THE MAINE SUPERIOR COURT ALTERNATIVE DISPUTE RESOLUTION PILOT PROJECT

PROGRAM EVALUATION FINAL REPORT

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EXECUTIVE SUMMARY

The Maine Superior Court Alternative Dispute Resolution Pilot Project was undertaken in 1995 to test the impact of dispute resolution conferences on the utilization of ADR and the likelihood of case settlement, as well as on case events such as requests for discovery and pretrial motions. The project ran from 1 July 1995 through 30 June 1997. During that time, eligible civil cases filed in Superior Courts of Androscoggin, Aroostook, Kennebec, and Sagadahoc Counties were referred to volunteer lawyer neutrals, who then held dispute resolution conferences with the parties (both lawyers and clients). Cases were exempted from such conferences only if the parties had previous undertaken formal ADR by agreement, or if a successful dispositive motion was filed.

At the conferences, neutrals were to examine the parties' positions and interests in the case; discuss the relative advantages and disadvantages of various dispute resolution options; explore settlement possibilities; and, with the parties' agreement, mediate any or all substantive and procedural matters. If the case remained unresolved, the neutral had the option of directing the parties to try formal ADR.

In two of the four "experimental" counties -- Kennebec and Sagadahoc -- the dispute resolution conferences were scheduled prior to the beginning of discovery; in the other two -- Androscoggin and Aroostook -- the conferences were held halfway through the discovery period. In both the "early" and "later" sets, one of the counties had a relatively large population and thus was designated "urban" (Kennebec and Androscoggin), while the other county's population was relatively small and was considered "rural" (Sagadahoc and Aroostook). Thus it was possible to examine the possible effects on case processes and outcomes of both the timing of the intervention and the demographic character of the conference setting.

Two other Superior Courts (in Oxford, a "rural" county, and Penobscot, an "urban" county) were selected as "controls" for the purpose of assessing the extent to which observed results could be attributed to the project itself, as opposed to other influences that might be operating in the state's courts.

The Muskie School of Public Service conducted an evaluation of the project with the support of a grant from the State Justice Institute. The research consisted of an analysis of case files for the project period as well as a comparable "historical" period; an exit survey of dispute resolution conference participants; and telephone interviews with selected project planners and participants.

The five central research questions, and the answers produced by the research, are briefly summarized here:

1) Were the procedural steps established in the project design actually followed?

Despite a number of "start up" administrative problems, the pilot project was implemented

according to plan. The efficiency with which the program operated was really quite remarkable, considering that no single individual had overall responsibility for directing the project, and that the project relied entirely on the efforts of volunteers, as well as the willingness of court staff members to assume extra everyday burdens.

(2) What was the effect of dispute resolution conferences on ADR utilization?

The absence of data in court records on formal ADR events made it difficult to determine precisely the project's impact on the utilization of ADR. However, it is clear that a substantial number of cases were exempted from screening conferences for undertaking mediation by agreement. Another sizable number of cases went to mediation following the dispute resolution conference (undoubtedly more than the 86, or 11.3 percent of all conference cases, found recorded in the docket books). It seems likely that this number would have been even higher if more neutrals had been willing to require parties to participate in formal ADR.

(3) What effect, if any, did dispute resolution conferences have on the settlement of referred cases?

The increase in the frequency of settlements among all project period case outcomes was more than five times as great in the experimental counties as in the control counties. Not only did experimental court cases settle more frequently than cases in the control courts, but on the whole they also settled more quickly. Three of the experimental courts also experienced faster overall case completion rates, a result achieved in neither of the control counties. Although the results were not completely consistent across the experimental counties, the data do show unequivocally that the pilot project produced superior rates of case settlement, settlement speed, and overall case completion.

(4) How did dispute resolution conferences influence the number and nature of subsequent procedural actions and events?

Average discovery events per case decreased in three of the experimental counties, including both of the "early" counties, while rising in both control counties. Holding screening conferences before starting discovery clearly resulted in less use of formal discovery. While the four experimental counties did not all experience the same levels of improvement, the percentages of cases without motions and without pretrial hearings were significantly higher in the experimental counties than in the control counties. The experimental counties also experienced much more significant overall reductions than the control counties in the frequencies of both dispositive motions and trials.

(5) Were the conference neutrals and the dispute resolution conferences themselves valued by the participants?

The exit survey data show that conference participants -- attorneys and parties alike -- thought highly of the utility of the dispute resolution conference and gave conference neutrals high marks for their performance.

This report describes the features, activities, and impacts of a unique demonstration project conducted in the Superior Courts of six Maine counties during the period 1 July 1995 through 30 June 1997. Known as the Maine Superior Court Alternative Dispute Resolution Pilot Project, it took the form of a controlled experiment in which four counties actively participated as "experimental" courts and two others functioned as "controls" for the purposes of comparison. The report details the project's purposes, scope, unique design components and administrative structure; identifies its goals and anticipated outcomes; summarizes activities throughout the life of the pilot project; and presents research findings regarding the project's impact on cases included within the framework of the experiment.

1. The Process of Project Development and Design

The genesis of this project lies in the work of the Commission to Study the Future of Maine's Courts, created by the Legislature in 1990 to identify and analyze issues affecting the public's access to the courts and the performance of the court system in fulfilling its functions. The Commission convened public hearings, examined information dealing with various aspects of the court's effectiveness, and surveyed the general public regarding its perceptions of these matters. The Commission's report, *New Dimensions for Justice*, was submitted to the 116th Legislature in 1993. One of its findings was that a substantial majority of respondents wanted expanded access to ADR options and opportunities for resolving disputes other than through court trial. Among the Committee's recommendations was that a pilot project be conducted involving the utilization of ADR. The Supreme Judicial Court subsequently established an ADR Planning and Implementation Committee to develop and implement such a project.

The actual project design was informed in large part by an earlier alternative dispute resolution pilot project conducted in the Knox and York County Superior Courts during an 18-month period from 1 September 1988 to 1 March 1990. In the Knox and York county study there was random assignment of eligible cases either to ADR, or to the expedited or the regular pre-trial track, and paid lawyer neutrals were assigned the dual roles of case screening and outright mediation. The January 1992 report on the Knox/York project, conducted by Professor of Sociology Craig McEwen of Bowdoin College, was ultimately developed into a concept paper that was submitted to the State Justice Institute in the hope of obtaining funding to conduct a similar but more extensive project in other Maine Superior Courts. The State Justice Institute subsequently invited a full proposal to evaluate such a pilot project.

Throughout the design process Committee member L. Kinvin Wroth, a former Dean of the University of Maine School of Law, drafted administrative rules to define the project, describe its procedural aspects, and identify the responsibilities of the court, the conference neutrals, and the ADR Committee. These drafts were revised many times as the design process continued. The

span of time during which all this work was carried out -- an exclusively volunteer effort -- was approximately 18 months beginning late in 1993 and concluding in the Spring of 1995. A complicating factor throughout was the vocal resistance of many members of the trial bar to a mandatory ADR project in any form. Although this did not prevent the experiment from going forward, the issue of how it might or might not alter the perceptions of trial lawyers who would come to participate in dispute resolution conferences became a matter of considerable interest to the ADR Planning and Implementation Committee and the research team.

A full proposal to obtain funding for evaluating the project was submitted by the Administrative Office of the Courts to the State Justice Institute in 1994. Final SJI approval was obtained early the following year, and the pilot project officially began on 1 July 1 1995.

2. Project Design

The goal of the pilot project was to determine the impact of dispute resolution conferences on the resolution of eligible cases through informal settlement and formal ADR. It was hoped that such conferences would expedite early case settlement; encourage the utilization of ADR; increase the understanding and constructive participation of parties in case-related activities; and reduce the active participation of the court in pretrial events.

Eligible cases filed in the experimental courts were to be referred to experienced lawyers in private practice (referred to hereafter as "conference neutrals" or, alternatively, "neutrals") who would schedule a dispute resolution conference with the litigants and their lawyers. The purpose of such conference was to assess the prospect that these cases might lend themselves to settlement outside the established procedures of negotiation and discovery that otherwise routinely apply in Superior Courts throughout Maine. The neutrals' function was to bring the parties and their attorneys together in face-to-face meetings to examine the issues in dispute; discuss alternative dispute resolution and encourage parties to consider it; explore the prospects for settlement prior to trial; identify, expedite and schedule the run of subsequent pre-trial events; refer the parties to ADR where appropriate; and report to the court regarding the outcomes of these conference proceedings. Conference neutrals were unpaid volunteers selected from a panel made up of attorneys with at least five years of experience in civil litigation who participated in two days of training.

Training of conference neutrals occurred during two sessions conducted in June 1995, a few weeks before the experiment officially began. A third follow-up training day took place in June 1996. The content of the training curriculum included a detailed review of the rules adopted by the Maine Supreme Judicial Court governing the conduct of the experiment; a summary of the duties of conference neutrals; a close review of the procedures to be followed in scheduling, organizing, and conducting conferences including the scope and limits on the authority of neutrals during meetings and afterwards; the theory and techniques of negotiation, mediation, and dispute resolution in general; reporting requirements; and the neutrals' role in supporting a comprehensive evaluation of the project. The training team consisted of a group of four attorneys with extensive

experience in formal alternative dispute resolution proceedings. The Muskie School research team also participated, to explain the neutrals' critical roles in administering questionnaires to parties at the conclusion of the conferences and forwarding them to the researchers for entry and analysis.

A range of outcomes from dispute resolution conferences might conceivably occur. The case might be resolved on the spot or shortly thereafter. Or the parties might voluntarily agree to participate in formal ADR, using the services of a compensated neutral to be selected by agreement of the parties. Or neutrals might order the parties to engage in formal ADR. If none of these outcomes were to result, it was hoped that the process of informal but systematic review of the cases would streamline discovery, expedite and consolidate the flow of pre-trial events and actions, and enhance the likelihood of settlement down the road. Neutrals were instructed to explore the chances for resolution during the meetings but not to apply undue pressure on the parties and their lawyers to come to agreement on the spot. Different neutrals applied their understanding of their charge in different ways, with what appear to have been widely differing results.

The timing of intervention was a crucial issue in designing the dispute resolution conferences. For two counties in the pilot project -- Kennebec and Sagadahoc -- dispute resolution conferences would be conducted at the onset of discovery procedures. These came to be known as the "early" counties. In two other counties -- Androscoggin and Aroostook -- pre-screening conferences would be scheduled to occur at mid-point in discovery. These were known as the "later" counties. Kennebec and Androscoggin counties were selected in part because, within the overall context of a semi-rural state, they serve jurisdictions that are more urban in character. Sagadahoc and Aroostook counties, by contrast, are more rural. To enable valid comparisons between experimental and control courts, the control county courts -- Penobscot and Oxford -- were chosen for their respective urban and rural settings. The table below graphically depicts each of these courts in its relation to all the others.

Form of Conference	*Urban County Courts*	*Rural County Courts*
Early Case Conference	**Kennebec**	**Sagadahoc**
Later Case Conference	**Androscoggin**	**Aroostook**
No Case Conference	**Penobscot**	**Oxford**

Overall responsibility for implementing the entire project was vested in an ADR Planning and Implementation Committee. An ADR Selection and Oversight Committee for Volunteer Neutrals accepted neutrals for inclusion on the roster and monitored their performance, paralleling the efforts of a Selection and Oversight Committee for Compensated Neutrals (those actually conducting ADR itself). The Selection and Oversight Committee for Volunteer Neutrals would also adopt and publish rules and regulations establishing the training, experience, and other criteria for acceptance on the rosters and governing its other activities. Among the most

significant features of the Maine project was the fact that it relied exclusively for operational staffing on the clerks and administrative personnel already assigned to the participating courts. No new staff were retained to manage the project other than the Muskie School research team, whose functions were limited to gathering, analyzing, and reporting data concerning project implementation, performance, and impact. The ADR Planning and Implementation Committee itself therefore provided whatever administrative direction was required as operational issues and problems arose. It must be kept in mind that the Committee had no direct authority over court personnel on whom the procedural success of the pilot project depended.

3. The Evaluation Process

The purpose of the evaluation of the Maine Dispute Resolution Conference Pilot Project is to determine the project's impact on the resolution of eligible cases filed during the project period in the four experimental counties included in the experiment. The evaluation was conducted by a research team from the Edmund S. Muskie School of Public Service at the University of Southern Maine in Portland. The team's principal investigator is a professor in the University's Department of Political Science with extensive research and program evaluation experience regarding legal topics and the performance of lawyers and the judiciary. The Muskie School combines a graduate degree program in public policy and management with an extensive nationwide program of sponsored and grant funded applied policy research.

Research Questions

The research team initially posed a cluster of research questions to guide the inquiry throughout the life of the project. These questions were modified or consolidated as the experiment proceeded, to reflect preliminary findings as they emerged. These questions are presented below in final form.

(1) Were the procedural steps established in the project design actually followed? Did project participants perform the tasks assigned to them?

(2) What was the effect of dispute resolution conferences on ADR utilization? Did utilization of formal ADR increase as a result of case screening?

(3) What effect, if any, did dispute resolution conferences have on the settlement of referred cases? Did cases settle more frequently and more quickly as a result of case screening? Did the conferences improve the overall speed with which cases were disposed of?

(4) How did dispute resolution conferences influence the number and nature of subsequent procedural actions and events? Did formal discovery and judicial events decrease as a result of case screening?

(5) Were the conference neutrals and the dispute resolution conferences themselves valued by the participants? Did parties and lawyers regard the conferences as useful in helping their cases reach settlement?

Two other questions were posed at the start, the first having to do with the extent to which the timing of the dispute resolution conference ("early or "later") altered the flow of cases and the likelihood of settlement before trial. The second dealt with the impact of the "rural" and urban" character of each experimental county as this might affect the performance of the experiment in those settings. In the end, it was decided that these matters would be addressed where appropriate in connection with other research questions rather than as separate research questions in their own right.

Data Sources

The research team utilized the following three data sources in evaluating this project: a case abstract data file, a dispute resolution conference exit survey, and telephone interviews with project planners, court personnel, and conference participants. Each of these will be described in turn.

1. Case Abstract Data File. A data file was developed containing information culled from the manually-maintained docket sheets contained in each civil case. This information was subsequently coded onto a case abstract instrument and entered into a database. Process variables include length of time for the discovery process, number and type of motions filed and heard, number and type of various court orders, and the elapsed time between these events. Outcome variables include the type of disposition of each case (e.g., settlement prior to trial, dismissal by dispositive motion, trial judgment). All eligible civil cases were subject to docket sheet photocopying by the research team in collaboration with court personnel.

Docket data were collected from two distinct time periods. In the four experimental counties (Androscoggin, Aroostook, Kennebec, and Sagadahoc), the sample included all cases eligible for referral to dispute resolution conferences filed during the Alternative Dispute Resolution Conference Pilot Project period (1 July 1995 - 30 June 1997). In three of these four counties, random samples were then drawn from cases filed during a comparable two-year historical period (1 July 1992 - 30 June 1994), using only cases of types that would have been eligible for dispute resolution conferences in the pilot project. In the relatively small county of Sagadahoc, the historical data set was not a random sample, but rather all cases filed during the two-year period.

A similar sampling method was used for the two control counties. In both Oxford and Penobscot, all project-eligible-type cases filed during the two years of the project period were surveyed, plus all comparable historical period cases in Oxford County and a random sample of such cases in Penobscot County.

A variety of case types inappropriate for dispute resolution conferences were eliminated from both the experimental and control county samples for both time periods. These were foreclosures; bankruptcies; cases consolidated with others; consent decrees; defaults; voluntary withdrawals; remands to State District Court or to another Superior Court; removals to federal district court; changes of venue; confirmations of arbitration; protection from abuse cases; habeas corpus petitions; complaints with no answer; petitions for specific procedural actions; and petitions to enforce a subpoena.

