AN EVALUATION OF THE ADR PILOT PROJECT

FINAL REPORT*

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EXECUTIVE SUMMARY

From September 1, 1988 to March 1, 1990, the Maine Superior Court undertook a pilot civil case alternative dispute resolution (ADR) project in two counties, Knox (a small, largely rural county) and York (a larger and fast-developing county). Eligible cases on the civil docket were assigned randomly either to ADR conducted by experienced trial attorneys or to the normal pre-trial track appropriate to the case. The ADR sessions occurred relatively early in the case and prior to most formal discovery, which was suspended during the process.

Origin of the Pilot Project

The pilot project was established by legislative act in 1988 and was intended in large part to reduce the costs and delays of civil litigation in Maine. The project had originally been conceived by the Maine State Bar Association's Alternative Dispute Resolution Commission and was incorporated into the recommendations of a Legislative Commission to Examine Problems of Tort Litigation and Liability Insurance. The final design of the pilot project was left to the Maine Judicial Council. The project was implemented by order of the Supreme Judicial Court.

Pilot Project Procedures

All civil cases filed in the Superior Court in Knox and York Counties after September 1, 1988 were eligible for ADR except appeals from the District Court or administrative agencies, medical malpractice claims and domestic relations matters. Under the Court's order, the Justice reviewing the pleadings and Pre-trial Scheduling Statement had full discretion to determine the cases to be assigned to ADR. In practice, any case in which one party selected ADR in the Pre-trial Scheduling Statement was assigned to ADR. The remaining eligible cases were sent to the clerk, who would randomly assign the case either to ADR or to the pre-trial track designated by the Justice.

At this point, by court order, the clerk would identify the names of three lawyers on the list of eligible ADR neutrals, called "mediators," and notify the parties of their assignment to ADR and the opportunity to strike any of the names from the list. The clerk, or the court in the case of objections, would designate one "mediator" for the case. Parties were also ordered to pay their equal share of a $250 fee for the ADR process. "Mediators" were paid $250 per case.

The ADR order would also set a time limit, normally within 90 days, for completion of ADR, set forth an ADR timetable, and stay any pending discovery. Dispositive motions were to be heard prior to commencement of ADR unless the court ordered otherwise.

Once selected, the "mediator" would arrange directly with the parties for scheduling the ADR Conference. The procedures to be used at the Conference were to be agreed upon in advance and could include any appropriate ADR technique. In practice, this meant either case evaluation or mediation (or some hybrid of the two processes). In the former process the "mediator" would hear the case and provide the parties a non-binding opinion regarding the appropriate outcome of the case. In the latter process, the "mediator" would not announce any opinion but would help the parties negotiate an agreement.

Although under the Court's order, all formal discovery was to be suspended during the pendency of ADR, "mediators' could require the exchange of information. In advance of the ADR Conference, both parties were to submit a best case summary, and both lawyers and their clients were expected to appear at the conference. If no agreement was reached as a result of the conference, the "mediator" so advised the court, and the case returned to the pre-trial track to which it had been assigned. The ADR proceedings were nonbinding, privileged, and inadmissible in evidence.

Design of the Evaluation

Evaluation of the Pilot Project was central to its design and led to the random assignment of eligible cases either to mediation or to a "control" group of cases following the standard pre-trial track (typically the expedited track). In addition, because ADR could be requested by parties, voluntary ADR cases constituted a third group for purposes of comparison. Data for the evaluation were collected from the thorough court docket records kept by the two courts and supplemented with data from the Adminstrative Office of the Courts. In addition, all of the lawyers who served as neutrals were asked to fill out a brief questionnaire on each case they handled. These questionnaires were distributed in the summer of 1991. Resources did not permit questioning either litigants or their attorneys.

The data reported here describe cases through November 30, 1991. Because approximately 11% of the cases remain incomplete, some of the results are subject to modification. Nonetheless, the general conclusions stated below should remain valid.

Results of the Evaluation

Caseload[1]:

- During the life of the project a total of 170 cases were randomly assigned to ADR and 156 to the regular pre-trial track.

- A total of 87 cases entered ADR voluntarily.

- Fifteen percent of the total number of 1989 civil cases filed in both York and Knox counties began the ADR process.

- By November 30, 1992, 89% of the cases entering ADR and in the control group were completed

Settlement and judicial disposition of cases:

- In the assigned ADR group 13% of all the cases settled prior to ADR and another 27% settled in ADR. Thus far (through November 30, 1991) an additional 29% have settled before trial, for a total of 69% settled.

- Among voluntary ADR cases, 13% settled prior to ADR and another 36% in ADR. Thus far, an additional 31% have settled before trial for a total of 79% settled.

- Among control group cases 65% settled by November 30, 1991.

- By November 30, 1991, 7% of voluntary ADR cases, 12% of assigned ADR cases, and 18% of control group cases had been resolved either by trial or hearing on a dispositive motion.

Time to disposition:

- Case resolutions occurred on average 59 days earlier in the assigned ADR group than in the control group. In voluntary ADR, cases were disposed of an average of 72 days earlier.

- Settlements occurred on average 77 days earlier in the assigned ADR group than in the control group. In voluntary ADR, cases were disposed of an average of 70 days earlier.

Litigation activity:

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[1] Consolidated cases were counted only once. The thirteen consolidated cases include a total of 31 original filings. These were distributed across assigned ADR (4 cases), control (13 cases) and voluntary ADR groups (14 cases).

- There were 50% more discovery requests on average in control group cases than in assigned ADR cases (almost 100% more than in voluntary ADR cases)

- Motion hearings on cases were almost twice as frequent in control group cases as in assigned ADR cases.

Impact on the Court:

- 20% of the voluntary ADR cases and 32% of the assigned ADR cases reached the trial list compared to 57% of the control group cases.

- There was no measurable reduction in case processing time in either York or Knox Counties that could be attributed to the ADR pilot project.

Administering the project:

- Parties had to be reminded or ordered to pay the ADR fee in a large percentage of cases, especially in York County.

- Objections to the proposed mediators occurred in over a third of York cases, but less than 10% of Knox cases.

- The court clerks in both counties bore a substantial extra burden in administering the Project.

The ADR Process:

- There was considerable variation in the procedures used by different "mediators" in the ADR conferences.

- More activist "mediators" and those who involved the parties to the dispute in the process seemed more likely to reach settlements.

- Nearly all the lawyers who served as "mediators" were both committed to the ADR Project and supportive of its continuation.

- There were no statistically significant differences in the likelihood of settlement through ADR for different case types although tort cases were somewhat less likely to settle in ADR while real property and equitable action cases were most likely to settle.

- The types of cases brought voluntarily to ADR did not differ significantly from the types of cases randomly assigned to ADR.

Summary

The use of ADR in the York and Knox County Pilot Project encouraged earlier settlement of cases in the Superior Court, reduced substantially the numbers of cases scheduled for trials, and diminished the number of cases requiring judicial resolution. In addition, the Pilot Project decreased the volume of formal litigation activities--discovery, motions, and motion hearings--that impose costs on parties and demand time and attention from the courts. At the same time, the Project had no discernible impact on the Court's docket as a whole and created some administrative burdens on the court clerks. These effects were achieved despite the minimal training for and supervision of "ADR mediators" and the wide variation in the types of interventions they utilized.

Introduction to the ADR Pilot Project

In September, 1988 the Maine Superior Court embarked upon an eighteen month Pilot Project in two counties to test the utility of court-ordered alternative dispute resolution in civil cases. The idea for this Pilot Project grew out of the work of the Maine State Bar Association's Alternative Dispute Resolution Commission established in 1985 to examine ways to reduce litigation costs and delays. A plan developed by the Commission for civil case ADR was incorporated in the report of The Tort Reform Subcommittee of the 113th Legislature's Commission to Examine Problems of Tort Litigation and Liability Insurance in Maine, which had been pressing for specific and immediate proposals to relieve the costs and delays of tort litigation.

