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PERSPECTIVES ON THE RAND REPORT: THE DIALOGUE CONTINUES

By Richard C. Reuben

For two decades now, the alternative dispute resolution movement has proceeded under the belief that ADR can be faster, cheaper, and more satisfying than traditional litigation.

While such benefits may seem intuitive, proving them empirically has been a more daunting task. Programs vary widely, as do definitions of even the most basic of terms. Even then, information from courts and parties is often not available — and when it is, it is often incomplete or potentially biased. As a result, empirical research generally has been less comprehensive in nature, and has tended to focus on questions of process, such as participant satisfaction, rather than efficiency.

For these reasons, both scholars and practitioners of ADR looked forward with special anticipation to the results of a major study of federal court-connected mediation and early neutral evaluation programs by the RAND Institute for Civil Justice. The study was a congressionally mandated evaluation of the effectiveness of demonstration programs authorized by the Civil Justice Reform Act of 1990. As such, it would be both more comprehensive and efficiency focused than any such work to date.

For many, the results were breathtaking, if not shocking and disappointing. It concluded that there were no "statistically significant" findings that the court-connected mediation and early neutral evaluation programs it studied reduced time to disposition, litigation costs, or even perceptions of fairness — although it

did find that participants liked the process.

The study's project director, Dr. James S. Kakalik acknowledges in his report that these and other conclusions are necessarily preliminary, and should in no way be understood as a final verdict on court-connected ADR. Still even these preliminary results have the potential to reshape the dialogue about ADR and its practice for years to come.

This issue of *Dispute Resolution Magazine* focuses on the RAND Report, offering a wide variety of perspectives on the study and its significance. It begins with RAND's own summary of its methodology, findings, and preliminary conclusions.

Several prominent ADR researchers then offer their thoughts on the significance of the report in a trilogy of provocative articles.

In one, RAND ICJ Director Dr. Deborah R. Hensler offers some possible explanations for the results. In another, Craig A. McEwen of Bowdoin College and Elizabeth Plapinger of the CPR Institute for Civil Justice lay out a blueprint for future research inspired by the RAND Report. Finally, Duke University College of Law Professor Francis E. McGovern offers a thoughtful essay on the policy justifications of ADR beyond the efficiency rationales called into question by the RAND Report.

The impact of the RAND Report of course will reverberate beyond the academic and policy communities. Therefore, this issue offers several perspectives from the trenches of ADR practice, both from attorneys who include ADR in their practices, as well as state and federal ADR program administrators.

Michigan lawyer Pamela Chapman Enslin writes about how the report underscores the importance of public participation in the design and implementation of ADR programs. Following up on that theme with a slightly different tack, California lawyer Jeffrey G. Kichaven explains why he delights in having the monkey of economic arguments off his back as an ADR practitioner.

Finally, Maine ADR program administrator Diane E. Kenty gives some thoughts on the lessons that state court administrators can draw from the RAND study of the federal programs, while Missouri federal ADR program administrator Kent Snapp describes his program in the Western District of Missouri, which produced dramatically different results than those found in the districts that RAND surveyed.

The RAND Report may well prove an important step in our understanding of ADR. The voices presented here continue the dialogue it began.

LETTER TO EDITOR

Please accept my compliments on the Spring 1997 issue of the *Dispute Resolution Magazine*. The timeliness and quality of the issues and articles presented were outstanding. I picked up my copy, merely intending to note the subject matter for future reference, and found that I had read it, cover to cover. The humor included was a nice touch. If we can't laugh at ourselves, others will.

Richard Chess, Jr., Oxnard, Calif.

Editor's Note: Thanks! We welcome your feedback, and your comments on the articles we run.

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