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State Offices of Mediation:
Thoughts on the Evolution
of a National Network

BY PETER S. ADLER*

INTRODUCTION

The idea of using innovative—and in some cases genuinely alternative—forums for preventing, managing, or settling disputes has gained great appeal in the past decade. Few of us interested in this idea ten years ago could have anticipated the growth of this movement or the directions it has taken. Likewise, few of us today can say with any degree of certainty or confidence what the landscape will look like a decade from now. What we do know is that interest-based (as opposed to rights-based) approaches to the resolution of conflicts are emerging from the shadows of American law and society. Alternative dispute resolution (“ADR”) activities—sometimes also called complimentary dispute resolution (“CDR”)—are now methodologically, substantively, geographically, and professionally entering the mainstream.

Nonetheless, fundamental policy issues remain. Foremost among these is what role, if any, public institutions should play in furthering the use of these methods. A few years before his death, Albert Einstein suggested that the twentieth century can best be characterized as an agreement on means and confusion of ends. Although Einstein was referring to atom

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1013
splitting and the advent of nuclear energy, his words are a good summary of the dispute resolution field. Today, a great deal of attention has been paid to the "technologies" of dispute resolution, i.e., how mediation and arbitration should be done, what constitutes proper training, and how mediators might be evaluated. Less clear are the ends and goals that we want organized programs of mediation to serve. This Article recounts the history of the "state offices of mediation" effort pioneered by the National Institute for Dispute Resolution ("NIDR") in the mid-1980s and explores the potential role that such offices might play in shaping a national mediation agenda.

I. STATE OFFICES OF MEDIATION: A HISTORY

Although the use of mediation has a long history in the United States, the current popularization of ADR appears to have developed in three successive stages. The first stage, beginning in the 1960s, can best be thought of as a period of early stirrings and felt needs. While organized applications of mediation like the Federal Mediation and Conciliation Service and the Community Relations Service existed in the 1960s, America's primary conflict management institutions, the administrative and judicial court systems, had shown little awareness of or interest in the subject. Critics of the justice system, however, were deeply concerned about a perceived faltering in the quality of American justice. They proposed, among other reforms, an increased use of mediation for "minor" disputes. As an implementing vehicle, those advocating reforms suggested that community mediation programs and neighborhood justice centers ("NJCs") be developed as a way of resolving disputes prior to court filing.

As originally proposed by Richard Danzig, neighborhood justice centers were to be independent community enclaves that fostered reconciliation rather than punishment through a complementary and decentralized system of criminal and civil justice. The roots of commu-

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1 As used in this Article, the term "state offices of mediation" refers only to those offices that have been—and are being—created under the public policy program of the National Institute for Dispute Resolution ("NIDR") in Washington, D.C. It is important to note that a number of states have statewide judicial offices of mediation and/or arbitration that perform coordinative, educational, or service-providing functions similar to, but not precisely the same as, those initially sponsored by NIDR. See, e.g., Thomas F. Christian, Running Statewide Dispute Resolution Programs: The New York Experience, 81 Ky. L.J. 1093 (1992-93) (describing the statewide mediation program run by the Unified Court System of New York).

2 See THE POLITICS OF INFORMAL JUSTICE (Richard L. Abel ed. 1982).

ty mediation were based on an amalgam of models and concepts spanning African "moots," socialist peoples courts, and American versions of psychotherapy and labor mediation. In great part, Danzig's proposals aimed at deprofessionalization—controlling the work of lawyers, judges, jailers and police and reestablishing direct community involvement in the justice process. His ideas were taken up and elaborated in somewhat different form by Sander, McGillis and Mullen, and by various legal scholars, social scientists and court officials participating in the 1976 National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, better known as the "Pound Conference."

By the late 1970s and early 1980s, interest in ADR had matured and the field seemed to enter a second phase centering on the development of actual mediation centers and the provision of real services to real people. Several private programs, most notably the San Francisco Community Boards Program, were inaugurated by foundations and civic organizations. Under the direction of Attorney General Griffin Bell and the U.S. Department of Justice's Law Enforcement Assistance Administration ("LEAA"), federal funding also was made available for pilot programs in 1978 in Atlanta, Los Angeles and Kansas City. LEAA later launched similar efforts in Honolulu and Dallas.