The Tort Commission's recommendations resulted in "An Act to Study Alternative Dispute Resolution in the Superior Court," P.L. 1988, c. 121, which charged the Maine Judicial Council to carry out "a pilot program extending the process of mediation to Superior Court civil cases." The Pilot Program would have a limited life from September 1, 1988 to March 1, 1990. The act left the final design of the program to the Council and the Supreme Judicial Court and appropriated $40,500 to carry out the purposes of the Act.

The Implementation of the Pilot Project

The final design of the Pilot Project grew out of the work of a subcommittee of the Judicial Council chaired by then Chief Justice of the Superior Court, Morton Brody. The work of this committee served as the basis for the Supreme Judicial Court's "Administrative Order in Regard to Alternative Dispute Resolution Pilot Project Procedures to Implement P.L. 1988, c. 121, Effective September 1, 1988," Maine Rules of Court, 494-98 (West, 1991).

According to this order all civil cases filed after September 1, 1988, "except appeals from the District Court, appeals from administrative agencies, medical malpractice claims, and domestic relations actions" were eligible for ADR. At the review of the pleadings and Pre-trial Scheduling Statement, the judge would determine eligibility and make the decision whether to refer to ADR. In addition, parties could request ADR in their Pre-Trial Scheduling Statement, and judges could assign any other eligible case (that is, one filed before September 1, 1988) to ADR.

Alternative Dispute Resolution was to to be conducted by neutrals (called "mediators" in the Order), who were to be experienced trial attorneys. These "mediators" would be compensated $250 for each case assigned to them. The parties in turn were required to pay in equal portions a fee of $250 within five days of notification of assignment to ADR.[i] Although not explicitly authorized in the order, judges proved willing to

dismiss complaints in which there was a continuing failure to pay the ADR fee.

During the period of assignment to alternative dispute resolution, no formal discovery was to occur, although the order provided that the "mediator" may require the parties to exchange information informally for the purpose of expediting the process." At the "mediator's" recommendation, ADR could be terminated if the "mediator" concluded that no settlement was possible without formal discovery.

The parties were required to submit to the "mediator" "concise 'best case summaries,' setting forth their legal and factual contentions and a summary of the evidence" prior to the alternative dispute resolution conference. At that conference it was mandated that both the attorneys and their clients appear. The order further noted that the dispute resolution technique to be used would be decided on a case-by-case basis with the consent of the parties. The order "anticipated that in most cases, the process will take no more than one full day." Within ten days of completing the conference the "mediator" was to file a report of the results with the court.

The order also established that "[a]ll conduct, discussions, and statements by any party or mediator in the course of alternative dispute resolution under this order, as well as the outcome of the process, shall be non-binding and absolutely privileged and inadmissible in evidence." Lawyers involved in the process as "mediators" or party representatives were also

instructed not to reveal any of the proceedings "to the disadvantage of any party to the mediation or to the advantage of himself or a third person."

A section on sanctions warned that if an agreement was not reached in alternative dispute resolution, "the court must determine that the parties made a good faith effort to resolve the issues in the process before the action is returned to the appropriate trial list." A finding of failure to make a good faith effort could lead to resubmission to ADR or to dismissal or default.

The order did not deal with the method of case assignment, which was central to the design of the Pilot Project and its evaluation. The method agreed upon between the judges and the project evaluator was random assignment of eligible, screened cases either to ADR or, as in the normal course, to the expedited or the regular pre-trial track (the 'control group'). Assignment was triggered by submission of the Pre-trial Scheduling Statement required to be filed fifteen days after the answer. At this point also volunteers could enter ADR unassigned by indicating a preference on the Pre-trial Scheduling Statement.

The Pilot Project in Operation

The program was supposed to begin with cases filed after August 30, 1988. Since it took an average of over four months for cases to move from filing to the pre-trial order when ADR was assigned, it was not until early in 1989 that ADR was really underway. One year later, as the Pilot Program drew to a close,

170 cases had been assigned to ADR, 156 cases to the control group, and 87 cases had entered ADR at the request of one of the parties.[ii] Seventy-four different lawyers were ultimately assigned to carry out the dispute resolution procedure in the two counties, all of them experienced trial attorneys and all of them men. By November 30, 1991, the cut-off date for this report, 89% of the cases in each of these three groups had reached resolution.

Evaluation Design

From early in the design of the Pilot Project, attention was given to insuring its evaluation. As a result, the author of this report was asked to participate in deliberations on that design in order to facilitate the evaluation process.

Given the Court's and Legislature's concerns in creating the Pilot Project, the evaluation focussed largely on speed and frequency of settlement, impact on frequency of trials, extent of litigation activity and court involvement in cases, and the administrative burdens and costs of undertaking the project. Court docket records provided data adequate to address virtually all of these issues. The docket record of each case was coded for statistical analysis, and supplemented by information from records of the Administrative Office of the Courts on type of case.

The random assignment of eligible ADR cases either to the normal pre-trial track or to ADR makes it relatively easy to compare results on each of these issues and to be confident that

substantial differences are the result of the ADR intervention. This experimental design makes the Pilot Project unusual compared to other court innovations nation-wide and aids immensely in answering the central questions of the evaluation.

Some complexity is added to the comparisons between the ADR and control groups by the fact that parties could request ADR voluntarily. Because self-selection into ADR presumably indicates a disposition to consider settlement seriously, one might guess that these voluntary cases would be more likely to settle early in the process than those assigned to ADR. Voluntary participants in the ADR process were thus tracked and examined separately from assigned cases.[iii]

In addition to examining court records of cases in the assigned ADR, voluntary ADR and control groups, we gathered data by mailing questionnaires to all ADR "mediators" who had heard cases. These questionnaires asked generally about their views of the ADR Pilot Project and specifically about each case they had heard. Thirty (41%) of the "mediators" have responded; together they handled 79 cases in the ADR group (33%).[iv]

RESEARCH EVIDENCE

Overall Settlement Patterns

By November 30, 1991 roughly 89% of the cases in each of the three groups had reached disposition. Of these 73% of the control group cases had been settled, compared to 79% of the assigned ADR cases and 90% of the voluntary ADR cases (see Table

1).[v] Further, of the completed control group cases, 20% had been resolved either through trial or a judicial finding at hearing compared to 13% in assigned mediation and 8% in voluntary ADR.[vi] This means that judicial resolution of the case is almost 50% more likely in the control group than in the assigned mediation group.[vii]

Of the total cases entering assigned ADR, 27% reached resolution through the ADR conference and another 13% prior to ADR. Thus, the settlements of 40% of these assigned cases could be attributed to the ADR intervention. Voluntary ADR cases settled at a higher rate--13% in anticipation of ADR and 36% through the conference.

A statistical picture of the flow of cases through the ADR process appears in Table 2. ADR conferences were actually attempted in 80% of the assigned ADR cases and 85% of the voluntary cases, largely because 11-12% of the cases in each group settled in anticipation of the ADR conference.[viii] Of those cases entering ADR, all but two had completed that process by November 30. Of those cases where an an ADR conference was undertaken, 34% in the assigned ADR group and 42% in the voluntary group settled. Of those cases not settling in ADR (and also of those that were removed from ADR), more than half have subsequently settled and one-fifth remain on the trial list.

The Speed of Settlement

The use of ADR speeds the settlement process. As Figure 1 shows, assigned ADR cases in both counties were completed roughly

an average of 60 days earlier (from pre-trial order to disposition) than control cases, and voluntary ADR cases were disposed of about 72 days earlier.[ix] Put another way it took the assigned ADR cases 15% less time on average to reach resolution than the control group cases.

