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"Technology has forever changed not only what we need to learn, but the way we learn."
– National Educational Technology Standards[1]

I. INTRODUCTION

In lieu of the changing legal environment, which has strongly begun to adopt Alternative Dispute Resolution (ADR) methods, and in lieu of the changing ADR environment, which has gone from face-to-face resolution to one that incorporates online resolution, the next generation of lawyers, who are most likely to practice in all three environments, should be educated in a way that adequately prepares them to practice in all three environments. As such, the most practical approach for legal educators is to incorporate face-to-face and online methods of ADR into the traditional law school curriculum. Realistically, law students will counsel clients through both face-to-face and online ADR methods. It is the legal profession's duty to adequately prepare law students for law practice, as it is currently practiced, not merely for how it was traditionally practiced.

The unfortunate reality of America's legal system is that, at a minimum, litigation is costly and the courts are overcrowded. As a reasonable solution to such realities, many people have sought out more economical and efficient methods of resolving disputes; these methods include negotiation, mediation, and arbitration, and are generally referred to as ADR methods. Because of the increased use of ADR methods to resolve disputes, globalization and the widespread reach of technology in daily life has lead to

1. *The Standards for Learning, Leading and Teaching in the Digital Age*, INTL. SOC'Y FOR TECH. IN EDUC., http://www.iste.org/standards (last visited Feb. 24, 2013).

the use of Online ADR (OADR) as a means of conducting ADR proceedings in an even more convenient manner. OADR "involves two or more parties communicating by electronic means in an attempt to reach an agreement."[2] Although OADR implements many of the same techniques as ADR, *online* ADR is very different from conducting ADR in *person*. Because OADR is becoming more widely used and because K-12 students are being introduced to online learning at a growing rate, I argue that law schools must start preparing future lawyers for dispute resolution in the online forum.

In this article, I will discuss traditional law school curriculums and how the addition of ADR courses has supplemented the traditional law school curriculum in a way that helps law schools achieve educational and academic recommendations, suggested by various studies including the Carnegie Report and the Best Practices for Legal Education. I will then show that the effects of globalization and the increased use of technology in daily life have caused a higher demand for OADR in legal practice. Further, because there is a growing use of technology in K-12 curriculums and the nation's youth are becoming more technologically savvy every year, it is time for legal education to adapt to the realities of our modern world and incorporate both ADR and OADR practice into their curriculums. I conclude with various methods that law professors can use to effectively teach students ADR and OADR skills in a way that adequately supplements doctrinal courses.

II. THE RECENT SHIFT TO ADR

Current statistics estimate that roughly "ninety-eight percent of 'all' cases eventually settle."[3] Although many factors are responsible for this trend, two extremely motivating factors are: (1) overcrowding in the courts and (2) the high cost of litigation for the courts and parties to the dispute.[4] The length of a litigated dispute, from filing through judgment, has a large effect on the ultimate expenditure of resources.[5] This is because the longer a

2. Martin Gramatikov & Laura Klaming, *Getting Divorced Online: Procedural and Outcome Justice in Online Divorce Mediation*, 14 J.L. & FAM. STUD. 97, 99 (2012).

3. C. Michael Bryce, *ADR Education From a Litigator/Educator Perspective*, 81 ST. JOHN'S L. REV. 337, 338 (2007) [hereinafter Bryce, *ADR Education*].

4. John B. Henry, *Fortune 500: The Total Cost of Litigation Estimated At One-Third Profits*, eLAW - FORUM (Feb. 1, 2008), http://www.metrocorpcounsel.com/articles/9493/fortune-500-total-cost-litigation-estimated-one-third-profits ("The high cost of litigation and small percentage of cases that actually go to trial is to some degree attributable to litigation delays and uncertainties resulting from under-funded court systems and the failure of some states to consider merit in the selection of judges.").

5. *Id.*

party is involved in litigation, the more resources she or he expends.[6] It is difficult to determine the exact length of a case because there are many confounding factors that arise during the pre-litigation period and possible appeals that might delay a trial. But the longer a litigated dispute takes to obtain a final judgment, the longer the potential for unanticipated delay and, more significantly, unanticipated money, emotion, and time that is exhausted.[7]

Beyond cost, litigation is becoming increasingly impractical due to the increased filings with courts, the decreased rate at which cases go to trial, and the decreased funding that courts receive, which causes general overcrowding in the courts.[8] Scholars have identified the following trends: (1) a statistical increase in the demand for litigated cases[9]; (2) an increase in

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6. *Id.* A recent study found that for Plaintiffs, the longer a case was being processed, the higher the ultimate cost of the litigation, all other things being equal. *See* Rep. to the Jud. Conf. Advisory Comm. on Civ. Rules, *Litigation Costs in Civil Cases: Multivariate Analysis*, 5 (March 2010), http://www.fjc.gov/public/pdf.nsf/lookup/costciv1.pdf/$file/costciv1.pdf (" . . . a 1% increase in case duration is associated with a 0.32% increase in costs, all else equal."). Resources may range from money, to time, to energy, to emotion. *Id.*

7. Examples of delays in litigation are motions for continuances, motions in limine, the presentation of new evidence, new witnesses, delays in depositions and delays in pre-trial hearings, etc. They can cause indefinite delays in litigation. *See generally* Conference Report, 2010 Conference on Civil Litigation, Litigation Cost Survey of Major Companies, 2, 4 (May 10–11, 2010), http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Duke%20Materials/Library/Litigation%20Cost%20Survey%20of%20Major%20Companies.pdf (A survey of litigation costs of major companies found that "[l]itigation costs continue to rise and are consuming an increasing percentage of corporate revenue" and "[c]ompanies are spending billions of dollars yearly on litigation").

8. Mark R. Kravitz, *The Vanishing Trial: A Problem in Need of Solutions?*, 79 CONN. B.J. 1, 9–10 (2005) ("the decline in the number of cases tried is not due to a reduction in case filings. To the contrary, both civil case filings and dispositions have actually increased fivefold in the federal courts during the same time that the number of trials, both the rate of trials and the absolute number of trials, has diminished substantially" (citing Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. EMPIRICAL LEGAL STUD. 459, 486–89 (2004)); *see* Marc Galanter, *The Hundred-Year Decline of Trials and the Thirty Years War*, 57 STAN L. REV. 1255, 1263–64 (2005) (the recent increase in access to the courts has caused an influx of disputes that surpass the court's ability and resources to preside over all cases in a timely fashion; this article offers many explanations besides the ones I have listed that might have influenced the decline in trials); *see also* Henry, *supra* note 4.

