Introduction

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It is difficult to date precisely the beginning of the current wave of enhanced interest in alternative methods of dispute resolution. But during the past decade we have seen impressive evidence of the growth of this remarkable movement. A sizable number of states have enacted legislation facilitating "ADR." Judges, both state and federal, have taken an increasing interest in the subject. There are well over sixty state and local bar ADR committees as well as over twenty entities of the American Bar Association that have some concern with ADR. Almost every law school now has courses in negotiation, mediation, and arbitration, and gradually these subjects are even working their way into the basic first-year courses. The scholarly outpouring is so profuse that it is difficult to stay abreast; we even have at least five new journals — including this one — devoted exclusively to the subject of dispute resolution. Clearly ADR has arrived with a vengeance, as evidenced by the recent spate of critical writings.

Whenever a movement comes of age, it is time to turn inward, away from mere further promotion and on to activities that try to give intelligent guidance and direction. I understand it was this sentiment that led the editors of this Journal to undertake the present project. Gently prodded by Professor Nancy Rogers and by Larry Ray, the Staff Director of the American Bar Association Standing Committee on Dispute Resolution, who jointly conceived this worthy infant, the Journal editors undertook to identify some issues that needed this kind of illumination. Given the critical place that mediation has played in recent developments, it seems natural and proper that they selected three aspects of that field for study — the limits of confidentiality in mediation, the enforcement of agreements arising from mediation, and the possible liability of mediators for failure to perform their duties properly.

But how should such a study be undertaken to insure maximum likelihood of success? Some other journals have simply regarded topics like these suitable grist for the standard law review mill by dispatching a few students to the library to research in the hope of ultimately producing a draft that could then be dissected by other editors. Clearly this subject is not suited to that process. The writing simply has not sufficiently matured, and there is too much "living learning" that needs to be factored in. Hence, it was decided to assemble in Columbus a diverse group of 22 individuals (see Appendix A) who were among the most knowledgeable experts on these topics. Three were selected to write background papers, revised versions of which appear in this volume.

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Others were asked to provide brief comments at our April 1986 workshop. The session was a lively and stimulating one, and one can only hope that some of that flavor comes through in the materials that make up this volume.

Following the conference, there remained the painstaking task of putting it all together for the future reader. This task was admirably performed by the editors of this Journal. We hope that their efforts — and those of all the others whose ideas and support helped to bring about this volume — will contribute to the responsible future development of this exciting field.