

WASHINGTON COLLEGE OF LAW

# ALTERNATIVE DISPUTE RESOLUTION NEWSLETTER

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A SEMIANNUAL PUBLICATION

ISSUE 3, MARCH 2006

Edited By: Debra Berman, Kelly Liggett & Travis Markley

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*Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser -- in fees, expenses and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough. -- Abraham Lincoln, "Notes for a Law Lecture," 1850*

## WHO WE ARE

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The Alternative Dispute Resolution (ADR) Society is a student organization dedicated to promoting student interest in ADR at the Washington College of Law. The society serves to help students gain an understanding of and promote the use of ADR as an effective alternative to litigation. The group provides students the opportunity to hear from prominent ADR experts in the field and to participate in local mediation trainings and competitions. The society also participates in events sponsored by ADR groups at other area law schools.

## BOARD MEMBERS

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- Debra Berman, Founder and President
- Travis Markley, Vice President
- Sean McDonald, 1L Representative
- Moray Horne, 1L Representative
- Matt Trumble, 1L Representative
- Kelly Liggett, Newsletter Staff
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The editors would like to specially thank the ADR Society Board for their assistance in the work for this Newsletter and Dean Niles for his support of the Society. The editors would also like to thank Bob Wiley for creating the ADR logo.

## SPRING 2006 EVENTS:

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- **February 23, 2006:** Pre-emptive Conflict Resolution Applications of ADR Law Panel Discussion (Jointly sponsored with the Society for Peaceful Conflict Resolution through American University's Institute for Peace and Conflict Resolution) on the way that formalized ADR legal models and institutions may be effective in pre-empting violence in inter or intra-national conflicts. The panel will consist of Ernest Tannis, a practicing mediator and lawyer who hosts the only weekly radio show on ADR law in Canada, Robert Fersh, Director of the National Consensus Initiative, and Ron Fisher, a conflict resolution practitioner in violent ethno-political conflict.
- **February 24-26, 2006:** American University Mediation Services free 20 hour basic mediation training. Completion of training provides certification to mediate cases at AU. For more information or to request an application, please email Gururaj Kumar at [gkumar@american.edu](mailto:gkumar@american.edu).
- **February 27, 2006:** Founders Celebration Event: Lessons from NAFTA – Trade Arbitration Resolution – US/Canada Softwood Lumber Dispute. (Jointly sponsored with the International Trade Law Society) This event seeks to give participants a brief overview of the steps, strategies, and problems involved in working a real issue through the trade dispute arbitration/resolution process.
- **March 4, 2006:** ABA Regional Representation in Mediation Competition at GWU
- **March 2006:** Joint event with WCL's International Arbitration Program regarding the ins and outs of international arbitration
- **April 2006:** ADR professor David Clark and Jeannette Twomey will host a lunchtime discussion about ADR opportunities in DC.
- **April 2006:** Informational meeting regarding the Fall Regional ABA Negotiations Competition.

## ***WHAT IS ADR?***

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There are many ways to resolve conflicts. The movement toward ADR, sometimes referred to simply as conflict resolution, grew out of the belief that there are better options than going to court for settling disputes. Today, the terms ADR and conflict resolution are used somewhat interchangeably and refer to a wide range of processes that encourage nonviolent dispute resolution outside of the traditional court system. The field of conflict resolution also includes efforts in schools and communities to reduce conflict and help young people develop communication and problem-solving skills. Common forms of dispute resolution include:

- **Negotiation** is a discussion among two or more people with the goal of reaching an agreement.
- **Mediation** is a voluntary and confidential process in which a neutral third-party facilitator helps people discuss difficult issues and negotiate an agreement. Basic steps in the process include gathering information, framing the issues, developing options, negotiating, and formalizing agreements. Parties in mediation create their own solutions and the mediator does not have any decision-making power over the outcome.
- **Arbitration** is a process in which a third-party neutral, after reviewing evidence and listening to arguments from both sides, issues a decision to settle the case. Arbitration is often used in commercial and labor/management disputes.
- **Mediation-Arbitration** is a hybrid that combines both of the above processes. Prior to the session, the disputing parties agree to try mediation first, but give the neutral third party the authority to make a decision if mediation is not successful.
- **Early Neutral Evaluation** involves using a court-appointed attorney to review a case before it goes to trial. The attorney reviews the merits of the case and encourages the parties to attempt resolution. If there is no resolution, the attorney informs the disputants about how to proceed with litigation and gives an opinion on a likely trial outcome.
- **Peer Mediation** refers to a process in which students act as mediators to help resolve disputes among their peers. The student mediators are trained by a teacher or other adult.

