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A DECADE OF PROGRESS



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 Department of Justice
 National Institute of Justice
 National Institute for
 Dispute Resolution

THE NATIONAL INSTITUTE FOR DISPUTE RESOLUTION

NIDR



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NIDR's Mission Is To: **P**ROMOTE the development of fair,
effective, and efficient conflict resolution processes and
programs;

FOSTER the use of such processes and programs
in new arenas, locally, nationally and internationally; and

STIMULATE innovative approaches to the
productive resolution of future conflict.

In all that it does, the Institute focuses special
attention on lessening the conflict-related problems of the
poor and other disadvantaged members of society.

While respecting the value of litigation in appropriate
circumstances, NIDR strives to expand the availability
and improve the use of other conflict resolution processes
with proven capacity to provide responsive, timely, and
affordable justice. We are guided by the principle that
tensions inherent in a conflict situation can, if dealt with
creatively, produce positive results.

S

ince we opened our doors in 1983, the National Institute for Dispute Resolution (NIDR) has witnessed a phenomenal growth in the field of conflict resolution — capacity has mushroomed; more sophisticated tools have been developed; and more creative applications for these tools have been devised.

The pages that follow describe the contributions that NIDR has been privileged to make to the burgeoning field of conflict resolution during the past decade. We take great pride in our efforts to help institutions build the capacity for conflict resolution and help disputants take advantage of that capacity.

As we start our second decade, NIDR is at the center of a rapidly expanding universe of real and responsive change in the way citizens, communities, institutions, and nations use conflict resolution to achieve better solutions for themselves and society.

What lies ahead is a new era in which conflict resolution approaches will fundamentally shape how governments, courts, communities, and citizens resolve conflicts and interact with each other. We are excited about the challenges, opportunities, and changes embodied in this era — not only for our field, but for the Institute as well.

Among other things NIDR has accomplished over the past decade, it has:

- Planted \$20 million in seed money to help individuals and institutions develop effective new approaches to resolving conflicts;
- Brought together leading practitioners, stakeholders, and institutions to foster discussion and use of promising conflict resolution developments;
- Sponsored conflict resolution research; and
- Served as a central source for information on the conflict resolution movement in the United States and abroad.

To meet the demands of the new era, NIDR must change as well. Where we once funded specific projects to build dispute resolution capacity, we will now work to build markets. That means designing, refining, and promoting the use of the best tools and techniques of conflict resolution practice. In so doing, we will seek to promote acceptance of the values that are the foundation of conflict resolution. These values include making shared decisions, building consensus, working collaboratively, appreciating diversity, nurturing community, and championing civility.

The Institute will be a national voice for our field — a vigorous advocate building support and demand. We will work hard to ensure that our field embodies fairness and equity, that it is open to everyone, and that it gives each person a voice in resolving his or her conflicts.



In our second decade, we will focus our efforts in five key arenas:

- *Public Policy:* We will promote improvements in the quality and effectiveness of public policy decision making;
- *Youth:* We will foster multicultural understanding and work to reduce prejudice and violence by helping our nation's youth resolve conflicts and work cooperatively to solve problems;
- *Quality of Justice:* We will encourage the use of more responsive conflict resolution services and programs, and meeting the needs of people who require them;
- *International:* We will support the exchange of knowledge about our field across international borders and pay particular attention to conflicts related to environment and development issues; and,
- *New Arenas:* We will create innovative programs and projects that promote the use of conflict resolution in new arenas.

We are indebted to our founding organizations and funders; to Madeleine Crohn, our first president; and NIDR's staff. Their many contributions and accomplishments have created a solid foundation upon which we will build.

We thank all of our partners and colleagues for their support and hard work. These dedicated practitioners and policy makers have made many of our successes possible. In our second decade, we will expand and strengthen our partnerships in everything we do. Our citizens, communities and institutions deserve our best, and NIDR is dedicated to helping them receive it. Together we have nurtured our field, and together we will help it grow.

Dick Clark
Chair, NIDR Board of Directors

Margery Baker
President, NIDR

NIDR

THE NATIONAL INSTITUTE FOR DISPUTE RESOLUTION

This report marks completion of our first decade of service on behalf of dispute resolution and improved paths of justice for Americans.

Five major philanthropic foundations and corporations created the National Institute for Dispute Resolution in 1982 and NIDR, as we are often called, began operations in 1983.

We were established to help shape and accelerate the development and growth of dispute resolution in America. In the 1960s and 70s, a growing number of citizens saw in the tools of dispute resolution—mediation, arbitration, and the like—options for settling disputes that were often more efficient, more effective, and fairer than courtroom battle. The more far-seeing believed that dispute resolution processes also had great intrinsic merit for solving problems, anticipating and defusing conflict, and settling differences, and should be valued not just as an alternative to litigation.

When we made our first grants in 1983, dispute resolution was only beginning to be launched into what has become a trajectory of growing impact and accomplishment. We were lucky to find and work with partners who have been responsible for dispute resolution's exceptional achievements during the past decade.

Here are some of those achievements.

Courts Twenty-six states and the District of Columbia are now exploring or adopting ways by which local courts can routinely offer a range of dispute resolution tools to settle most disputes that come before them. This development suggests a coming sea change in the way courts nationwide provide forums for dispute settlement.

Education Most law schools, many other professional graduate schools, and a wide spectrum of other disciplines in higher education now incorporate dispute resolution in their curricula. Tomorrow's leaders are being prepared to use dispute resolution methods to settle conflicts and solve problems.

Public Policy Eleven states and a consortium of eight U.S. and Canadian jurisdictions now have offices that seek to defuse and settle public policy disputes—the types of conflicts over matters such as land development, housing, environmental concerns, and allocation of public resources that tend to become bitter, interminable, and wasteful of everyone's time and money. Other states are investigating whether to follow suit.

Much else has been achieved in arenas ranging from the grass roots, where community justice centers are now reaching out to settle local public policy disputes, to nursing homes, where ombudsmen are being trained to settle conflicts that arise in settings that serve our elderly and infirm.

But perhaps the field's greatest achievement over the past ten years has been its capacity to innovate, to successfully adapt dispute resolution processes to new circumstances. To a considerable extent, this report is a record of many notable innovations in dispute resolution and NIDR's contributions to them. These innovations are not only the ones recognized by our Innovation Fund but also those found in the work of educators and scholars creating teaching materials, of judges and officials expanding the range of dispute settlement mechanisms within

A GLOSSARY OF DISPUTE RESOLUTION TERMS

the courts, of government and community leaders who have shaped the uses of dispute resolution to special local, state, and federal situations, and of dispute resolution professionals who have pioneered the field's development.

ESTABLISHING NIDR

The Ford Foundation, the William and Flora Hewlett Foundation, the John D. and Catherine T. MacArthur Foundation, the American Telephone and Telegraph Company, and the Prudential Foundation were NIDR's founding funders. They established the Institute as a private, nonprofit, grant-making, and technical assistance organization.

DISPUTE RESOLUTION *embraces such goals as alleviating court congestion, enhancing access to justice, and strengthening the capacity of communities to resolve conflict. The following glossary includes definitions of the various forms and techniques of dispute resolution as well as words and phrases used commonly by practitioners.*

ACTION LINES

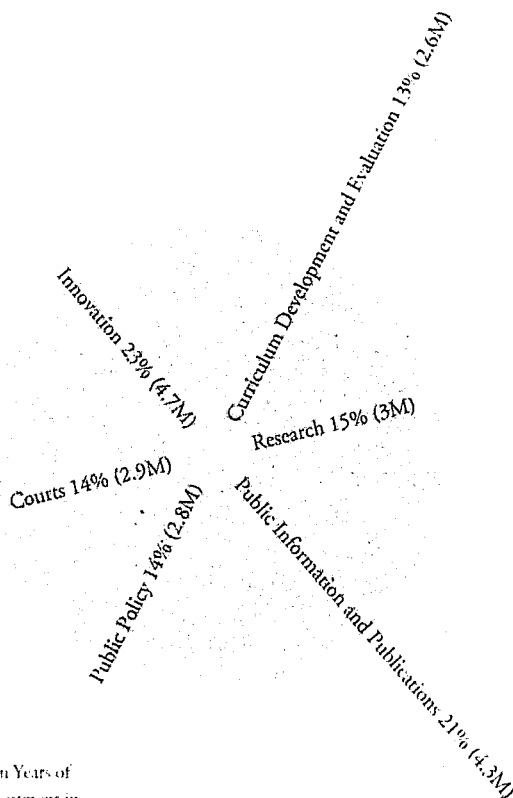
The telephone complaint processing services provided by individuals or organizations. Most commonly, action line programs are referred to as "offices of information and complaint" within government agencies, private industries, and the media.

ADJUDICATION

The solution to a particular conflict as determined by a judge or administrative hearing officer with the authority to rule on the issue in dispute. Generally speaking, adjudication also implies that judgments will be rendered according to objective standards, rules or laws.

ARBITRATION

A process that involves the submission of a dispute to an arbitrator, who renders a decision after hearing arguments and reviewing evidence. It is most widely used in commercial and labor management disagreements and for civil court cases. Arbitration is generally more informal, less complex, quicker, and less expensive than formal court proceedings. It is performed by



Ten Years of
Investment in
Dispute Resolution.

anyone acceptable to the parties. Lawyers, retired judges, and professionals from various disciplines conduct the proceedings.

COLLABORATIVE PROBLEM SOLVING

A process in which parties agree to work together to resolve common problems in a cooperative manner and, with the help of a facilitator, design a strategy to make consensus-based decisions regarding the possible solutions to problems. In the process, parties first must come to agreement on the definition of the problems at hand.

COMMUNITY DISPUTE RESOLUTION CENTERS

A generic name used to describe various kinds of community-based dispute resolution programs—most of which offer mediation services by using trained volunteers. They deal primarily with disputes between individuals with ongoing relationships (landlord-tenant, employer-employee, domestic, and neighborhood conflicts). The largest centers draw much of their caseload from police referrals or from local courts and prosecutors' offices.

COURT-ORDERED ARBITRATION

(Also referred to as "court-annexed" or "judicial" arbitration). One of the newest forms of arbitration, usually mandatory and non-binding. Certain civil suits—usually personal injury and contract matters—are referred by judges to arbitrators who will render a decision. If a party does not accept the arbitrator's decision, it may then appeal for a trial.

EARLY NEUTRAL EVALUATION

(Also referred to as "ENE".) A process in which a neutral factfinder, often one with substantive expertise, evaluates the merits of a case. The neutral provides a nonbinding evaluation intended to give parties an objective perspective on the strengths and weaknesses of their cases, thereby making further negotiations more productive.

FACILITATION

The process used to help a group of individuals or parties with divergent views reach a goal or complete a task to the mutual satisfaction of all participants. A facilitator helps the parties improve the definition of issues, develop options, keep on task, and ultimately increases the likelihood that a consensus will be reached.

FACT FINDING

The non-binding process used primarily (but not exclusively) in public sector collective bargaining that paves the way for further negotiations or mediation. A fact finder draws on information provided by both parties, as well as additional research, to recommend resolution for outstanding issues.

INTEREST-BASED NEGOTIATION

A process that seeks to discover and satisfy the underlying interests of parties rather than to meet the stated positions or demands that they bring to a negotiation.

MEDIATION

A structured dispute resolution process in which a person with no interest in the outcome of the conflict assists the disputants in reaching a negotiated settlement of their differences. The mediation process is generally voluntary and aims at a signed agreement defining the future behavior of the disputants. A mediator helps parties communicate, negotiate, and reach agreements and settlements but is not empowered to render a decision. The process may be mandatory or encouraged by the courts, particularly in divorce and custody matters, civil, and minor criminal cases.

MED-ARB

A dispute resolution process that combines some of the features of both mediation and arbitration. Most med-arb proceedings call for a third-party neutral to first mediate or help the parties agree to as many issues as possible and then, by permission of the disputing parties, to arbitrate or make a decision on those that remain. The same neutral may perform both roles, or the role can be split between several neutrals.

MINITRIAL

A structured settlement process in which the disputants agree on a procedure for presenting their cases in a highly abbreviated form to senior officials for each side who possess authority to settle. Often a neutral presides over the hearing, and may subsequently mediate the dispute or help parties evaluate their cases.

MULTI-DOOR COURT HOUSE

(Or Multi-Door Center.) A judicial innovation that offers a variety of dispute resolution services in one location and uses a single intake system to screen cases and clients for referral to mediation, arbitration, or other methods.

NEGOTIATION

The heart of most dispute resolution techniques. Various defined as: communication for the purpose of persuasion; a way of solving problems; and a process for reaching decisions.

NEGOTIATED INVESTMENT STRATEGY

A mediation process which has been used on a limited basis to bring together federal, state and local officials, and community members to resolve differences of opinion, disputes, and problems related to the allocation and use of public resources. Examples of applications include urban redevelopment, historic preservation, and planning for the allocation of public resources in the face of major financial cutbacks.

NEUTRALS

An impartial intervenor, often referred to as a third party, used in dispute resolution. A neutral does not benefit from a particular outcome.

OMBUDSMAN

A neutral who receives and investigates complaints or grievances aimed at an institution by its constituents, clients, or employees.

Ombudsmen have the power of persuasion, but not the authority to decide how a given dispute should be resolved.

POSITIONAL BARGAINING

A term that describes the traditional approach to negotiation, in which the parties are firmly committed to their bargaining positions, and exchange proposals and counterproposals in the anticipation that one or more parties will compromise to achieve a dispute settlement that satisfies all parties.

PRIVATE JUDGING

The popular name given to a procedure—presently authorized by legislation in six states—in which the court can (on stipulation of the parties) refer a pending lawsuit to a private neutral for trial with the same effect as though the case were tried in court. The verdict can be appealed through the regular appellate court system.

PUBLIC POLICY MEDIATION

A form of mediation that brings together representatives of business, public interest groups, and government to negotiate agreements on policy development, implementation, or enforcement. Facilitators or mediators are usually used to organize and guide the process.

REGULATORY NEGOTIATION

A form of public policy mediation where parties having a stake in the proposed government regulations reach agreement on key provisions through the assistance of a mediator(s).

SPECIAL MASTERS

Judicial adjuncts appointed by a judge to conduct mediation, arbitration, fact-finding, or settlement negotiation. A special master may develop an agreement, implement one or help enforce an agreement or a judge's decision.

SUMMARY JURY TRIALS

A dispute resolution procedure where lawyers present an abbreviated version of their arguments before a mock jury chosen at random from the jury pool. The jury deliberates and returns a recommended verdict on liability and damages. Lawyers are permitted to question the jury about their verdict and are thereafter encouraged to engage in direct settlement discussions. The process is designed and used for complex litigation that would involve considerable court time if not settled.



INNOVATION

Most people who know about dispute resolution think of it mainly as mediation or arbitration of personal disputes. In fact, the term dispute resolution encompasses an array of innovative processes that show how established techniques in mediation and kindred approaches can be adapted to resolve a remarkable variety of conflicts and problems. To cite some examples taken from our Innovation Fund, there are processes that address matters as diverse as homelessness in Idaho, drug and alcohol addiction in North Carolina, the safety of foster children in Connecticut, medical ethics in New Mexico, open adoption in Oregon, and the best interests of pensioners everywhere.

The Innovation Fund was established to discover, test, and document new methods of dispute resolution. Between 1989 and 1991, we distributed more than \$550,000 in matching grants to 29 projects. But the Fund's creation did not signal the start of our support for innovation. Since NIDR's inception in 1983, we have funded projects that focused on new and promising uses of dispute resolution.

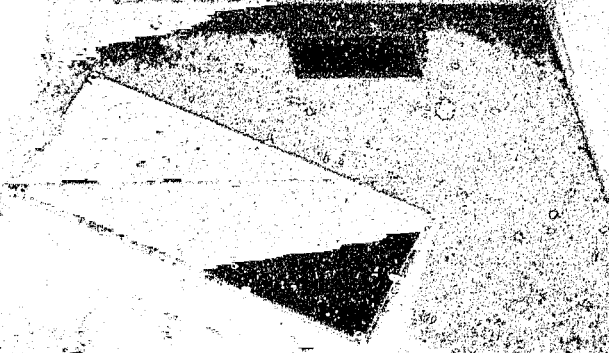
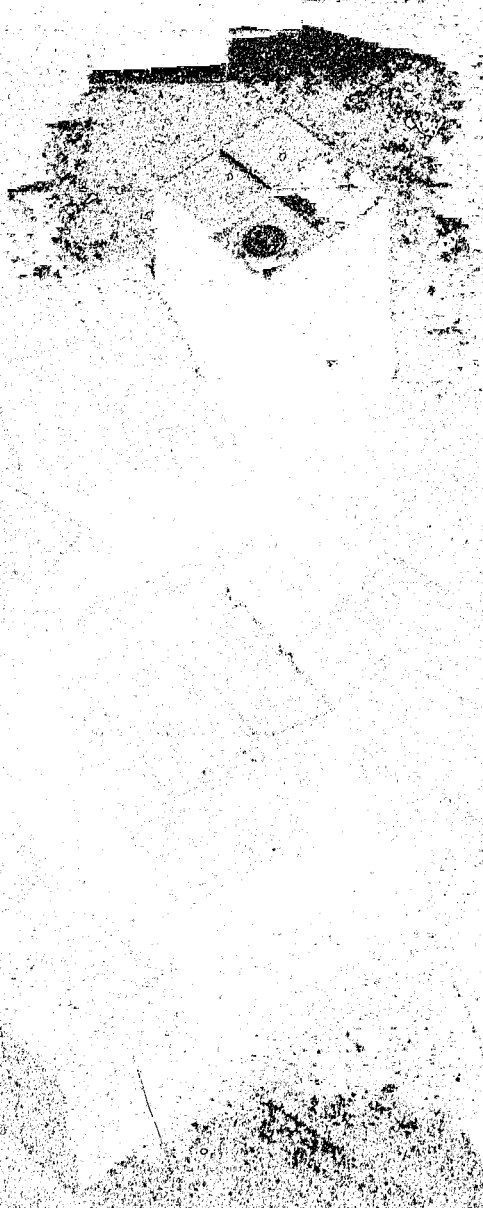
Some of NIDR's first grants examined

- the successful uses of mediation in settling disputes over special education plans for pupils with disabilities;
- the mediation process, skills used, and results of discrimination complaints filed under the federal Age Discrimination Act;
- the mechanisms created by private providers and government agencies to ensure accountability for the delivery of social services in a professional and humane manner.

Later NIDR-funded projects involved such matters as a policy dialogue on questions involving insurance coverage and AIDS patients, the intervention of a mediator in a dispute involving discriminatory real estate practices, and the intervention of mediators in disputes relating to coal development in New Mexico's San Juan Basin.



TO THE PUBLIC
FOR THE PURPOSES
OF THE
ACT OF MARCH 3, 1879



**FOR
RENT**

HOMELESSNESS IN IDAHO

The Sounding Board, a community mediation organization in Boise, believes the best way to avoid homelessness is to keep families in their homes from the outset. Social Systems Mediation is the key.

Most evictions in Boise and surrounding Ada County occur because of an average \$600 in owed but unpaid rent or utilities per household. Evicting a family costs an average \$3,000 in emergency shelter and other assistance before new housing is found. If a way is found to avoid eviction, a family is spared the discouraging disruptions of homelessness, and public and private agencies save money. The Sounding Board's Helping Hand Project describes the effects of homelessness on a family:

"When a family loses their home, they lose much more than a residence. They lose self-esteem and their base of operations. They may lose welfare benefits. They feel embarrassed and ashamed. Children lose their friends. School attendance suffers as they are forced to change schools repeatedly. Some just drop out. Those seeking work are crippled by loss of a phone and an address. If an employer discovers that a prospective employee lives at a homeless shelter, that candidate has little or no chance of landing the job.... [F]or many, the loss of their home is the knock-out blow from which they never recover."

To avert that knock-out blow, the Helping Hand project employs a two-tiered mediation process. One tier tackles the money issues which threaten a family's home. Project volunteers mediate between members of a household at risk of eviction and sometimes overwhelmed community agencies with the resources to help the family with its bills and other needs. The other tier involves mediating repayment agreements between the family on one side and the landlord and utility companies on the other.

With support from NIDR's Innovation Fund, the project improved its Social Systems Mediation approach to combatting homelessness, in one year helping 176 households to mediate 182 agreements to avoid eviction. Other communities have begun to study the Boise approach with an eye to replication.

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DRUG AND ALCOHOL ADDICTION IN NORTH CAROLINA

By the end of the 1980s, Winston-Salem, North Carolina and surrounding Forsyth County had more than 50 organizations committed to helping the area's residents who were addicted to drugs and alcohol. But as well meaning as the organizations were, there was little coordination of effort or purpose among them. Turf battles were common.

Then in 1990 the Winston-Salem/Forsyth County Coalition on Alcohol and Drug Problems decided "to resolve community issues related to providing available, accessible, and effective substance abuse treatment to all who need it regardless of ability to pay." The coalition includes citizens appointed by county commissioners and city aldermen, the local mental health authority, human service agencies, and business, religious, and community groups. It chose Collaborative Problem Solving (CPS) as a way of extracting accord from its unwieldy collection of organizations and interests. By one description, CPS means parties working together to define problems, develop options, and define objective criteria to arrive at consensus by consensus.

