Questions

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I. INTRODUCTION

I have been actively involved in the alternative dispute resolution movement for almost thirty years.[1] One benefit of longevity is that it enables one to appreciate what questions persons wrestled with at the dawn of contemporary ADR initiatives, assess which ones have been answered and which remain problematic, and examine what new inquiries and challenges have emerged.[2]

We do learn. It is important to affirm what we know now that we did not know at the time of the Pound Conference,[3] for those lessons help inform the nature and seriousness of our current challenges. In Part II, I identify those salient questions raised during the early years for which I believe we now have acceptable answers. In Part III, I explore selected questions that remain unanswered; they constitute what I believe to be the important intellectual and practical agenda for our field. I discuss these matters at a level of generality that hopefully does not mask subtle nuances or challenges that our talented speakers and practitioners have undoubtedly encountered in their work; my attempt is to frame the inquiry in as constructive a manner as is possible.

II. WHAT QUESTIONS HAVE BEEN ANSWERED?

I believe that five questions that concerned us in 1976 now have acceptable answers that shape our work. What are they?

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[1] I began full-time activity in the field in June, 1973 when I became the first director of the Center for Dispute Settlement in Rochester, New York; at that time, the Center was a regional office of the National Center for Dispute Settlement of the American Arbitration Association.

[2] The downside, of course, as Margaret L. Shaw, Esq., my dear friend, would remind me is that it also constitutes conclusive evidence that I am no longer a young man in my twenties!

[3] In April 1976, more than 200 judges, scholars, and bar leaders convened to discuss public discontent with the efficiency and fairness of our court systems. The papers for that gathering, now referred to as the Pound Conference, can be found at Address Delivered at the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice (Apr. 7–9, 1976), *in* 70 F.R.D. 79 (1976).

A. *As a Matter of Process Design, Is It Desirable To Combine Mediation and Arbitration?*

No. Using med-arb processes for resolving "minor disputes" was the design structure of choice for several of the prominent programs that developed in the late 1960s and early 1970s.[4] It remained the dispute system design for two of the three original Neighborhood Justice Centers established in 1977 by the U.S. Department of Justice.[5] I believe that the collective wisdom now is that this is not a desirable design, and the reasons for that conclusion are both conceptual and practical. Conceptually, we now appreciate that the way in which persons must behave in various dispute resolution processes are significantly different. If someone is trying to convince a decisionmaker of a particular matter, then she or he offers certain kinds of evidence and converses in certain styles of speech; alternatively, if one's goal is to persuade his or her bargaining counterpart to agree to a course of conduct that meets one's client's interest while not harming those of their counterpart, then bargaining participants share different kinds of information and display different types of concern and respect for each other's aspirations and goals.[6]

At a practical level, the conventional wisdom certainly is that courts and legislative bodies are comfortable supporting and mandating parties to participate in mediation because the parties, in mediation, retain the right to reject any proposed settlement and pursue their legal options. The remarkable growth of court-annexed mediation programs confirms this sentiment.[7]

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[4] *See, e.g.*, DANIEL MCGILLIS & JOAN MULLEN, U.S. DEP'T OF JUSTICE, NEIGHBORHOOD JUSTICE CENTERS: AN ANALYSIS OF POTENTIAL MODELS 134–62 (1977).

[5] DAVID I. SHEPPARD, PH.D, ET AL., U.S. DEP'T OF JUSTICE, NEIGHBORHOOD JUSTICE CENTERS FIELD: TEST: INTERIM EVALUATION REPORT 28–29 (1979).

[6] These types of insights are advanced with vigor in the somewhat frustrating dialogue about facilitative versus evaluative mediation styles. *See* Lela P. Love, *The Top Ten Reasons Why Mediators Should Not Evaluate*, 24 FLA. ST. U. L. REV. 937, 938–39 (1997).

[7] In his public remarks at the end of the conference day, Professor Frank E.A. Sander perceptively challenged this conclusion; he referenced comments by a number of intervener practitioners who attest that they can, without damage to either process, combine mediation and arbitration in the service of their clients. I actually have sympathy for such comments, since such experiences comport with my own early experience in the field. But I believe that the overwhelming evidence establishes that courts have supported the use of ADR at a pre-trial stage when the intervener has no decisionmaking authority over the parties.