Much of the emphasis in these early efforts rested on the belief that mediation is a faster, more accessible, more cost-effective, more humane, and more durable way of solving disagreements, particularly those that involve ongoing personal, organizational, or governmental relationships. Organizationally, the actual implementation of mediation rested on two key ideas. The first was that, in addition to judges and lawyers, ordinary lay people could resolve cases using mediation methods. The second idea was a kind of "train-them-and-the-cases-will-come" notion that once a

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4 Id. at 41-48.
7 The addresses delivered at the Pound Conference have been published in 70 F.R.D. 79-246 (1976).
8 The Community Boards program is a private mediation system, funded by corporate and foundation grants and serving 25 San Francisco neighborhoods. Mediators are volunteers; services are free to community residents. See Stephen Moore & Grover Hermann, Privitization Lessons for Washington Part II: Improving Human Services, HERITAGE FOUNDATION REPORTS, Sept. 28, 1988, at 1; Carolyn Lockwood, Taking Cities Private: Public Services Provided by Private Companies, SAT. EVENING POST, May 1988, at 30.
supply of mediators existed, disputes would naturally gravitate into the 
hands of mediation programs and the courts would begin to decongest.

By the late 1980s, the ADR field had clearly entered a third stage of 
development and diffusion. Mediation, or at least the idea of mediation, 
had fired a variety of imaginations and had gained credibility as a viable 
dispute resolution tool that could be applied to problems beyond just 
"minor disputes." Two phenomena contributed to this. The first was the 
growing specialization of ADR into new areas including public policy 
matters, insurance fights, real property disputes, construction defects 
litigation, planning and zoning problems, securities issues, and, especially, 
seemingly intractable environmental disputes. By 1990, hundreds of 
mediation programs had been established around the U.S., many of them 
set up as nonprofit community organizations but many actually attached 
to existing business, corporate and commercial dispute resolution regimes, 
and even law firms. Legislative decision makers at both the state and 
federal levels also were giving mediation a progressively stronger 
endorsement and authorizing new efforts aimed at resolving the many 
different kinds of disputes associated with administrative, judicial, and 
regulatory litigation. Simultaneous with this upsurge of interest were 
the following: (1) the development of research, teaching, and theory-
building programs at colleges and universities around the U.S., many of 
them sponsored by the William and Flora Hewlett Foundation; (2) a 
rising membership in professional organizations like the Society for 
Professionals in Dispute Resolution ("SPIDR"); and (3) a spate of new 
books and journals on the subject.

The second reason for the field's more rapid development was a 
gradual shift away from focusing on techniques for mediating agreements 
and toward the more generic challenge of systematically bringing cases

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10 See, e.g., Richard H. Weise, The ADR Program at Motorola, 4 NEGOT. J. 381 (1989) 
(outlining the corporation's extensive case screening and ADR referral structure).

11 See, e.g., Hillary Durgin, Bills Seek Forum for Benefit Disputes, PENSIONS & INVESTMENTS, 
June 10, 1991, at 16 (describing support in Washington for alternative resolution of health care 
benefits claims); Farmer-Lender Mediation Helps Ease Tensions in Minnesota, AM. BANKER, Jan. 
6, 1987, at 11 (describing mandatory mediation legislation passed by Minnesota legislature 
concerning disputes between farmers and lenders).

12 See Jim Galloway and Elizabeth Kurylo, Search for Peace Goes Private: Personal Initiatives 
Proliferate Few Successes, Little Clout, ATLANTA JOURNAL-CONSTITUTION, Feb. 21, 1993, at A10 
(Hewlett Foundation spends more than $4 million annually in support of academic negotiation 
centers).

13 SPIDR was founded in 1972 with approximately 60 members. By 1982, that number grew to 
more than 900 members. Between 1982 and 1986, membership doubled. See SPIDR President Sees 
1462.
to the table in the first place. It was in this larger context in 1984 that the National Institute for Dispute Resolution launched a modest effort aimed at establishing state offices of mediation.

