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L I N U S
Legal Innovations in the U.S.

(I) 40 Years After the Civil Rights Act and 50 Years after the Supreme Court Brown Vs. Board of Education Decision: A Historical Perspective of Civil Rights and Equal Opportunity in the United States

(II) Access to Fair Justice: Effectiveness and Efficiency of U.S. Models of Alternative Dispute Resolution

Welcome to this special fourth issue of **LINUS** - Legal Innovations in the U.S. - the U.S. Embassy's quarterly e-bulletin, dedicated to Desiree Grevler, z"l, our friend and colleague from the Office of Public Affairs in Tel Aviv.

In honor of the 50th anniversary of the U.S. Supreme Court's 1954 decision in ***Brown v. Board of Education*** and the 40th anniversary of the 1964 ***Civil Rights Act***, this edition of **LINUS** is a double-issue showcasing the emergence of the civil rights movement (whose purpose was to secure legal equality for the black population of the United States) and the legacy of this movement in the areas of civil rights enforcement and equal opportunity in the diverse society of the United States.

This edition of **LINUS** will also examine ***Access to Justice: Effectiveness and Efficiency of U.S. Models of Alternative Dispute Resolution***.

LINUS' goal is to examine innovative legal practices, ideas, experiments, and organizations and to provide references for further study. While the U.S. and Israel have different theories and practices of law, we also see many similarities. By sharing information on U.S. law, we hope that the dissemination of information on important developments of U.S. law will raise awareness and encourage openness and debate among those in the Israeli legal community and the population you serve.

Since 1995, the U.S. Embassy has brought together American and Israeli legal professionals to share ideas and processes. This exchange continues to enrich both U.S. and Israeli legal professionals, while broadening awareness of alternative legal approaches and innovations.

Future e-bulletins will include the following topics:

-- Ethics and the Law
-- Innovative Court Practices
-- Intellectual Property Rights

Each bulletin will include a bibliography and internet sites relating to that issue's central topic.

For the latest information on legal issues and back issues of this bulletin, please visit: http://israel.usembassy.gov/publish/law.html

Through its Office of Public Affairs and The American Center's Information Resource Center, the U.S. Embassy offers a variety of activities to strengthen the Israeli public's understanding of American society; it also conducts periodic seminars and videoconferences in Israel as well as educational and professional exchanges between the United States and Israel.

We welcome your feedback and, in particular, we welcome any comments on the content of this bulletin. Please send your emails to azizfr@state.gov.

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PART I

40 YEARS AFTER THE CIVIL RIGHTS ACT AND 50 YEARS AFTER THE SUPREME COURT BROWN VS. BOARD OF EDUCATION DECISION: A HISTORICAL PERSPECTIVE OF CIVIL RIGHTS/EQUAL OPPORTUNITY IN THE UNITED STATES

"All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof." Sec. 202, Civil Rights Act of 1964, Title II.

"One hundred and eighty-eight years ago this week a small band of valiant men began a long struggle for freedom. They pledged their lives, their fortunes, and their sacred honor not only to found a nation, but to forge an ideal of freedom—not only for political independence, but for personal liberty—not only to eliminate foreign rule, but to establish the rule of justice in the affairs of men....Americans of every race and color have died in battle to protect our freedom...Now our generation of Americans has been called on to continue the unending search for justice within our own borders... .We believe that all men are created equal. Yet many are denied equal treatment." President Lyndon B. Johnson Radio and Television Remarks Upon Signing the Civil Rights Bill, July 2, 1964.

More than 400 Constitutional amendments, state laws, and city ordinances legalizing segregation and discrimination were passed in the United States between 1865 and 1967. These laws governed every aspect of daily life, from education to public transportation, from health care and housing to the use of public facilities. Racial inequality was not unique to the South but was the norm across the nation, and other regions of the United States saw similar inequality and state-sanctioned discrimination.

Because black men could not vote or speak their minds without fear of being lynched, the resistance of black Americans to what was known as the Jim Crow period existed largely outside the political arena. Jim Crow laws affected the lives of millions of people. Named after a popular 19th century minstrel song that stereotyped African- Americans, Jim Crow came to personify the system of government-sanctioned racial oppression and segregation in the United States. To battle Jim Crow, African-Americans turned to raising public consciousness, legal challenges, self-help and advocacy groups, music, literature, and religion as the cornerstones of their struggle. These expressions of resistance engulfed the nation and transformed American society.