B. *Can One Person Mediate Across Multiple Contexts?*

Yes, but not in as many as one might think. This question is a variation on the "process/substantive knowledge" debate regarding mediator qualifications. Pre-1976, as programs solicited potential mediators from multiple community constituencies, the rhetoric certainly emphasized that process skills were the primary prerequisite for service across dispute settings ranging from civil rights controversies and family disruptions to collective bargaining impasses. I believe that our answer to this question today is much more humble—and appropriately so. I believe that the correct, short answer to this question is captured above: "Yes, but not for as many contexts as one originally thought." This answer has at least two dimensions: first, it answers the old process/substance debate.[8] A person who knows nothing about matters related to a particular area of dispute—be it some aspect of law, politics, finance, engineering, environmental science or family dynamics—is of no help to the parties. But further, as one develops expertise in a given area of practice—construction, employment, family, and the like—the range of "cross-over" into new contexts becomes more limited.[9]

There is a second dimension: namely, we might claim that we can and do mediate in multiple settings. But, to my mind, an important question to probe is whether the intervention values and strategies used in these multiple settings are identical. For example, is facilitating a public policy dialogue designed to develop standards for nuclear waste disposal the same type of process as facilitating a conversation designed to determine whether a parent should resume custody of his or her child? Reports suggest that interveners feel different obligations depending on the intensity with which the area of intervention appears to be governed by clear laws and public policies. If that is true, then it might be that we can, with some flexibility, serve in different disputing areas but we perform as a mediator in some areas but as an advisor,

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[8] The Model Standards of Conduct for Mediators adopted in 1994 by the American Arbitration Association, the American Bar Association Section on Dispute Resolution, and the Society of Professionals in Dispute Resolution address this matter under Standard IV on "Competence." MODEL STANDARDS OF CONDUCT FOR MEDIATORS Standard II (American Arbitration Ass'n et al., 1999).

[9] Similar types of inferences are contained in standards developed by particular practice-area groups. For example, standards governing mediation of family-related matters frequently identify training and substantive-knowledge requirements that become prerequisites for service in that areas. Likewise, those who serve in "public policy disputes" as "facilitators" identify standards of experience and expertise that are relevant to, and necessary for, the competent provision of service.

counselor, or decisionmaker in others; the skills required for that type of multitasking are not coextensive with those of mediating in multiple areas.

C. *Does Mediation Work Effectively—Is It Appropriate—Only for Minor Disputes?*

No. Much of the early program development focused on what the American Bar Association's initial Special Committee termed "minor disputes." The prevailing belief among court administrators and bar associations was that the more important, complex legal controversies should be resolved in traditional courtroom settings, not through mediation. As the numerous initiatives at state levels now confirm, with Florida having taken the lead in 1988, the evidence is overwhelming that there is nothing in principle that precludes the use mediation as a potentially effective forum for the resolution of the most complex business, commercial, and social controversies of our time.

D. *Can Mediation Work Only if Parties Voluntarily Choose To Use It?*

No. It works effectively even when parties are mandated to participate in this forum. This is a complex question, but at the process-design level, the answer is straightforward: as Professor Sander noted long ago, there is a difference between being coerced into mediation and being coerced in mediation;[10] the former might be acceptable but the latter is not. Professor Rogers' research confirms that advocates who are most receptive to mediation are those who have actually experienced it—and experienced it favorably.[11] There does appear to be something odd, conceptually, about praising a process for its consensual nature but yet mandating its use; I think the perceived oddity is more apparent than real. I believe that the normative justification for mandating its use derives from examining the available alternatives confronting one or more of the potential parties; much like the compulsory nature of the legal process, mandating mediation rectifies power

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[10] *See also* Craig A. McEwen & Richard J. Maiman, *Small Claims Mediation in Maine: An Empirical Assessment*, 33 ME. L. REV. 237 (1981) (examining mediation outcomes when parties are effectively ordered to participate in mediation rather than "voluntarily" opting to participate).

[11] Nancy H. Rogers & Craig A. McEwen, *Employing the Law to Increase the Use of Mediation and To Encourage Direct and Early Negotiations*, 13 OHIO ST. J. ON DISP. RESOL. 831, 839–47 (1998) (suggesting empirically that general counsel mandating their subordinates to subject contested cases to mediation result in those participants becoming active supporters of its use for subsequent controversies).

imbalances among the parties without dictating substantive outcomes. Certainly in practice, mandating its use has helped forge a change in the legal culture about how lawyers and the legal process can effectively service the public.[12]

