

Teaching the World: Educational Pivots for the Second Half of the ADR Century

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- I. INTRODUCTION
- II. TAKING A MID-CENTURY MOMENT
- III. GETTING TO MORE
- IV. ON PIVOTS AND PARADIGMS
- V. A THEORY OF CHANGE FOR ADR EDUCATION: THE WORLD IS OUR CLASSROOM
- VI. MOVING ADR'S NEEDLE BY EXPANDING OUR EDUCATIONAL AUDIENCE: THREE EVOLUTIONARY PATHWAYS
 - A. *Educational Evolution: Law School and Legal Education*
 - B. *Educational Evolution: Ripple Effects Over Time*
 - C. *Educational (R)Evolution: The World is our Audience*
 1. *STRUCTURAL LIMITATIONS ON OUR REACH*
 2. *JARRING THE NEEDLE: DESIGNING BROAD-AUDIENCE EDUCATIONAL ACTIVITIES*
 - a. *Intentionality*
 - b. *Scale*
 - c. *Diversity and creativity*
 - d. *Mainstreaming*
 - e. *Collaboration*
 - f. *Amplification*
 3. *CASE STUDIES*
 - a. *The Deliberation Engine Blueprint*
 - b. *Embedding Negotiation Education in Games, Movies, and Theater*
 - c. *NegMOOC*
 4. *STAR WARS AND CONFLICT RESOLUTION*

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VII. CAN WE NOT SAY WIN/WIN? BENEFITS TO LAW SCHOOLS,
BENEFITS TO ADR

VIII. CONCLUSION

I. INTRODUCTION

We are currently approaching the midpoint of the first century of ADR development in the U.S and around the world. It is a remarkable point in time to be involved in the ADR field,¹ marked as it is by reflection² upon the first half of The ADR Century and planning ahead for the second.

In this article, I will not discuss the past in detail, providing only the broadest of all possible snapshots as the minimal context necessary to continue the conversations of recent field-wide gatherings,³ and to engage listeners and

¹ Given the context of the symposium, I focus this article on the legally-focused ADR field and ADR education in law schools. ADR is, at once, a category of legal practice and education and a subset of the larger conflict resolution field. The latter field's temporal arc is longer; we currently approach the end of the Conflict Resolution Century.

² Here I beg the reader's forgiveness for speaking of 'the field' as a monolithic whole, rather than many individuals doing their individual things; not to mention, for seemingly ascribing to it opinions, intents, and goals. When I do so, it is to convey my best sense of the general sentiments expressed at the field's—again, that term—gathering points, or themes repeatedly raised by those who many recognize to be amongst its leaders. I will not use it to mask my own opinions, which I will present clearly as such.

³ Particularly, two recent gatherings of the field; one in person and one in writing. The first is *Appreciating our Legacy and Engaging the Future: An International Conference for Dispute Resolution Teachers, Scholars, and Leaders* held at Pepperdine University in June 2019. See generally Straus Institute for Dispute Resolution, *Appreciating our Legacy and Engaging the Future: An International Conference for Dispute Resolution Teachers, Scholars, and Leaders*, PEPPERDINE CARUSO SCH. OF L. (2019), <https://law.pepperdine.edu/straus/training-and-conferences/connecting-in-classrooms.htm>; Pepperdine Caruso School of Law, *Appreciating our Legacy and Engaging in the Future: An International Conference for Dispute Resolution Teachers, Scholars, and Leaders*, YOUTUBE (July 2, 2019), https://www.youtube.com/playlist?list=PLtgqDmgt8BJYwe4hol0cW_jEjVnRFPj_x [hereinafter "Appreciating our Legacy" conference]. This conference, co-sponsored by Pepperdine, Texas A&M, and ABA-DR in cooperation with many law school-based dispute resolution programs, brought together approximately 150 members of the ADR community to look back and cast ahead. The second is the Theory-of-Change Symposium convened online by John Lande, in which dozens of people in the dispute resolution field weighed in with their ideas and suggestions for the future of ADR. Bridging these two projects, Prof. Lande edited and published *Theories of Change for the Dispute Resolution Movement*, an open-access book incorporating chapters on the "Appreciating our Legacy" conference as well as the contributions to the Theory of Change symposium. See generally THEORIES OF CHANGE FOR THE DISPUTE RESOLUTION MOMENT: ACTIONAL IDEAS TO REVITALIZE OUR MOVEMENT (John Lande ed., 2019), https://papers.ssm.com/sol3/papers.cfm?abstract_id=3533324 [hereinafter THEORIES OF CHANGE].

readers as participants in these ongoing conversations.⁴ Instead, my focus will be on the future, explaining how the field can build on its previous successes by refining its conceptual models in both theory and practice. My key suggestion is that ADR's educational model also needs paradigmatic revision, if we hope our field to maintain and expand its beneficial impact across systems, professions, and society at large. Essentially, I suggest, we need to broaden our vision of our educational scale and impact. Bringing large numbers of non-students—members of the public who are not enrolled in our schools or our courses—into the circle of those we affect through ADR education, will benefit our schools, expand ADR practice, and strengthen the overall impact of the ADR field.

II. TAKING A MID-CENTURY MOMENT

In the first half of the ADR Century, the field of ADR has enjoyed notable achievements. It has touched the lives of individuals, inspiring many to get involved in the field.⁵ It has permeated the workflows and cultures of institutions and organizations. In particular, it has gained footholds (and beachheads, and perhaps even established colonies) within the court system. It has become ubiquitous in legal education,⁶ and has affected the way that lawyers interact.⁷

It is those very successes that provide a springboard for achieving so much more in the second half of the ADR Century, maintaining and reinforcing ADR's success in those areas as well as expanding it to others.

⁴ See generally Pepperdine Caruso School of Law, *Appreciating our Legacy: Success, Failures, and Work in Progress*, YOUTUBE (July 2, 2019), <https://youtu.be/JDraunjWqPU> [hereinafter, "Opening Plenary"]. To do so without providing an hour-long introduction to this twenty minute symposium talk, or appending eight pages worth of footnotes to the first sentence of the written version, I recommend viewing, in particular, the "Appreciating our Legacy" conference's opening plenary. In this session, Carrie Menkel-Meadow, Jean Sternlight, Doug Yarn, Len Riskin, Sharon Press, Tom Stipanowich, and moderator Andrea Kupfer Schneider discuss, in a most illuminating fashion, areas of ADR success and others requiring further development, including those noted in the next two paragraphs.

⁵ See Albie M. Davis, *Mediation: The Field of Dreams? If We Build It, They Will Come!* 9 NEGOT. J. 5 (1993).

⁶ See Pepperdine Caruso School of Law, *supra* note 5 (these and other successes are enumerated); see also Thomas J. Stipanowich, *Living the Dream of ADR: Reflections on Four Decades of the Quiet Revolution in Dispute Resolution*, 18 CARDOZO J. OF RESOL. 513 (2017).

⁷ See John Lande, *Good Pretrial Lawyering: Planning to Get to Yes Sooner, Cheaper, and Better*, 16 CARDOZO J. OF CONFLICT RESOL. 63 (2014) (For example, influences of the integrative approach to negotiation were evident in lawyers' descriptions of their negotiation experiences in unstructured interviews).

