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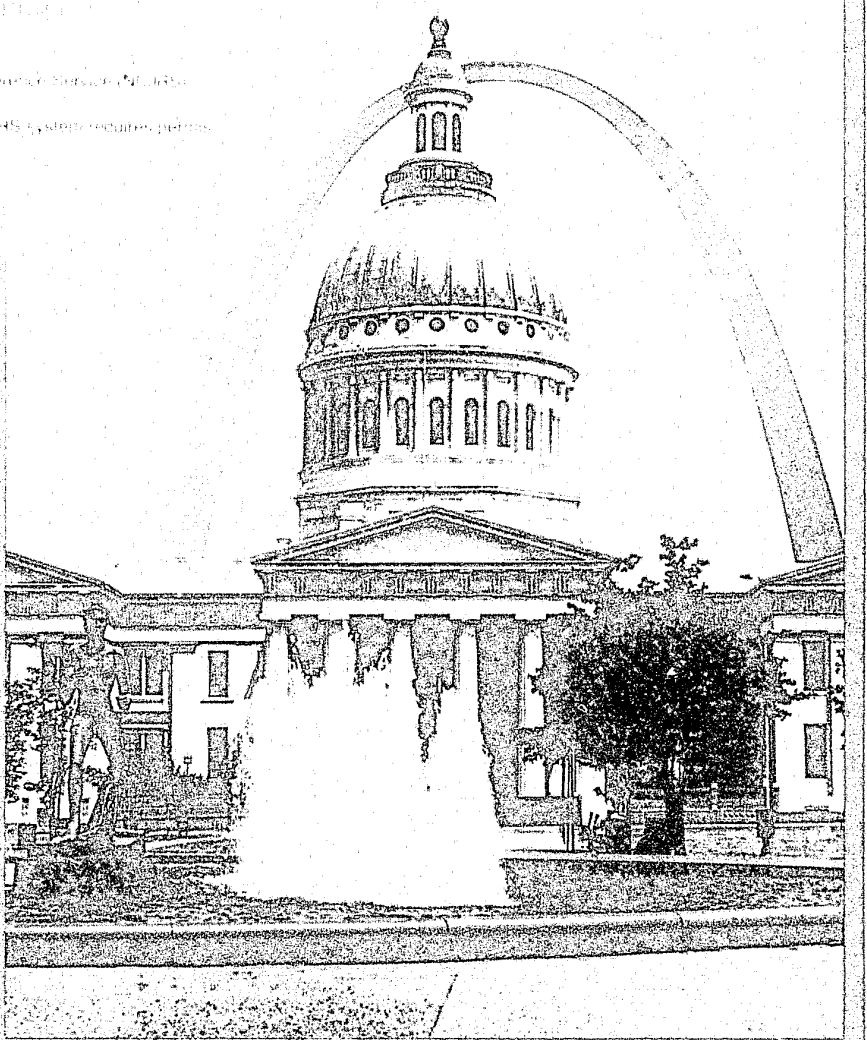

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FEATURES

DEPARTMENTS

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The Role of Management in State Court-Annexed Arbitration

Roger Hanson ◦ Geoff Gallas ◦ Susan Keilitz

According to proponents of alternative dispute resolution, many of the problems linked to traditional court processes can be reduced by introducing viable options to these traditional processes. Alternatives permit individuals to shape the final resolution of their conflict and to avoid the psychological, temporal, and financial costs associated with court procedures. Furthermore, when disputants participate more directly in creating the agreements that resolve their disputes, the agreements last longer than court orders.[1]

One of the most important developments in the alternative dispute resolution (ADR) movement is court-annexed arbitration, a method by which courts refer some portion of their caseload to another forum for third-party resolution. Court-annexed arbitration is used for cases in which money damages fall within a certain range, generally between $10,000 and $50,000. An arbitrator (or group of arbitrators) meets with the parties and, after hearing the evidence and testimony, renders an award. If accepted, the award is binding. Parties not accepting the award may appeal and seek a court trial *de novo*.

