PAULA MARIE YOUNG, J.D. LL.M.

- Commercial litigator for 20 years.
- Award-winning mediator.
- Legal educator for 15 years.
  - Clinical Professor of Law, Qatar University, 2015-present.
  - Professor, Appalachian School of Law, 2002-2015.
RESEARCH QUESTIONS: ROUND 1
RESEARCH QUESTIONS

❖ Does the region have a sufficient number of neutrals to handle the disputes arising here?
❖ Enough arbitrators, early neutral evaluators, mediators, group facilitators, etc.?
RESEARCH QUESTIONS

❖ To enhance this capacity, what kind of training should neutrals in the region have available to them?
  ▪ Substantive.
  ▪ Procedural.
  ▪ Ethical.
  ▪ Cultural.
RESEARCH QUESTIONS

❖ How do we build demand for alternative dispute resolution (ADR) services among businesses, government entities, civil society, and courts?
❖ What kinds of trainings and other interactions should we offer these potential users of ADR services?
RESEARCH QUESTIONS

❖ How do we help lawyers understand ADR and its uses in disputes that they handle on behalf of clients?
❖ How do we help them advise clients about arbitration, mediation, and other ADR processes?
THE ANSWERS
ANSWERS TO THE QUESTIONS

In General:

• Courts have no infrastructure for referring cases to ADR, whether statutory or by court rule.
ANSWERS TO THE QUESTIONS

Arbitration:

• Arbitration is the leading form of ADR by virtue of contract clauses typically imposed by expat companies whose expertise is much desired in a country that is scaling up at a very fast pace in anticipation of the World Cup.

• They have the contractual/bargaining leverage to require the clauses.
ANSWERS TO THE QUESTIONS

Arbitration:

• Government entities that have had experience with arbitration have not prevailed in most cases (4 out of 5 was the number given).

• They are now shy of participating in arbitration in the future when they feel the home courts will treat the government better.
ANSWERS TO THE QUESTIONS

Arbitration:

• Government entities wonder if arbitration can provide “justice.”
ANSWERS TO THE QUESTIONS

Arbitration:

• While many people hold themselves out as arbitrators, good arbitrators are hard to find.

• “Good” includes substantive competence, especially in construction-related matters.
Arbitration:

• Parties tend to pick lawyers as arbitrators, because even if they have not had formal arbitration training, they have some respect for legal process and procedural justice.
ANSWERS TO THE QUESTIONS

Mediation:
• Virtually no mediation is occurring in the region in litigated disputes.
Mediation:
• Mediation has taken some root in Dubai in the form of mandatory pre-trial ADR.
ANSWERS TO THE QUESTIONS

Mediation:

• If mediation is to take root in Doha at all, it would likely be through a court or government imposed system.

• (Does such a thing exist already in specialized courts in Doha like the Landlord-Tenant court?)
ANSWERS TO THE QUESTIONS

Mediation:

• Law firms trying to find competent mediators must go all the way to London.

• No real capacity exists in the region.

• Again, they are looking for mediators with substantive expertise, especially in construction-related disputes.
ANSWERS TO THE QUESTIONS

Mediation:

• By having to go to Europe to find good mediators, the cost of mediation is high.
ANSWERS TO THE QUESTIONS

Negotiation:

• Very few people, including local lawyers, have training in interest-based negotiation.
Negotiation:

• Accordingly, they have difficulty conceiving of a process, like mediation, that can bridge the hardened positions of parties.
RESEARCH QUESTIONS: ROUND 2
RESEARCH QUESTIONS: ROUND 2

❖ Using an Appreciative Inquiry approach.

❖ Questions ask about times when the interviewee see things working at their BEST.

❖ Many times interviewers ask questions about what is not working well or about problems a community, group, or organization is facing. Those interviews look to fixing the identified problems.
RESEARCH QUESTIONS: ROUND 2

❖ In this case, I am trying to find out about things at their best — the successes.
❖ I also ask about what the future of the ADR community in the Gulf is being called to become and what support people can provide to create that vision of the future.
❖ See handout.
RESEARCH QUESTIONS: ROUND 2

❖ I expect that the collected information and comments will help the members of the ADR community in the Arab Gulf region discover what enlivens that community and suggest opportunities for growth and service.
RESEARCH QUESTIONS: ROUND 2

❖ The interview takes about an hour.
❖ So far, I have 21 hours of interviews.
❖ I hope to take at least another 40 hours of interviews before I assemble the data and publish it.
THEMES EMERGING FROM INTERVIEWS

❖ Nearly everyone I interviewed perceived ADR as essential to economic growth and the ability to attract foreign capital to the region.