The resulting data on case processes and outcomes allow comparisons to be made among the four experimental counties (early v. later, urban v. rural), between the four experimental and two control counties, and between project and historical periods for each of the six counties.

While the pilot project was carefully designed to facilitate such comparisons, it was not possible to eliminate every factor that might affect their validity. An example is the potential impact of judicial vacancies on case processing. During much of the first year of the 1992-94 period, the Superior Court was two or three judges below its full complement of 16. The net loss was felt most significantly in Penobscot County. Thus it is possible that the levels of cases processed in Penobscot during the historical period were artificially low, which in turn could exaggerate some of the differences between that county's historical and project period cases.

For each case in the data set, all significant information about case events was recorded through 30 September 1997 for the project period cases, and 30 September 1994 for the historical period cases. Thus a case filed on the first day of the pilot project -- 1 July 1995 -- and not yet completed on 30 September 1997, would have 27 months worth of case events for analysis. A case filed on the last day of the project -- 30 June 1997 -- would have a maximum of three months worth of events.

A. Case File Sample Sizes

The county-by-county case file sample sizes are shown in Table 1.

TABLE 1

CASE FILE SAMPLE SIZES

	PROJECT PERIOD		HISTORICAL PERIOD	
	No.	Pct.	No.	Pct.
ANDROSCOGGIN	435	23.4	140	19.4
AROOSTOOK	301	16.2	155	21.4
KENNEBEC	417	22.4	112	15.5
SAGADAHOC	83	4.5	99	13.7
OXFORD	160	8.6	124	17.2
PENOBSCOT	467	25.1	93	12.9
TOTAL	1863		723	

B. Dispute Resolution Conferences

Among the 1,236 project period experimental court cases in the data set (Oxford and Penobscot County cases excluded), dispute resolution conferences were held in 673, or 54.4 percent, of the cases. These figures were arrived at by combining docket sheet information with returned exit questionnaires. In the absence of definitive evidence of a conference, a case was classified as having had no conference. In an unknown but undoubtedly small number of cases, a conference may have been held without being recorded in the docket book, and without any survey forms being returned.

The county-by-county breakdown of cases by whether or not a dispute resolution conference was held, is shown in Table 2, on the following page.

TABLE 2

CONFERENCE AND NON-CONFERENCE CASES

(AS PERCENTAGES OF ALL FILED CASES)

		No.	Pct.
ANDROSCOGGIN			
	Conference	**234**	**53.8**
	No Conference	**201**	**46.2**
AROOSTOOK			
	Conference	**153**	**50.8**
	No Conference	**148**	**49.2**
KENNEBEC			
	Conference	**238**	**57.1**
	No Conference	**179**	**42.9**
SAGADAHOC			
	Conference	**48**	**57.8**
	No Conference	**35**	**42.2**
TOTAL			
	Conference	**673**	**54.4**
	No Conference	**563**	**45.6**

Table 2 shows some variation by county in the likelihood that an eligible case would actually go to a screening conference. There are several reasons why a case would *not* have had a conference:

- If the case was settled before the conference was scheduled;
- If the case was exempted from the conference requirement under Rule 16B or 16C, either because of a dispositive motion, or because ADR had been attempted before or after the case was filed;

- If, for some reason, personnel in experimental courts failed to recognize the case as eligible for referral.

No comprehensive analysis was conducted of the reasons why some apparently eligible cases did not go to conference. However, a review of the case files of 94 no-conference cases in Kennebec County revealed the following:

- 31 (33.1 percent) of the cases settled before conference;
- 32 (34.0 percent) were exempt from conferences because of successful dispositive motions;
- 8 (8.5 percent) were exempt from conferences because of pending dispositive motions;
- 19 (20.2 percent) were exempt from conferences because the parties used private mediation;
- 4 (4.3 percent) had no conference for unknown reasons.

Generalizing from this non-random sample of no-conference cases, it would be reasonable to conclude that the dispute resolution conferences served their purpose by encouraging significant numbers of pre-conference settlements and private ADR's.

It is somewhat surprising to find that there are not greater differences between the percentages of completed conference cases in the "early" and the "later" counties, because the later the conference is held, the more likely it is that a case will already have settled. This raises the question of whether due to the vagaries of conference scheduling there might have been compression of the intended variation between the "early" and "later" counties in the time spans between filing and conference. The figures in Table 3, presenting mean and median time spans from filing to conference, show clearly that this was not the case. In all four counties, conferences were in fact held "on time," that is, consistent with the project design -- approximately three months after filing in the "early" counties and approximately six months after filing in the "later" counties.

TABLE 3

TIME SPANS (IN DAYS) FROM FILING TO CONFERENCE

	Mean	Median
ANDROSCOGGIN	183.7	174
AROOSTOOK	172.1	165
KENNEBEC	122.7	102
SAGADAHOC	98.6	83

2. Dispute Resolution Conference Exit Survey. The second important source of information for evaluating the pilot project was the exit survey conducted among participants in the screening conferences. Data from the completed questionnaires enable us to look at the Dispute Resolution Conferences from three distinct viewpoints: those of the conference neutrals, the attorneys, and the litigant parties. (See Appendix A for survey instruments and Appendix B for complete survey results.)

The questionnaires were prepared by the Muskie School research staff, in consultation with members of the Selection and Oversight Committee for Volunteer Neutrals. Muskie researchers provided the court clerks in each of the four experimental counties with packets containing separate questionnaires for the conference neutrals, the attorneys, and the parties. The clerk mailed a packet to each neutral assigned a case for conference. The research plan anticipated that after each conference the neutral would distribute the forms to all conference participants and ask that they be completed immediately, collected by the neutral, and returned along with the neutral's own completed questionnaire, in a postage-paid envelope to the Muskie School. In practice, most of the questionnaires were not filled out on the spot, but were completed later by the neutrals and the conference participants and mailed individually to the Muskie School.

A. Response Rates

Completed questionnaires were coded by the Survey Research Center at the Muskie School by professional coding staff using a project-specific coding manual. Information from these self-administered questionnaires was then processed and analyzed, and merged with procedural data from case files.

Table 4 shows the questionnaire completion rates, county-by-county, for each group of screening conference participants. The "surveys distributed" figures represent the numbers of cases assigned by the court clerks to dispute resolution conferences, not the number of conferences that actually took place. Survey materials were sent to neutrals once they had been assigned a case, but some cases settled or were withdrawn before a conference could be held, and others had not yet had a conference at the time the survey data were coded for analysis.

TABLE 4

QUESTIONNAIRES DISTRIBUTED/COMPLETED (AS OF 30 SEPTEMBER 1997)

	Surveys Distributed	Conferences Held	Completed by Neutrals	Completed by Attorneys	Completed by Parties
ANDROSCOGGIN	334	234	140	232	217
AROOSTOOK	244	153	131	188	152
KENNEBEC	356	238	208	364	350
SAGADAHOC	58	48	42	68	66
ALL	982	673	521	852	785

Using completed neutral survey forms as the most accurate measure of response (since it was not always clear how many attorneys and parties participated in a screening conference), the overall completion rate was 77.4 percent. The neutrals' county-by-county response rates were as follows:

Androscoggin:	59.6 percent
Aroostook:	85.1 percent
Kennebec:	86.7 percent
Sagadahoc:	87.5 percent

3. Telephone Interviews with Judges, Conference Neutrals and Participating Lawyers and Insurance Adjusters. The third source of data was telephone interviews with respondents from these cohorts. During the period beginning in December 1996 and ending in mid-March 1997, Muskie School researchers conducted structured interviews with a small sample of respondents in each of these categories to explore specific process and outcomes issues in depth. The interviews were conducted to enable a deeper understanding of what might be the underlying causes of whatever findings emerged from analyses of other data sources, singly and in combination. No statistical meaning attaches to responses obtained by this method. Rather, the discussions enabled respondents to describe their own perceptions of the efficacy and impact of the project in regard to the anticipated outcomes explicit in its design and to comment on unanticipated effects arising from its implementation. Respondents were selected from participants in conferences taking place in every experimental county.

Interview respondents were drawn from the following categories: The Judiciary (three respondents): a Justice of the Supreme Judicial Court (also a member of the Planning and Implementation Committee) and two Superior Court Judges (one a member of the Committee); conference neutrals (13 respondents, one a member of the Committee); lawyers who had also served as conference neutrals (three respondents); lawyers participating in screening conferences (seven respondents, one a member of the Committee); and insurance adjusters participating in screening conferences (three respondents). The geographical distribution of respondents is uneven, largely a product of the extent to which respondents were able to schedule interviews during the span of time available. (See Appendix C for summary of interview findings.)

4. Findings

Research Question 1: Were the procedural steps established in the project design actually followed?

Prior to commencement of the pilot project on 1 July 1995, members of the research team visited each experimental court to explain the project in some detail; examine the organization of docket sheets and case management entries by clerks onto working documents for their own internal use; and discuss the way the team proposed to collaborate with the courts in making certain that data collection occurred in ways that limited the administration of court staff. Team members thereafter periodically called and visited the courts to verify that the work was moving ahead and to identify whatever problems might be arising. Researchers also traveled periodically to each of the courts to gather docket data. Docket sheets were photocopied on the spot by team members to minimize the burdens on the court as much as possible.

Despite the researchers' best efforts to limit the clerks' responsibilities, it became clear during early discussions and during two follow-up meetings in Augusta and Bangor that some court personnel resented the burdens they perceived the project to be adding to their already heavy workloads. In some of the experimental courts, provision of exits surveys to neutrals was occurring only sporadically at first. This came to light when completed survey instruments did not arrive at the Muskie School with the same frequency as the team had anticipated.

The problem's dimensions became clearer when the research team realized that many neutrals also resented having to administer exit questionnaires to litigants and lawyers. Despite the emphasis placed on this function during their training, a few of the neutrals refused to carry out this task altogether. The volume of returns was sufficiently poor at this early stage that a decision was made by the ADR Planning and Implementation Committee and the research team to take corrective action. A letter was drafted to conference neutrals from the Chief of the Maine Superior Court which emphasized the importance of the participant questionnaires in the overall research design. The letter was distributed to every conference neutral on the approved roster.

Simultaneously, the research team began telephoning neutrals, lawyers, and litigants who did not return the questionnaires to remind them to do so. During these conversations the callers offered to take down exit survey information directly over the telephone, and this was done in a majority of these circumstances. As a result, the volume of returns improved dramatically, retrospective data were successfully captured for the most part, and after several months the completed questionnaires began routinely arriving at the Muskie School with sufficient frequency that telephone follow-up was eventually discontinued. Although Androscoggin County returns continued to lag behind the others, the overall neutral questionnaire return rate of 77.4 percent was more than sufficient to assure the generation of meaningful findings.

These early difficulties were the product in large part of the lack of project administrative capacity mentioned earlier. The ADR Planning and Implementation Committee and the Selection and Oversight Committee for Volunteer Neutrals both had authority over neutrals, as expressed in the Supreme Judicial Court's administrative rule, to insist that they fully cooperate with the research team. However, the fact that neutrals were unpaid volunteers, and that a considerable investment had been made in training everyone on the neutral roster, limited the Committees' real ability to impose sanctions on neutrals who did not fully cooperate. Further, the fact that court personnel are directly responsible only to the courts in which they are employed, and that they were not compensated for the project work they performed, meant that the Committees and the research team could rely only on their professionalism and their good will in persuading them to play their parts diligently. In the end, it must be said that conference neutrals and court staff as a group performed admirably in all major respects, including cooperation with the research effort. Referrals were made, conferences were convened, the work of the project went forward, and data crucial to a proper and thorough evaluation of the project were successfully captured and analyzed.

Research Question 2: What was the effect of dispute resolution conferences on ADR utilization?

One of the major stated purposes of the pilot project was to encourage lawyers and litigants to utilize formal ADR (i.e., with a compensated neutral) to try to resolve civil disputes. This was done in two ways. First, Rules 16B and 16C provided for exemptions from dispute resolution conferences for parties who had undertaken ADR by agreement either before or after commencement of the action. Second, conference neutrals were expected to inform the parties

about ADR options and were authorized, at their discretion, to direct the parties to participate in ADR.

Unfortunately for research purposes, private mediation sessions are not "official" court events and thus are not routinely recorded on docket sheets. When Muskie School researchers examined docket data for the two control counties, they found no mediations recorded for either the historical or project periods, and only a handful for the historical period in any of the four experimental counties. Mediations with compensated neutrals in the experimental counties were more likely to be recorded during the project period, because (1) under Rules 16B and 16C, a mediation held prior to conference provided an exemption from engaging in a conference subsequently; and (2) mediation results were sometimes included by conference neutrals in their official reports to the court. Still, only a few of the cases that were exempted from dispute resolution conferences because of an agreement to use ADR had a clear notation in the docket book that ADR had taken place. Consequently, the docket book data on compensated mediations during the project period in the experimental counties are only marginally reliable, and no comparisons at all can be made between the experimental and control counties, or between the project and historical periods.

The fragmentary docket data available from the four experimental courts are displayed in Table 5.

TABLE 5

FREQUENCIES OF REPORTED MEDIATIONS AMONG CONFERENCE-ELIGIBLE CASES

	CASES IN WHICH CONFERENCE WAS HELD (N=673)		CASES IN WHICH NO CONFERENCE WAS HELD (N=563)	
	No.	Pct.	No.	Pct.
ANDROSCOGGIN	21	9.0	7	3.5
AROOSTOOK	32	20.9	4	2.7
KENNEBEC	28	11.8	4	2.2
SAGADAHOC	5	10.4	5	14.3
TOTAL	86	11.3	20	3.6

Undoubtedly these figures undercount the number of compensated mediations that occurred both in conference and in no-conference cases. Nevertheless, it is important to ask whether the design of the pilot project lent itself to the greatest possible utilization of formal ADR. The most reasonable conclusion is that it did not. Although the conference neutral was permitted under

Rules 16B and 16C to "direct" parties to participate in alternative dispute resolution, this authority was undercut by the admonition that the neutral should "serve as a mediator of substantive or procedural issues, including the selection of a further dispute resolution process." Since the role of a mediator is universally acknowledged to be non-coercive, most neutrals naturally would be reluctant to require unwilling conference participants to undertake mediation.

However, this does not mean that ADR options were not discussed in conferences, or that neutrals did not encourage parties to consider resolving their cases through mediation. Evidence of the neutrals' efforts in this regard is found in Table 6, which presents data from the exit survey on the amount of conference time the neutrals reported allocating to each of four tasks: reviewing dispute resolution options; exchanging or arranging for the parties to exchange information; sharpening the issues in dispute; and settling some or all of the issues in dispute.

TABLE 6

NEUTRALS' REPORTED ALLOCATIONS OF DISPUTE RESOLUTION CONFERENCE TIME

Time Devoted To ...

	A GREAT DEAL		SOME		VERY LITTLE		NO	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
Reviewing Dispute Resolution Options	56	10.9	304	59.4	131	25.6	21	4.1
Exchanging/Arranging To Exchange Information	55	10.7	250	48.7	171	33.3	37	7.2
Sharpening Issues In Dispute	136	26.6	269	52.5	90	19.1	17	3.3
Settling Some or Or All Issues	179	35.1	167	32.8	112	22.0	52	10.2

It is clear from Table 6 that the neutrals typically used some of the conference time to review ADR options with the parties. Understandably, this task appears to have consumed somewhat less conference time than examining the substance of the dispute itself.

Table 7 presents county-by-county data on the neutrals' reports of the amount of dispute resolution conference time they devoted to reviewing ADR options.

TABLE 7

TIME DEVOTED TO REVIEWING DISPUTE RESOLUTION OPTIONS

	GREAT DEAL		SOME		VERY LITTLE		NO	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	10	7.4	79	58.5	39	28.9	7	5.2
AROOSTOOK	27	20.5	76	57.6	26	19.7	3	2.3
KENNEBEC	15	7.4	126	62.1	51	25.1	11	5.4
SAGADAHOC	4	9.5	23	54.7	15	35.7	0	0.0
ALL	56	10.9	304	59.4	131	25.6	21	4.1

It is worth noting that in Aroostook County, which was shown in Table 5 to have a significantly higher rate of reported mediations than the other counties, a higher proportion of conference neutrals reported spending "a great deal" or "some" conference time than in the other counties. This greater attention by Aroostook neutrals to reviewing ADR options with screening conference participants may well have resulted in greater utilization of formal ADR.

