

Reducing the Costs of Civil Litigation

Alternative Dispute Resolution

by Stacey Keare

Summary

Many state and federal courts have been experimenting with various forms of alternative dispute resolution in hopes of savings money and speeding up case processing time. However, empirical research has not yet born out the contention that ADR saves courts substantial amounts of money. Following a conference last year held by the National Institute for Dispute Resolution held for the purpose of addressing the question of evaluation of data pertaining to ADR, one writer summed up the situation as follows: "Most frustrating to conference participants were the practical difficulties in documenting with confidence what many court officials believe to be cost savings of ADR programs. Researchers doubt that they will ever have clear evidence of cost-savings claims of court-connected ADR programs." [1]

One reason for the lack of evidence on cost savings may simply be that evaluating the cost effectiveness of ADR programs is technically very difficult. Generally, program evaluations require a test and control group to determine comparisons between the two. Lawsuits are simply too variable to be able to make valid comparisons. However, the few extensive studies that have been done do not show significant cost savings. Those studies that do report cost savings tend to be anecdotal or opinion-based. If in fact courts are not saving money, it is necessary to evaluate ADR efforts on other criteria, such as savings to litigants, and satisfaction of litigants. There are many well-documented benefits to ADR, such as satisfaction of parties and a growing effort generally to resolve disputes outside of the courts, which argue for the continued use of ADR in the courts, even if costs savings are not substantial.

Although cost savings are not well-documented, there are several key issues that can be addressed as to the most likely ways to save money. Key questions for the state to address as far as saving money through ADR are:

- 1) Do any types of ADR programs offer more promise for savings than others?
- 2) Should ADR be mandatory?
- 3) To what extent should ADR be left to the private market?
- 4) Should ADR neutrals be paid, and if so, by whom?
- 5) Should penalties be assessed for those who do not actively engage in ADR or for those who go onto trial?



6) Should the limit on the amount in controversy be lifted?

7) Can ADR be better integrated into other types of settlement efforts?

Each type of ADR program presents a different set of costs and benefits. This report will outline the various options and the information available about those options. It will then review the California experience with ADR programs, and address the key questions facing decision-makers in California.

Background

I. Goals of ADR

For a number of years state and federal courts have been experimenting with various methods of alternative dispute resolution in the hopes of cutting costs to courts and litigants and of speeding up case processing time. It is believed that by giving litigants alternatives to going to court, they will be more likely to settle and will resolve their disputes more quickly and cheaply than they would if they went to trial. Even when ADR does not directly lead to a resolution, it is believed by some that the effort often leads eventually to a settlement.

Many state and federal courts have been experimenting with integrating ADR services with the court system. Generally, the benefits of court-annexed programs are seen as cost savings, reduced backup, and satisfaction of the parties. It is possible that motions, discovery and other pre-trial procedures are reduced when cases go through alternative dispute resolution. There is also the possibility that ADR improves the quality of the decision-making process and helps to preserve relations among the competing parties. Finally, it is contended that ADR at least helps to narrow the scope of issues so that if a trial is held, it will be faster and simpler than it otherwise would be.

A pervasive criticism of using ADR in the court system is that it provides a lesser form of justice in the interest of cost savings. Many people question the constitutionality of a system that in effect seeks to replace a person's right to a jury trial. Detractors note that there are goals of the justice system unrelated to efficiency, such as the development of the law through precedent, the desire for some to bring injustices out into the open (as opposed to settling in confidential ADR procedures), and the need for complete examination of issues, giving litigants the full benefit of federal rules of evidence and other procedures. Furthermore, many people doubt the quality and accountability of ADR providers, otherwise known as neutrals. [2]

II. Evidence of Cost Savings of ADR in the Courts

General Cost Savings Research

Empirical research into cost savings generated by such integrated systems has revealed less savings than might be expected. In one of the only studies that evaluates nationwide data by comparing Federal Court Districts that use ADR and those that do not, the researcher discovered no statistically significant differences in cost, overall delay, or the incidence of civil trials between districts that use ADR and those that do not. [3] The author of the study, Kim Dayton, found that "ADR Districts are neither more efficient nor

less efficient in handling caseloads or inducing settlement than peer districts", and suggested that ADR be considered merely a settlement event.