Despite the fact that twenty-three states and the District of Columbia now use some kind of arbitration program,[2] its widespread adoption is still at the formative stage. This is because in several of those jurisdictions, arbitration has been introduced only in selected trial courts to deal with particular types of cases, and not necessarily in courts with the largest caseloads.[3]

It is fair and accurate to say that pressing questions about court-annexed arbitration are being asked in nearly all states. In most of the twenty-four jurisdictions where court-annexed arbitration is in place, the questions being asked are whether to expand arbitration by broadening eligibility, to extend it to more trial courts, or to modify its structure and process.

In the remaining twenty-seven states, the questions revolve around whether to even introduce court-annexed arbitration. North Carolina, for example, is currently comparing court processing and arbitration as part of a pilot project, and Colorado recently initiated an experimental arbitration program in eight trial courts. This wait-and-see approach to court-annexed arbitration suggests that states view the process not as a proven idea simply awaiting implementation but as an innovation that is yet to be proven.

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One manifestation of this ambivalence toward arbitration is the Conference of State Court Administrators' (COSCA) expression of interest in the topic. Instead of fully endorsing arbitration and urging its rapid establishment, COSCA passed a resolution supporting a more systematic inquiry.[4] This article responds to the concerns behind that resolution. State court administrators, who must advise judges and legislators on whether to introduce, expand, or institutionalize court-annexed arbitration, want to know what has been learned from past experience with this procedure. Is it a promising innovation? What makes for an effective arbitration program? How can it be best organized?

Interestingly, some prominent researchers are in striking disagreement as to what has been learned. For example, research performed by Rand's Institute on Civil Justice suggests that state court-annexed arbitration has made considerable progress in achieving its main objectives. In contrast, others argue that the Rand research lacks evidence of either arbitration's effectiveness or its ineffectiveness.[5]

The purpose of this essay is threefold. First, to suggest that there is a middle ground between these opposite views. Reviewing the literature on state court-annexed arbitration, we conclude that something is known about arbitration's relationship to the pace, cost, and quality of dispute resolution but that methodological shortcomings limit the generalizations that we can make when drawing on available research.

A second objective is to draw attention to the crucial role of management in the process of dispute resolution. Past evaluations of arbitration have neglected management's role in affecting the pace, cost, and quality of both court processing and arbitration.

And finally, we point out that the significance of management in shaping the success of court-annexed arbitration is consistent with the proposition that organization is essential to court reform in general.

Why isn't more known about court-annexed arbitration?

This review will synthesize prior research about the connection between court-annexed arbitration and key outcomes, such as the pace, cost, and quality of dispute resolution. The complex issue of quality is broken down into participant satisfaction, integrity, access, and fairness. By seeing how research findings fit into this scheme rather than merely summarizing each study, we place what is known into a broader context and highlight the questions that remain unanswered.

PACE OF DISPUTE RESOLUTION

One of the common objectives of court-annexed arbitration is to reduce the time

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from case filing to disposition. Hensler (1986) paints a mixed picture of what arbitration actually accomplishes. In Pittsburgh, arbitrated cases move faster than those on the regular court calendar, while in some California jurisdictions arbitrated cases move slower. These observations are tentative, however, because they are not based on rigorous comparisons between arbitration and court processing.[6]

An experimental research design should be used to draw the most valid conclusions comparing the pace of court cases to arbitrated cases. That sort of design involves the comparison of a randomly assigned group of arbitrated cases with a randomly assigned control group of court cases. By establishing equivalent experimental and control groups and varying only the forum of resolution, the effects of extraneous factors are screened out. Observable differences in the pace of resolution can then be related logically to the presence or absence of arbitration.

Where random assignment is not possible, researchers can approximate the experimental/control group design by comparing matched samples of cases adjudicated before and after the introduction of court-annexed arbitration. If arbitration is working as intended, there should be a positive change in the pace of dispute resolution between the two samples. However, this approach also requires researchers to examine cases which remain on the court calendar because they are not eligible for arbitration. Past research has not taken this step.

Arbitration may deal with its assigned cases expeditiously, but only by drawing attention away from the rest of the court's caseload. Judges do not rid their calendars simply by referring cases to arbitration; they or their representatives must monitor and review arbitration cases. Additionally, judges and court staff must still resolve arbitration cases requesting trials *de novo*.