Presumably, ADR served not only as a device for bringing parties together to discuss settlement but also as a mechanism for setting deadlines and pressing earlier rather than later examination of settlement possibilities. This effect can be seen most readily in the eleven percent of ADR cases (either assigned or voluntary) which settled prior to an ADR conference. These cases took on average only 172 days from pre-trial order to disposition.

Another cause of earlier settlement in ADR was the requirement that discovery be suspended during the process. On average ADR was completed within 152 days of the pre-trial order. By comparison the deadlines set at the pre-trial order for completion of discovery averaged 234 days. Furthermore, in one-third of the control group cases (compared to 18% of the ADR cases) there were one or more requests to extend the discovery deadline. Thus, the ADR process moved parties toward serious consideration of settlement much earlier than was likely to occur under the pressure of other court deadlines. As a consequence, settlements occurred 77 days earlier on average in assigned ADR, than in the control group.

Averages disguise the considerable variation among cases in

time of disposition. Cases that settled in ADR took an average of 198 days from pre-trial order to disposition, and those cases in which no settlement was reached averaged 468 days. Thus, it would appear that the ADR process may have extended somewhat the duration of cases where it did not produce an agreement.[x] These cases took an average of 75 days longer than the control group cases. Clearly, the net impact of the ADR process, however, was to reduce significantly the amount of time it takes for cases to move from pre-trial order to disposition.[xi]

Discovery

The speeded-up process in ADR was achieved in large part by requiring it to proceed prior to completion of formal discovery. This requirement had been strongly criticized by some attorneys before the Project began. Many believed that settlement could not proceed without formal discovery and that their responsibility as attorneys required them to engage in discovery prior to advising settlement. In fact, however, some formal discovery begins prior to the pre-trial order, so the rule suspending discovery did not preclude it altogether in ADR cases. In addition, a few ADR "mediators" requested the Court's permission for formal discovery as ADR proceeded. Many more "mediators" encouraged informal sharing of information during or in advance of the ADR conferences.

The rule suspending discovery had considerable effect, decreasing substantially the amount of formal discovery that took place among ADR cases. Control group cases averaged 4.7 requests

for discovery per case compared to 3.1 such requests in the assigned ADR group and 2.6 in the voluntary ADR group.[xii] Figure 2 displays graphically the median number of discovery requests in each county.[xiii] In other words, there were one-third fewer discovery requests in the assigned ADR group and almost 50% fewer in the voluntary ADR group than in the control group.

In the assigned ADR group, those cases settling prior to ADR averaged .75 discovery requests, while those settling in ADR averaged 1.11 requests. Only in those ADR cases where no agreement was reached did the level of discovery requests average 4.4, nearly as high as that in the control group.

In the assigned ADR group depositions were employed in 42% of the cases (voluntary ADR 33%) whereas they were used in 58% of the control group cases.[xiv] Similarly, requests for production of documents occurred in 62% of the control group cases compared to only 42% of the assigned ADR group and 36% of the voluntary ADR group.[xv] Interrogatories too were less commonly propounded in the assigned ADR group (49%) and voluntary ADR group (36%) than in the control group in which 62% of the cases involved interrogatories.[xvi]

In summary, there was some formal discovery undertaken in 82% of the control group cases compared to 67% of the assigned ADR cases and only 54% of the voluntary ADR cases.[xvii] Clearly, discovery occurred in fewer ADR than control group cases and when it occurred there was less of it in both assigned and voluntary ADR cases.[xviii]

The limitation on formal discovery may also have been a barrier to serious settlement discussions in some cases, however. ADR "mediators" responding to the questionnaire indicated their belief that the absence of formal discovery was the reason for non-settlement in 29% of the ADR conferences where no agreement was reached. Three of the thirty "mediators" responding also criticized the Pilot Project for suspending discovery. It was also clear, however, that some "mediators" were more active than others in finding informal means to exchange information. In fact, in 44% of the cases where informal discovery was reported to have occurred a settlement was achieved, compared to 24% of cases where no informal discovery took place. It remains unclear from these questionnaire data how frequently the suspension of formal discovery prevented settlement. It is very clear, however, that significant informal discovery could and did take place, and that in ADR cases significantly less formal discovery occurred in aggregate than in control group cases.

Motions and Court Hearings

The level of formal court involvement in ADR cases was significantly lower than in control group cases. In 54% of the control group cases there was a hearing on some aspect of the case. This compares to hearings in only 35% of assigned ADR cases and 30% of the voluntary ADR cases.[xix] Put differently (see Figure 3), there were on average twice as many hearings per case in the control group (1.1) as in the assigned ADR group (.55) or voluntary ADR group (.44).[xx]

The diminished number of hearings results in part from the reduced number of motions[xxi] filed in ADR cases. In 74% of control group cases one or more motions was filed compared to 65% of cases assigned to ADR and 56% of voluntary ADR cases.[xxii] These motions were one-third to one-half less frequent in assigned ADR and voluntary ADR groups (averaging 1.7 and 1.2 motions per case respectively) compared to the control group (2.5 motions per case).[xxiii]

The ADR process also had a clear effect on the scheduling of cases for jury or non-jury trials. In 57% of the control group cases a trial was scheduled compared to only 32% of assigned ADR cases and 20% of voluntary ADR cases.[xxiv] These effects were evident for both the jury and non-jury calendars of the courts. For example, 35% of control cases were scheduled for jury trials compared to 20% and 14% respectively of the assigned and voluntary ADR groups.[xxv] Thus, the ADR program appears to have helped clean the court calendars as well as to reduce somewhat the numbers of trials actually taking place.

Differences Between Knox and York Counties

The success of ADR in moving cases toward settlement differed very little between Knox and York Counties (see Tables 3, 4, 5, and 6), but these achievements had to be measured against rather different patterns of settlement and trial in the two courts. Settlement occurred less frequently in Knox, and trials and summary judgments were strikingly more frequent. Fully a third of completed control group cases were disposed of

through judicial decision in Knox County while only 18% were in York, for example.[xxvi] In both counties, however, the likelihood of judicial disposition was substantially lower in the ADR groups than in the control group.

The greater reluctance to settle in Knox County was also reflected in slightly lower settlement rates within ADR in Knox (40% in voluntary and 30% in assigned ADR) than in York County (43% and 35%). The patterns of movement through the ADR stages (see Tables 4 and 6) were otherwise quite similar in the two counties.[xxvii]

Impact on the Courts

In both Knox and York Counties, the ADR Pilot Project encouraged and speeded settlements, but in neither county is there evidence that it had an impact on the overall court docket. For example, although the average days from filing to civil disposition fell in both Knox and York Counties during the period of the Pilot Project, so also did the statewide average.[xxviii]

This lack of discernible impact is not surprising when we note the low proportion of the docketed cases that actually participated in the Pilot Project. Roughly 21% of eligible 1989 cases began the ADR process in York County and 26% in Knox County.[xxix] Because not all civil cases were eligible for ADR, its impact on the total dockets was even smaller. Only 15% of 1989 civil filings began ADR in York and Knox counties. For ADR to have a marked effect on the civil dockets as a whole, it would probably have to include a substantially larger proportion of the

civil caseload.

Lawyer and Litigant Satisfaction

Indirect evidence suggests substantial lawyer satisfaction with the ADR Pilot Project. Unfortunately, the absence of funding for this evaluation made it impossible to probe the attitudes of participating lawyers and litigants toward the ADR process directly. One indirect measure of response, however, was the level of voluntary entry into the ADR program. In York County 23% of the eligible cases selected ADR on their own while 11% did so in Knox County. This pattern of selection so early in a Pilot program suggests substantial support among attorneys both for the concept and its implementation. That this voluntary choice of ADR was more common in York County accords with the differences in general settlement patterns evident in the two counties.

