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The Dispute Resolution Movement Needs Good Theories of Change

*John Lande**

I. INTRODUCTION¹

“Isn’t there a better way?”² Those words of former Chief Justice Warren Burger in 1982 continue to reflect the aspirations of the dispute resolution community (“community”) for innovation and improvement of traditional processes of dispute resolution. In a speech to the American Bar Association, Chief Justice Burger said:

The obligation of our profession is, or has long been thought to be, to serve as healers of human conflicts. To fulfill our traditional obligation means that we should provide mechanisms that can produce an acceptable result in the shortest possible time, with the least possible expense, and with a minimum of stress on the participants. That is what justice is all about.

The law is a tool, not an end in itself. Like any tool, particular judicial mechanisms, procedures, or rules can become obsolete. Just as the carpenter’s handsaw was replaced by the power saw and his hammer was replaced by the stapler, we should be alert to the need for better tools to serve our purposes.³

Almost four decades later, in June 2019, leading dispute resolution organizations convened a conference calling on our community to appreciate the legacy of past initiatives and engage the future.⁴ To follow up this important conference, I initiated the “Theory of Change Symposium”⁵ to elicit and share ideas about how we can develop and use tools to resolve dispute resolution problems we have not been able to resolve before, as well as to resolve problems created by the tools we have developed. I invited academics, practitioners, administrators, and

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1. Sections I and II are adapted from John Lande, *What’s Your Theory of Change for Dispute Resolution?—Part 1*, INDISPUTABLY BLOG (Aug. 12, 2019), <http://indisputably.org/2019/08/whats-your-theory-of-change-for-dispute-resolution-part-1>.

2. Warren E. Burger, *Isn’t There a Better Way?*, 68 A.B.A. J. 274 (1982).

3. *Id.* at 274.

4. *Appreciating Our Legacy & Engaging the Future: An International Conference for Dispute Resolution Teachers, Scholars, & Leaders*, PEPPERDINE LAW (June 18, 2019), <https://law.pepperdine.edu/straus/training-and-conferences/connecting-in-classrooms.htm> (detailing the conference sponsored by Pepperdine’s Straus Institute for Dispute Resolution, American Bar Association Section of Dispute Resolution, and Aggie Dispute Resolution Program, Texas A&M University School of Law, in cooperation with more than a dozen top American law school dispute resolution programs).

5. For a complete collection of posts in the Theory of Change Symposium, see John Lande, *Index to the Theory of Change Symposium*, INDISPUTABLY BLOG (Sept. 18, 2019), <http://indisputably.org/2019/09/index-to-the-theory-of-change-symposium>.

researchers, among others, in the United States and abroad to write short pieces describing their highest priority goals for the dispute resolution field and suggesting strategies for advancing them.

Theorists and practitioners developed “theory of change” concepts in the last half of the Twentieth Century to address “challenges in evaluating complex social or community change programs when it was not clear precisely what the programs had set out to do or how and therefore difficult to evaluate whether or how they had achieved it.”⁶ The Center for the Theory of Change provides the following definition of theory of change:

Theory of Change is essentially a comprehensive description and illustration of how and why a desired change is expected to happen in a particular context. It is focused in particular on mapping out or “filling in” what has been described as the “missing middle” between what a program or change initiative does (its activities or interventions) and how these lead to desired goals being achieved. It does this by first identifying the desired long-term goals and then works back from these to identify all the conditions (outcomes) that must be in place (and how these related to one another causally) for the goals to occur.⁷

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.⁸ Contributions to the Theory of Change Symposium include some, but not necessarily all, of these elements. Identifying assumptions and preconditions for success are particularly important.

Theories of change vary widely in scope. As an example toward one end of the continuum, Jill Gross used a “CRAPP” strategy—credibility, repetition, actual evidence, publishing, and patience—to improve the dispute resolution process for low-income parties in cases handled by the Financial Industry Regulatory Authority (“FINRA”).⁹ She proposed that claimants in certain FINRA arbitrations should be given the option of participating by telephone.¹⁰ On the other end of the continuum, Maurits Barendrecht and his colleagues developed global theories about improving the justice system.¹¹ For example, in one paper, they identified general justice needs, problems that may lead to disputes, difficulties in delivering justice,

6. *TOC Origins*, CTR. FOR THE THEORY OF CHANGE, <https://www.theoryofchange.org/what-is-theory-of-change/toc-background/toc-origins> (last visited Dec. 7, 2019).

