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The Immediate Future of Alternative Dispute Resolution

ROBERT COULSON*

The pace of communications in the modern world has increased at a seemingly magical rate, with improvements in services used to transmit information, opinions, and goods. People are linked by wire, by satellite, and by jet planes. Paper has been replaced by computer monitors. Documents drop instantly out of distant terminals. Presto!

Dispute resolution, as a service, has lagged sadly behind, particularly in the courts. Industry and the American public want their institutions to provide prompt and efficient service. The public courts have not done so, nor have most regulatory bodies which provide "due process" procedures. Their services are time-consuming, expensive and authoritarian.

What does this bode for Alternative Dispute Resolution (ADR)? The term ADR has been used to describe various systems that attempt to resolve legal disputes, other than through traditional litigation in the courts. Some of those systems are private. Others are based in public agencies.

The question here is whether alternative methods of dispute resolution will continue to flourish in the future. I think public demand for better dispute resolution methods is inevitable. The courts and quasi-judicial agencies have failed to maintain parity with other service institutions in our society. The reasons for this are obvious. Court processes reflect our historic legal tradition. Courts have little incentive to change, so court reform is frustrating and deliberate. Even relatively minor changes are difficult to achieve. Many of those who participate in the court process, including the lawyers who represent clients, have vested interests in the present system.

The same problem faces regulatory agencies. They share many of the courts' characteristics. Agency personnel and administrative law

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judges, whatever their personal desires, tend to be locked into the status quo. Expensive legal services, paperwork, and time lost in the often ponderous procedures are typical of such systems.

Some judges try to expedite the resolution of cases on their individual calendars by pressuring attorneys to settle, pushing cases into mediation, or utilizing other forms of alternative dispute resolution. But substantial change seems virtually impossible. The structure continues to slumber in the embrace of statutory, if not constitutional, law.

The business community has more freedom. Executives and their lawyers can utilize contractual settlement procedures. They can retain a mediator or submit a case to arbitration. In our free society, individuals have the right to negotiate their own settlements or make use of binding arbitration. These alternatives are realistic, logical, and available. Private dispute resolution will continue to grow, while the courts and administrative agencies lag behind other service institutions.

For certain types of disputes, there is a need for an independent agency to encourage the use of ADR procedures. The American Arbitration Association (AAA) was created to provide that function. Its services will continue to expand because lawyers and their clients need such an agency to help them design ADR systems and to provide administration. An impartial, professional agency can publicize the availability of private alternative dispute resolution services and demonstrate that such systems work. When needed, the AAA will be there. It and hundreds of other dispute settlement agencies will continue to encourage such procedures.

Thousands of experienced mediators and arbitrators are participating in this service. In effect, a new profession of dispute resolvers has been created. Therefore, the use of alternative dispute resolution will expand. Increasing numbers of individuals will become involved in the mediation or arbitration of disputes.

American business will continue to develop customized private procedures based upon negotiation, mediation, and arbitration. Courts will also turn to alternative systems to cope with their steadily increasing caseload. Court-annexed arbitration and summary jury trials are examples of such programs. However, most innovation is likely to take place outside the courts. Modern systems of private dispute resolution supplement the work of the courts, providing opportunity for research and creativity.

I foresee growth in alternative dispute resolution—a continuing opportunity to provide an expanding service to the public and the business community. A society that has developed almost instantaneous communications can no longer afford to maintain such archaic meth-

ods of resolving disagreements as those utilized in the present civil court system. Some lawyers may not greet this new era with undivided enthusiasm, but the trend seems inevitable. Modern dispute management requires modern techniques of dispute resolution.