However, a recent data report from the Administrative Office of the Courts shows more promising signs, but the data comes from estimates, and are not conclusive. Survey results showed that in 73% of reported cases in which ADR was used, participants estimated that ADR neither increased nor decreased litigant costs, while 18% estimated decreased costs and 8% estimated increased costs. While these statistics don't indicate a great savings, the signs are generally positive. The Administrative Office of the Courts used these estimates to cite an average savings to litigants of \$957 per case, or about \$300,000 for the 313 cases reported. Furthermore, the Administrative Office of the Courts estimated a savings of .48 Court days per case, which would translate to a savings of \$587,000 for the first year of the pilot program. [4] These figures, however, do not include costs of administration of the program, or the costs of mediator's time. If neutrals were paid, costs to either the litigants or the court system would increase.

Types of ADR Most Commonly Practiced in California, and Evidence of Their Effectiveness

Each of the methods discussed below has different strengths and weaknesses and different likely effects on the cost of litigation.

A. Mediation

Mediation consists of a neutral person acting as a facilitator to help parties come to their own decisions in resolving disputes. Traditionally mediation has been non-binding and voluntary, with the mediator having no power to impose a settlement. Mediation is popular because it allows the parties themselves to determine the outcome of a dispute. Unlike arbitration, parties are not threatened with an imposed settlement. Some mediation service providers offer a variant of mediation known as binding mediation, where the mediator offers an enforceable decision following the mediation process. Mediation has been used extensively in state and federal courts in the last several years.

The potential benefits of mediation are lower costs, early resolution of disputes, and improved quality of settlement because the parties work together to come to a mutually agreeable outcome. Mediation is also very flexible, it can be used at any point in the process, and allows for creative solutions that are acceptable to all parties. Many surveys have indicated that judges, attorneys and parties are satisfied with the mediation process. Typically, in these surveys, 75% or more of respondents indicate that they are satisfied with the use of mediation even if no agreement is reached. [5] Mediation is sure to save money in those cases where settlement is expedited due to the mediation, but in the cases that don't settle, the mediation may add to the overall cost.

Mediation is a simpler process than arbitration and therefore, generally costs less than arbitration. Therefore, when unsuccessful, the additional cost of a mediation encounter is less than the cost of arbitration. Furthermore, because the parties are the decision makers in a mediation, it is believed that the mediation will often help lead to a settlement even if there is not an immediate resolution.

Not all reaction to mediation programs is positive. A study documenting attorneys and clients attitudes towards mediation found that attorneys thought mediation can delay access to the legal system, account for an additional expense if settlement is not

reached, the quality of mediators is often unimpressive and that there are ethical problems generally with a shift away from the legal system. [6]

B. Arbitration

Arbitration is similar to a trial, with the decision of a judge or jury replaced by a third party arbitrator. Rules of evidence are typically relaxed and discovery is abbreviated. Unlike mediation, a decision is imposed by the neutral, although the decision can be either binding or non-binding. All court-annexed programs are reviewable through a trial de novo unless both parties waive their right to a jury trial.

Evidence indicates that arbitration may not be as successful at containing costs as is mediation. There are several reasons for this. Because mediation can take place earlier in the litigation process when cases do settle, more money is saved. Furthermore, the rate of trial de novo is higher for arbitration, probably because the parties do not make their own decisions regarding the settlement. One study cites a low rate of requests for trial de novo in the federal courts of 46% (in Iowa) and a high rate of 76% (in New York). [7] The District Court of Connecticut, one of the original pilot programs for court annexed arbitration, discontinued its program after it was determined that 14% of the courts administration costs were spent on the arbitration program, and only 7% of the civil caseload was being addressed by the program. [8]

Judge Neal of the Los Angeles District Court commented that he did not think Los Angeles should focus on arbitration. First, he said that it is probably best to focus on a single type of program, because the startup costs and implementation costs would rise considerably with different options of ADR. Furthermore, for the reasons mentioned above, he prefers mediation as a method of cost savings and true settlement. [9] This idea was echoed by administrators in San Francisco and Marin.