Why CPS? "Historically, this community has had a few people making decisions for the rest of its citizens," according to a coalition report to NIDR. CPS "offered the community an alternative model for people to look at problems of broad community concern and to collectively attempt to deal with them." We agreed to fund the work of a mediation team which helped the coalition reach consensus.

Over two years the coalition developed 40 key steps to achieve its goal of improved treatment for the addicts in the county. More important, coalition participants have accepted responsibility to follow through on taking those steps over a five-year period. Not that the process was easy. The coalition reported to NIDR that CPS was an "overwhelming, frustrating, painful yet an invaluable learning experience for coalition members and the community.... We have learned that a community must approach fighting drug abuse as a set of related problems that are the cause and effect of very deep and complex social issues. Attaining clear problem definition was difficult when issues such as racism, violence, and economic alienation kept emerging."

Yet the coalition succeeded, and the proof of the value of CPS was reinforced when other community groups used it in projects designed to help pregnant and "parenting" teenagers out of poverty and to determine the special needs of pregnant and post-partum women with substance abuse problems.

The design of this Collaborative Problem Solving Process was prepared by The Forsyth County Coalition.

Phase I: PROCESS INITIATION

Step 1: Identify Major Areas of Concern

A broad list of potential issues is generated and conceptually grouped into major areas of concern. Issues are prioritized and a single issue is selected for the focus of collaborative problem solving.

Step 2: Gather Information about the Major Issue

An initial list of problems that correlate with or contribute to the issue of concern is assembled.

Step 3: Identify Stakeholders

(Organizations and Individuals) A list is created of all individuals and groups (stakeholders) that could potentially participate in or benefit from a resolution of the issues. The list is validated to insure that the list is inclusive. Particular attention is paid to making sure disenfranchised elements of the community are involved.

Step 4: Identify Stakeholders' Interests

For each stakeholder, their relationship to the issue is defined and the potential benefits and costs that may result to them from resolution of the issue are identified. Cultural barriers to bringing disenfranchised shareholders to the table are identified.

Step 5: Gain Commitment from Stakeholders

Each stakeholder is instructed about the issue and the collaborative problem solving process and commits to participation. Procedural details are modified to gain commitment from as inclusive a group as possible.

Phase II: PROBLEM DEFINITION

Step 6: Get Broad Public Input about Problems

Input is collected from stakeholders as well as diverse individuals and groups about problems that correlate with or contribute to the issue being addressed.

Step 7: Identify Existing Resources

A list is assembled of resources that currently exist to address problems for resolving the issue of concern.

Step 8: Problems are Defined

Problems are conceptualized and organized into logical categories of inter-related problems. Similar problems are either collapsed into single problems or distinctions are elaborated. Problems are synthesized into a single list with additional documentation and definition. Differences among stakeholders' definitions are resolved.

Step 9: Problems are Validated

Stakeholders evaluate each problem as stated and defined with reference to the degree to which it is an actual problem that serves as a barrier. Differences among stakeholders' validation of each problem are resolved.

Step 10: Problems are Prioritized

Problems are ranked in the order in which they are to be addressed. Consensus is reached among stakeholders.

Step 11: Inform Public about Problems

The public is informed about the results of the problem definition phase.

Parties agree to work together to resolve common problems in a cooperative manner.

Phase III: SOLUTION GENERATION

Step 12: Brainstorm Solutions

Stakeholders participate in generating lists of solutions to prioritize problems. Solutions are sought from two perspectives, those which are innovative and those which are based on existing technology. Stakeholders review existing resources to see which can be applied to resolution of the issue.

Step 13: Evaluate Solutions

Each solution is evaluated in terms of which stakeholder's interests are served, which stakeholder's interests are compromised, how well solutions will solve the problem, and how easy or difficult solutions will be to implement.

Step 14: Select Solutions

From among solutions that are generated, stakeholders consider solutions and work to resolve differences until consensus about solutions is reached.

Step 15: Develop an Action Plan

A detailed, written plan is developed for implementing action steps required to initiate, support, and maintain action. Stakeholders verify that agreed upon solutions are fully incorporated into the action steps.

Phase IV: RATIFICATION AND IMPLEMENTATION

Step 16: Stakeholders Ratify Action Plans

Stakeholders endorse the details of the action plan and make formal agreements to participate in appropriate parts of the plan.

Step 17: Implement Action Plans

Stakeholders and others assigned roles in implementation perform their agreed upon roles.

Step 18: Evaluate Implementation

The action plan is monitored and evaluated to determine the degree to which roles have been fulfilled, procedures have been followed and the status of the issue of concern has changed. Problems that arise for implementation of the action plan will be documented.

Step 19: Celebrate Resolution of Issues

Successful resolution of issues of concern is publicized and rewarded.

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FOSTER CHILDREN IN CONNECTICUT

About 383,000 abused and neglected children are in foster care at any time in the United States. Many are returned to their families within a relatively short period, but many other children are placed permanently outside their homes. Federal law requires that state courts review every six months the cases of children in foster care. Further, the courts must establish within 18 months a plan for permanent placement outside the home provided they find reasonable, but unavailing efforts have been made to preclude the critical step of separating a child from parents.

States have responded by requiring that their courts hold full, formal hearings involving all parties before what is called an out-of-home disposition is made. "Although intended to be focused on the best interests of the child, the court's procedures tend to engender an adversarial atmosphere..." according to an Institute of Judicial Administration (IJA) report. "Even if cases are ultimately settled pre-trial, parties develop entrenched positions early on...with many destructive results."

NIDR funded the IJA to examine and report on Connecticut's Case Status Conference, a dispute resolution alternative to formal foster care court hearings. In 1987, the Family Division of the state's Superior Court established the procedure as a means of determining the best interests of children involved in child protective and placement proceedings. The procedure convenes all parties in a nonadversarial setting. All parties means not just a child and parents and their attorneys, but

an extended cast of social workers, court-appointed guardians, and state legal officials. Court officers use mediation techniques to help the parties understand the issues at hand and the positions of the various players and to resolve disagreements about a child's placement. Agreements reached in a conference are subject to court review.

The IJA report to NIDR found that the Connecticut-designed procedure "can serve as a national model for dealing with child protective and placement proceedings." The report continued: "The strength of the program lies in the fact that the goals of each Case Status Conference are modest and achievable, and that the primary goal...is to enhance the understanding of the current situation by all interested parties and professionals. Resolution, while undeniably important, is relegated to secondary importance and so, paradoxically, more easily achieved. Even where complete airing of all the facets of these complex cases does not result in agreement, a judicial disposition is more readily achieved when the legal and social issues are clearly articulated and information has been gathered and stipulated."

The report also said the Connecticut program "has the potential of empowering parents who, in their own sense of chaos, have found it easier to ignore or mistreat their children than to face up to their parental and societal responsibilities. These parents, excluding those guilty of chronic or criminal acts, can be better helped to resume full responsibility for their children through the Case Status Conferencing procedure."

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MEDICAL ETHICS IN NEW MEXICO

Remarkable advances in medicine mean that human life now can be sustained artificially, in some cases indefinitely. To grapple with the difficult questions that accompany gains in medical technology, hospitals increasingly turn to ethics committees. Medical ethics committees now routinely address perplexing questions such as whether and under what circumstances to sustain life. It is estimated that more than 60 percent of hospitals and a rapidly growing number of allied facilities such as nursing homes have ethics committees.

According to researchers at the Institute for Public Law at the University of New Mexico School of Law, these committees are growing increasingly sophisticated in the substance of medical ethics. But the researchers found that relatively little attention had been given to the processes committees use to assist them in providing education, policy advice, and "a case review function [that] involves assisting doctors and patients or their families in making a wide range of medical decisions that often have psychological, social, legal, economic and spiritual dimensions."

With assistance from the Innovation Fund, the researchers examined whether mediation and facilitation techniques commonly used in dispute resolution, if adapted for use by medical ethics committees, could help in dealing with the tough cases the committees face. They found that, indeed, the techniques were useful, adding that how mediation and facilitation "can best assist committees depends on an understanding of each committee's role in its institution, the applicable sources of committee power, the types of cases typically coming before the committee, and the committee's goals in consultation." The researchers produced a manual that ethics committees can use in incorporating dispute resolution techniques into their work. NIDR scheduled publication in late 1993 of materials related to the project.

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OPEN ADOPTION IN OREGON

It used to be that adoption meant severing all ties between parent and child. No longer.

In some adoptions today, birth and adoptive parents know each other and birth parents retain rights to visit their child.

Proponents of these so-called open adoptions quote experts as saying adopted children must learn who they are in relation to two sets of parents before they can fully develop their own identities. "Adoptive families must accept the critical notion that it is an identity dilemma to have two sets of parents, often one known and one unknown, and that this dilemma has to be addressed openly throughout life by all adoptees and their adoptive parents," according to Open Adoption and Family Services of Eugene, Oregon. "Now experts generally agree that open disclosure is the soundest way to facilitate the best psychological health of the child."

But how can agreement between birth and adoptive parents in open adoptions be achieved? Open Adoption's answer was to pioneer the use of mediation in developing written accords between the parties. In its view, parties "are best served when they plan the adoption together with the help of a mediator."

With support from the Innovation Fund, the organization surveyed a large sample of the persons involved in open adoptions. They questioned 129 birth and adoptive parents in 56 adoptions whose adoptions were an average of 4.5 years old. The survey found that 98.2

percent of birth and adoptive parents were keeping mediated adoption agreements with respect to the potentially delicate issue of visits to the child by birth parents. Further: "Most participants, 75.1 percent, reported no conflict in their relationship. Of those who reported some conflict, most, 71.1 percent, reported that the conflict was solved or mostly solved. They were satisfied with their contact with each other—adoptive parents, 79.1 percent, and birth parents, 94.4 percent. Most significantly, 93.8 percent of all respondents were satisfied with having their adoptions be open."

To the survey's authors, the results suggest that a "mediated adoption process with a written agreement in open adoptions significantly reduces conflict and enhances satisfaction and cooperation between birth and adoptive parents."



THE RIGHTS OF PENSIONERS EVERYWHERE

Some innovations in dispute resolution are meant to serve the interests of great numbers of people. An Innovation Fund grant to the Pension Rights Center in Washington, D.C. helped the center develop a dispute resolution system to settle private pension disputes that many older citizens find difficult, if not impossible, to litigate. The system is called the ERISA Early Expert Evaluation (4-E) Program, and it has drawn considerable attention in the federal government.

Here's how the Pension Rights Center describes the need for the program.

"In recent years, millions of workers and retirees have won important new rights under private pension laws. Yet many individuals continue to retire without benefits because they are unable to enforce their legal rights.

"The problem arises from the statutory scheme created by the federal private pension law, the Employee Retirement Income Security Act of 1974 (ERISA). ERISA governs the pension rights of 80 million participants in 900,000 private plans. Currently, the only recourse provided by ERISA for participants who have been denied benefits by their plans' internal claims procedure is to file a lawsuit.

"The reliance on private enforcement presents a series of obstacles to participants seeking to challenge a denial of benefits. At the earliest stage in the life of a pension dispute, they find that there is no government agency to turn to for individualized information about the legality of a plan's benefit denial decision. Then, once they know that they have a good case, they learn that it is extremely difficult to find a lawyer in private practice willing to pursue their claim.

"But even if these problems are overcome, a greater obstacle remains. Many workers and retirees find it impossible to secure their benefits because the only impartial dispute resolution process that ERISA provides is costly litigation. The legal fees and other expenses incurred in bringing an ERISA benefit claim to trial often far outweigh the modest monthly benefits at stake. For some, the costs are prohibitive. Older participants may be particularly wary of delay, stress, and other nonpecuniary 'transaction costs' of court proceedings.

"Lawyers often share their clients' reluctance to proceed to litigation. Plaintiffs' lawyers who have taken pension benefits cases to court have told us that they frequently counsel clients against litigation, particularly where a case involves complex ERISA concepts that may be difficult to explain to a federal court judge, or if courts in that circuit have shown disinterest in small, highly individualized benefit claims. They also advise against litigation where a plan with a 'deep pocket' might effectively 'bury' a participant in costly motions or burdensome discovery requests.

"The logical choice for addressing this serious deficiency in the ERISA enforcement scheme is dispute resolution.... The ERISA Early Expert Evaluation (the 4-E program) model is designed to settle private pension

disputes through the voluntary participation of the parties in a nonbinding, low-cost process that provides them with a neutral expert's evaluation of the merits of their positions and the likely outcome of litigation."

HOW THE 4-E PROGRAM WOULD WORK

According to its authors, here is how the 4-E program would work in resolving disputes over private pension benefit claims.

"A neutral pension expert facilitates informal discussions between the parties, assesses the merits of their respective positions, helps them explore settlement options, and presents an evaluation of the likely outcome of litigation. The 4-E program will be available to individuals claiming rights to benefits from private pension plans covered by the Employee Retirement Income Security Act of 1974 (ERISA). Claims may be submitted to the 4-E program at any point after exhaustion of the plan's internal two-step claims procedure, either before a complaint is filed in court or during the pretrial stage upon referral by a judge.

"Participation is completely voluntary for both parties to the dispute. Neither party waives any legal rights by

participating in 4-E, and the process is completely confidential. The program is designed to be established by federal legislation and administered by the U.S. Department of Labor. A 4-E board of dispute resolution and pension experts appointed by the secretary of labor will set policy guidelines and professional standards for the program.

"In the analysis stage, the neutral will review the claims procedure record, obtain additional information, identify the issues in dispute, and assess the potential for settlement. In the evaluation stage, the neutral will meet jointly with all parties to determine areas of consensus and settlement options. If settlement is not reached initially, the neutral will orally present to the parties an assessment of the strength of their claims and the probable results of a trial, and further explore the possibility of settlement."

COURTS



COMPREHENSIVE DISPUTE RESOLUTION

The day may be coming when courts in every state routinely provide methods to settle most disputes without going to trial. That's true for divorcing a spouse, or suing an auto mechanic, or fighting with a landlord. By the end of 1992, 26 states and the District of Columbia—most with our assistance—were in some stage of exploring or adopting what are called comprehensive, statewide dispute resolution systems for their courts.

Comprehensive means the courts offer a full set of dispute resolution methods either at the courthouse or by referring cases to outside neutrals.

Statewide means that these methods are integrated into the delivery of justice in every local court jurisdiction.

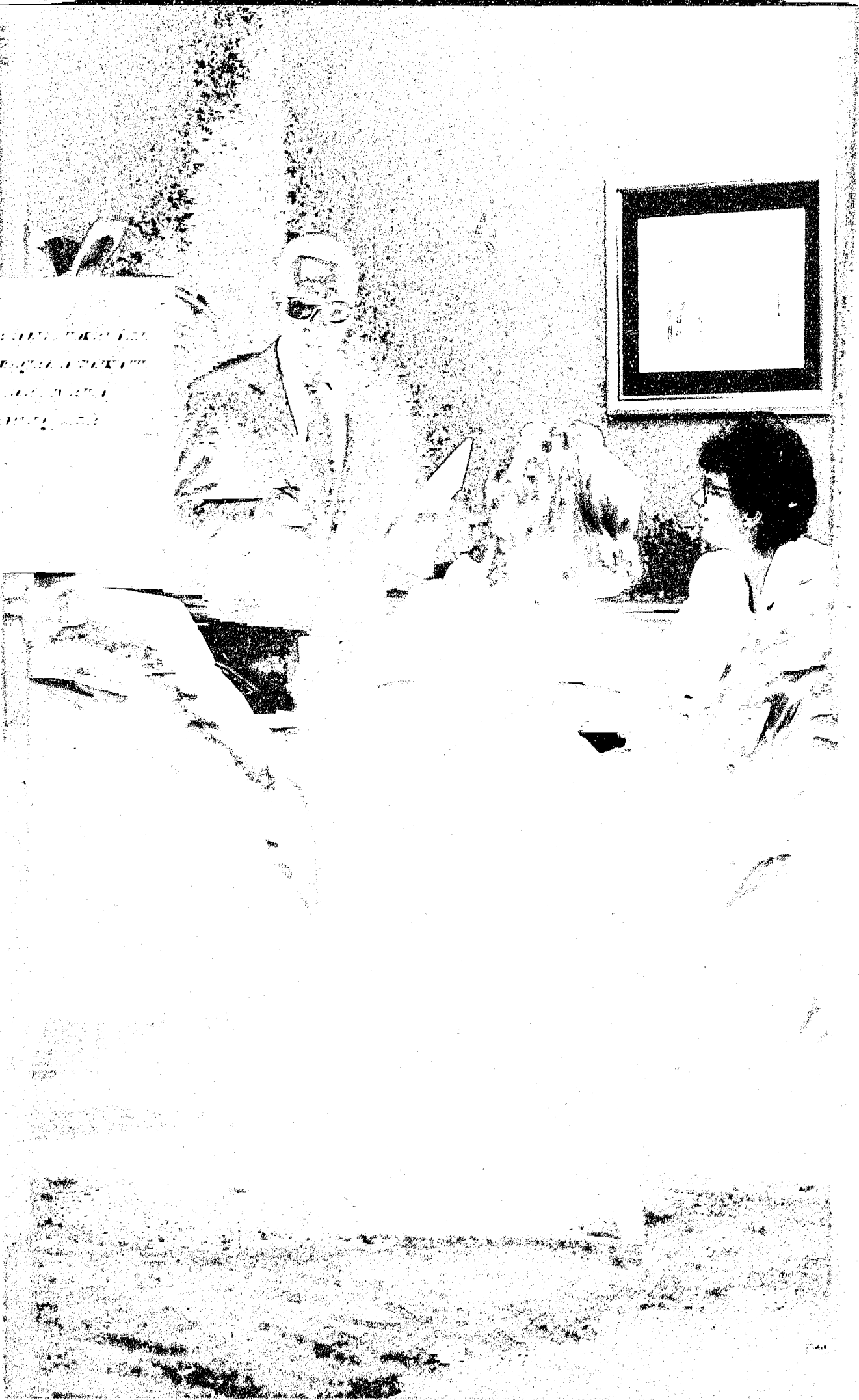
PURPOSE

In the words of the Supreme Court of New Jersey, the purpose of these systems is "to fulfill the commitment to provide the highest quality of justice possible." The purpose of our Courts Program is to foster their development and adoption throughout America.

The movement toward comprehensive, statewide systems represents a revolution from the time when the only dispute settlement method state courts provided was going to trial. It means that courts can offer a variety of methods such as mediation, arbitration, or early neutral evaluation as alternatives to litigation (see glossary for definitions).

Our program to foster comprehensive dispute resolution systems for state courts originated in an emphasis on court-ordered arbitration, an important element of the typical comprehensive system. During the 1980s, NIDR helped eleven states to adopt, expand, or explore the use of court-ordered arbitration.

A turning point in the movement toward statewide systems was the landmark 1988 National Conference on Dispute Resolution and the State Courts, sponsored by the State Justice Institute, the National Center for State Courts, and NIDR. The 300 participants at the invitational conference came from more than 40 states and included five state chief justices, state and appellate court judges, state and local court managers, legislators, executive branch officials, consumer advocates, business and insurance executives, and members of professions ranging from architecture to medicine.



**THE NEW JERSEY EXAMPLE:
ONE STATE'S COMPREHENSIVE SYSTEM**

New Jersey is well along in establishing a statewide dispute resolution system in its state courts. The state supreme court requires that every local court jurisdiction provide

- the opportunity for people involved in civil suits and their attorneys to opt for dispute settlement programs that include early neutral evaluation, mediation, and arbitration

- arbitration programs (already required by law) to settle disputes arising from automobile accidents and personal injuries

- a device called the early settlement panel to help resolve economic issues in divorce cases

- mediation to settle custody and visitation disputes in family court

- mediation for the resolution of community disputes, and

- mediation of small claims cases.

Beyond these requirements, the New Jersey Supreme Court encourages local courts to be creative, even a little daring. It advocates both that they experiment on their own and adopt settlement approaches used successfully in other jurisdictions.

To cite examples, the supreme court

- suggests that local jurisdictions experiment "with creative alternatives for the resolution of...family problems." It cites two county courts that "use referees to hear informal matters...which involve minor juvenile offenses and recommend dispositions (other than incarceration) to the judge."

- advises that "mediation may be appropriate in some family crisis cases and in resolution of some continuing support issues, once support has been established by the judge."

- looks favorably on "mediation as an alternative to probation violation hearings for juvenile probationers who are having difficulty complying with the technical conditions of their probationary periods."

- notes that in "many counties the bench and bar have established panels of one to four attorneys to conduct settlement conferences in selected cases in which trial has been scheduled. Generally, negligence, medical malpractice, and contract cases are panelled."

Implicit in the court's master plan, which is designed to do no less than transform the state's system of delivering justice, "is the understanding that in some instances justice will be best served by providing opportunities to individuals and groups to resolve their disputes without resort to trial presided over by a judge. On the other hand, dispute resolution programs should not be used in circumstances where judges would provide a better quality of justice."

HOW NIDR IS HELPING

That understanding is implicit as well in the plans of many other states. Through our Courts Program, NIDR is working with many jurisdictions to develop statewide, comprehensive dispute resolution systems. Some instances:

Arizona Institute funding provided educational, administrative, and technical assistance as the state moved toward realization of a legislatively mandated system.

Colorado The Colorado Judicial Institute received a NIDR grant to develop a model and recommendations for a comprehensive dispute resolution system for the state.

Georgia With our support, a joint commission has developed a plan to implement a statewide system.