The National Association for Colored People (NAACP), established in 1909 by W.E.B. Du Bois, was the primary vehicle for the legal resistance to the laws of the Jim Crow era. Through numerous legal battles from the 1920s onward – usually local litigation and

investigations of lynching and challenges to the unequal facilities of state institutions - the NAACP's efforts helped create a body of legal precedent used by the courts in the 1950s.

On May 17, 1954, in the *Brown v. Board of Education of Topeka* case brought by the NAACP, the U.S. Supreme Court's decision ended federally sanctioned racial segregation in public schools by ruling unanimously that "separate educational facilities are inherently unequal." *Brown* was a groundbreaking case. It not only overturned the precedent of *Plessy v. Ferguson* (1896), which had declared "separate but equal facilities" constitutional but also provided the legal foundation of the Civil Rights Movement of the 1960s. Although widely perceived as a revolutionary decision, *Brown* was in fact the culmination of changes both in the Court and in the strategies of the civil rights movement up to that point.

The Supreme Court had become more liberal in the years since it decided Plessy, largely due to appointments by Democratic Presidents Franklin D. Roosevelt and Harry S. Truman, and the Court's decisions in the 1930s and 1940s rendered racial separation illegal in certain situations. Consolidated under the name *Brown v. Board of Education*, five cases came before the Supreme Court in 1952. The lead NAACP attorney in the case, Thurgood Marshall, and his colleagues wrote that states had no valid reason to impose segregation, that racial separation – no matter how equal the facilities – causes psychological damage to black children, and that "restrictions or distinctions based upon race or color" violated the equal protection clause of the Fourteenth Amendment of the U.S. Constitution.

The opinion, written by Chief Justice Earl Warren, was short and straightforward. It stated that for African-American schoolchildren, segregation "generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be undone.... We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

Just over one year later, on May 31, 1955, Chief Justice Warren read the Court's unanimous decision, now referred to as *Brown II*, instructing the states to begin desegregation plans "with all deliberate speed."

Of course, reactions to the first decision varied greatly.

"It is true, of course, that the Court is not talking of that sort of 'equality', which produces interracial marriages. It is not talking of a social system at all. It is talking of a system of human rights which is foreshadowed in the second paragraph of the Declaration of Independence, which stated 'that all men are created equal.' *New York Times*, May 18, 1954.

"The Supreme Court's resolution yesterday of the school segregation cases affords all Americans an occasion for pride and gratification.... It will help to refurbish American prestige in a world which looks to this land for moral inspiration and restore the faith of Americans themselves in their own great values and traditions." *Post and Times Herald* (Washington, D.C.), May 18, 1954.

"Human blood may stain Southern soil in many places because of this decision but the dark red stains of that blood will be on the marble steps of the United States Supreme Court building. White and Negro children in the same schools will lead to miscegenation. Miscegenation leads to mixed marriages and mixed marriages lead to mongrelization of the human race." *Daily News* (Jackson, Mississippi), May 18, 1954.

As seen by the above quotes, despite the two unanimous decisions and careful, if vague, wording, there was considerable resistance to the Supreme Court's ruling in *Brown v. Board of Education*. In addition to the obvious disapproving segregationists, some constitutional scholars felt that the decision went against legal tradition by relying heavily on data supplied by social scientists rather than precedent or established law. Supporters of judicial restraint believed that the Court had overstepped its constitutional powers by essentially writing new law.

Although the 1954 *Brown* decision formally made segregation illegal, southern states continued to pass discriminatory legislation well into the 1960s, particularly in the area of school segregation. Historian C. Vann Woodward estimated that 106 new segregation laws were passed between the *Brown* decision and the end of 1956.

However, minority groups and members of the civil rights movement were buoyed by the *Brown* decision, and proponents of judicial activism believed that the Supreme Court had appropriately used its position to adapt the basis of the Constitution to address new problems in new times.

The decade following the *Brown* decision in 1954 was filled with many incidents, which have become legendary in the annals of civil rights history:

-- August 1955: Emmet Till, a 14 year old from Chicago, was sent to visit relatives near Money, Mississippi. The young man allegedly "flirted" with a 21 year old white woman. A few days later, Emmet disappeared and his body was eventually found on the bottom of a river. An all-white jury acquitted his murderers.

-- December 1955 – December 1956: Rosa Parks and the Montgomery Bus Boycott. On December 1, 1955, Rosa Parks boarded a bus in Montgomery, Alabama. During her ride, she was told to move out of her seat and go to the "colored section" in the back. She refused and was arrested. Her arrest triggered a systematic response from the civil rights community in Montgomery and a boycott of public transportation, led by a young Rev. Martin Luther King. The boycott lasted for over a year and ended when the U.S. Supreme Court ruled that the Montgomery segregation law was unconstitutional.