Other evidence comes from the thirty "mediators" who reported substantial cooperation among lawyers in both counties. Asked to rate counsel on a continuum from very cooperative (1.0) to very uncooperative (7.0), the average rating was 2.4 in both counties.[xxx]

Assessments by "Mediators"

Of the thirty lawyers responding to the survey of ADR "mediators," all but four expressed unqualified support for extension of the ADR Pilot Project. According to one respondent, "The mediation process refocused the attorneys, and, frankly any effort to focus everyone's attention on the case as early and as

often as possible is effort well spent." According to another, "The project provided a short, known time-frame which put pressure on the clients and attorneys to deal with and resolve issues." The few dissenters expressed concern about the mandatory character of ADR, its application to all cases rather than selected cases, and, particularly, to the suspension of discovery during ADR.

All but two of the "mediators" expressed willingness to continue in the role and an interest in more extensive training. The two who were unwilling to serve further noted the substantial time commitment for which there was meagre reimbursement. On the other hand, two "mediators" suggested their willingness to serve without pay.

Costs and Problems of Implementing the Pilot Project

The most visible out-of-pocket costs of the ADR Pilot Project were borne by the litigants. The $250 fee that they paid generally covered the $250 expense of hiring the attorney to do the ADR work. However, because Maine's accounting system credits fees taken in to the General Fund rather than to the Project or even to the Judicial Department, the program was a drain on the Department's budget. Further, the fee for participation was not sufficient to cover any of the costs of administering the program.

These hidden costs resulted from a substantial increase in the administrative and clerical load on court clerks. Indeed, to run the ADR program in York County an additional clerk had to be

hired whose responsibility was at least part-time to process the ADR cases. This happened despite substantial efforts to craft the program in a way that would minimize the burden on clerks.[xxxi]

The burden of the ADR cases fell on clerks in a variety of ways. All of these relate to the need to docket and schedule a variety of events in the dispute resolution process and to notify parties accordingly. Perhaps the greatest administrative problems from the clerk's point of view were the collection of the ADR fee, the processing of objections to proposed "mediators," and the occasional necessity of replacing the original "mediator" after recusal.

These problems occurred at different rates and vastly different volumes in Knox and York counties. Not only did York County have nearly seven times as many cases as Knox, but it also experienced proportionately higher rates of problems. In York County the clerks had to issue requests for payment of the ADR fee in 59% of the cases. In fact, in 38% of the ADR cases in York County an order was issued threatening dismissal or default of the case unless the fee was paid. In Knox County these problems were rare. Not only was the volume of cases much smaller, but the problems of fee collection were infrequent--38% of the cases required payment reminders sent and only 8% required a threatening court order.

A further difficulty was created by the opportunity given attorneys to reject names of "mediators" on the list of three sent to them. In 35% of the York County cases there was at least

one objection to a proposed "mediator" while this occurred in only 8% of the Knox County cases. Thus, lawyers for the parties took seriously the opportunity to help narrow the selection of "mediators," perhaps thereby helping to legitimate the mandatory procedure. For clerks, however, it delayed and complicated the scheduling of "mediators," each of whom was limited in the number of ADR cases he could undertake. A further challenge arose, especially in York County, when ADR "mediators" recused themselves after selection. This occurred in 10% of the York cases--once three times in the same case--but only 5% of the Knox cases.

Few "mediators" complied with their mandate to produce reports of the ADR conference within ten days of its completion. Clearly, one good reason for this in many cases was that parties to the dispute wanted some time to reflect on the possible settlements discussed there and to modify a pending agreement. This often left "mediators" hanging as to the outcome of the conference. Nonetheless, the delays also left to clerks the task of checking up on missing and late reports.

Another task for clerks especially in York County where the volume of cases was substantially higher was keeping track of the experimental design. This meant a dual bookkeeping system in which the ADR cases and control group cases were recorded separately, adding to the paperwork burden created by the Pilot Project. This difficulty would, of course, be reduced were the program to be institutionalized beyond the experimental period.

Interestingly, the Pilot Project provides little evidence that movement to a completely voluntary system would diminish the problems in fee payment. Indeed, in York County the voluntary ADR group required even more notices than the assigned ADR group with respect to payment of fees. The substantial difference across counties in unprompted compliance with the fee requests suggests differences in the cultures of the local bars that an expanded ADR program would have to deal with.

The Pilot Project may have shifted some of the burden from the judge to the clerk's office. The appearance of cost and time saving in the courts and even for the parties themselves must be weighed against the additional burden and possible dollar costs imposed on the clerks of courts. At the same time, some of these burdens and costs might be reduced by careful redesign of administrative procedures to smooth the flow of paper and diminish the additional requirements placed on clerk's offices.

The ADR Process

Ambiguity and vagueness in the court order establishing the Pilot Project and the very limited training left unclear precisely what the "ADR mediators" were expected to do as neutrals. The preferred process, according to the Order, was mediation, but alternative processes could be adopted at the discretion of the parties. Those lawyers who were trained in a three hour session heard primarily about mediation with some references to neutral evaluation. Because of these ambiguities in the "mediator" role, it is not at all clear what the 74

different ADR "mediators" actually did during their ADR conferences.

Responses by thirty of these "mediators" to brief questionnaires asking them to describe their approach to the task give some hints of the variety of approaches taken. The 65 mediation conferences described in these responses ranged in length from 30 minutes to nine hours, with an average length of 2.6 hours. Eighteen percent were adjourned and followed by a second conference.

Preparation for these conferences varied considerably. One "mediator" asked the parties not only for the required best case summary but also for extensive confidential descriptions of discovery efforts and needs, procedural history, and negotiating posture. In 25% of these 65 cases, the "mediator" had no contact with the lawyers prior to the conference. In 46% of the cases the "mediator" either talked with lawyers individually by phone or convened them in person or in a conference call. In 29% of the cases the "mediator" both called the lawyers and convened them. In 63% of the cases the "mediator" helped arrange for informal exchange of information.

The ADR conferences themselves varied not only in length but in the role played by the "mediator." In 37% of the cases, the "mediator" reported withholding judgments of the merits of the case or likely outcomes. In the remaining cases the "mediators" reported advising parties on their views of the legal merits of their cases (38%), their estimates of the case value (24%),

and/or their views of the likely court outcome (25%).

The formats for the conferences differed widely as well. In some cases the "mediator" began by having the lawyers for the parties present their cases and question one another before separating the parties for shuttle negotiations. In roughly one-third of the cases, the "mediator" heard the best-case presentations, asked questions, advised parties of his judgment of the case, and separated parties for shuttle negotiations. In another third of the cases, the "mediator" behaved more like a traditional mediator, working with the parties separately and together and withholding judgment about case value or likely court outcome. These differences led to varying responses to a question about whether the conference was devoted largely to case presentation (34%) or settlement discussions (57%).[xxxii]

In 86% of the conferences the parties were present along with their attorneys. In the remaining cases either one or both parties was absent, and in several cases no representative of an insurer appeared, even though the parties were present. Even when the parties were present, however, the "mediators" tended to focus the conference on the attorneys. In 55% of the cases the "mediators" indicated that "the lawyers did most of the talking and negotiating." In only 11% of the cases were the parties described as the active participants while in 34% of the cases the parties and lawyers were described as equally active.

In general, the self-descriptions of what "mediators" did in the conferences and in preparation for them suggest a process

focussed heavily on predicting possible legal outcomes and in working with lawyers rather with directly with parties to achieve settlements. For example, it was a common practice for "mediators" to caucus separately with the lawyers during the conference itself.

Although the data do not permit firm conclusions about the relative effectiveness of these different approaches to the ADR process, they provide some provocative hints. The likelihood of settlement was not related to the kind of preparation "mediators" made for the conference. On the other hand, it was related to their self-reported activity/passivity in the conference and to their willingness to involve parties in discussions rather than lawyers.