Illinois Institute funding assisted the state court system in developing dispute resolution programs and policies.

Maine NIDR enabled the Commission to Study the Future of Maine's Courts to examine the place of dispute resolution in the future of the state's judicial process.

Massachusetts Our grant supported the start-up of a Multi-Door Courthouse in Massachusetts.

Nebraska The Institute has awarded a grant to integrate mediation into the state's legal system.

New Jersey We supported the conference that introduced a statewide master plan for a comprehensive system to planning and advisory committees in each local court jurisdiction.

North Carolina The Institute funded a pilot program testing mediated settlement conferences in eight judicial districts and a study of the effects of this dispute resolution method.

Ohio The Ohio Bar Foundation received Institute support to fund the court-related components of a state dispute resolution system that involves both the state's executive and judicial branches.

Tennessee We supported a conference called to prompt development of a statewide dispute resolution commission.

Virginia The Institute funded a pilot program operating in the juvenile and domestic relations court of Prince William County.

Technical Assistance NIDR provides individual technical assistance to states planning to implement statewide programs. In November 1991, we sponsored a national technical assistance conference on dispute resolution in state courts that brought together 50 representatives from 17 states. A year later, we sponsored a regional conference that drew representatives from 12 western states. This continuing series of conferences examines a variety of court-based dispute resolution methods, considers how states can plan for comprehensive systems, and addresses how such systems can be monitored and evaluated.

TOUGH QUESTIONS AT A COURTS CONFERENCE

When NIDR held a national technical assistance conference on dispute resolution and the courts, the tough, recurring questions that surround establishing comprehensive, statewide systems quickly surfaced. For example:

How can judges be persuaded that dispute resolution options are good for litigants and don't deprive them of their rights? Conferees said it takes time. Advocates should point out that dispute resolution methods complement existing court processes and are not meant to supersede them. They say most judges who have experience over time with examples of

successful court-based dispute programs become supportive of them. But they must be persuaded, so relevant empirical data should be gathered and made available to them. Planners must address the specific concerns judges raise and build their efforts around providing them with concrete responses anchored in the experiences of effective programs. Enlisting judges already sympathetic to dispute resolution programs also helps.

Which type of cases should get referred to which types of dispute resolution methods? The answer: There are no nationally established hard and fast rules that would say, for example, whether a tangled dispute between a homeowner

AS MAINE GOES . . .

The Commission to Study the Future of Maine's Courts included several questions about dispute resolution in a survey it conducted of 350 members of the public. The results were reported in a commission report:

"When asked whether, 'we'd be better off in Maine if more people used arbitrators and mediators to resolve disputes instead of going to trial,' 63 percent agreed strongly and 18 percent agreed somewhat. (Eight percent disagreed and 11 percent had no opinion.)

"Seventy-five percent agreed that courts should provide mediators or arbi-

trators as an alternative to trial. (Seven percent disagreed and 14 percent had no opinion.)

"When asked how they would prefer to resolve a problem over a defective refrigerator, 44 percent indicated that they would prefer to take the case to a community mediation center, 30 percent indicated they would prefer to sue the store and have the dispute mediated by a court mediator, nine percent responded that they would prefer to sue the store and have the judge decide, and 17 percent had no opinion."

and a homebuilder should go to mediation or arbitration or whether a personal injury case should go to early neutral evaluation or end up in summary jury trial. It's up to planners in each state to set guidelines and policies that reflect local sentiment and common sense. This means that planners must follow the usual course of policy and guideline formation: complete a needs assessment, evaluate the feasibility in local courts of individual dispute resolution methods, review existing programs, consider the policy issues involved in procedures, rulemaking, and other important

program choices, and plan evaluations carefully.

There was a simple, clear answer as to why 50 key officials from 17 states attended the conference. In the words of a participant from Maine, "There is dissatisfaction with the court system. It takes too long and it costs too much. We should be looking to obtain earlier settlements of disputes."

Technical assistance conferences dealing with statewide, comprehensive dispute resolution systems are a continuing part of the Institute's Courts Program.

A LAWYER SHOULD ADVISE A CLIENT . . .

In 1992, Chief Justice Luis D. Rovira of the Supreme Court of Colorado announced that the court and the state legislature took separate steps that "will have a profound effect on the way in which law is practiced in our state."

First, the state's high court told lawyers they should let clients know about dispute resolution methods. Newly adopted Model Rules of Professional Conduct say:

"In a matter involving or expected to involve litigation, a lawyer should advise the client of alternative forms of dispute resolution which might reasonably be pursued to attempt to resolve the legal dispute or to reach the legal objective sought."

An accompanying comment to the rule adds:

"Common forms of ADR include arbitration, mediation, and negotiations. Depending upon the circumstances, it may be appropriate for the lawyer to discuss with the client factors such as cost, speed, effects of existing relationships, confidentiality and privacy, scope of relief, statutes of limitation, and relevant procedural rules and statutes."

Meanwhile, the legislature amended the state's Dispute Resolution Act to grant courts authority to refer cases "to any ancillary form of ADR."

STATEWIDE OFFICES



STATEWIDE OFFICES OF MEDIATION

With financial support and technical assistance from NIDR, fourteen states in the past decade have established small, energetic offices that champion the uses of dispute resolution to settle public policy disputes. These are disputes over which government has some control. They often involve large numbers of people split into bitterly divided factions. Battles occur over such matters as siting waste dumps, developing land, issuing government regulations, and allocating public resources. These are the types of disputes that can rouse strong emotions and lead to lawsuits that seemingly never are resolved. An example, noted in these pages, is a dispute over a garbage-to-electricity plant that the Florida Growth Management Conflict Resolution Consortium helped to resolve.

Each office has a different name (our generic term is statewide office of mediation). Whatever they are called, the offices tend to be dispute resolution hubs within the wheels of state government. As such, they not only work to resolve public policy disputes but also train government and other leaders in a variety of dispute resolution approaches. In addition, they seek to introduce a dispute resolution outlook into the infrastructure of state government and into arenas beyond it.

The offices are experimental, and their survival is not guaranteed, particularly in tough economic times. Each demonstrates an inventive adaptability in matching mediation, collaboration, negotiation, and like methods to the distinctive characteristics and circumstances

of its state. Most operate in at least two of the following ways:

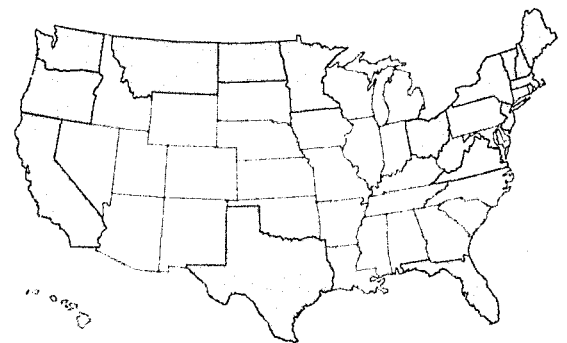
Intervention Program officials either directly mediate public policy disputes or help parties in disputes link up with dispute resolution professionals.

Training The office conducts or fosters training in dispute resolution for state government agencies and officials, community leaders, and others.

Systems Design The office designs and implements dispute resolution systems for other state agencies.

Public Education The office goes beyond the precincts of public policy disputes and state government and helps to educate the public at large in the methods and benefits of dispute resolution.

Courts Several offices have established relationships with the courts on matters ranging from training and referral of cases to actually being housed in the state court system, as is the case with Hawaii.





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MEDIATING A STATE CRACKDOWN ON A COUNTY

Problem When Florida's Department of Environmental Regulation (DER) decided to crackdown on alleged violations at Dade County's resource recovery plant, it demanded \$600,000 in penalties, the largest amount the agency ever sought against a local government. It also set in motion what became an example of how a statewide office of mediation can intervene successfully in important public policy disputes, at notable savings in time and money.

The plant is a 3,000-ton-a-day, waste-to-energy facility operated by the private Montenev Corporation under contract to the county that surrounds Miami. Its job is to transform garbage into electricity. It had a controversial history involving significant environmental problems under a previous operator. Now the plant was said to be guilty of storm-water, ground-water, and operations violations. The violations raised concerns about chemicals leeching into the area's water supply. To complicate matters, Montenev, despite community and environmental opposition, indicated it would seek a permit to expand the plant.

Parties In an attempt to settle a growing conflict over the penalties, the parties—the DER, the county's attorneys and administrators, and the chief executive officer and attorney for Montenev—called in the Florida Growth Management Conflict Resolution Consortium.

Process *Step one* for the Consortium was to convene a premediation meeting. The parties selected a mediator, set the scope of negotiations, discussed guidelines for dealing with the news media, potentially affected parties, and corporate documents that contained proprietary information, and dealt with the level and timing of participation by homeowners and environmental groups .

Step two was the first mediation session, at which an agenda was established. The agenda included a review of possible ways to correct matters tied to storm-water management, ground-water contamination, and odor control, and how to deal with penalties. The parties established guidelines for inspecting the plant and had productive technical discussions.

Step three was once the principal parties established a framework for settlement, community and environmental groups were briefed on the progress to date and asked to tell negotiators what they wanted as part of an agreement. An example was a program for controlling odors from the plant.

Outcome The mediation led to a settlement that included \$1 million in improvements to the plant and the surrounding community affected by the plant in lieu of the \$600,000 in penalties. Examples of improvements are new procedures for collecting

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MAY STS. MEXICO, D. C.



household hazardous waste such as paints, batteries, used oil, and mercury. The county paid \$45,000 to the state for the state's legal costs.

Time The premediation was held in December 1991. Six days of mediation took place between January and March 1992. Dade County commissioners approved the final agreement in May 1992.

Costs The parties paid the mediators \$6,105 and their expenses. Participants estimated that mediation saved between \$200,000 and \$500,000 in anticipated litigation costs.

CASES IN DISPUTE:

THE HAWAIIAN EXPERIENCE

Statewide offices of mediation seek to help settle disputes and encourage consensus in areas where government has a direct or implied interest. What does that mean in real life? An answer is suggested in this sample of cases that Hawaii's Center for Alternative Dispute Resolution handled in a recent year. The center, an early NIDR grantee, seeks to make mediation services widely available in cases that directly involve state and county government or that are referred to the center by government officials.

Center cases include:

Ancestral Lands Mediation of threatened litigation over rights to a large tract of ancestral land inherited by an extended family of native Hawaiians. Agreements were reached and litigation avoided.

Golf and Housing Mediation of permit disputes pending before the State Land Use Commission and the Maui Planning Commission over a proposed golf course and housing development. Agreements were reached and threatened litigation was avoided.

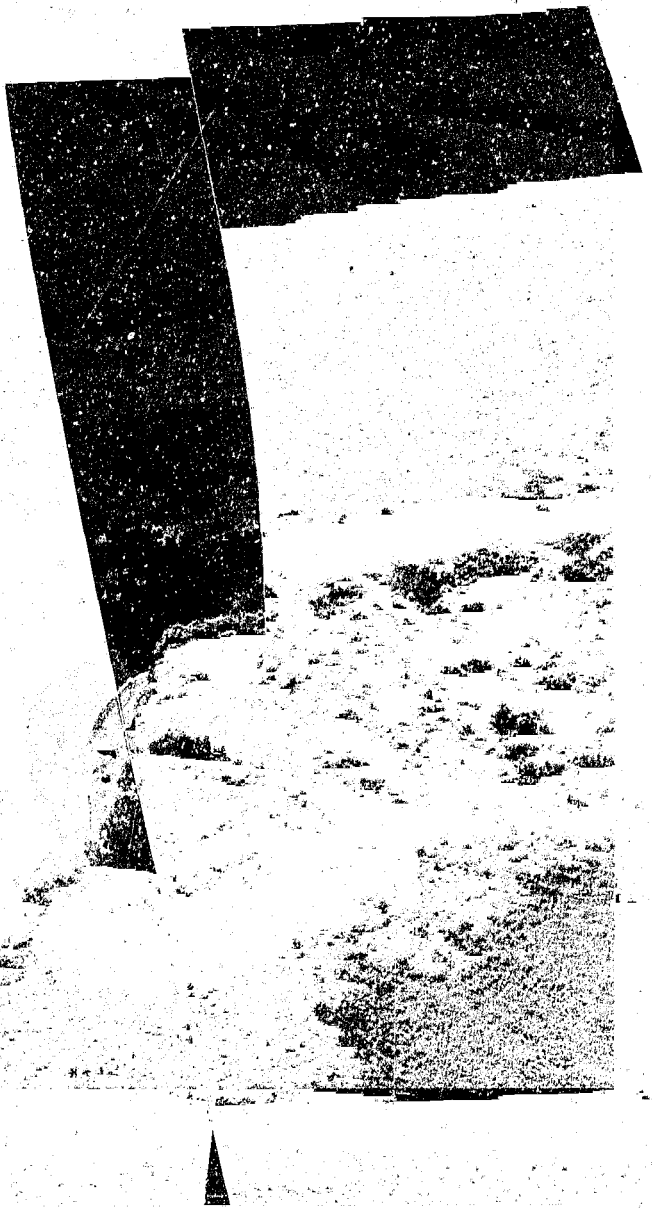
Mental Health Convening of a policy discussion that focused on prospective prescription privileges for psychologists. Six months of mediated discussions yielded recommendations for improving the treatment of mental illness in Hawaii. The recommendations went to the Hawaiian legislature which had requested the policy discussion.

Service Delivery Mediation between two agencies involved in the delivery of state-funded sexual assault and family treatment services on Kauai. A working agreement was reached.

United Way Facilitation of a series of meetings between board members of the Waikiki Community Center and representatives of the United Way over property management and service planning issues. Issues were narrowed and agreements reached.

Psychiatry Department A facilitated strategic planning retreat for the Department of Psychiatry at the University of Hawaii's School of Medicine. The retreat was called to update the department's mission statement and establish consensus on the department's goals and objectives for the 1990s.

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THE TRANSBOUNDARY INITIATIVE

The concept behind statewide offices of mediation is being tested not only interstate but also across the border into Canada. With a \$50,000 grant from NIDR, the North Dakota Consensus Council set in motion the Transboundary Initiative. The Initiative is an ambitious effort to explore the development of a joint public-private dispute resolution service for Idaho, Montana, North Dakota, South Dakota, Wyoming, and the three Canadian provinces of Alberta, Saskatchewan, and Manitoba.

Shared environmental and natural resource problems and a common desire to solve them provided an important impetus for the attempt to create an international public policy dispute resolution service for the region. The project leaders summed up the need for the service:

“[The region’s states and provinces] are characterized by open space, rural communities, natural resource-based economies, and small human populations. This area is seeking to position itself for a significant role in an international economy. The states and provinces...are confronted with social, economic and environmental conflicts that have been difficult to resolve in the traditional legislative, administrative, and judicial forums. Disputes over major issues of public policy are endemic.... Major disputes are occurring regarding environmental resources, economic development, health care, water, government structure, government revenue, and human services. Some are transboundary issues....”

Richard J. Gross, who served as counsel for former Governor George A. Sinner of North Dakota, called the possibility of a regional dispute resolution service “a real opportunity to do together what we may be unable to do separately and establish further connections among our states and provinces for a central region of North America with potential similar to that of a Pacific Rim.”



STATEWIDE OFFICE'S DEVELOPMENT

| 1984-85 | |
|---------------|--|
| Hawaii | Center for Alternative Dispute Resolution |
| Massachusetts | Office of Dispute Resolution |
| Minnesota | Office of Dispute Resolution |
| New Jersey | Office of Dispute Settlement |
| 1988-90 | |
| Florida | Florida Growth Management Conflict Resolution Consortium |
| Ohio | Ohio Commission on Dispute Resolution and Conflict Management |
| Oregon | Oregon Dispute Resolution Commission -- Public Policy Program |
| 1991 | |
| New Hampshire | New England Center Program on Consensus and Conflict Resolution
(University of New Hampshire) |
| 1992 | |
| California | A collaboration of the Public Policy Mediation Project (California State University-Sacramento) and Common Ground Law and Public Policy Programs (University of California-Davis) |
| Maine | Maine Consensus Project |
| Texas | Center for Public Policy Dispute Resolution (University of Texas Law School) |
| Vermont | The Governor's Commission on Dispute Resolution |
| | North Dakota and Montana took the lead in establishing an interstate, U.S.-Canadian office of dispute resolution referred to as The Transboundary Initiative, that, in addition to themselves, serves Idaho, South Dakota, Wyoming, and the Canadian provinces of Alberta, Manitoba, and Saskatchewan. |
| 1993 | |
| *Montana | Center for Dispute Resolution -- Office of the Governor |
| *New York | New York State Forum on Conflict and Consensus, Inc. |
| *Washington | Washington State Governor's Office of Finance and Management |

*NIDR provided technical assistance and/or funding to these offices during fiscal year 1993-94.



HIGHER AND PROFESSIONAL EDUCATION

One of the principal programs during our first ten years funded the development of a rich library of curriculum materials for use in higher and professional education. Our purpose was to significantly increase teaching and research in dispute resolution across many academic and professional disciplines. By the end of 1992, we had awarded almost 200 grants and research fellowships to scholars at more than 160 colleges and universities. The program focused on law schools and graduate schools of business, public administration, public affairs, public policy, planning and, in recent years, continuing professional education. It is these schools which produce many of the leaders of the future who will be able to use dispute resolution methods in ways that promote society's interests.

■ A major result of the program is our contribution to the rapid development and growth of dispute resolution courses in college and universities, notably at the graduate professional and law school level. Almost all of the nation's law schools and at least a third of its graduate schools of business education have integrated dispute resolution courses into their curriculum.

■ Another result is the remarkable increase in dispute resolution teaching materials. The publications list starting on page 69 includes more than one hundred books, reports, and associated documents developed from our funding alone. This collection of curriculum materials is a significant measure of the program's accomplishments.

■ A third result is the diverse and creative way that educators and scholars have responded to the task of devising classroom materials. On accompanying pages is an example of a teaching exercise developed by Institute grantees. Readers can try their hand at learning about an aspect of dispute resolution.

As NIDR entered the 1990s, the program in higher and professional education continued, albeit at a reduced pace. For example, we published the first-ever dispute resolution teaching materials for continuing legal education. The materials were prepared for NIDR by scholars at George Mason University and the University of Texas School of Law.

In February 1993, NIDR cosponsored a national conference with the Stanford University Center on Conflict and Negotiation (SCCN). The purpose was to bring together 50 leading law professors and social scientists to examine different perspectives on dispute resolution, conflict, and negotiation. NIDR also scheduled the publication of SCCN's book, *Barriers to Negotiation*, a summary of conference papers.

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DISPUTE RESOLUTION FOR LAWYERS

“Most attorneys recognize that litigation is a last resort for settling disputes, to be used only when other less acrimonious and expensive means of resolution have failed. Today there are a number of alternative methods of dispute resolution available, some independent of the courts and some part and parcel of courts’ pretrial procedures. Many of these procedures are new, the products of experimentation over the last couple of decades loosely referred to as the ‘ADR movement.’ The various ADR mechanisms all introduce third parties into the dispute resolution process,

A. To reduce the investment of legal and managerial time and money required by litigation; and

B. To reduce the acrimony engendered by the adversarial stance of litigation.

“The various processes, however, differ greatly among themselves—as to the role played by the third party, the manner in which the third party is selected, and the degree of control that the parties retain over both the process and the result.”

From NIDR’s *Dispute Resolution: Materials for Continuing Legal Education*

FOR LEADERS, PROFESSIONALS, AND MANAGERS

A tenet of our program in higher education is that leaders, professionals, and managers should know and understand the basics of dispute resolution and be able to apply them to their fields. For this reason, we established a continuing series of teaching materials that are among the most requested of NIDR’s publications. Two notable examples are *The Manager as Negotiator and Dispute Resolver* and *The Planner as Dispute Resolver: Concepts and Teaching Materials*.

The Escalation Game is one of a series of gaming exercises developed by Peter C. Cramton of the Yale School of Organization and Management for professional courses dealing with dispute resolution. Cramton says the exercises were designed to "give students a chance to think actively about conflict situations and develop skills to efficiently resolve them."

A classic situation of conflict arises when two or more parties claim rights to a particular object that only one can own. Often fights over the object ensue as a result of conflicting claims. Although fighting is costly to both sides, each is hoping to convince the other party to withdraw their claims and walk away. There is a natural tendency for the fighting to continue or escalate, since the cost of fighting today is small relative to the value of the object, and by not fighting a party forgoes any chance of obtaining the object.

Several standard situations of conflict resemble the escalation game. For example, imagine two animals simultaneously finding a piece of meat (or alternately a desirable mate) in the forest. Each wants the meat for itself and is willing to fight in the hopes that the other will go away. As another example, consider a market with two competing firms and sufficiently high fixed costs that the market is not profitable with both firms operating but is profitable for one firm by itself. The firms may compete as an unprofitable duopoly until one of the firms decides to abandon the market and forego the chance at monopolistic profits. Finally, in conflicts between nations, the escalation of the conflict into a state of war is similar to the escalation game.

All of these situations have certain general features found in every two-party escalation game:

- Each side can walk away without fighting but forfeits its claim on the object by doing so.
- The value of the object is worth more than the cost of fighting for one period; therefore, fighting is worthwhile if you think that the other will concede if you put up a fight.
- A willingness (or even eagerness) to fight is beneficial if it convinces the other side that fighting is unprofitable, but is potentially dangerous if the other side makes similar commitments to fight.
- Disaster results if both sides employ "fight to the death" strategies; that is, the value of the object is small relative to the cost of all-out escalation by both sides.