-- October 1957: To comply with the *Brown v. Board* decision, plans were made to integrate Central High School in Little Rock, Arkansas. When nine black high school students arrived to attend the school, they were met by an angry mob. The Governor of Arkansas ordered his National Guard to keep the black students, known as the "Little Rock Nine," out of the school. Faced with this defiance of a federal court order by the State of Arkansas, President Dwight Eisenhower responded by sending troops from the 101st Airborne to Little Rock with orders to protect the students. This marked the first time since Reconstruction in the mid-1800s that federal troops were sent to the South.

--May 1961: The "Freedom Riders," a group of civil rights activists, sought to test enforcement of a recent Supreme Court decision outlawing segregation in bus terminals. They boarded two buses in Washington, D.C. to travel to New Orleans to celebrate the 7th anniversary of the Supreme Court's Brown decision. Their route took them through South Carolina, Georgia, and Alabama. At various bus terminals, the black "Freedom Riders" went to the white dining areas and waiting rooms and the white "Freedom Riders" went to the area reserved for the blacks. During the journey, the Riders and their sympathizers (including a representative of the Justice Department dispatched by Attorney General Robert Kennedy) were beaten at an Alabama bus terminal.

--September 1962: James Meredith sought to enroll as the first black student in the history of the University of Mississippi. His enrollment triggered substantial resistance from the University, the community, and from the Governor of the state. As a result, President John F. Kennedy ordered federal marshals to ensure Meredith's right to enroll and to protect him as he moved to the campus.

In his first two years of his term, President John F. Kennedy made no decisive actions to assist the civil rights movement, except to provide assistance to James Meredith, as noted above. However, in 1963, protests became increasingly confrontational as Birmingham, Alabama's police commissioner, Eugene "Bull" Connor, crushed a nonviolent protest with extreme force. In June 1963, Alabama Governor George Wallace refused to allow two black students to enter the University of Alabama. President Kennedy used the National Guard to ensure the safety of the students and proposed a Civil Rights Bill to Congress a week after, making an impassioned and highly controversial televised address on June 11, 1963.

"This afternoon, following a series of threats and defiant statements, the presence of Alabama National Guardsmen was required on the University of Alabama to carry out the final and unequivocal order of the United States District Court of the Northern District of Alabama. That order called for the admission of two clearly qualified young Alabama residents who happened to have been born Negro.... Today we are committed to a worldwide struggle to promote and protect the rights of all who wish to be free. And when Americans

are sent to Vietnam or West Berlin, we do not ask for whites only. It ought to be possible, therefore, for American students of any color to attend any public institution they select without having to be backed by our troops.... The heart of the question is whether all Americans are to be afforded equal rights and equal opportunities, whether we are going to treat our fellow Americans as we want to be treated."

Eight days later, President Kennedy sent comprehensive civil rights legislation to the Congress. Although opposition within the Congress was strong, the need for civil rights legislation to address growing unrest in the country was urgent. In August 1963, approximately 250,000 Americans of all races marched in Washington, D.C. in front of the Lincoln Memorial. The event, marked into the psyche of the nation by the famous "I Have a Dream" speech of Dr. Martin Luther King, Jr., came to symbolize the irresistible insistence for meaningful legislation to address the demand for racial equality and justice. However, the assassination of President Kennedy in November 1963 threatened to derail the legislation. Five days after the assassination, the new President Lyndon B. Johnson spoke of the tragedy in an effort to give some meaning to the senseless murder:

"We have talked long enough in this country about civil rights. It is time to write the next chapter and to write it in the books of law.... No eulogy could more eloquently honor President Kennedy's memory than the earliest possible passage of the civil rights bill for which he fought so long."

On February 10, 1964, the House of Representatives passed the draft measure by a lopsided 190-130 vote, but everyone knew that the real battle would be in the Senate, whose rules had allowed southerners in the past to mount filibusters that had effectively killed nearly all civil rights legislation. President Johnson, however, asked the civil rights leaders to mount a massive lobbying campaign, including inundating the Capitol with religious leaders of all faiths and colors. It worked. On July 2, 1964, President Johnson signed the bill into law, following one of the longest debates in Senate history. However, the law was not signed without concessions and compromises to avoid the usual Senatorial filibuster.