In general, cases in which the "mediator" withheld judgment about the likely court outcome, the case value, or the legal merits of the cases were far less likely to settle (21%) than those cases where one or more of these judgments was revealed (50%).[xxxiii] These sorts of interventions do not accord with the more conventional role of the mediator. Apparently activist "mediators" who pressed harder on the parties for settlement were more likely to achieve that result. It would also appear that a focus largely on case presentation was far less effective than focus on settlement discussions. In 14% of the former instances, settlement was reached compared to 33% of the cases where settlement discussions were at least evenly split with case presentation, and 51% where the focus was settlement

discussion.[xxxiv]

At the same time, settlement was far more likely in cases where the "mediators" encouraged the parties to do most of the talking. In 71% of these cases settlement was achieved compared to 41% in cases where the parties and lawyers shared evenly in the discussion, and only 28% in cases where the lawyers were reported to have dominated the discussion.[xxxv] Despite the apparent success of the former strategy, however, it was adopted in only 11% of the conferences.

Which Kinds of Cases Is ADR Most Effective in Resolving?

One of the fundamental challenges in alternative dispute resolution is to match the most suitable processes with particular kinds of cases. The Pilot Project began without guidance from research or practice elsewhere about the kinds of cases most or least suitable for ADR. However, because court records classify each civil case as to type, we can learn something about case suitability after the fact.

Clearly, some types of cases were less likely than others to settle during ADR. Of those cases reaching the ADR conference, personal injury cases were the least likely to settle during ADR (28%), followed by contract cases (39%), damage cases (41%), equitable actions (47%), and real property cases (54%).[xxxvi] Although these differences are not statistically significant,[xxxvii] this pattern is consistent with the widely held view of trial attorneys that personal injury cases are least suited to mediation. These data might be read to suggest that personal

injury cases are less distinctive than professional wisdom would indicate; although cases vary substantially, the crucial variations are not well captured by labels such as "personal injury" or "contract." The data may also suggest that the neutral should be able to choose from a clearly delineated set of interventions (arbitration, neutral evaluation, mediation) to meet the individual needs of the case. For example, personal injury cases may more often (though not always) be handled most effectively by neutral evaluation, while other kinds of cases may be more likely to be amenable to mediation.[xxxviii]

It is also important to note that the kinds of cases brought to ADR voluntarily were virtually identical in distribution to the kinds of cases assigned to ADR. For example, of the assigned ADR cases 13% were damage cases, 41% personal injury and 32% contract cases compared respectively to 12%, 31% and 42% of the voluntary cases. The small differences in distribution could easily be attributed to chance variation. There is no strong indication that in practice, attorneys viewed personal injury cases as less amenable to ADR.

Conclusion

The use of ADR in the Pilot Project encouraged earlier settlement of Superior Court civil cases, reduced substantially the numbers of cases scheduled for jury and nonjury trials, and diminished the total number of cases requiring judicial resolution. In addition, the Pilot Project decreased the volume of formal litigation activities--discovery, motions, and motion

hearings--that impose costs on parties and demand time and attention from the courts. At the same time, the Project had no discernible impact on the Court's docket as a whole and created some administrative burdens on the court clerks.

These effects were achieved despite the minimal training for and supervision of "ADR mediators" and the wide variation in the types of interventions they utilized. The earlier settlements and reduced litigation activity appear to have come at least in part from the fact of intervention itself. By setting earlier deadlines and by bringing parties and their lawyers together to focus on case resolution, settlement was achieved in a substantial number of cases. However, it also appears that the kinds of interventions used by the "ADR mediators" were not equally effective and that different kinds of cases responded differently to these interventions. It is plausible that with more clarity about the processes to be employed, more extensive training of "mediators," and some guidance about which processes fit best with which cases, the Project could have greater impact than it did.

In weighing these findings and considering the possibility of continuing and expanding the Pilot Project, policy-makers must decide whether its apparent effects sufficiently outweigh its costs.[xxxix] Unfortunately, there is no objective guide as to how much effect must be shown in order to judge a program "effective." The differences reported between assigned ADR cases and control group cases are statistically significant (meaning

they are unlikely to have occured as a result of chance variations between "control" group and "experimental" group) but that fact does not indicate that they are substantively significant.[xl]

Another standard for assessing these findings is to compare them to those in other ADR programs. For example, the settlement rates among assigned ADR cases are roughly comparable to those occuring in mediation programs dealing with similar cases in other jurisdictions.[xli] The reductions in proportion of cases resolved by judicial decision are comparable to those reported in a North Carolina civil arbitration program.[xlii]

Drawing policy conclusions from these data is made more complex by the fact that some of the costs and benefits of the project could be altered by changes in program design. The scale of a statewide program may make it more difficult to implement because of the demands that it might place on the bar. More streamlined procedures could reduce the administrative burden on clerks. At the same time, program impact might be increased by improvements in clarity about the proceses to be used and clearer choices among processes for different kinds of cases. In sum, the Pilot Project clearly had an impact on the civil cases that were assigned to or voluntarily entered ADR. Whether or not the extent and character of that impact justifies renewal and expansion of the Project remains the central question for policy-makers.

TABLE 1
ADR Settlement Rates, York and Knox Counties Combined
(as of August 1, 1991)

	Voluntary ADR	Assigned ADR	Control Group
COMPLETED CASES			
Total Settled	90% (69)	79% (117)	73% (101)
Pre-ADR	14% (11)	15% (22)	
In ADR	40% (31)	31% (46)	
After ADR	35% (27)	33% (49)	
Dismissed	0% (0)	5% (8)	3% (4)
Dismissed at hearing/ summary judgment	5% (4)	3% (5)	7% (9)
Trial	3% (2)	10% (15)	13% (18)
Transferred/bankruptcy	3% (2)	3% (4)	4% (6)
Total completed cases	101% (77)	100% (149)	100% (138)
TOTAL CASES			
Completed cases	89% (77)	88% (149)	88% (138)
Trial list	10% (9)	12% (20)	12% (18)
In ADR Process	1% (1)	1% (1)	
Total cases	**99% (87)**	**101% (170)**	**100% (156)**
Total Settled	79% (69)	69% (117)	65% (101)
Pre-ADR	13% (11)	13% (22)	
In ADR	36% (31)	27% (46)	
After ADR	31% (27)	29% (49)	
Dismissed	0% (0)	5% (8)	3% (4)
Dismissed at hearing/ summary judgment	5% (4)	3% (5)	6% (9)
Trial	2% (2)	9% (15)	12% (18)
Transferred/bankruptcy	2% (2)	2% (4)	4% (6)
Trial list or ADR	11% (10)	12% (21)	12% (18)
Total cases	99% (87)	100% (170)	102% (156)

TABLE 2
ADR Stages--York and Knox Counties Combined
(as of August 1, 1991)

	Voluntary ADR		Assigned ADR	
Entering ADR	99%	(87)	101%	(170)
Removed/never started ADR	2%	(2)	6%	(10)
Dismissed for failure to pay ADR fee	0%	(0)	2%	(3)
Defaulted/dismissed	1%	(1)	1%	(1)
Settled pre-ADR	11%	(10)	12%	(20)
ADR attempted	85%	(74)	80%	(136)
ADR Attempted	100%	(74)	100%	(136)
Still in process	1%	(1)	1%	(1)
Completed process	99%	(73)	99%	(135)
ADR Process Completed	100%	(73)	100%	(135)
Settled in ADR	42%	(31)	34%	(46)
Not settled in ADR	58%	(42)	66%	(89)
Unsettled ADR Cases	100%	(42)	100%	(89)
Settled after ADR	64%	(27)	54%	(48)
Dismissed/remanded	0%	(0)	4%	(4)
Dismissed at hearing/ summary judgment	7%	(3)	6%	(5)
Trial	5%	(2)	16%	(14)
Transferred/bankruptcy	5%	(2)	2%	(2)
Remain on trial list	19%	(8)	18%	(16)
Removed and Unsettled ADR Cases	101%	(44)	100%	(99)
Settled	64%	(28)	52%	(51)
Dismissed	0%	(0)	4%	(4)
Dismissed at hearing/ summary judgment	7%	(3)	5%	(5)
Trial	5%	(2)	15%	(15)
Transferred/bankruptcy	5%	(2)	4%	(4)
Remain on trial list	20%	(9)	20%	(20)