Disaster results if both sides employ "fight to the death" strategies.

THE GAME

A new shopping mall has opened in the stable community of Westmore. Somewhat surprisingly two firms, Dance! and Jazzco, specializing in dance clothing and accessories, have rented space in the new mall. Each is disappointed by the presence of the other, since the community is too small to profitably support two top stores. With both stores in operation, each will lose \$1,000 per month, whereas the net present value of being the only dance store in the mall is \$10,000. The stores have one month leases with Dance!'s lease starting on the first of the month and Jazzco's starting in the middle of the month. Both store owners have limited funds to draw upon. The owner of Dance! has \$30,000, and the owner of Jazzco has \$34,000. Thus, if after thirty months, neither firm has left the mall, Dance! will be forced to leave because the owner will be unable to pay the rent.

You are to play the role of the owner of one of the two firms. Each month you must decide whether to renew your lease or exit from the mall. You are furious with the owner of the other store for trading on your territory, and because of this you are unwilling to talk to the other owner about a possible settlement of this problem. Side payments to encourage the other to leave are not possible.

The game begins with both firms in operation, and Dance! is deciding on whether to sign the current lease or leave the mall immediately. If Dance! decides to leave, then Jazzco gets the full monopoly profits of \$10,000. Otherwise, if Dance! decides to stay, then Jazzco must decide whether to leave or stay. If Jazzco leaves then it gets \$0, and Dance! gets $\$10,000 - 1000 = \9000 ; whereas if Jazzco stays then Dance! must decide again whether to leave or stay. This process continues until one of the firms decides to leave the mall or until thirty months have passed in which case Dance! must leave.



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CONFLICT RESOLUTION IN ELEMENTARY AND SECONDARY SCHOOLS

For most of us, school is our first encounter with people who are different from us. School is also where we first face pressure to fit in and succeed. It's a formula for the likelihood of at least occasional conflict.

Schoolyard fights, angry rivalry among cliques, and exchanges of bitter words are the staple byproducts of school that often warranted sanctions ranging from a few demerits to a trip to the principal's office to suspension.

Today, however, more and more schools are trying a different approach for dealing with disruptive, increasingly violent conflicts. They are training selected students to mediate conflicts between peers. Some schools also encourage the use of conflict resolution techniques in dealing with student-faculty disputes.

Launched in 1992, NIDR's new youth program is designed to increase the number and improve the quality of conflict resolution programs in schools and in other settings serving youth. We seek to promote multicultural understanding, the reduction of prejudice, and the prevention of violence by bringing the tools of conflict resolution and cooperative problem solving to young people.

The first step in the program has been to encourage conflict resolution training for teachers. In late 1992, we funded efforts by the National Association for Mediation in Education (NAME) to develop curriculum materials for both preservice and inservice

training at schools of education. In addition, we have provided information and technical assistance to state and local programs to help in the development of systemwide conflict resolution skill enhancement.

In partnership with the National Institute for Citizen Education in the Law (NICEL), we launched a three-year project sponsoring mock mediation competitions for secondary school students. The pilot phase is scheduled for January 1994 in Cleveland, Philadelphia, and Sacramento, where students will demonstrate their mediation skills in local competitions. The NIDR-NICEL project also plans to develop a blueprint for principals for devising their own dispute resolution programs in schools. The project includes a research component to determine the makeup of a successful program.

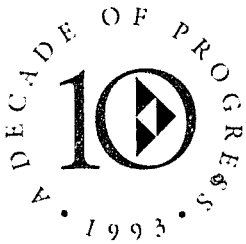
On the following page is a flyer from NAME that lists ten reasons for instituting a school-based mediation program.

TEN REASONS FOR INSTITUTING A SCHOOL-BASED MEDIATION PROGRAM

A review of program descriptions reveals that the following reasons most commonly motivate those who wish to promote mediation in the schools:

1. Conflict is a natural human state often accompanying changes in our institutions or personal growth. It is better approached with skills than avoidance.
2. More appropriate and effective systems are needed to deal with conflict in the school setting than expulsion, suspension, court intervention and detention.
3. The use of mediation to resolve school-based disputes can result in improved communication between and among students, teachers, administrators and parents and can, in general, improve the school climate as well as provide a forum for addressing common concerns.
4. The use of mediation as a conflict resolution method can result in a reduction of violence, vandalism, chronic school absence and suspension.
5. Mediation training helps both young people and teachers to deepen their understanding about themselves and others and provides them with lifetime dispute resolution skills.
6. Mediation training increases students' interest in conflict resolution, justice, and the American legal system while encouraging a higher level of citizenship activity.
7. Shifting the responsibility for solving appropriate school conflicts from adults to young adults and children frees both teachers and administrators to concentrate more on teaching than on discipline.
8. Recognizing that young people are competent to participate in the resolution of their own disputes encourages student growth and gives students skills—such as listening, critical thinking, and problem-solving—that are basic to all learning.
9. Mediation training, with its emphasis upon listening to others' points of view and the peaceful resolution of differences, assists in preparing students to live in a multicultural world.
10. Mediation provides a system of problem solving that is uniquely suited to the personal nature of young people's problems and is frequently used by students for problems they would not take to parents, teachers, or principals.

from NAME
National Association for
Mediation in Education



COMMUNITY JUSTICE

Community justice centers are the grass roots of dispute resolution. Operating at more than 400 locations nationwide, they use volunteer mediators to settle disputes within families, among neighbors, and between merchants and consumers, landlords and tenants, and even government agencies and citizens. They are today's embodiment of the impartial peacemakers who in other eras helped to resolve disputes in their cultures and societies. Tens of thousands of Americans use them yearly to devise solutions to their specific conflicts.

In some of the nation's cities and towns, community justice centers are expanding their roles beyond settling individual one-on-one disputes. They are finding ways to help resolve local public disputes involving several parties and often intricate demands and situations. Thus:

- **The Justice Center of Atlanta** coordinated and participated in the mediation of a dispute over a highway proposed to run through a residential neighborhood.

- **The Neighborhood Justice Center** in Honolulu mediated a series of disputes dealing with growth management.

- **The Community Board Program** in San Francisco mediated a variety of disputes ranging in subject matter from a conflict between police and neighborhood youth to the siting of a mental health facility.

During the past several years, our program in community justice has focused on improving the quality of dispute resolution centers and on

encouraging the development of local dispute resolution networks. A major product of the program is an 84-page manual for community centers which provides guidelines for designing and operating them. *Community Dispute Resolution Manual: Insights and Guidance from 2 Decades of Practice* is available through NIDR's publications department.

With NIDR funds:

- **The New Mexico Center for Dispute Resolution** in Albuquerque established networks among community justice, youth service, and juvenile justice organizations at local and national levels.

- **The Community Board Program** in San Francisco prepared to publish for community justice programs a semiannual report summarizing research, evaluation, and other dispute resolution information.

- **Community Mediation, Inc.** of New Haven worked to organize a network to assist in establishing community justice centers throughout Connecticut.

COMMUNITY INITIATIVE

NIDR's Community Initiative awarded matching grants to community dispute resolution organizations in 1992-93. The project was designed to strengthen communities by encouraging the use of collaborative, participatory processes to resolve specific conflicts. Under this initiative, we funded a limited number of projects built around partnerships of community dispute resolution programs, grass-roots organizations, community



leaders, religious bodies, local policy makers, nonprofit organizations, and community foundations.

With our funds:

■ **The Orange County Dispute Settlement Center** in Chapel Hill, North Carolina coordinated a joint project to develop improved processes for public housing residents to work together in dealing with problems associated with drug abuse and violent crimes and in enhancing their quality of life.

■ **The Neighbor to Neighbor Mediation Center** in Savannah, Georgia developed a project to reduce juvenile violence in an inner-city neighborhood. The project includes sponsoring a victim-offender reconciliation

program and requiring young offenders to participate in conflict resolution training as a condition of probation.

■ **The Cleveland Mediation Center** developed a program to assist residents of a Near West Side neighborhood in collaboratively addressing issues of importance to them and to improve the way that neighborhood conflicts are resolved.

■ **The Redwood Empire Conflict Resolution Service** of Santa Rosa, California planned to increase the efficacy of the Sonoma County Task Force on Gangs by providing such services as conflict resolution and cross-cultural dialogue training, victim-offender mediation, and facilitation processes.

QUITE SIMPLY, CIVILIZED

Mediation, the mainstay of community dispute resolution programs, is based on the conviction that giving two or more parties an opportunity to resolve their conflict with the support and guidance of an impartial person (often called a third party) is, quite simply, civilized. The important principle is that the parties themselves are responsible for devising their own solutions to the conflict; the impartial person does not

impose a solution. This common-sense method of resolving disputes is part of the fabric of many cultures and societies. In the past, the third party was a friend, a family member who could remain detached, or an individual who acted as the official mediator of community or family disputes.

From NIDR's *Community Dispute Resolution Manual: Insights and Guidance from Two Decades of Practice*

BENEFITS OF USING A COMMUNITY DISPUTE RESOLUTION PROGRAM

Proponents of community dispute resolution programs are often asked to explain what motivates a potential user to consider their service. The incentives include:

User accessibility Most mediation programs are able to schedule their sessions at night or on weekends, and, often, the sessions are held at locations familiar and comfortable to both parties.

Time efficiency Mediation sessions are scheduled quickly once the dispute has surfaced.

Affordability Services are free or provided at lower fees than most traditional litigation options, i.e., attorney and court fees.

Privacy Sessions are held in private settings away from the public forum of the courtroom.

Problem-solving orientation Underlying issues of the conflict are discussed.

Reflection on social and community values Because the mediators often are residents of the communities from which the disputes have arisen, the disputants can express themselves with the expectation that their values will be appreciated.

Judicial encouragement Judges recognize the benefits of resolving disputes outside the adversarial court system and encourage or require parties to use the services.

Education and empowerment The disputing parties learn how to negotiate and resolve personal and community conflicts.

Preservation of relationships Mediation has the potential to sustain ongoing relationships.

From NIDR's *Community Dispute Resolution Manual: Insights and Guidance From Two Decades of Practice*



NIDR AND THE WORLD

NIDR has established an international program that has its roots in contributions we have made to the development of dispute resolution activities in South Africa. Beginning in 1990, a succession of South African lawyers served as fellows at NIDR while obtaining advanced degrees at American law schools. At the Institute, they inaugurated a channel of communications between the U.S. dispute resolution community and its growing counterpart in South Africa. Vasu Gounden, the first of the fellows, summarized the need for dispute resolution in that community:

"South African society is confronting conflict and change of great complexity. Its future is uncertain. National negotiations to end apartheid are underway. Violent conflict flares regularly in regions and communities. The potential for civil war is evident."

"A small number of dispute resolution specialists and organizations is emerging. The leaders of this nascent conflict resolution community are striving to play a critical role in channeling local and regional conflict into productive dialogue, so that national negotiations have a better chance to succeed. For the longer term, they seek to introduce the concept of peaceful conflict resolution within a new society and its legal and social institutions."

The Institute's contributions to the development of dispute resolution in South Africa have included technical assistance, help in fund raising, and a continuing, informal flow of advice and encouragement to colleagues who are working against tough odds. With NIDR's

help, South African organizations have raised about \$600,000 from U.S. funders.

Technical assistance has gone to the Institute for a Democratic Alternative for South Africa, the Independent Mediation Service of South Africa, the Centre for Intergroup Studies, the Community Dispute Resolution Resource Committee, and the African Centre for the Constructive Resolution of Disputes (ACCORD).

In early 1992, NIDR's Board of Directors established a full-fledged international program. Before that, the Institute had become a regular stop on the itinerary of foreign visitors interested in dispute resolution. Overseas requests for our publications were growing rapidly. The new program gave a formal structure to NIDR's South African and other overseas projects.

One of the new program's first ventures was providing assistance in the creation of a training program on environmental negotiations and dispute resolution in collaboration with the United Nations Institute for Training and Research and the World Foundation for Environment and Development. As the three organizations noted in establishing the Geneva-based project:

"The world community faces unprecedented challenges concerning the balance between environmental protection and economic development at local, regional and global levels. Experience indicates that environmental problems complicate conventional international negotiations for many reasons, including scientific uncertainty, complex linkages with economic, political and

social issues, and solutions that require the committed participation of many groups.

"Hence, the need to provide dispute resolution training for government officials and intergovernmental negotiators who deal with environment and development issues and disputes. The project envisioned conducting training workshops in connection with major international environmental negotiations and conflict resolution initiatives."

In other activities under the international program, NIDR helped the National Endowment for Democracy administer a grant to Ecuador's Centro de Investigaciones sobre Derecho y Sociedad (Center for Research on Law and Society). The grant supported a project aimed at providing the native population of Ecuador with a means of dispute resolution which is compatible both with indigenous culture and with Ecuador's official legal system.

Also in Latin America, the Institute, at the request of the U.S. Agency for International Development, provided technical assistance to the Mediation Council of Jamaica in its dispute resolution training efforts.

CONFLICT RESOLUTION AND THE WORLD'S ENVIRONMENT

In 1992, we joined with the World Foundation for Environment and Development and the United Nations Institute for Training and Research in publishing a book exploring the U.N.'s role in settling environmental conflicts. Gro Harlem Brundtland, the prime minister of Norway, says of *International Environmental Conflict Resolution: The Role of the United Nations*:

"Balancing the need to protect the environment with improvement of human social and economic welfare can lead to conflicts of interest at local, national and international levels. The United Nations Conference on Environment and Development held in Rio... made some progress towards addressing the competing claims for protection and development of the world's natural resources. Now the challenge is for the United Nations to play a role in preventing and resolving international conflicts. This book examines the appropriateness of United Nations organs in environmental conflict resolution and stresses the importance of managing natural resources in a sustainable fashion.... If we fail to implement sustainable development approaches, it may have serious consequences for our security. This book makes a welcome contribution in an area of urgent importance."

Copies of the book are available through NIDR's publications department.

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NURSING HOMES

With the graying of the nation's population, more and more Americans are entering nursing homes. They are settings that call "for maximum flexibility, not to say continuous alertness, sensitivity and inventiveness, to cope with a range of conflicts that affect the quality of care—resident against staff or nursing home, staff against staff or nursing home, family members against family members or against the wishes of their confined relative." This quotation is from an evaluation of a two-year, \$250,000 NIDR program to increase and improve the uses of dispute resolution in settling conflicts that affect the welfare of the vulnerable elderly and infirm in nursing homes.

Our program in 1989-90 consisted of demonstration training projects conducted in Georgia and the San Francisco Bay Area. Its principal product is a 180-page training manual designed, in the manual's words, to provide "tools for those who seek to prevent conflict in nursing homes whenever possible and to manage it effectively when it occurs." The manual emphasizes the importance of instilling dispute resolution approaches into the operations of nursing homes, observing that:

"Handling conflict effectively improves quality of care. It takes tremendous energy to maintain ongoing conflict (whether openly expressed or covert). At best, continuing conflict becomes an enormous distraction from the real job at hand—caring for residents. Thus if administrators, staff, ombudsmen and others possess good conflict resolution skills, residents will be the ultimate beneficiaries. But everyone else will benefit, too."

The manual, *Communication and Conflict Resolution Skills for Nursing Homes: A Training Series in Five Modules*, is available through the Institute's publications department.

Besides producing the manual, the program's other goals were to (1) provide ombudsmen and nursing home advocates with training and technical assistance in dispute resolution techniques; (2) conduct special sessions in dispute resolution for nursing home administrators, personnel, and residents' families; and (3) assess the effectiveness of using volunteer mediators, from outside the nursing home environment, to help resolve hard-to-handle conflicts. The evaluation from the California-based Center for Social Redesign found that program participants who successfully completed the training were better able to apply, adapt, and integrate dispute resolution techniques to everyday conflicts.

Joining with NIDR in funding the nursing homes program were the Robert Wood Johnson Foundation, Henry J. Kaiser Family Foundation, Retirement Research Foundation, Pfizer Corporation, and Service Employees International Union.

RESEARCH

CREATING A RESEARCH PRESENCE

To help research into matters involving dispute resolution keep pace with the field's rapid growth, a total of \$2.25 million was awarded to 47 projects from 1988 to 1991. The goals of the Fund for Research on Dispute Resolution, housed at NIDR and supported by the Ford Foundation, were to create a research presence in dispute resolution and to develop theory and increase understanding of the relationship among disputing, dispute resolution, and important social problems.

Funding went to 47 projects representing a widely diversified assortment of subjects, including this sampling:

- how grass roots environmental groups use the court system to resolve controversial policy conflicts
- construction of an economic model to determine whether negligence or strict liability is more efficient in preventing medical malpractice
- the connections among power, language use, and the emergence of violence in Philadelphia's MOVE case

- a comparison of the impact of parent-child mediation, continued judicial intervention, or mental health counseling services on family functioning and conflict

- how managers resolve disputes within organizations

- a comparison of dispute handling by public courts, private courts, and judges

- the role of race and class in disputes between nurses and nursing assistants.

Results of the projects have begun to be published in scholarly journals and other forums. NIDR has published a series of working papers based on research results of selected projects.



COMMUNICATIONS

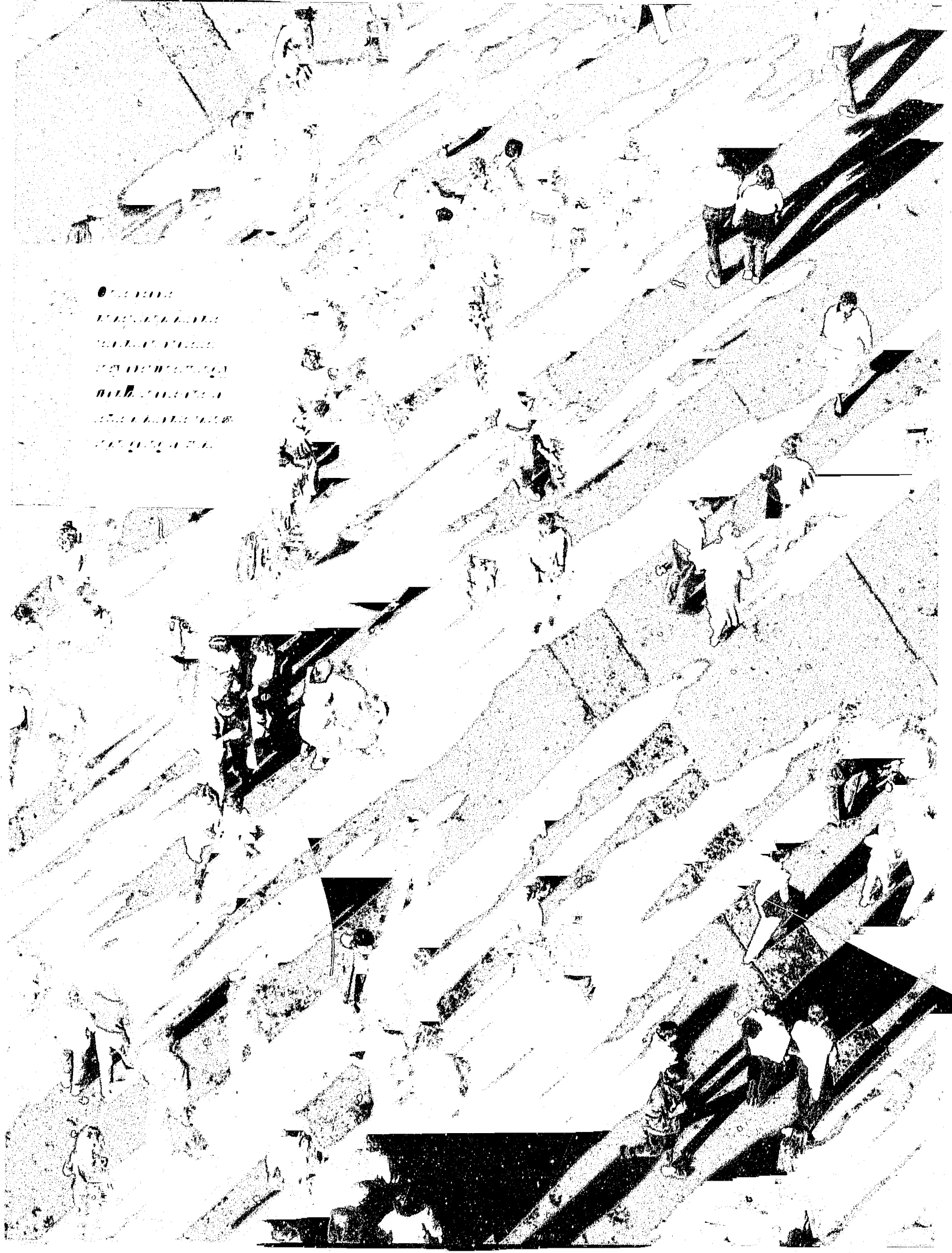
The job of NIDR's Communications Program is to disseminate essential information about dispute resolution. For example, we:

- confer several times a week with reporters, editors, and broadcast directors in helping them prepare news stories and opinion articles on the rapidly growing and diverse uses of dispute resolution;
- worked closely with the authors of Universal Press Syndicate's *The Mini Page* in preparation of a series telling children about dispute resolution, reaching more than 220 newspapers and over nine million readers;
- publish an interview series in which statesmen and authors discuss peacemaking;
- collaborated with the Federal Trade Commission in producing a report for consumers on dispute resolution.