One of the most serious compromises made in order to allow the passage of the bill occurred in the employment section of the proposed Civil Rights Act, a section that became known simply as "Title VII" and prohibited discrimination based on race, color, national origin, sex or religion. (http://www.eeoc.gov/policy/vii.html). The compromise resulted in a bill that initially eliminated any real enforcement authority for the Equal Employment Opportunity Commission, which had been officially established in July 1965. Instead, the EEOC, a five-member bipartisan commission was left only with power to receive, investigate, and conciliate complaints where it found reasonable cause to believe that discrimination had occurred.

In the years since 1964, the EEOC has become the lead enforcement agency in the area of workplace discrimination, as Congress had originally intended (http://www.eeoc.gov/). However, the United States still faces many challenges, including the further enforcement of laws against discrimination.

In 2004, to mark a half-century of school integration in Topeka, Kansas, President George W. Bush noted at the Brown v. Board of Educational National Historic site: "Fifty years ago today, nine judges announced that they had looked at the Constitution and saw no justification for the segregation and humiliation of an entire race.... While law no longer segregates our schools, they are still not equal in opportunity and excellence. Justice requires more than a place in school. Justice requires that every school teach every child in America." (http://www.whitehouse.gov/news/releases/2004/05/20040517-4.html)

Mary McLoed Bethune (1875-1955), in a statement as relevant today as it was in 1944 said: "If we accept and acquiesce in the face of discrimination, we accept the responsibility ourselves and allow those responsible to salve their conscience by believing that they have our acceptance and concurrence. We should, therefore, protest openly everything...that smacks of discrimination or slander."
"Certain Unalienable Rights," *What the Negro Wants*, edited by Rayford W. Logan, 1944.

The following Websites provide information on the subject of **The Civil Rights Act of 1964** and **Brown v. Board of Education of Topeka, 1954:**

Brown v. Board of Education National Historic Site:
On October 26, 1992, Congress passed Public Law 102-525 establishing Brown v. Board of Education National Historic Site to commemorate the landmark Supreme Court decision aimed at ending segregation in public schools. On May 17, 1954, the Supreme Court unanimously declared that separate educational facilities are inherently unequal" and, as such, violate the 14th Amendment to the United States Constitution, which guarantees all citizens "equal protection of the laws."
http://www.nps.gov/brvb/

The National Center for Public Policy Research, Washington, D.C.:
Chief Justice Warren's opinion of the Supreme Court regarding Brown v. Board of Education:
http://www.nationalcenter.org/brown.html

National Public Radio: Looking Back – Brown v. Board of Education:
http://www.npr.org/news/specials/brown50/

University of Michigan Library's Brown v. Board of Education Digital Archive:
This archive contains documents and images which chronicle events surrounding this historically significant case up to the present. The archive is divided into four main areas of interest: Supreme Court cases; busing and school integration efforts in northern urban areas; school integration in the Ann Arbor Public School District; and recent resegregation trends in American schools.
http://www.lib.umich.edu/exhibits/brownarchive/

FindLaw: U.S. Supreme Court: Brown v. Board of Education, 347 U.S. 483 (1954):Brown Et Al. v. Board of Education of Topeka Et Al.:
http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=347&invol=483

The Civil Rights Act of 1964:
http://usinfo.state.gov/usa/infousa/laws/majorlaw/civilr19.htm

CongressLink: Major Features of the 1964 Civil Rights Act:
http://www.congresslink.org/civil/essay.html

CivNet: Resources for Teachers and Students: The Civil Rights Act of 1964:
http://www.civnet.org/resources/teach/basic/part6/39.htm

Teaching With Documents Lesson Plan: The Civil Rights Act of 1964 and the Equal Employment Opportunity Commission:
http://www.archives.gov/digital_classroom/lessons/civil_rights_act/civil_rights_act.html

The following is a bibliography of available books at The American Center's Information Resource Center. For general information regarding the IRC, please visit: http://israel.usembassy.gov

THE HISTORY OF CIVIL RIGHTS IN THE UNITED STATES

Affirmative Action, by Rachel Kranz. New York, Facts on File, 2002.

American Crucible: Race and Nation in the Twentieth Century, by Gary Gerstle. Princeton, Princeton University Press, 2001.

Bearing the Cross: Martin Luther King, Jr., and the Southern Christian Leadership Conference, by David J. Garrow. New York, William Morrow and Company, 1986.

A Call To Conscience: The Landmark Speeches of Dr. Martin Luther King, Jr., edited by Clayborne Carson and Kris Shepard. New York, Warner Books, 2001.