7. *What is Theory of Change?*, CTR. FOR THE THEORY OF CHANGE, <https://www.theoryofchange.org/what-is-theory-of-change/> (last visited Dec. 7, 2019).

8. *How Does Theory of Change Work?*, CTR. FOR THE THEORY OF CHANGE, <https://www.theoryofchange.org/what-is-theory-of-change/how-does-theory-of-change-work> (last visited Dec. 7, 2019).

9. Jill Gross, *CRAPP: A Strategy for Dispute Resolution Reform*, INDISPUTABLY BLOG (July 25, 2019), <http://indisputably.org/2019/07/crapp-a-strategy-for-dispute-resolution-reform>.

10. *Id.*

11. *Maurits Barendrecht*, SSRN, https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=74344 (last visited Dec. 7, 2019).

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and a set of approaches for supporting negotiation and adjudication processes.¹² There are many theories of change with an intermediate scope. Many law review articles provide just such theories, identifying important problems and goals and then proposing strategies for achieving those goals. Michael Buenger's article, which proposes a "zero-based" approach to leadership in the courts,¹³ and Section V of this Article are examples of theories with an intermediate scope.

To provide material for theories of change about dispute resolution, Section II of this Essay sketches out some of the many goals for dispute resolution. Section III then sets forth several strategies that have been used to advance these goals, followed by a discussion of factors that may affect the success of these efforts in Section IV. Next, Section V describes one theory of change to provide an example of a strategy for the dispute resolution community to advance a particular high-priority goal: maintaining the vitality of the dispute resolution field in American legal education.

II. POSSIBLE GOALS OF A THEORY OF CHANGE FOR DISPUTE RESOLUTION

Proponents of "better ways" to manage disputes have aspired to numerous goals including, but not limited to:

- Helping people solve problems and manage conflicts so that they avoid destructive disputes;
- Giving parties the choice of a variety of dispute resolution processes;
- Increasing parties' control over the dispute resolution process and outcome;
- Increasing procedural and substantive fairness;
- Using parties' values and norms in dispute resolution;
- Creating value, i.e., producing resolutions that better satisfy all parties' interests;
- Improving dispute resolution for disadvantaged individuals and groups;
- Protecting interests of unrepresented third parties;
- Improving parties' ability to handle disputes on their own;
- Increasing parties' empathy and concern for others;
- Reducing tangible and intangible costs of disputing;
- Reducing the time required to handle disputes;
- Reducing the use of trials and the courts generally;
- Improving the quality and simplicity of dispute resolution processes;
- Providing appropriate confidentiality;
- Preserving relationships when desired;
- Reducing hostility between disputants and others affected by disputes;

12. Maurits Barendrecht et al., *Towards Basic Justice Care for Everyone: Challenges and Promising Approaches*, SSRN (Apr. 2, 2012), <https://ssrn.com/abstract=2229686>.

13. Michael L. Buenger, *Rethinking the Delivery of Justice in a Self-Service Society*, 2020 J. DISP. RESOL. 109 (2020).

- Increasing compliance with dispute resolution settlements and adjudications;
- Developing cohorts of skilled and ethical practitioners, including advocates and neutrals;
- Improving court procedures;
- Reducing burdens on courts and other institutions handling disputes;
- Developing support for dispute resolution processes in government, business, and other organizations;
- Improving achievement of organizational goals through conflict management techniques; and
- Changing the popular culture to value constructive conflict management processes and devalue destructive ones.

The dispute community has identified problems created or not adequately addressed by our efforts. Some of our goals are to reduce or eliminate such problems including, but not limited to:

- Lack of access to good dispute resolution processes for large portions of the population;
- Disadvantages of weaker parties, including members of groups subject to historical discrimination such as women, people of color, and lesbian, gay, bisexual, and transgender individuals;
- Unequal provision of dispute resolution services leaving low-income parties with “second-class” justice and parties who can afford private dispute resolution with premium justice;
- Pressure, coercion, or legal requirements to use certain processes or accept certain outcomes;
- Disempowerment of parties by lawyers or neutrals who dominate the process;
- Poor quality and/or inefficient processes;
- Insufficient resources to provide appropriate services;
- Prevention of disclosure of information of public interest;
- Prevention of parties from using public courts;
- Prevention of parties from joining their cases in collective actions;
- Undermining development of legal doctrine because some cases are settled and do not produce court opinions;
- Decreasing amount of judicial experience in public courts because judges become private neutrals;
- Reduced support for the public court system because elite parties use private processes; and
- Confusing dispute resolution jargon.