Several studies of court annexed arbitration have failed to find cost savings. Both a pilot study of three federal court-annexed arbitration programs and a study by RAND of court-annexed arbitration in commercial litigation failed to find savings, a change in case disposition time or settlement rates. [10]

C. Early Neutral Evaluation (ENE)

In ENE a third-party neutral meets with the disputants before the major portion of discovery has taken place. The neutral provides a non-binding assessment of the likely outcome of the case. The parties then use this assessment in their settlement discussions. This process was developed because there is a belief that cases are often not assessed dispassionately early on in the process, and that such evaluation will often lead to an early settlement. ENE begins much earlier in the process than arbitration and therefore can be helpful for issues other than settlement. The neutral can be helpful in assisting parties to prepare stipulations, draft discovery plans, and identify issues. [11]

The Northern District of California established an ENE program in 1985. Based on early indications of success, the court expanded and refined the program in 1988 and 1989. The court assigns cases to ENE through an automatic system -- every party who is assigned to ENE must attend the ENE session, together with his/her lead attorney.

A study done by Joshua Rosenberg and Jay Folberg, suggested that ENE may save a

considerable amount of money -- but their conclusions were based on opinions, not empirical data. The study also determined that the success of ENE in the Northern District of California's program depended on the skill and training of the neutrals. Because ENE is not a "form" of ADR, like arbitration or mediation, each neutral behaved differently according to his or her training. [12]

Rosenberg and Folberg reviewed all cases filed from April 1988 through March 1992. Because even-numbered cases were referred to ENE and odd-numbered cases were not, there was a control group against which they could compare the results of the ENE program. Unfortunately, when requested, the attorneys involved did not reveal their actual costs, so these could not be compared in the end. As usual, only information as to parties and attorneys opinions were gathered. The researchers estimated the mean cost of an ENE session to be \$2947. Seventy-seven attorneys returned estimates of cost savings -- with a mean value of \$10,000. [13] However, a comparable number of attorneys estimated that the ENE session cost them money -- with a reasonable estimate being the cost of the session itself. Thus, a possible measure of the potential savings is around \$6,000 per case. Thus, while the session represented duplicate effort in some cases, in those cases where savings were realized seem to lead to net savings.

Program Components that May Affect Cost Savings

A. Administration

With court-annexed programs, there is always going to be some form of cost associated with administering the program. These costs include training of neutrals, salaries of neutrals, the cost of generating lists of neutrals from private firms, and other administrative duties.

B. Right to Request Trial de Novo

One of the likely reasons for the lack of proof of cost savings is that people who use ADR in the court system preserve the right to request a trial de novo. If a trial is requested, the ADR effort in such cases may be duplicative.

C. Payment of Neutrals

The costs associated with running an ADR program of any sort can be distributed in a number of ways: litigants can be charged a fee, the court can pay for the training and salaries of neutrals, or neutrals can be asked to volunteer. Each of these methods has costs and benefits to different parties.

D. Mandatory v. Voluntary Programs

There is much controversy around whether mandatory or volunteer programs will result in greater cost savings. While mandatory programs will surely attract more cases than voluntary ones, some people believe that litigants who do not want to use ADR will not come to a decision and the ADR session will be a net loss of money, both to litigants and to the courts. However, the opposite side is that volunteer programs do not encourage enough participation.