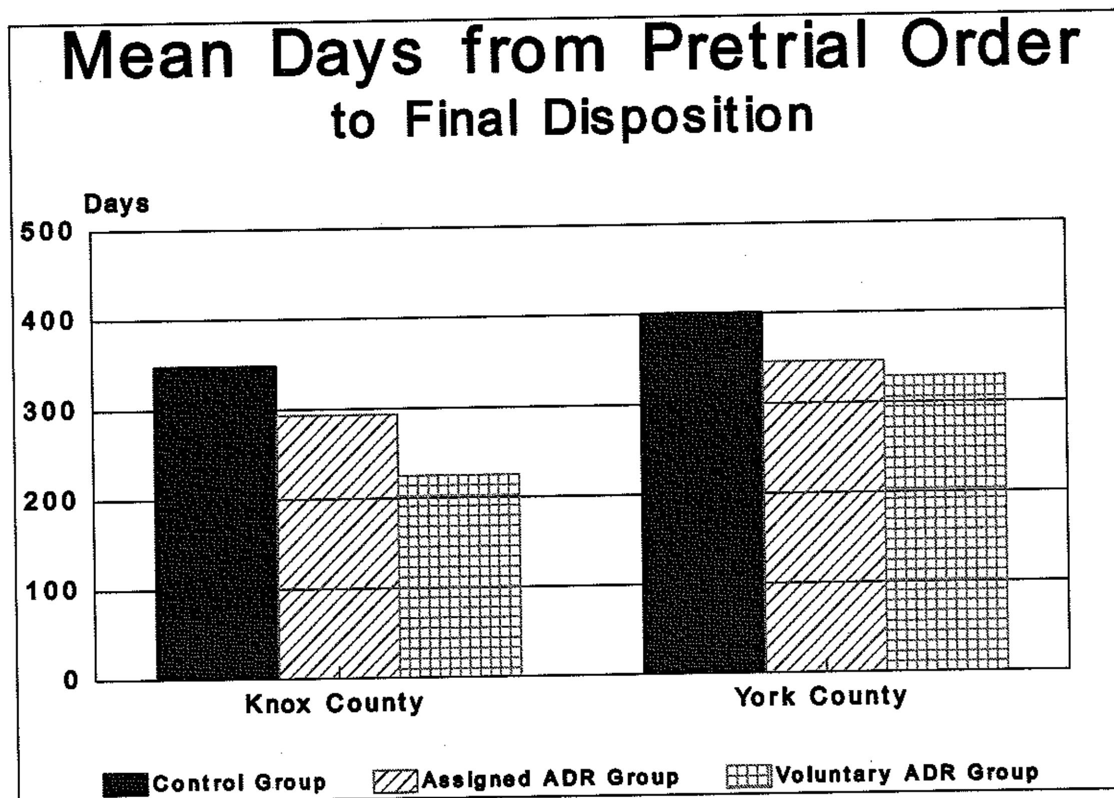

FIGURE 1

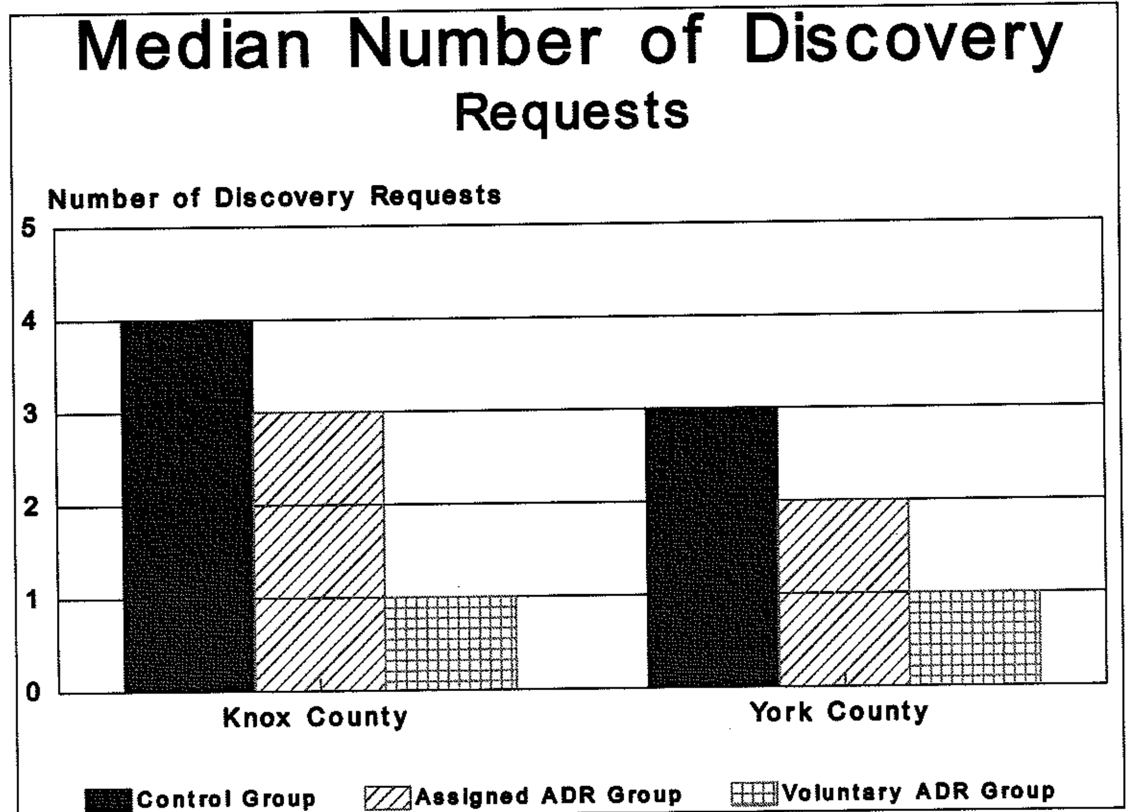

FIGURE 2

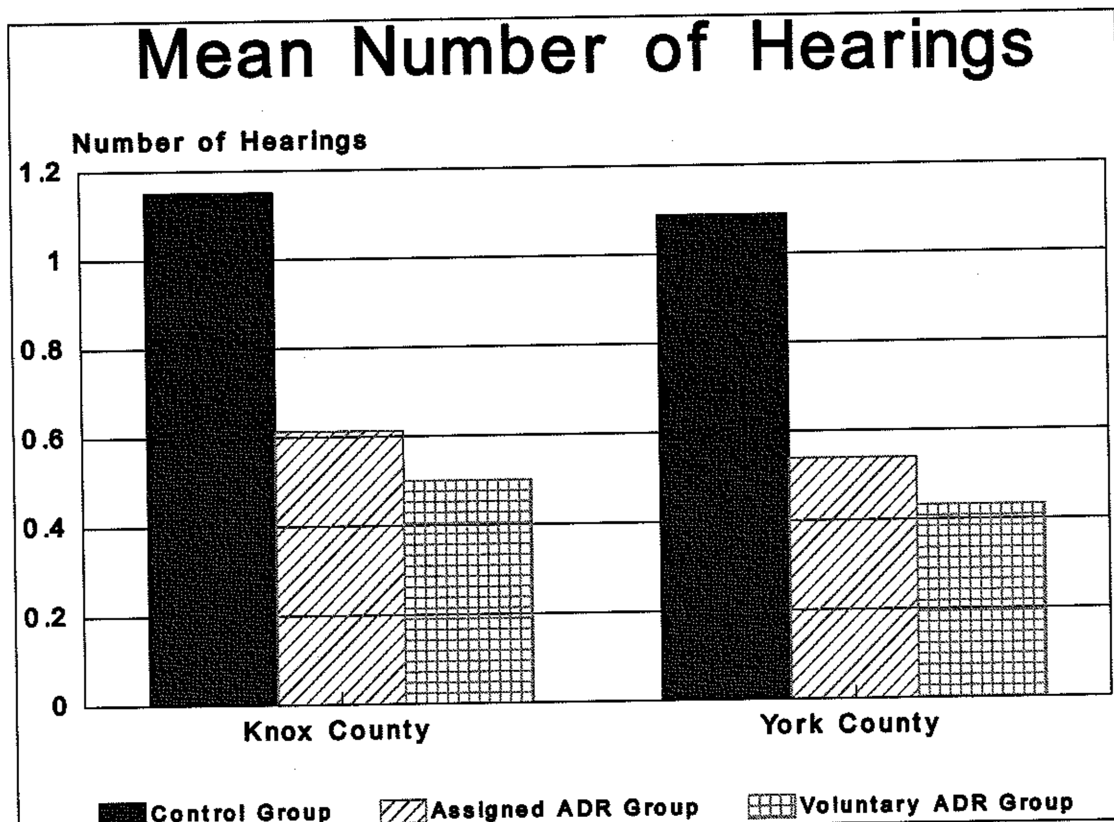

FIGURE 3

TABLE 3
ADR Settlement Patterns--Knox County (as of November 30, 1991)

	Voluntary ADR	Assigned ADR	Control Group
COMPLETED CASES			
Total Settled	80% (4)	70% (21)	68% (13)
Pre-ADR	20% (1)	7% (2)	
In ADR	40% (2)	27% (8)	
After ADR	20% (1)	37% (11)	
Dismissed	0% (0)	7% (2)	0% (0)
Dismissal at hearing/ summary judgment	20% (1)	3% (1)	11% (2)
Trial	0% (0)	17% (5)	21% (4)
Transferred/bankruptcy	0% (0)	3% (1)	0% (0)
Total completed cases	100% (5)	100% (30)	100% (19)
TOTAL CASES			
Completed cases	83% (5)	97% (30)	95% (19)
Trial list	17% (1)	3% (1)	5% (1)
In ADR process	0% (0)	0% (0)	
Total cases	100% (6)	100% (31)	100% (20)

TABLE 4
ADR Stages--Knox County (as of November 30, 1991)

	Voluntary ADR	Assigned ADR
Entering ADR	100% (6)	99% (31)
Removed/never started ADR	0% (0)	3% (1)
Dismissed for failure to pay ADR fee	0% (0)	0% (0)
Defaulted/dismissed	0% (0)	3% (1)
Settled pre-ADR	17% (1)	6% (2)
ADR attempted	83% (5)	87% (27)
ADR Attempted	100% (5)	100% (27)
Still in process	0% (0)	0% (0)
Completed process	100% (5)	100% (27)
ADR Process Completed	100% (5)	100% (27)
Settled in ADR	40% (2)	30% (8)
Not settled in ADR	60% (3)	70% (19)
Unsettled ADR Cases	100% (3)	99% (19)
Settled after ADR	33% (1)	53% (10)
Dismissal	0% (0)	5% (1)
Dismissal at hearing/ summary judgment	33% (1)	5% (1)
Trial	0% (0)	26% (5)
Transferred/bankruptcy	0% (0)	5% (1)
Remain on trial list	33% (1)	5% (1)
Removed and Unsettled ADR Cases	100% (3)	100% (20)
Settled	33% (1)	55% (11)
Dismissal	0% (0)	5% (1)
Dismissal at hearing/ summary judgment	33% (1)	5% (1)
Trial	0% (0)	25% (5)
Transferred/bankruptcy	0% (0)	5% (1)
Remain on trial list	33% (1)	5% (1)

TABLE 5
ADR Settlement Rates--York County (as of November 30, 1991)

	Voluntary ADR		Assigned ADR		Control Group
COMPLETED CASES					
Total Settled		90% (65)		81% (96)	74% (88)
Pre-ADR	14% (10)		17% (20)		
In ADR	40% (29)		32% (38)		
After ADR	36% (26)		32% (38)		
Dismissed		0% (0)		5% (6)	3% (4)
Dismissed at hearing/ summary judgment		4% (3)		3% (4)	6% (7)
Trial		3% (2)		8% (10)	12% (14)
Transferred/bankruptcy		3% (2)		2% (2)	5% (6)
Total completed cases		100% (72)		99% (119)	100% (119)
TOTAL CASES					
Completed cases		89% (72)		86% (119)	88% (119)
Trial list		10% (8)		14% (19)	12% (17)
In ADR Process		1% (1)		1% (1)	
Total cases		100% (81)		101% (139)	100% (136)

TABLE 6
ADR STAGES--York County (as of November 30, 1991)

	Voluntary ADR		Assigned ADR	
Entering ADR Group	99%	(81)	99%	(139)
Removed/never started ADR	2%	(2)	6%	(9)
Dismissed for failure to pay ADR fee	0%	(0)	2%	(3)
Defaulted/dismissed	1%	(1)	0%	(0)
Settled pre-ADR	11%	(9)	13%	(18)
ADR attempted	85%	(69)	78%	(109)
ADR Attempted	100%	(69)	100%	(109)
Still in process	1%	(1)	1%	(1)
Process complete	99%	(68)	99%	(108)
ADR Process Completed	100%	(68)	100%	(108)
Settled in ADR	43%	(29)	35%	(38)