Developing good theories of change for the dispute resolution field is a very difficult challenge. Our community is heterogenous, comprised of members who do not all share the same goals. Even if we agreed about all of the relevant goals, we could not achieve them all because of resource limitations, tradeoffs between goals, and various stakeholders’ differing interests constraining our efforts. We also have a difficult challenge in achieving our goals because, considering the wide

range of tools that have been deployed in recent decades, it is not clear what additional tools or changes in existing tools would produce a significant improvement.

III. STRATEGIES FOR IMPLEMENTING A THEORY OF CHANGE FOR DISPUTE RESOLUTION¹⁴

To effectively reach our goals in the future, we should consider our purposes and the tools we think could help achieve them. Our community has created and supported an impressive “toolbox” of strategies to accomplish our goals including:

- Increased number, variety, and refinement of dispute resolution processes, often specialized for particular types of disputes;
- Dispute resolution programs and entities in courts, businesses, government agencies, and other institutions, both in-person and online;
- Systems for selecting appropriate processes based on early case assessments;
- Use of paralegals, unbundled legal services, and court systems to provide free or low-cost assistance in handling disputes;
- Education of parties about the range of dispute resolution techniques;
- Protocols to protect vulnerable parties, such as domestic violence victims;
- Materials, in-person assistance, and technological tools to help parties handle their disputes on their own and participate in dispute resolution processes;
- Public information about dispute resolution practitioners and programs;
- Literature and materials for academics, practitioners, and the general public;
- Production and dissemination of empirical research about dispute resolution;
- Initiatives to increase diversity of dispute resolution practitioners;
- Initiatives to improve quality of dispute resolution processes;
- Trainings and continuing education programs for practitioners;
- Education of lawyers to be effective advocates in dispute resolution processes;
- Instruction about dispute resolution in law school and other higher education programs;
- Conflict resolution education and peer mediation programs in elementary and secondary schools;
- Legal regulation of practitioners and/or dispute resolution processes;
- Ethical standards, rules, and review processes;

14. Sections III and IV are adapted from John Lande, *What's Your Theory of Change for Dispute Resolution?—Part 2*, INDISPUTABLY BLOG (Aug. 13, 2019), <http://indisputably.org/2019/08/whats-your-theory-of-change-for-dispute-resolution-part-2>.

- Legal protection of confidentiality of communications in dispute resolution processes;
- Laws authorizing courts to order parties to use dispute resolution processes;
- Uniform laws;¹⁵
- Bilateral and multinational international treaties and agreements;
- Dispute resolution professional associations and committees at local, state, national, and international levels;
- Dispute resolution committees in local, state, and national bar associations;
- Convening of stakeholders to address specific issues; and
- Dispute system design techniques.

These strategies have not been universally implemented nor completely effective in achieving their intended purposes. Moving forward, some theories of change might involve expanding use of strategies that have been applied only in limited situations, correcting problems with strategies that have not produced the intended outcomes, or combining multiple existing strategies.

IV. TRENDS RELEVANT TO DISPUTE RESOLUTION THEORIES OF CHANGE

To develop realistic theories of change, it is important to consider contextual factors that may affect potential strategies. We should consider the developments in our field in the period since Chief Justice Burger's speech as well as relevant trends in our field and greater society. The dispute resolution field—and the world generally—is constantly changing. A theory of change for dispute resolution should consider past, present, and potential future circumstances and trends including, but not limited to:

- Institutionalization of dispute resolution in courts and other institutions;
- Difficulty anticipating court results because of low trial rates;
- “Creeping legalism,” the tendency of dispute resolution innovations to become legalized over time;
- “ADR fatigue,” the feeling that ADR is not the “shiny new thing” anymore;
- Decreased funding for courts and other government entities that use or might use dispute resolution processes;
- Large population of low-income and other self-represented litigants;
- Cut-off of Hewlett Foundation funding¹⁶ and decline of the resources it supported;

15. Timothy J. Heinsz, *The Revised Uniform Arbitration Act: Modernizing, Revising, and Clarifying Arbitration Law*, 2001 J. DISP. RESOL. 1 (2001); Nat'l Conference of Comm'rs of Unif. State Laws, *Uniform Mediation Act and Official Comments*, 2003 J. DISP. RESOL. 1 (2003).