## ***BENEFITS OF ADR***

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While ADR cannot guarantee specific results, there are trends that are characteristic of ADR. ADR processes generally produce or promote:

- **Economic Decisions**
- **Rapid Settlements**
- **Mutually Satisfactory Outcomes**
- **High Rate of Compliance**
- **Comprehensive and Customized Agreements**
- **Greater Degree of Control and Predictability of Outcome**
- **Preservation of an Ongoing Relationship or Amicable Termination of a Relationship**
- **Workable and Implementable Decisions**
- **Agreements that are Better than Simple Compromises or Win/Lose Outcomes**
- **Decisions that Hold Up Over Time**

## ***ONLINE RESOURCES***

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- The ABA Section of Dispute Resolution  
<http://www.abanet.org/dispute>
- Association for Conflict Resolution  
<http://www.acresolution.org>
- American Arbitration Association  
<http://www.adr.org>
- Center for Analysis of ADR  
<http://www.caadrs.org>
- CPR Institute for Dispute Resolution  
<http://www.cpradr.org>
- The Conflict Resolution Information Source  
<http://www.crinfo.org>
- Northern Virginia Mediation Service  
<http://www.gmu.edu/departments/nvms>
- Dept. of Justice Office of Dispute Resolution  
<http://www.usdoj.gov/odr>

## ***CONFLICTS APPROPRIATE FOR ADR***

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ADR can be used to help resolve almost any type of dispute. Family mediators, for example, help people with divorce, custody issues, parent-child or sibling conflicts, elder care issues, family business concerns, adoption, premarital agreements, neighbor disputes, etc. Other types of conflicts that respond well to ADR include workplace disputes, labor/management issues, environmental and public policy issues, international conflicts, and others.

## ***WORK ACCOMPLISHED BY THE SOCIETY***

Since the Society began in September of 2004:

- Three new adjunct ADR professors were hired
- One new section of Lawyer Bargaining was added
- Two new sections of ADR were added
- A Coach was hired to train a team to enter the ABA Representation in Mediation Competition in March and the ABA Negotiations Competition in November
- WCL's team won the regional Mediation Competition and will be advancing to the nationals in Atlanta in April.
- Ten WCL students participated in AU's free 20 hour basic mediation training and are now certified mediators.
- The students and faculty joined together and are working to add a mediation and arbitration seminar for the next academic year.

## ***PRACTITIONER SPOTLIGHT:***

### ***DAVID CLARK, PROFESSOR & WCL ALUM***



As a mediator and arbitrator, Professor Clark serves such diverse clients as Fortune 500 companies, private individuals, government agencies, and nonprofit organizations. As an attorney, he brings his legal expertise in areas of labor and employment, civil rights, commercial contracts, and

administrative law. Among other places, he serves as an arbitrator for the Better Business Bureau, Federal Mediation and Conciliation Service, NASD, NYSE, and the D.C. Bar Association's Attorney/Client Arbitration Board.

Prof. Clark graduated from WCL in 1997. While at AU, he specialized in the field of Conflict Resolution and was certified by Virginia to practice mediation. Prof. Clark is a member of the state bar associations of New York, New Jersey, and the District of Columbia.

David Clark, along with Jeannette Twomey, is currently teaching Lawyer Bargaining. Please be on the lookout for additional ADR classes taught by Professor Clark next semester!

## ***COMPETITIONS***

WCL is proud to announce that it sent two teams to this year's ABA Regional Representation in Mediation Competition on March 4th. The following students participated: *Sebastian Astrada, Debra Berman, Whitney Robinson, and Elaine Wang*. Sebastian Astrada and Whitney Robinson won the regional competition and will be representing WCL at the National competition being held in Atlanta in April. This competition, in which law students role-play as advocates and clients in a mediation setting, measures how well students model appropriate preparation for and representation of a client in mediation as well as provides students a valuable opportunity to experience the mediation process. Congratulations to the teams and to their coach, Dennis Sharp!

WCL will also plans on sending two teams to the ABA Regional Negotiations Competition in November. The Competition promotes greater interest among law students in legal negotiation and provides a means for them to practice and improve their negotiating skills. The competition simulates legal negotiations in which law students, acting as lawyers, negotiate a series of legal problems. The simulations consist of a common set of facts known by all participants and confidential information known only to the participants representing a particular side.

In addition to these competitions, WCL hopes to send teams to the ICC International Mediation Competition which is held in Paris in January of 2007 and the Wilhelm Vis International Commercial Arbitration Competition held in Vienna in April of 2007. Other ADR Competitions that WCL may consider entering in the future include: The ADR Cyberweek Online Negotiation Competition, The International Academy of Dispute Resolution Mediation Competition, and The Robert R. Merhige, Jr. Environmental Negotiation Competition.

An intra school negotiations competition will be held in September to determine which students will be eligible to compete in next years' competitions. Applications will be distributed at the end of the spring semester. Please be on the look out for further information.