Not settled in ADR	57%	(39)	65%	(70)
Unsettled ADR Cases	100%	(39)	99%	(70)
Settled after ADR	67%	(26)	54%	(38)
Dismissed	0%	(0)	4%	(3)
Dismissed at hearing or summary judgment	5%	(2)	6%	(4)
Trial	5%	(2)	13%	(9)
Transferred/bankruptcy	5%	(2)	1%	(1)
Remain on trial list	18%	(7)	21%	(15)
Removed and Unsettled ADR Cases	100%	(41)	100%	(79)
Settled	63%	(26)	49%	(39)
Dismissed	0%	(0)	4%	(3)
Dismissed at hearing or summary judgment	5%	(2)	5%	(4)
Trial	5%	(2)	13%	(10)
Transferred/bankruptcy	5%	(2)	4%	(3)
Remain on trial list	22%	(9)	25%	(20)

ENDNOTES

i. An <u>in forma pauperis</u> procedure was also built in to permit waiver of the fee for good cause.

ii. This count of cases includes several consolidated cases involving two or three original cases. A total of fifteen cases were consolidated with at least one other case, three of these with two other cases. For purposes of analysis here, each consolidated case was counted as only one case.

iii. Self-selection into ADR occurred prior to the random assignment of cases and thus did not compromise the random assignment process. The control and ADR groups were contaminated slightly, however, through the consolidation of several cases that had originally been in different groups during the course of the study. Two cases assigned to the control group were transferred to the voluntary ADR group and are treated for this analysis in the voluntary ADR group. In three other instances a control group case was consolidated with an assigned ADR case. All of these cases are analyzed here in the assigned ADR category.

iv. These cases appear to be generally representative of the ADR group. They include 4% of cases settling prior to ADR (compared to 11% in Pilot Project), 36% settled in ADR (compared to 33% in Pilot Project), and 60% failing to settle in ADR (compared to 57% in Pilot Project). Knox County cases are overrepresented: 29% of the cases done by responding lawyers were in Knox County compared to only 14% in the Pilot Project.

v. For purposes of this analysis "complete" includes cases that have been suspended because bankruptcy has been filed by the defendant or cases that have been transferred to another court for disposition. Cases are also considered complete when disposed of by the Superior Court, even though an appeal was pending.

vi. Chi square=5.74 with 2 degrees of freedom; p=.068. The chi square statistic tests the probability that two variables that are observed to be associated in a sample are in fact independent or unrelated in the population from which the sample was drawn. The value of p is the probability that the apparent association is the result of sampling variability. When p is low (by convention, usually .05 or less), the observed relationship is termed "statistically significant." The association between group and judicial disposition rate thus is not statistically significant, but it remains highly probable that a relationship

exists between these variables.