9. This is largely due to the increased number of initiatives that are intended to increase access to justice. *See* ABA STANDARDS FOR LANGUAGE ACCESS IN COURTS, STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS, 9 (February 2012) *available at* http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_language_access_proposal.authcheckdam.pdf; Annual Meeting, *Resolution 2 In Support of the Efforts to Increase Access to Justice*, Conference of Chief Justices, Conference of State Court Administrators (July 30, 2008),

case management initiatives; (3) an increase in non-trial adjudications, hearings, and preliminary discussions with the other party and the court; and (4) an increased effort by the court to actively outsource potential trials to ADR providers in order to minimize courtroom adjudications.[10] These trends indicate a shift of focus to the beginning stages of litigation in an effort to dilute the number of cases that advance to trial.[11] As evidenced by the fact that roughly ninety-eight percent of cases settle, these efforts to promote ADR methods have had some success.[12] Given the obstacles of litigation and that ADR methods have proven to be successful in many types of lawsuits, many people have become comfortable using ADR methods rather than waiting to go to trial.[13]

III. MERITS OF ADR

The benefits of ADR are far reaching, but I will only mention four merits common to all methods of ADR. Primarily, ADR methods are favorable to litigation because they are time-efficient and cost-effective.[14] An average contract-based lawsuit takes two years to resolve, which means two years time is spent agonizing over the lawsuit, generating attorney fees, and spending time in court.[15] When using ADR methods to resolve a contractual dispute, the parties have three options, all of which can be conducted whenever the parties want, and not according the court's timeline.[16] The first option the parties have is to negotiate the dispute, which could cut out attorneys entirely and save attorney fees for both parties.[17] The

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http://ccj.ncsc.org/~/media/Microsites/Files/CCJ/Resolutions/07302008-In-Support-of-Efforts-to-Increase-Access-to-Justice.ashx; Meeting, Resolution 12 In Support of State Courts' Responsibility to Promote Bias-Free Behavior, Conference of Chief Justices, Conferences of State Court Administrators (Aug. 3, 2005), http://ccj.ncsc.org/~/media/Microsites/Files/CCJ/Resolutions/08032005-In-Support-of-State-Courts-Responsibility-to-Promote-Bias-Free-Behavior.ashx.

10. Galanter, *supra* note 8, at 1264–65.

11. *See* John Lande, *The Movement toward Early Case Handling in Courts and Private Dispute Resolution*, 24 OHIO ST. J. ON DISP. RESOL. 81, 88–94 (2008) (discussing early case handling and its ability to help the parties think about settling or resolving the issue as soon as possible so as to reduce the length of the case, which in turn reduces the cost to litigants and the court).

12. *See id.* at 88–94; *see also* Bryce, *ADR Education*, *supra* note 3, at 337–38.

13. *See* Bryce, *ADR Education*, *supra* note 3, at 337–38.

14. Fred Galves, *Virtual Justice as Reality: Making the Resolution of E-Commerce Disputes More Convenient, Legitimate, Efficient, and Secure*, 2009 U. ILL. J.L. TECH. & POL'Y 1, 41–42 (2009).

15. *Id.*

16. *Id.* at 9.

17. *Id.*

parties also have the option to mediate or arbitrate the dispute.[18] Although these options require the parties to jointly pay for a mediator or arbitrator (possibly in addition to their own attorneys), there is less paperwork and discovery, which will cut attorney fees significantly.[19]

Second, ADR methods tend to value and foster the parties' relationship.[20] ADR proceedings are less adversarial because they usually occur in an environment that is mutually decided upon by both parties.[21] The process of deciding on a venue helps the parties cooperate with one another prior to discussing the dispute, and creates a less intimidating atmosphere for the parties compared to the tense atmosphere created in a courtroom.[22] Further, ADR proceedings give the parties a chance to fully discuss and understand substantive issues with each other because these proceedings include fewer formalities. These formalities, for example, include evidentiary presentations and the order in which parties speak. With fewer motions, which tend to delay or dismiss the trial for procedural issues rather than adjudication on the merits, parties can come to an agreement that is based on the merits and not the procedure, which helps parties feel that they have a more fair resolution.[23]

Third, ADR is a future-looking means of resolving disputes. In this way, ADR differs from litigation, which resolves disputes by focusing on the past, placing fault with one of the parties, and forcing the "losing" party to pay damages to the "winning" party.[24] ADR methods don't merely make a judgment that places blame on one party or both parties for past actions.[25] But as the goal in ADR is to resolve the dispute with an agreement that is mutually beneficial and that allows both parties to move forward amicably, both parties tend to feel like "winners" when they are able to reach a resolution.[26]

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18. *Id.* at 41–42.
19. *See id.*
20. *Id.* at 40–41.
21. *Id.* at 40.
22. *Id.*
23. *Id.* at 40–41. Many motions that may exist in court do not exist in an ADR forum; thus, motions do not delay the trial and the parties are not able to use motions as a tactic to delay trial, which also wastes time and resources. *Id.* at 41.
24. *See id.* at 41.
25. *Id.*
26. *Id.*

Finally, ADR methods have positive fiscal effects on state and federal budgets.[27] Courts are government entities, and thus, conserving judicial resources saves money for the state and the federal government.[28] Such conservation allows for the potential surplus to be used on other, more collectively beneficial initiatives.[29] Various law schools have acknowledged the aforementioned benefits and practicality of ADR.[30] This has caused these schools to integrate ADR-themed classes into their curriculums.[31]

IV. THE LAW SCHOOL CURRICULUM SHIFT TOWARD THE INCORPORATION OF ADR METHODS

Traditional and much of current legal education relies heavily on the Socratic Method, which is described as "an intensive interrogation of professor-selected students [about] the doctrinal logic of a legal case."[32] The shift away from traditional litigation and toward ADR methods encouraged an implementation of ADR-themed classes, lectures, and concentrations in law schools. Recent studies identify several shortcomings in regard to the Socratic Method. These shortcomings are improved by legal curriculums that incorporate ADR-themed classes and lectures.[33]

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27. *Id.*

28. Benjamin Angulo, Daniel J. Romine & Matthew Schact, *State Legislative Update*, 2011 J. DISP. RESOL. 387, 401–07 (2011).

29. *Id.* (offering examples of how states have used ADR as a means of solving state budget issues). There are various statutes that states have adopted that function as a means of saving money. *Id*. For example, Ohio passed a law that prohibits "public employees from bargaining for less than a fifteen percent contribution to their benefits' costs." This prevents certain smaller claims from being bargained and wasting state resources. *Id* at 406–07. Additionally, New Jersey conserves money by capping the arbitration awards for salaries that state officials, such as fire fighters and police officers, can collect. The capped awards are two percent per year. *Id.* at 402.

30. *See* US NEWS, *Best Grad Schools Dispute Resolution*, http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/dispute-resolution-rankings (last visited Sept. 14, 2013).

31. *Id.*

32. Edward Rubin, *Curricular Stress*, 60 J. LEGAL EDUC. 110, 114 (2010); Douglas K. Rush & Suzanne J. Schmitz, *Universal Instructional Design: Engaging the Whole Class*, 19 WIDENER L.J. 183 (2009).

33. *See* WILLIAM M. SULLIVAN ET AL., THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS, PREPARATION FOR THE PROCESSION OF LAW SUMMARY, 9–10 (2007), *available at* http://www.carnegiefoundation.org/sites/default/files/publications/elibrary_pdf_632.pdf (last visited February 21, 2013) [hereinafter SULLIVAN, EDUCATING LAWYERS, PREPARATION FOR THE PROCESSION OF LAW]; Roy Stuckey, et al., *Best Practices for Legal Education* 173–81 (2007), *available at* http://law.sc.edu/faculty/stuckey/best_practices/best_practices-cover.pdf [hereinafter Stuckey, *Best Practices*].