The Children, by David Halberstam. New York, Random House, 1998.

Civil Rights in America: 1500 to the Present, by Jay A. Sigler. Detroit, Gale, 1998.

The Civil Rights Movement, by Peter B. Levy. Westport, Connecticut, Greenwood Press, 1998.

The Civil Rights Movement: An Eyewitness History, by Sanford Wexler. New York, Facts on File, 1993.

The Civil Rights Struggle: Leaders in Profile, by John D'Emilio. New York, Facts on File, 1979.

Downsizing Democracy: How America Sidelined Its Citizens and Privatized Its Public, by Matthew A. Crenson and Benjamin Ginsberg. Baltimore, Johns Hopkins University Press, 2002.

Dream Makers, Dream Breakers: The World of Justice Thurgood Marshall, by Carl T. Rowan. Boston, Little, Brown and Company, 1993.

Equal Protection: Rights and Liberties Under the Law, by Francis Graham Lee. Santa Barbara, California, ABC-CLIO, 2003.

The Eyes on the Prize: Civil Rights Reader: Documents, Speeches, and Firsthand Accounts From the Black Freedom Struggle, 1854-1990, edited by Clayborne Carson et al. New York, Viking, 1991.

Freedom's Daughters: The Unsung Heroines of the Civil Rights Movement From 1830 to 1970, by Lynne Olson. New York, Scribner, 2001.

Human Rights in the United States: A Dictionary and Documents, by Rita Cantos Cartwright and H. Victor Conde. Santa Barbara, California, ABC-CLIO, 2000.

Lincoln's Greatest Speech: The Second Inaugural, by Ronald C. White Jr. New York, Simon & Schuster, 2002.

Martin Luther King, Jr., by Marshall Frady. New York, Penguin Group, 2002.

The Minority Rights Revolution, by John D. Skrentny. Cambridge, Mass., The Belknap Press of Harvard University Press, 2002.

The Modern Presidency & Civil Rights: Rhetoric on Race from Roosevelt to Nixon, by Garth E. Pauley. College Station, Texas A & M University Press, 2001.

Nixon's Civil Rights: Politics, Principle, and Policy, by Dean J. Kotlowski. Cambridge, Mass., Harvard University Press, 2001

Parting the Waters: America in the King Years, 1954-1963, by Taylor Branch. New York, Simon & Schuster, 1988.

A People's Charter: The Pursuit of Rights in America, by James MacGregor Burns and Stewart Burns. New York, Alfred A. Knopf, 1991.

Pillars of Fire: America in the King Years, 1963-65, by Taylor Branch. New York, Simon & Schuster, 1998.

Reporting Civil Rights: Part One: American Journalism 1941-1963. New York, Library of America, 2003.
Reporting Civil Rights: Part Two: American Journalism 1963-1973. New York, Library of America, 2003.

Shouting Fire: Civil Liberties in a Turbulent Age, by Alan M. Dershowitz. Boston, Little, Brown and Company, 2002.

Someone Else's House: America's Unfinished Struggle for Integration, by Tamar Jacoby. New York, Basic Books, 1998.

A Testament of Hope: The Essential Writings of Martin Luther King, Jr., edited by James Melvin Washington. San Francisco, Harper & Row, 1986.

Whose Votes Count? Affirmative Action and Minority Voting Rights, by Abigail M. Thernstrom. Cambridge, Massachusetts, Harvard University Press, 1987.

PART II

ACCESS TO JUSTICE: EFFECTIVENESS AND EFFICIENCY OF U.S. MODELS OF ALTERNATIVE DISPUTE RESOLUTION

"*Personally I don't want to live in a society where every dispute is solved in court. It is far better to live in a society where agreement and cooperation win out over confrontation, both verbal and physical*." Israeli Supreme Court President Aharon Barak, Association of Israeli Mediators, February 2004.

"*Disputes are inevitable...By emphasizing consensual resolution of disputes, these programs (ADR) encourage the participants in these processes to retain control over the outcome of the conflict. By moving away from winning and losing, and focusing instead on problem solving, these programs encourage the parties to identify what they really need to get the controversy resolved. By using experienced mediators and evaluators whose sole goal is to aid the parties in their resolution of the dispute, we find parties jointly engaged in creating solutions to disputes that no board, law judge, or court might have the authority to impose*." Former U.S. Attorney General Janet Reno, 1998, Inter-Agency Working Group on Alternative Dispute Resolution.