Table 8 presents exit survey data from attorneys and their clients about how useful they found the dispute resolution conference in providing them with information about ADR.

TABLE 8

HOW USEFUL WAS CONFERENCE IN PROVIDING INFORMATION ABOUT DISPUTE RESOLUTION METHODS?

ATTORNEYS

	VERY		FAIRLY		SLIGHTLY		NOT	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	43	18.9	85	37.3	55	24.1	45	19.7
AROOSTOOK	47	25.3	65	35.0	45	24.2	29	15.6
KENNEBEC	73	20.3	125	34.8	99	27.6	62	17.3
SAGADAHOC	16	24.2	22	33.3	17	25.8	11	16.7
ALL	179	21.3	297	35.4	216	25.7	147	17.5

PARTIES

	VERY		FAIRLY		SLIGHTLY		NOT	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	63	29.3	99	46.1	37	17.2	16	7.4
AROOSTOOK	60	39.7	65	43.1	20	13.3	6	4.0
KENNEBEC	102	29.7	150	43.7	63	18.4	28	8.2
SAGADAHOC	17	25.8	31	47.0	8	12.1	10	15.2
ALL	242	31.2	345	44.5	128	16.5	60	7.7

Aroostook is slightly ahead of the other counties among attorneys and considerably ahead among parties in reports of the conference's utility in this regard. This is further evidence of a relationship between the amount of attention which the conference neutral gives to ADR and the likelihood that litigants will employ formal mediation.

The data on the project's impact on utilization of ADR are fragmentary, as we have seen. Yet the most plausible conclusion to be drawn seems to be that the emphasis in the pilot project on the neutrals' role as information providers rather than as decision makers probably limited the project's impact on utilization of formal mediation.

Research Question 3: What effect, if any, did dispute resolution conferences have on the settlement of referred cases?

Rates of Settlement

Another important stated purpose of the pilot project, according to the experimental rules, was to have the neutral "serve as a mediator of substantive or procedural issues," that is, to explore with participants the possibility of reaching a full or partial settlement *within* the conference setting. The data presented above in Table 6 show that neutrals reported spending a relatively substantial amount of conference time on this task. One-third of the neutrals reported in the exit survey that they had devoted "a great deal" of time to "settling some or all of the issues in dispute," while another one-third indicated that they spent "some" time in this activity. Moreover, the activity to which neutrals reported giving the most time -- "sharpening the issues in dispute" -- is closely related to settlement as well.

Did dispute resolution conferences in fact lead to increased rates of settlement in the experimental counties? Table 9 (on the following two pages) shows disposition data for all cases completed during both the project and the historical periods.

TABLE 9

DISPOSITIONS OF COMPLETED CASES

	1995-97		1992-94	
	No.	Pct.	No.	Pct.
ANDROSCOGGIN				
Settled	213	83.5	74	77.9
Dispositive Motion	25	9.8	14	14.7
Tried	10	3.9	5	5.3
Other	7	2.7	2	1.4
AROOSTOOK				
Settled	147	80.7	57	60.0
Dispositive Motion	23	12.6	20	21.1
Tried	3	1.6	11	11.6
Other	9	4.9	7	7.4
KENNEBEC				
Settled	199	77.4	45	77.6
Dispositive Motion	41	16.0	7	12.1
Tried	6	2.3	2	3.4
Other	11	4.3	4	6.9
SAGADAHOC				
Settled	44	83.0	37	77.6
Dispositive Motion	2	3.8	5	10.2
Tried	4	7.5	4	8.2
Other	3	5.7	2	4.1
ALL EXPERIMENTAL COUNTIES				
Settled	603	80.7	213	72.0
Dispositive Motion	91	12.2	46	15.5
Tried	23	3.1	22	7.4
Other	30	4.0	15	5.1

OXFORD				
Settled	79	81.4	53	76.8
Dispositive Motion	10	10.3	8	11.6
Tried	5	5.2	7	10.1
Other	3	3.1	1	1.4
PENOBSCOT				
Settled	178	70.9	33	66.0
Dispositive Motion	54	21.5	12	24.0
Tried	15	6.0	2	4.0
Other	4	1.6	3	6.0
ALL CONTROL COUNTIES				
Settled	257	73.9	86	72.3
Dispositive Motion	64	18.4	20	16.8
Tried	20	5.7	9	7.6
Other	7	2.0	4	3.4

These data show that percentages of settled cases increased in three of the four experimental counties in the project period compared to the historical period. In the fourth county -- Kennebec -- the rates of settlement were virtually the same for the two periods. Collectively, the four experimental counties experienced a 12.1 percent increase in percentage of cases settled. There were also increases in case settlement rates in both of the control counties, though the overall increase was only 2.2 percent. Although the results are not entirely consistent across all of the experimental counties, there is no doubt that the pilot project produced a far greater increase in rates of case settlement than would have otherwise occurred.

The Speed of Settlement

The pilot project was intended to increase not only the *frequency* of case settlement, but also the *speed* of settlement. It was hoped that some cases would be resolved at the conference itself. But even in cases that remained unsettled, the conference neutral, by facilitating the exchange of information, providing case evaluation, and seeking to resolve at least some disputed issues, would hasten the eventual settlement of the case by the parties themselves.

How quickly did cases settle during the project period compared to the historical period? This question is addressed in Table 10.

TABLE 10

TIME SPANS FOR CASE SETTLEMENTS

(IN CUMULATIVE PERCENTAGES OF ALL SETTLEMENTS)

Months:	0-3	3-6	6-9	9-12	12-15	15-18	18-21	21-24	24-27
ANDROSCOGGIN									
1995-97	14.2	40.1	60.8	77.4	89.2	92.5	98.1	99.1	100.0
1992-94	20.3	40.5	68.9	82.4	91.9	95.9	98.6	100.0	100.0
AROOSTOOK									
1995-97	17.9	42.1	66.2	81.4	95.2	99.3	100.0	100.0	100.0
1992-94	24.6	42.1	54.4	71.9	82.5	93.0	94.7	96.5	100.0
KENNEBEC									
1995-97	21.2	47.5	67.7	80.3	88.4	94.9	99.0	99.5	100.0
1992-94	22.2	42.2	55.6	66.7	80.0	95.6	97.8	100.0	100.0
SAGADAHOC									
1995-97	14.0	51.2	79.1	86.0	95.3	97.7	97.7	100.0	100.0
1992-94	15.8	39.5	50.0	71.1	81.6	92.1	97.4	100.0	100.0
OXFORD									
1995-97	16.5	43.0	60.8	82.3	93.7	98.7	98.7	100.0	100.0
1992-94	24.5	41.5	60.4	73.6	84.9	90.6	92.5	96.2	100.0
PENOBSCOT									
1995-97	23.6	40.4	56.2	67.4	78.1	86.5	94.4	99.4	100.0
1992-94	21.2	42.4	66.7	78.8	84.8	93.9	97.0	100.0	100.0

These data show that, in three of the four experimental counties, settlements tended to occur earlier during the pilot project than during the historical period. The differences are most apparent in the period between six and 15 months after filing. The exception to this pattern is Androscoggin County, which had a slower rate of settlement throughout the project period. In one control county – Oxford – settlements occurred somewhat faster during the project period, while in Penobscot cases took somewhat longer to settle. An overall comparison of the experimental and control counties shows a clear pattern of earlier settlement during the project period in the experimental counties.

Combining and summarizing the data in Tables 9 and 10, in two of the four experimental counties -- Aroostook and Sagadahoc -- there were increases in both the frequency and the speed of case settlements in the project period as compared to the historical period. Kennebec County experienced no increase during the project period in the frequency of settlements, but its settlements occurred at a much faster rate. In Androscoggin County there was a higher settlement rate during the project period, but settlements took somewhat longer to occur.

The control counties experienced a similar mixture of results. In both Oxford and Penobscot there were higher settlement rates for the project period, but while Oxford also showed a faster rate of case settlement during that period, in Penobscot the speed of settlement decreased.

Case Completion Rates

Still another measure of the overall impact of the project is the time required for a case, regardless of its disposition, to move from filing to completion. More, and earlier, settlements obviously would contribute to an overall reduction in time spans among all cases. In addition, higher rates of early settlements also mean that more court resources can be devoted to the remaining cases, thus increasing their chances for earlier completion by whatever means.

Table 11 presents data on how long cases actually took from filing to resolution, as well as from pretrial order to resolution. These measures apply to completed cases only. Confusion may arise from the fact that some of the filing-to-resolution figures are *smaller* than those measuring time from pretrial order to resolution. This is because the former figure includes cases that settled *before* ever being issued a pretrial order. The relatively short time spans for such cases reduce the mean and median figures from filing-to-resolution.

TABLE 11

TIME SPANS (IN DAYS) AND PERCENTAGE INCREASE/DECREASE FOR COMPLETED CASES

	FILING-RESOLUTION			PRETRIAL ORDER-RESOLUTION		
	95-97	92-94	Pct +/-	95-97	92-94	Pct +/-
ANDROSCOGGIN						
Mean	255	256	0.0	238	248	-4.0
Median	224	225	0.0	200	208	-3.8
AROOSTOOK						
Mean	226	283	-20.1	201	287	-29.9
Median	204	265	-23.0	184	272	-32.4
KENNEBEC						
Mean	238	282	-15.6	216	281	-23.1
Median	197	276	-28.6	200	282	-29.1
SAGADAHOC						
Mean	223	298	-25.2	207	301	-31.2
Median	189	298	-36.6	193	292	-33.9
OXFORD						
Mean	242	285	-15.1	230	282	-18.4
Median	240	231	+3.9	233	255	- 8.6
PENOBSCOT						
Mean	285	228	+25.0	287	235	+22.1
Median	243	185	+31.4	262	216	+21.3

In three of the four experimental counties, there were significant decreases in both time spans in

the project period as compared with the historical period. In Androscoggin County there was a slight decrease in the time span from pretrial order to resolution, and no change in the filing-to-resolution time span. In the control counties, Oxford also registered decreases in both time spans that were less substantial than those in the experimental counties, while Penobscot experienced large increases in both time spans.

Another way of measuring the impact of the pilot project on caseflow is to examine the rate of overall case completion. Table 12 displays figures showing the status of all cases filed during the first year of both the project and the historical periods, as of the end of the study period -- that is, 27 months after the period began. Year 1 cases are used exclusively for two reasons: to reduce the number of unresolved cases in the data set; and to reduce the possibility of distortions from county-by-county differences in filing rates. For example, a county in which 55 percent of the overall case filings occurred in Year 2 could be expected to have a smaller percentage of completed cases after 27 months than a county which had only 45 percent of its total case filings in Year 2.

TABLE 12

DISPOSITIONS OF CASES FILED IN YEAR 1 OF EACH STUDY PERIOD

27 MONTHS AFTER START OF PERIOD

	PENDING		SETTLED		TRIED		DISPOSITIVE		OTHER	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN										
1995-1996	31	14.6	150	70.4	10	4.7	17	8.0	5	2.4
1992-1993	15	19.2	49	62.8	4	5.1	10	12.8	0	0.0
AROOSTOOK										
1995-1996	31	20.7	100	66.7	3	2.0	13	8.7	3	0.0
1992-1993	15	18.1	39	47.0	8	9.6	16	19.3	5	6.0
KENNEBEC										
1995-1996	48	21.3	129	57.3	6	2.7	32	14.2	10	4.4
1992-1993	16	28.6	32	57.1	2	3.6	5	8.9	1	1.8
SAGADAHOC										
1995-1996	7	15.6	31	68.9	3	6.7	1	2.2	3	6.7
1992-1993	15	29.4	27	52.9	4	7.8	4	7.8	1	2.0

OXFORD										
1995-1996	21	23.1	57	62.6	4	4.4	6	6.6	3	3.3
1992-1993	11	18.3	35	58.3	7	11.7	6	10.0	1	1.7
PENOBSCOT										
1995-1996	74	30.6	120	49.6	14	5.8	34	14.1	0	0.0
1992-1993	15	28.9	21	40.4	2	3.9	12	23.1	2	3.9

The most significant figures here are in the "pending" category, which show reductions in uncompleted cases during project period in three of the four experimental counties (Aroostook being the slight exception), while in both of the control counties the percentages of uncompleted cases rose during the project period. Thus the pilot project had a strongly positive impact on overall case completion rates.

Research Question 4: How did dispute resolution conferences influence the number and nature of subsequent procedural actions and events?

Another purpose of the pilot project was to determine whether dispute resolution conferences would reduce formal discovery, as well as the court time and resources devoted to motions and court hearings. It was hoped that, particularly in the "early," or "pre-discovery" courts, conference neutrals would facilitate informal exchanges of information that would lessen the need for formal requests for discovery. Table 13 (on the following two pages) reports the mean number of discovery events that occurred in each completed project and historical period case.

TABLE 13

MEAN DISCOVERY EVENTS PER CASE (IN COMPLETED CASES)

	19 95-97	19 92-94
ANDROSCOGGIN		
Depositions	1.9	1.2
Requests for production	1.7	1.2
Interrogatories	1.4	1.1
Requests for exams	0.2	0.0
Requests for admission	0.2	0.2
Total Discovery Events	5.4	3.7
AROOSTOOK		
Depositions	1.0	1.3
Requests for production	0.6	0.6
Interrogatories	0.6	0.7
Requests for exams	0.0	0.0
Requests for admission	0.1	0.1
Total Discovery Events	2.3	2.7
KENNEBEC		
Depositions	1.1	1.8
Requests for production	1.0	1.0
Interrogatories	0.7	0.7
Requests for exams	0.0	0.0
Requests for admission	0.1	0.1
Total Discovery Events	2.9	3.6
SAGADAHOC		
Depositions	1.0	0.9
Requests for production	0.1	0.9
Interrogatories	0.9	0.8
Requests for exams	0.0	0.0
Requests for admission	0.1	0.2
Total Discovery Events	2.1	2.8

OXFORD		
Depositions	2.6	1.8
Requests for production	1.2	1.3
Interrogatories	0.9	1.3
Requests for exams	0.0	0.0
Requests for admission	0.2	0.2
Total Discovery Events	4.9	4.5
PENOBSCOT		
Depositions	1.5	0.9
Requests for production	1.0	0.7
Interrogatories	0.8	0.7
Requests for exams	0.0	0.0
Requests for admission	0.1	0.2
Total Discovery Events	3.4	2.5

In both of the "early" counties, where the impact of the conference on discovery events would be expected to be greater than in the "later" counties, substantial decreases in formal requests for discovery occurred during the project period as compared with the historical period. In Kennebec, average discovery events per case dropped by 19.4 percent, and in Sagadahoc there was a 25 percent decrease.

In the "later" counties, where conferences were scheduled approximately halfway through the discovery period, the results were mixed. Aroostook had a 14.8 percent decrease in requests for discovery, but in Androscoggin the rate of requests per case rose by 45.9 percent in the project period. Both of the control counties experienced increases in discovery events per case during the project period -- a moderate 8.9 percent rise in Oxford, and a more substantial 36 percent increase in Penobscot.

Judicial Events (Motions and Pretrial Hearings)

Did the screening conferences, by encouraging and facilitating settlement efforts, reduce reliance on formal motions and court hearings to resolve such motions? Table 14 displays data on the percentages of completed cases with motions.