16. The Hewlett Foundation began making major investments in dispute resolution in 1984. JEROME T. BARRETT & JOSEPH P. BARRETT, *A HISTORY OF ALTERNATIVE DISPUTE RESOLUTION: THE STORY OF A POLITICAL, CULTURAL, AND SOCIAL MOVEMENT* 223 (2004). In the mid-2000s, the Foundation made

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- Contraction and restructuring of legal practice in the U.S.;
- Contraction of the system of legal education in the U.S. and many law schools' resistance to fundamental change; and
- Aging of a large cohort of senior law school faculty specializing in dispute resolution, with limited prospects of repopulation.

Some conditions and trends in society generally may also affect the dispute resolution field. These trends include, for example:

- Change in demographic composition in various parts of society;
- Prejudice and discrimination against disfavored groups;
- Inequality of resources and power;
- Fluctuation of economic conditions;
- Changes in political power and philosophy in various branches and levels of government;
- Technological change;
- Increase in number and sophistication of communication modes;
- Increased use of social media;
- Decreased consensus about evidence, facts, and truth;
- Increased political polarization;
- Cyberwar and other abuses of the cyberworld;
- International migration;
- Climate change; and
- Deterioration of the Post–World War II order with the ascendance of authoritarian countries like China and Russia and weakening of democratic countries like the U.S. and many countries in Western Europe.

Failure to take factors such as those listed above into account could render our theories and strategies ineffective. Therefore, it is important that our community continue to identify trends—both within the field and external to it—that may affect dispute resolution developments.

Similarly, proponents of improvements in dispute resolution should consider how social change occurs. Sociologists have developed numerous theories about the process of social change, and various theories have come in and out of fashion since the Enlightenment.¹⁷ Social change theories describe different mechanisms of change such as:

- Mechanisms of one–directional change such as accumulation of knowledge, selection of superior ideas, and specialization;

its last grants as part of its major dispute resolution initiative. *Grants*, WILLIAM & FLORA HEWLETT FOUND., https://hewlett.org/grants/?keyword=dispute&sort=date¤t_page=3 (last visited Dec. 7, 2019).

17. The enlightenment was an intellectual and philosophical movement in the Eighteenth Century relying on reason as the primary source of knowledge and advocating values that are the basis of modern Western societies. *See Age of Enlightenment*, WIKIPEDIA, https://en.wikipedia.org/wiki/Age_of_Enlightenment (last visited Dec. 7, 2019).

- Mechanisms of curvilinear or cyclical change that recognize limits to growth and natural cycles;
- Conflict, competition, and cooperation;
- Tension and adaptation to changes in a social system;
- Diffusion of innovations; and
- Planning and institutionalization.¹⁸

There is no single generally accepted theory of social change, so proponents of theories of change should consider what social change dynamics might be applicable in particular situations.

V. AN ALL-HANDS-ON-DECK STRATEGY FOR AMERICAN LEGAL EDUCATION

To illustrate a theory of change for dispute resolution, Section V advocates for an “all-hands-on-deck” strategy to maintain the vitality of the dispute resolution field in American legal education. Although it does not include all of the elements of a formal theory of change,¹⁹ this theory identifies a major goal, discusses assumptions about the future, suggests why past efforts have not been effective, proposes some concrete steps to achieve the goal, and describes causal connections between the proposed strategies and desired goal.

*A. The Future of Dispute Resolution in American Legal Education*²⁰

Dispute resolution faculty in American law schools have played an important role in our field and have a lot to contribute in the future as our society and legal system evolve. We not only teach future lawyers and other dispute resolution professionals, we also develop new theories and techniques, advise institutions about dispute resolution issues, and serve as a valuable hub connecting students, practitioners, courts, businesses, and other organizations invested in dispute resolution. Maintaining the vitality of our legal education community should be a high-priority goal for our field.

The dispute resolution field in American legal education is facing a slow-moving demographic disaster. There is a cohort of extraordinary—and aging—senior dispute resolution academics in American law schools. As they retire, it seems unlikely that law schools will hire new faculty to fill most of their positions with faculty specializing in dispute resolution. This and associated developments pose a threat to the vitality of the dispute resolution field, especially related to legal education.

