

We Need an All-Hands-On-Deck Strategy Now to Maintain the Vitality of Our Field in the Future

Theory-of-Change Symposium

indisputably.org/2019/09/theory-of-change-symposium-part-1

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[John Lande](#) is alarmed that the DR field is facing a foreseeable shriveling in US law schools as retiring faculty are not replaced by faculty specializing in DR. He worries that this will lead to a downward spiral and that the field will become a fading shadow of itself. He recommends that everyone in our field take this seriously now, before the trend becomes harder to counteract, and he suggests several strategies to counteract this trend. He is the Isidor Loeb Professor Emeritus at the University of Missouri School of Law.

We are staring down a slow-moving demographic disaster. There is a cohort of amazing – and aging – senior DR academics in American law schools and, as they retire, it seems unlikely that law schools will hire new faculty to fill most of their positions with faculty specializing in DR.

Is it an exaggeration to call this a disaster? You tell me. Consider the following scenario.

- A series of well-known DR faculty retire and their schools don't fill their positions or fill them with faculty who specialize in other subjects.
- Faculty candidates see the writing on the wall and don't want to risk listing DR as an interest in their applications.
- Law school administrators, some of whom never respected DR very much to begin with, cut back DR course offerings.
- Most DR courses are taught by over-stretched adjuncts who have little guidance and support.
- DR instruction becomes routinized, limited mostly to techniques commonly used in practice.
- Colleagues who now specialize in DR become demoralized and drift away from our community.
- Faculty produce less-significant DR scholarship and less of it.

- The ABA and the Section of Dispute Resolution, which were already struggling, reduce their DR activity and discontinue the Legal Educators' Colloquium.
- Similarly, the AALS ADR Section shrinks and stops sponsoring the annual Works-in-Progress conference.
- DR survives in American law schools only as a faint shadow of its former self.

I am not predicting that all this actually will happen. But if I was a betting person, I would bet that much of it will happen in the next 10-20 years – especially if we don't start taking action soon to counteract these possibilities.

So What?

So what is that American DR faculty have played an important role in our field and have a lot to contribute in the future as our society and legal system evolve. It would be a damn shame if our community shrinks so that practitioners, the public, and students lose the benefit of a vital legal academic DR community.

The poop won't hit the fan for a while, so it is easy to ignore the threat now.

Doug Yarn is the canary in our coal mine. Let's not wait until we have a canary graveyard. (Pardon the gruesome imagery.)

This would be the tragedy of the commons, where people focus on their individual self-interests, which results in the depletion of a common interest. This 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. Understandably, the larger the group, the easier it is to assume that others will take responsibility.

Everyone is busy with work, family, and other commitments. So it seems rational for people to focus on those commitments and wait until "tomorrow," like Scarlett O'Hara, to worry about the demographic problems that won't be felt for a while.

As a community, we need to focus on this now because it takes time to counteract these trends. If there is a downward spiral so that if DR colleagues perceive that our community is shrinking, some will withdraw their time and interest, reinforcing that perception. It may be too late if we wait until the deterioration is more obvious. At that point, people may be heading for the exits and the "survivors" may doubt that it's worth sticking around in the field.

So What Can We Do?

Here are some ideas. Ideally, we would pursue them all. We should do as many as we can.

Engage Junior and Mid-Career Faculty to Take Increasing Leadership

We have a cohort of great junior and mid-career colleagues specializing in DR and we should begin the transition for them taking senior leadership in our field. If my nightmare scenario is realized to a significant extent, they will be the ones to bear the brunt of leading a possibly dwindling community.

Some say that they are “only junior” colleagues. I imagine that they may compare themselves with our cast of senior colleagues and put themselves down by comparison. With great affection and respect, I say, please cut that out right now!

You – and you know who you are – have a lot to offer and you don’t give yourselves enough credit. More importantly for our common interest, we really need you to step up with more confidence and leadership.

Engage Current Faculty Who Weakly Identify with DR

There are a lot of colleagues on the DRLE listserv who obviously have some interest in DR but who don’t 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 ABA 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 folks.

Recruit New Faculty

It may be hard to get schools to hire faculty to specialize in DR and recruit new faculty to focus on DR but we should do what we can to groom suitable candidates and help them get faculty positions. We should also advocate for faculty candidates who are interested and experienced in DR even though they specialize in other subjects.