Through these and other undertakings, we hope not only to inform our fellow citizens about the advantages of the tools of dispute resolution to their lives, but also to help our colleagues in dispute resolution achieve recognition for their efforts.

Several NIDR initiatives directly serve the dispute resolution field. *Dispute Resolution FORUM*, circulated to 16,000 readers, regularly examines emerging issues in the field. Our Communication Program manages the publication and distribution of more than 100 books, reports, and other materials. (A publication list appears on page 69.) The program helps to fund meetings of the Society of Professionals in Dispute Resolution, and its commissions focusing on the tough policy issues of qualifications and ethics. Through the program, we established the Frank E. A. Sander Lecture Series at annual meetings of the American Bar Association.

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AMERICAN ATTITUDES TOWARD DISPUTE RESOLUTION

The pages of this report suggest the notable advances that the people who work in dispute resolution have made—in the courts, in the states, in innovations at the grass roots, in community justice centers, in universities and colleges, in remarkably diverse areas of American life. But what about the American people toward whom all this effort and progress is directed? What do they think about dispute resolution? In 1992, we sponsored the first nationwide survey ever of public attitudes toward using structured dispute resolution processes such as mediation and arbitration.

The survey's results show that once people understand dispute resolution processes, they overwhelmingly would choose one of them to settle a dispute rather than going to trial. Specifically, the survey shows that with just minimal instruction about dispute resolution, 42 percent of 822 respondents say it is very likely they would use mediation or arbitration to settle a conflict and another 40 percent say it is somewhat likely.

According to the survey analysis "the majority of people say the most important thing about solving a problem is that it come to a fair conclusion (41 percent) or that they actively participate in its resolution. These people value most the peace of mind and sense of self-satisfaction that stem from fair solutions and active participation." The survey found that another ten percent in the sample say that winning the argument is the most important element of problem solving.

When the survey was made public in June 1992, Sandy D'Alemberte, president of the American Bar Association (ABA), called the results "encouraging for all of our long efforts to make dispute resolution process common practice for the public and the legal community." The ABA joined with NIDR in releasing the results.

Yet the survey marked just the beginning of what should be an ongoing inquiry into both the barriers to wider acceptance of dispute resolution and the refinements that should be made to existing dispute resolution services to make them fairer, more accessible, and more responsive to the needs of the public at large.

COLMAN McCARTHY

Mediation Offers Better Way of Winning

In separate civil cases this month, a pair of New York state judges awarded mammoth and record-setting settlements to two citizens. One is a whistle-blower who filed a suit based on evidence that his military contracting company had been systematically defrauding the Pentagon on contracts worth more than \$1 billion. His award was \$7.5 million, about 10 percent of the overcharges. In the second case, a Utica nurse received \$5.4 million for pain and suffering. She contracted the AIDS virus during a hospital incident when stuck in the palm by a hypodermic needle containing the blood of a prisoner. Two prison guards were ruled negligent in restraining the patient who was physically abusive to the medical team.

At about the same time that these cases had reached the end of litigation, another judicial story was unfolding, one that had far less splash but was of equal newsworthiness. It was about the growing national movement involving mediation: the major alternative to litigation and the massive clogging of U.S. Courts. The National Institute for Dispute Resolution (NIDR), a Washington-based organization that for 10 years has been awarding grants to innovative groups working on nonviolent solutions to conflicts, released a survey that examined public opinion on preferences in settling disputes.

Until now, little research was available on what citizens understood about nonviolent dispute resolution and whether or not they would choose the proven methods of mediation, arbitration and conciliation instead of hurtling headlong into litigation. More than 18 million civil cases were filed in state courts alone in 1990, a 5 percent increase over 1989. Everything disputable, it appears, has someone calling a lawyer to go at another lawyer.

That's changing. The NIDR survey of 822 people found that once citizens were aware that alternatives to litigation were available—such as mediation and arbitration—those choices were preferred. NIDR reported that with only minimal education about non-litigation methods of dispute resolution, more than 80 percent of those polled are likely or very likely to use them. That would mean a potential lowering of state and federal court cases by 6 million to 10 million annually.

Informing the public of the options is the door that needs to be opened, because large numbers of citizens want to pass through it. Money is one reason. NIDR tells of a Northern California study in which divorcees—when litigated—average \$12,000 in cost but when mediated through a dispute resolution program average \$5,000.

With little publicity, a national movement—as principled as it is needed—has been taking hold in the past decade. The Oregon Statowide Office of Mediation, the Ohio Dispute Resolution and Conflict Management Commission, the Minnesota Office of Dispute Resolution and the New Jersey Center for Public Dispute Resolution are among the programs now operating in 50 states. More than 140 law schools include dispute resolution courses among the electives. A 1988 American Bar Association conference on education and mediation led to conflict resolution programs in some 2,000 grade schools and high schools. Court-ordered arbitration programs are in 23 states.

What's being discovered is that mediation is superior to litigation: less money, less time and less *angst*. It should have been that way all along, especially for lawyers. The greatest lawyer of the 20th century, Mohandas Gandhi of India, wrote of his 20 years in South Africa and the art of mediation: "My joy was boundless. I had learned the true practice of law. I had learned to find out the better side of human nature and to enter men's hearts. I realized that the true function of a lawyer was to unite parties riven asunder. The lesson was so indelibly burnt into me that a large part of my time during the last 20 years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby—not even money, certainly not my soul."

The National Institute for Dispute Resolution, funded by Ford, MacArthur, Hewlett and other prime foundations, has awarded \$8 million in grants since 1983. At their core, mediation programs deal in keeping temperatures low: settling disputes when they are small and halting the process by which they may become large, out-of-hand and often lethal. It's the difference between stopping a fire as a lick of a flame or a blazing inferno. When calls go out for the inevitable "something" to be done about America's overworked courts, mediation ranks high among the most effective somethings.

Reporters and editors call upon NIDR for information to help them prepare news stories and opinion pieces. Coleman McCarthy, writing in the *Washington Post*, said "... a national movement, as principled as it is needed, has been taking hold in the past decade."

NIDR staff members worked closely with the authors of *The Mini Page*, a Sunday newspaper supplement that reaches nine million readers, in developing a two-installment report telling kids about dispute resolution.



By BETTY DEBNAM

SUNDAY, May 17, 1992

From The Mini Page by Betty Debnam © 1992 Universal Press Syndicate

It's Cool to Learn

How to Settle Differences



A conflict is a disagreement between one or more people.



Resolution is a settlement between them.



Sam broke Bill's new computer game. They were best friends until this happened. Now they aren't speaking.

How do you handle conflicts? Put a check if you:

Every day people have disagreements. It's hard to go through life without them.

We all grow up learning how to handle conflict by seeing how others handle it.

Some of us learn from parents, teachers, friends, or even TV.

In many schools, kids are taking lessons in conflict resolution.

By learning these skills now, they can become better citizens who know how to settle things. They have learned a better way.

Conflict is not all bad. Conflict often brings about changes. Often these changes are for the best.

Consultants: National Institute for Dispute Resolution; Stephen V. Nordfjord, coordinator, Writing and Speaking Program, and Robin Amann, guidance counselor, Montgomery County, Md., Public Schools; Joseph O'Brien, professor of social studies, University of Kansas; Federal Mediation Conciliation Service.

SHE REALLY DIDN'T MEAN THAT. Do nothing because you realize that the problem is temporary and you will just let it go away.

THAT'S FINE WITH ME. Decide to just give in and accept the changes someone wants.

SOMETIMES THIS IS BEST. Run away and try to avoid the person or the situation.

I DON'T CARE IF I'M NOT INVITED. Pretend that the problem is not there and does not bother you when it really does.

I NEED YOUR HELP. Go to a parent, teacher or principal and ask them to settle it.

Fight and argue. Unfortunately, some kids are growing up thinking this is the best way to settle things.

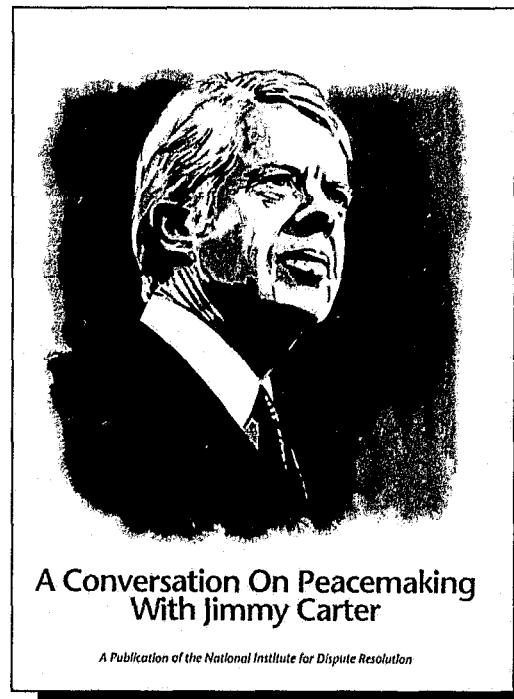
THE
PEACEMAKERS'
SERIES

NIDR's Communications Program publishes a series of conversations with leaders and authors who have an established interest in peacemaking. Professor James Laue conducted the first conversations in the series, interviewing former President Jimmy Carter and Carlos Fuentes, the Mexican novelist, historian, and diplomat.

FROM A CONVERSATION ON PEACEMAKING WITH JIMMY CARTER

"People of my age who reached positions of some political responsibility during the civil rights years were confronted with one of the most tortuous, self-inflicted wounds that a society could suffer. To watch the slow evolution into racial harmony—to see the elimination at least of legal discrimination—was something that was both emotional as well as memorable. Out of civil rights came a commitment to human rights."

"One of my great disillusionments when I reached the White House was to see how inadequate was—and still is—the international mechanism by which peace can be brought to a troubled area. The science of waging war is very highly developed, but waging peace is still in the embryonic stage even at this point."



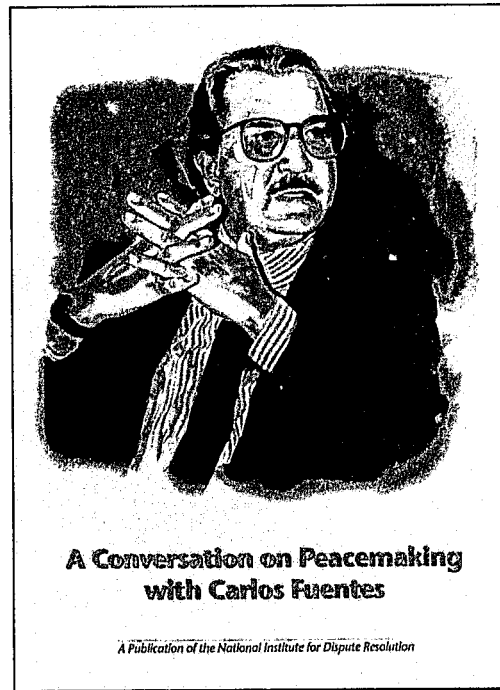
"There's no doubt in my mind that the greatest violator of human rights that we know is armed conflict."

FROM A CONVERSATION ON PEACEMAKING WITH CARLOS FUENTES

“Sometimes revolution can be an outgrowth of a lack of negotiating capacity, cultural understanding, or of a lack of understanding the costs of true growth and development.”

“The Central American people want the possibility of fostering their own institutions, and to move beyond very old and anachronistic situations, domination by oligarchies, the army, and elitist institutions which leave the majority of people outside the pale and outside the possibility of creating a society of growth, justice, and law.”

“I return to... emphasizing the importance of abiding by the international laws and treaties we have accepted. We have to give strength to the concept of international law, which has been downtrodden and despised over the long period of the Cold War.



“In Latin America, we have to go from the concept of population, or inhabitants, to the concept of citizens. This road... requires a lot of conciliation, negotiation, and a lot of thinking about law and our dealings with our fellow citizens. It also takes a lot of communitarian thought.”

W

*hat I am
thus advocating is a
flexible and diverse
panopoly of dispute
resolution processes,
with particular types of
cases being assigned to
differing processes.*



Frank E. A. Sander
From the Pound Conference:
Perspectives On Justice in the Future
1979

THE SANDER LECTURE SERIES

Frank E. A. Sander, a professor at Harvard Law School, is one of dispute resolution's most creative and distinguished pioneers. To honor him, NIDR's communications program supports a lecture series in dispute resolution held at the annual meeting of the American Bar Association (ABA).

Sander's "brilliant approach to dispute resolution," says former Attorney General Griffin B. Bell, "was of a courthouse to which one would repair when seeking the resolution of a dispute. There the applicant would be interviewed by trained personnel to find the best forum. There would be doors that would lead to a fact-finding process, or to mediation, or to arbitration, or to the regular trial system."

NIDR was pleased to help provide start-up funding for the ABA's experiments with the "Multi-Door Court House" in the 1980s and now to commemorate Sander's work. Since publication of NIDR's last progress report, Bell and Malcolm M. Lucas, chief justice of the Supreme Court of California, have delivered the Frank E. A. Sander Dispute Resolution Lecture at ABA meetings. Here are excerpts:

I have seen disputes where there was a lack of communication and the problem was resolved simply by bringing about an understanding of the facts having to do with the disputes.



GRIFFIN B. BELL

I was selected by the parties in a complex case to be the mediator... a few years ago. We had a meeting of an hour with counsel two months in advance of the mediation, agreed on short briefs, and began the mediation by letting the lawyers argue for four hours on each side with their clients present. The next morning was devoted to my giving a critique of the case... and suggesting that we try for a settlement.

The parties agreed and we were able to settle the case before noon. All the papers were drawn and the case was dismissed by four in the afternoon. The parties were well satisfied with the result, although the final settlement was not what either wanted. The satisfaction came from the fact that the settlement was something to which they had agreed.

As a lawyer, I have seen... disputes where there was a lack of communication and the problem was resolved simply by bringing about an understanding of the facts having to do with the dispute. I suppose this is the kind of result that is often brought about by the neighborhood justice center or in the old days by the justices of the peace.

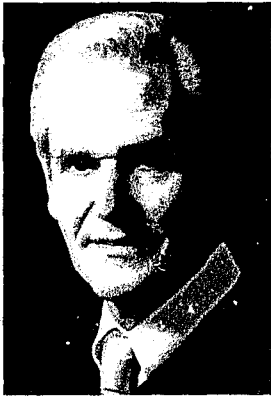
Oftentimes, and particularly now that a degree of incivility has crept into the litigation process as between counsel, it is necessary to get assistance from the court or from some third party source to assist in bringing about

settlements. This is often true in complex cases where the dispute can be resolved by looking at damages rather than liability, a form of reverse bifurcation. There are many judges who will not assist in settlement if the details are such that the judge might later have to consider them as facts in a trial. Some judges will assist nevertheless. The district court in San Francisco has a court rule that allows one to ask for a settlement conference before a settlement judge. A different judge then is assigned to the settlement conference so that the trial judge to whom the case is assigned has nothing to do with the settlement....

It takes thinking judges and lawyers who have uncommon devotion to the administration of justice to improve the system. There has always been an ethical canon that every lawyer, and this surely includes judges, has a duty to improve the system of justice. We can improve the system. We can make justice more efficient, less costly and with a needed degree of dispatch.

W

*e have yet to see
"Perry Mason, Mediator"
in the line-up of network
shows.*



MALCOLM M. LUCAS

Endorsement of ADR (alternative dispute resolution) is not universal—nor should it be without some caveats. Some lawyers and scholars suggest ADR is IDR—inappropriate dispute resolution. Some in the legal community fear ADR will result in the ultimate loss and practical unavailability of the constitutional right to trial by jury—and threaten the ability of citizens to vindicate their rights effectively. Others, I am sad to say, even place concerns about effects on their livelihood above the interests of the system as a whole.

Our existing mode of public dispute resolution serves a variety of functions. It assures people justice can be had. It aids in and memorializes the development of the law. It establishes precedent and thus predictability. It avoids having to reinvent the wheel each time the same type of conflict occurs. It teaches what is expected of members of society, and about what conduct—personal and business—will or will not be tolerated. It gives those who serve as jurors a stake in and feeling of contribution to the justice system.

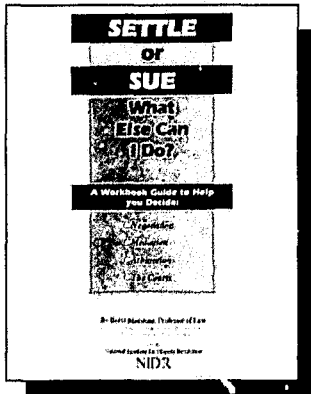
Moreover, on a practical level, the availability of trial as a last resort is often the engine that drives ADR: Without a firm trial date, parties may have no incentive to settle.

I want to stress that to be pro-ADR does not require one to be anti-lawyer. I do not

believe ADR's growth has been driven only by negatives. It is not just a matter of too few courtrooms or a poor perception of lawyers. Positive facets of ADR itself also account for its rise.... Some are measurable in dollars and cents—others in personal satisfaction. ADR methods can give people a chance to participate more directly in a process they then have a better shot at understanding. It can satisfy the need for at least partial justice while saving money and time and it leaves court dockets clear for cases that truly require trials.

Given so many reasons to explore ADR, reluctance to do so often comes from a lack of knowledge—on the part of the public, the bar, and even judges—about what ADR really is. Even its most ardent advocates admit ADR encompasses a confusing mix of words, procedures, and practices that differ from site to site. Perplexing as our traditional system may be, lawyers, judges, and most members of the public are at least familiar with the basic rules of the game. We have yet to see "Perry Mason, Mediator" in the line-up of network shows.

For ADR to become truly integrated in our culture, American lawyers as a group must undergo what futurists call a paradigm shift, a move to a fundamentally different way of perceiving and valuing something.



SETTLING CONSUMER DISPUTES

NIDR has had several projects that urge consumers to consider using various dispute resolution processes in settling their disputes. In a joint project with the Federal Trade Commission (FTC), in late 1993 we sent to 1,000 radio stations a series of 15-, 30-, and 60-second public service announcements that alerted consumers to the helpful features of dispute resolution programs. A second NIDR-FTC project was publication of a widely-distributed booklet, *Road to Resolution: Settling Consumer Disputes*. In addition, NIDR published in 1993 *Settle or Sue: What Else Can I Do?*, a workbook that helps readers decide whether to use negotiation, mediation, arbitration, or the courts.

“When you buy a product or service, you expect it to work. If there’s a problem with the purchase, you try to resolve it with the company. If you can’t settle a complaint this way, you seek results in other ways. Sometimes you have to go to court. But there is another, increasingly available option: a dispute resolution program.

“Dispute resolution programs are practical alternatives to more costly litigation. They seldom require attorneys and can be quicker, cheaper, more private, and less stressful than going to court.

“Because of these advantages, many businesses and other organizations have developed new and flexible dispute resolution programs for consumers. What’s more, many state and federal courts now encourage you to

consider dispute resolution programs before resorting to litigation....

“Three types of consumer programs use mediation or arbitration. Some programs are directly sponsored by industry or developed with industry’s help. Others are sponsored by the courts and may be mandatory or voluntary. Still other programs are voluntary and independent of industry or government.”

From *Road to Resolution: Settling Consumer Disputes*. A joint publication of NIDR and the Federal Trade Commission.

“Conflict is a natural way of life. It is normal to feel frustrated or angry when you have a problem. The stress of disputes with employers, institutions, neighbors, or other persons can take productive energy from our lives. Stress can turn to anger and adversely affect our health and important relationships. It is often difficult to decide what to do, and how to do it. You can, however, learn how to deal with disputes more productively and efficiently.

“You may think you have to go to court to settle a dispute with a friend, neighbor, boss, relative, store, and landlord. Many times going to court is unnecessary. You can use a different method to solve your problem. For example, two homeowners who share a joint driveway may think they must go to court to limit how the driveway should be used. Instead, together these two homeowners may find an acceptable solution by direct negotiation, mediation, or arbitration.”

From *Settle or Sue: What Else Can I Do?*
A workbook published by NIDR.

Dispute Resolution FORUM
is published several times a
year as a medium for
discussion and debate of
the principal questions in
the field.

WINTER 1993

FORUM

NATIONAL
INSTITUTE FOR
DISPUTE
RESOLUTION

INTERNATIONAL PERSPECTIVES ON DISPUTE RESOLUTION

"HAVE PROCESS, WILL TRAVEL" REFLECTIONS ON DEMOCRATIC
DECISION MAKING AND CONFLICT MANAGEMENT PRACTICE ABROAD
Christopher W. Moore

THREE INTO TWO WON'T GO? FROM MEDIATION TO NEW
RELATIONSHIPS IN NORTHERN IRELAND
Duncan Morrow and Derick Wilson

THE MOVEMENT TOWARD CONFLICT MANAGEMENT IN THE FORMER
SOVIET UNION
Valeria Votchal

DEFUSING VIOLENCE IN SOUTH AFRICA: THE MOVE TO ESTABLISH
COMMUNITY DISPUTE RESOLUTION CENTERS
NIDR Interviews Edwin Molalehi

THE MEDIA AS MEDIATOR
Melissa Baumann and Hannes Siebert

COMMUNITY-BASED DISPUTE RESOLUTION IN SRI LANKA
Punchi Bandara Herat

PRESERVING CULTURAL IDENTITY IN THE INTRODUCTION OF DISPUTE
RESOLUTION TECHNIQUES
Elizabeth Garcia de Sylva and Alberto Wray

THE PRACTICAL ADVANTAGES OF ADMINISTERED ARBITRATION
Robert Coulson

INTERNATIONAL ENVIRONMENTAL CONFLICT RESOLUTION:
MOVING BEYOND RIO
Preston T. Scott and Jon Martin Trolldalen

NIDR

PUBLICATIONS



Central to achieving NIDR's mission is the dissemination of new knowledge about dispute resolution. To this end, we publish and distribute a variety of books, research reports, periodicals, guides, teaching materials, and videotapes. The materials listed on the following pages form a tangible legacy of NIDR's first ten years.