This bleak assessment is based on several assumptions about possible future dynamics in legal education. First, a series of leading dispute resolution faculty will

18. William Form & Nico Wilterdink, *Social Change*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/social-change> (last visited Dec. 8, 2019).

19. *How Does Theory of Change Work?*, *supra* note 8.

20. Section VI is based on John Lande, *We Need an All-Hands-On-Deck Strategy Now to Maintain the Vitality of Our Field in the Future*, INDISPUTABLY BLOG (Sept. 19, 2019), <http://indisputably.org/wp-content/uploads/Lande-TOC.2.pdf>.

retire within the next two decades, and their schools probably either not fill their positions or fill them with faculty who specialize in other subjects. Some schools may view dispute resolution courses to be “merely practice courses” that can be taught much cheaper by adjunct faculty. Over-stretched adjunct faculty may get little guidance and support for their teaching. Some candidates for new faculty positions may perceive that dispute resolution is a disfavored area and thus will not risk listing dispute resolution as an interest in their applications. As the cohort of experienced dispute resolution faculty dwindles, some law school administrators may cut back dispute resolution course offerings. As a result, some colleagues who now have an interest in dispute resolution—even those who are far from retirement age—may become demoralized and drift away from our community. Scholarship and service by regular faculty specializing in dispute resolution may not be valued as much as in the past. Faculty may produce less significant dispute resolution scholarship or produce less of it altogether.

Many law schools will face intense competitive pressure to attract students and, for many schools, hiring dispute resolution faculty may not seem like a good strategy to fill their classes. Dispute resolution instruction in many schools may become routinized, limited primarily to techniques that are commonly used in practice, and would not include the rich range of material now included in dispute resolution courses. If there is a substantial reduction in the number of faculty interested in dispute resolution, the American Bar Association Section of Dispute Resolution may reduce its dispute resolution activity related to legal education and discontinue sponsoring the Legal Educators’ Colloquium.²¹ Similarly, the Association of American Law Schools Alternative Dispute Resolution Section may shrink and stop sponsoring the annual Works-in-Progress conference.

These possibilities foreshadow the risk that in the foreseeable future, dispute resolution may survive in American law schools only as a faint shadow of its former self. I am not predicting that all this actually will happen. However, given current trends, it is plausible to assume that much of it will happen in the next ten to twenty years—especially if members of our community do not start taking action soon to counteract these possibilities.

There are already indications that some of these dynamics are underway. Douglas Yarn, the executive director of the Consortium on Negotiation and Conflict Resolution at Georgia State College of Law, described how his school decided to close the consortium and devote its resources to another subject.²² This decision is one of several indicators of a shift of priorities away from dispute resolution in American law schools.²³ These indicators may be our “canaries in the coal mine,”²⁴ warning of potential dangers ahead.

21. The annual conference of the American Bar Association Section of Dispute Resolution includes a day-long Legal Educators’ Colloquium for the benefit of law school faculty focusing on dispute resolution.

22. John Lande, *What Will Be the Future of ADR in U.S. Legal Education?*, INDISPUTABLY BLOG (Jan. 24, 2019), <http://indisputably.org/2019/01/what-will-be-the-future-of-adr-in-us-legal-education>.

23. *See id.*

24. *Canary in a Coal Mine*, WIKTIONARY, https://en.wiktionary.org/wiki/canary_in_a_coal_mine (last visited Dec. 8, 2019) (“An allusion to caged canaries (birds) that miners would carry down into the mine tunnels with them. If dangerous gases such as carbon monoxide collected in the mine, the gases would kill the canary before killing the miners, thus providing a warning to exit the tunnels immediately.”).

The dispute resolution field may be a victim of our success in some ways. We are not the “shiny new thing” anymore. Members of our community generally do not have the same intense passion that existed when Chief Justice Burger made his remarks and there was a burst of enthusiasm and experimentation. Many courts now require parties to mediate, and lawyers now view mediation as a regular part of litigation. Arbitration is a routine dispute resolution method in many contexts. Most law schools include some instruction in dispute resolution and quite a number have impressive dispute resolution programs. Dispute resolution faculty have produced a substantial body of scholarship and are involved in many dispute resolution organizations. Indeed, most dispute resolution faculty are very busy with work, family, and other commitments, so it seems rational for faculty to focus on their immediate obligations and not worry about demographic problems that will not be felt for a while.