TABLE 14

FREQUENCIES (IN PERCENTAGES)OF COMPLETED CASES WITH MOTIONS

	1995-97	1992-94
ANDROSCOGGIN	53.9	53.8
AROOSTOOK	53.3	63.8
KENNEBEC	52.6	61.4
SAGADAHOC	58.5	61.2
OXFORD	61.1	63.2
PENOBSCOT	67.2	61.2

These data show that in three of the experimental counties there were reductions from the historical period to the project period in the percentage of cases with motions. The exception was Androscoggin County, which saw no change. In the control counties, Oxford also experienced a decrease during the project period in its percentage of cases with motions, while in Penobscot there was an increase. The overall rate of reduction in the experimental counties was considerably greater than in the control counties.

Did the Dispute Resolution Conference Pilot Project affect the frequency of formal pretrial hearings? Table 15 reports data on the percentages of completed cases in each county with no, one, two, and three or more pretrial hearings.

TABLE 15

FREQUENCIES (IN PERCENTAGES) OF COMPLETED CASES

IN WHICH PRETRIAL HEARINGS WERE HELD

	NO HEARINGS		ONE HEARING		TWO HEARINGS		THREE/MORE HEARINGS	
	95-97	92-94	95-97	92-94	95-97	92-94	95-97	92-94
ANDRO	82.7	78.3	14.8	17.4	1.2	4.3	1.2	0.0
AROOS	96.1	92.6	3.4	7.4	0.6	0.0	0.0	0.0
KEN	82.9	80.7	12.7	10.5	3.2	7.0	1.2	1.8
SAG	82.7	75.0	15.4	20.8	0.0	2.1	1.9	2.1
OXF	77.9	76.5	17.9	16.2	4.2	2.9	0.0	4.4
PEN	76.4	81.6	19.2	16.3	3.2	2.0	1.2	0.0

The table shows that in each of the experimental counties there was a moderately greater percentage of cases with no hearing during the project period as compared with the historical period. The percentage of no-hearing cases increased slightly in one control county, and declined in the other.

Another important measure of the pilot project's impact on the use of judicial resources can be found in the disposition data reported earlier in Table 9 (on pages 21 and 22, above). Those data show significant overall decreases in the frequencies of dispositive motions and trials in the experimental counties. In the experiemental counties, dispositive motions fell by 21.3 percent, and trials declined by 58.1 percent. This compares with an increase of 9.5 percent and a reduction of 25.9 percent, respectively, in the control counties. Kennebec was the only experimental county in which the frequency of dispositive motions increased in the project period compared with the historical period. Since Kennebec was also the only experimental county in which settlement rates did not increase for the project period, it seems that the greatest impact of the project there may have been in the encouragement of early filings of dispositive motions.

Summarizing the evidence from the case files relating to requests for discovery, formal motions, and court hearings, it is clear that the pilot project had positive impacts in each area measured. Discovery requests declined in all experimental counties except Androscoggin, while rising in the control counties. The reductions were particularly striking in the "early" counties. It is clear that scheduling dispute resolution conferences before the discovery period very definitely reduced the use of formal discovery.

Three of the experimental counties also experienced decreases in the percentages of completed cases with formal motions. Again, the exception was Androscoggin County, which held steady. The rate of cases with motions rose in one of the control counties and fell in the other, but the overall decrease in motion cases was much smaller in the control counties than in the experimental counties.

Finally, all four experimental counties experienced increases for the project period in cases with no pretrial hearings. The rate of increase in the experimental counties was much greater than in the control counties, where in one county the frequency of no-hearing cases rose and in the other it fell.

Research Question 5: Were the conference neutrals and the dispute resolution conferences themselves valued by the participants?

The exit survey asked parties and lawyers a number of questions about their assessments of the utility of the dispute resolution conference and the effectiveness of the neutral. Tables 16 and 17 (on the following two pages) display data on the conference participants' responses to these queries.

TABLE 16

UTILITY OF DISPUTE RESOLUTION CONFERENCE

How Useful Was the Conference in ...	VERY		FAIRLY		SLIGHTLY		NOT	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
Clarifying the Issues in Dispute?								
ATTORNEYS	216	25.4	321	37.8	191	22.5	121	14.3
PARTIES	228	29.2	316	40.4	164	21.0	74	9.5
Providing Information About Dispute Resolution?								
ATTORNEYS	179	21.3	297	35.4	216	25.7	147	17.5
PARTIES	242	31.2	345	44.5	128	16.5	60	7.7
Scheduling Next Events in Litigation Process?								
ATTORNEYS	281	34.5	284	34.9	130	16.0	120	14.7
PARTIES	294	38.4	309	40.4	111	14.5	51	6.7
Increasing Likelihood of Settling Some or All Issues?								
ATTORNEYS	213	25.1	228	26.9	225	26.5	182	21.5
PARTIES	177	22.8	242	31.1	209	26.9	150	19.3

TABLE 17

EFFECTIVENESS OF NEUTRAL

How effective was the Neutral at ...	VERY		SOMEWHAT		SLIGHTLY		NOT	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
Understanding the Issues in Dispute?								
ATTORNEYS	599	70.9	197	23.3	42	5.0	7	0.8
PARTIES	388	49.9	301	38.7	69	8.9	20	2.6
Being Fair and Even-handed?								
ATTORNEYS	740	87.5	95	11.2	8	1.0	3	0.4
PARTIES	513	66.2	211	27.2	44	5.7	7	0.9
Managing the Conference?								
ATTORNEYS	674	79.6	149	17.6	17	2.0	7	0.8
PARTIES	548	70.7	181	23.4	39	5.0	7	0.9

The data in Table 16 suggest that the most important dispute resolution conference functions -- providing ADR information, organizing litigation events, and laying the groundwork for settlement -- were all well received by both lawyers and litigants. Likewise, Table 17 provides strong evidence that the neutrals themselves were given high marks by the participants for their knowledge, fairness, and skill. It is worth noting that attorneys rated the neutral's performance more highly than parties, while parties reported finding the conference more useful than attorneys. Perhaps the attorneys' relative familiarity with the screening conferences slightly reduced their perceptions of their utility, while their professional training may have made them especially sensitive to and appreciative of their colleagues' performances as neutrals.

5. Conclusion

This evaluation of the Maine Superior Court Alternative Dispute Resolution Pilot Project concludes that the project has substantially succeeded in meeting its goals. Dispute resolution conferences have been successful in increasing overall ADR use, rates of settlement, rates of early settlement, and case completions; and in reducing reliance on formal discovery, motions, and

judicial hearings. Moreover, the conference participants themselves reportedly found the conferences useful in terms both of case management and of settlement, and considered the neutrals to be highly effective in their various roles. As policy-makers consider the next steps beyond the pilot project, they should recognize the basic soundness of this program's design.

Of course, the results reported here are complex, and not uniformly positive. For example, although the data on ADR use are not completely reliable, they do raise questions about whether the project was as effective as it might have been in promoting greater use of formal ADR. To do so, the neutral's authority to order parties into ADR might have to be reinforced. That in turn could conflict with the neutral's role as a non-coercive mediator. Policy-makers may ultimately have to pick and choose among the various worthy goals encompassed within this pilot project.

Finally, this analysis also makes clear that some of the positive results achieved by the pilot project were not experienced in all four experimental counties. The findings for Androscoggin County were sometimes particularly anomalous. While it is beyond the scope of this evaluation to determine why this was so, these results will no doubt remind policy-makers of the important interplay between statewide policy and local legal culture.

APPENDIX A: DATA COLLECTION INSTRUMENTS

1. Case File Data Collection Sheets

2. Dispute Resolution Conference Exit Survey Forms (For Neutrals, Attorneys, and Parties)

DOCKET BOOK DATA COLLECTION FORM
(HISTORICAL AND CONTROL CASES)

1. DOCKET NUMBER _____

2. COUNTY _____

3. WAS THIS CASE CONSOLIDATED WITH ANOTHER CASE?

_____ Yes
_____ No

If yes, with which one(s)?

First consolidated case _____
Second consolidated case _____
Third consolidated case _____
Fourth consolidated case _____

4. WAS THERE A THIRD-PARTY COMPLAINT?

_____ Yes
_____ No

5. WHAT TYPE OF ACTION TOOK PLACE?

_____ Complaint for trespassing
_____ Complaint to enforce lien
_____ Complaint to quiet title
_____ Verified complaint
_____ Complaint for damages
_____ Set aside for conveyance of real estate
_____ Contract for sale of real estate
_____ Establish location of property line
_____ Complaint for injunction
_____ Complaint for negligence
_____ Lien complaint
_____ Rule 80B appeal
_____ Foreclosure
_____ Infraction of zoning ordinance
_____ Removal from probate
_____ Complaint for forfeiture
_____ Complaint for goods and services sold and delivered
_____ Complaint for breach of warranty
_____ Complaint for breach of contract
_____ Complaint for partition of real property

_____ Complaint for Maine Lemon Law
_____ Complaint on promissory note
_____ Personal injury
_____ Complaint for declaratory judgment
_____ Real property action
_____ Complaint for accounting
_____ Equitable action
_____ Complaint to recover deposit on purchase price and for recision
_____ Not stated
_____ Other

6. NUMBER OF PLAINTIFFS
_____ One party
_____ Two parties
_____ Three parties
_____ Four or more parties

7. TYPE OF PLAINTIFF(S)
_____ One individual
_____ Two or more related people
_____ Two or more unrelated people
_____ Business
_____ Municipality or public officials
_____ Citizen's group
_____ Inhabitants of a municipality
_____ Other (specify) _____

8. NUMBER OF DEFENDANTS
_____ One party
_____ Two parties
_____ Three parties
_____ Four or more parties

9. TYPE OF DEFENDANT(S)
_____ One individual
_____ Two or more related people
_____ Two or more unrelated people
_____ Business
_____ Municipality or public officials
_____ Citizen's group
_____ Inhabitants of a municipality
_____ Other (specify) _____

10. WHO RECEIVED REPRESENTATION?
_____ All parties

_____ Plaintiff only
_____ Defendant only
_____ Neither

11. PLAINTIFF'S ATTORNEY _____
ADDRESS _____

12. DEFENDANT'S ATTORNEY _____
ADDRESS _____

13. DATE OF FILING OF COMPLAINT (DAY, MONTH, YEAR) _____

14. DATE OF PRETRIAL SCHEDULING STATEMENT (DAY, MONTH, YEAR)
_____

15. DATE OF PRETRIAL ORDER (DAY, MONTH, YEAR) _____

16. TO WHICH TRACK DOES CASE BELONG?
_____ Expedited track
_____ Regular track

17. TIME GIVEN FOR DISCOVERY FROM PRETRIAL SCHEDULING ORDER
_____

18. WHAT TYPE AND AMOUNT OF DISCOVERY TOOK PLACE?
Number of depositions _____
Number of requests for production of documents/things _____
Number of interrogatories _____
Number of requests for physical/mental examinations _____
Number of requests for admission _____

19. NUMBER OF REQUESTS TO EXTEND DISCOVERY DEADLINE
_____ None
_____ One request
_____ Two requests
_____ Three requests
_____ Four requests
_____ Five or more requests

20. WHICH OF THE FOLLOWING MOTIONS TOOK PLACE?
_____ Motion to amend complaint
_____ Motion to compel
_____ Motion for summary judgment
_____ Motion to withdraw as counsel
_____ Motion to amend pretrial order

_____ Motion to extend time for filing of report of conference of counsel
_____ Motion to extend tome for filing of briefs
_____ Motion for entry of judgment
_____ Other (specify) _____

___ Cont.
___ Dismiss.

21. HOW MANY HEARINGS WERE HELD?
_____ None
_____ One
_____ Two
_____ Three
_____ Four
_____ Five or more

22. WHAT TYPE OF TRIAL WAS SCHEDULED?
_____ Jury trial
_____ Non-jury trial
_____ No trial scheduled

23. WAS TRIAL HELD?
_____ Yes
_____ No

24. DATE OF RESOLUTION OR DISMISSAL (DAY, MONTH, YEAR) _____

25. WHAT WAS THE OUTCOME?
_____ Dismissed with prejudice
_____ Dismissed without prejudice
_____ Rule 41A dismissal
_____ Dismissed at request of party or parties
_____ Dismissed for failure to pay docket entry
_____ Judgment for plaintiff
_____ Judgment for defendant
_____ Stipulated judgment/consent judgment
_____ Bankruptcy
_____ Remand/removal to district court
_____ Other (specify) _____

26. WHAT WAS THE JUDGMENT?
(Includes payment of opposing party's legal fees)
_____ Non-monetary judgment or sum not stated
_____ $1000 or less
_____ $1001 to $5000
_____ $5001 to $10,000
_____ $10,001 to $20,000
_____ $20,001 to $40,000

____ $40,001 to $80,000
____ $80,001 and over
____ Not yet determined
____ No judgment due to dismissal

27. IS THE CASE COMPLETED?
____ Yes
____ No

28. WAS THERE A MOTION TO AMEND THE JUDGMENT?
____ Yes
____ No

29. WAS AN APPEAL FILED?
____ Yes
____ No

30. ADR?
____ Yes
____ No

31. CONFERENCE HELD?
_____ Date

32. 1997 CASES ONLY:
CIRCLE APPROPRIATE PREFIX
1 CV
2 RE

33. NEUTRAL REPORT:
1 3 6
2 4
5

34. ANY MEDIATION ORDERED OR SCHEDULED?
1 Yes
2 No

35. IF YES: WHEN WAS MEDIATION HELD?
_____ DATE HELD
999997 NOT HELD
999998 HELD, DON'T KNOW DATE
999999 DON'T KNOW IF HELD
000000 INAP (34 = NO)

CONFERENCE NEUTRAL QUESTIONNAIRE

Please complete this form immediately after the Dispute Resolution Conference and mail it along with participants' questionnaires in the envelope provided.

1. Case Docket Number _____

2. County _____

3. Conference location _____
_____

4. *How long* did the Conference last? _____

5. *How many hours* did you devote to this Conference? Include time spent in scheduling, preparation, and completing forms and reports, as well as actual conference time.
_____

6. *How much time, if any*, was devoted to each of the following during the Conference? (Please circle number corresponding to your response.)

a) Sharpening the issues in dispute

4	3	2	1
A Great Deal	Some	Very Little	None

b) Exchanging or arranging for the exchange of information between the parties

4	3	2	1
A Great Deal	Some	Very Little	None

c) Reviewing dispute resolution options

4	3	2	1
A Great Deal	Some	Very Little	None

d) Working to settle some or all of the issues in dispute

4	3	2	1
A Great Deal	Some	Very Little	None

7. Did you encounter any particular *logistical or procedural problems* in scheduling or holding the Conference? (If yes, please explain).

_____ Yes _____ No

8. *How much of <u>your</u> time , if any*, was devoted to each of the following during the Conference? (Please circle number corresponding to your response.)

a) Caucusing privately with each side

4	3	2	1
A Great Deal	Some	Very Little	None

b) Meeting privately with the lawyers only

4	3	2	1
A Great Deal	Some	Very Little	None

c) Giving each side your views of the merits of their case

4	3	2	1
A Great Deal	Some	Very Little	None

d) Encouraging the parties to participate more actively

4	3	2	1
A Great Deal	Some	Very Little	None

9. How would you describe *the relative levels of participation* in the Conference by the attorney(s) and party(ies) on each side?

PLAINTIFF'S SIDE

____ Exclusively attorney(s)
____ Mostly attorney(s)
____ Evenly divided between attorney(s) and party(ies)
____ Mostly party(ies)
____ Exclusively party(ies)

DEFENDANT'S SIDE

____ Exclusively attorney(s)
____ Mostly attorney(s)
____ Evenly divided between attorney(s) and party(ies)
____ Mostly party(ies)
____ Exclusively party(ies)

10. *How co-operative, if at all*, were each of the participants in the Conference process?