**ADR COURSES @ WCL**

**LAW-614 Alternative Dispute Resolution** (3 hrs.) Examines various dispute resolution techniques, including negotiation, mediation, arbitration, mini-trials, and negotiated rule making, as alternatives or supplements to court litigation and administrative agency adjudication. Tactical and ethical issues as well as emerging legal and public policy issues (e.g., use of mandatory arbitration clauses) will be covered, and student participatory role-plays will be used extensively to give the course a practical dimension. *Aldridge, Datz, Lubbers, B. Murphy.*

**LAW-651 Lawyer Bargaining** (3 hrs.) Studies the lawyer's role in the resolution of disputes through nonadjudicatory processes such as negotiation, mediation, arbitration, and minitrial. The course focuses on theories underlying each form of dispute resolution and the lawyering skills necessary to implement effectively those processes. The lawyer's role and required skills will be explored from the dual perspective of the lawyer as advocate and as impartial dispute resolver. *Milstein, N. Stein.*

**LAW-733 Seminar: International Environmental Dispute Resolution** (2 hrs.) Surveys the various tribunals to which environmental disputes involving nations or nationals of different states can be presented for resolution. The course considers the ICJ, the European Court of Justice, and the U.S. federal court system, as well as the roles of the General Agreement on Tariffs and Trade, various human rights courts, and the International Labor Organization, along with the potential of alternative dispute resolution and roles of individuals and nongovernmental organizations. *Zaelke, Clark, Hunter*

**LAW-789 Seminar: International Commercial Arbitration** (3 hrs.) Analysis of the practical legal problems that arise in the arbitration of international commercial disputes. Drafting of arbitration agreements, selection of arbitral procedures and forums, and enforcement of arbitral awards as they arise under both domestic law (in U.S. and other major arbitration forums) and international law.

**ADR COURSES @ OTHER SCHOOLS**

One of the goals of the ADR Society is to increase the number of ADR classes available to students. If WCL does not offer a class you would like to take, you may be allowed to take classes at other area law schools and receive credit for them at WCL.

**George Washington University**

Course	Credits
Environmental Negotiations	2
International Arbitration	2
International Negotiations	2
Consumer Mediation Clinic	2-3
Mediation	2
Alternative Dispute Resolution	2-3
Negotiations	2-3
Mediation and Alternative Dispute Resolution	3
Negotiation and Conflict Management Systems Design	3
International Dispute Resolution	3

**Georgetown University:**

Course	Credits
Alternative Dispute Resolution Seminar	3/2
Alternative Dispute Resolution: Theory- Practice- and Policy	3
International Negotiations Seminar	2
Labor Arbitration Seminar	3
Mediation Seminar	3
Multi-Party Dispute Resolution Seminar: Consensus Building and other Negotiation Processes	3
Negotiation and Mediation in Public Interest Settings	3
Negotiations and Mediation Seminar	3
Negotiations Seminar	3
Dispute Resolution in Federal Systems of Government	3
Dispute Resolution Under International Trade and Investment Agreements	2
International Commercial Arbitration	2
International Negotiations Seminar	2
Investor-State Dispute Settlement	2

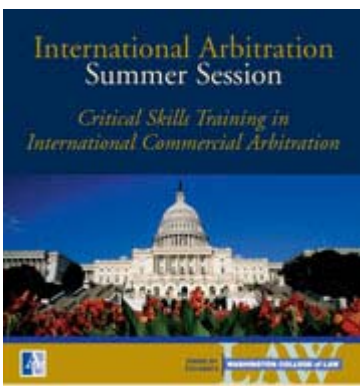
## ***INT'L ARBITRATION PROGRAM AT WCL***

International arbitration is today a flourishing legal practice area posing diverse and unique challenges to legal practitioners all over the world and has become the recognized dispute resolution method for the international business and economic fields. The widespread use of arbitration in bilateral investment treaties accentuates its role in the resolution of semi-public international disputes involving private and state parties.

The International Arbitration Program was developed at the Washington College of Law with the purpose of analyzing the practical and theoretical issues surrounding the development of international commercial arbitration and contributing to the task of better understanding this phenomenon. The Program prepares the legal profession to face these new challenges. Created under the direction of Dr. Horacio A. Grigera Naón, former Secretary General of the International Court of Arbitration of the International Chamber of Commerce, the Program builds on WCL's commitment to building a world community by identifying transnational legal issues and addressing these issues through the expertise of our accomplished full and part-time faculty, alumni and practitioners.

2006 INTERNATIONAL ARBITRATION  
SUMMER SESSION  
May 20-June 15, 2006

Washington College of Law announces its second annual Summer Session on International Arbitration.



Each year the International Arbitration Program gathers a distinguished faculty of leading practitioners in the area of international arbitration on the practical and theoretical aspects of specific international arbitration topics.