I will discuss two identifiable issues attributed to the traditional Socratic-based curriculum that can be resolved through ADR education: (1) the Socratic Method cultivates a competitive and adversarial nature in law students, which tends to spread into law practice,[34] and (2) the Socratic Method results in a failure to recognize that students' learning styles vary.[35] ADR-themed classes operate differently than the Socratic Method on these two issues because ADR-themed classes value cooperation and mutually beneficial settlement, and ADR classes are taught through skills-based learning, team-building, and group problem solving.[36] In other words, "[b]y focusing on interactive, skills-based approaches, ADR courses [are] beginning to address .†.†. a nagging concern about legal education generally – that it [is] too [cryptic] to be terribly useful to law students."[37]

The skills learned in ADR classes are great supplements to the doctrinal courses because they incorporate cooperative skills, which are not normally fostered through the adversarial nature of the Socratic Method. The 2007 Carnegie Report, a report that assessed the current state of the law school curriculum and then made curriculum recommendations based on the assessment, recommended that law school curriculums begin to "[w]eave [t]ogether [d]isparate [k]inds of [k]nowledge and [*s*]*kill*[,]"[38] which, practically speaking, suggests that law schools integrate practical skills and ethical dilemmas into their doctrinal-based curriculum.[39] ADR courses primarily teach through the use of skill-based exercises, which I will discuss in more detail at the end of this article,[40] while fulfilling many of the "Best

34. Bryce, *supra* note 3, at 337–39.

35. Rush & Schmitz, *supra* note 32, at 185. Scholars have hypothesized that at least seven, but possibly more, learning styles exist. These seven styles are: "print, aural, interactive, visual, haptic, kinesthetic, and olfactory." *Id.* (quoting DONNA M. JOHNSON & JUDITH A. FOX, CREATING CURB CUTS IN THE CLASSROOM: ADAPTING UNIVERSAL DESIGN PRINCIPLES TO EDUCATION, IN CURRICULUM TRANSFORMATION AND DISABILITY: IMPLEMENTING UNIVERSAL DESIGN IN HIGHER EDUCATION 12 (Jeanne L. Higbee ed., 2003)).

36. *See* Bryce, *supra* note 3, at 340 ("Concepts like teamwork, cooperation, conciliation, mutual problem-solving, and peacemaking (maybe even studying together) are not normally considered a relevant part of the legal education.").

37. Christene Ver Ploeg & Jim Hilbert, *Project-Based Learning and ADR Education: One Model for Teaching ADR to Problem Solve for Real*, 11 APPALACHIAN J.L. 157, 160 (2012) [hereinafter Ver Ploeg & Hilbert, *Project-based Learning and ADR Education*].

38. SULLIVAN, *supra* note 33, at 9–10 (emphasis added).

39. *Id.*

40. *See infra* Section IV and accompanying text.

Practices for Legal Education."[41] With 98% of all cases settling, and 100% of all cases requiring attorneys to work with clients and opposing counsel, almost every law student could benefit from learning and practicing cooperative *skills* in law school.[42] As law schools recognize the benefit of altering the traditional Socratic Method and as ADR becomes more prevalent in practice, the integration of ADR themes into traditionally doctrinal curriculums has increased.[43]

There are various skills that law students gain from taking ADR courses that they would not otherwise learn through doctrinal courses. Skills emphasized in ADR courses include, but are not limited to, the following: "listening, demonstrating empathy, [and] building rapport .†.†. ."[44] As ADR courses are skill-based and not strictly doctrinal, law students are taught *how* and *when* to focus on their client's interests, not merely what their client's interests are.[45] Because ADR is still an offspring of the legal profession, these skills are often taught through a Socratic-like process where the ADR professors ask one or more students questions, much like the traditional use of the Socratic Method.[46] But the professors then ask how the student might counsel their clients, a question that is not asked in a traditional law school class.[47] As the legal system is evolving in a way that requires less litigation and more settlement, these ADR skills are becoming more useful for law students and more desirable to employers.[48]

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41. Bryce, *supra* note 3, at 359–66. The CLEA's Best Practices Guide's discussion of simulations reflects practices that are accomplished in many mediation courses Stuckey, *supra* note 33.

42. Bryce, *supra* note 3, at 340. In addition to ADR-related skills, law schools have begun integrating other practical skills such as clinical work and trial practice, which allow students to use different learning capacities and to gain practical experience before becoming an attorney. *Id.*; *see also* Rush & Schmitz, *supra* note 32 (containing the list of other types of learning capacities).

43. Bryce, *supra* note 3, at 340–41. Many law schools provide ADR classes as electives, others have developed full ADR programs, and many professors have chosen to integrate ADR topics into their traditional law class curriculums. *Id.* at 341–42 ("These Centers and Institutes offer a wide array of ADR courses and clinical opportunities for law students, as well as providing needed mediation services to the community."); *see* John Lande & Jean R. Sternlight, *The Potential Contribution of ADR to an Integrated Curriculum: Preparing Law Students for Real World Lawyering*, 25 OHIO ST. J. ON DISP. RESOL. 247, 250 (2010).

44. Lande & Sternlight, *supra* note 43, at 290.

45. *Id.* at 290; *see* Ver Ploeg & Hilbert, *supra* note 37, at 160.

46. *See* Lande & Sternlight, *supra* note 43.

47. *Id.* at 290.

48. *Dispute Resolution Skills in "High Demand" Survey Reveals*, RESOLUTION MEDIATION (Aug. 26, 2012) *available at* http://www.peoplemanagement.co.uk/pm/articles/2012/08/dispute-resolution-skills-in-high-demand-survey-reveals.htm.

V. GLOBALIZATION AND THE INCORPORATION OF TECHNOLOGY IN K-12 CURRICULUMS

Although ADR is gaining momentum in the legal profession and in law school curriculums, cross-cultural communication and the prevalence of technology in society has resulted in a new forum for commerce, communication, and ADR. Given that much of our modern world transactions are conducted online, K-12 education has adapted by incorporating online teaching techniques into their curriculums. As such, law schools should also prepare future attorneys for the modern world, much of which takes place in the online forum.

A. Globalization, Globalism, and Technology Defined

Globalization[49] is a multi-faceted concept that involves goods, services, businesses, news, people, and money that travel and communicate around the world at a non-stop and rapid rate.[50] A concept that emerged from globalization is globalism, which is "a way of thinking of the world as a single marketplace in which political, legal, and economic distinctions begin to blur."[51] Technology is a driving force that makes constant communication around the world possible.[52] Most people in developed countries, even people who aren't technologically savvy, find it difficult to

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49. "Globalization" is defined as

> the expansion of global linkages, the organization of social life on a global scale, and the growth of a global consciousness, hence to the consolidation of world society. Such an ecumenical definition captures much of what the term commonly means, but its meaning is disputed. It encompasses several large processes; definitions differ in what they emphasize. Globalization is historically complex; definitions vary in the particular driving force they identify. The meaning of the term is itself a topic in global discussion; it may refer to "real" processes, to ideas that justify them, or to a way of thinking about them. The term is not neutral; definitions express different assessments of global change. Among critics of capitalism and global inequality, globalization now has an especially pejorative ring.

What is Globalization?, THE GLOBALIZATION WEBSITE, http://sociology.emory.edu/globalization/issues01.html (last visited Feb. 24, 2013).

50. Sungjoon Cho & Claire R. Kelly, *Promises and Perils of New Global Governance: A Case of the G20*, 12 CHI. J. INT'L L. 491, 493 (2012).

51. Nadja Alexander, *Mobile Mediation: How Technology is Driving the Globalization of ADR*, 27 HAMLINE J. PUB. L. & POL'Y 243, 246 (2006) [hereinafter Alexander, *Mobile Mediation*].

52. *Id.* at 243.

avoid e-mail, Google,[53] and mobile phones, all of which fuel globalization because they act as a means to communicate nationally, internationally, and transnationally.[54] These sorts of technological devices permit people to communicate at their leisure and through whichever technological medium they choose, such as video-based or text-based mediums.[55] Accordingly, a new online forum exists, within which the world operates and people can engage in social (and legal) interactions.