GENERAL PUBLICATIONS

Communication and Conflict Resolution Skills for Nursing Homes: A Training Series in Five Modules.

Hoy Steele, principal author, and NIDR
1992

This training manual is designed for use by long-term-care ombudsmen, all levels of nursing home staff, and residents' family members.

Community Dispute Resolution Manual: Insights & Guidance from 2 Decades of Practice

NIDR Community Justice Task Force
1991 90 pp.

This self-assessment guidebook is the result of a NIDR-initiated two-year project looking at community justice centers around the U.S.

A Conversation on Peacemaking with Jimmy Carter

National Institute for Dispute Resolution
1992 11 pp.

The 39th President of the United States talks about his work for peace, his convictions, and his hopes for the future in a conversation with Professor James Laue of George Mason University.

A Conversation on Peacemaking with Carlos Fuentes

National Institute for Dispute Resolution
1992 8 pp.

The prizewinning Mexican novelist, historian, and diplomat talks about his work and his hopes for peace and development with Professor James Laue of George Mason University.

The Dilemmas of Mediation Practice: A Study of Ethical Dilemmas and Policy Implications

Robert A. Baruch Bush
1992 36 pp.

A study of ethical dilemmas, policy implications, and the standardization of mediation practice.

Dispute Resolution and the Courts: An Annotated Bibliography

Deborah Croom
1989 69 pp.

A bibliography of information citing 577 books, journal articles, and other materials that deal with court-based dispute resolution developed for judges, court administrators, lawyers, law professors, and students.

Dispute Resolution and the Courts: A Report of the National Conference on Dispute Resolution and the State Courts

Published by NIDR in collaboration with the State Justice Institute and the National Center for State Courts.
1988 28 pp.

The conference examined court-annexed dispute resolution methods.

Dispute Resolution Education and Training: A Video Reference Guide

Jay Folberg and Karen E. Claus
1989 167 pp.

A first-of-its-kind reference guide that lists more than 100 videotapes dealing with dispute resolution for use in education and training. Each entry describes the processes depicted, gives running times and prices, and notes how the tapes can be obtained.

Dispute Resolution in America: Processes in Evolution

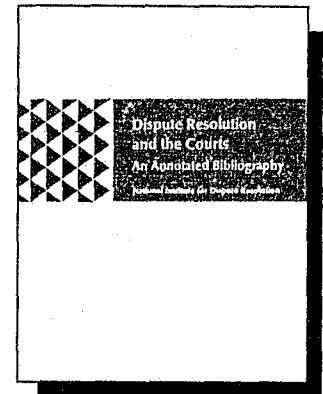
Jonathan B. Marks, Earl Johnson, Jr., and Peter L. Szanton
1984 80 pp.

A concise guidebook which defines and describes dispute resolution both within the broad context of litigious and non-litigious systems, and also for resolving disputes which specifically use mediation, arbitration, and kindred methods.

Dispute Systems Design

1989 50 pp.

Several articles excerpted from the October 1989 issue of *Negotiation Journal* describe how dispute resolution procedures can be most effectively used to form an integrated system for dealing with disputes that arise in nearly all relationships, organizations, and communities.



Divorce Settlements: Comparing Outcomes of Three Different Dispute Resolution Mechanisms

Marilyn L. Ray, Cornell University
1988 228 pp.

This study compares the results of divorce settlements reached through three different dispute resolution mechanisms.

ERISA Early Expert Evaluation: A Dispute Resolution Model for Pension Benefit Claims

Marilyn Park, Project Director,
The Pension Rights Center
1991 25 pp.

This report describes a dispute resolution model designed to settle private pension disputes through the voluntary participation of the parties in a low-cost process that provides them with a neutral expert's evaluation of the merits of their positions and the likely outcome of litigation.

Interim Guidelines for Selecting Mediators

Test Design Project
1993 38 pp.

This publication was created to help secure the highest standards from mediators practicing in the field of dispute resolution. These guidelines are an attempt to provide tools for programs wishing to test mediators before, after, or in lieu of training them.

International Environmental Conflict Resolution: The Role of the United Nations

Jon Martin Trollidalen
ISBN 0-9635465-0-3
1992 225 pp.

This book examines the role of the United Nations in international conflicts concerning river systems, coastal areas, forestry, biodiversity, and land resources.

Mandated Participation and Settlement Coercion: Dispute Resolution as it Relates to the Courts

Law and Public Policy Committee, Society of Professionals in Dispute Resolution
1991 28 pp.

A report on issues related to mandated participation and settlement coercion in dispute resolution processes.

**Mediation: The Coming of Age—
A Mediator's Guide to Serving the Elderly**

The American Bar Association Standing Committee on Dispute Resolution and the Commission on Legal Problems of the Elderly.
1988 37 pp.

The guide assists mediators in using their skills to help the nation's growing elderly population.

**National Survey Findings on:
Public Opinion Towards Dispute Resolution**

1992 37 pp.

This report presents findings from a national benchmark survey on public opinion towards dispute resolution. The results presented here are from a national telephone survey of the general public, consisting of 822 adults aged 21 and older living in the continental United States.

**New Approaches to Resolving
Local Public Disputes**

Denise Madigan, Gerard McMahon, Lawrence Susskind, and Stephanie Rolly,
Harvard University
1990 48 pp.

These materials provide six case studies, a guide to mediated negotiations, and selected readings.

**Proceedings of the Workshop on
Long-Range Funding Alternatives for
Dispute Settlement Centers**

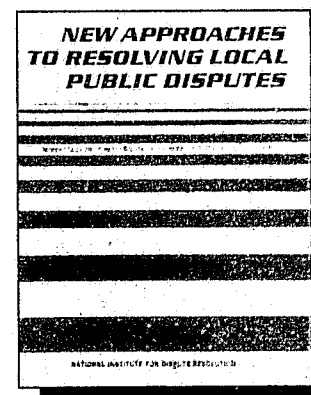
Lucy Knight and Jean Zoubek,
Durham Dispute Settlement Center
1987 95 pp.

Highlights information from a workshop on sources of funding for dispute settlement centers.

**Public Benefits Issues in Divorce Cases:
A Manual for Mediators**

The Center for Law and Social Policy
1988 61 pp.

Assists mediators and advocates in safeguarding the economic security of low-income divorcing couples and their children.



**Resolving Disputes in Nursing Homes:
A Collaborative Approach**

Nancy Hanawi and Oscar B. Goodman,
The Center for Social Redesign

1992 51 pp.

An evaluation of a two year demonstration project intended to help nursing home advocates and staff to be more responsive to the needs of residents by applying mediation and other dispute resolution techniques to conflicts arising there.

Road to Resolution:

Settling Consumer Disputes

Federal Trade Commission in
cooperation with NIDR

1991 18 pp.

A guidebook which describes the various dispute resolution programs available to consumers; also contains a state-by-state resource directory of consumer dispute resolution programs.

Settle or Sue: What Else Can I Do?

Beryl Blaustone, CUNY Law School

1993 36 pp.

This workbook is designed to guide consumers through the various methods of dispute resolution. It is written to appeal to a wide audience and includes a glossary of dispute resolution terms.

RESEARCH

The Working Papers Series: Research supported by grants from the Fund for Research on Dispute Resolution.

Dispute Processing in the Workplace: The Role of Gender Stereotypes in Arbitral and Judicial Treatment of Picket-line Misconduct

Diane Avery

1992 30 pp.

An analysis of the role of gender stereotypes in the construction of the legal boundaries for strikers.

Dispute Domains and Welfare Claims: Processing Disputes in a Work Incentive Program

James Holstein and Gale Miller

1992 16 pp.

A detailed account of how disputes arise and are handled in an intergovernmental welfare program.

Procedural Fairness in the Workers' Compensation Claims Process: The Injured Worker's Perspective

Karen Roberts and Sandra Gleason

1992 22 pp.

An examination of questions concerning process and fairness in workers' compensation claims.

Caseworker-Family Negotiations in Child Maltreatment Cases

Patricia Tjaden and Nancy Theonnes

1992 32 pp.

An analysis of the decision-making process underlying the child protection system.

Levels of Interracial Conflict: Manifestation of Symbolic and Competitive Racism

Dionne Jones and Monica Jackson

1992 22 pp.

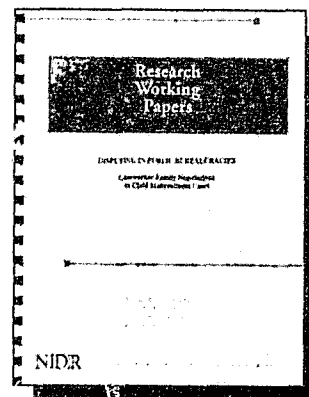
A theoretical examination of interracial violence in our communities and cities.

Of Cabbages and Kings and Why the Sea is Boiling Hot: How Communities Decide to Fight

Beth Roy

1992 16 pp.

A look at communities and what influences the escalation of conflict within and between them.



Alternative Dispute Resolution and the Puerto Rico Legal Curriculum: A Proposal

Alberto Omar Jimenez and Celine Romany,
Inter-American University School of Law
1986 75 pp. (English or Spanish)

These materials, to develop the curriculum of Puerto Rican law schools, include a bibliography and an outline for a civil procedure course which provides an overview of the ADR field in Puerto Rico and the U.S.

Alternatives to Simulation for "Alternatives to Litigation": Use of Process Observation to Teach Alternative Dispute Resolution

Robert A. Baruch Bush,
Hofstra University School of Law
1986 43 pp.

This article describes and evaluates the genesis of an experimental course titled "Alternatives to Litigation," which employs a unique methodology of observation in teaching.

Arbitration Exercises

Thomas G. Field, Jr. and William S.
Van Royen, Franklin Pierce Law Center
1986 74 pp.

These five computer-assisted exercises, which take the form of formatted print-outs and are accompanied by the factual scenarios, are practical and suitable for use in the first-year law school curriculum.

Arbitration in the Securities Industry: Too Much of a Good Thing?

David A. Lipton, Catholic University
1985 45 pp.

This study was conducted to determine the extent to which inefficient use is being made of the arbitration process offered by the securities industry to resolve disputes between customers and brokers.

Beyond the Adversary Model: Materials on Mediation and Alternative Approaches to Law Practice, Volumes I and II

Center for Law and Human Values
1984 Vol. I - 378 pp.; Vol. II - 211 pp.

This packet of readings provides a source of information and referral on the topics of mediation and other alternatives to exclusively adversarial approaches to "lawyering".

A Case Study of Consumer Problems and Alternative Dispute Resolution: The FTC-GM Settlement Establishing One-Way Binding Arbitration Administered by Better Business Bureaus

Arthur Best, New York Law School
1985 22 pp.

This study outlines the issues and procedures of the 1983 settlement between the Federal Trade Commission and General Motors, which sold cars with high-failure-rate components to customers without disclosing that information.

Cases and Materials on Arbitration

George I. Wallach and William H. Henning,
University of Missouri-Columbia
1985 97 pp.

These cases and materials provide a basic introduction to arbitration and contain a review article and the complete text of the Uniform Arbitration Act.

Civil Procedure I (Part 1) (Course Materials)

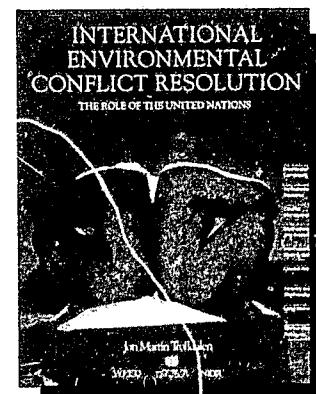
David M. Trubek,
University of Wisconsin Law School
1985 199 pp.

These materials incorporate the teaching of Alternative Dispute Resolution into the basic civil procedure course at the University of Wisconsin Law School.

Dispute Resolution: Materials for Continuing Legal Education

John S. Murray, The Conflict Clinic, Inc.;
Alan Scott Rau, Edward F. Sherman, and Edward Clark, University of Texas
1991 514 pp.

This teaching material is organized into five separate modules: (1) alternative dispute resolution; how it can be used by a lawyer; (2) settlement negotiations; (3) mediation; (4) arbitration; and (5) formal settlement processes



involving case evaluation or reality-testing before third parties. Each module may be used (in whole or in part) for a separate Continuing Legal Education (CLE) course.

**Divorce and Custody Mediation
(Curricular Materials)**

Kelly Weisberg, Hastings College of Law
1985 65 pp.

These materials for students in a divorce and custody mediation course include topics such as divorce law, the development and definition of family mediators, and the participation of children in custody mediation.

**Divorce Mediation Teaching Materials
(Volumes I and II)**

Serena Stier and Nina Hamilton,
University of Iowa
1985 925 pp.

These teaching materials reflect an interdisciplinary approach to mediation and are designed to integrate the discussion of substantive issues with skills training.

**Empirical Research on Offers of
Settlement: A Preliminary Report**

Thomas D. Rowe and Neil J. Vidmar,
Private Adjudication Center
1988 41 pp.

Having compiled a three-part research questionnaire with settlement case scenarios and possible approaches, this report examines a preliminary empirical study of settlement offers and judgements.

**Ethical Issues in Negotiation and
Mediation: Problems and Materials**

Leslie P. Francis and John K. Morris,
University of Utah Law School
1986 262 pp.

For use in law school courses in professional responsibility, this packet treats the adversary system, alternative methods of dispute resolution, the ethical problems in negotiation, and the ethical issues in mediation.

**Evaluating Negotiation Behavior and Results:
Can We Identify What We Say We Know?**

Mary-Lynne Fisher and Arnold I. Siegal,
Loyola Law School
1986 143 pp.

This article discusses the various grading systems and explains reasons and goals in designing new grading standards for simulated student negotiations.

Fundamentals of Legal Negotiation

Robert G. Burdick, Boston University
1984 139 pp.

These materials present an outline of the steps and strategies towards a successful conclusion in negotiation.

**Index to a Research Collection of Tapes
and Transcripts from a North Carolina
Small Claims Court**

John M. Conley and Mark B. Childress,
University of North Carolina
1984 33 pp.

As part of a larger study, this index summarizes transcripts made from tape recorded proceedings in the Durham County Small Claims Court, North Carolina.

**The Integration of Non-litigious Dispute
Resolution Material into the First-Year
Property Course**

Peter W. Salsich, Jr. and Sandra H. Johnson,
St. Louis University
1985 107 pp.

The materials for the first-year property course include separate sections on policy development, negotiation, mediation, planning and arbitration.

**An Introduction to the Lawyer's Role in
Dispute Resolution + Teacher's Manual**

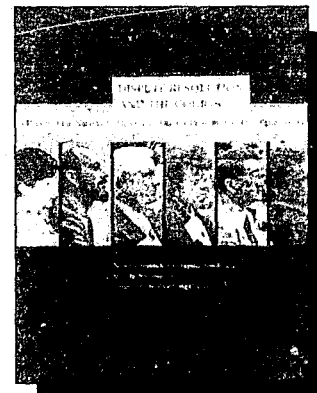
Paul J. Spiegelman, SUNY/Buffalo
1985 250 pp.

Teacher's Manual 172 pp.
This two-part supplement for civil procedure classes introduces the nomenclature of alternative dispute resolution and the relationship of ADR to the process of litigation. It includes a problem and a case study to provide concrete understanding of the differences between negotiation, mediation, arbitration and litigation.

**Introduction to the Legal Process
and the Resolution of Disputes**

Winston D. Woods, Jr., University of Arizona
1985 135 pp.

This textbook for use in civil procedure courses includes not only materials about the traditional



topics of civil procedure, but also those on the alternatives to litigation.

**Judgmental Processes in Negotiation:
Curriculum Module in Negotiation and
Dispute Resolution**

Max H. Bazerman, Northwestern University
1986 140 pp.

This 3-hour module posits irrational judgement of negotiators and suggests a training to improve their decision processes.

Landlord Tenant Negotiation Problem

Richard R. Chused,
Georgetown University Law Center
1985 30 pp.

These materials direct student negotiations on behalf of both sides of a landlord/tenant class negotiation problem and describe the different positions, instructions, and priorities of both sides.

**Legal Practice at Northeastern
University School of Law**

Brook K. Baker and Stephanie Levin,
Northeastern University
1984 114 pp.

These materials provide an overview of the structure and goals of a simulated negotiation, as part of a first year course in writing, research, advocacy and legal process at Northeastern University School of Law.

**Materials on Alternative Dispute Resolution—
Theory and Practice**

Robert S. Catz, Cleveland State University
1986 659 pp.

Outlining a clinical practicum which covers topics such as techniques and programs for resolving disputes—specifically, arbitration, mediation, and conciliation—these advanced law school materials include a syllabus and reading list.

**Materials on Law and Lawyering
(Outline and Course Materials)**

Donald T. Weckstein, University of San Diego
1986 461 pp.

These materials present various aspects of law and lawyering and include topics such as the role of the lawyer in society, the importance of cases in the development of law, a discussion of dispute settlement in labor relations, and a future perspective on law.

Materials on Mediation, Law and Lawyers

Leonard L. Riskin,
University of Missouri-Columbia School of Law
1985 500 pp.

These materials for a mediation course cover the topics of alternative methods of dispute resolution and the lawyer's role, mediation education and training, the actual mediation process, the professionalization of mediation, and the practice of mediation.

**Mediating Civil Rights:
The Age Discrimination Act**

Linda R. Singer and Ronald A. Schechter,
Center for Community Justice
1984 50 pp.

This case study describes an innovative use of mediation to resolve discrimination cases by the federal government. The study is useful reading in any course dealing with the policy question of whether civil rights cases should be mediated.

Mediation and Alternative Dispute Resolution

Carrie Menkel-Meadow, UCLA
1985 850 pp.

These course materials include readings from descriptive and social scientific literature combined with exercises and role-plays covering all aspects of legal negotiation and dispute resolution.

**Negotiating on Behalf of
Consumer Debtors: A Lesson Plan**

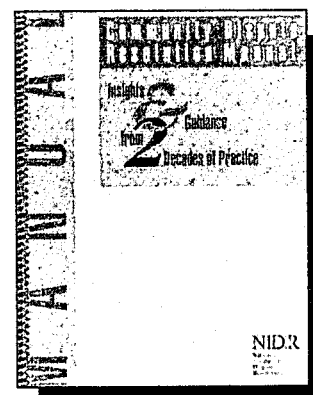
Jane H. Aiken, Georgetown University
1985 71 pp.

This lesson plan aims to teach second and third year law students negotiation strategy in the consumer/debtor context and covers four skills in negotiation, creativity, and ethical dilemmas, followed by a simulated case scenario.

Negotiation: A Card Game

Robert G. Burdick, Boston University
1985 22 pp.

This game is to test students' abilities to negotiate for a client and to get the best result. The material includes 36 Plaintiff Negotiation cards and 35 Defendant Negotiation cards containing information for negotiation.



Negotiation and Mediation Training Manual

Joseph B. Tulman, Antioch School of Law
1986 175 pp.

This manual focuses on the use of negotiation and mediation in the juvenile delinquency context and includes hypothetical fact situations for discussion, written exercises, and simulations.

Negotiation Exercises for Contracts I

Robert Viles, Franklin Pierce Law Center
1985 20 pp.

These two exercises were designed primarily as counterweights to the emphasis on litigation that pervades traditional contracts instruction.

Negotiation Problem:**Rapid Printing Co. vs Scott Computers, Inc.**

Stephen B. Goldberg and Jeanne M. Brett,
Northwestern University
1985 78 pp.

These materials for the exercise involve a lawsuit between a large company (Scott) and a small printing firm (Rapid), and include confidential fact statements for each party and its attorneys, along with teaching notes.

Negotiation Simulation Problems for Contracts

Jonathan Hyman, Rutgers Law School
1985 18 pp.

These materials consist of three simulations involving a contract for the sale of used books, a supply contract between a buyer and seller of plastic sheets, and a purchase order form.

Negotiations

Marc Galanter, University of Wisconsin
1985 606 pp.

For use in a negotiations² course, these materials consist of a syllabus and readings which seek to examine the range of negotiation processes frequently encountered by lawyers.

Negotiations

Peter T. Hoffman, University of Nebraska
1985 52 pp.

These materials consist of the readings for Prof. Hoffman's Negotiations course and include excerpts from the works of five authors and an affidavit sworn out by a criminal defendant.

Plea Bargaining Simulation**Problems for Criminal Law**

Jonathan Hyman, Rutgers Law School
1985 44 pp.

These materials were designed to allow students to examine, through simulation, how the doctrines of criminal law operate in their procedural setting.

Problems and Materials for a First Semester Legal Writing Course Attached to Civil Procedure

Paul J. Spiegelman, SUNY/Buffalo
1985 136 pp.