The Summer Session, open to practitioners for continuing legal education (CLE) credit and to JD

and LLM candidates for academic credit, will touch on practical and theoretical aspects of procedural and substantive law topics currently arising in the practice of international arbitration and their foreseeable future developments.

The following courses will be offered:

- Salient Issues in ICC Arbitration (1 credit)
- Nuts and Bolts of International Commercial Arbitration (1 credit)
- International Arbitration and Choice-of-Law Issues (1 credit)
- How to Conduct an Arbitration Hearing (1 credit)
- Bilateral Investment Treaty Arbitration: Current Developments (1 credit)

General Registration for the Summer Session ends May 1, 2006. Please contact [arbitration@wcl.american.edu](mailto:arbitration@wcl.american.edu) with any questions.

THIRD ANNUAL SEMINAR ON  
INTERNATIONAL COMMERCIAL  
ARBITRATION: How to Handle a BIT Arbitration  
under the ICSID Rules  
October 9 - 12, 2006

Taught by leading practitioners in the field, this four-day intensive advanced seminar provides critical skills and practical insight into handling cases under the International Rules of Arbitration of the American Arbitration Association's (AAA) International Centre for Dispute Resolution. Through dynamic interactive lectures and scenario-based exercises, participants will be taught skills, strategies, and tactics for successfully conducting international arbitration cases on various factual and legal bases.

ICC Secretary General Announces WCL Externship  
Anne Marie Whitesell, Secretary General of the ICC International Court of Arbitration (Paris), announced that a space would be reserved at the ICC each year for a qualified WCL student extern. Dr. Horacio Grigera Naón and the Externship Program will select well-qualified students with some background in arbitration, gained either academically or through work experience. The position will be open to JD and LLM students at WCL and will begin Summer 2006.

**ADR NEWS & INITIATIVES**

*Excerpted with permission from:  
Mediation News and Updates, November edition by Keith Seat*

**UK National Mediation Week**

*Times (UK), October 25, 2005;*

*Daily Post (Liverpool), October 25, 2005*

The UK Department for Constitutional Affairs (DCA) and Her Majesty's Courts Service sponsored "Mediation Week," showing videos, demonstrating mediation, and holding discussions from October 24 to November 4. The publicity is part of DCA's effort to meet its target of reducing the proportion of claims filed with courts by 5%.

**Government Use of Mediation Growing in UK**

*Building, September 9, 2005*

A UK DCA report on the effectiveness of the government's commitment to alternative dispute resolution during the 2003-2004 fiscal year reveals that government agencies' use of ADR, normally mediation, increased 40% from the previous year, to 229 cases, with a success rate of 79%. Estimated savings from use of mediation during the year are put at 14.6 million pounds.

**Air Force Announces Creation of Negotiation Center of Excellence**

*FedNews OnLine, September 29, 2005*

The Air Force announced in 2005 that it had established the Negotiation Center of Excellence at Maxwell Air Force Base, Alabama. The Center will be located within the Air University and will promote the advanced applications of negotiation and problem-solving skills in varying complex situations, including warfighter operations.

**NRC Reviews Pilot Mediation Program**

*Inside NRC, October 17, 2005*

After a year's experience with mediation as an alternative to traditional enforcement by the U.S. Nuclear Regulatory Commission (NRC), industry participants, advocacy groups, and the Commission met on October 12 to discuss draft evaluation criteria for the pilot program. An evaluation report is due in February from Cornell University's Institute of

Conflict Resolution, which is under contract with the NRC and provides mediators. About one-third of the cases in which mediation is suggested get agreement of all parties to proceed to mediation. Of those, mediation has been successful in reaching resolution in just over half of the mediations conducted prior to any investigation by the NRC, while 100% of post-investigation mediations have been successful.

**FAA Launches New Mediation Center**

*ADRWorld.com, September 30, 2005;*

*FedNews OnLine, September 27, 2005*

The U.S. Federal Aviation Administration (FAA) opened the Center for Early Dispute Resolution on September 26, to assist employees with conflict management and resolution, in response to internal surveys revealing concern about workplace conflict. The new approach provides training and coaching, as well as mediation services. The FAA's new program is expanding to include union as well as non-union employees, and initially will run for 12 to 18 months at FAA headquarters.

**Rhode Island Joins Medical Malpractice Mediation Trend**

*ADRWorld.com, October 21, 2005*

Both the plaintiffs' and defense bar in Rhode Island have been involved in developing a new program for mandatory mediation of medical malpractice claims, which was established by a September 23 order of the Rhode Island Superior Court. The pilot program will continue for six months and then be analyzed to see if it needs to be tweaked or modified.