Just as face-to-face interactions lead to conflict and possible resolution, online interactions lead to e-conflict and possible online resolution.[56] This new online forum extends beyond geographic borders and traditional business hours; people may conduct transnational commercial and business transactions twenty-four hours a day seven days a week.[57] There are many benefits to international e-commerce[58] and business operations; four of the most commonly cited operational benefits of e-commerce are its speed,[59] availability,[60] low costs,[61] and a larger market of buyers and suppliers. Consequently, these borderless transnational interactions and the convenience and commonality of online communications have opened up individuals to legal disputes and have created a demand for online legal services.[62]

53. GOOGLE, https://www.google.com/ (last visited September 13, 2013).

54. Alexander, *supra* note 51, at 243–44.

55. *Id.* at 244.

56. *Id.* at 247.

57. *Id.* at 247 (citing Alejandro E. Almaguer & Roland W. Baggot III, *Shaping New Legal Frontiers: Dispute Resolution for the Internet*, 13 OHIO ST. J. ON DISP. RESOL. 711, 712 (1998)).

58. Prof. Matthew Wilson, *Reducing Legal Risks: Online Commerce, Information Security, and the World*, 33-OCT WYO. LAW. 24, 25 (2010) (E-commerce is short for electric commerce).

59. *See* Alan S. Gutterman & Robert L. Brown, *Online Cross-Border Business Activities*, 23 NO. 4 CORP. COUNS. QUARTERLY ART 5 (2007). Transactions are much more efficient as they are recorded and often done automatically. *Id.*

60. *See id*. Transactions may occur twenty-four hours a day, seven days a week because computers are always available to record transactions. *Id*.

61. Dr. Ljiljana Biukovic, *International Commercial Arbitration in Cyberspace: Recent Developments*, 22 NW. J. INT'L L. & BUS. 319, 325 (2002).

62. *See* Wilson, *supra* note 58, at 25.

B. Prevalence Of Technological Teaching Tools In Grades K-12 Institutions[63]

K-12 curriculums adapted to the prevalence of technology in society and have incorporated online teaching and study components into their curriculums. As of January 2013, thirty states offer full-time online schools, which allow students to take courses from any location and for subjects not offered at their schools.[64] These online courses are beneficial because they are self-paced, giving students the opportunity to retake courses for higher grades, and allowing more advanced students the opportunity to get ahead.[65] Furthermore, using the Internet gives students access to free research materials, as well as interactive modules and video lessons.[66] Although many schools do not provide online courses or online lessons, technology's presence is expected to escalate in the next few years. It is projected that in the next two to three years, over half of American schools will use e-books, which requires that those students have Internet access and certain technological devices.[67] Further, a recent poll shows that 71% of teens said that the Internet was their source for completing a recent school project.[68] Additionally, about 65% of students said that they completed their homework online at home.[69] With teachers routinely assigning homework

63. *See* D.A. Barber, *5 K-12 Tech Trends for 2012*, THE JOURNAL (Jan. 10, 2012), http://thejournal.com/articles/2012/01/10/5-k-12-ed-tech-for-2012.aspx; K12, http://www.k12.com/ (last visited November 5, 2012) (showing that public schools are being offered entirely online); *The Standards for Learning, Leading and Teaching in the Digital Age*, ISTE INTERNATIONAL SOCIETY FOR TECHNOLOGY IN EDUCATION, http://www.iste.org/standards (last visited Feb. 24, 2013).

64. Helen Brunner, *Equal Internet Access is a Must-Have*, EDUCATION WEEK (Jan. 29, 2013), http://www.edweek.org/ew/articles/2013/01/30/19brunner.h32.html?tkn=LVUFOE60aReBCasPaQWKHfm1jCJUMRuedqi2&cmp=clp-edweek.

65. *Id.*

66. *Id.* ("For instance, the nonprofit Khan Academy offers an extensive online library of more than 3,800 free video lessons that have been viewed millions of times and cover topics on everything from math, chemistry, and physics to art history, civics, and economics. Founder Salman Khan has said he created the academy as a way to provide a free world-class education for anyone, anywhere.").

67. *Id.*; *see also*, EBOOKS.COM, www.ebooks.com (last visited September 12, 2013) (to use e-books, students must have access to "Kindle Fire, Apple, Android, Nook, Kobo, PC, Mac, or Sony Reader").

68. September Commission Meeting, FCC National Broadband Plan (Sept. 29, 2009), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293742A1.pdf (last visited February 24, 2013).

69. Brunner, *supra* note 64.

assignments that require Internet access to complete, there seems to be a general reliance on Internet access as a basic resource.

Some states have passed legislation that reflects the prevalence of technology in education. In 2011, the Florida legislature mandated that, as a graduation requirement, all high school students take at least one online course.[70] In fact, even President Obama has acknowledged the benefits of online teaching and started an organization named Digital Promise,[71] which is an organization that supports "[a] comprehensive research and development program to harness the increasing capacity of advanced information and digital technologies to improve all levels of learning and education, formal and informal, in order to provide Americans with the knowledge and skills needed to compete in the global economy."[72] Technological advancements in education are expansive and are acknowledged internationally. According to the National Educational Technology Standards (NETS), which is established by the International Society for Teaching Education (ISTE), there are several benefits to "learning, teaching, and leading with technology in education."[73] These include: improving higher-order thinking skills, preparing students for the future global job market, designing online learning environments, guiding systemic change to create digital places of learning, and "inspiring digital age professional models for working, collaborating, and decision making."[74]

The purpose of the push to use technology in K-12 and higher education is to stay current within the 21st century and to prepare students for their futures in a society that is becoming increasingly embedded with technology. Because the Nation's K-12 and undergraduate curriculums have integrated technological components, these students are better equipped to work in our globalized world. Legal education must also adapt so that future attorneys not left with skills that prepared them to use paper in a paperless world.

VI. THE RISE OF ONLINE ALTERNATIVE DISPUTE RESOLUTION

The combination of globalization, the increased use of technology in daily life, and the increased use of ADR instead of litigation, created a form

70. Brunner, *supra* note 64. Florida is also home to the country's largest k-12 online school program, Florida Virtual School. *Id.* Florida Virtual School serves more than 148,000 students. *Id.*

71. DIGITAL PROMISE, http://www.digitalpromise.org/ (last visited February 21, 2013).

72. *Mission + History*, DIGITAL PROMISE, http://www.digitalpromise.org/about-us/mission-history/ (last visited February 21, 2013).

73. *The Standards for Learning, Leading and Teaching in the Digital Age*, INT'L. SOC'Y FOR TECH. IN EDUC., http://www.iste.org/standards (last visited Feb. 24, 2013).

74. *Id.* Coincidently, the ISTE standards are similar to the goals of ADR and OADR. *See id*.

of ADR to surface in the online forum.[75] OADR is similar to ADR in the sense that it resolves disputes cost effectively and efficiently. OADR, however, uses the Internet as the forum for conducting ADR proceedings.[76] It can occur through online chatting or instant messaging, email, secure password encrypted websites, video conferencing, and third-party websites or software that facilitate online negotiation, mediation, and/or arbitration.[77] Thus, OADR is practical in lieu of pervasive globalization. Additionally, because minors are growing accustomed to using technology throughout their secondary education, I argue that OADR is distinct enough from ADR that OADR components should be incorporated into law school curriculums so as to keep the legal profession modern and practical in our globalized world so that attorneys are capable of practicing in the technological world.

A. The Merits of Online Alternative Dispute Resolution

There are many benefits that make OADR a more viable option for dispute resolution than ADR in our globalized world. First, OADR is even more efficient and cost-effective than ADR. As many companies exist globally with many offices, and because mergers typically occur between companies from different states or countries, OADR is more efficient because parties are able to resolve disputes transnationally. If the parties otherwise chose to litigate or use ADR methods, one party would have to travel across states or countries for the proceedings, for an undetermined

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75. Alexander, *supra* note 51, at 247–49.