The old maxim of "justice delayed is justice denied" can be all too accurate, especially in a civil lawsuit seeking monetary damages for someone who is out of work, or for a party seeking to enforce provisions of a contract. The perception and the reality of a crisis in courts, with the increasing expense of litigation and the overcrowded court dockets, have pushed efforts to employ informal, less adversarial means for resolving disputes.

Although mediation can be traced back hundreds of years, *alternative dispute resolution* has grown rapidly in the United States since the political and civil conflicts of the 1960s. The introduction of new laws protecting individual rights, as well as less tolerance for discrimination and injustice, led more people to file lawsuits in order to settle conflicts. As an example, the Civil Rights Act of 1964 outlaws "discrimination in employment or public accommodations on the basis of race, sex, or national origin." These laws provided people new grounds for seeking compensation for discriminatory treatment. At the same time, the women's movement and the environmental movements were growing, leading to another host of court cases.

Alternative dispute resolution (ADR) was once considered a novelty, but today has emerged as a major movement in the United States. ADR programs have proliferated, and national organizations have emerged – the National Institute for Dispute Resolution and the Society for Professionals in Dispute Resolution being the most prominent, along with the Judicial Arbitration and Mediation Services (JAMS).

The result of the enormous amount of new substantive law, not just the civil rights reform but also constitutional reform, free trade agreements and commercial legislation, has given rise to a significant increase in the number and complexity of lawsuits filed in U.S. courts. Eventually the system became overloaded with cases, resulting in long delays and, sometimes, procedural errors.

The emergence of mediation as a device to resolve litigation in the United States can probably be traced to the seminal work in negotiation theory done by Roger Fisher and William Ury of the Harvard Negotiation Project, popularized in their 1981 book *Getting to Yes*. The central insight of this work is that most negotiations are conducted by bargaining over positions and can result in either impasse or an agreement that is perceived by one of the parties to have been imposed simply through superior strength of the other.

Fisher and Ury suggested that instead of being based on positions, bargaining should focus on the underlying interests that motivate parties to take these positions, thereby creating solutions which can be developed to meet, at least in part, the underlying interests of each of the parties. This permits a principled and mutually advantageous resolution of the conflict.

Alternative dispute resolution today enjoys widespread support from many groups that are normally adversaries. What unites these groups is a shared concern that the courts are not adequately handling many types of civil and criminal cases. Today major texts on dispute resolution have been published and courses on disputes and dispute resolution are now regularly offered in many universities.

Alternative dispute resolution is a label used to cover a broad range of options that share few characteristics aside from their common departure from the more traditional courtroom procedures. Nor are alternatives to the more formal judicial processes necessarily new. Arbitration, juvenile courts, small claims courts, and family courts are a few examples of long-standing activities that were established because it was felt they would be more effective than traditional court operations.

The purpose of ADR is not, however, always so clear, and there are a number of contradictory goals. Some will emphasize an improved process for case handling – ADR will provide more lasting, equitable resolutions for all parties by emphasizing mediation rather than the winner-takes-all approach of the judicial process, while others will focus on equal access to justice stating that ADR will increase accessibility to justice for underserved minorities, and others will stress efficiency and how ADR will improve the justice system by reducing caseloads, decreasing delay, and cutting litigant's costs.

Many courts in the United States, both state and federal, have introduced mediation programs. This has been particularly true since the Civil Justice Reform Act of 1990, which required (P.L. 101-650) federal courts to design and implement alternative dispute resolution. In 1996 Congress renewed the Administrative Dispute Resolution Act, and in 1998 earmarked $13 million of the Equal Employment Opportunity Commission's

budget for expansion of mediation. The federal Alternative Dispute Resolution Act of 1988 requires every federal district court to implement a dispute resolution program; the federal appellate courts already offer mediation.

However, this new role for courts has generated criticism. Yale University Law Professor Judith Resnik suggests that the "managerial judges" will neglect adjudicative roles, while Georgetown University Center of Law Professor Carrie Menkel-Meadow warns that involvement with the justice system will make the mediation process more rigid and directed toward legal issues. The courts themselves are concerned that support for settlement may compromise their effectiveness in setting precedent.

Some see that court intervention in issues of *alternative dispute resolution* is a contradiction in terms. Judges are supposed to judge – not mediate; to apply law – not interests; to evaluate – not facilitate; to order – not accommodate; and to decide – not settle. Despite these fears, the public in the U.S. does back an *alternative dispute resolution* function for the courts and for public agencies.

