

**Rekindling the ADR Flame in the Legal Academy:
Include ADR in Bar Exams and Hold ADR Symposia at Legal Education Events**
Theory-of-Change Symposium

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[Jim Alfini](#) advocates two potential “sparks” to rekindle the ADR flame in law schools that are explored in this essay. The first is the development of appropriate ADR questions for inclusion on bar examinations. The second is to hold ADR symposia at the AALS meetings and other gatherings of law school administrators and faculty. He is the president, dean, and professor emeritus of South Texas College of Law Houston.

Following on John Lande’s recent call to action, it is imperative that ADR practitioners and academics encourage, as a prominent goal for the field, the increased recognition, inclusion, and enhancement of ADR subject matters as core pieces of law school curricula. Although I was unable to attend the Pepperdine get-together, one concern apparently was that interest in the ADR field within the legal academy seems not only to have plateaued but is cooling off. I suggest two potential “sparks” to rekindle the ADR flame in law schools.

Include ADR in Bar Exams

One factor that may be contributing to this cooling off phenomenon is that ADR subjects are not covered in bar exams. Because law school administrators have to contend with increased emphasis on bar passage rates by accrediting bodies, they necessarily seek to re-design their curricula with bar passage in mind. ADR subjects thus are becoming marginalized because they are not covered in bar exams.

A principal strategy for rekindling the law school flame therefore would be to develop appropriate ADR questions for inclusion in bar examinations. Although this strategy has been discussed periodically over the past three decades, it has never gotten much traction. Perhaps it has not been seen as necessary because, until recently, law schools generally had been receptive to adding ADR subjects to their curricula. However, as discussed, this trend apparently is in danger of being reversed.

As far as I can determine, the only times ADR subjects have been included on the multistate bar exam were on the Multistate Performance Test (MPT) in 2000 and again in 2010. On the 2000 test, the bar applicants were provided with materials relating to the case of *March v. Betts*, a personal injury case resulting from an automobile accident. The materials included correspondence among the defendant taxicab company, the Taxicab Commission, and the plaintiff’s attorney; notes from the plaintiff’s attorney’s interview with the plaintiff; and an internal memo from the plaintiff’s attorney to the bar applicant asking the applicant to draft a “persuasive written mediation

statement” that would be filed with the Taxicab Commission’s mediator. Appended to the materials were a relevant state statute and summaries of three relevant state supreme court cases. For the 2010 MPT, the applicant was representing the defendant in a slip and fall case (*Logan v. Rios*), and was directed in a memo to assist in preparing for an “early dispute resolution” conference by preparing part of an EDR statement that required the parties to candidly discuss the strengths and weaknesses of their case.

Since anything resembling an ADR question has apparently been used infrequently (only 1% of the time by a colleague’s count), the relevant committee of the National Conference of Bar Examiners (NCBE) might be open to considering MPT questions relating to ADR subjects or using an ADR format. These might include the drafting of a mediated settlement agreement, a negotiation plan, an argument for enforcing a settlement agreement, or an argument to overturn an arbitration award. I’m sure that many of you can come up with even better ideas that you have used in ADR exercises or exams.

Similarly, if we think creatively, we should be able to infuse other parts of the bar examination with ADR subject matter. The NCBE is also responsible for drafting the 200 multiple choice questions on the Multistate Bar Exam (MBE) which now is part of the Uniform Bar Exam (UBE). There are seven committees that cover each of the subjects covered by the MBE and the UBE: business associations, civil procedure, conflicts of laws, constitutional law, criminal law and criminal procedure, evidence, and family law. Many law school faculty members who teach ADR courses also teach one or more of these subjects. They also teach in subject matter areas covered by the Multistate Essay Exam and in subjects covered by jurisdiction-specific components of the bar exams in the 20 or so states that have these state-specific additions.

Although the drafting of relevant ADR multiple choice questions for the bar exam could be challenging, perhaps somewhat less challenging would be the drafting of questions for the Multistate Professional Responsibility Examination. It is a two-hour, 60-question multiple-choice examination that is administered three times per year and is required for admission to the bars of all but two U.S. jurisdictions (Wisconsin and Puerto Rico). Many of us have explored the intersections between the ABA Model Rules of Professional Conduct and negotiation and mediation practices. For example, we have asked our students whether a lawyer-mediator is required to report certain instances of lawyer misconduct during a mediation to state bar authorities; whether a lawyer may misrepresent a material fact during a negotiation or mediation; and whether a lawyer must or may keep certain communications confidential during a mediation.

These bar exam questions could be generated by a new committee or task force of the ABA Section on Dispute Resolution or perhaps a new subcommittee of the Section’s Law School Committee. This committee would be charged not only with drafting questions but also establishing and maintaining contacts with relevant individuals and entities within the NCBE and state bar examiners.

Hold ADR Symposia at Legal Education Events

A second strategy for rekindling the ADR flame is to hold an ADR symposium at events for legal educators generally, not only events focusing exclusively on ADR. This could help build support for ADR in law schools.

There were AALS-sponsored ADR workshops in 1982, 1989, 1996, and 2003 but none since then. I believe that these workshops, most if not all of which were held at the time of the AALS annual meeting, encouraged and promoted the adoption of ADR courses in the law schools. I have mentioned this to some of my more youthful colleagues and there appears to be interest in asking the ADR Section of the AALS to move forward with a workshop or symposium, perhaps in collaboration with another AALS section.

Other venues for law school faculty and administrators might also be considered. In recent years, for example, the Southeast Association of Law Schools (SEALS) has become more popular and heavily attended. Therefore, continued ADR programming at SEALS meetings should also be encouraged.

I hope these two ideas for rekindling the ADR flame in law schools will encourage some commentary, criticism, or discussion. As John Lande has so forcefully exclaimed, "[We Need an All-Hands-On-Deck Strategy Now to Maintain the Vitality of Our Field in the Future.](#)"