NIDR's interest stemmed from several sources. Over the previous decade, mediation had been used in nearly 200 public policy disputes ranging in subject matter from the preservation of endangered species, to the siting of public facilities, to budget cut-backs for social services, to policies regarding historic preservation.4 These cases shared similar characteristics: they involved multiple parties, fell under the purview of sometimes overlapping government jurisdictions, and focused on complex scientific and social issues. Generally speaking, approaches to mediating these matters took place on an ad hoc basis with little or no public encouragement. Interestingly, however, a high percentage of these cases, on closer scrutiny, were successfully resolved or substantially streamlined by mediation.5

NIDR, having provided funding and technical assistance for some of these efforts, saw a need and opportunity to systematically build capacity by institutionalizing mediation venues. They wanted to strengthen and more carefully focus the use of mediation for complex cases, have services offered on a statewide basis, encourage the marketplace of increasing numbers of private mediators, and develop more thoughtful and systematic applications in government.6 NIDR's approach to accomplishing this was to test the efficacy of seeding a few "statewide" offices located in different branches of government. Each office would, theoretically, offer assistance to the resolution of disputes in moving through the sometimes complex procedures of administrative, judicial, or legislative decision making. NIDR offered matching grants to states interested in mediation and public policy and waited for expressions of interest.7

Six states were selected in NIDR's initial round of grant making: Alaska, Massachusetts, Minnesota, Wisconsin, New Jersey, and Hawaii.8 The Alaska and Wisconsin programs, however, did not develop into full programs. Each of the remaining states brought to their proposed

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4 See Gail Bingham, Resolving Environmental Disputes: A Decade of Experience 13-58 (1984); see also Gershon Fishbein, The Case for Mediating Environmental Disputes, Wash. Post, Mar. 10, 1979, at A10 (describing use of mediation in cases involving herbicide spraying, land use and endangered species protection).
5 See Bingham, supra note 14, at 65-90.
8 See id. at 361, 364 n.5.
effort an experienced staff member with a prior track record of accomplishment in either mediation or government affairs; a commitment of local financial resources; a proposed agenda for furthering the use of ADR; and high-level political support. In Massachusetts, Minnesota, and New Jersey the newly created state offices were located in the executive branches of government with close working linkages to the governor. Hawaii's office was attached to the Judiciary through its chief justice.¹⁹

Although the offices differed in significant ways, all four were small in size with staff sizes ranging from one to four.²⁰ Nonetheless, all four moved quickly to establish programs of systematic public policy case development. This involved the education of key government managers and administrators, the creation of procedures for identifying and evaluating potential cases, training mediators, maintaining appropriate panels and rosters, and working in consultative capacities with other state and county agencies to further public understanding of mediation.

The effort yielded important early successes. In New Jersey, mediators in the newly established Center for Public Dispute Resolution were appointed as special masters and helped resolve a longstanding, multi-county conflict over sewage treatment.²¹ They also convened and facilitated an important policy dialogue on the statewide delivery of emergency medical treatment.²² The Massachusetts Mediation Service and the Office of Dispute Resolution in Minnesota assisted with the settlement of various natural resources disputes including problems arising from hydroelectric development and herbicide spraying.²³ They also helped organize systematic programs of mediation for their local court systems. The Hawaii office, in turn, helped bring closure to a decade-long impasse over the development of a new state water law and assisted the state's major trial courts in developing a statewide court-annexed arbitration system.²⁴

In 1987, after several years of experimentation and development, NIDR commissioned Peter Szanton to conduct an independent evaluation of the efforts underway in all four states. In his comparisons, Szanton, a

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¹⁹ See id. at 361.
²⁰ Id.
²² A protracted inability to resolve disagreements concerning the ambulance service had placed the state in danger of losing more than $20 million in federal funding. See Peter L. Szanton, Four State Offices of Dispute Resolution: A Report to the National Institute for Dispute Resolution, at 5 (National Institute for Dispute Resolution 1988).
²³ See Susskind, supra note 21, at 1.
²⁴ Id.
Washington-based legal consultant, found that where the office was housed seemed to matter less than high-level political support, experienced staff, and a strong statewide tradition of public participation in governmental affairs. One challenge noted by Szanton was that none of the states had yet put in place clear systems or procedures that would identify, bring to the table, and help resolve in a predictable manner the steady streams of disputes that mediation enthusiasts had often predicated would eventually find their way to the process. Nonetheless, he rated NIDR's work to be a valuable and important contribution to the field.