**California Statute Encourages Mediation and Limits Binding Arbitration by Homeowner Associations**

*ADRWorld.com, October 11, 2005*

California legislation (SB 137) enacted on October 3 requires homeowner associations to notify members of new ADR provisions under which homeowners may initiate mediation or arbitration by simply submitting a request to the association. Among other things, associations are prohibited from recording a lien without first pursuing ADR, and may not use binding arbitration if intending to resort to judicial foreclosure.

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**ARTICLES**

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***The Promise of Community Mediation***

By: Debra Berman

*Founder & President, WCL ADR Society*

Every community experiences a wide range of disputes among its members, including arguments with neighbors and relatives and policy controversies. While conflict is inevitable, strategies for responding to such conflict vary. Common responses to conflict include simply accepting the problem, confronting the other party directly, and going to court. However, in recent years many communities across the United States have developed another approach for handling disputes by establishing community mediation programs that address a broad range of conflicts.<sup>1</sup> These community centers have proven extremely successful in not only helping citizens to resolve their own conflicts, but also in reducing tension and violence within communities.

Since the 1970s, there has been an enormous growth of community mediation programs across the country. Ten years ago, it is estimated that there were only 150 community mediation centers. Today it is estimated that there are more than 550. Overall, there are approximately 19,500 active volunteer community mediators, 76,000 citizens trained by community mediation programs, 97,500 disputes referred on an annual basis, and 45,500 disputes mediated on an annual basis.<sup>2</sup> The typical community mediation program has 1.5 staff, 30 active mediators, operates on a \$40,000 annual budget, receives 150 referrals per year and mediates 70 cases.<sup>3</sup>

**Background on Community Mediation**

Community mediation centers are established to help residents resolve conflicts that typically arise in neighborhoods. These centers apply mediation and other informal processes to help parties resolve their disputes outside of court. Community mediation programs train local volunteers in conflict resolution skills and these volunteers then provide dispute resolution services to individual citizens and groups.<sup>4</sup> Most community centers offer mediation services free of charge or for a minimal price.

Community mediation centers often deal with neighborhood and community disputes, family/custody disputes, consumer/merchant disputes, landlord/tenant disputes, victim/offender conflicts, harassment problems, and juvenile/peer conflicts.

Several innovative community mediation programs also deal with a wider variety of issues concerning race, employment, religious disputes, AIDS, environmental rights, and more. Almost half of all referrals come from the courts, including criminal, juvenile, family, and civil matters. Most community mediation centers stand alone as non-profit organizations; but, some are housed within universities, social service agencies, religious organizations, or in the formal judicial system.<sup>5</sup> The fact that community mediation centers are able to thrive in such a variety of locations is a testament to their "flexibility and broad social utility."<sup>6</sup>

Community mediation centers strive to reduce barriers to service by providing service to clients regardless of their ability to pay; initiating and educating residents for collaborative community relationships to effect positive systemic change; engaging in public awareness and educational activities about the values and practices of mediation; providing a forum for dispute resolution at the early stages of the conflict; and providing an alternative to the judicial system at any stage of the conflict.<sup>7</sup> The objectives and goals of community mediation centers include: addressing disputes before they enter the legal system, preventing and deescalating conflicts, using conciliatory mechanisms as a mechanism for addressing relationships, strengthening the capacity of neighborhood, church, organization, school, and social service organizations to address conflict effectively, strengthening the role of citizens, and using community support to recruit volunteers to solicit appropriate conflicts and issues.<sup>8</sup>

Some states have been very active in supporting community mediation throughout the state. For example, the New York state legislature provides funding to centers serving all 62 counties in the state. New York community mediation centers received over 44,000 case referrals in 1996 involving over 100,000 people.<sup>9</sup> Michigan has provided funding to 29 programs across the state. North Carolina's 26 programs receive support from a diverse array of sources in addition to some legislative funding.<sup>10</sup>

Many states support more innovative community mediation centers to meet a wide range of community needs. Community mediation programs have recently embarked on creative projects to expand their services. For example, the Good Shepard Program in

Philadelphia offers not only low cost mediation services and conflict resolution trainings, but a "Peace Theater." The Peace Theater is an interactive, improvisation theater presentation where participants are called on stage to help resolve conflicts with the performers.<sup>11</sup> Typically, the program is used at schools. Another example of an innovative and successful program is in the City of Bellevue, Washington. The Bellevue Mediation Program offers dispute resolution for neighbors, work groups, parents and teens, and business involving governmental matters, and is free to residents and business owners.<sup>12</sup> In addition, many other community programs offer adult education classes in conflict resolution and partner with local colleges and universities to build conflict resolution consortiums.

### **Community mediation & reduction of violence**

Most community mediation programs believe that the sooner people learn basic problem solving and communication skills, the sooner they can solve their own problems and improve their relationships.<sup>13</sup> This improvement in communication has led many to believe that one of the substantial benefits of mediation is the reduction in violence throughout the community. While there have not been many detailed studies on the subject, the following sections reflect the promise that community mediation holds out for the reduction of violence.