III. The Current State of Private ADR Efforts

In the last twenty years ADR has been rapidly developed in the private sector. Companies such as the Center for Public Resources, a New York-based non-profit, EnDispute, a for profit company with offices in several U.S. cities, California-based Judicial Arbitration and Mediation Services (JAMS), and the American Arbitration Association [14] provide a high volume of business to primarily corporate clients. For example, in 1992 JAMS generated revenues of 25 million dollars and handled roughly 12,500 cases. In the same year the American Arbitration Association handled 60,000 cases. [15] It is incontestable that private ADR has saved the court system money by preventing a number of disputes from entering the court system altogether. Likewise, it is clear that there are savings from the litigants perspective. Many companies are choosing to resolve disputes through private ADR services because they are convinced that savings are realized. "Proponents point to substantial savings in time and legal costs and to another key plus -- confidentiality." [16]

IV. ADR in California

California courts have been developing arbitration and mediation programs over the last decade, and the Northern District of California has developed an extensive ENE program. California first officially ventured into ADR in 1982, when the legislature created an arbitration program under which superior courts with more than 10 judges would provide arbitration in civil matters where the amount in controversy was less than \$50,000. In 1993, a similar law was created to encourage the use of mediation. Under that law (1993 Cal ALS 1261), Los Angeles has been under a mandated program of mediation and arbitration of disputes where the amount in controversy is less than \$50,000. Other counties are authorized to use mediation as an alternative to judicial arbitration.

In addition, in California there is a rule requiring settlement conferences in all superior courts with three or more judges on all matters which will take more than five hours of trial. [17] Furthermore, unique to California is the 1986 Dispute Resolution programs ACT (DRPA) which authorizes counties to charge court user fees to fund non-profit dispute resolution programs. [18] In May of this year legislation that would require mandatory mediation in certain civil cases failed passage in the senate. [19] Senate Bill 271, last considered on August 24, then re-referred to committee, would have courts with ADR programs explain the benefits of mediation to the parties and ask parties to use mediation to resolve disputed issues.

In signing the authorizing legislation for the mediation programs, Governor Wilson complained that the law does not go far enough in expanding the use of ADR. He contended that there was no good reason for limiting the amount in controversy to \$50,000 and that he disagreed with the provision that disallowed using both arbitration and mediation on the same case.

The counties have developed programs that vary in significant ways. Following is a summary of four differing county programs:

Four California ADR Programs

San Francisco San Francisco still uses arbitration in most cases, although they have plans to develop a civil mediation program. While arbitration is mandatory in certain

cases, mediation will be voluntary. Arbitrators are paid a fee by the county, but mediators will be paid by the litigants.

Marin In Marin, most civil cases now go to mediation. The program is mandatory and litigants pay the neutral's fees. An administrator in Marin said that it is up to the attorneys to point out at the outset if a litigant cannot afford to take part in the mediation. Arbitrators are paid by the county.

Los Angeles Both arbitration and mediation are being used extensively in Los Angeles. The programs are mandatory and neutrals all volunteer.

San Diego San Diego also uses both mediation and arbitration extensively. The neutrals are paid \$150/case with state funds.

Clearly, there is little consensus on various program components which may impact potential cost savings. Payment of neutrals varies among the counties, there is not consensus on the issue of voluntary vs. mandatory programs, and there is not consensus about the preferred type of ADR method.

Conversations with administrators and judges reveal several general conclusions:

- 1) Mediation seems to offer more promising savings than arbitration. The rates of trial de novo following arbitration have consistently been higher than following mediation.
- 2) Earlier intervention is likely to save more money than later intervention. This would also favor mediation or ENE over arbitration, as mediation is more flexible.
- 3) There is unlikely to be funding for the court system to pay neutrals in the foreseeable future. Therefore, if there is to be expansion and improvement of ADR programs, litigants will likely be assessed fees for ADR.