PLAINTIFF

3	2	1
Very	Somewhat	Not At All

PLAINTIFF'S ATTORNEY

3	2	1
Very	Somewhat	Not At All

DEFENDANT

3	2	1
Very	Somewhat	Not At All

DEFENDANT'S ATTORNEY

3	2	1
Very	Somewhat	Not At All

ON BACK OF PAGE, PLEASE FEEL FREE TO ADD WRITTEN COMMENTS ON ANY ASPECTS OF THE DISPUTE RESOLUTION CONFERENCE

PLEASE COLLECT PARTICIPANTS' QUESTIONNAIRES AND MAIL WITH THIS FORM IN THE ENVELOPE PROVIDED.

THANK YOU VERY MUCH FOR YOUR COOPERATION

CASE DOCKET # _____

County _____

CASE CONFERENCE EXIT QUESTIONNAIRE FOR ATTORNEYS

The Administrative Office of the Courts is conducting an evaluation of the Alternative Dispute Resolution Pilot Project in Superior Court. Please take a few moments to answer the following questions about the Dispute Resolution Conference you have just completed. The questionnaire will be seen only by independent researchers at the Muskie Institute of Public Affairs. Your responses will be treated in complete confidence and will have no effect whatsoever on your case.

PLEASE CIRCLE THE NUMBER CORRESPONDING TO YOUR RESPONSE TO EACH QUESTION. FEEL FREE TO ADD WRITTEN COMMENTS AFTER ANY QUESTION.

1. *How well* would you say you understood the purpose of the Dispute Resolution Conference before it began?

4	3	2	1
VERY WELL	FAIRLY WELL	ONLY SLIGHTLY	NOT WELL AT ALL

2. *How useful* was the Dispute Resolution Conference to you in each of the following areas?

a. Clarifying the issues in dispute in the case.

4	3	2	1
VERY USEFUL	SOMEWHAT USEFUL	ONLY SLIGHTLY USEFUL	NOT AT ALL USEFUL

b. Providing information about the advantages and disadvantages of various dispute resolution methods.

4	3	2	1
VERY USEFUL	SOMEWHAT USEFUL	ONLY SLIGHTLY USEFUL	NOT AT ALL USEFUL

c. Scheduling the next events in the discovery and/or motion process.

4	3	2	1
VERY USEFUL	SOMEWHAT USEFUL	ONLY SLIGHTLY USEFUL	NOT AT ALL USEFUL

d. Increasing the likelihood of a settlement of some or all issues in the case.

4	3	2	1
VERY USEFUL	SOMEWHAT USEFUL	ONLY SLIGHTLY USEFUL	NOT AT ALL USEFUL

e. Giving your client a better understanding of the case.

4	3	2	1
VERY USEFUL	SOMEWHAT USEFUL	ONLY SLIGHTLY USEFUL	NOT AT ALL USEFUL

3. Prior to this case, *how many Dispute Resolution Conferences, if any,* had you participated in?

3	2	1
THREE OR MORE	ONE OR TWO	NONE

4. Do you represent the *plaintiff* or the *defendant* in this case?

2	1
PLAINTIFF	DEFENDANT

5. *How effective* was the Conference Neutral in each of the following areas?

a. Understanding the issues in the case.

4	3	2	1
VERY EFFECTIVE	SOMEWHAT EFFECTIVE	ONLY SLIGHTLY EFFECTIVE	NOT AT ALL EFFECTIVE

b. Being fair and even-handed.

4	3	2	1
VERY EFFECTIVE	SOMEWHAT EFFECTIVE	ONLY SLIGHTLY EFFECTIVE	NOT AT ALL EFFECTIVE

c. Managing the conference.

4	3	2	1
VERY EFFECTIVE	SOMEWHAT EFFECTIVE	ONLY SLIGHTLY EFFECTIVE	NOT AT ALL EFFECTIVE

d. Providing useful information about dispute resolution alternatives.

4	3	2	1
VERY EFFECTIVE	SOMEWHAT EFFECTIVE	ONLY SLIGHTLY EFFECTIVE	NOT AT ALL EFFECTIVE

6. How would you feel about *using this Conference Neutral again* if the occasion arose?

5	4	3	2	1
STRONGLY POSITIVE	POSITIVE	NEGATIVE	STRONGLY NEGATIVE	NOT SURE

7. Please give your best estimate of *the amount of time* you devoted to this Dispute Resolution Conference. On the first line, include any time you spent preparing for the conference, conferring with your client, waiting for the conference to begin, and participating in the conference. On the second line, estimate the time you spent travelling to and from the conference.

_____ HOURS (NON-TRAVEL) _____ HOURS (TRAVEL)

8. What do you think will be the ultimate effect of the Dispute Resolution Conference on your *client's costs* in this case?

5	4	3	2	1
WILL INCREASE COSTS SUBSTANTIALLY	WILL INCREASE COSTS MARGINALLY	WILL NOT AFFECT COSTS	WILL DECREASE COSTS MARGINALLY	WILL DECREASE COSTS SUBSTANTIALLY

_____ CANNOT TELL

ON THE BACKS OF THESE PAGES, PLEASE ADD ANY COMMENTS YOU MAY WISH TO MAKE ABOUT THE DISPUTE RESOLUTION CONFERENCE.
WE ARE PARTICULARLY INTERESTED IN YOUR SUGGESTIONS ABOUT HOW THE CONFERENCE COULD BE IMPROVED.

THANK YOU VERY MUCH FOR YOUR COOPERATION.
PLEASE SEAL THIS QUESTIONNAIRE IN THE ENVELOPE PROVIDED AND RETURN IT TO THE CONFERENCE NEUTRAL.

CASE CONFERENCE EXIT QUESTIONNAIRE FOR PARTIES

The Administrative Office of the Courts is conducting an evaluation of the Alternative Dispute Resolution Pilot Project in Superior Court. Please take a few moments to answer the following questions about the Dispute Resolution Conference you have just completed. The questionnaire will be seen only by independent researchers at the Muskie Institute of Public Affairs. Your responses will be treated in complete confidence and will have no effect whatsoever on your case.

PLEASE CIRCLE THE NUMBER CORRESPONDING TO YOUR RESPONSE TO EACH QUESTION. FEEL FREE TO ADD WRITTEN COMMENTS AFTER ANY QUESTION.

1. *How well* would you say you understood the purpose of the Dispute Resolution Conference before it began?

4	3	2	1
VERY WELL	FAIRLY WELL	ONLY SLIGHTLY	NOT WELL AT ALL

2. *How useful* was the Dispute Resolution Conference to you in each of the following areas?

a. Clarifying the issues in dispute in the case.

4	3	2	1
VERY USEFUL	SOMEWHAT USEFUL	ONLY SLIGHTLY USEFUL	NOT AT ALL USEFUL

b. Providing information about the advantages and disadvantages of various dispute resolution methods.

4	3	2	1
VERY USEFUL	SOMEWHAT USEFUL	ONLY SLIGHTLY USEFUL	NOT AT ALL USEFUL

c. Scheduling the next events in the litigation process.

4	3	2	1
VERY USEFUL	SOMEWHAT USEFUL	ONLY SLIGHTLY USEFUL	NOT AT ALL USEFUL

d. Increasing the likelihood of a settlement of some or all issues in the case.

4	3	2	1
VERY USEFUL	SOMEWHAT USEFUL	ONLY SLIGHTLY USEFUL	NOT AT ALL USEFUL

3. Prior to this case, *how many Dispute Resolution Conferences, if any,* had you participated in?

3	2	1
THREE OR MORE	ONE OR TWO	NONE

4. Prior to this case, *how much experience, if any,* had you had with civil lawsuits?

4	3	2	1
A GREAT DEAL	SOME	VERY LITTLE	NONE

5. *How effective* was the Conference Neutral in each of the following areas?

a. Understanding the issues in the case.

4	3	2	1
VERY EFFECTIVE	SOMEWHAT EFFECTIVE	O NLY SLIGHTLY EFFECTIVE	NOT AT ALL EFFECTIVE

b. Being fair and even-handed.

4	3	2	1
VERY EFFECTIVE	SOMEWHAT EFFECTIVE	ONLY SLIGHTLY EFFECTIVE	NOT AT ALL EFFECTIVE

c. Managing the conference.

4	3	2	1
VERY EFFECTIVE	SOMEWHAT EFFECTIVE	ONLY SLIGHTLY EFFECTIVE	NOT AT ALL EFFECTIVE

d. Providing useful information about dispute resolution alternatives.

4	3	2	1
VERY EFFECTIVE	SOMEWHAT EFFECTIVE	ONLY SLIGHTLY EFFECTIVE	NOT AT ALL EFFECTIVE

6. How would you feel about *using this Conference Neutral again* if the occasion arose?

5	4	3	2	1
STRONGLY POSITIVE	POSITIVE	NEGATIVE	STRONGLY NEGATIVE	NOT SURE

7. What was *your role* in this case?

3	2	1
PLAINTIFF	DEFENDANT	INSURANCE ADJUSTER

8. Please give your best estimate of *the amount of time* you devoted to this Dispute Resolution Conference. On the first line, include any time you spent preparing for the conference, conferring with your attorney, waiting for the conference to begin, and participating in the conference itself. On the second line, estimate the time you spent travelling to and from the conference.

_____ HOURS (NON-TRAVEL) _____ HOURS (TRAVEL)

ON THE BACKS OF THESE PAGES, PLEASE ADD ANY COMMENTS YOU MAY WISH TO MAKE ABOUT THE DISPUTE RESOLUTION CONFERENCE.
WE ARE PARTICULARLY INTERESTED IN YOUR SUGGESTIONS ABOUT HOW THE CONFERENCE COULD BE IMPROVED.

THANK YOU VERY MUCH FOR YOUR COOPERATION.
PLEASE SEAL THIS QUESTIONNAIRE IN THE ENVELOPE PROVIDED AND RETURN IT TO THE CONFERENCE NEUTRAL.

APPENDIX B: DISPUTE RESOLUTION CONFERENCE EXIT SURVEY RESULTS

SCREENING CONFERENCE EXIT SURVEY RESULTS

A. CONFERENCE NEUTRAL RESPONSES

TABLE N1

AVERAGE TIME (IN HOURS) SPENT PREPARING FOR AND CONDUCTING CASE CONFERENCE

	SCHEDULING AND PREPARATION	CONDUCTING CONFERENCE	TOTAL
ANDROSCOGGIN	1.7	1.5	3.2
AROOSTOOK	4.4	1.6	6.0
KENNEBEC	1.9	1.4	3.3
SAGADAHOC	2.5	1.7	4.2

TABLE N2

TIME DEVOTED TO SHARPENING ISSUES IN DISPUTE

	GREAT DEAL		SOME		VERY LITTLE		NO	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	32	23.9	62	46.3	34	25.4	6	4.5
AROOSTOOK	37	27.8	71	53.4	24	18.1	1	0.8
KENNEBEC	56	27.6	113	55.7	24	11.8	10	4.9
SAGADAHOC	11	26.2	23	54.8	8	19.1	0	0.0
ALL	136	26.6	269	52.5	90	19.1	17	3.3

TABLE N3

TIME DEVOTED TO EXCHANGING/ARRANGING TO EXCHANGE INFORMATION

	GREAT DEAL		SOME		VERY LITTLE		NO	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	13	9.7	51	38.1	51	38.1	19	14.2
AROOSTOOK	15	11.2	65	48.5	47	35.1	7	5.2
KENNEBEC	26	12.8	114	56.2	53	26.1	10	4.9
SAGADAHOC	1	2.4	20	47.6	20	47.6	1	2.4
ALL	55	10.7	250	48.7	171	33.3	37	7.2

TABLE N4

TIME DEVOTED TO REVIEWING DISPUTE RESOLUTION OPTIONS

	GREAT DEAL		SOME		VERY LITTLE		NO	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	10	7.4	79	58.5	39	28.9	7	5.2
AROOSTOOK	27	20.5	76	57.6	26	19.7	3	2.3
KENNEBEC	15	7.4	126	62.1	51	25.1	11	5.4
SAGADAHOC	4	9.5	23	54.7	15	35.7	0	0.0
ALL	56	10.9	304	59.4	131	25.6	21	4.1

TABLE N5

TIME DEVOTED TO SETTLING SOME OR ALL ISSUES IN DISPUTE

	GREAT DEAL		SOME		VERY LITTLE		NO	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	51	38.6	42	31.8	24	18.2	15	11.4
AROOSTOOK	58	43.3	40	29.9	27	20.2	9	6.7
KENNEBEC	52	25.7	70	34.7	54	26.7	26	12.9
SAGADAHOC	18	42.9	15	35.7	7	16.7	2	4.8
ALL	179	35.1	167	32.8	112	22.0	52	10.2

TABLE N6

TIME DEVOTED TO CAUCUSING PRIVATELY WITH EACH SIDE

	GREAT DEAL		SOME		VERY LITTLE		NO	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	35	25.9	50	37.0	4	3.0	46	34.1
AROOSTOOK	30	22.6	43	32.3	9	6.8	51	38.4
KENNEBEC	35	17.3	69	34.2	20	9.9	78	38.6
SAGADAHOC	10	23.8	21	50.0	2	4.8	9	21.4
ALL	110	21.5	183	35.7	35	6.8	184	35.9

TABLE N7

TIME DEVOTED TO MEETING PRIVATELY WITH LAWYERS ONLY

	GREAT DEAL		SOME		VERY LITTLE		NO	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	5	3.7	22	16.3	17	12.6	91	67.4
AROOSTOOK	9	6.7	23	17.2	11	8.2	91	67.9
KENNEBEC	11	5.5	23	11.5	27	13.5	139	69.5
SAGADAHOC	4	9.5	6	14.3	6	14.3	26	61.9
ALL	29	5.7	74	14.5	61	11.9	347	67.9
ANDROSCOGGIN	10	7.4	49	36.3	36	26.7	40	29.6
AROOSTOOK	6	4.5	67	50.0	32	23.9	29	21.6
KENNEBEC	4	2.0	75	37.1	68	33.7	55	27.2
SAGADAHOC	0	0.0	18	42.9	15	35.7	9	21.4
ALL	20	3.9	209	40.7	151	29.4	133	25.9

TABLE N8

TIME DEVOTED TO ENCOURAGING THE PARTIES TO PARTICIPATE MORE ACTIVELY

	GREAT DEAL		SOME		VERY LITTLE		NO	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct
ANDROSCOGGIN	12	9.0	34	25.6	47	35.3	40	30.1
AROOSTOOK	17	12.8	53	39.9	35	26.3	28	21.1
KENNEBEC	4	2.0	58	29.2	85	42.7	52	26.1
SAGADAHOC	0	0.0	22	53.7	11	26.8	8	19.5
ALL	33	6.5	167	33.0	178	35.2	128	25.3

TABLE N9

LEVELS OF ACTIVITY, PLAINTIFF'S SIDE

	EXCLUSIVELY ATTORNEY		MOSTLY ATTORNEY		EVENLY DIVIDED		MOSTLY PARTY		EXCLUSIVELY PARTY	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	36	26.9	49	36.6	45	33.6	4	3.0	0	0.0
AROOSTOOK	24	18.2	41	31.1	58	43.9	9	6.8	0	0.0
KENNEBEC	52	26.0	87	43.5	53	26.5	6	3.0	2	1.0
SAGADAHOC	9	21.4	15	35.7	18	42.9	0	0.0	0	0.0
ALL	121	23.8	192	37.8	174	34.3	19	3.7	2	0.0

TABLE N10

LEVELS OF ACTIVITY, DEFENDANT'S SIDE

	EXCLUSIVELY ATTORNEY		MOSTLY ATTORNEY		EVENLY DIVIDED		MOSTLY PARTY		EXCLUSIVELY PARTY	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	52	38.8	43	32.1	30	22.4	8	6.0	1	1.0
AROOSTOOK	60	45.5	35	26.5	30	22.7	4	3.0	3	2.3
KENNEBEC	68	34.0	77	38.5	45	22.5	6	3.0	4	2.0
SAGADAHOC	16	38.1	10	23.8	15	35.7	0	0.0	1	2.4
ALL	196	38.6	165	32.5	120	23.6	18	3.5	9	1.8