As prior studies have demonstrated, the introduction of an innovation also requires a considerable portion of the time and attention of the chief judge and court manager to keep the implementation process moving forward.[7] All of these factors consume the time and resources available for handling cases not referred to arbitration. Hence, it is possible that the pace of arbitration may be swift, but the rest of the court's caseload may suffer. Hensler admits that the question of a serious, negative side effect of arbitration on the remaining court calendar is open, which means that more thorough analyses are called for in the future.[8]

COST OF DISPUTE RESOLUTION

Any thorough study of the cost of dispute resolution must consider both the cost to the parties and the cost to the court. Hensler's survey of what is and is not known about state court-annexed arbitration reveals a major void in our knowledge about costs to the parties. Hensler reports on the amount of time the parties spend and what fees they pay to their lawyers for arbitrated cases, but she presents no time or cost data on comparable court cases. She correctly observes that any reduced fees to the parties depends in part on the attorneys' billing structures and their willingness to pass along savings to their clients. However, the primary question of whether there *is* any savings for attorneys to pass on to their clients remains unanswered.[9]

> . . . the pace of arbitration may be swift, but the rest of the court's caseload may suffer . . .

Hensler compared the expenditure per case of all cases referred to arbitration with all those remaining in the court system to determine the cost of arbitration to the court. In both California and Pittsburgh, the per-case cost of arbitration was lower. She also compared the cost of all cases that actually went to an arbitration hearing with those court cases that went to trial and found that the per-case cost of arbitration was lower.

For at least three reasons, however, these positive results should be taken with a note of caution. First, the lower cost estimates do not reflect any time that the court spends in monitoring or reviewing arbitrated cases. Second, as Hensler recognizes, information is lacking on the ultimate resolution of arbitration appeals, which, like trials, consume a disproportionately large share of the court's available resources compared to cases that do not go to trial. The cost of appeals, of course, must be charged against arbitration. Consequently, because these cost factors have been omitted, the total cost of arbitration is underestimated by an unknown amount.

Third, one should avoid drawing broader conclusions than are warranted from per-case cost figures. These figures measure the relative *efficiency* of court processing versus arbitration. Efficiency is calculated for court processing and arbitration separately by dividing equivalent resources (e.g., personnel) by the number of cases in each respective forum. However, even if arbitration has a lower per-case cost, this efficiency does not translate into a cost savings to the court. To reach conclusions about cost savings, we need to know how arbitration affects the allocation and distribution of court resources. After arbitration is introduced, what adjustments, if any, are made in the number and assignment of judges, staff, and other personnel? Does the court shift resources out of the civil division because some cases are now being arbitrated? If cases are siphoned off for arbitration, do the judges spend more time on complex civil cases? Or is the efficiency associated with arbitration simply absorbed with no change in resource allocations by the court? These sorts of questions need to be addressed before conclusions about cost savings can be reached.

QUALITY OF DISPUTE RESOLUTION

One of the most complex issues in the study of law and society is the quality of legal services. From our perspective, quality in the context of court-annexed arbitration encompasses four key components: (1) participant satisfaction, (2) integrity, (3) access, and (4) fairness.

Participant satisfaction. Concerning participant satisfaction, positive assessments by parties who have gone through an arbitration process are among the most heralded findings. Hensler reports that the overwhelming majority of arbitration participants, including those who lost their disputes, are satisfied with the procedure. Hensler's positive findings corroborate an earlier review of participants' reactions to mediation programs.[10]

Despite these affirmative judgments from the users of arbitration, some questions are still outstanding.[11] In a more strict comparison of parties in experimental (arbitration) and control (court processing) groups, if members of the two groups are asked to rate arbitration or court processing on a common scale, how would the ratings compare? Moreover, would the ratings vary according to the nature of the case, the length of time taken to resolve the dispute, the mode of disposition, the winning or losing side, and so forth?

The basis for the positive evaluations by the users of arbitration also needs to be clarified. Are there identifiable facets of arbitration that predict high or low satisfaction? Are these facets subject to manipulation? Answers to these questions are needed to determine what specific procedures or particular values should be incorporated into the design, implementation, and management of arbitration programs.

Integrity. The integrity of the dispute resolution process reflects the degree to which parties adhere to agreed-upon arbitration awards, settlements, or court orders. Noncompliance with these agreements signals that the process is marked by miscommunication, misunderstanding, or misrepresentation. The failure to render services, to pay damages, or to discharge other obligations imposes a deprivation on one of the parties. Finally, the inability to execute arbitration awards or court judgments calls into question the authoritative nature of the arbitration or court process.

