

## **We Need to Make Negotiation a Central Focus of Legal Education Especially in Divided Times**

Theory-of-Change Symposium

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[Grande Lum](#) argues that negotiation is central to lawyers' work and is especially important in today's polarized environment. He advocates making negotiation a central part of the legal curriculum. He is Provost and Vice President for Academic Affairs of Menlo College and previously served as Director of the Community Relations Service in the US Justice Department, Director of the Divided Community Project at Ohio State Moritz College of Law, and Director of UC Hastings College of Law's Center for Negotiation and Dispute Resolution.

### **Negotiation is Especially Important in Our Polarized Environment**

Many people are questioning our field in this time of great social division. However, there is an especially important need for our field's contributions in this polarized political moment. We bring something special to this moment, and we should not give up on the courage of our convictions. It is more important than ever to serve the greater good by helping people understand others who they strongly disagree with and by building consensus.

Our field often is seen as neutral and soft in ways that diminish the perceived value of our work. For example, the use of confidential settlements in negotiation and mediation sometimes has harmed victims and benefited powerful wrongdoers. But many of our colleagues have spent much of their careers focused on improving dispute resolution systems and the overall legal system. We need to combat the perception that we are maintaining the power structure as is.

As society increasingly grapples with various identity issues such as racial, gender, and political issues, that perception of our work is even more problematic. It can make social justice advocates suspicious of our work.

We need to tackle this challenge head on. The skills we teach are essential to bridge divides and find common ground. Negotiation is a key advocacy skill for all lawyers and should never be left out, especially for those in pursuit of justice. Community mediation and facilitation have roots in race relations and community empowerment. Successful negotiators essentially are "[code-switchers](#)" because they build rapport, empathize, make difficult conversations easier, and persuade through fairness and facts.

Robert Mnookin's book [Bargaining with the Devil](#) is instructive in this moment. There are times when we should not negotiate with evil people, particularly when there are more effective ways to promote justice, such as litigation and isolation. On the other

hand, sometimes we can promote a greater good by using ADR processes – even with such people.

It is important to emphasize the value of negotiation because of its universality and contribution to advocacy. Some of the major gains of civil rights advocacy, for example, occurred through negotiation before, during, and after demonstrations. We need to help people appreciate how our work can facilitate advocates' work to promote diversity, increase inclusion, and ensure equity. We do this in our work on restorative justice, reconciliation, civil rights, and community mediation.

Nuanced negotiation theory and practice involves persuasion without coercion, enables disagreement without being disagreeable, and is essential for these divisive times. Mahatma Gandhi, Nelson Mandela, and Andrew Young exemplify the most skilled negotiators of the 20<sup>th</sup> century. They demonstrated a strong, principled, and humane advocacy approach that we should teach law students and lawyers. As Gandhi reportedly said, "An eye for an eye leaves the whole world blind."

We need to tell the story that our field is critical both for individuals' professional success and for promotion of more equitable and just communities. ADR was developed to address weaknesses of litigation and to increase self-determination and fairness. We should clearly convey that narrative. Our work is necessary for lawyers to manage complex human interactions, and it is particularly valuable when they work in polarized environments.

### **Importance of Teaching Negotiation in Law School**

We should recognize our tremendous success in preparing law students to become more successful and satisfied lawyers. In my view, this is one of the most important accomplishments of our field in the last forty-plus years. Many of us can share numerous anecdotes about how transformative our classes have been for our students and the lifelong impacts that we have made.

As Lisa Amsler described, [legal practice and education are in the first stages of game-changing disruption](#). After three decades of growth, ADR has been on the decline at law schools in the last decade. Given the ominous warning signs about our field's future, we must leverage our major accomplishments. To deal with looming threats to our field, we need to be at the forefront of coming changes. Lawyers have played – and will continue to play – important roles as negotiators, representatives, and leaders. Positioning our field is critical for enhancing its relevance. Future ADR academics need to create new opportunities much as Silicon Valley entrepreneurs do by anticipating and addressing future needs.

[Negotiation should be the point of the ADR spear](#). We need to renew the centrality of negotiation throughout the law school curriculum. Negotiation is the ADR course with the most general law student appeal and it is the gateway course for all other ADR courses. Negotiation academics have done a superb job of making negotiation a core

foundation of the business school curriculum; negotiation is the [most popular course at business schools in general](#). This also is true at some law schools.

This is not a fixed pie. Increasing negotiation's centrality within legal education raises all other ADR teaching and scholarship "boats" by addressing mediation, facilitation, and leadership in a variety of courses.

### **Strategies for Increasing Negotiation Instruction in Law Schools**

How do we get there? I love the [all-hands-on-deck strategy](#). Here is a three-pronged all-hands-on-deck strategy to accomplish the goal of increasing preparation of all law students in indispensable negotiation skills.

#### **Turbocharge the Basic Negotiation Course**

It's in our joint interest to increase negotiation's law school market share. We should collaborate in enhancing the basic negotiation course in every law school in the country. We should scale up cross-school negotiation exercises. We should incorporate technological innovations as part of a core negotiation competency by fully [integrating ODR](#) and artificial intelligence and by using virtual reality simulations. In addition, we should equip students to extend their negotiation skills to help communities deal constructively with their divisions.

#### **Collect and Disseminate Data about the Indispensability of the Skills We Teach**

We should focus on persuading prospective law students, law school deans, and accreditation officials to recognize the importance of negotiation for lawyers. For example, we might organize a conference focused on this issue, encourage more research in this area, and convene a critical mass of colleagues to conduct a joint "moonshot" research project on the importance of negotiation.

#### **Start Negotiation Revolution 2.0**

We have the benefit of deep and long relationships with each other, and we can leverage that by working together to enhance the field as a whole. We should connect it explicitly to inclusion, equity, and technology. We need to keep focusing on institution building, i.e., ADR organizations and centers. We should take a page from strategies of organizations like the Federalist Society and the NAACP that work consciously and strategically toward achieving concrete measurable goals.