#### The Effect of Mediation on Police Calls

A study conducted by Lorig Charkoudian measured the effect of community mediation on decreasing police calls for service. Using a sample of personal conflicts in which there was police involvement in Baltimore City, the study estimated the effect of police calls per week.<sup>14</sup> The results indicated that mediation had a significant impact on decreasing the number of police calls for service to conflict situations during the six months following mediation.<sup>15</sup> The principal finding is that mediation causes a decrease of .332 calls per week, or approximately 8.53 calls during the six months following mediation.<sup>16</sup> Because each call takes an average of 32 minutes for police to respond, it can be approximated that mediation saves 273 minutes per situation per six month period, or 4 hours and 33 minutes of patrol time.<sup>17</sup> Officers who are not responding to service calls can spend more time preventing and investigating crimes. These results indicate the benefit of mediation

to the police. The author of the study suggests that police departments and the courts should increase the number of cases referred to mediation.

#### Southern Nevada's FORUM Program

Southern Nevada's program called FORUM (Families and Offenders Reconciliation Using Mediation) is one type of innovative community mediation program that has the potential to reduce violence in communities. Through the use of mediation, FORUM helps prisoners who are released from jail develop a support system to assist them in addressing issues such as employment, housing, and substance abuse, etc. The founders of FORUM believe that "if left unresolved, these problems can hinder reintegration and result in recidivism or the return to incarceration."<sup>18</sup>

To begin the process, inmates tell mediators the names of those who have been affected by their incarceration and the members of their support system, such as family or friends. These family members or friends are contacted by the mediators and asked to attend a mediation session with the inmate to discuss their release, plans for the future, expectations and needs, and how to prevent recidivism. A mediation session is conducted at the prison and several follow up meetings usually take place following the release. Those who have researched the effects of the FORUM program have stated that "the mediation process encourages participants to deal with basic issues of life after prison and has a positive impact on both the prisoner and community."<sup>19</sup> The hope for such a program is that released prisoners will become thriving members of the community, instead of repeating the violent acts that caused them to be incarcerated in the first place.<sup>20</sup>

#### Peer Mediation

With the rising occurrence of violence at schools, many wonder what can be done to make schools safe. Increasing security measures in schools, such as metal detectors, armed police guards, and locker searches, may prevent the violence, but will probably not alleviate the underlying causes.<sup>21</sup> In an attempt to address this and other underlying causes, many schools, especially those located in large urban areas, have joined the trend toward the use of mediation as a way to handle problems arising between students.<sup>22</sup> This is accomplished through the implementation of a Peer Mediation Program within the school as part of

the school's overall strategy for preventing violence. Peer mediation is the use of trained student mediators to resolve disputes among their fellow students. The most common disputes mediated include arguments between friends, fights, property/theft issues, rumors, and boyfriend-girlfriend conflicts.

School-based mediation programs provide several proven benefits to schools including reduced suspensions, detentions, and expulsions, improved communications among students, teachers, administrators and parents, improved school climate, a decrease in violence, vandalism and habitual school absenteeism.<sup>23</sup> Programs also provide students with a direct forum for resolving conflicts without resorting to administration personnel. In addition, because students can attempt to permanently resolve conflicts on their own by addressing the underlying causes, teachers spend less time disciplining and more time focusing on the classroom.

One of the most important results seen from peer mediation programs is a decrease in violence in the classroom. In one study, 90% of the teachers said they are more willing to let students take responsibility for solving their own conflicts and 80% of the student mediators agreed that the mediation process helped them to understand people with different views.<sup>24</sup> Often, schools with mediation programs report an 80% reduction of office referrals of student problems, 80% reduction in student fighting, and 75% reduction of school suspensions.<sup>25</sup>

In schools where peer mediation programs are in place, a decrease in the general level of criminal activity has been reported.<sup>26</sup> In a recent survey of 200 New York teachers and administrators who used peer mediation programs, 71% reported a decrease in classroom violence after the implementation of a peer mediation program.<sup>27</sup> There was also a significant decrease in verbal abuse. In Washington, D.C., similar results have been reported, with the number of fights cut in half after the introduction of peer mediation programs in the schools.<sup>28</sup> In addition, suspension rates have decreased in schools using mediation. In Las Vegas, the Clark County School Board and Clark County Social Services provide a comprehensive school-based mediation program for some 2,500 students at one middle school and three elementary schools.<sup>29</sup> An evaluation of the program found that peer mediators successfully resolved 86% of the

conflicts they mediated and there were also fewer conflicts and physical fights on school grounds.<sup>30</sup>