Between 1989 and 1991, NIDR funded additional offices in Ohio, Florida, and Oregon. The Ohio and Oregon offices were established under the authority of state commissions which, in Ohio's case, included the direct participation of all three branches of state government. In Florida, on the other hand, the office was created as a "consortium" of agencies and organizations headquartered at Florida State University. Like the efforts that preceded them in other states, the Ohio, Oregon, and Florida offices moved swiftly to develop a track record of successful intervention and consultation.

Nearly a decade after its inception, the state offices experiment launched by NIDR in 1984 would appear to be the leading edge of a trend that will probably result in many more state-sponsored efforts aimed at putting ADR more prominently into the public agenda. Today, additional offices with the potential capability of intervening in complex public policy disputes are under development in California through a cooperative effort between the University of California at Davis, the California State University in Sacramento, and the McGeorge School of Law; in New Hampshire through the Program on Consensus and Negotiation at the University of New Hampshire; in Texas through the Center for Public Policy Dispute Resolution at the University of Texas School of Law; in Vermont through the Governor's Task Force on Dispute Resolution; in Maine through the Maine Consensus Council; and in an especially ambitious enterprise, in Montana, North Dakota, and the Canadian provinces of Alberta, Saskatchewan, and Manitoba, through the Central Region Transboundary Initiative for Collaborative Problem Solving.

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25 See Szanton, supra note 22, at 8.
26 Id. at 6-7.
27 Id. at 15.
29 See id.
II. ASSESSING THE FIELD IN TRANSITION

Interest in dispute resolution has been, and continues to be, driven by forces only dimly understood. Most often it seems tied to a disenchantment with “business as usual” approaches to the management of conflict and to reforms and reformers in particular institutions, that is, to people bent on changing the way courts, churches, corporations, neighborhoods, and administrative agencies administer the opportunities and dangers of conflict. At times, the field looks and feels like some kind of wider social movement. Missing, however, is a central and unifying thesis, a set of legal, political, or economic principles that could substantively link the efforts of mediators working in different areas. As often as not, conciliation, mediation, and factfinding simply seem like sensible techniques that are adapted and used for a variety of purposes.

Ironies abound, of course. The idea of substituting mediation and arbitration for adjudication excites many people, reflecting a need, perhaps even a hunger, for new methods of dispute resolution in American society. Simultaneously, actual demand, while increasing, continues to lag. People simply do not seem willing to volunteer their conflicts for mediation and arbitration in sizeable numbers. This type of resistance may or may not be characteristic of any social innovation. Increasingly, however, mediation procedures are being mandated for the users of public justice systems. Add to this picture a growing number of actual and would-be mediators (along with a burgeoning population of mediation trainers) and we have a socio-legal phenomenon that is both puzzling and interesting.

None of this diminishes the value of what is taking place. Whether we call it “dispute resolution” (“DR”), “alternative dispute resolution” (“ADR”), “complementary dispute resolution” (“CDR”), or “negotiated dispute resolution” (“NDR”), interest in mediation seems to reflect something significant in America. Minimally, the use of interest-based negotiation and mediation models continues to generate an unusual discourse among judges, elected officials, and business and community leaders about the management of conflict in western society. More optimistically, it may actually be changing the way many disputes get handled in their respective settings and contexts. But what of the future and what, in particular, of the role of state offices of mediation and other

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31 See, e.g., Litigators and In-House Counsel Argue the Merits of Alternative Dispute Resolution, ILLINOIS LEGAL TIMES, Sept. 1992, at 17 (discussing the mandatory mediation of personal injury claims in Illinois and the post-discovery mandatory mediation program in Michigan).
institutional initiatives which would seem to be in a potential leadership role?

In its current form, the dispute resolution field encompasses four broad goals: (1) to relieve court congestion and undue costs and delays; (2) to enhance community involvement in dispute resolution; (3) to facilitate and improve access to justice; and (4) to provide more effective forums for conflict resolution. How these are prioritized depends on the local political and legal culture and the preferences of local institutions. In some ways, however, this list defines the national agenda as it has developed thus far. When these goals are translated into specific activities, however, other more detailed objectives emerge. They include:

(1) Reducing the public costs, both short- and long-term, of dispute processing;
(2) Reducing the private costs of dispute processing;
(3) Reducing the social costs of dispute processing;
(4) Increasing procedural satisfaction;
(5) Increasing the efficiency and wisdom of outcomes;
(6) Decentralizing dispute resolution institutions;
(7) Improving the natural dispute resolution skills of various groups;
(8) Improving the way particular professions handle disputes;
(9) Developing and perfecting the practice of dispute resolution;
(10) Educating various publics about dispute resolution alternatives;
(11) Changing the culture of problem solving and decision making.