76. Haitham A. Haloush & Bashar H. Malkawi, *Internet Characteristics and Online Alternative Dispute Resolution*, 13 HARV. NEGOT. L. REV. 327, 328, 332 (2008); Alexander, *supra* note 51, at 249.

77. *See* Haloush & Malkawi, *supra* note 79; Ivvonely Colon Fung, *Protecting the New Face of Entrepreneurship: Online Appropriate Dispute Resolution and International Consumer-to-Consumer Online Transactions*, 12 FORDHAM J. CORP. & FIN. L. 233, 247–50 (2007) (the following are some examples of online ADR systems: the World Intellectual Property Organization Arbitration and Mediation Centre (http://arbiter.wipo.int/domains/index.html); The National Arbitration Forum (www.arbitration-forum.com); CyberSettle.com (www.cybersettle.com); Center for Public Resources Alternative Dispute resolution in the United States (www.cpradr.org); SquareTrade (www.squaretrade.com); and Online Resolution (www.onlineresolution.com); and OneAccord (www.oneaccord1.com)); Noam Ebner et al., *You've Got Agreement: Negoti@ting Via Email*, 31 HAMLINE J. PUB. L. & POL'Y 427 (2010) [hereinafter Ebner, *You've Got Agreement*]. For example, SquareTrade is an online negotiation and mediation tool that offers a "free Direct Negotiation Tool that allows disputants to use password-protected case pages and standard e-mail to submit and respond to disputes online." Lucille M. Ponte, *The Case of the Unhappy Sports Fan: Embracing Student-Centered Learning and Promoting Upper-Level Cognitive Skills Through an Online Dispute Resolution Simulation*, 23 J. LEGAL STUD. EDUC. 169, 185 (2006).

amount of time, and would face external stressors, such as travelling, parking, lost luggage, and having to take an unknown amount of time off of work.[78] Furthermore, many OADR systems allow parties to settle, and communicate twenty-four hours a day, seven days a week.[79] Parties may read and respond to posts at a time of their own choosing or may agree on a time in which both are available to communicate through online video-based systems without worrying about travelling to a location. This contrasts with ADR methods in which both parties must schedule a time and place where they are both available to meet.[80] Additionally, OADR is often cheaper than ADR. For example, when using an OADR system that offers settlements based on a range within which each party claims it will settle, the parties have the option to forego consulting with an attorney, and the parties can skip much of the painful negotiation dance that so often happens when parties try to settle. Additionally, virtually all forms of OADR will save the parties time and travel fees.[81]

Second, OADR allows users to remain anonymous, if they choose, and it equalizes power differentials between parties. OADR allows the parties to make their claims without the stress of facing the other party or sitting through hearings and meetings.[82] This is especially useful in settings where there is a large power differential between the parties, such as employee-

78. Lan Q. Hang, *Online Dispute Resolution Systems: The Future of Cyberspace Law*, 41 SANTA CLARA L. REV. 837, 854–55 (2001); Robert Bordone, *Electronic Online Dispute Resolution: A systems Approach—Potential Problems and a Proposal*, 3 HARV. NEGOT. L. REV. 175, 192 (1998); Amy J. Schmitz, *"Drive-Thru" Arbitration in the Digital Age: Empowering Consumers Through Binging ODR*, 62 BAYLOR L. REV. 178, 225 (2010) [hereinafter Schmitz, *"Drive-Thru" Arbitration in the Digital Age*].

79. *See* Hang, *supra* note 78, at 859. However, some argue that OADR is not practical or convenient for many people due to obstacles that prevent access to technology. There is a presumption that everyone in developed countries have access to technology and know how to use it, when that is not the case. In fact, many people who do not have access to a computer nor the technology or software to conduct OADR, despite that this group would benefit the most from OADR because of its low cost. Shekhar Kumar, *Virtual Venues: Improving Online Dispute Resolution as an Alternative to Cost Intensive Litigation*, 27 J. MARSHALL J. COMPUTER & INFO. L. 81, 89 (2009) [hereinafter Kumar, *Virtual Venues*]; Hang, *supra* note 78, at 859; *see* Fung, *supra* note 77, at 250–53. However, one solution to access is the local library, which offers computers for public use.

80. Hang, *supra* note 78, at 859. However, some people question the effectiveness of OADR in regards to response times. A party's ability to respond effectively at an appropriate amount of time because research has shown that when excessive time elapses between responses, the chance of failure to come to a resolution increases. *See* Kumar, *Virtual Venues*, *supra* note 79, at 89.

81. Hang, *supra* note 78, at 859. Requiring partial upfront payment, and the balance of the payment upon resolution of the dispute, can mitigate any apprehension resulting from fees from online dispute resolution systems. Schmitz, *supra* note 81, at 225. However, there are costs to OADR such as purchasing equipment, access to various OADR Systems, software, and any additional training. *Id.* at 223–24.

82. Schmitz, *supra* note 78, at 202.

employer disputes; large corporations and small corporations' settlements, mergers, or hostile takeovers; or divorce proceedings where there is a history of domestic violence.[83] OADR operates in a way that actually establishes a forum of equality, where intimidation tactics[84] cannot be used as effectively as in a face-to-face setting. This equality empowers parties, as the parties have the comfort of responding to communications at their leisure and with greater clarity of mind. Additionally, the luxury of remaining anonymous allows some parties to be more truthful and straightforward in their communications.[85] This often leads to quick resolutions.

Third, OADR increases access to the justice system, because OADR is more accessible to socio-economic populations that have historically had trouble resolving disputes in court or through ADR methods. Because there is a reduction in cost when OADR is used, as opposed to litigation and ADR, OADR is available to traditionally disadvantaged groups.[86]

B. OADR Challenges

Given the aforementioned benefits of OADR, and the demand and practicality of OADR, I argue that there are enough practical differences between ADR and OADR that law schools should incorporate OADR components into their ADR classes and lectures so as to better prepare future

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83. *Id.*

84. *How to Deal With Intimidation*, WESTERN ORGANIZATION OF RESOURCE COUNCILS, http://www.worc.org/userfiles/Deal-with-Intimidation.pdf (last visited February 24, 2013) (discussing five commonly used intimidation tactics).

85. Schmitz, *supra* note 78, at 203. OADR allows for "reasoned responses." *Id.*

86. Kumar, *supra* note 79, at 85. However, despite the expansive scope of OADR, there is some distrust in OADR's operability, privacy, and security by some of the users. As there is traditionally no record taken during ADR proceedings, there is concern over the accessibility and dissemination of confidential information discussed during the OADR proceedings. Many parties are concerned with hackers, viruses, and other parties making hard copies of the communications. Schmitz, *supra* note 78, at 215. Confidentiality is important because parties speak more openly if they don't fear that their statements will be recorded. *Id.* On the other hand, the Internet's reliability improves everyday and many individuals regularly conduct bank transactions and sell or purchase goods and services; these online actions pose the same security, privacy and confidentiality risks as OADR. *Id.* at 215. Regardless, there are possible solutions to ensure privacy, security, and confidentiality: (1) encryption codes and (2) security devices. For example, antiviruses and malware are cheap one-time purchases for individuals, and OADR providers can invest in their own security measures within their online dispute resolution systems. *Id.* For example, MARS, an online arbitration site, stores all communications and sends the participants an email notification when the other party has posted. Then the party is required to log on with their individual password to respond. *Id.* at 215–16.

attorneys for the difficulties common to the online forum. To illustrate the need for OADR in law school curriculums, I present the challenges that face OADR that are absent or downplayed when using ADR methods.