Sober work lies ahead. Now a mature(-ish) field, ADR must cope with questions of identity emanating from its shift from an ideological movement to a field that has been institutionalized in a variety of contexts, affected by those it sought to affect.⁸ Moreover, it remains to be seen whether the second half of the ADR Century will witness ADR rising to the aspirations or dreams of some of its proponents. In the legal arena, these have included deep transformation of the legal system⁹ and enhancing access to justice.¹⁰ Still broader aspirations have included hopes for changing the way individuals interact in society, impacting the way broad social conflicts are engaged, and creating a more peaceable world.¹¹

In all these areas, the first half of the ADR century has moved the needle (to introduce a phrase I will use throughout this article), significantly, yet not all the way. Will the second half see movement in the needle's position, on all these fronts?

It is perhaps regarding these last, broad aspirations that one most strongly feels the challenge set up by the first half century for the second. It is

⁸ See generally Carrie Menkel-Meadow, *Pursuing Settlement in an Adversary Culture: A Tale of Innovation Co-Opted or "The Law of ADR"*, 19 FLA. ST. U. L. REV. 1 (1991); Nancy Welsh, *The Thinning Vision of Self-Determination in Court-Connected Mediation: The Inevitable Price of Institutionalization?*, 6 HARV. NEGOT. L. REV. 1 (2001); Pepperdine Caruso School of Law, *supra* note 5 ("The failure that we have had around institutionalization... There's no question - in the answer to the question Carrie asked 30 years ago—who is going to change, when dispute resolution is institutionalized in the court? And I think we know the answer, it's dispute resolution, its appropriate dispute resolution, it's mediation that has had the significant changes. I think we all had hoped that in coming into the courts... we would change the institution.")

⁹ See, e.g., Opening Plenary, *supra* note 5. As stated there:

In many respects, our glass is half empty. We have not achieved that vision, that is evoked in the Burger and Sander discussions at the Pound conference, the dynamic system that responds to the needs of people and the interests of people in a more holistic way, that is adaptable to different sorts of situations, that can be less formal that can be less adversarial, that puts people into the driver's seat in conflict... which is a very difficult proposition, quite frankly, and yet, a very important one. These were all things we were thinking about

Id.

¹⁰ For a summary of this area of ADR focus, see Jacqueline Nolan-Haley, *Does ADR's "Access to Justice" Come at the Expense of Meaningful Consent?*, 33 OHIO ST. J. DISP. RESOL. 373 (2018).

¹¹ See *infra*, note 13.

remarkable that such a young field, in its formative stages, could even have *envisioned*, let alone achieve, such far-reaching impact. Indeed, simply *creating* a needle in these areas is a remarkable achievement of early ADR, let alone the degree to which it has already moved. I suspect that such movement is greater than those involved give themselves credit for. Still, in reflecting on how far we've come and the horizons yet ahead, an oft-repeated theme is a yearning for the ADR field to have more impact on the big picture: day-to-day layperson interactions, society, diplomacy, and peace.¹²

¹² See, e.g., BERNARD MAYER, *BEYOND NEUTRALITY* 4 (1st ed. 2004). Mayer observes:

But the field's growth has obscured the fact that it is facing a major crisis in achieving broad acceptance, profound impact, or mainstream use. As a result, the conflict resolution field has not yet lived up to its potential for changing the way conflict is handled in out organizations, communities, or societies . . . Conflict resolution professionals are not significantly involved in the major conflicts of our times . . . we are not involved at the center of the conflict or decision making processes.

Id. See, e.g., Doug Yarn, *Re-Conceptualizing the Work as Something Bigger than Ourselves--Reconciliation*, MEDIUM.COM (Jan. 2015), <https://www.mediate.com/articles/YarnFuture.cfm>. As Yarn states:

With the exception of a once overburdened court system, society really didn't crave what we were selling . . . Society has not been transformed, and political leaders do not turn to Mary Mediator for help solving the domestic and international problems of the day. More crucial perhaps is the fact that normal everyday folk don't turn to Mary Mediator for help either—at least without prodding by a court.

Id. See, e.g., Opening Plenary, *supra* note 5. As the speakers at the plenary state:

Mediation's roots were in the Civil Rights movement, and yet we have done little to move that dial. When major issues happen, we aren't the one that people turn to. We are on the brink of war—why? Why, with all of the time and all of the energy and all of the people we've trained and all of the people that we've worked with, how are we not

Moving the needle upwards on these fronts seem far easier to accomplish in the future, given ADR's established position on the eve of the second half of the ADR Century. And yet, new, emerging challenges may stymie those needles' progress, even cause them to regress. In the legal arena, the litigation juggernaut continues ever onwards, ever on the rise.¹³ Conversely, investment in ADR in legal education may be on the decline.¹⁴ ADR's perception as access to justice may erode as societal attitudes change.¹⁵ ADR's impact on society at large may actually diminish, given the interpersonal and societal polarization around political issues, the double threat currently tearing at the fabric of American society (as well as other societies around the world), and putting the skids on any movement toward a more peaceable society.¹⁶

To sum up the mid-century state-of-conversation in ADR in the very broadest of senses: We've achieved so much. There is so much left to be done.

moving that dial, and how have we not made more progress?

Id.

¹³ See, e.g., Bob Jones, *Worldwide Survey of Litigation Trends Reveals Grim News for America*, TOWNHALL (May 24, 2015), <https://townhall.com/columnists/bobjones/2015/05/24/worldwide-survey-of-litigation-trends-reveals-grim-news-for-america-n2003038>.

¹⁴ David Yarn et al., *What Will Be the Future of ADR in US Legal Education?*, in THEORIES OF CHANGE, 138 (John Lande ed. 2020).

¹⁵ Jennifer W. Reynolds, *Does ADR Feel Like Justice?*, 88 FORDHAM L. REV. 2357 (2020). As Reynolds observes:

[M]odern conflict spectacles . . . foisted upon the polity through media and social media, are so far afield from traditional ADR principles and practices that they may keep ADR from "feeling" like justice to many people. How people feel about alternative practices and processes will have an impact on whether they avail themselves of those methods in their own disputes. In other words, even if we had widely available, high-quality, and free ADR services available to everyone, we might still have an access-to-justice problem because those services would not be seen as providing justice.

Id. at 2360.

¹⁶ I note that while the effects of polarization diminish the overall effects of ADR on society at large, ADR activities might still have positive impact on local issues or communities. For one such attempt to mitigate the effects of polarization, see Erik Cleven, Robert A. Baruch Bush & Judith Saul, *Living with No: Political Polarization and Transformative Dialogue*, 2018 J. DISP. RESOL. (2018).

The field currently seems to be at a plateau; hopefully, this is a point of regrouping and gathering resources and intellectual capital for what lies ahead. If we are able to overcome obstacles old and new, the next half-century will turn out to be more thrilling and rewarding than the first.

III. GETTING TO MORE

The ‘If’ in the previous sentence is an uncomfortably big ‘If.’ Even bigger, is the question of ‘How?’ How is the ADR field to continue moving the needles upwards on so many fronts, while facing so many challenges?

While not a particularly new question, it may be particularly ripe for addressing at the current moment. Given the field’s focused attention on this issue at this moment, there may be unprecedented opportunity for communal action. Additionally, there seems to be increased recognition that ‘Let’s do, incrementally, more of the same!’ is unlikely to be ADR’s best strategy for thriving in the future.¹⁷ While it is hard to predict what will trigger ADR’s next great leap forward, I suspect it will not be handing out more flyers in courthouses—as many of us have done, often and literally. Rather, I suggest, ADR’s next moves will more likely take the form of Big Changes—ranging from significant reframing to paradigmatic shifts—in practice, research, and teaching.