Although there is very little information on the relative integrity of state court-annexed arbitration, this dimension has been explored by McEwen and Maiman in the related area of small claims mediation.[12] They find that parties to mediation are twice as likely as their court counterparts to fully live up to their obligations. This startling difference is one of the reasons some policymakers are attracted to small claims mediation despite intellectual criticisms of it.[13]

However, compliance is not an either/or distinction; compliance may be partial. In sorting out the relative importance of several factors influencing the degree of compliance, McEwen and Maiman find that the type of arena in which the dispute was resolved does not have an independent impact on the likelihood of compliance. Other factors are even more powerful influences. McEwen and Maiman find that compliance is inversely and most strongly related to the size of the award: the larger the award, the lower the degree of compliance. Hence, it remains to be seen whether state court-annexed arbitration, where the dollar amounts in controversy are much larger than in small claims, has an impact on compliance.

> The fairness of dispute resolution processes is of universal concern . . .

Access. Access to justice is a value arbitration offers to disputants because it presumably is more rapid and less expensive. The meaning of access is not, however, altogether obvious. If it is *assumed* that arbitration is as fair or fairer than court processing and so more closely approximates the ideal of due process, then the level of its use is an appropriate indicator of access. That assumption begs the question, however. The critics of ADR make the opposite assumption; they maintain that arbitration provides second-class justice partially because of its reputed speed. This contrary assumption calls into question, of course, the validity of program use as a measure of access to justice.

Although access to justice is inextricably bound to notions of fairness, both the proponents and the critics of ADR might agree that the parties' ability to make their claims known and understood by the court (or the arbitrators) is an essential component of access. For this reason, we believe it is fruitful to frame the issue of access in terms of factors such as the parties' views of whether they are able to present their claims, whether their ultimate goals are taken into account, and whether the process is orderly. If they have counsel, their beliefs as to whether their attorneys are able to be prepared, make effective arguments, and answer questions posed by the court (or the arbitrators) are relevant issues.

Hensler reports that most participants in state court-annexed arbitration believe that this process allows them the opportunity to be heard and to have their decisions rendered by an impartial third party. While this information is pertinent in a general way to our notion of access, it is important to recognize that Hensler's observation is not based on any relevant comparison. It is not based on a comparative assessment between arbitration and court processing by the parties in arbitration. It also is not based on a comparison of the judgments by parties in arbitration with equivalent judgments by parties in courts. Hence, there is a need to build on Hensler's work and to design a more-complete set of measures of access.

Fairness. The fairness of dispute resolution processes is of universal concern. Even if a given route to resolving a dispute is clearly the shortest or the most efficient, a lack of fairness is sufficient in itself to warrant the search for a different path. Although the emphasis is commonly placed on the procedural notion of fairness, we believe that decisions rendered by a process are equally important to any assessment of its fairness.

The appropriateness of analyzing decisions in dispute resolution arises from the debate over who is and who is not disadvantaged by the choice of dispute resolution forums. Generally, the proponents of alternatives to court processing claim that greater parity in the bargaining strength

and power of both parties is achieved outside the court arena. Critics contend that it is precisely the parties with the least resources, the lesser skills, who are the most dispossessed, who are the least successful when disputes are resolved by some alternative process.

One contribution that research can make to this debate is clarifying the various claims. While the proponents contend, for example, that parties with less clout tend to do better in arbitration than in court, the question is, how much better? Do these parties simply increase their chances of winning, or do they emerge as the prevailing party in at least a majority of the disputes? Do the advantages of mediation for less-powerful parties hold true in arbitration, which is a more adversarial process than mediation?

On the other hand, do the critics contend that parties with less clout do even worse in arbitration than they would do in court? Or is it that the critics see the parties with the least clout as not doing any better than before? Part of any future research agenda should be to determine if the attributes of the parties (such as race, gender, occupation, income, and type of legal representation) are associated with variations in the patterns of awards, settlements, or court orders.