In a 1999 article, *Student Mediators Step in When Trouble Brems*, by the American News Service, eighth-grade peer mediator Amy Ortiz said that mediating conflicts as they arise has brought a significant decrease in the number of violent altercations at her school.<sup>31</sup> Additionally, the article quotes the assistant principal, Denise Johnston, of Alameda Middle School in Santa Fe, New Mexico as saying "I can't think of any mediation that was followed by later conflict between the parties involved."<sup>32</sup>

As a result of the decrease in violence, students have an increase in their feeling of security at school. In addition, students' levels of self-esteem increase as they learn to resolve their own problems and work out solutions on their own.<sup>33</sup> These changes have positive effects on both the students and faculties attitudes in the schools.<sup>34</sup> Teachers working in schools with peer mediation programs found that they had gained a new and better understanding of their students and were better able to listen to their concerns.<sup>35</sup>

Delinquency and violence are often symptoms of a juvenile's inability to handle conflict constructively.<sup>36</sup> By teaching young people how to manage conflict, conflict resolution education can reduce juvenile violence while providing lifelong decision-making skills.<sup>37</sup> In addition to providing the students with problem solving, critical thinking, and listening skills, peer mediation prepares students to be citizens in a complex and conflict-ridden world.<sup>38</sup> The goal in implementing peer mediation programs is that these programs will have a long-lasting effect on students, beyond just their place in the school system. However, to have such an effect, children must be exposed early on to productive conflict resolution, and the most appropriate place to start is in the schools.

Although peer mediation does not solve all the problems facing the American educational system, it has helped to lessen violence in the schools.<sup>39</sup> Even though establishing such a program takes a significant amount of time and money, the benefits from peer mediation programs outweigh its costs.

As diversity and differences among people increase, the opportunities for conflicts and disputes will also increase. The reduction of community tensions and conflict is a vitally important goal for communities across the United States. Mediation has the potential for transforming our conflictual society

into a collaborative, problem-solving one.<sup>40</sup> As awareness and understanding of mediation increases, community mediation programs must take their place alongside other social and legal services as an option of first resort, not as an afterthought.<sup>41</sup>

To date, informal statistics have proven that the use of community mediation centers has been an extremely useful tool in reducing not only community tension, but violence in general. This is because residents involved in community mediation learn how to communicate more effectively with one another to collaborate to create their own agreements. Residents feel that they have an outlet for their disputes, without having to resort to the court system or to violence. In addition, many community programs offer a variety of service beyond mediation, such as free or low cost trainings and public education. Most importantly however, community mediation promotes peer mediation in schools across the country. It is at school where children at an early age learn conflict resolution skills that they can make use of for the rest of their lives. The more that children and adults are exposed to peacefully resolving conflicts, the less violence we may see throughout our communities. In the past decade, approximately 500 community programs have come into existence and more are on the way. Such dramatic growth indicates that communities understand and appreciate the value of the services that these centers provide.

<sup>1</sup> www.nafcm.org

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> McGillis, Daniel, *Resolving Community Conflict: The Dispute Settlement Center of Durham, North Carolina*, at www.mediate.com.

<sup>5</sup> Heeden, Timothy and Brian Polkinhorn, *The Evolution of Community Mediation in the United States: A Continuing Process of Adaptation*, ACRResolution, Winter 2006, at 8.

<sup>6</sup> Id.

<sup>7</sup> www.nafcm.org

<sup>8</sup> Heeden, Timothy, *Institutionalizing Community Mediation: Can Dispute Resolution 'of, by and for the people' Long Endure?* 108 Penn St. L. Rev. 265, 270 (2003).

<sup>9</sup> www.nafcm.org

<sup>10</sup> Id.

<sup>11</sup> www.phillymediators.org

<sup>12</sup> www.cityofbellevue.org

<sup>13</sup> www.nafcm.org

<sup>14</sup> Charkoudian, Lorig, *A Quantitative Analysis of the Effectiveness of Community Mediation in Decreasing Repeat Police Calls for Service*, Conflict Resolution Quarterly, Fall 2005, at 87.

<sup>15</sup> Id.

<sup>16</sup> Id. at 96.

<sup>17</sup> Id. at 96.

<sup>18</sup> Strahl, Barbara, *Coming Home: Reentry as Community Mediation*, ACRResolution, Winter 2006, at 28.

<sup>19</sup> Id. at 29.

<sup>20</sup> Id.

<sup>21</sup> Harper, Brian, *Peer Mediation Programs: Teaching Students Alternatives to Violence*. 1993 J. Disp. Resol. 323 (1993).

<sup>22</sup> Id. at 324.

<sup>23</sup> Eisele, Jim, *Student/Peer Mediation: a Multi-Purpose Tool*, at www.mediate.com.

<sup>24</sup> www.nafcm.org

<sup>25</sup> Id.

<sup>26</sup> Harper, Brian, *Peer Mediation Programs: Teaching Students Alternatives to Violence*. 1993 J. Disp. Resol. at 328 (1993).