Attract Faculty to Incorporate DR in Their Teaching and Scholarship

Considering the limited prospects for recruiting a substantial cohort of new faculty specializing in DR, we should try to entice existing junior and mid-career faculty to incorporate DR in their teaching and scholarship. This is the [Infect a Colleague Today](#) strategy I recently wrote about.

Junior and mid-career faculty presumably will have their own scholarly and teaching agendas and we would encourage them incorporate DR themes in their work. For example, if faculty are interested in contracts, civ pro, or virtually any traditional subject, we might encourage them to focus on DR issues within those subjects in their teaching and scholarship. We might collaborate with them as described in my prior post.

We can conduct annual summer workshops specifically designed for faculty who don't specialize in DR but want to incorporate it in their teaching or scholarship. These workshops might piggyback on the summer programs offered by various schools teaching DR skills and ideas for practitioners, which some of these faculty might also want to attend. Given limited travel budgets because of contraction of the legal academy, it might be important to subsidize the special programs for such faculty. We might seek funding from the JAMS Foundation, private donors committed to DR, or other sources to this support project.

It also would be good if we could encourage "recruits" to attend the annual ABA conference and perhaps other events. Indeed, although they wouldn't immediately be DR experts, it would be good if they could be included in programs at these events, which could increase their identification with the field.

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](#) as Ava Abramowitz described, summarizing a session at the Past-and-Future conference. 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.

Take Advantage of Our Faculty Administrators

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 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.

Keep Valued Colleagues Engaged

It would be nice if there was some way to keep emeriti engaged in the field, perhaps with periodic conference calls, which might be partly social. For our emeriti, participation in the field and connection with colleagues has been an important part of our identity. It would be good to enable emeriti 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.

So What Are YOU Gonna Do?

If you are reading this piece, you probably care a lot about our field and our community. You probably are extremely busy, as we all are, and have your own professional and personal priorities. Unfortunately, so does everyone else and this dynamic can lead to the tragedy of the commons described above.

There can be a [bandwagon effect](#), where people join an effort because they see that others are doing it too, so they don't feel that they are acting alone. There also can be a negative bandwagon effect, where people decline to act because they don't see other people doing so. What this means is that seemingly taking no action really is taking an action signaling to others that an activity is not worthwhile.

So I encourage people – especially those who generally don't visibly participate in our field – to demonstrate your interest in preserving our community. This doesn't need to take a lot of time or be anything extraordinary. It's easy to participate in listserv discussions or write a short guest blog post for *Indisputably*. You can ask questions, share experiences, contribute your ideas for the field, etc. I particularly encourage you to write a short piece with your ideas for this Theory of Change symposium. You can work with colleagues in your school to support the DR field as described above. There are lots of other ways that you can demonstrate your commitment – and thus encourage others to do so as well.

If any of the pieces in the symposium “speak to you,” please send a note to the author expressing your appreciation, reactions, ideas etc. This builds human capital in our field. It doesn't take much time and it's just a really nice thing to do.

You might extend this into a conversation with the author by email, phone, or video. I have been using [zoom](#) to have video conversations a lot these days and I find it really enhances communication. It's incredibly easy.

You might extend a conversation into some initiative to advance the goals described in the author's piece. For example, you might collaborate on writing an article, resource for students, faculty, or practitioners, report, or recommendation to some organization for certain actions. Perhaps the author might want to lead some effort and you could provide suggestions and feedback. You might do this on a one-time or recurring basis. There might be a small group to collaborate on such an initiative.

Of course, just sending a note or having a conversation doesn't commit you to participate in some activity.

You also might engage in some productive procrastination. You may have ideas about how to improve something in our field but are wary about planning to write a piece for the symposium because of all your commitments. If you find that the ideas are bouncing around in your head and distracting you from your work, you can take a break and exorcise the ideas by putting pen to paper (or fingers to keyboard). Before you know it, you may have written a piece for the symposium. As you can see from the first set of pieces, they are short and informal. Think about it.

At the end of the day, the question is what the DR community means to you and what you are willing to do to help preserve and strengthen it.