For funders and policy makers—and for strategically placed agencies like NIDR's state offices of mediation—these goals are not automatically compatible with each other. In some cases, increasing the likelihood of achieving one goal may, in fact, reduce the probability of accomplishing another. Choosing between them therefore involves tensions. For example, if policy-making or policy-influencing groups like NIDR's state offices focus on reforms that strengthen the existing justice system, is the quest for meaningful alternatives then sacrificed? Are we willing to accept higher public costs in exchange for increased disputant satisfaction? By institutionalizing interest-based processes, are we setting the stage for a new wave of demands for rights-oriented justice procedures? If we concentrate the new mediation skills in the hands of fee-for-service professionals, are we in effect sowing the seeds of future inaccessibility? If we institutionalize various dispute resolution processes, will they then be sapped of their flexibility and situational responsiveness? If we create alternative dispute resolution "systems," are we creating more bureaucracy?

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Despite a lack of clear answers to these and other questions, the national pace of ADR experimentation continues to quicken. Predictably, the dispute resolution landscape will become even more crowded and diverse in the next several years. Most certainly new actors will emerge and the language, symbols, and activities of dispute resolution will continue to be adopted for diverse and unanticipated purposes by people working in various arenas with very different agendas and goals. But how much of this rising popularity is transitory? Necessarily, some of the current "stock-taking" and reconceptualizing being done by friendly and unfriendly critics of ADR must pivot around just this question. What lies beyond the immediate fad of DR and ADR and how best do we integrate mediation into America's primary dispute resolution institutions?

III. STATE OFFICES: THE NEXT GENERATION

Several years ago, Peter Edelman described "state-of-the-art" in the field as "[h]andfuls of innovative practitioners...pointing to a problem, conceptualizing models and establishing demonstration programs." The world of alternative dispute resolution, he believed, was comprised of various community-based, private practice, and court-connected mediation and arbitration projects that had spread across the country. Many of these programs were simple replications of what had been done in nearby locales. A fair number had survived start-up and appeared to be experiencing the kinds of problems normally associated with success. Many seemed well on the way to becoming permanent features in their geographic and substantive areas of interest.

In addition to noting some interesting diffusion of innovation patterns, Edelman's article was also an argument in favor of "second-stage" models. These he defined as initiatives that contain the seeds for qualitative rather than quantitative development—projects that would add significant new knowledge to the field or set important institutional precedents. Examples of second-stage models included the State of New York's commitment to fund community mediation programs in each of its jurisdictions, the ABA's "Multi-Door Courthouse" program, and NIDR's now maturing "State Offices" projects.

Implicit in Edelman's conception was the notion of incremental experimentalism. What was needed, he suggested, was a new wave of

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34 Id. at 137-41.
35 Id. at 141-44.
demonstrations that could command the attention and respect of institutional leaders. Such efforts would require higher levels of financial and political support. They would need to identify targets of opportunity and set up special dispute resolution tests beyond which, should they succeed, might lie broader, deeper and more lasting impacts. In essence, Edelman was arguing for better articulated, and more well-endowed, dispute resolution experiments. Presumably, such experiments would make a long-term difference in the way conflict resolution activities are structured in American society and its institutions.

Edelman's observations continue to offer a useful analysis of how the dispute resolution field has evolved, where it is now, and where it appears to be going. The economic parallels are obvious. First-stage models were, and continue to be, based on "supply side" thinking. The operative notion was to perfect the procedures of ADR and expand the availability of trained mediators and arbitrators. Second-stage models, on the other hand, aim at legislating demand. They seek to crystallize the way these methods work for certain applications and then formalize and define the conditions under which they will or will not be used. This is where the field of dispute resolution is today: in the midst of serious second-stage institutionalization experiments. Presumably, third-stage models will involve an ADR "economy" in which need, demand, and supply are more balanced.

Here, Edelman's notion of second-stage experiments also offers a thought-provoking and potentially helpful organizing principle for additional activities that might be undertaken by future state-sponsored offices of mediation. Rather than thinking of the offices themselves as "models," it may be more useful to view them as second-stage "modelers," that is, as strategically located dispute resolution resource groups capable of conceiving, developing, building support for, and implementing the kinds of institutional tests to which Edelman referred.