V. ADR in Federal Courts

Following the enactment of the Civil Justice Reform Act of 1990 and the Administrative Dispute Resolution Act of 1990, the use of ADR has expanded in federal courts. By the end of 1993, three-quarters of the country's federal district courts had adopted some form of ADR. [20] Arbitration is the most developed form of ADR in the Federal Courts, with over ten districts using it to a significant extent. Mediation is practiced in at least four districts. The Northern District of California has a well-established program of court-annexed arbitration. Cases are screened immediately after filing to determine eligibility, and those deemed eligible are assigned after the last answer in the case has been filed. [21] Arbitrators fees are paid for by the Administrative Office of the United States Courts - \$250 per day for single arbitrators, and \$150 per day for those serving on panels of three. There used to be a penalty assessed if a party decided to go on to trial but the verdict was not substantially more favorable. In 1989 all penalties were repealed. The Eastern District of Pennsylvania continues to use a system of penalties, which includes refusing the right to a trial de novo for those who do not meaningfully participate in ADR.

Key Questions

Possible reforms that would affect all of the counties in California include raising the limit

on the amount in controversy, expanding the mandate to other court systems, mandating court payment for neutrals, charging litigants for ADR services, and adding new forms of ADR. Another possibility is the use of penalties for those who pursue a trial de novo who do not receive a substantially better outcome at trial. Furthermore, each county must decide whether to make its program mandatory, whether to pay neutrals, and which type of program to use.

1. Do any types of ADR programs offer more promise of cost-savings than others?

Mediation and Early Neutral Case Evaluation seem to be more promising for cost savings than arbitration from the court's point of view. While arbitration often involves large cases and therefore has a promise to save litigants a fair amount of money, those savings potentially are lost because of the widespread use of the right to request a trial de novo. Mediation and ENE both take place earlier in the process of litigation and are cheaper to conduct than arbitration. This may lead to the conclusion that arbitration is more suited to the use of voluntary programs or the private sector, because people who choose to go through arbitration and pay for the services are more likely to abide by the decision.

Furthermore, lawyers and judges have indicated to administrators that mediation is a preferable form of ADR, because it is not coercive and is more flexible. While it might seem that the best answer would be to offer a variety of options, counties may find that it is both expensive and cumbersome to do so.

2. Should ADR be mandatory?

There is much controversy around the issue of whether ADR should be mandatory or voluntary. Of course the main benefit of a mandatory program is that it will be more widely used. However, ADR is likely to be most successful when the parties are willing participants. Therefore if unwilling parties are forced to go through ADR, they are more likely to request a trial de novo and therefore make cost savings less likely.

In California, both mandatory and voluntary methods are used in different counties. For example, in San Francisco, arbitration is mandatory where the amount in controversy is less than \$50,000, but the use of mediation services is voluntary. In Marin, on the other hand, mediation is widely used and is mandatory. In Marin the litigants must also pay the fees of the mediators. One person interviewed said that the Marin system is viewed as onerous by some parties, because it is both mandatory and the litigants must pay. Therefore, for those people determined to go to trial, the ADR session is a certain added cost.

There is little evidence to suggest that ADR should be mandatory. It seems clear that if both sides want to settle, ADR is likely to be successful, but if they do not want to settle there is a strong chance that there will be a request for a trial de novo. Making ADR mandatory is more likely to infringe on the right of parties to a jury trial, by causing delay in the time of trial, and creating greater overall cost to going to trial.

The federal Judicial Conference as well as the former Council on Competitiveness, while encouraging the use of ADR programs, specifically take the position that ADR programs should be voluntary. They believe that mandatory programs will put an added cost on litigants and likely not save the courts any money. [22] Judge Ann Claire Williams

testified to Congress that "the prevailing sentiment is that well run voluntary programs will attract participants and provide an effective ADR alternative."

3. To what extent should ADR be left to the private market?

The private sector ADR market is expanding rapidly and operating effectively. Unlike public programs, the efficiency of private ADR firms can be discerned from their mere existence -- people would not resort to the use of a public system if they did not believe it is less costly to them than the public system. This would suggest that the private sector development of ADR should be encouraged to the greatest extent possible.

For this reason, courts can be a conduit for encouraging people to explore the use of private ADR instead of going to court. As large companies have discovered, the cost of using ADR is less for them than the cost of going to court. For those people who do not expect to be regularly involved in litigation, they are likely to have less knowledge about the existence or effectiveness of private ADR. Private citizens should be encouraged to make similar calculations of their probable costs, and should be encouraged to avail themselves of ADR before entering the court system.