E. *Can One Person Make a Difference to the Development of a Vision and Idea?*

Yes, without a doubt. This question is not unique to the field of dispute resolution, but its affirmative answer is a significant element in explaining the explosive growth in the use of mediation since 1976. Many persons have made important contributions to the development of ideas and practice in this field.[13] Many of those persons are in this audience today.[14] But I think the answer is clear that the impact that one person—Professor Frank E.A. Sander—has had on this area of social conduct is incalculably positive.[15] In

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[12] In jurisdictions such as Florida, court reports note that more than 100,000 cases per year are addressed through mediation; anecdotal conversations among litigators suggest that litigators must now be adept at representing clients in mediation as they are in representing them in a traditional trial. FLA. DISPUTE RESOLUTION CTR., FLORIDA MEDIATION & ARBITRATION PROGRAMS: A COMPENDIUM (14th ed. 2001). In other jurisdictions, such as Minnesota, court rules mandate that advocates discuss, analyze and select some dispute resolution mechanism other than trial as an option for addressing the claims in litigation—or provide detailed reasons as to why no ADR option is appropriate for this case. MINN. GEN. R. PRAC. DIST. CT. 114. Such a systematic requirement requires all participants to the process, including clients "looking for revenge," to assess how to approach dealing with controversies.

[13] Among the critical thinkers and program designers in the early years were Donald Straus, Robert Coulson, Willoughby Abner, and William F. Lincoln of the American Arbitration Association; Theodore Kheel and George Nicolau of the Institute for Mediation and Conflict Resolution; Raymond Shonholtz, President of the Community Boards Program; and Linda Singer and Michael Lewis, then Director and Associate Director of the Center for Community Justice. Talbot ("Sandy") D'Allemberte served as the first chair of the American Bar Association's Special Committee on the Resolution of Minor Disputes; that special committee, with all of the wonderful persons serving on the original committee as well as its successor configurations, has now evolved into the Section of Dispute Resolution of the American Bar Association, one of the most critical institutional resources in our field.

[14] I am referring here both to those individuals who graciously consented to participate as Symposium presenters and commentators as well as to the distinguished audience members, many of whom are leaders in designing or executing mediation initiatives in their respective jurisdictions.

[15] I offer here simply a small sampling of his activities and contributions to this area: (1) his article, Frank E.A. Sander, Varieties of Dispute Processing, Address Delivered at the National Conference on the Causes of Popular Dissatisfaction with the

my judgment, he has been the linchpin for connecting judges, academics, court personnel and practitioners to sustain their dialogue and implement their visions. He has, through his relentless acts of decency, been unwavering in his support—not blind support—of every person expressing an interest in the area. He is a model for us all.

These questions confronted us more than twenty-five years ago; I believe they have been answered persuasively. What questions remain?

III. UNANSWERED QUESTIONS

Many questions permeate the theoretical, policy, and practice levels of our work; other Symposium participants shall raise some of them sharply and incisively. I want to reference and briefly discuss four significant themes that raise analytical puzzles with important practice implications. I believe that the tragic events of September 11, 2001 and their aftermath poignantly crystallize our need to address these matters thoughtfully and urgently. In my judgment, they constitute an agenda of work for the next decade that is rich with challenges and excitement.

A. *How Do We Reconcile the Rule of Law with Individual Autonomy?*

We celebrate the rule of law in part because it reflects the uniform application of public rules to every citizen irrespective of her wealth, social standing, race, ethnicity, or political power. But we cherish autonomy and freedom because it encourages each of us to fashion plans and decisions in a way that reflects our most fundamental beliefs regarding the most desirable way in which to experience the human condition. What happens when the two conflict? Critics such as Richard Delgado thoughtfully warn that facilitating individual dialogue in a private, informal forum can be a formula

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Administration of Justice (Apr. 7–9, 1976), *in* 70 F.R.D. 111, 133–34 (1976), shaped the concept of the multi-door courthouse that triggered the ABA's initial focus of its Special Committee on the Resolution of Minor Disputes, of which Professor Sander was a member; (2) he is a co-author of *Dispute Resolution*, the first ADR textbook used in law-school settings, STEPHEN B. GOLDBERG ET AL., DISPUTE RESOLUTION (3d ed. 1999); (3) he has been an advisor to, or board member of, multiple national dispute resolution organizations, including the American Arbitration Association and the CPR Institute for Dispute Resolution. The Section of Dispute Resolution of the American Bar Association has recognized Professor Sander's contribution by establishing the Frank E.A. Sander Lecture as an integral part of its annual program.

for letting bigotry and prejudice run rampant;[16] if, in fact, that is what occurs in mediation, then Delgado, as well as most of us, would call either for urgent reforms in mediation or for jettisoning its use. The power of Delgado's criticisms, though, emanate from his assumptions and beliefs, often widely shared, about the fundamental values that we believe are central to the notion of the rule of law.[17] Before embracing those claims, I believe we must critically examine at least the following considerations.