Such tests need not be confined to public disputes. To the contrary, other areas—family conflicts, torts, construction defect problems, workers' compensation claims, and tax and land assessment disputes, to name just a few—may offer additional and better precedent-setting opportunities for institutionalization. Regardless of the substantive area, however, any serious experiment must carry within it the capacity and potential to change for the better the way particular institutions work.

Building on what has developed thus far, then, a well-conceived next generation of state offices dedicated to second-stage modeling seems logical. Establishing an array of such offices in different parts of the

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36 Id. at 144-45.
country can generate new and needed information about the efficacy of mediation in various settings. Over time, it could also help define a more systematic national dispute resolution agenda. In their own locales, however, state offices would serve more immediate functions.

First and foremost, they would be a source of rigorous experimentation, the aim of which is to test the viability of proposed institutional changes. Over the long term, this would involve improving the laws, rules, and policies that govern the way particular disputes are managed and, wherever appropriate and feasible, building in permanent negotiation, mediation, or fact-finding systems. In the short term, it would mean incubating or “greenhousing” new dispute resolution ideas, building consensus around those ideas, and then implementing real life tests that lead to informed adoption or rejection.

In essence, each office should be a “proving ground” for projects that have a high probability of gaining eventual institutional acceptance. To qualify as a true second-stage effort and to maximize chances for success, projects undertaken by these offices would need the following:

1. An articulated and compelling social goal. Possible social goals include reducing the cost of disputing; increasing dispute resolution efficiency; broadening access to justice; increasing dispute resolution “satisfaction”; and achieving a greater sense of fairness and justice.

2. The interest, commitment, and support of relevant decision makers. This must include both financial support, signed memoranda of understanding, and/or other specific indications that a given test is viewed as a serious endeavor.

3. The capacity to carry on a project to its conclusion. This includes the availability and commitment of human “capital” including trained dispute resolvers, coordinative staff, and evaluators.

4. Enough time and latitude to “tinker.” Many, perhaps even most, serious DR projects need at least three to five years to perfect the logic of a given experiment and to measure and compare impacts.

5. A rigorous research and evaluation design. Wherever possible, this must include the use of control groups that examine comparative ways of achieving similar impacts.

6. The freedom to fail. In a reasonably open institutional environment, there should be an understanding that experimentation always involves the possibility of an idea or project not succeeding. Concurrently, institutional innovators must be prepared to abandon a project if it fails and avoid the temptation to expand it indefinitely.

7. A high probability of institutional acceptance should the experiment work. This would require enough early consensus that
successfully tested innovations would not later be defeated by bureaucratic inertia or the politics of interpersonal turf-guarding.

A logical second function for state offices, and one that several of the existing offices now perform, pivots around the gathering and dissemination of new ideas. Each state office should be part of a more formal and identified network of reference organizations through which nationally significant information about ADR is reviewed, updated and shared locally. This umbrella network, supported modestly by one or more national funders, would ensure a flow of useful information to, from, and between state offices. Such a network is, in fact, beginning to emerge in the form of a National Council of State Dispute Resolution Programs that was established in Columbus, Ohio, in June, 1992.\textsuperscript{37} NIDR has also committed to assessing the lessons learned from their efforts and to making a body of knowledge gleaned from these state-by-state experiences available to others.

Finally, each state office might be expected to mount active and ongoing programs of local and regional education. In particular, state offices should be encouraged to target a good portion of their efforts to agencies in all three branches of government. Information on current developments in the use of special masters, for example, might be organized for administrative law judges. Regulatory and rate setting negotiation material should be circulated to public utility commissions. Special successes in the use of negotiated policy formation exercises could be sent to legislators and key executive branch officials. The goal in all of these endeavors would be to arouse and maintain the curiosities of key institutional and agency "gatekeepers" and to provide them with procedural options.

Other dissemination activities might be more generic. Certainly all of the state offices should be available to help organize and coordinate newsletters, training programs, working papers, and conferences that broadly promote the use of new dispute resolution practices. While in one state these might focus primarily on courts and in another on ADR uses by executive and administrative agencies, all state offices would strive—through these activities—to become accepted as knowledgeable advocates and competent technical advisers for new institution-specific dispute resolution experiments.

