

Reframing Our Field to Focus on
Improving People's Ability to Handle Disputes on Their Own
Theory-of-Change Symposium
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Heather Scheiwe Kulp believes our field's survival depends on refocusing on conflict management, negotiation, and communication – skills people readily identify they want – rather than on the narrower “dispute resolution.” In building capacity for people to better manage conflict, we also improve the downstream effects of conflicts. She provides examples of how we have done this and can do this. She is the Alternative Dispute Resolution Coordinator for the New Hampshire Judicial Branch Office of Mediation & Arbitration. This article is an expression of her personal views and does not represent the opinion of the New Hampshire Judicial Branch.

For a field to thrive, it must add value to people's lives. Consider two possible reasons why the average person may not see the value of ADR: (1) Most people don't think they are in “disputes” or have “legal needs.” They have “problems” or someone else has a problem with them. (2) When such problems arise, most people handle them on their own. That's what 80% of U.S. adults said in an American Bar Foundation study as did the same percentage in a Legal Services Corporation survey of low-income Americans. Maybe they talk to family and friends. Maybe they do an internet search. But they rarely seek professional assistance, primarily because they don't recognize a need for such assistance.

Of course, I believe that ADR professionals frame and offer assistance with conflicts in ways that are helpful to solving problems. And certainly, we could do a better job of describing how we add value in the context of legal disputes.

Yet I worry our field will become more exclusive and underutilized the more we overlook how people *actually* think about and seek to manage conflicts. We unnecessarily narrow the field when we use terms like “conflict / dispute resolution” to describe what we do, or when we assert the fallacy that ADR = mediation. We misleadingly promise that we can help people resolve disputes more cheaply than attorneys or courts, even though most people with civil disputes that land in court don't hire attorneys and court fees often are cheaper than private mediation.

I propose a few prescriptive reframes to help us better achieve the goal of adding value to people's lives by improving people's ability to handle disputes on their own.

Recognize that Negotiation and Effective Communication are the Underlying Skill Set of ADR

We should focus on negotiation and effective communication as the key skill sets we offer. People are desperate to “upskill” in areas like collaboration and systems thinking. And employers want people with problem-solving skills more than any other skill. Why use the term “ADR” or “dispute resolution,” when people would rather learn about “negotiation” or “communication” or “problem-solving”? When we focus on what people actually want, our field can better meet people where they are and help them grow.

For instance, when thinking about how to retool law schools to be competency-based, let’s require every law student to take a negotiation course (and as a first step, every law school must *offer* a negotiation course). Let’s also retitle some of our otherwise niche-sounding courses to have broader appeal. For example, we might call a course “Communicating about Employment Issues” rather than “Employment Mediation.”¹ *We can still teach the same things*, but reframing what we call it to better match people’s identified needs is more likely to bring a wide range of people into the fold: future CEOs, business people, in-house counsel, employment benefits professionals, employment discrimination advocates, and labor union representatives.

Focus More on the Management of Conflict than on Resolution

In the same vein, we could recognize that “resolution” is actually the downstream need resulting from many upstream problems. To demonstrate how the principles of ADR can be applied to better prevent and manage conflict (not just resolve it), we should start – or at least focus more – on the upstream challenges.

For example, in addition to improving our mediation skills to better serve people getting divorced, we should also ask why people are getting divorced.² Are there ways we can add value at the front end of a relationship that would help people better manage conflict that will inevitably arise?

- What if conflict management professionals teamed up with financial professionals to offer a seminar to all couples who file for a marriage license about “talking about money in your relationship”?

¹I’m not picking on any one substantive area of law, course, or type of course. Rather, I’m posing as an example how we might broaden our frame of ADR-related courses to introduce more students to the concepts of improved communication and problem-solving.

²Let me be super clear: this is not a condemnation of divorce or people who get divorced. Divorce is the best option in many circumstances. Rather, I provide this as a concrete example of a downstream result that we currently “resolve,” when we could offer a lot of value in the upstream process that may also positively impact the downstream result.

- What if conflict management professionals paired with pre-marital counseling providers to offer couples a session on expressing disagreement with one another in healthy ways?
- What if mediators offered on-the-spot 15-minute coaching sessions via a text chat for couples who are arguing about who does the dishes or takes on the second job?

Perhaps the upstream is also the space where ADR and the [“important modes of interaction”](#) like [“resistance and activism”](#) connect (hat tip to Jen Reynolds), providing not only incremental individual reform but also systemic change.

Add Value Where You Sit (or Stand / Roll / Fly / Walk / Motor)

Upstream examples like these illustrate how we might see the opportunities to incorporate our skills and research in the very workplaces, homes, and organizations where we interact with others every day. I urge newer members of our community to look for opportunities to help manage conflict right where they are, share specifically how they might be helpful, and say “yes” when they are asked to contribute. While not everyone will become a full-time professional mediator or ADR professor, people might teach negotiation in an adult-education program or create a new restorative justice-based disciplinary system as members of their local school board. Others might facilitate local conversations about how their community uses a vacant lot or heals after a racially-motivated incident. Other ADR professionals might volunteer to be on their company’s committee to review the sexual harassment policies and procedures, or offer to design a new complaint system for customers. Opportunities abound for us to use our skills right where we are.

You may recall the online conversation John Lande and I had a few years ago about [ADR Careers](#). One of our conclusions was that newer ADR professionals could significantly benefit from more experienced ADR professionals [vouching for their competence](#). Providing opportunities to [eager new colleagues](#) is an easy way to ensure the future, and something all of us who are already in the field can do from where we sit.

For instance, the New Hampshire Judicial Branch [Office of Mediation and Arbitration](#) (where I am ADR Coordinator) started an internship program for people interested in learning more about ADR and the courts. In two years, I’ve had five excellent interns – seniors in college to second-career law students – who help me think through challenges of managing statewide court ADR programs. They observe court, get familiar with the access to justice issues prevalent in the court system, and think with me about how ADR can *and cannot* help manage those issues. Offering an internship is not hard. In fact, it is quite enjoyable to have colleagues in an otherwise often-lonely profession.

Will these interns become professional mediators? Maybe, maybe not. But what these interns want to do with the experience and skills of ADR is actually just as interesting and potentially impactful:

- start a youth diversion program for kids in his hometown in Prince George's County, MD
- work with entrepreneurial women in Africa to develop their negotiation skills, so they can provide greater financial stability for their families
- analyze and redesign standard plea negotiation processes as a public defender
- offer services as a collaborative law attorney to family members fighting about parents' estates
- design healthier and more helpful employee and manager feedback systems as CEO of a business

As [Chris Guthrie says](#), ADR provides an excellent foundation for leadership training. I am happy, and humbled, to support this innovative integration of ADR into their future careers, and I think this benefits not only our field, but the world.

Rebekah Gordon reminded us that ["The Future Is in Your Midst!"](#) and to me, it looks bright. To keep it so, we need to continually re-examine the messages we are sending and the value we are adding to make sure they match people's actual wants and needs. We have much to offer, and much to learn.