1. *Are the Public Values Reflected in Our Laws Always Desirable?*

For example, historically, the doctrine of "holder in due course" explicitly protected such pernicious consumer practices as requiring the consumer to pay the entire contractual amount to the "holder in due course" even though the consumer never received the items promised by the original contractor. Why, one might ask Delgado, should that "public policy" triumph over more desirable, equitable outcomes? The proposition that many of us endorse—that the mediation process can be used as an engine for constructive, democratic social change—directly challenges the thesis that positive law, public policy, and "the right thing to do" are synonymous.

2. *What Kinds of Normative Values Are Held by Contesting Parties Who Participate in Mediated Conversations?*

Delgado is concerned, properly, that mediation not be a forum in which bigotry and hatred dominate the dialogue and outcomes. Many of us share that concern. But my own experience as a mediator suggests that the comments of parties and their advocates are strikingly insightful (even if stated in harsh or inflammatory rhetoric), remarkably grounded in shared values about how persons and groups should treat one another, and constitute, as the favorable settlement statistics suggest, important sources of communal understanding. In short, I think that what, in fact, occurs in mediated conversations is uncharted territory rich with potential for providing us insights into how legal obligations and non-legal normative values interface in shaping the conduct of parties to a mediation. We might discover, importantly, that the presumed dichotomy between the two is not as

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[16] Richard Delgado et al., *Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution*, 1985 WIS. L. REV. 1359, 1387–91.

[17] *See, e.g., id.* at 1402–04 (setting forth his prescriptions for "fixing" ADR processes in a way that minimizes the risk of prejudice).

pronounced as some might believe, thereby demolishing the perception that private and public "justice" norms are operating at cross-purposes.

B. *What Is the Appropriate Connection Between Conducting a Negotiation and Litigating the Controversy?*

We have been strongly influenced to view the behavior of parties in mediated conversations as being that of individuals who are bargaining "in the shadow of the law."[18] I think that framework seriously distorts our perceptions regarding appropriate participant conduct and argument in mediation. For instance, it suggests that a mediator, when mediating a controversy presented in the context of legal causes of action, should first listen to the legal arguments of the respective participants and then ask parties to "set aside the legal arguments" to consider "practical" or "business" interests.[19] But such a move is flawed because it inaccurately accounts for the complex relationship between the interplay of positive law, negotiation power, and problem-solving dialogue. Provisions of positive law are often relevant to shaping the conversation and visions regarding what parties want or are willing to agree to in negotiation. The provisions of positive law affect the power relationship among the parties by enhancing the presumptive claims of some persons over others. But, acknowledging that, it certainly is not clear that the most desirable or effective way to conduct negotiated discussions is for each of the advocates to present their arguments regarding the legal cause of action, highlight one's strengths and the opponent's weaknesses, and then move to a posture of considering some settlement range in light of their alleged BATNA.[20] The work focusing on how to effectively represent clients in a mediation process must reconcile these competing concepts.

Our failure to provide an adequate account of the relationship between negotiation and litigation has invited other conceptual mischief. Some mediation proponents, for instance, suggest that problem-solving negotiation should lie at the heart of constructive participation in mediated dialogue; further, they suggest that problem-solving negotiation does not involve

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[18] Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950 (1979).

[19] This is depicted, for instance, in a video prepared by the CPR Institute for Dispute Resolution. Videotape: Mediation in Action: Resolving a Complex Business Dispute (CPR Institute for Dispute Resolution 1994).

[20] Best Alternative to a Negotiated Agreement, as set forth in ROGER FISHER & WILLIAM URY, GETTING TO YES 96–107 (Bruce Patton ed., Houghton Mifflin Co., 2d ed., 1983) (1981).

argumentative comments or adversarial behavior. The image suggested is that mediated conversations must not be contentious, but consist of calm, polite dialogue among persons mutually committed to working out acceptable resolutions. I believe that such claims seriously misdescribe the world in which we operate. Further, and more important, they constitute circuitous attempts to reintroduce into the mediation forum a form of conversational rigidity and conventional conduct that is inconsistent with robust, candid dialogue that must lie at the heart of democratic dialogue processes.[21]

C. *Who Are the Mediators?*

What is it that attracts individuals to want to become mediators? At one level, it strikes me that, whether we have an explanation for it or not, the result of various program recruiting, mediator training opportunities, and the like has been that, for most mediation programs in most jurisdictions, persons who serve this field as mediators reflect a remarkable grouping of highly talented individuals. But are there any other characteristics of mediator aptitudes or values that surface that should capture our attention?