In summary, court-annexed arbitration has been found in some instances to be an improvement over court processing. Some applications of court-annexed arbitration have been linked to more-expeditious, more-efficient, and more-satisfying dispute processing. Yet, our review has shown that court-annexed arbitration is not always superior, and in some instances is inferior, to court processing. If court-annexed arbitration is not a magic bullet guaranteeing faster, cheaper, and fairer dispute resolution, then other factors are influencing arbitration's success. These other factors deserve attention if arbitration is to realize its maximum potential.

Management: The forgotten variable

A search of different studies reveals one consistent finding—the success of arbitration hinges on its administration.[14] Simply stated, loosely structured programs, lax enforcement of deadlines, and tolerance of inefficiencies are believed to contribute to slow and ineffective arbitration processes.

These observations have gone somewhat unrecognized because they are *post hoc* conclusions based on examinations strictly of arbitration programs rather than explicit and controlled comparisons between the management of arbitration and court processing. Nevertheless, these observations raise the larger issue of the role of management as a key variable in shaping dispute resolution.

We know from court-related research that the management of litigation affects the pace at which cases are resolved.[15] However, the mere referral of cases to arbitration may not expedite the court's remaining caseload. In theory, siphoning off cases to arbitration, with the corresponding reduction in court congestion, should improve the pace of litigation for the remaining cases. Yet recently completed research on case processing time in eighteen jurisdictions indicates that arbitration does not necessarily speed the processing of cases that remain on the court's docket.[16] Nine of the courts in this study, including four of the fastest and three of the slowest, had mandatory arbitration programs for at least a portion of their civil caseloads. Moreover, the fast courts were observed to have effective leadership, performance standards, monitoring of performance against standards, and tight control over case processing. According to the researchers' conclusions, management determines the efficiency of case processing. Court-annexed arbitration, in and of itself, does not have an impact.

On the basis of that inquiry, one can infer that the positive results attributed to arbitration actually arise because of the increased attention given to case processing. Heightened concern, even without the establishment of arbitration programs, might produce similar positive effects. This argument has considerable support. For example, evaluations of delay reduction programs have found that the greatest decrease in case-processing time occurs before the implementation of delay reduction procedures. The explanation is that greater interest in and a greater focus on case processing among judges and court staff are sufficient to move cases more promptly.[17] A judge or court administrator, therefore, may reasonably believe that if attention and resources are aimed at court processes, the improvements are likely to be similar to those achieved by creating an alternative to court processing. In fact, that inference may be behind COSCA's resolution calling for research on alternative dispute resolution.

Looking beyond

Based on our understanding of the literature, future research should examine the extent to which different approaches to management affect the pace, cost, and quality of dispute processing. For example, arbitration may be a more-efficient and rapid method of resolving cases than court processing because the court fails to apply its own rules and fails to exercise adequate control over litigation. On the other hand, when a court monitors case processing, its management approach may be transferred to the arbitration process, as Mahoney *et al.* posit is the case in four speedy, well-managed courts.[18] Consequently, the two dispute resolution processes may function in much the same way because of the common management framework.

The vital role of management in the study of court-annexed arbitration relates to the larger issue of court reform. The history of planned change is studded with examples of ideas that are discussed but never introduced, experiments that begin but are only partially implemented or never institutionalized. Some scholars have commented that one of the most important ingredients in the successful introduction of new policies is organization.[19] Unless programs to implement policies are structured in such a way that they can deliver the intended services, the prospects of positive results are dim. We would like to add to that proposition the parallel idea that management is essential to successful reform. When reforms are monitored in terms of performance, adjusted, and kept on track, they have a chance of succeeding. This is no prescription as to what is the most potent reform, but it is a necessary condition underlying the execution of any idea. Because dedicated management takes so much time, it supports Arthur T. Vanderbilt's adage that reform is not for the short winded. scj