IV. INITIATING AND SUSTAINING THE EFFORT

Several years ago the U.S. Peace Corps marked its twenty-fifth anniversary by inviting several thousand former volunteers to a celebration and

\textsuperscript{37} National Institute for Dispute Resolution, National Council of State Dispute Resolution Programs (1992) (unpublished report, on file with author).
conference in Washington. Amidst the retrospectives and reaffirmations of ideals, one speaker asked everyone to consider what the Peace Corps' organizational life might be like if more money were available. What would happen, he suggested, if for just one year the Marine Corps and the Peace Corps exchanged budgets? What would be the result? What would it mean in terms of building schools, replanting forests, providing primary medical care, improving nutrition, and expanding literacy?

Directing large amounts of money at problems never assures solutions, especially if it is a substitute for "political will," but let us imagine, for a moment, what the goals and support structures of a reasonably endowed and nationally coordinated state offices program might look like.

First, it need not involve huge staffs and large budgets; it need not be "fat," glossy, or high profile. NIDR's current efforts suggest that a variety of different models can, in fact, succeed. Building on Ohio and Oregon's experience, these may be independent state commissions or councils that participate in a national network of similar groups from other states. Others might, like the Hawaii, Florida or Minnesota programs, be located in the courts, in a respected university, or in a cabinet-level executive agency. Still others, like the Montana and North Dakota efforts, might be built on regional as opposed to state premises. Regardless of form, each state would have a small, high-level body focused on research, planning, and program development. Day to day, the offices would be responsible for gathering and disseminating information, encouraging the growth of good ideas, and undertaking important institutional experiments. Sensitive to the best of what is taking place nationally and aware of local needs, they would become lightning rods for developing reliable second-, and eventually, third-stage dispute resolution models.

Another feature of such a program would involve state-by-state ADR "diplomacy" in which NIDR and its constituent state offices work together to link different groups doing similar or overlapping activities in different parts of the country. Obviously, the participation of funders like the National Institute for Dispute Resolution should be a way of leveraging reasonable levels of local financial support and helping individual enterprises to establish "portfolios." But a funder's participation and involvement in a given state's commission or office might also be conditioned on other factors as well. A national funder, for example, might require that all state offices have trilateral participation and involvement from the judicial, executive, and legislative branches of state government. Ideally, each office would have—in one form or another—a commitment of local dollars. Equally important would be the serious policy participation of governors, chief judges, and lead legislators.
Any national effort aimed at enhancing the work of constituent state offices must also concern itself with the contextual resources needed for serious second-stage modeling. In most state offices, the director and his or her staff also serve as actual mediators of the cases they take in. However, as caseloads expand and administrative and programmatic functions increase, better systems for managing dockets of cases and panels of private mediators will need to be put in place. State offices must therefore have available to them active and vital communities of practitioners—people trained in, enthused about, and available for various kinds of mediation and arbitration activities. Equally essential are scholars and researchers with demonstrated interests in and knowledge of dispute resolution issues. Presumably, the credibility of individual state level initiatives will ultimately depend on the outcome of rigorous and independent evaluation designs. In the best of worlds, all state offices would have resources for formal outside monitoring. The presence of academics who are capable of doing this work is critical. To that end, a major role for a successful state office will probably involve brokering and facilitating a triangle of special relationships between governmental institutions, practitioner groups, and university-based research programs for the purpose of accomplishing common interests.

Finally, the development of any second generation of state offices must begin with a clear understanding of needs. The challenge, of course, does not lie in institutionalizing state offices. Rather, it is to institutionalize the reforms such offices initiate. Nor is the broader objective to expand the use of new dispute resolution technologies _per se_. Well-organized programs of mediation and arbitration are simply vehicles for change. The real work of ADR involves refining and improving America’s social, political, and economic institutions—making them work better and for a greater number of people. Serious dispute resolution experiments may mean serious changes to the existing way of doing things. They are, to borrow an idea from Buckminster Fuller, potential institutional “trimtabs,” small rudders that help big boats make needed, and sometimes urgent, mid-course corrections. The end goals, of course, remain constant: fairness, efficiency, informed participation, wise outcomes, and the reduction of injustice.

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38 See Lucien Rhodes, _Being Dead Is Bad for Business_, Inc., July 1984, at 79.