Anecdotally, some individual leaders in this field suggest that they like to mediate rather than litigate, because they do not like conflict. In that same vein, a frequent jest made by individuals at professional meetings is to introduce oneself as a "recovering lawyer." While it is important not to inflate such comments out of proportion, they hint at interesting concerns. For instance, does the mediator who does not like conflict conduct his or her mediation conferences in such a way as to emphatically enforce rules prohibiting interruptions, loud voices, and the like? Is the "recovering lawyer" someone who uses his or her valuable experience to establish credibility, trust, and respect among all participants when mediating legal disputes or to suggest condescendingly to participants that they, too, will soon "see the light" and change their adversarial ways?[22]

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[21] Examples of this dangerous tendency regrettably abound. *See, e.g.*, the account of "Individual Practice: The Conference Role Play" in ROBERT A. BARUCH BUSH & JOSEPH P. FOLGER, THE PROMISE OF MEDIATION 35–36 (Jeffrey Z. Rubin ed., 1994), and Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 YALE L.J. 1545, 1559–77 (1991) (discussing how mediators deliberately and significantly minimize discussion of rights and fault or displays of anger when attempting to assist parties reach settlement).

[22] Alternatively, of course, is the situation in which individuals become mediators who have served as judges or magistrates in various jurisdictions. The anecdotal reports suggest that such individuals adopt a strongly evaluative mediation style. That raises the

One final dimension of our profile must be of concern to all: what is our diversity profile across all ranges of mediation practice? The most compelling reason for us to pay attention to this topic, of course, is the straightforward matter of social justice; this employment area should be as robust as the constituencies we serve. But there are two additional reasons for special attention to this matter. Historically, during the 1960s and 1970s, persons used mediation as a forum for addressing the most controversial social and political challenges of that explosive time period; the mediators in those situations systematically reflected racial and class diversity.[23] Part of our historical legacy, then, is a commitment to this principle. But there is a compelling argument of fairness as well. In the important Metrocourt Study,[24] the data suggest that the ethnicity or gender of the mediator has important implications for both the procedural and substantive outcomes of that mediation. For those disputes in which at least one party who is non-majority interacts with a mediator who is also non-majority, that non-majority party fares better (receives more or pays less) than in those mediation conferences in which one or more non-majority parties interact with mediators who are members of the majority culture.[25] This raises serious questions regarding our conceptions of mediator neutrality and mediator qualifications, for it suggests that, despite our rhetoric, it is not easy for a mediator to ensure that parties shall leave a mediation conference at least no worse off compared to their pre-mediation status.

D. *How Do We Teach Mediation?*

Twenty-five years ago, there were no training materials for preparing someone to mediate cases for court-annexed programs.[26] That has changed

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concern that participants would experience that type of mediation as being no different than participating in a traditional adjudicatory process. *See* Barbara McAdoo & Nancy Welsh, *Does ADR Really Have a Place on the Lawyer's Philosophical Map?*, 18 HAMLINE J. PUB. L. & POL'Y 376 (1997).

[23] For accounts of typical efforts, see ROUNDTABLE JUSTICE (Robert Goldmann ed., 1980). For an account of the historical use of mediation in these areas, and the development of institutional initiatives to support it, see JAMES J. ALFINI ET AL., MEDIATION THEORY AND PRACTICE 2–13 (2001).

[24] MICHELE HERMANN ET AL., UNIV. OF N.M. CTR. FOR THE STUDY AND RESOLUTION OF DISPUTES ET AL., THE METROCOURT PROJECT FINAL REPORT (1993).

[25] *Id.* at xxiv–xxvi.