At the “Appreciating our Legacy” conference, Carrie Menkel-Meadow articulated how new substantive ideas and educational practices bridge between the successes of the past and those of the future:

We’ve contributed memes, we’ve contributed ideas... to try to teach the next generation to look at problem solving differently. Whether we getting to yes, or to maybe, or unfortunately to war, the challenge is, what have our memes actually accomplished. The good news: every law school in the country—*every* law school—now teaches some form of negotiation, mediation, ADR, problem solving... but the question for us is twofold:

What are the new ideas that this field has produced in the last few years? We have been

¹⁷ See *infra* “On Pivots and Paradigms.”

terrific at the beginning of founding our field with a whole series of memes that reoriented, hopefully, how lawyers and diplomats and decision makers in government and decision makers in business and industry, and in labor unions who do collective bargaining—we did change the way many people thought about things.

But I challenge you to think about what really new ideas have come out of our field in the last few years? I think we've been working off of our old memes. And the world is definitely in need of new ones... So I hope—for the younger ones of you, who are both scholars and practitioners—you will help us think through why the memes we've used for the last forty years are actually not in ascendance at the moment.

The rhetoric in government and international affairs are not peacemaking. They are warmongering, trade wars, they are the language of aggression and beating and bullying, and the question is what intellectual ideas can we offer to counter that at the intellectual level of idea creation; and then, secondly, what can we do so that we are not preaching to our own particular choirs... how can we push forward these ideas, so that they go beyond the people who are already peacemakers and the people who want to make love and peace and make the world better. I really think we are in desperate need of new ideas intellectually, and new practices, and new educational programs.¹⁸

New intellectual ideas are already on the table, and hopefully more are on the way; we must engage with them deeply. In the next section, I'll introduce several of these briefly, to uncover their mechanism of departure from what

¹⁸ The "Appreciating our Legacy" conference, *supra* note 4.

Prof. Menkel-Meadow calls the field's 'traditional memes'. Next, I'll suggest applying the same mechanism to reimagine ADR education.

IV. ON PIVOTS AND PARADIGMS

Over the years and particularly recently, there have been a number of Big Ideas for reconceptualizing ADR, spanning practice and education. Each suggestion takes the form of recommending a particular *pivot*. I borrow the term 'pivot' from the realm of career transition and business recalibration, to indicate a process of intentionally, methodically identifying and doubling down on the best parts of what we have learned and accomplished in our field, in order to make a purposeful shift in a new, related, direction.¹⁹ Under this term, we might bring together suggestions that have been made to move past traditional names and categorizations, reorganize the work that has been done so far in ADR, incorporate the work of other disciplines, and create new conceptual frameworks or practical approaches. As examples of this, I'll note pivots advocated by:

- Bernie Mayer, suggesting the field step away from focusing on *neutrals resolving conflicts*, and instead improve *conflict engagement* through encompassing a *broader range of conflict roles*, with system and ally roles complementing neutral roles.²⁰
- Doug Yarn, suggesting a pivot away from mediation as the central theme of the field towards *reconciliation and reconciliation facilitation*.²¹
- Deb Eisenberg, suggesting a pivot away from ADR's focus on *specific processes*, toward a more flexible and inclusive focus on *process strategy*.²²

¹⁹ JENNY BLAKE, PIVOT: THE ONLY MOVE THAT MATTERS IS YOUR NEXT ONE 4–8 (2016).

²⁰ BERNARD MAYER, BEYOND NEUTRALITY: CONFRONTING THE CRISIS IN CONFLICT RESOLUTION 15 (2004). While I'm not familiar with any law school ADR program adopting this approach, several conflict resolution graduate programs implemented have, to different extents, including Creighton University's Negotiation and Conflict Resolution program.

²¹ Doug Yarn, *Re-conceptualizing the Work as Something Bigger than Ourselves—Reconciliation*, MEIDATE.COM (Jan. 2015), <https://www.mediate.com/articles/YarnFuture.cfm>.

²² Deborah Thompson Eisenberg, *Beyond Settlement: Reconceptualizing ADR as "Process Strategy" in Theories of Change*, in THEORIES OF CHANGE FOR THE DISPUTE RESOLUTION MOVEMENT: ACTIONABLE IDEAS TO REVITALIZE OUR MOVEMENT 50, 50–53 (John Lande ed., 2019).

- Nancy Welsh, suggesting that some in the field might choose to pivot away from *mediation*—as it is largely practiced as a means for technically or formally ending disputes—toward innovating new processes and practices aspiring to profound transformation of society that center around the *essential elements* contributing to mediation’s original “soul.”²³
- Alyson Carell and myself, suggesting a pivot away from mediation’s *technology-bereft* practice toward practice incorporating the best of its ‘human touch’ elements *with technology*.²⁴

The topic of pivots in ADR deserves attention far beyond the focus of this paper. I’m introducing it here briefly in order to introduce it as a necessary part of the bridge between the successes of the past and those of the future, even as I focus on the other necessary part of that bridge—a pivot in our educational paradigms. The two elements complement each other. If the field pivots conceptually, its educational curriculum and practices will necessarily change as well.²⁵ If educational paradigms shift, some pivots might be more suitable or beneficial than others.

²³ Michael Z. Green et al., *New Horizons for the ADR Field: Where Are We Headed and Where Can We Go?*, in THEORIES OF CHANGE FOR THE DISPUTE RESOLUTION MOVEMENT: ACTIONABLE IDEAS TO REVITALIZE OUR MOVEMENT 44, 46–47 (John Lande ed., 2019).

²⁴ Alyson Carrel & Noam Ebner, *Mind the Gap: Bringing Technology to the Mediation Table*, 2019 J. DISP. RESOL. 1, 3 (2019).

²⁵ These are offered as examples, to clarify the notion of fieldwide pivot and stir the reader’s imagination. If you are wondering how you might begin to consider pivots to propose, a good starting point might be considering just what ADR is, essentially, at present. John Lande, *What is (A)DR About?*, in THEORIES OF CHANGE FOR THE DISPUTE RESOLUTION MOVEMENT: ACTIONABLE IDEAS TO REVITALIZE OUR MOVEMENT 54 (John Lande ed., 2019) (listing elements helpful to such reflection). I don’t include, under ‘pivot’, expansions of ADR into new or new-ish areas that lack significant reframing of what it is we do and offer. For example, consider an ADR professor teaching negotiation in a business school, with the syllabus essentially similar to the one they use teaching in their ADR program. In such a case, ADR doesn’t pivot—it travels. Applying pivot terminology to ADR is an untested proposition and I’ll go no further in delineating it than suggesting that the term’s appropriateness increases together with the degree of unpacking, renaming, and borrowing from other disciplines involved.

