krieger, *Lawyers as Problem Solvers*, 72 TEMP. L. REV. 811 (1999)

For next class:

1) Please complete and score the Thomas Kilman Inventory (TKI) which will be distributed in class. Answer the questions posed in the inventory with reference to a work environment.

2) Take a few minutes to reflect on what it is that brought you to the legal profession and how you envision yourself at graduation from law school and beyond. Next, write a letter to yourself (your letter will NOT be graded or read by anyone but you). In this letter, record who you are today as you begin your legal education. In addition, record the thoughts that you want to convey to yourself at your graduation from law school when you begin the next stage of your journey – your professional life as an attorney. Place the letter in a sealed envelope addressed to yourself and bring it to class. Your letter will be returned to you when you graduate from law school.

Class 2 – September 3

Impact of conflict style, neuroscience and psychological biases on decision-making and counseling

Readings:

- Excerpt from Lisa Bingham, *When We Hold No Truths to be Self-Evident: Truth, Belief, Trust, and the Decline in Trials*, 2006 J. DISP. RES. 131
- Excerpt from Kenneth Cloke, *Journeys into the Heart of Conflict*, 4 PEPP. DISP. RESOL. L.J. 219 (2004)
- Excerpt from Richard Birke, *Neuroscience and Settlement: An Examination of Scientific Innovations and Practical Applications*, 25 OHIO ST. J. ON DISP. RESOL. 477 (2010)

Journal Prompt (entry one):

Discuss what most interested you (and why) from the readings, class discussion, or your score on the Thomas Kilman Inventory (TKI) as it relates to your future work as a problem-solving professional.

Class 3 – September 10

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

Readings:

- 26 Effectiveness Factors
- Forrest S. Mosten, *Lawyer As Peacemaker: Building A Successful Law Practice Without Ever Going To Court*, 43 FAM. L. Q. 489 (2009)
- Stephen D. Easton, *My Last Lecture: Unsolicited Advice for Future and Current Lawyers*, 56 S. C. L. REV. 229 (2004)

Journal Prompt (entry two):

Based on what you heard (explicitly or implicitly) from the panelists, what five “effectiveness factors” do you believe are most important to the practice of law? Explain your reasoning.

Class 4 – September 17

Process choice (adjudicative, evaluative and facilitative processes); key characteristics of negotiation, mediation, neutral evaluation and arbitration; central concept of party *interests*

Readings

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

For next class:

In first year classes you spend a lot of time using IRAC (issue, rule, analysis, conclusion) to help you develop your ability to “think like a lawyer.” The journal entry required after next week’s class asks you to consider an additional “I” in the IRAC analysis and ponder the “interests” of the parties involved in a lawsuit. Pick a case from one of your doctrinal courses and be prepared to discuss the following questions in class next week (and later address them as a journal entry after class):

- 1) what were the interests of the different parties in the case, named or not?
- 2) was there a better process than litigation to satisfy the parties' interests?
- 3) what solutions, other than those ordered by the court, might have resolved the conflict among all interested parties?

Class 5 – September 24

Debriefs on alumni interviews; case analysis discussion; introduction to effective listening and questioning

Readings:

- Excerpt from Jean R. Sternlight & Jennifer Robbennolt, *Good Lawyers Should be Good Psychologists: Insights for Interviewing and Counseling Clients*, 23 OHIO ST. J. ON DISP. RESOL. 437 (2008)

Journal Prompt (entry three):

Using the case you selected from one of your doctrinal courses, answer the following questions:

- a) what were the interests of the different parties in the case, named or not?
- b) was there a better process than litigation to satisfy the parties' interests?
- c) what solutions, other than those ordered by the court, might have resolved the conflict among all interested parties?

Class 6 – October 1

Interviewing and counseling; the centrality of emotion

Readings

- Excerpt from Jean Sternlight and Jennifer Robbennolt, *Good Lawyers Should Be Good Psychologists: Insights For Interviewing and Counseling Clients*, 23 OHIO ST. J. ON DISP. RESOL. 437 (2008)
- Daniel L. Shapiro, *Untapped Power: Emotions in Negotiations*, in THE NEGOTIATOR'S FIELDBOOK: THE DESK REFERENCE FOR THE EXPERIENCED NEGOTIATOR 263-270 (Andrea Kupfer Schneider and Christopher Honeyman eds. 2006)

Journal prompt (entry four) *(please remember that journals will be graded anonymously; accordingly, do not put your name or the name of the person you worked with in this journal entry):*

If you were the lawyer in the client interview simulation completed in class:

- a) what did you do to be a good listener and what evidence do you have that you were successful?
- b) what did you do that was counterproductive to good listening and what evidence leads you to that conclusion?

If you were the client in the client interview simulation completed in class:

- a) provide concrete examples of what your lawyer did or said that demonstrated good listening skills.
- b) in what ways did your lawyer's actions or words inhibit you from sharing information?