[26] Joseph B. Stulberg, *Trainer Accountability*, 38 FAM. & CONCILIATION CTS. REV. 77, 78–79 (2000) (describing status and development of mediator training initiatives during this initial time period).

significantly. But I want to raise a different question: after twenty-five years, does our teaching pedagogy and approach match the state of mediation activity and practice? For instance, a noticeable percentage of today's students who enroll in a law school's "basic mediation" course or clinic have prior mediation training and experience; some have served as mediators in high school peer mediation programs while others, through their college or work experience, have undergone mediator training for juvenile, family, or community-based programs. Some students have been exposed to mediation processes, because they are the sons or daughters of parents who themselves are professional mediators. For these students with experience (and the same, of course can be said for attorneys or other professionals who have acquired substantial experience and expertise in mediation), how and what do we teach them? Most law schools (or private mediator trainers) deploy the standard model of teaching a "basic" mediation course and an "advanced" course.[27] But the pedagogical framework for both types of courses are identical: teach to a large group of persons,[28] expose students to the primary literature in the field, sharpen discussion about policy developments, and develop and strengthen mediator performance skills. However, given who our students are today, is this approach sufficiently subtle or sophisticated? Consider an alternative teaching setting.[29]

At age five, one's daughter begins the study of the violin; she works with a teacher, participates in various school or community orchestras, and possibly participates in various musical competitions. At age seventeen, she auditions for admission to the Julliard School of Music, a nationally pre-eminent music school; she wants to gain admission in order to study with some of the world's greatest violin pedagogues. The student gains admission.

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[27] For a general discussion of the development of dispute resolution materials in the law school curriculum, see Robert B. Moberly, *Dispute Resolution in the Law School Curriculum: Opportunities and Challenges*, 50 FLA. L. REV. 583 (1998).

[28] "Large," of course, is a term that can refer to significantly different numbers. Most law school mediation courses (class or clinic) structure the class size to fall within the sixteen to twenty-five range, thereby allowing for effective, considerable use of simulation exercises and role plays. In the private market, of course, some jurisdictions sponsor "beginning mediator training" programs that have unlimited enrollments and could service a group as large as seventy-five to 100 participants. There is a significant difference between a performance-skills "training program" for practitioners and a more traditional-based course offered in an academic institution. I direct my remarks to the academic setting, though there are clear implications for designing and conducting mediator training in the other domain.

[29] The picture of pedagogy set forth in the following example draws on some of the basic insights of BARBARA LOURIE SAND, TEACHING GENIUS: DOROTHY DELAY AND THE MAKING OF A MUSICIAN (2000).

How would that distinguished violin pedagogue approach the teaching of this seventeen-year old? Two elements are obvious: First, the teacher would not assume that she must teach the student "the basics about violin playing" because the student knows nothing about how to play; for if that were true, the student would have failed in her audition. Second, the teacher would not simply present the student with a more advanced repertoire of music in order to help her "move on." Instead, what happens is that the teacher engages with such a student in a different, transformative way: she would coach, challenge, and stretch that student's ability, with the goal of blending sharpened performance skills (including the "basics") into more nuanced, sophisticated, and complex musical contexts. And the philosophical approach to teaching would be the same if the pedagogue were working with a developing seventeen-year old or an accomplished artist who wants to improve.

For those of us who teach mediation in a law school setting, would we know how to effectively teach the equivalent of an Itzhak Perlman or a Jack Nicklaus who enrolls in our mediation course? My fear is that we are responding conventionally but not creatively: we create an independent project for that talented student, make the student enroll in the required curriculum but encourage him or her to undertake a particularly challenging topic for a research paper, or undertake efforts to create internship placements for that student in agencies, firms, or organizations engaged in dispute resolution work. All of these efforts are well-meaning, but do they tap and support the possibilities? For instance, can we envision a pedagogical approach that calls for individualized teaching (à la the "private lessons" approach)? What kinds of educational materials and exercises would be required to support that approach to teaching? If we combined individualized teaching with group work, could we make it fit comfortably within the framework of a traditional academic semester? Can we tap computer technology to support multiple learning vehicles?

My interest is how teachers can effectively and creatively enhance the skills and experiences that students now bring to the classroom into an enriched understanding of this area of human endeavor. Much is at stake: if the next generation of mediators comes primarily from a cohort of individuals who have been "educated" about mediation during their formal educational training, then the quality of our justice system that our citizens will experience is being shaped in our classrooms—and all of us want to be confident that the integrity of that experience is beyond reproach.

IV. CONCLUSION

Questions direct inquiry; their answers shape our conduct. Experience is the final arbiter of whether the questions were insightful and their answers sound. Since the 1976 Pound Conference, we have learned much about mediation and the role it plays in a vibrant, democratic society. I hope that we, or our successors, will be able to draw a comparable conclusion when we gather to mark the fiftieth anniversary of our collective, sustained effort to address effectively and fairly the causes of popular dissatisfaction with the administration of justice.