V. A THEORY OF CHANGE FOR ADR EDUCATION: THE WORLD IS OUR CLASSROOM

John Lande introduced the helpful notion of formulating ‘theories of change’ as a mechanism for proposing, supporting, and considering propositions for new pathways for the ADR field:

A full-fledged theory of change involves six steps. These steps include: (1) identifying long-term goals; (2) "backwards mapping" to connect the requirements for achieving the goals and explain the necessity and sufficiency of those requirements; (3) identifying assumptions about the relevant context; (4) identifying interventions that will create the desired change; (5) developing indicators to measure outcomes and assess the initiative's performance; and (6) writing a narrative explaining the logic behind the initiative.²⁶

My (highly abbreviated) theory of change for ADR is, in a nutshell:

- (1) By the end of The ADR Century, ADR should grow exponentially from its current state, in terms of its impact on systems and especially in terms of its broad effects on society,
- (2) To this end, as broad a public as possible should be educated as to ADR's values and tools, creating enough familiarity that they are predisposed to prefer ADR's methods to other alternatives.
- (3) In the past, we have largely sufficed with raising public ‘awareness,’ reserving ‘education’ for key players and systems. However, public ‘awareness’ is not enough for ADR growth, and dedicating such resources that exist to highly targeted ‘education’ might be counterproductive.²⁷

²⁶ John Lande, *The Dispute Resolution Movement Needs Good Theories of Change*, in THEORIES OF CHANGE FOR THE DISPUTE RESOLUTION MOVEMENT: ACTIONABLE IDEAS TO REVITALIZE OUR MOVEMENT 13, 13–14 (John Lande ed., 2019).

²⁷ As Jen Reynolds so eloquently put this:

What will not be helpful are more projects that tend to concentrate knowledge and expertise in the hands

- (4) Owing to the past successes of our field, we have the capacity to engage in educational activities at scale. Paradigmatic shifts in our educational approach, regarding the identity and scale of our audience, will allow us to conduct widespread ADR education.
- (5) TBD, depending on specific projects
- (6) I offer two mutually supporting propositions: First, that the compilation of knowledge and tools underlying the activities of the ADR field are useful to *all* people, in all their personal and professional interactions. Second, that if people were educated to view interactions and conflict through prisms offered by ADR, they would naturally prefer ADR when they are unable to self-resolve their disputes. By ‘educated’ I don’t intend ‘made aware of ADR’s existence’; such efforts have been surprisingly unsuccessful, and equally surprisingly ineffective even when successful.²⁸ Rather than ‘awareness’ our goal should be ‘education,’ in the sense that ‘members of the public have been taught, through a variety of educational and societal means, about the values of the ADR field, some of its tools, and their combined utility for preventing, managing and resolving disputes.’

I believe that we are now poised to experiment with efforts to realize new gains from our longtime investment in legal education. We have deep roots, human capital, political savvy, and other advantages, in this well-respected institution. Law students become lawyers, who benefit from enhanced social standing. Law schools themselves enjoy a unique social standing and a norm-setting role, and they are often engaged with local and wider communities to advance social agendas in ways that some other academic frameworks are often not.

of a small number of professional gatekeepers and guides. To the extent that the field focuses on the development and advancement of these kinds of players, the field is missing important opportunities to engage with the special challenges of the present moment.

See Reynolds, *supra* note 16, at 2377.

²⁸ Consider the work of Donna Shestowsky, showing that parties to legal processes are largely oblivious to mediation services offered by their court. See generally Donna Shestowsky, *Inside the Mind of the Client: An Analysis of Litigants’ Decision Criteria for Choosing Procedures*, 36 CONFLICT RESOL. Q., 69 (2018); Donna Shestowsky, *When Ignorance Is Not Bliss: An Empirical Study of Litigants’ Awareness of Court-Sponsored Alternative Dispute Resolution Programs*, 22 HARV. NEGOT. L. REV. 189 (2017).

Therefore, to achieve ADR's goals over the second half of the ADR Century, I propose that ADR educators must expand our grasp of our audience and societal impact through paradigmatic evolution of our educational approaches and goals on three fronts:

- (1) Our aspirations regarding our impact on legal education
- (2) Our view of how our messages spread throughout society, over time
- (3) Our view of our target audience as educators

Each evolutionary area requires action that should be designed and assessed with the ultimate goal of moving ADR's overall needle in mind. Action in any of these areas, in the framework of legal academia, will be challenging.²⁹ However, the benefits to be gained by succeeding at doing this in legal academia are accordingly large.

VI. MOVING ADR'S NEEDLE BY EXPANDING OUR EDUCATIONAL AUDIENCE: THREE EVOLUTIONARY PATHWAYS

A. *Educational Evolution: Law School and Legal Education*

In his typology of law schools' relationship to ADR,³⁰ Michael Moffit introduced the notion of law schools that are ADR islands: they invest so much in ADR that they stand high above the sea of law schools offering little or no ADR education.³¹ The most radical way to achieve the goal for which ADR first entered legal education would be to adjust a law school's worldview to align with an ADR worldview. Such a law school might be considered an ADR super-island, even an ADR continent. I leave it to readers to fantasize such a school's foci, priorities and curriculum.

While not dismissing the possibility of enacting such change at a single institution or more widely—amongst the plethora of voices calling for

²⁹ To clarify, I am not currently on faculty at a law school. However, I have taught in and around various frameworks of legal education ever since completing my own twenty years ago; I often collaborate with law school faculty, and I am occasionally, as in this symposium, asked to weigh in on issues regarding legal education. I hope that my close-by-but-not-inside status adds a helpful perspective; if my comments on legal education seem in any way out-of-synch with readers' current lived experience, this comment provides an explanation.

³⁰ Michael Moffit, *Islands, Vitamins, Salt, Germs: Four Visions of the Future of ADR in Law Schools (and a Data-Driven Snapshot of the Field Today)*, 25 OHIO ST. J. DISP. RESOL. 25–86 (2010).

³¹ *Id.* at 54.

dramatic change in legal education, one hears many suggestions that are aligned with ADR values and priorities or embrace them overtly³²—I'd like to focus on pathways more readily available to individual faculty, or small clusters of them, regardless of their school's investment in, or attitudes toward, ADR.

Rather than shifting the attitude, worldview, or culture of a law school from the top down, individual faculty can consider whether, working in their current environment, they can re-envision their role and their work with students, adopting more of a 'moving the needle' orientation than in the past. In the context of educating future lawyers (as opposed to the broader circles of influence addressed in the next two sections), this entails the challenge of expanding the influence of ADR on formulating the law student's worldview.

Legal education is a formation process, teaching students to reason, analyze, differentiate, categorize, and more. Of course, as the brain is trained, cognitive maps and worldviews develop and reform, with new ideas achieving primacy and new perspectives becoming dominant. We are all familiar with one noticeable effect: by the beginning of their spring semester, first year law students see everything—*everything*—in terms of their potential legal ramifications. Rather than cracks in the sidewalk, they see municipal negligence; late to work because of a pile-up on the highway, they fantasize suing for interference with contract. The point is not that this is what law students do in their free time, if we've left them any, but rather that many of them *can't help* but do so. This is an external expression of the worldview remapping process. While this condition, thankfully, is not permanent, readers with a legal education of their own will recognize its deep and lasting power. Besides giving law students topics for pointed arguments amongst themselves that no one else can understand,³³ this phenomenon indicates how quickly, and how early-on in their studies, law students are indoctrinated into a rights-based worldview with little consideration of interests, empathy, or other important issues.

