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Two-hundred years ago, the founders of this great nation ratified what has been confirmed as the greatest charter of government ever created, the United States Constitution. The Constitution was conferred upon us as a diamond in the rough—exclusive of our Bill of Rights, unclear as to the role of the judiciary, ambivalent toward the mutually exclusive concepts of equality, severely limited as to enfranchisement, freedom, and slavery. Despite being replete with pluralistic structures and methods through which these shortcomings might be addressed, we as a nation continue to grow. Minutes of the constitutional convention of 1787 indicate that the authors of this great document viewed it as much as a heuristic approach to law and government as a mere charter of form.[1] The Constitution was approached by the participants of the convention as an evolving concept; a means as well as an end. It is clear that the authors of this charter demanded a "living constitution,"[2] one which admitted to change and adaptation as our nation grew.

Over the last two-hundred years, our society has progressed dramatically, growing from a predominantly agrarian nation to the undisputed industrial, economic, and military leader of the world. In the process, those institutions engendered in our Constitution have enabled us to polish that rough diamond to a brilliance unrivaled throughout the world. Our judiciary, particularly our adversarial system of justice, has played a key role in this progression. Therefore, it

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1. For an excellent treatment of the constitutional convention, *see* THE RECORDS OF THE FEDERAL CONVENTION OF 1787 (M. Farrand ed. 1963).

2. *Id.*

is appropriate that on this bicentennial celebration of the Constitution, and at a time when our adversarial system has come under attack as unwieldy and inefficient, we should examine these issues as they relate to the past two-hundred years, as well as to the future.

In the two centuries since our Constitution was drawn, many dramatic changes have occurred. Our population has grown nearly a hundred-fold. Technology has changed the way we live, easing our workload while polluting our environment. With the advent of modern transportation, members of our society have become extremely mobile, changing residencies on average of every five years.[3] Computers, telephones, and the mass media have all tremendously facilitated interaction among our people. A natural result of this cacophony of interaction is an increase in the number of disputes between members of society; and courts have been called upon with increasing frequency to adjudicate these disputes.

Other factors, such as the social attitudes of our citizens, must also be considered in tracing the etiology of this so-called "explosion of litigation."[4] There can be no doubt that the increasing contact among members of our society is among the primary reasons for this result. Contrary to the comments of some of the critics of our system, this increase in litigation is simply reflective of an open, growing, and healthy society which encourages its citizens to resolve disputes peacefully within our *adversarial* court system.

Alternative Dispute Resolution (ADR) is not intended to supplant this healthy adversarial process. Rather, ADR is properly viewed as a supplement to that process, a method which helps free court resources for those cases that are better served in an adversarial proceeding. Consequently, ADR provides twentieth-century America with a means to continue the refinement of our two-hundred year old system.

While ADR is often perceived as the "new kid on the block" with uncertain prospects for success, it has actually been a part of our judicial process for many years. The modern trend began in the 1940's with the introduction of pretrial conferences designed to facilitate case settlement. ADR continued apace with such historic developments as the Arbitration Act of 1947,[5] the 1983 amendments to the Federal Rules of Civil Procedure, which, among other things, encouraged alternative means of dispute resolution, and the courts' and parties' increased use of mediation and other court-annexed settlement devices. The great successes achieved by virtue of these meth-

3. *See, e.g.*, P. MICHAEL, POPULATION GEOGRAPHY: PROGRESS AND PROSPECTS (1986).

4. *See generally* J. LIEBERMAN, THE LITIGIOUS SOCIETY (1981).

5. 9 U.S.C.S. § 1 (Law. Co-op. 1978 & Supp. 1987).

ods will undoubtedly inspire new and more creative methods in the future.

It is my conviction that the 1990's will experience a growth in both court-annexed and court mandated extra-judicial procedures. Judges and attorneys—from the county courthouse to crowded metropolitan areas—will unleash the same creative spirit which helped polish our cherished adversarial system. That same spirit will help create alternative means of resolving disputes which will complement and fine tune this adversarial system. Law schools will train advocates in ADR methods, and we will likely see courts requiring more arbitration, mediation, and negotiation for cases which admit best to settlement. It is even likely that some sort of pre-judicial system will be created in order to resolve conflicts efficiently and fairly *before* they enter our judicial system.

Cases which do not respond well to early settlement technique will most likely be sent to magistrates and judges for summary jury trials. These trials, which have been in use for nearly five years, provide the parties with an opportunity to present their cases to a jury in an abbreviated fashion and at relatively little cost.[6] These juries render advisory opinions and verdicts. Summary jury trials have proven effective at settling even the most difficult and acrimonious cases, largely because they help focus issues and give parties a good idea of the merits and value of their cases.

Even where summary jury trials and so-called "mini-trials" are not able to settle a case, the crown jewel of our system of justice, the adversarial process, will be utilized to its full extent. It is important to note that many ADR methods preserve and employ the basic tenets of the adversarial system—tenets such as the conduct of discovery and motion practice. The adversarial process in full bloom, however, includes the presentation and admissibility of evidence, argument before the court or a jury, and the possibility and process of appeal, as well as various other strategic and tactical forays by counsel. In the future, only cases which fail other means of dispute resolution will be exposed to the full array of the adversarial process.

The adversarial process will always be available for those difficult cases which cannot be resolved otherwise. Alternative Dispute Resolution will serve to facilitate and strengthen the adversarial process by preserving precious court resources for those cases which need it

6. *See* Lambros, *The Summary Jury Trial—an Alternative Method of Resolving Disputes*, JUDICATURE, Feb.-Mar. 1986, at 286.

most. We indeed should be thankful to our forefathers for leaving us a system of justice that works so well and which at the same time maintains the flexibility needed to grow and change with our changing needs. It is a gift of which we can all be proud and which we should all cherish on its two-hundredth anniversary.