From the point of view of clients, the incentive to participate in ADR may not be strong enough if they are forced to pay for ADR services. However, a number of businesses have determined that using private ADR services is more cost effective than going to court, so other people may be persuaded that the benefits outweigh the costs. The biggest drawbacks to reliance on private ADR are the lack of access for those who cannot afford ADR services, and the possible abuse by companies who use their contracts to require use of ADR.

There are several ways that courts can help encourage the use of private ADR. The courts can encourage the development of private ADR by requiring attorneys to tell clients about ADR options or by having judges refer disputes to private ADR providers. An administrator in San Francisco said that he had been approached by someone in JAMS/EnDispute who proposed that the county give JAMS the names of people who file cases so that the company can contact them and try to sell their services. Any expansion in the use of private ADR should be done carefully to protect the rights of both parties. To the extent that it is more valuable for parties not to enter the system, as long as they are satisfied with the outcome, both the system and the litigants will save money.

4. Should neutrals be paid, and if so, by whom?

There are several levels to this analysis. The first question is -- should we pay neutrals? Presently neutrals in California are either volunteer, paid for by the parties, or are paid a fee with state funds. While a volunteer system saves the courts money, it uses a large amount of volunteer capacity in the legal community. Furthermore, there is the question whether we can attract the highest quality neutrals if they must volunteer their efforts. The highest quality neutrals may temporarily volunteer their time but would not likely be willing to do so on a long term basis. Furthermore, by demanding that neutrals volunteer, the extent of ADR programs has a self-imposed limit -- volunteers will not support a widespread program. If neutrals continue not to be paid, the opportunity cost must be considered in determining whether or not ADR is a cost-effective program, given that the volunteers' time could be used elsewhere.

The second question is, if it is preferable for neutrals to be paid, how should they be paid? Through interviews with administrators and judges it seems beyond doubt that the state will not increase funds to pay for neutrals in the near future. Therefore, fees would have to be imposed on litigants. In this scenario, the cost to litigants cannot be seen as a free-ride for the court system. The courts must acknowledge that the cost is significant, even if it is not being born by the court. An administrator in Marin said that she did not perceive problems with their program of charging litigants for mediation services, but the program in Marin is mandatory, so the litigants really have no choice. Although the county sees this as an advantage, it does not necessarily mean that the overall costs for the litigants are going down.

5. Should California Courts use penalties to prevent parties from requesting a trial de novo?

Assessing penalties on parties who go on to trial after using ADR would certainly save money for the state by decreasing the number of disputes that go on to trial. For this reason several U.S. District Courts use such penalties. However, this avenue approaches coercion and therefore imposes substantial stress on the right to a jury trial. Given that ADR was first conceived to reduce the cost of courts and increase the speed of trials, this method does not seem to serve the goal of improving access to the justice system.

6. Should the amount in controversy limit be raised from \$50,000?

Given the strong evidence of satisfaction in ADR procedures, there does not seem to be a good reason for limiting the value of the amount of controversy to \$50,000. The purported benefits of ADR, such as narrowing the issues, and creating a better relationship between the parties, are arguably more important for larger cases than smaller cases. However, the incentive to save costs on litigation are greater for people with lesser values at stake. Currently, those with larger amounts in controversy seem to be the parties who are taking advantage of private sources of dispute resolution. It may be preferable to encourage those involved in bigger cases to take part in ADR but to impose upon them the costs of the ADR sessions.

7. Can ADR be better integrated into other types of settlement efforts?

97% of all cases settle. Therefore, ADR is clearly not the only factor influencing settlement, and keeping cases out of trial. We need to learn more about where in the process efforts at settlement are more likely to be truly helpful. In the Northern District of California, one of the ADR methods used is to have Magistrates take part in settlement conferences. In developing the program, the District learned that an overwhelming number of attorneys believed that having a judge encourage settlement at the opening of the case would be helpful. [23]

"Settlement conferences are currently the most common form of ADR." [24] The settlement judge appraises a case and the chances of winning a jury verdict and suggests a settlement figure. This is not very different from ENE. It seems unlikely that one approach fits all cases. However, it is equally unlikely that it would be cost effective to provide so many ADR and settlement options that all situations could be addressed individually. The administrative cost and coordination costs would be too high. A positive prospect would be to approach the whole process as a single effort rather than separate

ADR efforts from more traditional settlement efforts.