There are many ways in which cases in court can turn to ADR. Some statutes require that certain types of cases must go to a designated ADR process. Other statutes or court rules give the court discretion to send a specific case to an appropriate form of *alternative dispute resolution*. The attached bibliography and web sites provides an indication of the variety of ADR programs and methods.

One of the most encompassing mechanisms for institutionalizing ADR referral in the public sector is the multi-door courthouse, a multi-faceted dispute resolution center that was established on the idea that there are advantages and disadvantages in any specific case to using one or another dispute resolution process. Instead of just one "door" leading to the courtroom, the center has many doors through which the litigants can receive an appropriate ADR process.

The key feature of the multi-door courts is the initial procedure of intake screening and referral. Disputes are analyzed according to various criteria to determine which ADR mechanism or process would be most appropriate for the resolution of the problem.

At the present time there are no licensing or certification requirements for mediators in the United States and no formal training is required. However, most mediators have received some training and most courts that have court-annexed mediation programs require training of the people who wish to be members of the mediation panel. In addition, many private continuing legal education courses offer mediation programs.

Alternative Dispute Resolution – be it mediation to reach a mutually satisfactory agreement resolving all or part of the dispute, early neutral evaluation which aims to provide parties in dispute with an early and frank evaluation by an objective observer of the merits of a case, or arbitration in order to provide parties with an adjudication that is faster, less formal, and less expensive than trial - is not the answer for all problems of the courts.

However, without complementary alternatives to trial, the primary objective of those courts (to deliver access to justice for all) is unlikely to be realized. Effective implementation strategies are critical for transforming alternative dispute programs into effective and efficient legal practices.

The following Websites provide information on the subject of **Access to Justice: Effectiveness and Efficiency of U.S. Models of Alternative Dispute Resolution**.

Academy of Family Mediators (AFM):
AFM is the largest family mediation organization in existence. Members are mediators working in a variety of settings including private practice, courts, schools, and government in the United States and internationally.
http://www.mediators.org

ADR and Mediation Resources:
Contains substantial on-line materials for alternative dispute resolution and mediation.
http://adr.com

American Arbitration Association:
The most comprehensive site for up-to-the-minute information about mediation, arbitration, and other forms of alternative dispute resolution.
http://www.adr.org

American Bar Association: Section of Dispute Resolution:
The American Bar Association Section of Dispute Resolution provides its members and the public with creative leadership in the dispute resolution field by fostering diversity, developing and offering educational programs, providing technical assistance, and producing publications that promote problem-solving and excellence in the provision of dispute resolution services.
http://abanet.org/dispute

Association of Attorney-Mediators (AAM):
A non-profit trade association whose members are qualified, independent attorney-mediators offering mediation services.
http://www.attorney-mediators.org

Continuum of Dispute Resolution Processes. Bickerman Dispute Resolution Group, PLLC:
This site has an interactive continuum graph that lists and defines alternative dispute resolution processes including negotiation, fact-finding, mediation, arbitration, mini-trial, and court adjudication.
http://www.bickerman.com/chart.shtml

FindLaw: ADR/Arbitration Articles:
FindLaw's legal information, tools, and resources are FREE for you to use 24 hours a day, 7 days a week.
http://library.findlaw.com/ADRArbitration_1.html

Guide to Alternative Dispute Resolution (ADR):
Sponsored by Hieros Gamos: The Comprehensive Law and Government Portal, this site gives an overview of ADR with international sources.
http://www.hg.org/adr.html

Desktop Guide to Alternative Dispute Resolution. Jeffrey Krivis, First Mediation Corporation:
This guide provides clear and concise definitions of the following dispute resolution terms and procedures: mediation, negotiation, arbitration, mini-trial, litigation, confidential listener, the language of ADR, voluntary settlement, dispute management model, and hybrid/combined procedure.
http://www.firstmediation.com/desktopguide/index.htm

Judicial Arbitration and Mediation Services (JAMS):
Since the founding of JAMS in 1979, this organization has become one of the largest conflict resolution organizations in the U.S.
http://www.jamsadr.com/welcome/welcome.asp

The Justice Center of Atlanta (JCA):
The Justice Center of Atlanta began as a pilot project in 1977 funded by the U.S. Department of Justice. It was one of three sites nationally chosen to implement the Neighborhood Justice Center Project whose objective was to determine if alternatives to litigation such as arbitration and mediation, could more quickly resolve disputes without violating any party's due process or civil rights.
http://www.justicecenter.org