At the very same time, law students are shepherded into a competitive mindset leaving very little word for a collaborative worldview, even if they were cooperative people before law school. "Law school," Michelle LeBaron

³² Elayne Greenberg & Noam Ebner, *What Dinosaurs Can Teach Lawyers About How to Avoid Extinction in the ODR Evolution*, St. John's Legal Studies Research Paper No. 19-0004. See also Amani Smathers, *T-Shaped Lawyer*, R. AMANI SMATHERS (Sept. 17, 2019), <http://www.amanismathers.com/technolawgic/2014/2/21/t-shaped-lawyer>; Alyson Carrel, *Legal Intelligence Through Artificial Intelligence Requires Emotional Intelligence: A New Competency Model for the 21st Century Legal Professional*, 35 GA. ST. U. L. REV. 1153 (2019).

³³ And, partially explaining the phenomenon explained *infra*, note 43.

recently remarked, after her law students played a prisoner's dilemma game particularly competitively, "is a particularly individualist induction."³⁴

Some ADR professors are doubtlessly happy to teach their students the skills they need to implement their competitive approach and to achieve their rights-based goals. Others, keeping their eye on the goal of moving the needle, will not. They might try to help their students to recognize that there is more than one way to achieve success, that interests and rights are not always aligned, and that they might do better to make contextual choices. At times—perhaps in the case of particularly promising students—they might find themselves in the position of feeling they are in a struggle for law students' very soul, seeking to help them recognize the benefits of cooperation, integrative outcomes, trust, mutual help, and perceiving the larger societal picture.

From a needle-moving perspective, then, the question becomes: how do we help students to prefer our teachings over what most others in law school are teaching them? How can we embed our approach so deeply in formative legal training that it displaces the rights-based vision from its primacy, even subsuming it under an ADR-infused worldview?

One way would be to overtly bring our ADR worldview into direct clash with doctrinal approaches. We teach you to reach agreement, we might say, while other profs teach you to fight. Our way, we might say, reflects the *real* world. However, the real world and the lawyer's work in it involves both rights as well as interests, power as well as trust, competition as well as cooperation. Perhaps we would not do our students a favor by creating this dichotomy; moreover, we might do them a fundamental *dis*favor by bringing them into misalignment with their chosen profession, their other professors, and their very identity.

Forgoing this approach might not come easily, given our collective experience with our law school colleagues indicates that many of them will not step up to the challenge of bringing everything into alignment, explaining to students how the frames they teach fit together holistically with our own. Indeed, many of them will continue to ignore us or teach their students, implicitly or explicitly, not to waste their time on our kumbaya.

To bring the law school experience into alignment, we are challenged by two sets of defensiveness: our own, and our colleagues'. Letting go of our own, however, opens up the opportunity of subsuming, rather than contesting, a rights-based approach. We can then attempt to form students through our frames such that these become a natural part of how they take in and process the remainder of their legal education. In this new balance, ADR is no longer

³⁴ Personal correspondence with author.

the salt sprinkled onto legal topics in some law schools³⁵; instead, it is part of the main course.

To frame the challenge somewhat flippantly: *Can we flip the law school paradigm, without flipping the law school?* What might such a task entail? I'll leave it to ADR professors reading this article, with far more law school experience than I have, to consider this question. If you had to explain to students (directly or indirectly) that their entire law school body of learning was actually *an expansion of your ADR class*, and that their law school education in its entirety would *only* make sense when processed through this frame - how would you do it?

As examples, one strategy for changing the worldview balance would be to increase the number and salience of real-world interactions involving ADR components a student experiences, through clinical education in areas such as labor and family law. Faculty might not be able to create a new clinic at their school, but they might be able to nudge suitable teachable students towards them in their role as advisors. Keep in mind the ripple effect that changing one student's worldview can have. Another strategy would be to discuss an issue that students have learned in constitutional or contract law, discussing the case with them through an ADR worldview including an interests-based perspective, opportunities for mutual gain, and empathy.³⁶

One way to play with this idea, is to bring it down to a particular planning task: Assume you have been tasked to teach one of those (increasingly common) one or two-week J-term courses, surveying ADR or perhaps a wider range of the softer skills. What would you teach students, in that one week, that would not be *alternative*, but rather would help them to proceed to bring all of their future law school learning into their toolbox properly positioned alongside, not in opposition to, the ADR tools? And—*how* would you teach it to them?

B. Educational Evolution: Ripple Effects Over Time

The previous section focused on our current law students themselves. Such focus has a direct effect on moving ADR's societal needle, in the form of affecting thousands of law students annually. It also has indirect effects over time on its institutional needles, in the sense of our students becoming

³⁵ MOFFIT, *supra* note 31, at 27 (explaining that some law schools currently treat ADR as salt, or "...vital seasoning for many different offerings, but never consumed on its own. Rather than treat ADR as a topic that students should learn independent of doctrinal areas of the law, these schools consciously incorporate small doses of ADR throughout the curriculum.").

³⁶ My thanks to Elayne Greenberg for these excellent suggestions.

practicing lawyers rippling ADR principles and practices, to one extent or another, onward into the court system.

Expanding beyond this traditional aspiration of legal ADR education, with our eye on shifting the needles more sharply, involves considering our students in a new light, and our educational impact in a longitudinal sense. Law school students ripple what we teach them out into society far beyond the court system; they are our educational partners-over-time. In addition to our outlook as teachers in service of their learning and success, we could, more deliberately than we do, relate to them as potential amplifiers, ambassadors, change-agents and force-multipliers.

Law students turn into lawyers, who tend to have disproportionate conflict-effect in society at large (when compared to an average member of society):

- Lawyers sit at the crossroads of disputes and conflicts;
- Lawyers rise to leadership roles in business, government, and communities;
- Lawyers often garner instant credibility, and their opinions carry a certain gravitas;
- Lawyers model conflict behavior, and the public passively learns from lawyers' actions in movies, from the actions of the lawyer representing them, and from the lawyer they spoke with at the gym.

In that sense, lawyers are natural riplers of conflict behavior patterns and norms out into society. We should hope to have them ripple what we teach them onward, even if they don't directly 'go into' ADR. There is nothing novel in that, of course. What might be novel is strategic thinking and intentional action to this end: what can we add to our curriculum and pedagogy to prepare future lawyers to fulfill that function effectively, even when they are not intentionally doing so. Adding the notion of future effects, of time itself, into our educational planning has significant potential to move ADR's needles. *We* teach a hundred students a year; *they* will come into conflict-related interaction with tens of thousands³⁷ of people over the course of the next half-century. If we are intentional about preparing our students to play needle-shifting roles, our actions today will be multiplied—compounded, even—over time.

³⁷ These numbers were invented for effect.

C. Educational (R)Evolution: The World is our Audience

1. STRUCTURAL LIMITATIONS ON OUR REACH

Sure, we need to teach our law school students. In fact, we *love* teaching them, at least up until the point where we receive their detailed appeals on our grading. Even then, the lawyer in us (dormant or active) can always enjoy a well-reasoned appeal.

If we perceive our law students to be our *sole* direct audience, though, then even when we take time and their future ambassadorship into account, we are limiting our ability to affect much of the public, and particularly those outside of the field of law or its immediate environs. Having lauded the potential for ripple effect over time in the previous section, I note that this potential is still somewhat limited. Astounding as it may seem, there are many people out there in the world who will never in their whole life come into contact with a lawyer.³⁸ More to the point, though, the ripple-effect-over-time, beneficial as it is, is admittedly indirect (and therefore, imprecise), and it may require a great deal of time. The slower an idea spreads, temporally, the more vulnerable it is to disruption or intentional dismissal—particularly if it bucks a powerful, dominant status quo. You can't fight Epidemiology 101, nor its analogies: If an idea, behavior, or worldview is introduced to a group in the hopes it will spread, the more the group is small, tightly-knit, co-located, and in limited contact with others, the slower the spread of the ideas outside the group will be.

