

The Alternatives Movement: Rekindling America's Creative Spirit

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For over two hundred years, the American adversary system of justice has been admired by the world for its consistent ability to resolve disputes in a fair and efficient manner. We have great reverence for this system, but are told that it is declining and soon will be incapable of meeting the demands of this computer era. Our system is neither obsolete nor ineffective. It is simply overburdened and in need of retooling and streamlining. By integrating a system of alternative methods of dispute resolution into our existing legal framework, we can prepare our system for the plunge into the twenty-first century without sacrificing the achievements of our great legal heritage.

Reflection upon my quarter century of judicial service clarifies my objectives as a judge. My goals are precisely the same as those of the American adversary system: to enhance the quality of human dignity, to expand the scope of human liberty, and to enrich the pursuit of happiness. America's Founding Fathers made the attainment of these goals possible when they laid our constitutional foundation. Rather than establishing hard and fast rules to control the daily lives of all Americans, the Framers created institutions through which the citizens could create order in their own lives and resolve their own disputes. The Framers entrusted America's dispute resolution institutions, the courts, to the nation's lawyers and judges. Over the years these trustees have proven themselves to be the best problem solvers in the world. From the county courthouses of rural America to the bustling halls of the metropolitan courts, America's lawyers have carried out their constitutional mission by vigorously advocating the rights of their clients. America's judges have also fulfilled their constitutional duties by fairly and impartially assessing those cases that come before them. Together, the nation's lawyers and judges have evolved a body of law that facilitates the resolution of controversies which arise in all fields of human endeavor.

Given all the strengths of the American legal system — many more strengths than any other system in the world — there is no reason for us to be anxious to adopt a new system. Nevertheless, we should not adopt the myopic view that our system is incapable

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of improvement through modification. Our system has maintained its great strength by adapting to the demands of our ever-developing society. Through insightful analysis and decisive action, America's lawyers and judges have transformed the legal system that once governed the lives of the few citizens of a fledgling republic into the system which now maintains the orderly freedom of more than two hundred million individuals.

Today our system is challenged by the unprecedented volume of litigation. This increase in filings should be viewed as a challenge rather than as a problem. People are now bringing their disputes into the open, seeking expert assistance with resolution. This positive development reflects a public trust in America's legal system and a public confidence that the system can consistently resolve controversies in a fair, equitable, and efficient manner. However, the nation's increasing reliance on the legal system compels us to search for new means and methods of stretching our resources to accommodate the increased demand.

Confronted with increased case filings and increasingly complex disputes, the leaders of America's legal community have begun searching for less costly and more efficient methods of resolving controversies. In just a short period of time, this initiative has grown into a nationwide movement supporting the development of alternative methods of dispute resolution. The alternatives movement provides a bold means of harnessing the American legal system's adaptive capacity so that it can thrive in the modern environment. By supplementing the traditional judicial system with a combination of out-of-court and court-annexed alternatives, we can relieve the modern pressures and burdens on the traditional system, thereby assuring that appropriate dispute resolution mechanisms are available to all.

Dispute resolution devices outside the courts may prove valuable in a variety of contexts. Many neighborhood and family disputes involve individuals who must live together or maintain a continuing relationship. These individuals may be disserved by time consuming and highly adversarial court proceedings. Out-of-court alternatives such as counseling, mediation, and arbitration may provide the prompt and lasting settlements sought in such situations. On a larger scale, a variety of intercorporate disputes can be resolved without resort to judicial proceedings. Private arbitration and mini-trials have proven to be particularly effective in promoting settlements between major corporations seeking to maintain continuing business relations.

Dispute resolution in the court setting may come either through settlement or adjudication. We have come to rely on a steady stream of settlements. Our exploration in the area of court-annexed alternative dispute resolution methods should focus on developing fair means of fostering settlements.

Court resources can thereby be conserved for the few hard core cases that require the full range of traditional legal procedures. The summary jury trial and court-annexed arbitration already have proven themselves to be highly effective in promoting the settlement of many potentially lengthy civil jury cases. Alternatives may also be of value in the management of complex cases that must pass through the traditional pretrial and trial processes. The use of special masters, neutral experts, and summary jury trials may sharpen the parties' understanding of the issues that must be developed in such controversies.

The widespread adoption of alternative methods of dispute resolution will uphold and advance the traditional American system of justice. Integrating out-of-court and court-annexed alternatives into the American legal system will relieve the system of the great demands now posed by disputes that can be resolved fairly and equitably through procedures short of a full blown trial. If we channel such controversies through appropriate alternative methods of dispute resolution, we can assure that the full panoply of traditional devices are readily available in all instances in which they are actually required. Thus, by supplementing our traditional system with a system of alternatives, we can at once uphold the values embodied in our tradition of jury trial and expand our system's capacity for resolving controversies.

The alternatives movement has already made great advances throughout the nation. From coast to coast, communities are establishing neighborhood justice centers, business leaders are agreeing to settle their disputes through mini-trials and arbitration, and courts are implementing summary jury trial programs. The leaders of the alternatives movement have strived to develop a comprehensive dispute resolution system that addresses itself to large and small problems, and to disputes both within and outside the courts. Ultimately, they seek to provide Americans with complete freedom of choice in the manner in which they resolve their controversies. A civilized society is characterized by an ability to resolve disputes rationally. We have all vicariously experienced the thrill of space exploration, and marvelled at the great achievements of our nation along this sophisticated scientific fron-

tier. Yet, do we really advance if we search beyond the limits of this earth without simultaneously seeking to expand the horizon of interpersonal understanding? Although space exploration receives more national attention, the exploration of new means to resolve disputes is of at least equal importance because it provides a means to increase the quality of human dignity, thus advancing our civilization.

There is a need today to rekindle the creative spirit that inspired our nation's Founders, and to spark the adaptive genius that has sustained this nation throughout its history. As the leading experts on dispute resolution, it is incumbent upon the nation's lawyers and judges to take the initiative in the integration of alternative methods of dispute resolution into our traditional legal framework. The Editors of the newly formed *Ohio State Journal on Dispute Resolution* are to be applauded for stepping forward and assuming a leadership role in the alternatives movement. By forming this journal, they are demonstrating the same vision that has made the American system work so well for so long, and one that will sustain it long into the future.