**Pepperdine Law Review**

Volume 16
Issue 5 *Symposium: Alternative Dispute Resolution*

Article 1

5-15-1989

# Introduction: Second Symposium Issue on Alternative Dispute Resolution

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# Introduction

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Pepperdine University School of Law is pleased to present this second symposium issue focused on the area of dispute resolution. A similar project resulted in the publication of our first symposium issue on dispute resolution in 1987. The success of the first symposium issue is indicative of the growing focus on dispute resolution and the increasing relevance of that area to the practice of law. This issue contributes a variety of perspectives to the discussion of alternative or non-litigation approaches to resolving legal conflicts.

The 1989 symposium issue comes at an important time in the development of the dispute resolution field. Just a decade ago, one might have characterized the field only as experimental. In 1978, Attorney General Griffen Bell established the first three neighborhood justice centers providing a mediation resource for the resolution of community and neighborhood disputes. In the late 1970s, legislatures began considering proposals to connect "new" processes such as mediation and arbitration to judicial processes. Concurrently, a movement arose among law and business schools for a broadened curriculum to reflect the many options available for efficient and effective dispute resolution. Finally, in the early 1980s, major corporations and federal agencies began experimenting with alternatives to litigation through a host of public and private organizations. In short, the movement as it is known and described today was in its infancy: a period of experimentation and creative implementation.

In the mid-1980s, activity in dispute resolution grew at an unprecedented and perhaps surprising pace. Over a matter of several years,

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the three experimental neighborhood justice centers increased to more than 400 community-based dispute resolution programs. Virtually every state passed some legislation related to dispute resolution, most of which was not so concerned with authorizing the use of a particular process as in mandating its implementation and use. More than 120 bar communities were established and alternative dispute resolution became the focus of efforts to reform and save the justice system. A variety of profit and not-for-profit service organizations emerged ready to provide sophisticated dispute resolution services to sophisticated clients. Attention to dispute resolution blossomed in education as well. Law schools, such as those at Pepperdine, Willamette, Harvard, and the Universities of Missouri, Vermont, and Ohio State established significant programs in dispute resolution. More than 140 law schools moved to include some work and exposure to dispute resolution as part of their legal education programs. Thus, in the mid-1980s, experimentations broadened to implementation; the promotion of alternative dispute resolution among those within and outside of the legal profession occurred with almost an evangelical spirit.

Finally, as the end of this decade approaches, dispute resolution appears to be settling in. It is now recognized that some of the experiments of the early 1970s have been extraordinarily successful, while others have had surprisingly little impact. Many of those with a heart for collaborative dispute resolution have come face-to-face with the realities of the economics of practice—the fact that the level of need for these services is higher than the current demand. Programs, which started with zeal and were dependent on the charismatic leadership of a particular person, have found it necessary to define a long-term mission and establish a broader base for their continued existence. This suggests a necessary maturing of the field.

Recently there has been increased discussion about the institutionalization of early projects and experiments in dispute resolution. Leaders in the field wonder to what degree pilot projects and foundation-funded experiments should be made a part of government services and court systems. An honest inquiry into this period of solidification and institutionalization will encourage wrestling with difficult questions, reviewing progress in objective ways and carefully considering the long-term impacts of particular activities. Such is the objective of this special symposium issue of the PEPPERDINE LAW REVIEW.

The symposium begins with an article on the process of mediation written by a nationally-recognized commercial mediator, Kenneth R. Feinberg. Mr. Feinberg acknowledges concern about the process but strongly advocates the potential for its use. The second lead article is

an empirical examination of the process of court-annexed arbitration, statutorily implemented in Hawaii to handle civil claims under $150,000. In a jurisdiction that established a higher than average dollar amount for cases going through that process, the authors provide current empirical data on its accomplishments, especially the reduction of litigation cost for parties and the corresponding reduction in discovery. Finally, an analysis of significant legislation in the area of community dispute resolution is contributed by Mary Alice Coleman, Executive Officer of the California Dispute Resolution Advisory Council. Ms. Coleman analyzes the particular legislative enactment in California that provides a funding base for a statewide system of community mediation centers, and the regulations written in response to that legislation. Both of the latter articles recognize the tremendous impact that legislative initiatives have had on the implementation and use of dispute resolution—legislation that institutionalizes the processes as part of society's dispute resolution mechanism.

Two essays are included by individuals with extensive experience in completely different arenas. Wallace Warfield, a visiting fellow at the United States Administrative Conference, advocates the continued use of negotiation and mediation in the context of government contract disputes. An expert in federal administrative agencies, Mr. Warfield draws attention to the application of dispute resolution in an area perhaps as significant for society's dispute processing as is the court's. Gilbert Serota advocates in *The Unjustified Furor Over Securities Arbitration* that, in light of recent Supreme Court rulings, the application of arbitration to disputes regarding securities is appropriate.

*Negotiating Better Superfund Settlements: Prospects and Protocols* won the 1988 national competition for papers on dispute resolution sponsored annually by the Center for Public Resources. Authored by Scott Cassel, the paper was the result of his graduate study at the Massachusetts Institute of Technology. The Law Review is especially pleased to publish this paper, which received first place in the student category.

Finally, three significant student comments are presented. First, Bruce Braun of the University of Virginia School of Law stretches the application of dispute resolution processes to advocate, that contrary to current case law, there are substantial arguments to support arbitration of domestic anti-trust claims. Next, Leslie Gladstone, a Pepperdine law student, examines the practical application of federal rule of evidence 408 which excludes settlement discussions from evi-

dence. She argues that courts should liberally interpret the rule to encourage the voluntary settlement of federal civil suits and suits in bankruptcy courts. Finally, Nina Jill Speigel, a student at Fordham Law School, discusses the summary jury trial, a dispute resolution process used in a number of federal courts. Ms. Spiegel questions whether mandatory use of the process can be justified under the federal rules of civil procedure. The article brings to bear an important issue in implementation of dispute resolution: whether a particular process should be voluntary or mandatory. All three student comments point to issues that will be addressed in the 1990s as the integration of dispute resolution into the justice system is expanded.

Obviously, the reality of this symposium issue is the result of efforts by many. The Law Review is indebted to the authors of the articles, essays, and student papers for their commitment to submit important perspectives. In addition, this special issue could not have occurred without the institutional support from Dean Ronald F. Phillips and the Institute of Dispute Resolution, a comprehensive and unique program at Pepperdine School of Law.