❖ International investors want the ability to pick the forum for dispute resolution rather than rely on more uncertain local court outcomes.
The Arab Gulf ADR community is still in a startup mode.

❖ Overall, the status of ADR in the Gulf reminds me of the state of ADR in the United States in the early 1980s.
SOME COUNTRIES, LIKE UAE, HAVE A MORE MATURE COMMUNITY.
The Arab Gulf ADR community is still in a startup mode.

❖ While people were familiar with arbitration, most judges, lawyers, and clients knew very little about other ADR processes, including mediation and other consensual ADR processes.
DISPUTE RESOLUTION SPECTRUM

Settlement processes proceed in the shadow of adjudication.

UNFACILITATED NEGOTIATION
Maximum process and outcome control

Settlement Processes/Non-Binding

Adjudicative Processes/Binding

TRIAL
Minimum process and outcome control

Adjudicative processes proceed in the shadow of settlement.

Adapted from:
Despite its startup status, the region is primed to expand the use of ADR very quickly as it continues to put in place the “infrastructure” required to support the use of ADR by disputants.
That growth could be quite quick as the people in the region:

- borrow ideas from other countries where ADR is well-developed;
That growth could be quite quick as the people in the region:

- adopt respected international standards, laws, ethical guidelines, and operating rules to govern ADR in the region;
That growth could be quite quick as the people in the region:

- build a well-educated group of neutrals, lawyers, judges, and disputants.
People in the Arab Gulf ADR community are hopeful, enthusiastic, excited, and committed to growing ADR in the region.
People recognize that several barriers exist to the more widespread use of ADR in the Arab Gulf region.
THEMES EMERGING FROM INTERVIEWS

Barriers:

- First, many interviewees suggested more training for judges so they are more supportive of referring cases to arbitration in accordance with contract clauses and then enforcing arbitral awards when they come before the courts.
THEMES EMERGING FROM INTERVIEWS

Barriers:

- Second, lawyers are seeking more transparency and access to ADR-related court opinions, legislation, and commentary, in both Arabic and English.
Barriers:

- Third, disputants and their lawyers need more training in the use of ADR, its benefits, and the spectrum of ADR options.
The focus of nearly all ADR in the region is on arbitration.
THEMES EMERGING FROM INTERVIEWS

• ADR is consistent with the underlying values of Arab culture, as well as values found in the Quran.

• Several interviewees mentioned that the Prophet Mohammed was known as a skillful arbitrator and mediator.
However, cultural barriers may exist to more institutionalized arbitration because people value confidentiality, privacy, and face-saving.

They may prefer more private forums not too far removed from the familiar majlis experience.

I am still sorting out what these types of comments mean.
THEMES EMERGING FROM INTERVIEWS
Again and again, I heard about the importance of training law students and young lawyers to use ADR.
THEMES EMERGING FROM INTERVIEWS

Training young lawyers to use ADR.

• People suggested a bigger role in training by state universities.
Training young lawyers to use ADR.

- Several people mentioned the importance of international student competitions and the need for on-going financial support of those competitions.
Training young lawyers to use ADR.

- One person recommended mentoring programs for young arbitrators.
THEMES EMERGING FROM INTERVIEWS

New arbitration law in Qatar was seen as the breakthrough event for the community in 2017.

- Signed in March 2017.
RESEARCH QUESTIONS: ROUND 3
In this final phase of the research, I plan to circulate a survey to a much wider group of ADR practitioners in the Gulf region.
RESEARCH QUESTIONS; ROUND 3

❖ It will ask:
  ❖ Age & gender.
  ❖ Nationality.
  ❖ Area of ADR practice
  ❖ Number of times he or she has served as a neutral.
  ❖ Number of times he or she has served as an advocate in an ADR process.
  ❖ Location and nature of trainings taken to serve as a neutral.
THANKS!