NOTES

1. *See* Lon Fuller, "Mediation—Its Forms and Functions," 44 *Southern California Law Review* 305 (1971); Richard Danzig, "Toward the Creation of a Complementary Decentralized System of Criminal Justice," 26 *Stanford Law Review* 1 (1978); Laura Nader and Linda Singer, "Dispute Resolution in the Future: What are the Choices?" *California State Bar Journal* 281 (1976); Frank E. A. Sander, "Varieties of Dispute Processing," 70 *Federal Rules Decisions* 79 (1976); Marc Galanter, "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," 9 *Law and Society Review* 95 (1974); Earl Johnson *et al.*, *Outside the Courts: A Survey of Diversion Alternatives in Civil Cases* (Williamsburg, Va.: National Center for State Courts, 1977); Phillippe Nonet and Philip Selznick, *Law and Society in Transition* (New York: Harper and Row, 1978); David Aaronson *et al.*, *The New Justice: Alternatives to Conventional Criminal Adjudication* (Washington, D.C.,: Institute for Advanced Studies in Justice, The American University, 1977); Paul Wahrhaftig, "Citizens Dispute Resolution: A Blue Chip Investment in Community Growth," *1978 Pretrial Services Annual Journal* (1978); Stephen Goldberg, Eric D. Green, and Frank E.A. Sander, *Dispute Resolution*, (Boston: Little, Brown and Co., 1985).

2. In early 1987, the National Center for State Courts surveyed all state court administrators to determine the extent of alternative dispute resolution activities, including court-annexed arbitration, in the states. For a discussion of this survey, see Susan Keilitz, Geoff Gallas, and Roger Hanson, "State Adoption of Alternative Dispute Resolution," *State Court Journal*, 12 No. 2, (Spring 1988).

3. *See* Keilitz, Gallas, and Hanson, *supra*. Other reasons ADR adoption can be said to be still in the formative stage are that some programs have low ceilings on the dollar amounts in controversy (e.g., $6,000 in New York) while other programs are restricted to certain case types (small claims in Louisiana; family law in Delaware, medical malpractice in Vermont, motor vehicle cases in Nevada, and automobile property and medical damages in New Jersey). Whereas this does not suggest that arbitration has negative consequences, it does indicate that its full potential has yet to be realized.

4. The members of the COSCA Committee on Alternative Dispute Resolution include Carl F. Bianchi (chair), Samuel Conti, Robert Duncan, Franklin E. Freeman, Thomas J. Lehner, J. Denis Moran, Larry Polansky, Arthur H. Snowden, and Janice Wolf. Although the committee members do not necessarily subscribe entirely to the views expressed in this article, they have supported a closer analysis of court-annexed arbitration's effects on the efficiency and quality of the administration of justice. In our opinion, their actions indicate that pressing questions about arbitration's consequences remain unanswered.

5. For the point of view that court-annexed arbitration has made considerable progress in achieving its goals, *see* Deborah R. Hensler, "What We Know and Don't Know About Court-Administered Arbitration," 69 *Judicature* 307 (1986). (Hensler's article is a synthesis of two detailed studies in which she participated: *see* Jane W. Adler, Deborah R. Hensler, and Charles E. Nelson, *Simple Justice: How Litigants Fare in the Pittsburgh Court Arbitration Program*, [Santa Monica, Ca.: Rand Corporation 1983]; and Deborah R. Hensler, Albert J. Lipson, and Elizabeth S. Rolph, *Judicial Arbitration in California: The First Year*, [Santa Monica, Ca.: Rand Corporation, 1981].) For the opposing viewpoint, *see* James J. Alfini and Richard W. Moore, "Court-Annexed Arbitration: A Review of the Institute for Civil Justice Publications," 12 *Justice System Journal* 260, (1987). Parallel work on federal court-annexed arbitration does not reconcile disagreement surrounding state court-annexed arbitration. (E. Allan Lind and John E. Shapard, *Evaluation of Court-Annexed Arbitration in Three Federal District Courts* [Washington, D.C.: Federal Judicial Center, 1983].) The federal court research, based on a study of three programs, places arbitration's effectiveness in some doubt. Arbitration was successful in only two of the three jurisdictions, and where there was the strongest evidence of its success, the program was abandoned. Although other federal courts are now experimenting with arbitration, the results are not yet in.

6. A similar picture of arbitration emerged from the Federal Judicial Center's study of three federal district courts; arbitrated cases terminated earlier in the District of Connecticut and the Eastern District of Pennsylvania, but later in the Northern District of California. (*See* Lind and Shapard, *supra*.)