To be candid: law school entails *all* of those constraints. Consider how insulated our classrooms are from students from other programs,³⁹ and how our faculty buildings are often located in a secluded, private, corner of the campus. We might consider other factors of constraint (which vary from law

³⁸ No, this is not a lawyer joke in disguise.

³⁹ Legal ADR education limits its engagement with other members of the wider conflict resolution community. Even its informal elements, such as many of our student essay and mediation competitions are limited to JD and LL.M students. *See, e.g.*, 2020 James Boskey Dispute Resolution Essay Competition Rules https://www.americanbar.org/groups/dispute_resolution/awards_competitions/james_b_boskey_law_student_essay_contest_on_dispute_resolution/ (“The competition is open to anyone who was a full-time or part-time J.D. law student at an ABA-accredited law school during the 2019-20 academic year.”)

school to law school) such as income, gender⁴⁰ or racial⁴¹ disparity in law school application and enrollment. Lawyers' interactions with non-lawyers after law school continue to be somewhat constrained. As examples, they are constrained professionally, given the law-firm career-track paradigm; personally and voluntarily, because no one else seems to speak their language,⁴² or normatively, given restrictions on partnership with non-lawyers. If we truly want to have widespread impact, we need broad, contagious engagement that will not only nudge but *jar* the needle in the right direction.

2. JARRING THE NEEDLE: DESIGNING BROAD-AUDIENCE EDUCATIONAL ACTIVITIES

Engaging education outside of law school class structures is something that many ADR educators already do, in a variety of ways. University settings offer opportunities to engage relatively large numbers of people across a range of activities. Faculty might be active in their university's local community, sharing ADR insights with the local bar, training for a local mediation center, and more. ADR clinic activity exposes clients to ADR approaches, providing indirect education. Some law school ADR institutes have non-clinical practice activities in their local communities or beyond; these might include a direct educational element, or educate indirectly through practice.⁴³ All of these activities contribute to the education of our non-students. I hope to add to these good intentions and actions six needle-moving elements to consider: intentionality, scale, diversity and creativity, mainstreaming, collaboration, and amplification.

⁴⁰ Scott Jaschik, *Law School Gender Gaps*, INSIDE HIGHER ED (Nov. 30, 2016), <https://www.insidehighered.com/quicktakes/2016/11/30/law-school-gender-gaps>, *Law School Rankings by Female Enrollment (2018)*, ENJURIS (2018), <https://www.enjuris.com/students/law-school-female-enrollment-2018.html>.

⁴¹ Melissa Heelan Stanzione, *Law School Enrollment Up Overall, But Not for Minorities*, BLOOMBERG LAW (Dec. 12, 2019, 3:23 PM), <https://news.bloomberglaw.com/us-law-week/law-school-enrollment-up-overall-but-not-for-minorities>. *Law School Enrollment by Race & Ethnicity (2018)*, ENJURIS (2018), <https://www.enjuris.com/students/law-school-race-2018.html>.

⁴² Adam Pearce & Dorothy Gambrell, *This Chart Shows Who Marries CEOs, Doctors, Chefs and Janitors*, BLOOMBERG (Feb. 11, 2016), <https://www.bloomberglaw.com/graphics/2016-who-marries-whom/> (noting that lawyers tend to marry other lawyers).

⁴³ See, e.g., *Divided Communities Project*, THE OHIO STATE UNIVERSITY MORITZ COLLEGE OF LAW, <https://moritzlaw.osu.edu/dividedcommunityproject/> (last visited Apr. 22, 2020).

a. *Intentionality*

Having an overt, clear, and specific move-the-needle focus, in addition to any other goals a teacher or their institution have in conducting an activity. For example, this might lead a clinic instructor to expand the reasoning behind their ADR-driven advice, adding weight to the educational element of the interaction.

b. *Scale*

Designing projects so that they will directly impact many people who do not participate in our traditional classes, aspiring to reach more than we could ever accommodate in a classroom; perhaps, even, in all our classrooms, throughout our careers. The internet is, by its nature, an environment conducive to host such projects in, but there are other, more traditional platforms providing scale.

c. *Diversity and Creativity*

Teaching-the-world educational work can be done in diverse ways: writing, teaching, creating, playing, art, music, and more. A project aiming to move the needle might consider including more than one component, to broaden its reach to diverse audiences. Some projects might involve using our traditional conflict or academic skills (e.g., writing a book or designing a system),⁴⁴ others might tap skills or passions faculty have never yet brought to their professional work, or bring them to learn new skills.

d. *Mainstreaming*

These initiatives should not rely solely on professors' 'spare' time while not 'counting' towards their academic success. Law school ADR centers and institutes might have the discretion to put 'moving the needle' on their objectives list and dedicate person-power and resources to this cause.

⁴⁴ Traditional skills might be put to use in new ways, such as by accomplished academic authors turning their hand to writing for children. See, e.g., G.F RELYEA & J. WEISS, *TROUBLE AT THE WATERING HOLE: THE ADVENTURES OF EMO AND CHICKIE* (Resol. Press 2017). This is a children's book about a bear cub named Emo and his best friend, a bird named Chickie, who try different conflict resolution strategies to help their friends, the forest animals, resolve a conflict around drinking priority at the watering hole.

Individual ADR professors at law schools viewing ADR as ‘vitamins,’⁴⁵ or ‘supplements’⁴⁶ might have less discretion to do so. While we can’t always determine what our institutions will support or give credit for, we may be able to influence this by assigning these activities, as a field, the front-and-center status granted to our field’s most important activities. Mainstreaming such efforts through recognition and reward by the ADR field’s institutions and channels (e.g., awards, spotlighting in journals, etc.) might facilitate faculty’s obtaining of support from their institutions. Beyond that, teaching-the-world should be on the teaching community’s agenda; we could discuss, share, improve, experiment, and collaborate on needle-moving projects just as often, and as successfully, as we do regarding teaching our classroom students.

e. *Collaboration*

Partnership comes naturally to many in the ADR field, and this is even more important when taking on large scale projects. Moreover, the more diverse the target audience of a project is (up to and including ‘everyone’), the more helpful it can be to involve a number of perspectives in its design and conduct through collaboration.

f. *Amplification*

Moving the needle requires engaging very broad audiences. Universities and law schools have communication channels and social media platforms, and (occasionally) professionals who know how to use these platforms for amplification of our work better than we do; we need to utilize the former and work closely with the latter. Amplifying and spreading word of our colleagues’ efforts is another way we can help to move the needle.

⁴⁵ See Moffit, *supra* note 31. In Michael Moffit’s typology, some law schools currently treat ADR as vitamins: “Persuaded that an understanding of ADR is foundational to modern lawyering, these schools require every student to take at least the recommended dosage of ADR. ADR courses under the *Vitamin* model are standalone courses, consumed outside of the context of the traditional law school curriculum.” *Id.*

⁴⁶ See Moffit, *supra* note 31. In my addition to Moffit’s typology, schools treating ADR as a *Supplement* offer it as standalone courses, yet as opposed to Moffit’s *Vitamins*, these courses are wholly elective. In other words, these schools recognize that ADR has some importance for modern lawyering, yet the modern lawyer can survive without studying it.