1. Media Richness & Interactivity

The two main communicative differences between ADR and OADR are media richness, which is the transmission of visual and verbal cues,[87] and interactivity, which is the potential for a seamless flow of communication.[88] Media richness is distinctive because online, text-based communication does not allow for the conveyance of visual cues, such as facial or body expression, or verbal cues, such as tone or inflection.[89] Despite the convenience of OADR, the lack of visual and verbal cues may pose a limitation on the parties involved in online negotiation, because they are forced to make decisions purely on the substance of the email communication as opposed to indirect verbal and visual signals.[90] Thus, e-mail negotiations might lead to misunderstandings as there are fewer circumstantial cues, and there is no opportunity for back channeling[91] or body language to indicate recognition and understanding.[92] Research further indicates that in online negotiations, the communication is less focused on the relationship or rapport building, and more focused on the task at hand and coming to an agreement or settlement.[93]

The interactivity aspect of OADR is distinct from ADR in regards to the temporal dimension of processing the information.[94] In ADR,

87. "Media richness is the capacity of a medium to transmit visual and verbal cues, thus providing more immediate feedback and facilitating communication of personal information." Ebner, *You've Got Agreement*, *supra* note 77, at 430–32.

88. "[I]nteractivity is the potential of the medium to sustain a seamless flow of information between two or more negotiators." *Id.* at 430–34.

89. *Id.* at 430.

90. *Id.* at 91–92.

91. "The term *backchanneling* has been used extensively in linguistics when referring to the feedback loop of verbal (e.g., yes, uh huh) and nonverbal cues (e.g., head nods, smiles). A number of culture and language studies focus on this type of backchanneling [citations omitted]. Linguist Victor Yngve's (1970) originated the term *back-channel* in reference to conversational turn-taking. The advancement of information communication technologies in the last 40 years has digitized this practice of turn-taking to include both face-to-face and virtual interactions." Cheri Toledo & Sharon Peters, *Educators' Perceptions of Uses, Constraints, and Successful Practices of Backchanneling*, IN EDUCATION, *available at* http://ineducation.ca/ineducation/article/view/48/515 (last visited February 24, 2013).

92. Ebner, *supra* note 77, at 430.

93. *Id.* at 431. However, depending on the type of dispute the parties are attempting to resolve, the focus on substance might be more favorable.

94. *Id.* at 432.

communication between the two parties is contemporaneous because each party understands the utterance as it is produced.[95] However, the downside for ADR (and upside for OADR) is that the parties might begin talking at the same time, or interrupting each other's arguments to make comments. While interruptions make it difficult for parties to get their point across during face-to-face negotiations, it does allow for conscious parallel processing.[96] This is unlike OADR, where an indefinite amount of time may pass before the recipient reads the contents of a communication, which allows the parties to convey their entire communication without interruption. However, it is important to note that with OADR a recipient may review messages out of order if the sender sends multiple messages, which can be confusing.[97] Without cues from the shared surroundings, body language, facial expressions, tone, inflection, timing, and processing synchronicity, parties to an online negotiation may find it difficult to interpret messages.[98]

2. Ability to Trust Other Parties

Due to media richness and interactivity issues, when using OADR methods, the parties have difficulty establishing "grounding," which is the process that allows parties to develop "a shared sense of understanding about a communication and a shared sense of participation in the conversation," also known as trust.[99] The truth is that it is more difficult to create trust through OADR methods.[100] Trust is a crucial aspect of using cooperative techniques, problem solving with the other party, and resolving disputes.[101] Parties using OADR methods tend to begin communications with skepticism

95. *Id.* at 430; *see* John R. Searle, *How Performatives Work*, 12 LINGUISTICS & PHIL 535, 535 (1989), *available at* http://ist-socrates.berkeley.edu/~jsearle/133/howperfwork.pdf ("[P]erformative utterances are really just statements with truth values like any other statements . . .").

96. Ebner, *You've Got Agreement*, *supra* note 77, at 433.

97. *Id.* at 432.

98. *Id.* at 433.

99. *Id.*; *see also* HERBERT CLARK & SUSAN BRENNAN, GROUNDING IN COMMUNICATION, IN PERSPECTIVES ON SOCIALLY SHARED COGNITION (L. Resnick, et al., eds. 1991).

100. ADR communicators are encouraged to pursue trust-building mechanisms whenever possible, and as early as possible in whichever ADR method is chosen. Ebner, *You've Got Agreement*, *supra* note 77, at 441.

101. *Id.*; *see* DEAN PRUITT ET AL., SOC. CONFLICT ESCALATION, STALEMATE, AND SETTLEMENT (3rd ed., 2004); CHRISTOPHER W. MOORE, THE MEDIATION PROCESS: PRACTICAL STRATEGIES FOR RESOLVING CONFLICT (3d ed., 2003).

and a lack of trust in the other party.[102] Thus, because online parties enter communications with distrust, they tend to acknowledge actions that affirm their distrust in the other party, consequently causing them to continue to use competitive tactics.[103] Accordingly, research shows that many parties using OADR methods experience less trust at the end of resolving a dispute than parties using ADR methods.[104] Further, there is a tendency for parties to view negative results as the fault of the other party, rather than merely as an unfortunate outcome.[105] Because the cyber environment allows for fewer social cues, and negotiators ask fewer clarifying questions during online negotiations, research shows that online negotiators are more likely to make assumptions about the other party's intentions.[106]

3. The Environment Created by the Forum

Research has shown that online communications are more likely to create an environment that promotes distrust, competition, and adversarial behavior, while face-to-face communication fosters an environment more conducive to creating rapport and cooperation among the parties.[107] Research shows that OADR causes parties to use contentious and competitive tactics because there is less grounding and no social presence.[108] Thus, there is a likelihood that statements might be made recklessly or thoughtlessly, without taking time to appreciate the statement's possible repercussions.[109] In text-based OADR, rash or reckless statements are

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102. Online negotiators report lower levels of trust in online negotiations than in face-to-face negotiations. Ebner, *You've Got Agreement*, *supra* note 77, at 442; see Charles E. Naquin & Gaylern D. Paulson, *Online Bargaining & Interpersonal Trust*, 88 J. APPLIED PSYCH. 113 (2003) [hereinafter Naquin & Paulson, *Online Bargaining*].

103. Ebner, *You've Got Agreement*, *supra* note 77, at 442; *see* Naquin & Paulson, *Online Bargaining*, *supra* note 107, at 113.

104. Ebner, *You've Got Agreement*, *supra* note 77, at 442.

105. *See id.*

106. *Id.*; *see* Leigh Thompson & Janice Nadler, *Negotiating is Information Technology: Theory & Application*, 58 J. SOC. ISSUES 109, 119 (2002), *available at* http://www.law.northwestern.edu/faculty/fulltime/nadler/Thompson_Nadler_InfoTechnology.pdf ("Fortune and Brodt (2000) found that negotiators interacting via e-mail were more likely to mistrust and suspect the other party of lying or otherwise deceiving them, relative to negotiators interacting face to face. Yet e-negotiators were in fact no more likely than face-to-face negotiators to deceive the other party. Thus, the increased suspicion of the other party on the part of e-negotiators had no factual bias.").

107. Ebner, *You've Got Agreement*, *supra* note 77, at 435 (citing Amy L. Drolet & Michael W Morris, *Rapport in Conflict Resolution: Accounting for How Face-to-Face Communication Fosters Mutual Cooperation in Mixed-Motive Conflict*, 36 J. EXPERIMENTAL SOC. PSYCHOL. 26 (2000)).