Class 7 – October 8

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

Readings

- Excerpt from Carrie Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem Solving*, 31 UCLA L. REV. 754 (1984)
- Andrea K. Schneider, *What Family Lawyers Are Really Doing When They Negotiate*, Marquette Research Paper Series (July 2006)
- Finish GETTING TO YES
- Excerpt from Gary Goodpaster, *A Primer on Competitive Bargaining*, 1996 J. DISP. RESOL. 325

Journal Prompt (entry five):

Reflecting on the negotiation you just completed in class:

- a) identify and describe two things you did well;
- b) identify and describe two things you would do differently that would have improved the negotiation.

Class 8 – October 15

Introduction to mediation; the role of the lawyer before, during and after a mediation; the importance of creativity in legal practice.

Readings:

- Basic Rule 114 Framework. See MINN. GEN. R. PRAC. 114 (2010).
- Lela P. Love & Joseph B. Stulberg, *The Uses of Mediation*, in THE NEGOTIATOR'S FIELDBOOK: THE DESK REFERENCE FOR THE EXPERIENCED NEGOTIATOR 573-79 (Andrea Kupfer Schneider & Christopher Honeyman eds., 2006)
- Excerpt from Jean R. Sternlight, *Lawyers' Representation of Clients in Mediation: Using Economics and Psychology to Structure Advocacy in a Nonadversarial Setting*, 14 OHIO ST. J. ON DISP. RESOL. 269 (1999)
- Jennifer Brown, *Creativity and Problem Solving*, in THE NEGOTIATOR'S FIELDBOOK: THE DESK REFERENCE FOR THE EXPERIENCED NEGOTIATOR 407-414 (Andrea Kupfer Schneider and Christopher Honeyman eds. 2006)

For next class: Finalize your adventure learning reflective writing assignment

Class 9 – October 29

Debrief of adventure learning negotiation assignment; decision/risk analysis; time-value of money; delivering bad news

Readings:

- Jeff Senger, *Analyzing Risk*, in THE NEGOTIATOR'S FIELDBOOK: THE DESK REFERENCE FOR THE EXPERIENCED NEGOTIATOR 445-454 (Andrea Kupfer Schneider and Christopher Honeyman eds. 2006)
- Excerpt from: Linda F. Smith, *Medical Paradigms for Counseling: Giving Clients Bad News*, 4 CLINICAL L. REV. 391 (1998)

Journal Prompt (entry six):

Lawyers often deliver bad news (e.g., about actual and predicted outcomes; regulatory barriers; ethical proscriptions). What gives you the most concern about performing this common lawyering role?

Class 10 – November 5

Disaster in the Gulf: A case study in how lawyers help solve complex problems (legislative; regulatory; litigation; and other problem-solving responses)

Readings

- Excerpt from Robert Ackerman, *The September 11th Victim Compensation Fund: An Effective Administrative Response to National Tragedy*, 10 HARV. NEG. L. REV. 135 (Spring 2005)
- Excerpt from Mike Steenson and Joseph Michael Saylor, *The Legacy of the 9/11 Fund and the Minnesota I-35W Bridge-Collapse Fund: Creating a Template for Compensating Victims of Future Mass-Tort Catastrophies*, 35 WM. MITCHELL. L. REV. 524 (2009)
- Additional materials to be identified later in the fall as the situation evolves (e.g., text of legislation; excerpts of complaints; relevant government websites, etc.)

Class 11 – November 12

Alumni panel discussion about emerging trends in the practice of law

Readings:

- John Lande, *The Movement Toward Early Case Handling in Courts and Private Dispute Resolution*, 24 OHIO ST. J. ON DISP. RESOL. 81 (2008)
- John W. Allen, *Lawyers as Healers*, 80-OCT. MICH B.J. 42 (2001)
- Excerpt from Julie Macfarlane and John Manwaring, *Reconciling Professional Legal Education with the Evolving (Trial-less) Reality of Legal Practice*, 2006 J. DISP. RESOL. 253 (2006)
- Forrest S. Mosten, *Unbundling*, 40 FAM. CT. REV. 15 (2002)

Journal Prompt (entry seven):

Review all of your previous six journal entries. For each, write a short paragraph (formatted in *italic font* immediately after the initial entry) explaining how your perspective has shifted since you first wrote the entry.

Class 12 – November 19

Debrief of mediation simulation held in legal writing class; ethics, professionalism and justice

Readings

- Excerpt from Owen Fiss, *Against Settlement*, 93 YALE LAW JOURNAL 1073 (1984)
- Excerpt from Michael Moffit, *Three Things To Be Against (“Settlement” Not Included)*, 78 FORDHAM L. REV. 1203 (2009)
- Excerpt from Thomas L. Shaffer and Robert F. Cochran, Jr., *Lawyers as Strangers and Friends: A Reply to Professor Sammons*, 18 U. ARK. LITTLE ROCK L. J. 69 (1995)