Other Recommendations

1) Increase Education about Benefits of ADR to Increase Voluntary Use

There is no doubt that there is a place for ADR. However, the loss in potential savings comes from people who do not abide by ADR judgments, and request a trial de novo. If people were more knowledgeable about the costs and benefits of ADR, if it is done well, they would be more likely to make a good faith effort to resolve disputes outside of court. Various methods of education, from general public information to giving information to potential litigants will help encourage people to accept ADR as a legitimate decision making tool.

2) Need for Effective Empirical Analysis

ADR programs are widespread enough in the U.S. by now that there is ample information available from which to learn about the cost effectiveness of ADR. Efforts to determine the effectiveness should tie in with efforts to determine the success of settlement efforts more generally.

Reducing the Costs of Civil Litigation

Alternative Dispute Resolution

Bibliography

I. Public vs. Private ADR

Johnson, Sharon. With Crowded Courts and 7-Digit legal Bills, Companies are Finding New Ways to Settle Differences, Working Woman, September 1984.

Galen, Michelle. Guilty! Business Week, April 13, 1992.

Schine, Eric, and Linda Himelstein. The Explosion in Private Justice, Business Week, June 12, 1995,

II. ADR in the Court System

A. Generally

i. Costs

Kerbeshian, Lynn. ADR: To be or ?, North Dakota Law Review, 1994.

Dayton, Kim. The Myth of ADR in Federal Courts, Iowa Law Review, July 1991.

Carver, Todd. ADR: Why it Doesn't Work and Why it Does, Harvard Law Review, May 1994.

ii. Benefits

Wood, Donald. ADR -- Why it Works and Why it Doesn't, Tax Executive, January 1995.

Stuller, Jay. Settling to "Bearable Happiness," Across the Board, Nov. 1993.

Justice in the Balance, Report of the Commission on the Future of California Courts.

Manzoorian, Harry. The Changing Face of ADR, Connecticut Law Tribune, Aug. 29, 1994.

Fischer, John. Local Governments and ADR, Public Management, 1993.

Rosenberg, Joshua, and Jay Folberg. ADR: An Empirical Analysis, Stanford Law Review, July 1994.

Administrative Office of the Courts, ADR Data Reports, July 17, 1995.

Sherman, Edward. Symposium on Civil Justice Reform: A Process Model and Agenda for Civil Justice Reform in the States, Stanford Law Review, July 1994.

B. Arbitration

i. Costs

ii. Benefits

Hensler, Deborah. Court-Ordered Arbitration: An Alternative View, RAND Corp., 1992.

Guill, James and Edward Slavin. Rush to Unfairness: The Downside of ADR, 28 No. 3 Judges Journal (Summer 1989).

Roehl, Janice and George Capowich. Evaluation of New Jersey's Expanded Arbitration Program: Final Report. New Jersey Administrative Office of the courts, May 1991.

Slate, William. Arbitration Comes of Age, American Lawyer, May 1995.

Hanson, Roger and Keiletz, Susan. Court-Administered Arbitration: Lessons from the Field, State court Journal, Fall 1991.

C. Mediation

i. Costs

ii. Benefits

Marguiles, Sam, and John Sands. New Dispute Resolution Rules Promote

Settlement, 133 N.J.L.J. 343 Feb. 1, 1993.

Laney, Frank. Mediated Settlement Program Already Making an Impact, North Carolina Lawyer, Mar.-Apr. 1992.

Keilitz, Susan. National Symposium on Court-Connected Dispute Resolution Research (National Center for State Courts and State Justice Institute, 1994).