3. CASE STUDIES

Below, I describe a number of educational projects I've been involved in that aimed to share negotiation and conflict knowledge with the public at large, educating our non-students. Each demonstrates one or more of the six elements listed above.

a. *The Deliberation Engine Blueprint*

The Deliberation Engine project⁴⁷ envisioned an online platform that would, at once, allow for public debate around hot-button social-conflict issues, and support learning and practice of negotiation and conflict skills. Besides allowing mass participation in structured debate, the platform encouraged discussion grounded in data rather than opinion. It did so by creating linked connections between participants' statements and their supporting evidence and allowing other participants to rate not only their statements, but also the veracity and salience of the data they provided as evidence. The platform could accommodate formal education (e.g., negotiation teachers were invited to use the platform for large-scale, multiparty negotiation simulations), but primarily aimed to nudge participants from the general public to focus on fact-based debate in dealing with real-life issues (away from the platform).⁴⁸

b. *Embedding Negotiation Education in Games, Movies, and Theater*

How might people learn about negotiation, whilst going about their day-to-day life? A very diverse group of co-authors, took on this question by considering informal or free-range learning, in which people choose what (and when, and how) they wish to learn without any guidance from a teacher—or, don't even consciously 'choose' to learn at all. We explored whether free-

⁴⁷ Christopher Honeyman et al., *A Game of Negotiation: The "Deliberation Engine"*, in Christopher Honeyman et al., *Educating Negotiators for a Connected World*, 4 THE RETHINKING NEGOTIATION TEACHING SERIES (2013).

⁴⁸ *Id.* While this idea never made it off the drawing board, its formulation drew together a large, interdisciplinary group of experts. The outcome of this project is the blueprint articulated in the book chapter for anyone to explore and implement. There are, by now, online platforms for debate of broad social issues. See, e.g., KIALO, www.kialo.com (last visited June 22, 2020). I am unaware of any adopting the Deliberation Engine's focus on fact-based debate. Given the deterioration in this form of debate since the book chapter came out, the value of such a platform may have increased.

range learning might serve as a mechanism for widespread negotiation education, suggesting that through involvement in the creation of games, theater, and movies, negotiation experts could teach the public at-large helpful negotiation lessons as they enjoyed cultural or recreational activities.⁴⁹

c. *NegMOOC*

While allowing students (and teachers) to participate without geographical considerations, university-based online learning does not transcend other limitations such as cost, program acceptance, group size, etc. The internet's capacity to take traditional commodities and enable them to flourish for free and at scale truly hit the educational realm with the flourishing of MOOCs (Massive Online Open Courses) in the early teens of the 21st century. MOOCs enable knowledge dissemination at unprecedented scale; anyone with an internet connection can take these free courses, regardless of background, experience, prior knowledge, age, location, or anything else.

In 2013, Creighton University decided to create and offer its first MOOC, and my proposal for a MOOC teaching basic negotiation concepts and skills was selected; thus, *Negotiation: Navigating Professional and Personal Interactions* (or "NegMOOC") was born. My university and I had different yet complementary interests in offering a MOOC. The university wished to dip a toe in the MOOC-y waters of open education and explore how offering MOOCs might help to advance its mission. I wanted to teach the world negotiation skills. NegMOOC served this purpose both directly and indirectly. Directly, in that over 2,000 students from 87 countries around the world enrolled in the course.⁵⁰ Indirectly, by providing me a testing ground to explore whether MOOCs could provide good-quality education, convey the signature negotiation course participant experience that serves us so well in our academic courses, and accommodate the negotiation and conflict classroom's signature pedagogy of experiential learning. The NegMOOC experience showed that thoughtfully designed MOOC's could indeed deliver

⁴⁹ Eric Blanchot et al., *The Education of Non-Students*, in Christopher Honeyman et al., *Educating Negotiators for a Connected World*, 4 THE RETHINKING NEGOTIATION TEACHING SERIES (2013).

⁵⁰ This offers a good example of the 'amplification' and 'mainstreaming' elements noted above: Creighton actively invited Creighton alumni to participate, and spread word of the course throughout the campus. My institute spread word of the course through its channels, and I invited participation through my own networks in the conflict and online education communities. Many colleagues in the ADR and conflict resolution world helped by sharing announcements of the course with their students and networks.

the goods on all three issues⁵¹; I consider MOOCs to be a powerful tool for disseminating the knowledge⁵² of our field to the public, at scale.⁵³

4. *STAR WARS AND CONFLICT RESOLUTION*

Since 2017, Jen Reynolds and I have been developing a new approach utilizing pop culture phenomena to introduce conflict and negotiation to the general public. Our working theory is that pop culture phenomena have their own, ready-made, mass following; if we can tap into this following and introduce negotiation and conflict resolution skills, terms, and tools by relating them to the pop-culture phenomenon, we can reach far more people than we could ever pack into our classrooms.

We decided to begin (and along the way, seek proof of concept), with a project on Star Wars & Conflict Resolution. Why Star Wars? For one set of reasons, we were both born at a certain time, grew up connected to the saga, and continue to quote it disproportionately (albeit accurately, and in a contextually helpful way) in conversations, courses, and academic articles.⁵⁴

More importantly, though, in terms of teaching the world, is that Star Wars is one of the largest cultural phenomena of our times; of *all* times.⁵⁵

⁵¹ For a discussion of NegMOOC's design, pedagogy, preparation, teaching, and assessment, see Noam Ebner, *Negotiation and Conflict Resolution Education in the Age of the MOOC*, 32 *NEGOT. J.* 231 (2016).

⁵² See Rachel Viscomi, *Engaging Deep Differences Online*, in *THEORIES OF CHANGE* 96 (John Lande ed. 2020). A comparable initiative has the general public *experiencing*, rather than *studying*, what the field has to offer, is Rachel Viscomi's proposal to convene a large number of online facilitated dialog groups, cutting across polarized lines.

⁵³ Noam Ebner, YOUTUBE, <https://www.youtube.com/channel/UCgk5FU8Xr2JADtt8ZRNYKmg/videos>. (last visited June 23, 2020). An additional, ongoing contribution of NegMOOC for advancing widespread negotiation education is the continued availability of the videos created for the course—lectures and interviews involving myself and many other professors in the ADR and conflict resolution fields who generously contributed their time and ideas to the course—on YouTube. NegMOOC participants logged approximately 17,000 views of these videos. Between the course's culmination in November 2014 and the final draft of this paper in June 2020, these videos have been viewed over 65,000 additional times. In May 2020 alone, over 1,500 people have accessed these videos 2,000 times, viewing them for 175 hours, with zero effort on my side.

⁵⁴ Star Wars nerds, in other words. Minor nerds, it should be said. I myself own but one lightsaber. And, it's not as if speak like Yoda, we do.

⁵⁵ The Hollywood Reporter & Morning Consult, *National Tracking Poll #181115*, *THE HOLLYWOOD REPORTER*, 3 (Nov. 8–11, 2018), <https://www.hollywoodreporter.com/sites/default/files/custom2/The%20Hollywood%20Reporter%20Morning%20Consult%20Film%20Franchise%20Return%20Poll.pdf>. (reporting that 75% of participants have seen all or some of the Star Wars movies).