These materials include six civil procedure problems, four research and writing problems, a settlement negotiation problem, and a schedule of written assignments.

Readings for Seminar—**Alternative Dispute Resolution**

Robert B. McKay, New York University
1985 433 pp.

Consisting mainly of articles published in various journals and other professional publications, these materials address the adversary system and the various alternatives to litigation.

Suggestions for Teaching Mediation in Law School

Leonard L. Riskin, University of Houston
1983 38 pp.

This paper presents a format for teaching mediation that could be utilized in a first year course or in a variety of advanced or specialized courses. It includes statements of course objectives, assignments and role-play exercises.

The Wisconsin Contracts Materials

Arlen Christenson, Kenneth Davis, Marc Galanter, Robert Gordon, John Kidwell, Stewart Macaulay, Joseph Thome, and William Whitford,

University of Wisconsin Law School
1986 806 pp.

This set of materials is coursework for teaching Contracts I and represents the authors' effort to place contract law in its full context by examining both legal rules and the functioning of the legal system.

SCHOOLS OF BUSINESS

Affect, Cognition and Decision Making in Negotiation: A Conceptual Integration

Rajesh Kumar, New York University
1987 28 pp.

This paper develops a conceptual framework for analyzing processes and outcomes of business negotiations. A theoretical model integrating cognitive and motivational factors is developed to account for bargaining processes and outcomes.

Bargaining and Negotiations: Cases, Materials and Teaching Notes

Kaylan Chatterjee and Gary L. Lilien,
Pennsylvania State University
1988 165 pp.

This packet for marketing courses covers multi-issue and multi-party situations as well as principal-agent and government procurement bargaining.

Case Studies and Teaching Notes: International Banks and Mexico 1984, and International Banks and Mexico 1982

Arvind K. Jain, McGill University
1988 79 pp.

Mexican debt crisis negotiation case studies and role-play suggestions are the basis of this graduate economics or finance course material.

Cognitive Foundations of Cross Cultural Communication:

A U.S. and Japanese Comparison
Rajesh Kumar, Pennsylvania State University
1988 36 pp.

This paper examines the implications of differences in communication strategies used by American and Japanese businessmen in negotiations.

The Collective Governance of Industrial Relations

Joel Cutcher-Gershenfeld, MIT
1987 13 pp.

Focusing on the relationship between Xerox Corporation and the Amalgamated Clothing and Textile Workers Union, this research examines the limits of collective bargaining and labor

management committees in times of rapid change.

Computer-Mediated Communication in Organizational Research

Cynthia S. Fobian, University of Iowa
1987 11 pp.

This research paper presents a study of negotiation and group decision making and uses a computer simulation with the capacity to establish interactive communication networks.

Conflict Management

Randolph Flynn and David Elloy,
Gonzaga University
1987 37 pp.

This 4 1/2 hour module on conflict management includes three simulations and a lecture outline for organizational behavior courses.

Conflict Resolution in Environmental Disputes: A Module for Business Environmental Courses

John Kohls, Gonzaga University
1988 50 pp.

This is a four to six-hour class module for courses on law or business and society, which includes suggested readings, a role play, module outline, and teaching guide.

Curriculum Materials for Negotiation and Conflict Management

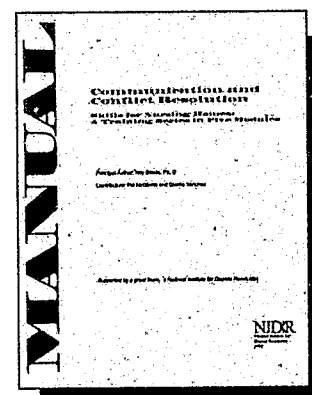
Mary P. Rowe, MIT
1987 150 pp.

This set of materials for a one-semester course on major topics in negotiation and third-party complaint management includes instructor's notes, reading list and a series of exercises and simulations.

Deceptive Communication in the Bargaining Context: Does Hedging Enhance the Bluffer's Chance of Gaining Trust, Pardon, and Integrative Agreements?

Debra Lynn Shapiro, Northwestern University
1986 179 pp.

This dissertation examines the effect of negotiator bluffing on subsequent interpersonal evaluations and behavior through the use of a buyer-seller simulation.



Decision Making and Negotiation

Skills for Entrepreneurs: Part 1 and 2

Margaret Neale and Gregory Northcraft,
University of Arizona

1986 171 pp. and 149 pp.

This set of materials is for an experiential course on negotiation and conflict resolution as a part of the growing specialization in entrepreneurship in business schools.

An Empirical Test of the Determinants of the Effectiveness of Workplace Complaint Procedures

Karen Boroff, Columbia University

1988 83 pp.

This paper examines a model of the effectiveness of a complaint procedure in a nonunion firm by measuring several factors.

The Evolution of Compensation Agreements in Principal-Agent Dyads: An Experiment

Judi McLean Parks, University of Iowa

1989 36 pp.

This paper compares the effects of economic factors (i.e. agency) and social factors (i.e. institutionalization) on emergent compensation policies within principal-agent dyads.

Exercises in Managerial Dispute Resolution

Thomas L. Watkins, University of Denver

1988 189 pp.

This set of materials includes ten short exercises and contains cases appropriate for MBA and executive education programs.

Exercises on Issue Formulation

Roger Volkema, George Mason University

1988 16 pp.

These case materials and exercises on issue formulation are suitable for use in classes on organizational behavior and management principles.

Groups as Mixed-Motive Negotiations

Max H. Bazerman, Elizabeth A. Mannix and Leigh L. Thompson, Northwestern University

1988 41 pp.

This paper distinguishes group negotiation from two-party negotiation and discusses a mixed-motive perspective of group decision making.

Her Place at The Table: A Curriculum Module on Gender and Negotiation

Deborah Kolb

1989 43 pp.

This module is organized around the twin themes of women's voice and women's place.

Influence on Negotiators' Perceptions of the Task and the Opponent on Negotiation Outcomes

Leigh Thompson and Reid Hastie,

Northwestern University

1988 43 pp.

This study examines negotiation success in relation to different negotiators' views of the task as a zero-sum game or a variable-sum game.

Interorganizational Negotiation and Accountability:

An Examination of Adams' Paradox

Cynthia S. Fobian, University of Iowa

1987 46 pp.

This research examines aspects of Adams' paradox, where those in positions of dealing with the outside world often develop cooperative methods of negotiating with those outsiders that may result in a loss of trust within the organization for which they work.

Judgment Tasks & Biases in Negotiation

Leigh Thompson and Reid Hastie

Northwestern University

1987 36 pp.

In this paper, the authors present a number of systematic biases that appear in negotiators' judgments of one another and the structure of the negotiation task.

Justice, Affect and Behavior:

A Process Model of Employee

Turnover and Voice

John W. Minton, Appalachian State University

1988 21 pp.

This research examines the relationships among perceived justice, job satisfaction, organizational loyalty, turnover, and voice.

The Kherhov Joint Venture: Teaching Materials in Modeling for Negotiation

J.D. Nyhart and Dhanesh Samarasan, MIT
1988 127 pp.

This set of materials offers instruction in negotiation management, teaches the use of four generic modeling tools and uses the case which sets up a series of negotiations to establish a joint venture between a U.S. firm and a U.S.S.R. state organization.

Lateral Intergroup Management in Organizations: A Test of a Negotiation Strategy Model

Jorn Kjell Rognes, Northwestern University
1987 280 pp.

Using a case involving a community hospital, the author examines conflict management and behavior styles among distinctly interdependent groups within an organization.

Management and the Political Process: Curriculum Materials in Dispute Resolution for the Graduate Management Course on the Environment of Business

Steven Maser, Willamette University
1989 107 pp.

These materials aim to build an understanding of politics among graduate students of management and include an essay, exercise, teaching note and case.

Management's Role in Litigation and Dispute Resolution: A Teaching Module for Business Law Courses

George J. Siedel, University of Michigan
1986 130 pp.

This three- to five-hour module covers the litigation process, alternative processes and the use of decision analysis in dispute resolution.

The Manager as Negotiator and Dispute Resolver

Jeanne Brett, Northwestern University; Leonard Greenhalgh, Dartmouth College; Deborah Kolb, Simmons College; Roy Lewicki, The Ohio State University; Blair Sheppard, Duke University
Second Edition
1985 310 pp.

This volume is for use in courses on managerial negotiations, organizational behavior and human resource management and includes simulations, a

case study, teaching guides and suggested readings.

The Manager as Negotiator and Dispute Resolver: Curriculum Materials

David Lax, Harvard Business School; William Samuelson, Boston University; James Sebenius, Harvard University; Robert Weber, Northwestern University
1985 230 pp.

This volume, a companion to *The Manager as Negotiator and Dispute Resolver*, is for use in courses on managerial economics, microeconomics, decision analysis, and game theory, and includes exercises, role play simulations, teaching notes, and an overview of recent game theory research.

The Manager as Negotiator and Dispute Resolver: Supplement No. 1—Coalitions Research: The Carrera Task-Force Simulation — Strategic Marketing Decisions at Porsche of America

Leonard Greenhalgh, Dartmouth College
1985 28 pp.

This simulated negotiation for sets of two to seven participants is tailored for research involving negotiation, coalition-formation, and group dynamics, and includes roles and suggestions for teaching.

The Manager as Negotiator and Dispute Resolver: Supplement No. 2—

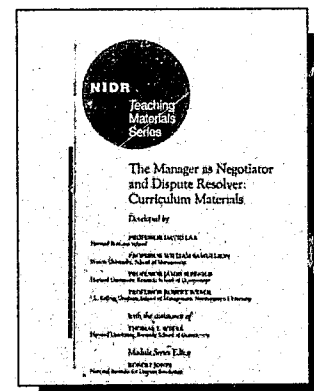
Third Party Conflict Resolution
Roy Lewicki, Ohio State University;
Blair Sheppard, Duke University;
Leonard Greenhalgh, Dartmouth College
1986 14 pp.

This packet contains a case study and a role play focusing on managerial mediation criteria and skills. It includes an instructor's manual with suggested readings and charts for overhead transparencies.

Managing Conflict

Leonard Greenhalgh, Dartmouth College
1987 21 pp.

This article presents a model focusing on how conflict is conceptualized by key actors, and includes an exercise involving a dispute between management and labor at a car assembly plant.



**Matching and Negotiation Processes
in Quasi-Markets**

Harris Sondak and Max Bazerman,
Northwestern University
1987 34 pp.

This research focuses on quasi-markets and concludes that a lack of learning opportunity leads negotiators and the markets to negotiate irrationally.

**The MBA Job Market: A Simulation of
Matching and Negotiation in Market
Contexts + Teaching Notes**

Harris Sondak and Max H. Bazerman,
Northwestern University
1988 33 pp.

The exercise presents a simulated job market for graduating MBA students and can be used for instructional and research purposes simultaneously. It gives students the opportunity to develop integrative and distributive negotiation skills in market contexts.

**Mediator Behavior and Interest:
Effects on Mediator and Disputant Perceptions**

Donald Conlon, University of Illinois
1988 85 pp.

This study examines the influence of mediator interests and behavior on mediator self-perceptions, and the influence of those same variables on disputant perceptions of their mediators.

**The Multi-Dimensionality of Perceived
Injustice in Discharged Employees**

Linda Klebe Trevino and Monica Fabia,
Texas A&M University
1989 20 pp.

In this paper, complainants' reasons for filing unjust discharge claims are analyzed to isolate perceptions of injustice.

Negotiation Exercises Based on Current Events

Miriam Rothman, University of San Diego
1988 83 pp.

This packet uses eight real-life news stories of business or organizational conflicts as material for student role-plays.

Negotiation in Small Groups

Elizabeth A. Mannix, Leigh L. Thompson and
Max H. Bazerman, Northwestern University
1988 35 pp.

This study examines cooperation and communication in mixed motive decision-making tasks.

**The Role of Bargaining Zones and Agents:
A Simulation of Real Estate Negotiations —
with Teaching Notes**

Max H. Bazerman, Yong Min Kim and
Margaret A. Neale, Northwestern University
1988 39 pp.

This paper describes real estate negotiation simulations and examines differences between a direct negotiation of two parties and the same negotiation through agents.

Tactics in Integrative Negotiations

Leigh L. Thompson, Laurie R. Weingart and Max
H. Bazerman, Northwestern University;
and John S. Carroll, MIT
1988 37 pp.

The authors examine the impact of various negotiation tactics on the efficiency of negotiated agreements using a variable-sum two-party negotiation task.

**The Use of the Decision Tree
Analysis in Dispute Resolution**

George J. Siedel, University of Michigan
1986 23 pp.

These materials introduce students in business and law schools to the use of decision tree analysis, a specific technique which reduces the uncertainty accompanying most difficult decisions.

**When Do Employees Speak Up? Factors
Influencing the Propensity to Use Voice**

David Saunders, Blair H. Sheppard and
Virginia Knight, Duke University
1987 31 pp.

This paper presents the results from studies which examine the relation between employees' perception of managers' dispute handling and employees' propensity to voice their concerns.

SCHOOLS OF PLANNING

Consensual Procedures and the Role of Science in Public Decision Making

Connic Ozawa, MIT
1988 270 pp.

This paper compares scientific disagreement handled in consensus-based, supplementary procedures with those managed through conventional decision making, and suggests the distinct advantages and disadvantages of consensus-based procedures in policy-making.

Course Modules and Teaching Materials Alternative Conflict Management/Growth Management: The Florida Experience

Richard H. Schneider, University of Florida
1988 310 pp.

These teaching materials for first-year graduate students in urban and regional planning courses have five modules based on Florida's urban planning experiences.

Growth/No Growth: A Development Dispute at Sea Pines Plantation, Hilton Head Island, South Carolina

Emil E. Malizia, University of North Carolina at Chapel Hill
1986 53 pp.

This case study describes the conflict between the Sea Pines Plantation Company and property owners opposing the company's inn project.

Metropolitan Dispute Resolution in Silicon Valley: The Multiple Advocacy Approach

Donald Rothblatt, San Jose State University
1988 150 pp.

These teaching materials describe a multiple advocacy resolution approach to reaching negotiated settlements of metropolitan problems.

Negotiating Public Policy Issues

Richard Collins and Bruce Dotson,
University of Virginia
1986 28 pp.

This packet for a graduate level course in planning includes an instructor's essay, course syllabus, recommended readings, exam questions, and two simulations.

The Planner as Dispute Resolver: Concepts & Teaching Materials

A. Bruce Dotson, University of Virginia,
David Godschalk, University of North Carolina
and Jerome Kaufman, University
of Wisconsin-Madison
1989 202 pp.

This volume is designed for use in planning curricula and presents the idea of dispute resolution in the planning field.

A Practical Theory of Negotiation for Planners

Thomas A. Taylor, Virginia Polytechnic Institute
and State University
1989 299 pp.

This dissertation regards planners as negotiators and facilitators in public and private urban planning, and provides a useful guide for complex multi-issue, multi-party conflicts.

Resolving Public Disputes: Interactive Teaching of Negotiation and Dispute Resolution in the Public Sector—Teaching Notes for Eleven Negotiation Games

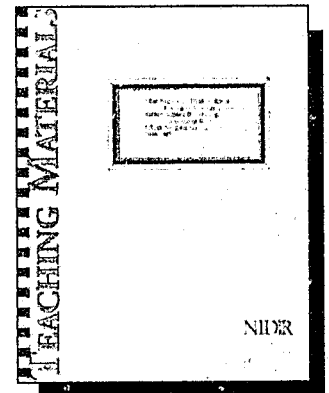
Lawrence Susskind and Eileen Babbitt,
MIT-Harvard Public Disputes Program
1987 74 pp.

Appropriate for use in public policy and planning courses, these materials consist of negotiation and facilitation simulations and teaching notes.

Resolving Science-Intensive Public Policy Disputes: Lessons From The New York Bight Initiative

Scott T. McCreary, MIT
1989 486 pp.

By examining the traditional mechanisms and the potential use of assisted negotiation, this paper analyzes the problems of resolving technically complex conflicts that arise over use and allocation of natural resources.



**A Source Book on Dispute Resolution
in Planning School Curricula**

Tom Dinell and John Goody,
University of Hawaii at Manoa
1987 136 pp.

This NIDR-commissioned volume contains essays, a listing of planning courses with dispute resolution content, complete syllabi, and an annotated bibliography.

Strategic Management in the Public Arena

Robert Hopley, University of Massachusetts
1989 370 pp.

This instructional material was developed for a 13-week course on the use of strategic planning techniques in dispute resolution with a particular focus on public sector disputes.

**A Study of Ability to Choose Appropriate
Conflict Behavior Determined by the
Relationship Between Locus of Control
and Conflict Behavior Styles**

Mary H. Zinkin, Portland State University
1987 137 pp.

This study focuses on the relationship between locus of control and conflict behavior, addressing two theoretical controversies in the conflict resolution literature.

Tampa Bay Park of Commerce:

**State Assisted Resolution of a
Local Land-Use Dispute**

Bruce Stiffler, Florida State University
1988 105 pp.

This report is a case study of a complex land-use dispute in Florida. These materials detail the issues and parties' positions through the final agreement.

**Teaching Materials in
Intergovernmental Dispute Resolution**

Mark Alan Hughes, Princeton University
1988 48 pp.

Based on public policy issues in the imaginary state of New Guernsey, this packet includes two scoreable simulations.

**Three Cases Involving Strategies
for Managing Public Disputes**

John M. Bryson and Barbara C. Crosby,
University of Minnesota
1987 146 pp.

These materials include case studies of planners, public managers, analysts, and policy makers handling two types of conflict: "locally unwanted land use" and "locally appreciated land applications."

**Town Square: Public/Private
Development Negotiation**

David Godschalk, University of North Carolina
1987 58 pp. (Includes 2 computer disks for use
with Lotus 1,2,3 on IBM compatibles)

This microcomputer-based exercise involves students as planners, developers, and lawyers in negotiating a development project over a 6-week period.

**Westville: Mediation Strategies
in Community Planning**

John Forester and David Stitzel,
Cornell University
1988 43 pp.

This is a three-party, multi-issue, scoreable mediation-negotiation exercise to explore non-neutral mediation strategies.

**PUBLIC ADMINISTRATION
AND PUBLIC POLICY**

**Conflict Resolution and Collaborative
Problem Solving in Local Government**

Carl Moore, Lawrence Keller,
Cleveland State University
1988 146 pp.

Designed as an interdisciplinary approach to public policy mediation, these materials include three case studies focusing on applications of dispute resolution to chronic problems faced by local governments.

Conflict Resolution in the Policy Process

Gerald M. Pops and Max O. Stephenson, Jr.,
West Virginia University
1987 140 pp.

This is a teaching text and instructor's manual for a section on conflict management for use in

public policy formulation and implementation courses.

Developing Systems for the Settlement of Recurring Disputes: Four Case Studies Analysis and Recommendations

Mediation Institute

1984 275 pp.

Includes four case studies with analysis and recommendations.

Ethical Aspects of Public Sector Negotiation: Concepts, Cases, and Commentary

Lloyd Burton, University of Colorado

1987 113 pp.

This set of materials with simulations, essays, and commentary on administrative ethics in the context of the negotiation process are designed for use in the classroom as well as in-service training seminars for public managers.

Four Exercises in Negotiation and Competitive Decisions

Peter C. Cramton, Yale School of Organization and Management

1988 28 pp.

This packet of four gaming exercises is for graduate level negotiation and political and economic analysis courses.

Intermediary Intervention: A Model of Intervention and a Study of the Beagle Channel Case

Thomas E. Princen, Harvard University

1988 309 pp.

This paper addresses the question of how intermediaries—self-interested actors who have no direct interests in dispute issues, yet are able to influence its resolution—intervene effectively in disputes.

Knowledge and Negotiation: Learning Under Conflict, Bargaining Under Uncertainty

Arthur Isak Applebaum, Harvard University

1987 327 pp.

This dissertation analyzes different configurations of knowledge, interest, and power, and traces instances and varieties of tension between learning and bargaining.

Multi-Criteria Dispute Resolution and Decision-Aiding

Stuart S. Nagel, University of Illinois

1988 233 pp.

This book clarifies the general nature of computer-aided negotiation and mediation and enables the reader to use the P/G% decision-aiding software for dispute resolution purposes.

Negotiating International Debt: From A Debtors' Alliance to a Global Bargain

Thomas Todd Weeks, Harvard University

1988 217 pp.

This paper recommends that debtor countries form an alliance to improve their political leverage to bargain with creditor nations, and explores several options to achieve debt resolution as well as global economic recovery.

Public Ends and Private Means: Accountability Among Private

Providers of Public Social Services

Michael J. Keating, Jr.,

Institute for Conflict Management

1985 140 pp.

This material describes the increasing privatization of the delivery of public social services, and describes a possible role for dispute resolution processes in keeping private providers accountable to the public.

Public Involvement in Public Management: A Curriculum Module

John Clayton Thomas,

University of Missouri-Kansas City

1987 94 pp.

This set of materials serves as a teaching text and includes seven short cases and discussion questions focusing on the public manager's role in public decision making.

Racial Conflict in South Carolina: A Four-Part Teaching Case

Robert Behn and Regina K. Brough, Duke University

1987 40 pp.

The materials present the evolution of a racial incident into a major dispute confronting a governor and describes its resolution.

**Racial Issues in Public Policy
Formulation and Implementation**

Gale Auletta and Terry Jones,
California State University
1988 58 pp.