108. *Id.* at 435–37.

109. *Id.* at 435.

documented, whereas ADR methods allow emotional, rash or reckless statements to pass more freely because they are not documented.[110] On the other end of the spectrum, because parties communicating online can spend unlimited time revising their communications, the cognitive dissonance theory suggests that the more time a party spends focusing on an issue, the more that party believes its position to be right and true, which makes mutual agreement between the parties more difficult.[111]

4. Tendency for Cooperation Among Parties

The lack of an opportunity to establish rapport through online communications leads to less cooperation among and within the parties.[112] The difficulty surfaces from the inability to accurately assess the possibilities for mutual gain between the parties.[113] The online forum fosters reduced social awareness and parties may not clearly convey their interests and priorities to the other party.[114] Thus, parties might not respond to every point made in a communication, but will pick which parts to respond to, and will likely devote the majority of each communication pushing their own agenda without addressing minor issues, clarifications or concerns.[115] This may cause parties to accentuate their competitive behaviors rather than cooperative behaviors.[116] Due to lower levels of cooperation in online negotiations, parties tend to make fewer mutually beneficial agreements.[117] Parties respond to the multi-issued emails and unnatural turn taking by acting competitively and being firmer in their positions rather than exploring possible mutually beneficial agreements.[118] However, critics say that this

110. Raymond A. Friedman & Steven C. Currall, *Conflict Escalation: Dispute Exacerbating Elements of E-mail Communication* (2003), *available at* http://www.stevecurrall.com/pdf/Currall_HR_EmailEscalation.pdf (last visited Feb. 24, 2013).

111. *See generally id.*

112. Ebner, *You've Got Agreement*, *supra* note 77, at 435–37.

113. *Id.* at 437. One study claimed that negotiations that take place online caused the parties to less accurately judge the other party's interests than face-to-face negotiations. *Id.* at 437–38.

114. *See id.*

115. Friedman & Currall, *supra* note 110.

116. *See* Ebner, *You've Got Agreement*, *supra* note 77, at 437–38.

117. *See id.*; JANICE NADLER & DONNA SHESTOWSKY, NEGOTIATION, INFORMATION TECHNOLOGY, AND THE PROBLEM OF THE FACELESS OTHER, NEGOTIATION THEORY AND RESEARCH (L. Thompson ed., 2006).

118. *See* Naquin & Paulson, *supra* note 102, at 113 (the study found that "relative to face-to-face negotiations, online negotiations were characterized by (a) lower levels of pre-negotiation trust and (b) lower levels of post-negotiation trust. The reduced levels of pre-negotiation trust in online

can be corrected and parties can create mutually beneficial agreements by taking time to think about all the issues before responding, allowing the parties to process the issues simultaneously, which causes parties to create mutually beneficial agreements.[119]

VII. EFFECTIVE TEACHING CAN MITIGATE THE CHALLENGES FACING OADR

At this point, it is important to note the merits that come from the aforementioned OADR difficulties, as proper legal instruction can mitigate the challenges facing OADR and highlight scenarios where OADR is favorable to ADR.

First, the media richness and interactivity issues can be mitigated through video communication systems such as FaceTime or Skype as the parties are able to maintain interactivity and media richness within their communications, and are still able to establish grounding.[120] Second, the online environment can cause resolution to be more congenial where the parties are less agreeable or socially awkward.[121] Third, the anonymity and inability to view the other party reduces the salience of group differences and reduces bias by deemphasizing any sociocultural differences or power differences among parties.[122] Fourth, competitive tactics are not always a bad negotiating style, but can be very effective and persuasive; the anonymity of OADR allows parties to more easily use competitive tactics. Fifth, almost all of the aforementioned text-based communication issues can be mitigated with strong writing skills because online text-based communications rely heavily on arguments and persuasive writing. Thus, attorneys can alleviate many of these challenges with clear, concise, thoughtful writing that is sensitive to the other party's interests.[123] Sixth, online communication allows parties to take time to formulate well-thought-out responses because of the turn-taking[124] process of communicating

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negotiations (i.e. before any interaction took place) demonstrate that negotiators bring different expectations to the electronic bargaining table."); *see also* Ebner, *You've Got Agreement*, *supra* note 77, at 439–40.

119. Ebner, *supra* note 77, at 440–41.

120. *See* APPLE, *FaceTime*, http://www.apple.com/ios/facetime/ (last visited Sept. 13, 2013); SKYPE http://www.skype.com/en/ (last visited Sept. 13, 2013).

121. Ebner, *You've Got Agreement*, *supra* note 77, at 434.

122. Such socio-cultural differences include "gender, race, accent, national origin." *Id.* at 436.

123. Ebner, *You've Got Agreement*, *supra* note 77, at 437.

124. Online turn taking is sequential and allows parties to state their entire position before hearing from the other party. *Id.* at 438. Further, online communication allows the parties to consider multiple issues in one statement. *Id.* at 438–39. This differs from face-to-face processing, which allows interruptions and the opportunity for one party to overpower the other and suppress the other's views. *Id.*

online.[125] Seventh, where a resolution is required in a very short period of time, it is favorable to conduct the negotiations in an online forum where rapport-building is less likely to occur because it will keep the parties focused on the substance of the agreement.

Thus, the usefulness of ADR in a variety of situations, the commonality of online communication, and the growing rate that K-12 curriculums are implementing technological components indicate a necessity for modern legal education to adapt. Law schools should implement OADR components into their curriculums to properly equip future lawyers to properly serve their clients.

VIII. TEACHING METHODS THAT CULTIVATE ADR AND OADR SKILLS, AND THAT SUPPLEMENT THE SOCRATIC METHOD

At this point I will explore several ADR and OADR methods of teaching practical skills for using ADR and OADR methods that supplement the Socratic Method of teaching in a way that satisfies the suggestions made in the Carnegie Report and the Best Practices for Legal Education. There are infinite teaching techniques that cultivate ADR skills, as well as countless techniques that cultivate OADR skills, but I will only mention a few for the purposes of this article.

A. Teaching Methods that Cultivate ADR Skills

First is the problem-based method.[126] This technique in itself is a novelty within law schools, as it is a stark departure from the Socratic Method.[127] This method involves students solving made-up problems by using the skills they are taught in class.[128] This is beneficial because students learn skills through trial and error, rather than just taking notes during a lecture.[129]

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125. *Id.* at 437.

126. *See generally* Keith H. Hirokawa, *Critical Enculturation: Using Problems to Teach Law*, 2 DREXEL L. REV. 1 (2009).

127. Ver Ploeg & Hilbert, *supra* note 37, at 160. "ADR courses 'required new pedagogies [because] [l]aw students do not learn to negotiate, mediate, or arbitrate by responding to Socratic questions in the classroom.'" *Id.* (quoting Deborah Jones Merritt, *Pedagogy, Progress, and Portfolios*, 25 OHIO ST. J. ON DISP. RESOL. 7, 7 (2010)) (brackets in original).

128. Hirokawa, *supra* note 126, at 36.

129. Although this is a departure from the Socratic Method, this teaching method is simply another means of generating class participation. *Id.*

Second is project-based learning, which is similar to problem-based learning, except the problems are not made-up but involve "real situations and the problems of actual people and organizations."[130] This allows students to gain experience by helping people and organizations solve real life legal problems. This can be accomplished through on-campus clinics, skills-based courses (such as ADR-themed classes), as well as volunteer work with local organizations.