<sup>27</sup> Id.

<sup>28</sup> Id.

<sup>29</sup> LeBoeuf, Donni and Robin V. Delany-Shabazz, *Conflict Resolution, Delinquency, and Violence*, at www.mediate.com.

<sup>30</sup> Id.

<sup>31</sup> Eisele, Jim, *Student/Peer Mediation: a Multi-Purpose Tool*, at www.mediate.com.

<sup>32</sup> Id.

<sup>33</sup> Harper, Brian, *Peer Mediation Programs: Teaching Students Alternatives to Violence*. 1993 J. Disp. Resol. at 329 (1993).

<sup>34</sup> Id.

<sup>35</sup> Id.

<sup>36</sup> LeBoeuf, Donni and Robin V. Delany-Shabazz, *Conflict Resolution, Delinquency, and Violence*, at www.mediate.com.

<sup>37</sup> Id.

<sup>38</sup> Eisele, Jim, *Student/Peer Mediation: a Multi-Purpose Tool*, at www.mediate.com.

<sup>39</sup> Harper, Brian, *Peer Mediation Programs: Teaching Students Alternatives to Violence*. 1993 J. Disp. Resol. at 331 (1993).

<sup>40</sup> www.nafcm.org

<sup>41</sup> Id.

### ***Report to the Steering Committee, 3/17/04***

By: Interagency ADR Working Group  
*Department of Justice*

ADR is transforming the way that the government resolves disputes. In doing so, the federal agencies' ADR programs have implemented the President's policies in many areas. Here is a selective listing of just some examples of the many federal successes to illustrate the breadth and scope of their significant contributions to good government.

First, federal ADR programs are implementing the President's directive to make government results-oriented. What matters here is completion, performance, and results. ADR does a better, quicker, and more cost effective job than traditional adversarial processes in resolving disputes that involve the public. Here are some examples:

- At the Federal Energy Regulatory Commission, the use of mediation by its Dispute Resolution Service saves parties, on average, \$100,000 in avoided costs by resolving disputes concerning electricity and natural gas. These savings lower energy costs, which can only benefit consumers.
- At the Department of Health and Human Services, the Provider Reimbursement Review Board uses ADR to settle about 150 health

care provider disputes each year. It costs \$11,000 to hear one of those cases, but only \$750 to mediate it, so the cost savings is over \$10,000 per case.

- At the Federal Aviation Administration, the Office of Dispute Resolution for Acquisition has resolved 89% of all contract disputes, ranging from small claims under \$100,000 to large, multi-million dollar claims. It has also resolved 67% of all bid protests, ranging from small contract values to large acquisitions valued over one billion dollars.

ADR also is demonstrating results in dealing with internal disputes. Unlike traditional adversarial processes, ADR is reducing costs, improving workforce morale, and increasing productivity. For example:

- At the U.S. Air Force, over 2700 workplace disputes were mediated last year. Seventy-five percent (75%) of them were successful. The average cost savings was \$14,000 per case. The average time savings was 410 days per case. The number of informal workplace complaints has dropped by 70% and formal complaints have dropped by 56%.
- The Department of Energy saved about \$1.3 million dollars over the last three years by mediating longstanding workplace problems.
- The U.S. Postal Service mediates 10,000 workplace disputes every year. Its exit surveys show that 90% of both managers and employees are satisfied with the mediation process.

Federal ADR programs are also implementing the President's second directive, which is to make government citizen-centered. What matters here is fostering a good relationship between citizens and their government, and making the government responsive to those citizens. ADR is a tool for the government to do exactly that. Instead of telling citizens what is in their best interest, the government is using ADR to obtain citizen input in a collaborative

process that achieves a satisfactory result for everyone. For example:

- The U.S. Institute for Environmental Conflict Resolution provided expertise and resources for 50 site-specific projects in the past year, including the Grand Canyon overflight noise controversy in Arizona, and collaborative water management planning for the Florida Everglades.
- In the past year, the Department of the Interior successfully completed two negotiated rule makings with all interested parties. It used that collaborative process to develop new regulations covering Indian education under the No Child Left Behind Act, and off-road driving on the Fire Island National Seashore in New York.

The government is also demonstrating a focus on citizens by using ADR to avert citizen disputes before they arise or to deal with them quickly when they do arise. For example:

- The Department of Education's ombudsman deals with hundreds of federal student loan problems weekly. The program has been successful in resolving long-standing issues, identifying problem trends, and recommending improvements.
- The Federal Energy Regulatory Commission has a policy of encouraging parties to contact its Enforcement Hotline or its Dispute Resolution Service - and consider the use of ADR- before a formal complaint is filed. The successful use of this proactive approach avoids the cost of formal adjudicatory processes for both the Commission and the parties.