7. *See*, for example, Alexander B. Aikman, Mary E. Elsner, and Frederick G. Miller, *Friends of the Court: Lawyers as Supplemental Judicial Resources* (Williamsburg, Va.: National Center for State Courts 1987). The acute need for someone to spend large amounts of time and energy to resolve inevitable obstacles to implementation is a general phenomenon. Eugene Bardach's theory of policy change develops the notion that someone must adopt the role of an extremely dedicated "fixer" to keep innovations from unraveling. *See* Eugene Bardach, *The Implementation Game: What Happens After a Bill Becomes a Law* (Cambridge, Mass.: MIT Press, 1979).

8. Related research compares the pace of court cases with those handled by the American Arbitration Association (AAA) in five states. It concludes that arbitrated cases "tend" to be faster in reaching termination (i.e., arbitration is faster for tort and contract cases but not in all states for both types). (*See* Herbert M. Kritzer and Jill K. Anderson, "The Arbitration Alternative: A Comparative Analysis of Case Processing Time, Disposition Mode, and Cost in the American Arbitration Association and the Courts," 8 *The Justice System Journal* 6 [1983].) This evidence lends support to the claim that court-annexed arbitration is faster, but it is more suggestive than conclusive. It is based on extremely small numbers of cases per state, typically less than 40 arbitrated cases and less than 100 state court cases. Additionally, the comparison is contaminated because the stakes are reported to be higher in the AAA cases than in the state court cases.

9. Cost to the parties may, in fact, prove to be higher in arbitration. Kritzer and Anderson (*supra*, p. 17) recommend that "one should not turn to arbitration if the goal is to save processing costs (lawyers' fees); if anything, the AAA may be a little more expensive."

10. Jessica Pearson, "An Evaluation of Alternatives to Court Adjudication," 7 *The Justice System Journal* 420 (1982).

11. Hensler's study lacks data on arbitration users' views of case processing. Her data describe reactions strictly to arbitration rather than judgments between arbitration and adjudication. Without any comparison, the reported high level of satisfaction is not strong evidence of arbitration's advantage. Whereas the lack of comparative assessments is the case in many other studies (*see* Daniel McGillis, *Community Dispute Resolution Programs and Public Policy* [Washington, D.C.: National Institute of Justice, 1986], pp. 53-74), that larger void accentuates the need for more rigorous tests of satisfaction in regard to court-annexed arbitration.

12. Craig A. McEwen and Richard J. Maiman, "Mediation in Small Claims Court: Achieving Compliance through Consent," 18 *Law and Society Review* 11 (1984).

13. *See* James McKenna, review of *Justice Without Law?* by Jerold Auerbach, 68 *Judicature* 45 (1984).

14. *See* Hensler (1986), Kritzer and Anderson, (1983), and Lind and Shapard (1983), *supra*.

15. *See* American Bar Association Action Commission to Reduce Court Cost and Delay, *Attacking Court Costs and Delay* (Washington, D.C.: American Bar Association, 1984); Steven Flanders, *Case Management and Court Management in United States District Courts* (Washington, D.C.: Federal Judicial Center, 1977); Ernest C. Friesen, "Cures for Court Congestion," 23 *The Judges' Journal* 5 (1984); Larry L. Sipes, "Where Do We Go From Here?" 23 *The Judges' Journal* 45 (1984); Maureen Solomon, *Caseflow Management in the Trial Court* (Chicago: American Bar Association Commission on Standards of Judicial Administration, American Bar Association, 1974).

16. Barry Mahoney *et al.*, *Caseflow Management and Delay Reduction in Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1988).

17. John Paul Ryan, Marcia T. Lipsetz, Mary Lee Luskin, and David Neubauer, "Analyzing Delay Reduction Programs: Why Do Some Succeed?" 65 *Judicature* 58 (1981). After the pre-implementation stage and delay reduction procedures are in place, the pace of litigation tends to improve in a more uniform manner. Fewer cases fall through the cracks or inadvertently take a long time to resolve after the procedures are in place. Consequently, meaningful change *is* achieved with the introduction of new procedures despite the dramatic change that occurs in the gestation period.

18. General jurisdiction trial courts in Phoenix, Arizona; Dayton, Ohio; Portland, Oregon; and Cleveland, Ohio, all have mandatory arbitration programs and are relatively fast courts.

19. Malcolm Feeley and Austin Sarat, *The Policy Dilemma* (Minneapolis: University of Minnesota Press, 1981).