TABLE N11

LEVELS OF COOPERATION, PLAINTIFF'S SIDE

	PLAINTIFF						PLAINTIFF'S ATTORNEY					
	Very Coop		Somewhat Coop		Not Coop		Very Coop		Somewhat Coop		Not Coop	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	96	78.1	24	19.5	3	2.4	103	79.8	23	17.8	3	2.3
AROOSTOOK	96	79.3	23	19.0	2	1.7	111	84.1	20	15.2	1	1.0
KENNEBEC	134	79.8	34	20.2	0	0.0	173	86.5	25	12.5	2	1.0
SAGADAHOC	23	62.2	13	35.1	1	2.7	37	88.1	5	11.9	0	0.0
ALL	349	77.3	94	21.0	6	1.3	424	84.3	73	14.5	6	1.2

TABLE N12

LEVELS OF COOPERATION, DEFENDANT'S SIDE

	DEFENDANT						DEFENDANT'S ATTORNEY					
	Very Coop		Somewhat Coop		Not Coop		Very Coop		Somewhat Coop		Not Coop	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	65	65.7	27	27.3	7	7.1	103	80.5	22	17.2	3	2.3
AROOSTOOK	59	62.8	26	27.7	9	9.6	108	85.0	18	14.2	1	0.8
KENNEBEC	111	72.6	33	21.6	9	5.9	161	82.2	32	16.3	3	1.5
SAGADAHOC	19	55.9	12	35.3	3	8.8	31	75.6	9	22.0	1	2.4
ALL	254	66.8	98	25.8	28	7.4	403	81.9	81	16.5	8	1.6

B. ATTORNEY AND PARTY RESPONSES

TABLE P1

RESPONDENT'S ROLE IN CASE

ATTORNEYS

	REPRESENTED PLAINTIFF		REPRESENTED DEFENDANT	
	No.	Pct.	No.	Pct.
ANDROSCOGGIN	112	48.7	118	51.3
AROOSTOOK	90	48.4	96	51.6
KENNEBEC	171	47.2	188	51.9
SAGADAHOC	31	48.4	33	51.6
ALL	404	48.0	435	51.7

PARTIES

	PLAINTIFF		DEFENDANT		ADJUSTER	
	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	105	49.3	69	32.4	39	18.3
AROOSTOOK	87	58.8	46	31.1	15	10.1
KENNEBEC	158	46.8	133	39.4	47	13.9
SAGADAHOC	38	58.5	17	26.2	9	13.9
ALL	388	50.8	265	34.7	110	14.4

TABLE P2

PREVIOUS PARTICIPATION IN DISPUTE RESOLUTION CONFERENCES

ATTORNEYS

	NONE		ONE OR TWO		THREE OR MORE	
	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	31	13.5	35	15.2	164	71.3
AROOSOTOOK	33	17.6	23	12.2	131	69.7
KENNEBEC	77	21.2	73	20.1	213	58.5
SAGADAHOC	12	17.9	8	11.9	47	70.2
ALL	153	18.0	139	16.4	555	65.4

PARTIES

	NONE		ONE OR TWO		THREE OR MORE	
	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	151	69.9	23	10.7	42	19.4
AROOSTOOK	115	76.2	17	11.3	19	12.6
KENNEBEC	245	70.8	42	12.1	59	17.1
SAGADAHOC	54	79.4	5	7.4	9	13.2
ALL	565	72.3	87	11.1	129	16.5

TABLE P3

HOW WELL DID YOU UNDERSTAND PURPOSE OF CONFERENCE BEFORE IT BEGAN?

ATTORNEYS

	VERY		FAIRLY		SLIGHTLY		NOT	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	192	82.8	32	13.8	6	2.6	2	0.9
AROOSTOOK	157	83.5	27	14.4	4	2.1	0	0.0
KENNEBEC	283	77.8	63	17.3	15	4.1	2	0.6
SAGADAHOC	56	82.4	10	14.7	1	1.5	1	1.5
ALL	688	80.8	132	15.5	26	3.1	5	0.6

PARTIES

	VERY		FAIRLY		SLIGHTLY		NOT	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	114	52.5	76	35.0	22	10.1	5	2.3
AROOSTOOK	81	53.3	53	34.9	14	9.2	4	2.6
KENNEBEC	163	46.8	123	35.3	43	12.4	19	5.5
SAGADAHOC	40	58.8	21	30.9	4	5.9	3	4.4
ALL	398	50.7	273	34.8	83	10.6	31	4.0

TABLE P4

HOW USEFUL WAS CONFERENCE IN CLARIFYING ISSUES IN DISPUTE?

ATTORNEYS

	VERY		FAIRLY		SLIGHTLY		NOT	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	48	20.8	87	37.7	58	25.1	38	16.5
AROOSTOOK	54	28.9	80	42.8	32	17.1	21	11.2
KENNEBEC	93	25.5	134	36.8	88	24.2	49	13.5
SAGADAHOC	21	31.3	20	29.9	13	19.4	13	19.4
ALL	216	25.4	321	37.8	191	22.5	121	14.3

PARTIES

	VERY		FAIRLY		SLIGHTLY		NOT	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	52	24.0	90	41.5	59	27.2	16	7.4
AROOSTOOK	63	41.5	55	36.2	24	15.8	10	6.6
KENNEBEC	98	28.3	140	40.5	67	19.4	41	11.9
SAGADAHOC	15	22.4	31	46.3	14	20.9	7	10.5
ALL	228	29.2	316	40.4	164	21.0	74	9.46

TABLE P5

HOW USEFUL WAS CONFERENCE IN PROVIDING INFORMATION ABOUT DISPUTE RESOLUTION METHODS?

ATTORNEYS

	VERY		FAIRLY		SLIGHTLY		NOT	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	43	18.9	85	37.3	55	24.1	45	19.7
AROOSTOOK	47	25.3	65	35.0	45	24.2	29	15.6
KENNEBEC	73	20.3	125	34.8	99	27.6	62	17.3
SAGADAHOC	16	24.2	22	33.3	17	25.8	11	16.7
ALL	179	21.3	297	35.4	216	25.7	147	17.5

PARTIES

	VERY		FAIRLY		SLIGHTLY		NOT	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	63	29.3	99	46.1	37	17.2	16	7.4
AROOSTOOK	60	39.7	65	43.1	20	13.3	6	4.0
KENNEBEC	102	29.7	150	43.7	63	18.4	28	8.2
SAGADAHOC	17	25.8	31	47.0	8	12.1	10	15.2
ALL	242	31.2	345	44.5	128	16.5	60	7.7

TABLE P6

HOW USEFUL WAS CONFERENCE IN SCHEDULING NEXT EVENTS IN LITIGATION PROCESS?

ATTORNEYS

	VERY		FAIRLY		SLIGHTLY		NOT	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	64	29.1	77	35.0	39	17.7	40	18.2
AROOSTOOK	55	30.7	64	35.8	31	17.3	29	16.2
KENNEBEC	139	39.4	123	34.8	51	14.5	40	11.3
SAGADAHOC	23	36.5	20	31.8	9	14.3	11	17.5
ALL	281	34.5	284	34.9	130	16.0	120	14.7

PARTIES

	VERY		FAIRLY		SLIGHTLY		NOT	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	69	33.0	92	44.0	33	15.8	15	7.2
AROOSTOOK	65	43.9	60	40.5	14	9.5	9	6.1
KENNEBEC	141	41.4	123	36.1	56	16.4	21	6.2
SAGADAHOC	19	28.4	34	50.8	8	11.9	6	9.0
ALL	294	38.4	309	40.4	111	14.5	51	6.7

TABLE P7

HOW USEFUL WAS CONFERENCE IN INCREASING LIKELIHOOD OF SETTLING SOME OR ALL ISSUES IN DISPUTE?

ATTORNEYS

	VERY		FAIRLY		SLIGHTLY		NOT	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	47	20.4	74	32.0	54	23.4	56	24.2
AROOSTOOK	60	32.1	44	23.5	51	27.3	32	17.1
KENNEBEC	88	24.2	94	25.9	104	28.7	77	21.1
SAGADAHOC	18	26.9	16	23.9	16	23.9	17	25.4
ALL	213	25.1	228	26.9	225	26.5	182	21.5

PARTIES

	VERY		FAIRLY		SLIGHTLY		NOT	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	44	20.5	68	31.6	59	27.4	44	20.5
AROOSTOOK	42	27.6	50	32.9	40	26.3	20	13.2
KENNEBEC	74	21.6	103	30.0	95	27.7	71	20.7
SAGADAHOC	17	25.0	21	30.9	15	22.1	15	22.1
ALL	177	22.8	242	31.1	209	26.9	150	19.3

TABLE P8

HOW USEFUL WAS CONFERENCE IN GIVING CLIENT BETTER UNDERSTANDING OF CASE?

	VERY		SOMEWHAT		SLIGHTLY		NOT	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	35	15.7	78	35.0	53	23.8	56	25.1
AROOSTOOK	46	25.3	64	35.2	36	19.8	36	19.8
KENNEBEC	72	20.2	109	30.6	97	27.3	78	21.9
SAGADAHOC	17	25.0	24	35.3	9	13.2	18	26.5
ALL	170	20.5	275	33.2	195	23.5	188	22.7

TABLE P9

HOW EFFECTIVE WAS NEUTRAL AT UNDERSTANDING ISSUES?

ATTORNEYS

	VERY		SOMEWHAT		SLIGHTLY		NOT	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	162	71.4	48	21.2	12	5.3	5	2.2
AROOSTOOK	139	73.9	38	20.2	11	5.9	0	0.0
KENNEBEC	261	71.9	86	23.7	15	4.1	1	0.3
SAGADAHOC	37	55.2	25	37.3	4	6.0	1	1.5
ALL	599	70.9	197	23.3	42	5.0	7	0.8

PARTIES

	VERY		SOMEWHAT		SLIGHTLY		NOT	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	109	50.7	86	40.0	17	7.9	3	1.4
AROOSTOOK	86	57.3	49	32.7	12	8.0	3	2.0
KENNEBEC	161	46.4	140	40.4	35	10.1	11	3.2
SAGADAHOC	32	48.5	26	39.4	5	7.6	3	4.5
ALL	388	49.9	301	38.7	69	8.9	20	2.6

TABLE P10

HOW EFFECTIVE WAS NEUTRAL AT BEING FAIR AND EVEN-HANDED?

ATTORNEYS

	VERY		SOMEWHAT		SLIGHTLY		NOT	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	200	87.3	26	11.4	2	0.9	1	0.4
AROOSTOOK	169	90.4	17	9.1	1	0.5	1	0.4
KENNEBEC	318	87.6	41	11.3	3	0.8	1	0.3
SAGADAHOC	53	79.1	11	16.4	2	3.0	1	1.5
ALL	740	87.5	95	11.2	8	1.0	3	0.4

PARTIES

	VERY		SOMEWHAT		SLIGHTLY		NOT	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	147	68.4	56	26.1	9	4.2	3	1.4
AROOSTOOK	100	66.7	42	28.0	8	5.3	0	0.0
KENNEBEC	229	66.6	90	26.2	22	6.4	3	0.9
SAGADAHOC	37	56.1	23	34.9	5	7.6	1	1.5
ALL	513	66.2	211	27.2	44	5.7	7	0.9

TABLE P11

HOW EFFECTIVE WAS NEUTRAL AT MANAGING CONFERENCE?

ATTORNEYS

	VERY		SOMEWHAT		SLIGHTLY		NOT	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	176	76.9	43	18.8	8	3.5	2	0.9
AROOSTOOK	156	83.0	29	15.4	2	1.1	1	0.5
KENNEBEC	297	81.8	59	16.3	5	1.4	2	0.6
SAGADAHOC	45	67.2	18	26.9	2	3.0	2	3.0
ALL	674	79.6	149	17.6	17	2.0	7	0.8

PARTIES

	VERY		SOMEWHAT		SLIGHTLY		NOT	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	152	70.7	54	25.1	9	4.2	0	0.0
AROOSTOOK	115	77.2	28	18.8	6	4.0	0	0.0
KENNEBEC	237	68.7	81	23.5	20	5.8	7	2.0
SAGADAHOC	44	66.7	18	27.3	4	6.1	0	0.0
ALL	548	70.7	181	23.4	39	5.0	7	0.9

TABLE P12

HOW EFFECTIVE WAS NEUTRAL AT PROVIDING USEFUL INFORMATION ABOUT DISPUTE RESOLUTION ALTERNATIVES?

ATTORNEYS

	VERY		SOMEWHAT		SLIGHTLY		NOT	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	129	57.6	65	29.0	22	9.8	8	3.6
AROOSTOOK	103	55.6	64	34.8	13	7.1	4	2.2
KENNEBEC	209	58.7	95	26.7	45	12.6	7	2.0
SAGADAHOC	32	49.2	22	33.9	7	10.8	4	6.2
ALL	473	57.1	246	29.7	87	10.5	23	2.8

PARTIES

	VERY		SOMEWHAT		SLIGHTLY		NOT	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	108	50.9	79	37.3	17	8.0	8	3.8
AROOSTOOK	87	58.8	50	33.8	11	7.4	0	0.0
KENNEBEC	157	45.9	122	35.7	46	13.5	17	5.0
SAGADAHOC	35	53.0	23	34.9	5	7.6	3	4.6
ALL	387	50.4	274	35.7	79	10.3	28	3.7

TABLE P12

FEELING ABOUT USING THIS NEUTRAL AGAIN?

ATTORNEYS

	Strong Positive		Positive		Negative		Strong Negative		Not Sure	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	135	59.5	74	32.6	5	2.2	5	2.2	8	3.5
AROOSTOOK	123	66.5	53	28.7	5	2.7	2	1.1	2	1.1
KENNEBEC	191	52.9	145	40.2	10	2.8	3	0.8	12	3.3
SAGADAHOC	33	48.5	19	27.9	10	14.7	1	1.5	5	7.4
ALL	482	57.3	291	34.6	30	3.6	11	1.3	27	3.2

PARTIES

	Strong Positive		Positive		Negative		Strong Negative		Not Sure	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
ANDROSCOGGIN	80	37.2	95	44.2	12	5.6	8	3.7	20	9.3
AROOSTOOK	61	40.9	60	40.3	11	7.4	1	0.7	16	10.7
KENNEBEC	112	32.8	157	46.0	24	7.0	10	2.9	38	11.1
SAGADAHOC	18	27.3	29	43.9	7	10.6	3	4.6	9	13.6
ALL	271	35.2	341	44.2	54	7.0	22	2.9	83	10.8

TABLE P15

EFFECT OF CONFERENCE ON CLIENT'S COSTS?

	Decrease Substantially		Decrease Marginally		Will Not Affect		Increase Marginally		Increase Substantially		Don't Know	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct	No.	Pct..
ANDROSCOGGIN	22	9.7	17	7.5	69	30.5	76	33.6	11	4.8	31	9.7
AROOSTOOK	23	12.6	14	7.7	41	22.5	69	37.9	17	9.4	18	9.9
KENNEBEC	37	10.3	54	15.0	86	23.9	132	36.7	15	4.2	36	10.0
SAGADAHOC	13	19.1	9	13.2	16	23.5	19	27.9	7	10.3	4	5.9
ALL	95	11.4	94	11.2	212	25.4	296	35.4	50	6.0	89	10.7

APPENDIX C: TELEPHONE INTERVIEW RESULTS

Introduction

This is a report of findings from 29 structured interviews conducted with selected key informants concerning their experience with and knowledge of the Alternative Dispute Resolution project. The interviews were conducted between November 15, 1996 and March 11, 1997. Except for two face-to-face interviews with members of the ADR Planning and Implementation Committee, all the conversations took place over the telephone.

Interview respondents included the following:

The Judiciary (3 respondents): A Justice of the Supreme Judicial Court (also a member of the Planning and Implementation Committee) and two Superior Court Judges (one a member of the Committee);

Conference Neutrals (13 respondents, one a member of the Committee);

Lawyers who have also served as Conference Neutrals (three respondents):

Lawyers participating in Screening Conferences (seven respondents, one a member of the Committee);

Insurance Adjusters participating in Screening Conferences (three respondents).