Other fields have capitalized on this, using *Star Wars* to introduce philosophy, history, and other topics to a wide audience of readers. Conflict and its resolution are central to the saga's narrative themes, providing the perfect artefacts for implementing our vision of utilizing pre-existing, time-tested cultural and social phenomena as vehicles for introducing the knowledge of the conflict and negotiation field to the public at large.

We decided that the initial product would take the form of an edited book, incorporating contributions from many in the ADR, conflict, and related fields. We envision the book being written in a light, humorous tone with minimal jargon, and animated by passion for conflict resolution and for *Star Wars*, to connect with its broad target audience. In late 2019, we put out a call for chapter proposals, and were thrilled to receive dozens of proposals from familiar and new colleagues alike. We are currently seeking the right publisher to support creation of such a non-conventional book and its dissemination in line with a teaching-the-world vision.

These are only examples. As noted above, many in our field have engaged in spreading conflict education far and wide beyond their traditional classrooms or training rooms.

VII. CAN WE NOT SAY WIN/WIN? BENEFITS TO LAW SCHOOLS, BENEFITS TO ADR

In suggesting this educational pivot, I do not intend to put ADR faculty in law schools at odds with their institutions. Quite the opposite; I think that the shifts in our educational outlook will greatly benefit law schools, particularly in areas where they themselves would do well to pivot. With variations from one institution to another, some major issues law schools face are well known and generalize to most law schools: Student enrollment and retention and their effect on finances; student physical and mental health while in law school and beyond; bar exam passage rates, student employment and career success; law school branding and individuation; and the actual impact of the school and its alumni on the world and the impact of this on school finances, to name some of the biggies.⁵⁶

⁵⁶ Of course, I am not suggesting that these educational shifts by ADR faculty will provide a panacea for all the challenges law schools face today. Rather, I hope this section provides ADR faculty some initial pathways for not only *justifying* these shifts to their institutions but for actually *using* them to benefit their schools. Colleagues teaching in law schools can doubtlessly compile more informed and nuanced lists of issues challenging law schools and their own in particular and consider how these educational shifts can meet acutely-felt needs of their school.

My in-a-nutshell theory-of-change for law schools is that to thrive in the 21st century, they must create new pools of potential students and attract their actual enrollment. The current situation seems to offer a common situation that not all law schools can thrive in. By supporting their ADR faculty's educational shifts suggested in this article, a law school can generate large new pools of potential students, prime them to appreciate ADR-positive approaches, connect that to the school's overall legal approach, empower these students to enroll, support their mental health and help them to thrive in law school, and prepare them for effective 21st century practice.

Consider how the first two shifts, of affecting students' core legal paradigm and of empowering students to model and promote ADR in society, combine to form a new kind of student. If supported, rather than resisted, these shifts can support a law school's transformation into an institution in which a healing profession is taught. Framed appropriately in the law school's outreach website and recruitment material, this could attract a new type of student, from a largely untapped pool. It could help to retain students who might previously have dropped out of law school or experienced at-odds-ness with it, once they awoken to the fact that they are *not* being taught law as the helping profession they thought it would be. It would build these students a pathway to professional success, rather than offer them three dismal years likely to include coping with mental health issues.⁵⁷ Finally, it will prepare students to offer the services the lawyers of the future are likely to need.⁵⁸

The third shift, conducting ADR educational activity for the public at large, has inherent value that mesh with the goals some law schools hold themselves out as promoting, such as creating a more peaceable world or promoting social justice. Beyond that, the third shift closes a circle with the benefits ascribed to the first two shifts. As noted, these *attract* a new type of student from an untapped pool. It is teaching-the-world activity that *creates* this pool of potential students in the first place. Perceiving the helpful material they've learned to be typical components of legal education, more people might be drawn to attend law school... particularly, the law school that reached out and empowered them in the first place, in which these topics are more robust components of a legal education. Of course, some educational

⁵⁷ Beyond these students, enhancing ADR's effect on students' approach to legal and personal situations might contribute to lower rates of mental health problems across a law school. See Deborah Malizia, & Jessica Katz Jameson, *Hidden in Plain View: The Impact of Mediation on the Mediator and Implications for Conflict Resolution Education*, 35 CONFLICT RESOL. Q. 301 (2018) (finding that students studying mediation experience reduced stress levels and enhanced emotional well-being; the authors recommend expansion of mediation teaching in legal education as a means of dealing with the alarming rates of mental health issues amongst law school students and legal professionals).

⁵⁸ Greenberg & Ebner, *supra* note 33.

activities could involve branding and overt advertisement connecting potential students with pathways into the law school.

VIII. CONCLUSION

The ADR field confronts its future with a history of achievement. To maintain its momentum and increase its impact, it must consider change, across all its aspirations, axioms, activities, and audiences. Such change, which I have introduced using the term ‘pivot,’ should capitalize on the best gains of the field while unfettering it from preserving the entirety of all of its previous conceptions and processes.

In this article, I’ve proposed one such pivot, with regard to the educational reach of ADR in legal education. We have educated many thousands of key actors, gatekeepers, and legitimacy-granters, building a cadre of practitioners for legal ADR and beyond even as we established the field’s essentiality to the justice system, its efficacy in other systems, and its legitimacy far beyond these. With the goals of maintaining and expanding ADR’s footprint in these systems, and strengthening the role and impact that ADR’s principles, values, processes, and professionals have in society, the pivot I’ve suggested includes three paradigmatic shifts in how we view our educational audience. We can strive to increase ADR’s overall effect on our law students’ cognitive frames, impacting the overall shape of their legal understanding and their grasp of their role as lawyers. We can view our students as our partners-in-change, rippling the values of ADR not only into the court and related systems but also into broader circles of society. Finally, by adjusting our own vision of the scope of our educational audience, we can spread ADR’s ideas to non-students at scale, generating a more peaceable world even as we increase people’s tendency to utilize ADR to resolve their disputes.

As activity in this area increases, we will be better equipped to explore and address questions it gives rise to. One area to explore is how much education is ‘enough’? If a wide population is taught a very thin slice of ADR material, will that suffice to achieve movement on the needles we hope to budge? What types of complementary educational activities work well together to fortify thin slices? What educational activities provide more robust information without requiring excessive resources? How much can we teach through a single activity, before it is ignored by the very audience we wish to reach, owing to limitations on their free time and attention? Another set of questions we will be able to explore is the value of these activities to our schools, who support them through supporting us or by providing us further resources to enact them. Are these activities improving the overall legal

TEACHING THE WORLD

education that students receive in our schools? Does it support their academic success, their physical and mental well-being, and their professional capacities? Has it brought about positive change with regard to student enrollment, retention, satisfaction, and degree completion? Has it had positive impact on expanding the field of ADR practice, opening up employment opportunities for our graduates? If the answers to even some of these questions are positive, these paradigmatic shifts may ultimately contribute to stabilizing and even expanding the role of ADR and its faculty in law schools, and bring greater alignment between ADR faculty, their institutions, and their colleagues.

While I've used the term 'paradigmatic shifts,' I stress that I am not claiming to have invented any wheels. Many ADR educators, from the movement's very beginning and up to the present day, have engaged in teaching-the-world activities. I hope that this article will support this activity's expansion, though its more modest contributions of recognizing this activity for what it is; framing it as a pivot; naming and articulating the some of the different pathways such activity could follow; providing theoretical support for its centrality to ADR's future success; and ending, if this hasn't been made clear enough already, with a call to action: Teach the world.