Although it is understandable why individual faculty would focus so much on their personal commitments, the cumulative effect would be a “tragedy of the commons”: people will focus on their individual self-interests and de-emphasize a common interest.²⁵ The tragedy of the commons is based on the socio-psychological phenomenon of diffusion of responsibility, where people are less likely to take responsibility when they believe that others may do so.²⁶ Understandably, the larger the group, the easier it is to assume that others will take responsibility, and the easier it is to internally justify our own inaction.

To counteract these trends effectively, the dispute resolution community should focus on these issues now because it would take time for this strategy to take effect, and delaying implementation would aggravate the problem. If there is a downward spiral causing dispute resolution colleagues to perceive that our community is shrinking, some colleagues will withdraw their time and interest, reinforcing that perception. At that point, people may be “heading for the exits” and the “survivors” may doubt that it is worth sticking around in the field. In other words, it may be too late if we wait until the deterioration is more obvious.

B. Possible Strategies to Keep Dispute Resolution Alive in American Law Schools

There are many possible strategies for addressing these problems to maintain the vitality of dispute resolution in American law schools. The following eight possibilities are discussed in more detail below: (1) encourage junior and mid-career faculty to take increasing leadership; (2) engage current faculty who weakly identify with dispute resolution; (3) recruit new faculty interested in dispute resolution; (4) attract faculty who do not specialize in dispute resolution to incorporate it in their teaching and scholarship; (5) support adjunct faculty; (6) take advantage of administrators’ experience; (7) keep retired colleagues engaged; and (8) encourage faculty to act so that colleagues can see their contributions. Ideally, we would pursue all of these strategies. We should undertake as many as time, effort, and resources will allow.

25. *Tragedy of the Commons*, WIKIPEDIA, https://en.wikipedia.org/wiki/Tragedy_of_the_commons (last visited Dec. 8, 2019).

26. *Diffusion of Responsibility*, WIKIPEDIA, https://en.wikipedia.org/wiki/Diffusion_of_responsibility (last visited Dec. 8, 2019).

1. *Support and Engage Junior and Mid-Career Faculty to Take Increasing Leadership*

We should begin the transition into leadership of a cohort of junior and mid-career colleagues in our field. If the scenario described above is realized to a significant extent, they will be the ones to bear the brunt of leading a possibly-dwindling community. Some such faculty have a tendency to minimize their own importance, saying that they are “only junior” colleagues. They may weigh their contributions against those of senior colleagues and put themselves down by comparison. In fact, junior and mid-career colleagues have a lot to offer and often do not give themselves enough credit. More importantly for our common interest, we need them to step up with more confidence and take on further leadership.

2. *Engage Current Faculty Who Weakly Identify with Dispute Resolution*

Many colleagues who subscribe to the Dispute Resolution in Legal Education listserv²⁷ have some interest in dispute resolution but do not come to conferences or participate in our organizations for various reasons. We should reach out to some of them individually to see what, if anything, might strengthen their identification with the field and encourage them to participate and make contributions to the field. Presumably, many of them would not find it useful to come to in-person events like the annual American Bar Association Section of Dispute Resolution conference, but perhaps there are other things that they *would* find valuable. People often ignore general messages on the listserv, so this might require individual emails or calls to connect with some of these colleagues.

3. *Recruit New Faculty*

Although it may be hard to get law schools to recruit and hire faculty to specialize in dispute resolution, we should do what we can to groom suitable candidates and help them get faculty positions. We also should advocate for faculty candidates who are interested and experienced in dispute resolution even though they specialize in other subjects.

4. *Help Faculty Who Do Not Specialize in Dispute Resolution Incorporate it in Their Teaching and Scholarship*

Considering the limited prospects for recruiting a substantial cohort of new faculty specializing in dispute resolution, we should try to help existing junior and mid-career faculty incorporate dispute resolution in their teaching and scholarship.²⁸ For example, if faculty are interested in contracts, civil procedure, or virtually any traditional subject, we might encourage them to focus on dispute

27. *Dispute Resolution Listserv*, UNIV. OF MO. SCH. OF LAW, <https://law.missouri.edu/csdr/drle/dispute-resolution-listserv> (last visited Dec. 8, 2019) (there are over 300 subscribers to the listserv).