The geographical distribution of respondents is uneven, largely a product of the extent to which respondents were able to schedule interviews during the span of time available.

Ten neutrals, five attorneys, and two adjusters had participated in conferences in Androscoggin County (a 'late' county).

Three neutrals, three attorneys, and one insurance adjuster had participated in conferences in Aroostook County (a 'late' county).

Four neutrals, four lawyers, and one adjuster had participated in conferences in Kennebec County (an 'early' county).

One neutral and five lawyers had participated in conferences in Sagadahoc County (an 'early' county) .

These totals exceed the number of respondents because some have participated in conferences in more than one county.

Informants were asked to respond on two levels to questions put to them during the interviews: (1) What does your own experience tell you about the answer to this question? (2) What have you heard from others about this same topic? It should be noted that none of

the members of the judiciary participating in these interviews had personal experience to bring to these conversations; their responses were all premised on information and opinion provided by others.

The interview instrument is made up of five sections.

Section 1 presents five objectives of the ADR experiment and asks whether they are being achieved.

Section 2 asks respondents to comment on the reasons why any of these objectives might not be fully achieved and why they said so.

Section 3 asks whether referral to conference early or late in the discovery process is preferable and on what basis the respondent bases his or her judgment.

Section 4 asks where the experiment has produced unexpected or unintended results and effects other than the five objectives identified at the start.

Section 5 asks whether the respondent thinks ADR in civil matters is workable in Maine's Court system. If the answer was yes, respondents were asked to identify those elements of the procedure as currently established they believe ought to be maintained and those they would change.

A sixth question was added for lawyers and insurance adjusters, asking whether informants knew of circumstances in which attorneys not favorably disposed towards ADR filed suits in non-participating counties as a way to avoid the process. Lawyers were asked whether they had ever taken such action themselves.

1. Response Summary

Responses to part one of question five ("Do you think ADR in civil matters is workable in the Maine Court system?") and to question six ("Do lawyers sometimes file suits in nonparticipating counties to avoid ADR?") can be quickly summarized.

1.1 Do you think ADR in civil matters is workable in Maine's Court system? All respondents but one -- an attorney who participating in conferences in Androscoggin and Aroostook Counties -- said they believe some form of ADR involving the kinds of matters included within the scope of the experiment is workable. The one respondent holding a negative view said that "...lawyers in Maine don't generally take cases to trial if they can settle them...(they)get worked out without this sort of mandated, formalized process." He believes the procedure is entirely unnecessary in any form. All other respondents, including those who were otherwise sharply critical of one or more aspects of the experiment, said they think some version of the process is desirable.

1.2 Do you think lawyers who dislike ADR in civil matters sometimes file legal actions in non-participating counties to avoid the process?

None of the respondents said they knew of anyone taking such a step. One attorney, whose office is in Androscoggin County, said that to the extent a lawyer filing a suit has discretion, too many variables other than ADR itself would influence such a decision. He gave as an example the fact that there are more judges in Cumberland County to hear these matters, a factor he would weigh far more heavily than any inconvenience associated with an ADR screening conference.

Responses to the other questions on the interview instrument were more varied. Each is summarized and discussed in turn below.

1.3 To what extent are the major objectives of the ADR experiment being achieved? Respondents were invited to comment on each of the following:

Speedier resolution of civil matters: Of the 16 respondents who have served as neutrals 13 said they believe the process speeds resolution in at least some of the matters they have handled (one neutral handling matters in Kennebec and Androscoggin Counties said he had settled 19 of the 20 cases assigned to him). One neutral said it does not, and the other two were not certain.

Many neutrals responding positively expressed reservations:

(Androscoggin) "I would say yes in non-personal injury cases. It's not working in personal injury cases. The business cases settle out faster because the environment is less contentious. People know you have to do business, that it makes sense to compromise. There's less ego involved and the parties are making a different level of emotional investment. Another thing is that the parties can't influence when the case (goes to a neutral). They come in too early in personal injury cases. And some trial attorneys just resist in personal injury matters."

(A contradictory view from Androscoggin) "Some of the personal injury cases and personal finance cases go pretty speedily. But families fighting over an estate -- more emotional; grudge matches."

(Kennebec and Androscoggin) "In Kennebec in *pro se* cases it speeds things up. But when attorneys are fully involved they seem to think it's too early in the process. In Androscoggin I've had more success."

(Kennebec and Androscoggin) "Maybe just a little. A few cases settled at the screening conference itself. Of course, the conference itself adds a step to the process. So a little, not greatly."

(Aroostook) "When the issue of liability itself isn't in dispute the cases settle a lot faster. The contested liability cases are hard to resolve."

(Aroostook) "Yes. I'm finding that the results are directly proportional to the lawyers' predispositions toward ADR. If they're not open to it it's not helpful at all. Some people just can't handle the give and take the process requires.

(Kennebec) "Yes, in the late counties. It also depends on the kind of case."

A negative response:

(Androscoggin) "No. Adds a layer of delay. And then, if it goes to mediation, another layer."

Of lawyers participating in screening conferences, five responded positively and four negatively. One was not certain.

"Kennebec) Two of the seven cases (five as plaintiff's lawyer) I've handled settled in the pre-screening conferences. The rest are still going."

(Androscoggin, Kennebec, Sagadahoc) In some cases, yes. Most other lawyers would say the same from what I hear. It gets people into a resolution mode faster, sometimes."

(Androscoggin, Kennebec, Sagadahoc) "Yes, in one case. Helpful in establishing the impossibility of settlement in another case. Clients get a chance to tell their stories."

(Androscoggin, Kennebec, Sagadahoc) "No. The idea is to achieve more settlements. I've had 25 cases and only one settled in early ADR, a couple in late ADR. The number is so small it's hard to attribute these to ADR itself. They all settled after the pre-screening."

(Androscoggin, Kennebec, Sagadahoc) "No. One broad disclaimer. Allstate and State Farm handle liability cases the same way regardless. If they're going to jury trial, that's where they're going. Their corporate position is to litigate."

(Sagadahoc) "No. The main problem is that no discovery has taken place."

Two of the three insurance adjusters interviewed said this objective is not being achieved. One had participated exclusively in Kennebec County conferences and said early referral there is ineffective. Another had participated in more than one county (locations unknown) but saw no real effect.

A third adjuster, based in Aroostook County, was equivocal: "I'm hearing that speedier resolution of claims is happening with bigger insurance companies -- Allstate and

State Farm. It's not having much effect on us. We do a lot of ADR ourselves. We're always prepared to talk settlement. So the project hasn't really affected us all that much."

Of the three members of the judiciary responding, one was reluctant to comment in the absence of data. A second replied in the negative:- "My reports from clerks are that the administrative work is heavier, creating backlogs. Said the third: "I've hear it creates delays in the early counties but not the others."

Fewer procedural actions taken, leading to fewer matters requiring the involvement of judges and court personnel: Eight conference neutrals replied in the affirmative. Seven replied negatively and one was uncertain.

(Androscoggin) "That's been the case. I've resolved a lot of procedural matters in my conferences."

(Sagadahoc) "Yes. With everyone in the room at the same time it creates a powerful incentive to share information."

(Aroostook) "Yes. A lot of times we can focus on procedural matters, find out what needs to happen, reach procedural agreement, eliminate the need to file a lot of motions."

(Androscoggin and Kennebec) "One case out of 20 is a case that never reaches the judge."

(Androscoggin and Kennebec) "The discussion itself helps shake out what documents are needed and helps the scheduling process."

(Androscoggin) "Not fewer. I can't speak to whether it adds more. In late counties you have the same discovery disputes you have elsewhere."

Androscoggin) "I don't think so. I don't think people perceive that they reduce the number of procedural steps just by coming in and having a conversation."

(Androscoggin) "Only if the case settles. No, not otherwise."

(Aroostook) "No. It helps in terms of framing discovery issues, getting things scheduled. I guess from the court's perspective it's having that effect. But more happens outside the court. From the standpoint of Aroostook County, the fact that one Superior Court judge hears all the cases brings a high level of predictability to these discussions. We all know from experience how he's likely to deal with any given matter. That's helpful."

Four lawyers gave affirmative responses. Five replied negatively and one was uncertain.

(Aroostook) "Absolutely."

(Aroostook) "Things get resolved faster overall."

(Kennebec) "You do have to focus on your case a little earlier. That speeds things up."

(Sagadahoc) "I don't think so. I've had many cases go to litigation. You still need motions."

(Androscoggin, Kennebec, Sagadahoc) "Nope. They're all on the same track. It's just another step."

(Androscoggin, Kennebec, Sagadahoc) "Basically the same. Most of the lawyers I deal with try not to involve the judges anyway."

Of the three members of the judiciary responding, one said she hears reports that this is being achieved, but cannot comment on the basis of personal experience. Another said that court personnel now bear heavier burdens than before. The third had the impression that no real change has taken place.

None of the three insurance adjusters said they believe this objective is being achieved.

Reduced level of effort by lawyers: Five neutrals replied positively to this question. Eight replied negatively (two expressing the view that effort has increased). The others were not certain.

(Androscoggin and Kennebec) "I think when you streamline discovery that's what you're doing."

(Aroostook) "A lot of the time we can reduce the conflict level between the parties, eliminate the need for a lot of contentious lawyering, eliminate peripheral issues that take legal effort."

(Kennebec) "Well sure; every time you settle a case it's less work. The plaintiff's lawyer always wants to shorten things up while the defense lawyer tries to drag things out. They make their living that way. If this program starts cutting into their income the defense bar will kill it."

(Aroostook) "Probably not. If forces them to focus, improves their presentation. That takes more work."

(Androscoggin and Kennebec) "No. But discovery begins earlier in the process."

(Androscoggin and Kennebec) "When lawyers come before me in Kennebec they're usually not well prepared. I don't think going early is very beneficial."

(Androscoggin) "Some lawyers see this as just a thing they have to do that gets in their way."

Two lawyers responding believe this objective is being realized. The others responded negatively.

(Androscoggin, Kennebec, Sagadahoc) "Dramatically true in one case (out of a total of three). Reduced the level of effort in another by getting rid of the idea of settlement."

(Androscoggin, Kennebec, Sagadahoc) "It all depends on whether it settles. It does achieve some streamlining...."

(Androscoggin, Kennebec, Sagadahoc) "Hasn't been true for me. For lawyers on the other side of the case, either. When they settle it's because we've all worked hard at it."

(Androscoggin, Kennebec, Sagadahoc) "No. Androscoggin is a mid-point county. I try to give the other side my information, but they usually haven't done much preparation anyway. Or that's the reason they give for not being willing to talk settlement."

(Aroostook) "No, it shouldn't happen. You should work just as hard. If you settle early you do save labor overall. But you have to prepare."

One of the three judges responding said she believes the level of effort has increased: "My personal understanding is that it takes more work; the feeling lawyers have that they need to shepherd their clients through the ADR process, make sure they don't get short shrifted." A second judge commented: " I don't think that's the perception." The third said, "I don't know. A perceived increase in level of effort by lawyers because we've added a duty they didn't previously have."

None of the insurance adjusters said they believe this objective is being achieved.

Reduced litigation expenditure: Six neutrals responded positively to this question. Three responded in the negative, and the others were not certain.

(Aroostook) "In some cases, yes. If there's a reduction in the level of lawyer's effort it should save money."

(Sagadahoc) "I would say yes. It has to be having that impact."

(Androscoggin, Kennebec) "I think so. Some cases settle earlier. A lot of procedural fluff is avoided."

(Androscoggin) "Increased significantly for the plaintiff's side."

(Androscoggin) "No, I don't know. Obviously, if the case settles sooner. Otherwise, no. Might even increase it."

Three attorneys responded positively. Five said they perceive little or no difference and two said litigation expenditures have increased.

(Aroostook) "Yes, particularly as it involves getting witnesses to trial."

(Androscoggin, Kennebec, Sagadahoc) "In one (of three cases handled), yes. It rendered depositions unnecessary."

(Androscoggin, Kennebec, Sagadahoc) "I can't say that, either. Even when they settle earlier it's because we've done one or maybe two mediations."

(Androscoggin) "Increased significantly for the plaintiff's side."

Two of three members of the judiciary thought litigation costs were decreasing. Said a third: "...my perception is that it will increase the costs unless they settle out faster. The organization of the case may lead to reductions in cost."

One insurance adjust gave a cautiously positive response: "Maybe. I think it's beginning in Aroostook." The other two perceive no effect.

Higher level of client satisfaction: Eleven neutrals gave positive responses. The others were equivocal or negative.

(Aroostook) "The client comes in nervous and unsure about what's about to happen. But the experience enables them to participate. In Aroostook the issue of travel creates some resentment, even though Aroostook people are used to long distances."

(Androscoggin) "I think clients like being involved. Except when they don't want to settle. But they get to have someone listen to their side of it."

(Androscoggin) "All the clients I saw in conference liked the opportunity to participate."

(Kennebec) "Not the insurance companies. I think the people I've seen were satisfied."

(Androscoggin, Kennebec) "Some of the people seemed pleased that an effort has been made to settle the case. Lawyers are less enthusiastic."

(Androscoggin, Kennebec) "I think when you don't have insurance companies involved it increases. It doesn't affect the attitudes of insurance adjusters in personal injury cases."

(Androscoggin) "It's all intertwined with the lawyers' attitudes when they walk through the door. Personal injury lawyers have this mindset. They do it for the almighty buck. It's in the lawyer's interest to get paid. The insurance adjusters have always been willing participants, but lawyers behave as if it's a big waste of time."

Six of ten lawyers responded positively. Four gave negative responses.

(Aroostook) "Yes, but you need a good mediator."

(Androscoggin, Kennebec, Sagadahoc) "At minimum, clients think the process is worth going through."

(Androscoggin) "I think clients are generally dissatisfied. Travel, distance, time spent."

(Androscoggin) "I don't see that."

One of the three members of the judiciary responding said he thought survey results show that clients like the experience. The others had no firm impressions.

Of three insurance adjusters, one thought clients found the experience positive. One had no idea and the other was sharply negative.

1.4 If objectives are not being realized, why do you think that is so? A sample of neutral opinion includes the following:

(Androscoggin) "There hasn't been enough time to achieve a reduction of effort by lawyers. I think resistance to change is high on the part of old-timers. But it will get better as people get used to the newer procedures."

(Androscoggin) "There's resistance to change from the bar, driven in part by the economics of the practice of law. All my cases were personal injury cases. I didn't know anything about personal injury practice and that kept me from being helpful. I found the plaintiff's lawyer generally knows whether he's going to settle or whether it will go to jury trial. The plus factors aren't there."

(Aroostook) "You need a better mediator pool in Aroostook. And the bar needs a better understanding of what non-binding arbitration generally means. The lawyers often don't understand their own cases, let alone the other side's case."

(Androscoggin, Kennebec) "I think things would improve if conference-neutrals could go on to act as mediators in the same cases. I also think sending cases early doesn't work as well. If you don't have information you can't settle the case."

(Androscoggin, Kennebec) "Lawyers see it as just another obstacle to overcome before they get their day in court."

(Androscoggin) "(Personal injury) lawyers just think about the bottom line. And they don't know enough about mediation. The neutral's background isn't considered when the case gets assigned."

(Sagadahoc) "I think a lot is being achieved here. This preliminary process has fundamental effects on what goes on later. A good result for the bar and for specific cases. As regards personal injury cases, things change dramatically when insurance adjusters are involved. The clients aren't making the calls. I always insist that insurance companies participate, but you need to have the right person representing them -- someone in a position to make a decision."

Among comments offered by lawyers on this question were the following:

(Androscoggin, Kennebec, Sagadahoc) "All my cases involved people with no previous exposure to litigation. Obstacles include the burdens on conference neutrals: large numbers of telephone calls to schedule meetings."