Third is videotaping and assessing a student negotiation, mediation, or arbitration performed in a problem-based or project-based scenario.[131] This method of teaching allows students to review their work and the work of their peers, and to analyze what they did correctly and what they can improve upon. Further, this method allows students to receive individualized attention and feedback from the professor because the professor can review each student's video and watch the negotiation in its entirety, rather than walking around from group to group and only hearing parts of each student's negotiation.[132]

Fourth is watching videos[133] of professionals using ADR skills as a means of presenting material to students. This method usually supplements lectures and is a demonstrative means of presenting information to students. Before allowing students to try the ADR skills after just learning about them, watching films gives students a chance "to watch an experienced person do it" first.[134]

B. Teaching Methods that Cultivate OADR Skills

OADR learning techniques are markedly different than learning techniques designed for ADR methods.

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130. Ver Ploeg & Hilbert, *Project-based Learning and ADR Education*, *supra* note 37, at 161.

131. *See* Michael Moffit, *Lights, Camera, Begin Final Exam: Testing What We Teach in Negotiation Courses*, 54 J. LEGAL EDUC. 91, (2004) (discusses advantages and disadvantages to a student-analyzed negotiation video, and ultimately advocates for this method over other methods of in-class teaching).

132. Moffit, *supra* note 131, at 106–07; *see* Dwight Golann, *Using Video to Teach Negotiation and Mediation*, 13 No. 2 DISP. RESOL. MAG. 8 (2007).

133. *See id.* (videotaped negotiation problem-based or project-based role-plays and showed commercial films to supplement instruction in ADR courses. Also discusses available technology, challenges of implementation, avoiding and troubleshooting technological glitches, and creating original videos).

134. *See* Golann, *supra* note 132. There are various methods of teaching with video: 1) videos are an example of good practice; 2) videos can be used to compare approaches through "different professionals performing the same role"; 3) videos stimulate discussion; 4) videos help launch problem-based simulations; and 5) videos aid memory and morale. *Id.*

First are transnational and transcontinental communication exercises.[135] This is similar to the ADR problem-based method, except, with this exercise professors from two different institutions partner each student with a student from the other institution, and assign the students to resolve a problem via e-mail, usually outside of class, over a designated period of time.[136] This is advantageous, because it exposes students to common negotiation issues that are unique to OADR such as: jurisdictional issues, interpretive issues, time-lapse issues, and rapport building issues.[137] Additionally, this gives students an opportunity to work with law students from other law schools and in other states, which presents a real-life scenario of negotiating with an unknown party.

Second are chat room negotiation simulations. These simulations are different from e-mail communications, because there is no time-lapse, and students are forced to respond in a timely fashion. Simulations that focus on real time online exchanges can be conducted in a problem-based fashion in which the students conduct the negotiation by messaging each other over e-mail.[138] This is advantageous because it exposes students to the difficulty of handling multiple issues at once.[139]

Third is through video game simulations.[140] Game simulations help teach OADR techniques in ways that problem-based simulations cannot

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135. Duncan Bentley and John Wade, *Special Methods and Tools for Educating the Transnational Lawyer*, 55 J. LEGAL EDUC. 479, 479–83 (2005) (two institutions conducted negotiation exercise by having each student partner with a student form the other institution and conduct a negotiation); Paul Maharg, *Negotiating the Web: Legal Skills Learning in a Virtual Community*, 15 INT'L REV. L. COMPUTERS & TECH. 345 (2001) (discussing advantages of transnational negotiation methods).

136. Ebner, *You've Got Agreement*, *supra* note 77, at 454–55; *see* Bently & Wade, *supra* note 135, at 479–83 (discussing an example of what the process of conducting a simulated negotiation exercise might look like).

137. *See* Ebner, *supra* note 77, at 445.

138. Ebner, *You've Got Agreement*, *supra* note 77, at 455–56.

139. *See* Ebner, *supra* note 77.

140. *See* Kathleen Goodrich & Andrea Kupfer Schneider, *The Classroom Can Be All Fun and Games*, 25 OHIO ST. J. ON DISP. RESOL. 87 (2009). An example of a game simulator is Peacemaker, which is:

> a video game simulation about the Palestinian-Israeli conflict in which the participants take on the role of either the Istraeli Prime Minister or the Palestinain President. The participant/politician then "plays the computer" as events unfold, facing decisions about how to move the peace process forward. A "win" achieves peace in the Middle East and the Nobel Peace Prize. Conversely, a "loss" results in being voted out of office or even triggering a Third Intifada. This simulation is a teaching mechanism that allows students to gain hands-on experience in applying

teach, as games allow students to play the same problem over and over again using different techniques and bringing about different results.[141] Game simulations allow students to reverse roles, analyze options, and suffer immediate consequences for their decisions.[142] This is advantageous for both ADR and OADR, because students can use cooperative and competitive techniques on the same problem and will see immediate consequences for their chosen style of communicating. The fact that these simulations are conducted against a computer necessarily means rapport building will be difficult, much like in the real world when using OADR to resolve disputes.

The macro use of online teaching and study methods in primary and secondary schools, as well as the prevalence of OADR and the opportunity for OADR to encapsulate the Carnegie Report's curricular change recommendations for law school[143] ultimately provides a solid foundation for law schools to alter their curriculums in a way that acknowledges and values technological advances of the 21st century.

IX. CONCLUSION

Supplementing doctrinal law classes with ADR and OADR-themed classes and lectures is the optimal solution for modern legal education for two reasons. First, integrating ADR and OADR components into the legal curriculum will speed up the legal profession's slow adaptation to changing global technologies. ADR classes prepare law students with practical skills for settling cases, which, according to the statistics, occurs more than litigating in court. The reality of modern communication is that the majority of it occurs through online mediums, and incorporating OADR techniques into the law school curriculums will help the legal profession better communicate with clients and opposing parties in the modern world. Further, preparing law students for OADR will encourage future lawyers to actually use OADR methods, and to feel more comfortable using OADR methods when they start practicing.[144] It takes time to incorporate technological advances into the legal profession, and the best way to induce

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several dispute resolution concepts as they work toward achieving peace and winning the game.

Id. at 87.

141. *Id.* at 94.

142. *Id.* at 98, 103.

143. *See* SULLIVAN, *supra* note 33, at 9–10; *see also* Stuckey, *supra* note 33, at 173–81.

144. Brian Pappas, *Online Court: Online Dispute Resolution and the Future or Small Claims*, 2008 UCLA J. L. & TECH. 2, 24–25 (fall) (discusses the implications on ODR for education, and the importance of training future attorneys in this arena).

such a change is to educate future legal professionals in the use of such technology.[145] Second, integrating ADR and OADR components into the legal curriculum provides a challenging environment in which students can learn Carnegie Report and Best Practices for Legal Education-suggested skills.[146] Due to the number of challenges that are unique to OADR,[147] there is a higher demand for educational instruction in OADR so that students will be able to better create trust in the online environment when they are practicing law in the future.

ADR offers an opportunity for law schools to improve the law school curriculum, and to comply with suggestions offered by the Carnegie Report and The Best Practices for Legal Education, while preparing students for life as a practicing lawyer in our modern, globalized, and technological world.

145. *Id.*

146. *See* SULLIVAN, *supra* note 33, at 9–10; *see also* Stuckey, *supra* note 33, at 173–81.

147. *See* Susan Exon, *Maximizing Technology to Establish Trust in an Online, Non-Visual Mediation Setting*, 33 U. LA VERNE L. REV. 27, 63–65 (2011) (discussing how technology affects the "mediator's ability to engender trust").