Language of ADR: Glossary:
The Language of ADR - an International Glossary was conceived and published as a part of The Academy of Expert's desire to facilitate good practices, efficient communication and co-operation among all of those involved in ADR. The present Glossary resulted from the co-operation of 600 individuals and institutions from 43 countries. Work is now in hand for the second, and we hope, expanded edition. We also intend to include a 'directory of dispute resolution clauses ', which is in use around the world.
http://www.academy-experts.org/language.htm

Law Journal Extra! Arbitration and ADR:
Legislation, recent court decisions, news updates, articles, and forums on alternative dispute resolution.
http://www.lextra.com/practice/arbitration/arbrsrc.html

Legal Information Institute: Alternative Dispute Resolution:
An overview of ADR and U.S. cases, international conventions and treaties and links to ADR sources.
http://www.law.cornell.edu/topics/adr.html

Mediate-Net:
A research and demonstration project of the Program for Dispute Resolution at the University of Maryland School of Law and the Center for On-Line Mediation.
http://www.mediate-net.org

Mediation Information and Resource Center (MIRC):
A comprehensive guide for information and educational programs.
http://www.mediate.com

Society of Professionals in Dispute Resolution (SPIDR):
An international membership association committed to the advancement of the highest standards of ethics and practice for dispute resolvers.
http://www.spidr.org

U.S. Department of Justice Office of Dispute Resolution:
The office is responsible for ADR policy matters, ADR training, assisting lawyers in selecting the right cases for dispute resolution, and finding appropriate neutrals to serve as mediators, arbitrators, and neutral evaluators.
http://www.usdoj.gov/adr/index.html

Victim Offender Mediation Association (VOMA):
Created so that greater networking among practitioners and other interested individuals would enhance the overall credibility of victim offender mediation and reconciliation programs within the justice community.
http://www.voma.org

What is Arbitration? Mediate.com.
This outlines the general principles of arbitration, the different types of arbitration and the advantages it has over other kinds of conflict resolution processes.
http://www.mediate.com/articles/grant.cfm

The following is a bibliography of available books at The American Center's Information Resource Center. For general information regarding the IRC, please visit: http://israel.usembassy.gov

ALTERNATIVE DISPUTE RESOLUTION

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The Costs of Conflict: Prevention and Cure in the Global Arena, edited by Michael E. Brown and Richard N. Rosecrance. Lanham, Md., Rowman & Littlefield, 1999.

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Designing Conflict Management Systems: A Guide to Creating Productive and Healthy Organizations, by Cathy A. Costantino and Christina Sickles Merchant. San Francisco, CA., Jossey-Bass, 1996.

Dispute Resolution: Negotiation, Mediation, & Other Processes, by Stephen B. Goldberg, Frank E.A. Sander & Nancy H. Rogers. Gaithersburg, [Md], Aspen Law & Business, 1999.

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From Conflict to Cooperation: How to Mediate a Dispute, by Dr. Beverly Potter. Berkeley, CA., Ronin Publishing, 1996.

Getting Past No: Negotiating Your Way from Confrontation to Cooperation, by William Ury. New York, Bantam Books, 1993.

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The Handbook of Conflict Resolution: Theory and Practice, edited by Morton Deutch and Peter T. Coleman. San Francisco, CA., Jossey-Bass, 2000.

International Dispute Settlement, by J. G. Merrills. New York, Cambridge University

Press, 1998.

The Keys to Conflict Resolution: Proven Methods of Settling Disputes VoluntarilyThe Keys to Conflict Resolution: Proven Methods of Settling Disputes Voluntarily, by Theodore W. Kheel. New York, Four Walls Eight Windows, 1999.

The Mediation Process: Practical Strategies for Resolving Conflict, by Christopher W. Moore. San Francisco, CA, Jossey-Bass, 1996.

Must We Fight? From the Battlefield to the Schoolyard - A New Perspective on Violent Conflict and Its Prevention, edited by William L. Ury. San Francisco, CA., Jossey-Bass, 2002.

Negotiating at an Uneven Table: Developing Moral Courage in Resolving Our Conflicts, by Phyllis Beck Kritek. San Francisco, CA, Jossey-Bass, 2002.

Preventive Negotiation: Avoiding Conflict Escalation, edited by I. William Zartman. Lanham, MD., Rowman & Littlefield Publishers, 2001.

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Win-Win Negotiating: Turning Conflict Into Agreement, by Fred E. Jandt. New York, John Wiley, 1985. Quarterly E-Bulletin.

Responding to Community Conflict: A Review of Community Mediation
John Gray, Moira Halliday, Andrew Woodgate.

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