Final conclusions about the rates of trial and of disposition through hearings leading to dismissals or summary judgments must await further data from the as yet incomplete 11% of cases in each group. The dispositions of these cases could have a substantial effect on the small numbers of trials and the small but differences in rates of trials and rulings on dispositive motions reported in Tables 1 through 6.

vii. The chi-square value for the comparison of rates of judicial determination of case outcomes across the three groups is significant at the .07 level. Although this does not reach the .05 level usually expected in social science, it means that the likelihood is high (93/100) that these two variables are in fact not independent of one another.

viii. In addition, 8% of the assigned ADR cases and 2% of the voluntary cases dropped out of ADR either at the request of the parties, or because ADR was never attempted either because the mediator was informed (wrongly) that the parties had settled or because the ADR was suspended temporarily for discovery or some other reason and never resumed. In addition, three cases in the assigned ADR group were dismissed because the plaintiff failed to pay the required ADR fee.

ix. The analysis of variance among the three groups yields $F=3.14$, with $p=.04$. The analysis of variance tests the possibility that the differences among the means of two or more samples is a result of random sampling variability rather than reflecting underlying differences in the populations from which the samples were drawn. The value of p is the probability that the differences are the result of sampling variability. When p is low (by convention, usually .05 or less), the differences are termed "statistically significant."

Note that case length has been measured from the date of the pre-trial order to completion rather than from date of filing to completion. In almost all cases, assignment to ADR occurred at the time of the pre-trial order, but there was substantial variability across the two courts and across cases in how long it took to get from the filing date to the pre-trial order. Thus, by using the pre-trial order date as the starting date, we can eliminate that variability and focus more clearly on the impact of ADR on the duration of cases.

x. Trials in the control group were completed an average of 530 days after the pre-trial order but 618 days afterwards in the assigned ADR group. This gap of 88 days suggests that the ADR process particularly delayed final resolution in the few cases

where trials took place. This delay can be accounted for by the postponement of the start of formal discovery and of entry onto the trial list. Had ADR been more successful in cutting down subsequent discovery efforts (and thus the time allotted for discovery) in cases not reaching agreement, it might have prevented this delay. Greater attention to the use of ADR to streamline discovery might address this problem.

xi. The average times in each group will change as the last (and often, the longest) 11% of cases are completed. It is unlikely that the addition of these unresolved cases will change the patterns reported here although they will certainly change the average times reported.

xii. The analysis of variance between the three groups yields an F=8.10 with 2 degrees of freedom, p=.000.

xiii. In Maine requests for production of documents, depositions, interrogatories, and admissions are submitted to the clerk and docketed. The median number of these requests is summarized in Figure 2. The median is reported here rather than the average because it is not affected by unusual cases as is the average. Because of the small number of cases in Knox County, one or two cases with intense discovery (28 requests) skew the averages substantially.

xiv. Chi square=15.43 with 2 degrees of freedom, p=.000.

xv. Chi square=20.53 with 2 degrees of freedom, p=.000.

xvi. Chi square=15.63 with 2 degrees of freedom, p=.000. The analysis of variance between the three groups yields an F=8.10 with 2 degrees of freedom, p=.000.

xvii. Chi square=22.05 with 2 degrees of freedom, p=.000.

xviii. The patterns reported in this section do not differ significantly in Knox and York Counties so results are not reported separately.

xix. Chi square=18.38 with 2 degrees of freedom, p=.000.

xx. Analysis of variance among the three groups yields an F=14.80 with two degrees of freedom, p=.000.

xxi. For purposes of tabulation, any motion regarding extensions of time or delays in proceedings was not included in the count. All other motions were counted.

xxii. Chi square=8.50 with 2 degrees of freedom, p=.010.

xxiii. Analysis of variance among the three groups yields F=9.69 with two degrees of freedom, p=.000.

xxiv. Chi square=38.38 with 2 degrees of freedom, p=.000.

xxv. Chi square=17.03 with 2 degrees of freedom, p=.000.

xxvi. The difference between percentages of control cases resolved by judicial decision in the two counties is not statistically significant; chi square=2.06 with 1 degree of freedom, p=.155.

xxvii. In addition, there were no statistically significant differences between the two counties in any of the other findings reported in earlier sections. In other words, for example, in both Knox and York counties, control group cases had higher freuency of motions, hearings and discovery than did assigned and voluntary ADR cases.

xxviii. Reports of the Administrative Office of the Courts on civil caseload, filings, dispositions, and time to disposition have in recent years appeared on a fiscal year basis. Because the major work of the Pilot Project was in the calendar year 1990, it is especially difficult to judge its impact through statistics of the two fiscal years that include that calendar year.

xxix. Random assignment precluded entry of some cases into ADR. In addition, the dollar limits set by funding of the pilot program capped the total number of cases that could be handled in the Project.

xxx. In fact, the continuum on the questionnaire had no numbers attached but was simply a six inch long line. For scoring purposes it was divided into equal intervals, numbers assigned to the intervals, and scores derived from this scale.

xxxi. The York and Knox County clerks were part of the committee that designed the implementation plan for the Pilot Project.

xxxii. Another 9% of cases were reported to have been equally divided between the two.

xxxiii. Chi square=5.92 with 1 degree of freedom, p=.015.

xxxiv. Chi square=8.46 with 2 degrees of freedom, p=.015. Of course, it is difficult to distinguish cause and effect in this association. Where settlement was unlikely, settlement discussions may simply not have occurred or been rapidly ended.

Nonetheless, the self-reported level of settlement versus case presentation may help distinguish between processes that were more oriented to case evaluation and those more like mediation.

xxxv. Chi square=5.02 with 2 degrees of freedom, p=.08.

xxxvi. The ADR groups consisted largely of personal injury cases (38%) and contract cases (34%) with fewer numbers of the remaining types--damages (13%), real property (6%), and equitable action (7%).

xxxvii. Chi square=4.36 with 2 degrees of freedom, p=.226 for a table of settled or not settled in ADR by type of case (damages, personal injury, contract, and real property).

xxxviii. For example, the early neutral evaluation program developed in California utilizes the conference not only for assessing the case value and encouraging settlement, but also, where appropriate, in assisting in the design of an efficient discovery plan that might save parties money and time (see Brazil, Kahn, Newman, and Gold, "Early Neutral Evaluation," 69 Judicature 279 [1986]).

xxxix. In drawing conclusions from this evaluation, the reader should also remember that this research has been limited in scope. As a consequence, it has not examined whether the experience of the pilot project enhanced or diminished the sense of justice and faith in the courts among litigants. We do not know with certainty how lawyers in Knox and York Counties viewed the project. Nor can we tell what the long term effects of the project, if any, might be on the ways in which lawyers approach civil litigation.

xl. Measures of statistical significance generally are a product of the degree of difference between the two groups and the size of the samples. The larger the sample, the more likely that small differences will be statistically significant. Thus, statistical significance does not mean the same thing as substantive significance.

xli. For example, Paddock reports that settlement week programs across the country produce agreements in roughly 35-40% of the civil cases they handle (Harold Paddock, Settlement Week: A Practical Manual for Resolving Civil Cases through Mediation, 1990.). A nearly completed evaluation of the Middlesex County (Massachusetts) Multi-door Courthouse reports roughly comparable settlement rates for civil case mediation.

xlii. Clarke, et al., Court-Ordered Arbitration in North Carolina: An Evaluation of Its Impact, Chapel Hill: University

of North Carolina Institute of Government, 1989.