Schultz, Carl. Florida's ADR Demonstration Project: An Empirical Assessment (Florida Dispute Resolution Center, 1990).

McEwen, Craig. An Evaluation of the ADR Pilot Project: Final Report. Bowdoin College, January, 1992.

D. Neutral Case Evaluation

Rosenberg, Joshua, and Jay Folberg. ADR: An Empirical Analysis, Stanford Law Review, July 1994.

IV. The Experience in California

Interviews with: Lynda Bytof, Irene Mariani (Marin), Alan Carlson, (San Francisco), Helen Roseberry (San Diego), Richard Neal (Los Angeles), Elliot Monka (Los Angeles), Ken Bryant (Dispute Resolution Council)

ADR Data Report, from the Administrative Office of the Courts, July 17, 1995.

Folberg, Jay and Rosenberg, Joshua. The Use of ADR in California Courts: Findings and Proposals, USF Law Review, Spring 1992.

Notes

[1] McEwen, Craig. "State Justice Institute Conference Examines Research on Court-Connected ADR." ([return to text](#))

[2] One proposal for reform would create an accrediting system for neutrals which could potentially alleviate this problem. ([return to text](#))

[3] Dayton, Kim. The Myth of ADR, Iowa Law Review, July 1991. ([return to text](#))

[4] Administrative Office of the Courts Data Report, July 1995. Using a cost estimate of \$3,943 per judge day. This savings estimate exceeds the target of \$250,000. ([return to text](#))

[5] Kerbeshian, Lynn. ADR: To be or ?, North Dakota Law Review, 1994. ([return to text](#))

[6] Id. ([return to text](#))

[7] Dayton, Kim. The Myth of ADR, Iowa Law Review, July 1991. ([return to text](#))

[8] Id. ([return to text](#))

[9] Telephone conversation October 23, 1995. ([return to text](#))

[10] E. Lind and J. Shepard. Evaluation of court-Annexed Arbitration in Three district Courts (Federal Judicial Center, 1983) Hayes. Arbitration in Commercial Cases Save Money, Not Time, Wall Street Journal, Sept. 5, 1990. ([return to text](#))

[11] Dayton, Kim. The Myth of ADR, Iowa Law Review, July 1991. ([return to text](#))

[12] Rosenberg, Joshua, and Jay Folberg. ADR: An Empirical Analysis, Stanford Law Review, July 1994. ([return to text](#))

[13] While the mean was much higher this is attributable to one answer that guessed savings to be over \$1,000,000. Because this is such an outlier, the median gives a much more realistic estimate. ([return to text](#))

[14] Stuller, Jay. "Settling for Bearable Happiness," Across the Board, November 1993. ([return to text](#))

[15] Id., at 33. ([return to text](#))

[16] Johnson, Sharon. "A Plague of Lawyers," Working Woman, September 1984. ([return to text](#))

[17] Rosenberg, Joshua, and Jay Folberg. ADR: An Empirical Analysis, Stanford Law Review, July 1994. ([return to text](#))

[18] Folberg, Jay, and Rosenberg, Joshua. The Use of ADR in California Courts: Findings and Proposals, USF Law Review, Spring 1992. ([return to text](#))

[19] 1995 CA S.B. 1040 ([return to text](#))

[20] Mazadoorian, Harry. The Changing Face of ADR, Connecticut Law Tribune, August 29, 1994. ([return to text](#))

[21] Dayton, Kim. The Myth of ADR, Iowa Law Review, July 1991. ([return to text](#))

[22] FDHC Congressional Testimony of Ann Claire Williams, U.S. District Court judge for the Northern District of Illinois, October 29, 1993. ([return to text](#))

[23] Brazil, Wayne. A Close Look at Three Court Sponsored ADR Programs. University of Chicago Legal Forum. ([return to text](#))

[24] FDHC Congressional Testimony of Ann Claire Williams, U.S. District Court judge for the Northern District of Illinois, October 29, 1993. ([return to text](#))