These course materials consist of lecture notes and bibliography, five case studies written by policy makers of color and two sample analyses of case studies.

Resolving Disputes in International Trade

Heather Hazard, Harvard University
1988 407 pp.

This research paper examines the dispute settlement mechanisms of the General Agreement on Tariffs and Trade (the GATT) and the success of its system in resolving conflicts in international trade.

**Resolving Policy Conflict:
Congress and Immigration Reform**

Rosanna Perotti, University of Pennsylvania
1989 520 pp.

This paper focuses on integrative tactics, analyzing the process of Congressional policymaking as well as the role of informal mediators in Congress.

**Teaching Module for the Tartan
Negotiation Game**

George T. Duncan, Carnegie Mellon University
1987 25 pp.

This module is designed for use in management science courses and builds on decision theory, game theory, and dynamic programming.

**The Use of Mediation as a Dispute Settlement
Tool: An Historical Review and Scientific
Examination of the Role and Process of
Mediation**

Raymond A. Whiting, Syracuse University
1988 142pp.

This dissertation examines the nature of community, the function and limitations of mediation, and suggests its use when ongoing relationships between disputants exist.

*Do you Believe that Mediation, Arbitration,
and Similar Methods of Dispute Resolution
Promise to Reduce Litigation and Other Uses of
the Courts to Settle Disputes?*

by Howard Bellman, Marc Galanter,
and Leo Levin

December 1983 8 pp.

Three experts express their views of dispute resolution's potential.

Who Should Pay?

By William K. Reilly and Daniel McGillis
March 1984 12 pp.

This crucial question is addressed by the president of the Washington-based Conservation Foundation, and the assistant director of Harvard Law School's Center for Criminal Justice.

*Should Dispute Resolution Be Attached
to the Courts?*

By Raymond Shonholtz and Thomas F. Christian
June 1984 10 pp.

Responses from the president of Community Boards Program, Inc. of San Francisco, and the director of the Community Dispute Resolution Centers Program of the Unified Court System of the State of New York.

Family and Divorce Mediation

December 1984 12 pp.

Contains the American Bar Association and the Association of Family and Conciliation Courts' standards of practice for family mediators along with a commentary by attorney Thomas A. Bishop.

*Where is Dispute Resolution Today?
Where will it be in the Year 2000?*

April 1985 10 pp.

Opinions of a diverse group of public servants, scholars, long-time mediators and arbitrators on dispute resolution activities.

Court-Ordered Arbitration

August 1985 16 pp.

A report on the First National Conference on Court-Ordered Arbitration.

Regulatory Negotiation

January 1986 16 pp.

Overviews by Philip J. Harter and Lawrence Susskind.

Dispute Resolution in Higher Education:

A New National Survey

April 1986 16 pp.

Interviews with Arnold Weber, Craig McEwen, Carrie Menkel-Meadow, and Roy Lewicki — plus a funder's perspective by Robert Barrett.

SPIDR's Ethical Standards of Professional Conduct: Six Leading Practitioners Discuss Their Meaning

March 1987 16 pp.

Comments on the standards and their meaning.

Getting to YES Six Years Later

May 1987 11 pp.

Interviews with authors Roger Fisher and William Ury including observations on the book, and material on the art of negotiation by Max H. Bazerman.

Culture's Consequences in Dispute Resolution

September 1987 11 pp.

Articles by Stephen E. Weiss and Susan B. Goldstein with examples of cross-cultural conflict in Northern Ireland and the Texas Gulf Coast.

Statewide Offices of Mediation:

Experiments in Public Policy

December 1987 16 pp.

An examination of offices that mediate public policy complaints in Hawaii, Massachusetts, Minnesota, and New Jersey.

Programming the Process: An Examination of the Use of Computers in Dispute Resolution

April 1988 16 pp.

Lead article by J.D. Nyhart, Professor, MIT and four case studies that examine the uses of computers in negotiations.

The Status of Community Justice

December 1988 16 pp.

Interviews with center directors in Atlanta, Chicago, the District of Columbia, Honolulu, Massachusetts, and San Francisco.

Qualifying Neutrals: The Basic Principles

May 1989 16 pp.

The first report of the SPIDR Commission on Qualifications.

Research Into Mediation:

What we know now. What's left to learn.

October 1989 22 pp.

A report on the Fund for Research on Dispute Resolution with an overview by Deborah M. Kolb and Jeffrey Z. Rubin.

Farmer-Lender Mediation

Fall 1990 23 pp.

Several innovators in the use of agricultural mediation share their insights and experiences.

Dispute Resolution in Education

Spring 1991 21 pp.

Explores the evolution and diversity of mediation programs in elementary and secondary schools and on college campuses.

Dispute Resolution and Health Care

Summer/Fall 1991 33 pp.

This issue explores many of the vexing and human elements of health care reform which illuminate the potential of dispute resolution.

Perspectives on Dispute Resolution and the Legal Community: A Report on the First Frank Sander Lecture Series

Winter 1991 15 pp.

Includes keynote address by Robert D. Raven past president of the ABA.

Dispute Resolution and Community Justice: A Report on the Second Frank Sander Lecture Series

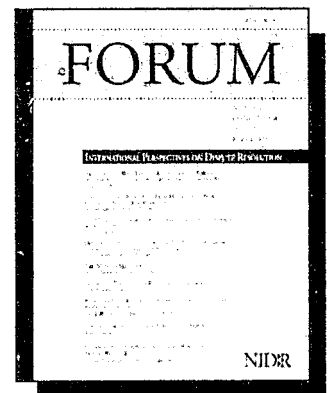
Winter 1992 29 pp.

Includes keynote address by Judge Griffin Bell, former Attorney General in the Carter Administration.

International Perspectives on Dispute Resolution

Winter 1993 54 pp. (double issue)

This issue includes articles on mediation in Northern Ireland, conflict management in the former Soviet Union, community-based dispute resolution in Sri Lanka, perspectives from South Africa, dispute resolution techniques in Ecuador, and international environmental conflict resolution.



NIDR REPORTS

NIDR Report #1

Mediation in Special Education

By Linda R. Singer and Eleanor Nace

1986 20 pp.

Analyzes the use of mediation in special education by state education agencies.

NIDR Report #2

Public Ends and Private Means: Accountability Among Private Providers of Public Social Services

By J. Michael Keating, Jr.

1985 12 pp.

Researches how private providers and government agencies ensure accountability for public services in a professional and humane manner.

NIDR Report #3

Resolving Student-Initiated Grievances in Higher Education. Dispute Resolution Procedures in a Non-Adversarial Setting

By Joseph P. Folger and J. Janelle Shubert

1985 11 pp.

Focuses on how dispute resolution procedures alter the relationships among disputing parties, and influence the resolutions that are reached.

NIDR Report #4

Mediating Civil Rights:

The Age Discrimination Act

By Linda R. Singer and Ronald A. Schechter

1986 20 pp.

Describes the mediation process used for age discrimination complaints.

NIDR Report #5

Consumer Dispute Resolution:

A Survey of Programs

By Daniel McGillis

1987 15 pp.

Recounts third-party dispute settlement mechanisms in the area of consumer disputes.

NIDR VIDEO SERIES

Community Justice Mediation

1988 Time: 30 minutes.

Shows an actual community justice center mediation between a homeowner and a contractor over a construction repair. Taped at the Justice Center of Atlanta, Inc.

Court-Ordered Arbitration—Minneapolis

1988 Time: 28 minutes.

Portrays a simulated court-annexed arbitration within the Hennepin County Court System. The case involves a tort claim stemming from an automobile accident.

Court-Ordered Arbitration—Pittsburgh

1988 Time: 28 minutes.

Depicts an actual court-annexed arbitration within the Allegheny County Court System. The case involves a shopping mall owner attempting to evict a restaurant for nonpayment of rent.

Summary Jury Trial

1988 Time: 30 minutes.

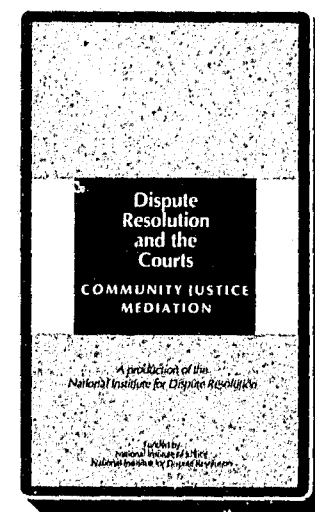
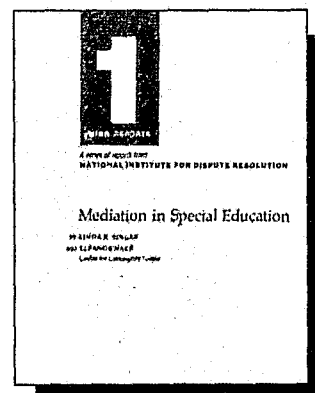
A reenactment involving the actual lawyers of a summary jury trial held by Judge Richard A. Enslin of the U.S. District Court for the Western District of Michigan. The case involves a groundwater contamination damage action filed by 29 plaintiffs against a major corporation.

Dispute Resolution and the Courts:

An Overview

1988 Time: 28 minutes.

Gives viewers a summary look at how the courts use dispute resolution at every level of the justice system—from mediation in community justice centers to court-ordered arbitration that resolves disputes in different settings, to the use of summary jury trial to settle multimillion dollar case.



FINANCIAL REPORT

To the Board of Directors
The National Institute
for Dispute
Resolution, Inc.

Report of Independent Accountants

We have audited the accompanying balance sheet of the National Institute for Dispute Resolution, Inc. (the Institute) as of June 30, 1992, and the related statements of revenue, expenses and changes in fund balances for the year then ended. We previously audited and reported upon the financial statements of the Institute and the Fund for Research on Dispute Resolution for the year ended June 30, 1991, the combined totals of which are presented for comparative purposes only. These financial statements are the responsibility of the Institute's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the National Institute for Dispute Resolution, Inc. as of June 30, 1992, and the results of its operations for the year then ended in conformity with generally accepted accounting principles.

Coopers & Lybrand
Washington, D.C.
August 28, 1992

THE NATIONAL INSTITUTE FOR DISPUTE RESOLUTION, INC.

BALANCE SHEET June 30, 1992

(with comparative totals for the year ended June 30, 1991)

| | 1992 | | | Totals | 1991 Totals |
|---|--------------|-------------|--|-------------|-------------|
| | Unrestricted | Restricted | Fund for
Research
on Dispute
Resolution | | |
| ASSETS | | | | | |
| Current assets: | | | | | |
| Cash and cash equivalents
(Note 2) | \$ - | \$ 280,793 | \$401,580 | \$ 682,373 | \$1,770,409 |
| Due from unrestricted fund | - | 49,715 | - | 49,715 | - |
| Short-term investments
(Note 2) | 1,957,131 | - | - | 1,957,131 | 2,783,416 |
| Grants receivable
(Notes 2 and 3) | - | 849,500 | - | 849,500 | 875,341 |
| Prepaid expenses and other
receivables | 34,245 | - | - | 34,245 | 48,792 |
| Total current assets | 1,991,376 | 1,180,008 | 401,580 | 3,572,964 | 5,477,958 |
| Fixed assets (Note 2): | | | | | |
| Furniture and equipment | 233,332 | - | 4,907 | 238,239 | 229,655 |
| Leasehold improvements | 13,579 | - | - | 13,579 | 13,479 |
| Less allowance for deprecia-
tion and amortization | (236,203) | - | (4,178) | (240,381) | (199,180) |
| Fixed assets, net | 10,708 | - | 729 | 11,437 | 43,954 |
| Other assets | 6,147 | - | - | 6,147 | 6,147 |
| Total assets | \$2,008,231 | \$1,180,008 | \$402,309 | \$3,590,548 | \$5,528,059 |
| LIABILITIES AND FUND BALANCES | | | | | |
| Current liabilities: | | | | | |
| Accounts payable and accrued
expenses | \$ 100,027 | \$ - | \$ 2,506 | \$ 102,533 | \$ 130,717 |
| Grants payable (Note 2) | 1,090,929 | - | 331,064 | 1,421,993 | 2,011,656 |
| Deferred revenue (Notes 2 and 3) | - | 1,180,008 | - | 1,180,008 | 2,143,062 |
| Due to restricted fund | 49,715 | - | - | 49,715 | - |
| Total current liabilities | 1,240,671 | 1,180,008 | 333,570 | 2,754,249 | 4,285,435 |
| Rental abatement (Note 4) | 23,318 | - | - | 23,318 | 38,894 |
| Total liabilities | 1,263,989 | 1,180,008 | 333,570 | 2,777,567 | 4,324,329 |
| Commitments (Note 4) | - | - | - | - | - |
| Fund balances | 744,242 | - | 68,739 | 812,981 | 1,203,730 |
| Total liabilities and
fund balances | \$2,008,231 | \$1,180,008 | \$402,309 | \$3,590,548 | \$5,528,059 |

The accompanying notes are an integral part of these financial statements.

THE NATIONAL INSTITUTE FOR DISPUTE RESOLUTION, INC.

STATEMENT OF REVENUE, EXPENSES AND CHANGES IN FUND BALANCES

for the year ended June 30, 1992 (with comparative totals for the year ended June 30, 1991)

| | 1992 | | | | 1991 Totals |
|----------------------------------|--------------|------------|--|-------------|-------------|
| | Unrestricted | Restricted | Fund for
Research
on Dispute
Resolution | Totals | |
| Revenue: | | | | | |
| Private grants (Notes 2 and 3) | \$1,246,000 | \$420,090 | \$ - | \$1,666,090 | \$2,517,703 |
| Federal grant (Note 2) | - | 13,168 | - | 13,168 | 63,052 |
| Interest | 140,291 | - | 30,071 | 170,362 | 355,644 |
| Other | 25,452 | - | - | 25,452 | 62,207 |
| Total revenue | 1,411,743 | 433,258 | 30,071 | 1,875,072 | 2,998,606 |
| Expenses (Note 5): | | | | | |
| Program (Note 6) | 1,446,643 | 343,818 | 33,949 | 1,824,410 | 2,593,792 |
| Management and general | 255,692 | 89,440 | 96,279 | 441,411 | 565,460 |
| Total expenses | 1,702,335 | 433,258 | 130,228 | 2,265,821 | 3,159,252 |
| Excess of expenses over revenue | (290,592) | - | (100,157) | (390,749) | (160,646) |
| Fund balances, beginning of year | 1,034,834 | - | 168,896 | 1,203,730 | 1,364,376 |
| Fund balances, end of year | \$ 744,242 | \$ - | \$ 68,739 | \$ 812,981 | \$1,203,730 |

The accompanying notes are an integral part of these financial statements.

The National Institute for Dispute Resolution, Inc.

Notes to Financial Statements

1. Organization

The National Institute for Dispute Resolution, Inc. (the Institute) is a private, nonprofit, charitable organization based in Washington, D.C. Created through the efforts of five foundations, the Institute began operating in 1982 and opened its permanent offices in January 1983.

The purpose of the Institute is to enhance the fairness, effectiveness and efficiency of the processes through which Americans resolve disputes. Where conflicts serve no social purpose, the Institute seeks out and promotes systematic measures to eliminate the causes of needless controversy. Where disputes do arise, the Institute fosters the development, validation and public acceptance of innovative techniques to resolve them without resorting to litigation. The Institute addresses these goals by providing financial support and guidance for well-conceived projects in dispute resolution and by providing technical and informational services.

The Fund for Research on Dispute Resolution (FRDR) is an independent research fund affiliated with the Institute. FRDR was established by the Ford Foundation in July 1987 to support a broad range of research which connects the study of disputing and dispute handling to social, psychological, economic, political or legal theory.

2. Summary of significant accounting policies

Basis of presentation

The financial statements include accounts for the funds of the Institute as well as for FRDR. Certain administrative costs, which are incurred jointly by the Institute and FRDR, are allocated ratably to each based on their proportion of total expenses.

Cash equivalents and short-term investments

Cash equivalents consist of certificates of deposit and money market funds. Short-term investments consist of Treasury bills. Interest on these investments is recognized when earned. The cost of these investments approximates market value.

Concentration of credit risk

The Institute generally invests its excess cash in money market funds and certificates of deposit at major banks. These investments typically mature within 30 days and, therefore, bear minimal risk.

Grant revenue

Grants which are restricted as to their use are recorded in the balance sheet as grants receivable and as deferred grant revenues when awarded. Revenues are recognized only to the extent of expenditures that satisfy the purposes of these grants.

Unrestricted grants are not designated for specific purposes by the contributors and are recognized as income in the year awarded.

Fixed assets

Fixed assets are carried at cost. Depreciation of furniture and fixtures is computed on the straight-line method over the estimated useful lives of the assets, five years. Leasehold improvements are amortized on a straight-line basis over the remaining terms of the leases. Depreciation and amortization expense for the years ended June 30, 1992 and 1991 was \$43,453 and \$41,321, respectively.

Grants payable

Grants made by the Institute are recorded in the balance sheet as grants payable and as an expense at the time recipients are entitled to them.

3. Funding

The Institute was initially funded for a five-year period which ended June 30, 1988. In this initial period, five large private foundations made substantial funding grants to support the Institute's activities. Three of these foundations continued funding of the Institute's activities for the next five years. During this period, FRDR was established as a separate fund in 1988 with a three-year grant from the Ford Foundation.

Currently, the Institute is working on a proposal requesting renewed support from its core funders for general support during the five years beginning July 1, 1993. The likelihood of continued funding at levels commensurate with previous years is uncertain.

During the year ended June 30, 1992, the Institute incurred \$26,250 of fundraising expenses.

4. Lease commitment

Effective January 1, 1989, the Institute entered into an operating lease agreement for office space which expires on December 31, 1993. The lease provides for minimum monthly rental payments of \$14,695. The agreement also provides for adjustments to monthly rental payments for certain landlord operating expenses, adjustments in base rent according to changes in the Consumer Price Index and an initial rent abatement period of six months. The rental abatement is being amortized straight-line over the life of the lease. Annual minimum lease payments under the operating lease agreement are as follows:

| Year ending
June 30, | Minimum
lease payments |
|-------------------------|---------------------------|
| 1993 | \$176,340 |
| 1994 | 88,170 |
| Total | \$264,510 |

Total rental expense for the years ended June 30, 1992 and 1991, was \$168,459 and \$156,472, respectively.

5. Fund for Research on Dispute Resolution

The Ford Foundation did not renew funding to the Institute to maintain FRDR as an independent research fund during 1992. FRDR's remaining projects will be administered by the Institute, which has obtained supplemental funding from the Ford Foundation to oversee the completion of FRDR's open projects. Costs relating to the completion of FRDR projects are presented in a separate fund in the accompanying financial statements.

6. Program expenses

Working directly and through a wide variety of grantees, collaborators and contractors, the Institute concentrates its resources within four basic categories of effort:

- Programs and projects to develop, field-test and document specific methods and policies that offer substantial promise of improving dispute prevention and/or resolution (Nursing Homes, Innovation, Mediation in Schools, South Africa/ International);
- Assistance to educational and professional institutions as they absorb, analyze, perfect, administer and teach new concepts and techniques (Higher and Continuing Education);
- Support and technical assistance to legislative bodies, judicial conferences, executive departments of government and other officials who are responsible for public policy toward dispute resolution and for the operation of the public agencies and institutions that carry out these policies (Public Policy, Courts, Community Justice); and

- Public and professional information programs to broaden and deepen understanding of current events, issues, problems and achievements in the field (Communications).

The amount expended for the year ended June 30, 1992 in these categories of effort is as follows:

| | |
|---|--------------------|
| • Field-Test and Documentation | \$ 495,958 |
| • Assistance to Education and Professional Institutions | (3,581) |
| • Support and Technical Assistance for Public Policy | 782,431 |
| • Public and Professional Information | 515,653 |
| | <u>\$1,790,461</u> |

During 1992, \$890,673 of the \$1,790,461 of program expenses was expended for grants and contracts.

FRDR concentrates its resources within two basic categories of effort:

- Commission additional research, hold research conferences or workshops, and underwrite research initiation and development work as needed;
- Award research grants.

The amount expended for the year ended June 30, 1992 in these two programs is as follows:

| | |
|----------------------|-----------------|
| • Research/Workshops | \$27,162 |
| • Research Awards | 6,787 |
| | <u>\$33,949</u> |

The costs of providing the various programs and other activities have been summarized on a

functional basis in the statement of revenue, expenses and changes in fund balance. Accordingly, certain costs have been allocated among the program and management and general services benefitted.

7. Retirement costs

The Institute has a retirement plan covering all employees. Under the plan, the Institute makes contributions to an insurance company, based on a percentage of the payroll of covered employees. These contributions, together with voluntary employee contributions, are used to purchase annuities, the rights to which immediately vest in employees hired prior to June 30, 1984. Individuals commencing employment after June 30, 1984 become vested after three years. Costs of the plan for the years ended June 30, 1992 and 1991 were \$40,574 and \$56,790, respectively.

8. Income taxes

Under provisions of the Internal Revenue Code Section 501(c)(3) and the applicable income tax regulations of the District of Columbia, the Institute is exempt from taxes on income other than unrelated business income. No liability for income taxes was incurred for the years ended June 30, 1992 and 1991, since the Institute had no unrelated business income.

THE NATIONAL INSTITUTE FOR DISPUTE RESOLUTION

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