(Androscoggin, Kennebec, Sagadahoc) "The reason you're not seeing reduced expense is because of the preparation needed to participate in ADR. I've done it at early and midpoint in discovery."

(Aroostook) "No big problems. Make sure you have all the right people at the conference. In insurance cases you need someone there capable of making a decision. And stiff resistance from old guard lawyers is a problem. I generally don't think you should let people participate by phone unless you don't expect to make substantial progress toward settlement in the meeting. Insurance companies complain that if we make them go to mediation they're being asked to bear an additional cost. They want to know who'll pay the bill."

(Kennebec) "When people get into litigation they're mad at each other. If they could have settled earlier they wouldn't have brought suit in the first place."

Comments from two members of the judiciary:

"Concerns I have about slower resolution have to do with delays in getting things scheduled. Calendaring problems. The bar likes late ADR better than early. They want to do some discovery first."

"I think the major barrier is the extremely complex rule. It tries to appease too many constituencies. A big impediment."

Two insurance adjusters expressed the view that early referral is the major impediment. Said the third: "No real design problem. It's a good system, better than New Hampshire's. But I can usually tell before I go to conference whether it's a good candidate for settlement or not. We sort through these cases pretty thoroughly ourselves beforehand. But the big companies have these huge bureaucracies that are locked into these corporate postures that make them more inflexible."

1.5 Do you have an opinion concerning whether early or mid-point referral to conference is preferable?

Nearly every respondent took the position that referral at midpoint is more desirable. They said that some degree of discovery is needed before settlement can be explored in any meaningful sense. Some of them even suggested that a firm commitment to mid-point results in premature referral in many cases, as discovery activity has often been minimal even at this later stage.

One neutral and one lawyer suggested that lawyers should be able to influence or control when cases go to conference. Said the lawyer: "There are instances when early might be the best approach." Other comments include this from a Kennebec neutral: "Early intervention can even help in discovery planning. But the cases don't settle." And a member of the judiciary suggested that "...some cases in which the facts are generally known warrant early referral....No one size fits all."

1.6 Has the ADR experiment produced unanticipated results?

A sample of neutral comments includes the following:

"I'm generally a fan of ADR, a believer. It has the potential to reduce hyper-adversarial behavior that's so epidemic in Portland."

"I've been troubled over the years about the distance between clients and the judicial system. This process lets clients gain increased access to the system. When people leave my conferences they're generally grateful."

"It's exposed a lot of people to the ADR option. Some attorneys are now exploring it as a way to get cases moving."

"It has promoted greater use of ADR, created a climate in which ADR is routinely considered by lawyers. Some lawyers are egotistical or pugnacious; they'll never like ADR. But clients like the process because they're more directly involved in it."

"People must wonder what's wrong with a system that you need to resort to such methods. I've heard clients say that."

"I hear a lot of grumbling on the street. Lawyers hate it. I like it."

"One benefit is we get to be a sounding board for the attorneys. We can comment on what we think of their cases. That can be useful to them."

"I think the process is viewed more favorably by lawyers once they've gone through it."

"The resistance to the pilot project is frustrating. I found it basically to be a very frustrating experience."

A sample of lawyer comments:

"I was not prepared for the enormous commitment neutrals would be willing to make in the absence of any financial support. And opposition to ADR appears to be diminishing as time goes on."

"...the whole idea is more abroad than it was ten years ago. The idea as an idea is greater than its actual impact. It's not a panacea."

"ADR has been a buzzword in Maine for ten years. But Aroostook hadn't experienced a lot of it. Given that fact, I've been surprised at how often people show up prepared to talk settlement."

"No. Nothing. One more stop on the way to court. That's all. One more hurdle. My concern is the burden on clients: travel time lost. I've had indigent clients who have to blow gas money for no good purpose. Or give up a day or work. As for myself, I've probably spend 40 to 60 hours doing this pointless stuff."

"Often the parties don't show up. Sort of defeats the whole purpose. Also the time it takes. A lot of time is spent setting up the schedule, especially when you have more than one plaintiff or more than one defendant."

"People not showing up. Nothing else."

All three members of the judiciary had different positive perceptions:

"It's produced a wonderful showing of what a dedicated bar we have in Maine. The free work of neutrals is amazing."

"The fact that the experiment is going on is creating the feeling that the court is trying to do something about its problems."

"The project itself has improved public awareness; *lawyer* awareness. Lawyers are becoming more comfortable with ADR. The project *per se* is building support for ADR generally."

None of the insurance adjusters commented in response to this question.

1.7 Which elements of the ADR experiment should be maintained?

Comments from neutrals:

"Having the neutral pre-screen is a good thing. Makes everyone focus on the case."

"I like things just the way they are."

"I like that it's set up to defer the fee for jury trials."

"It works to have the neutral intervene in the court docket. Using the bar as a source of volunteers is good. It's good to require that people meet face-to-face. I liked being in the position of being able to explain mediation to attorneys who had no experience with it.

"The crucial part is that it forces litigants to appear and understand the other side's case as well as their own."

"It flows pretty well. I haven't had any problems."

"I think you'd want to keep the volunteer aspect of the program intact. Otherwise you're going to be adding to the financial burdens of people with limited means."

"What they've done is a step in the right direction. A real problem with the insurance industry. They only respond to brute force."

"Hard to say. I hope other people had a better experience than I did."

Comments from lawyers:

"In large part the role of the conference neutral needs to be maintained -- the hybrid role of educator and case manager. It should not be assigned to a judge."

"I think the whole thing makes sense. Gets the parties involved, makes them partners in the decision process."

"Just getting people to the table is beneficial. The bar has enough experience with this that perhaps some aspect of the volunteer feature could be maintained."

"The neutrals are wonderful, professional. It has a place. Mediation can bring everyone to a real sense of possibility."

"It has merit. It ought be maintained. I like the neutral concept. Almost all the neutrals have done well, although some of them don't know much about torts."

"It should be mandatory."

"Scrap it all and start over. Redesign it from scratch."

"None."

A comment from a judge: "I like the idea of intervention early -- maybe not so early in discovery as the early courts, but at midpoint in discovery at least."

One insurance adjuster said: "Keep them all. No problem. We need it." Said another: "I get to face the other side and know they're hearing my position. The other did not comment.

1.8 Which elements should change?

Neutral comments:

"PI cases. I'd rachet up the requirements as to who represents insurance companies. Otherwise I don't have a lot to criticize."

"Get rid of the paperwork in the clerk's office. It's such a simple process. The rule ought to be that both the parties and the insurance adjusters have to show up for conference. Lawyers shouldn't be able to show up without their clients, as sometimes happens now."

"I'd see that cases were screened for information and sent after they'd been evaluated. Don't just send everything. Also, when things aren't binding I'm not sure that doesn't render the process ineffective. The neutral needs more weapons, more tools."

"Train attorneys in non-binding arbitration. Allow more discovery. Require that experts be named early. Do exchange of interrogatories. Use more telephone and teleconferences, especially in Aroostook."

"Take out mortgage foreclosures. Not much middle ground, no surprises. It's a waste."

"Allow neutrals to mediate. Pay neutrals for their work."

"Neutrals should stay with the case all the way to trial. But if you really want speedy and fair resolutions in suits for damages, tell the legislature to enact a statute that requires all these cases to be heard early, by either an arbitrator or a single justice. The whole thing would take half a day, and you'd get a directed verdict. The parties could then go to a jury trial if they didn't like the result, but the jury would be told of the directed verdict in the earlier proceeding and the reason behind it. Then they could change the verdict or the damage award it they wanted. As it stands now, emotional factors like a little old lady suing a corporation for damages play too big a role. This would help eliminate that sort of thing. They do it in New Jersey. Also, make the loser in a case that goes to jury trial pay legal costs for both sides."

"I'd try to get more people involved as volunteer neutrals. My volume is higher than the four to five cases a year I was led to expect. Training is an important aspect; I could use more training myself. If lawyers had to act as neutrals occasionally they'd come to see the beneficial aspects of the process.

"I like the multi-door concept they have in other states....The requirement that all these cases go to mediation needs to be waived in some circumstances."

"I don't like the volunteer aspect as a permanent proposition. It can't go on forever. I think lawyers may become more vigorous participants if the program stops being an experiment and goes statewide."

Lawyer comments:

"Consider ways to diminish the role of the clerk's office. Just have attorneys submit reports that the conference has taken place and what outcomes resulted. Give thought to paying the expenses of neutrals for travel and time spent. It just can't be supported *pro bono* forever."

"Have the neutral be more aggressive."

"You have a ton of high priced lawyers volunteering as neutrals because (Chief Justice Daniel) Wathan asked them to. You can't keep that up. You need to put $300 to $400 in for neutrals to make it worthwhile. In Aroostook we've had a tremendous amount of support from Bangor. We'll need to find more warm bodies; seasoned people who can perform the function properly."

"Mandate attendance of all the parties...."

"Eliminate the volunteer neutral system. If counsel want to mediate, then fine. If you have a nice client with serious injuries you're inclined to want to try the case in front of a jury. The ones in the middle may lend themselves to mediation."

"Make it mandatory. Consolidate the screening and mediation functions. Send the cases out early, before discovery (but) start the process after some discovery's been done."

"Not needed. Unnecessary."

Suggestions from members of the judiciary:

"Some screening to determine whether early or late is best, or whether to refer at all. Also, I've hear concerns about hassles associated with having to schedule a pre-screening conference and then having to schedule the mediation itself."

"We need a court-connected mediation procedure in civil litigation. Something different than Rules 16B and 16C. I'm also concerned with the prospects for 'privatization' and specialization. The costs to litigants could be so high as to price out people who aren't well off."

Insurance adjusters' comments:

"I recommend that parties be able to elect the kind of ADR they want. Pre-screening conference? Arbitration? Mediation? Give participants an option. That's what New Hampshire does."

"Delay arbitration proceedings until after interrogatories and depositions. And let the neutral try to settle the case. Don't reassign the case elsewhere."

"Both sides should be able to decide when to go to mediation. I think you should skip conference meetings and go straight to mediation.

2. Observations on the Interviews

The largest cohorts participating in these discussions were neutrals and lawyers, and they were selected exclusively on the basis of location from statewide master lists. Their comments, and those of insurance adjusters, bear most heavily on whatever conclusions may be drawn, since they have the most immediate and direct experience with the ADR experiment. No screening factor other than location influenced who participated and who did not. It is still possible that the overall character of the responses from these two groups reflects in part their willingness to be interviewed. No record was kept of the number of calls required to generate the interview lists or whether anyone flatly refused to participate.

Nevertheless, we believe the responses from participating neutrals and lawyers are roughly representative of viewpoints held by their counterparts around the state.

If this is true, it seems reasonable to conclude that the ADR experiment has reduced the perceived intensity of opposition from the bar to ADR as a general proposition in the handling of civil suits for damages. None of the neutrals and only one of the lawyers said such a procedure is altogether unnecessary. None of the insurance adjusters thought the idea of ADR itself should be done away with. No one knew of anyone attempting to avoid the process by filing in a non-participating jurisdiction. The idea simply hadn't occurred to anyone.

Among the clearest themes emerging from these discussions is the widely held view that referral to conference is more productive at mid-point in discovery than at the early stage. Several of those participating in mid-point conferences reported that even at this later point lawyers are frequently insufficiently prepared to discuss settlement. One adjuster was adamant in her belief that later is better. However, a few respondents believe case preparation and management are expedited at the early stage, as well. The call of some respondents for more flexibility in the timing of referral would seem to merit closer examination.

Another major theme was the distinction many respondents made between the kinds of civil matters that lend themselves to ADR. In particular, many believe cases involving insurance companies have a profoundly different character. How these cases actually differ and whether they are more or less amenable to resolution were viewed differently by different people. It is possible that outcomes are affected at least in part by which insurance companies are involved as regards readiness to settle at conference or later in the process. It is hard to know what to make of the fact that the one insurance adjuster most favorably disposed toward ADR represents a smaller company in Northern Maine. The implications of his comments, buttressed by a few other respondents, that larger companies take a harder line toward settlement seems worthy of consideration.

Among the four counties in the experiment, respondents from Aroostook County were most favorably disposed to ADR as it is presently designed. Otherwise, a good deal of variation within other counties among respondents regarding the success of the experiment came to light during these discussions. The comment of one Aroostook respondent that the fact that all these matters are heard by one Superior Court judge may account in part for the greater uniformity of responses by informants from this county. Other factors arising from the rural character of the county and its remoteness from major population centers may also be important.

Respondents -- particularly neutrals -- identified resistance from some lawyers as among the most significant barriers to successful implementation of the process. Yet our interviews with lawyers suggest a widespread willingness on the bar's part to support, or at least live with, some version of ADR in civil matters in Maine.

What is the appropriate role for the conference neutral to play? We have reported that one neutral handling matters in Androscoggin and Kennebec Counties reported settling 19 of the 20 cases referred to him. His success was attested to by an attorney who participated in several conferences over which he presided, and his approach was described (by himself and the participating attorney) as being markedly aggressive. This neutral also called for what he characterized as New Jersey's approach: assigning cases to arbitrators or single justices who render verdicts and make damage awards prior to trial. Other neutrals viewed their role differently – as educators and as conveners of a search for common ground that might lay the foundation for settlement then or later on. While some respondents thought the functions of neutral and mediator should be combined, others believe the system works well as it is. How any informant responded seemed clearly to be affected by how that individual understood the purposes of and opportunities afforded by the conference in the first instance. One neutral in Androscoggin County handling exclusively personal injury cases expressed frustration at her inability to achieve meaningful progress toward settlement in these matters. She attributed her difficulties in part to inexperience in dealing with these kinds of cases in her practice.

How well is the experiment achieving its stated objectives? Thirteen of 16 neutrals and five of ten lawyers participating in these interviews believe speedier resolution of civil suits for damages is being achieved. Contradictory viewpoints were expressed concerning whether personal injury cases are amenable to speedy resolution. How respondents answered this and other questions about realization of project objectives was influenced by how they understood the issue. Some believe than any case that settles early produces speedier resolution overall. Others took the view that the impact of early settlement in some matters is offset at least in part by delays in cases which do not settle or would ultimately have settled anyway. Here, the extra layer of activity triggered by the conference and possible subsequent mediation activity is viewed as creating a potential for delay.

These different viewpoints influenced how respondents treated three other questions about achievement of project objectives: reductions in procedural steps, reduced level of effort by lawyers, and reduced litigation costs to the parties. Some respondents perceive that if any cases settle more speedily achievement of these objectives is advanced. Others draw sharp distinctions between cases settling early and cases which do not. Some of them think the overall effect is to increase the number of procedural steps, and/or lawyers' level of effort, and/or litigants' cost. Others sharing this perspective think the ultimate effects are negligible or marginal. Analyzing these comments on the merits is problematic since some cases which settle would probably have been resolved prior to trial in any event. But we cannot know for sure how many, or which ones, or whether their resolution was expedited in any way by ADR and to what degree.

Client satisfaction is enhanced by participation in conferences in the view of 11 of 16 neutrals and six of ten lawyers. Informants responding positively perceive that clients like the opportunity to participate and benefit from hearing the other side's case. Respondents responding in the negative report that clients resent the time and expense associated with traveling to and participating in these events. The evidence gleaned from these interviews

when combined with survey response data strongly supports the conclusion that most clients believe some benefit is realized by their participation.

What to keep and what to change? Among the most frequent suggestions regarding maintenance of current program features is that the volunteer neutral approach be maintained. Otherwise, a significant body of opinion holds that little or nothing should be altered or eliminated if ADR screening conferences are mandated statewide. Those calling for changes expressed a range of views: allow neutrals to mediate; encourage neutrals to be more aggressive; permit more flexibility in the timing of conferences; treat personal injury cases differently; compensate neutrals; provide training for lawyers in nonbinding arbitration; reduced the burdens on the clerks' offices. No consensus formed around any of these positions.