28. See generally John Lande, *Infect a Colleague Today—And Next Year and the Year After That!*, INDISPUTABLY BLOG (Aug. 11, 2019), <http://indisputably.org/2019/08/infect-a-colleague-today-and-next-year-and-the-year-after-that>.

resolution issues within those subjects in their work. We might collaborate with them by, for example, giving advice and offering to be guest lecturers or co-teachers.

We can conduct annual summer workshops designed specifically for faculty who do not specialize in dispute resolution but want to incorporate it in their teaching or scholarship. These workshops might “piggyback” on summer programs offered by various schools teaching dispute resolution skills for practitioners, which some of these faculty might also want to attend. Considering that most faculty have limited travel budgets, it might be important to subsidize the special programs for such faculty. We might seek funding from foundations, private donors, or other sources interested in dispute resolution.

It also would be good if we could encourage such “recruits” to attend the annual American Bar Association Section of Dispute Resolution conference and other events. Indeed, although they would not immediately be dispute resolution experts, it would be good if they could be included in programs at these events, which could increase their identification with and connection to the field.

5. *Support Adjunct Faculty*

If law schools are going to rely increasingly on adjunct faculty in place of regular faculty, there is greater need to integrate adjunct faculty in our field. To our credit, our community has taken steps to support adjunct faculty. We probably will need to do more and do it more regularly in the future.²⁹

6. *Take Advantage of Faculty Administrators’ Experience*

Many of our colleagues are or have been administrators, and they have valuable experience that would be good to share and tap systematically. These might include present and former deans, associate deans, and dispute resolution program directors. As the legal education environment becomes more challenging, this cadre of administrators might value having a support system. They could also provide a valuable perspective for our community in trying to maintain our vitality.

7. *Keep Retired Colleagues Engaged*

We should try to keep retired faculty engaged in the field, perhaps with periodic telephone or video conference calls, which might be partly social. Their participation in the field and connection with colleagues has been an important part of their identity. It would be good to enable them to stay engaged without making substantial time commitments. Those interested in being part of an “emeritus club” would be natural candidates to be mentors for junior and mid-career colleagues becoming involved in our community.

29. See John Lande, *Integrating Adjunct Faculty*, INDISPUTABLY BLOG (Aug. 8, 2019), <http://indisputably.org/2019/08/integrating-adjunct-faculty> (summary written by Ava Abramowitz, the conference moderator, featuring breakout session speakers Tracy Allen, Dwight Golann, and Brian Pappas).

8. *Encourage Faculty to Act so That Colleagues
Can See Their Contributions*

If faculty see colleagues participating and taking action to address the problems described above, we are more likely to want to do so as well. Conversely, if we perceive that colleagues are not taking action, we are likely to avoid doing so ourselves, feeling that we would be acting alone and that our actions would be ineffective. Thus, taking no action to promote the continued vitality of the community signals to colleagues that this effort is not, in fact, worth the effort.

Publicizing our activities is an important element of this strategy because it demonstrates to our colleagues an interest in preserving our community. There are many ways people can share news of their work. An easy way to publicize activities is by posting messages on the Dispute Resolution in Legal Education listserv³⁰ about one's activities, successes, and challenges. Similarly, colleagues can write guest posts on the Indisputably blog.³¹ Of course, colleagues can communicate through publications and presentations at conferences and other educational events.

VII. CONCLUSION

Addressing Chief Justice Burger's question, there *are* better ways to handle disputes than the status quo. In the decades since he posed his challenge, many academics, practitioners, judges, government officials, businesspeople, and others have been incredibly creative in devising new and better ways to manage conflicts and handle disputes. Our collective efforts have generated great benefits to individuals, institutions, and society generally.

The dispute resolution project is not now complete and never will be. Our innovations have not fully penetrated through society to benefit all who might take advantage. Our innovations are imperfect, and some have created new problems. Society continues to evolve at a rapid rate, so there are constantly new problems of dispute resolution to address. Faculty at American law schools, among others in the field, are important actors needed to fulfill the potential of this project. We need to continue the work of creating better ways to manage conflict and handle disputes. Developing realistic theories of change can help us do so.

30. See *Dispute Resolution Listserv*, *supra* note 27.

31. See INDISPUTABLY BLOG, <http://indisputably.org> (last visited Dec. 9, 2019).

