HISTORY OF THE TEXAS ADR ACT

*By Lisa Weatherford**

> *"Of all the things that have happened during my career as a trial lawyer (including tort reform), nothing has had so significant an impact on the trial practice as the passage of your ADR bill in 1987; at any time tomorrow afternoon, you could shoot a cannon in the courthouse and no one would be injured (except a few family lawyers)."*[1] —Sam Millsap, former Bexar County District Attorney

INTRODUCTION

Fortunately, no one has to haul out the heavy artillery to prove that the Alternative Dispute Resolution Procedures Act ("ADR Act")[2] "changed the face of Texas jurisprudence."[3] Twenty years after its enactment, alternative dispute resolution ("ADR") is so thoroughly integrated into our justice system that scholars often substitute "appropriate" for "alternative."[4] However, in 1987, ADR was "alternative" in the word's modern connotation: a little on the edge—not radical, but by no means traditional. The use of ADR processes to settle disputes increased after the ADR Act, but like any significant change—particularly when it occurs in the legal system—the paradigm shift was a gradual one. Although the legislation opened the door to change by encouraging the overburdened courts to refer cases to mediation and other ADR procedures, its passage did not mark the beginning of ADR in Texas. It was, in retrospect, more of a zenith than a starting point. Texas and other states had been studying ADR for many years—interest that was sparked by the Pound Conference in 1976,[5] where Professor Frank Sander outlined a model of what came to be known as the "multi door courthouse."[6] By the time the Texas ADR Act passed, the Texas House of Representatives had published several interim reports that recommended greater use of ADR in appropriate situations.[7] Also, Texas, like many other states, already had an arbitration statute.[8] Then, in 1983, the Texas legislature passed the ADR Systems and Financing Act of 1983, a law that allowed counties to set up dispute resolution systems, and provided for the collection of fees to support them.[9] In the years following the Pound Conference, ADR advocates in Texas were not merely talking about it: they were settling disputes. Alternative dispute resolution centers (with an emphasis on mediation services) had been operating in Houston and Dallas since 1980, and after the 1983 legislation, other metropolitan areas established centers as well. Consequently, the Texas ADR Act of 1987 was not as much a validation of ADR as it was a confirmation of its significance.

Despite its eventual success, the ADR Act was not the kind of legislation that grabbed headlines. It was esoteric, and only slightly controversial, so it did not enflame public passions. Even the bill's sponsor, former Texas Senator Cyndi Taylor Krier, mused that she had "passed a lot of bills [she] thought were (maybe) more important than [the ADR Act]."[10] During the 70th legislative session, 4,179 bills were filed and 1,185 were passed, setting records in both categories.[11] Tort reform, education reform, deregulation, and a state budget that was unresolved at the end of the regular session, were only a few of the many issues that challenged legislators in 1987.[12] A bill that authorized the "peaceable resolution of disputes,"[13] was relatively low priority.

A mere six months later, James W. Wilson, the senior vice president and general counsel of Brown & Root in Houston (at that time) proclaimed to the *Houston Chronicle* that ADR "is kind of taking the country by storm."[14] The *Chronicle* reported that "[i]n Texas, ADR methods will be increasingly popular because of the new Alternative Dispute Resolution Act, in which the Texas Legislature encouraged judges to promote out-of-court settlements to lighten the load of the judiciary."[15] Those words were prophetic, although it is unlikely that anyone could have predicted the scope of the ensuing tempest. ADR is now so firmly established in our society, it is easy to forget that only twenty years ago conflicts were resolved by trial more frequently than through mediation and other ADR procedures. Yet, we still celebrate the statute's unceremonious passage. When asked if she knows of any other legislation that has instilled such reverent respect and enthusiasm two decades after its enactment, Krier shook her head firmly "no," and added, "this one, people do, for some reason look back and commemorate . . . it's sort of a realization that they've really used this."[16]

This article is an informal legislative history of the ADR Act. Informal, because it incorporates the legislative successes and failures that contributed to the act's existence—an acknowledgement that the ADR Act's history must be examined in context, rather than in isolation. It is also informal because it is a narrative, rather than a mechanical recitation of facts gleaned from old bill files and audio tapes. Committee hearings, journal entries, and viva-voce votes tell only part of the story; the other part lives in the memories of those who made it happen. The facts are here, but so are the perspectives of three people who—because of their positions, their hard work, and their good fortune—were thrust into the foreground of the effort. It is not a history of ADR in Texas, nor is it a survey of Texas ADR law.[17] It is also not a section-by-section analysis or interpretation of the statute.[18] It does not address unsettled questions that persist twenty years after the act took effect, and finally, regrettably, it could not be about all of the people who were directly responsible for getting the bill introduced and passed. An attempt to include everyone in this relatively brief article would be inadequate. Cindy Krier said it best in 1997:

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> Please know that every one of you who served on one of the Bar's ADR committees; who researched issues; who drafted, and redrafted bill language; who called or wrote a legislator asking for a vote on the bill; who testified in support of the legislation; who wrote articles about dispute resolution; who has taught an ADR course; who has conducted ADR sessions; has played a significant role, made a difference in our being where we are today.[19]

In other words, the statute certainly deserves its birthday party, but without the people who care about it, there would be nothing to celebrate.

BACKGROUND

" [T]rying to remember all that transpired in the legislative process, I find it is almost as hard to retrace the history now as it was to project the future of ADR then."[20]

"To begin [its] life at the beginning of [its] life" is a much simpler proposition for a Charles Dickens character[21] than it is for one who attempts to chronicle the ADR Act's precise moment of birth. Although the act was "born" on June 20, 1987, the day the governor signed it, the story of its conception began much earlier, long before S.B. 1436 was introduced. Like most legislation, the ADR Act was not conceived in a vacuum; rather, it was the culmination of prior legislative successes and failures, the product of cooperation and conflict, compromise and political karma. When she discussed S.B. 1436, Cyndi Krier commented that "so many areas of the law really evolve from session to session to session, so it's rare that you can go back [for example] and say there was not an ADR statute before 1987, and there was not one after . . . you can go back to the establishment of the ADR centers."[22] In fact, some people might go back to the years before the establishment of the Neighborhood Justice Centers, all the way to the creation of the State Bar ADR Committee.

Frank Evans[23] was attending a Houston Bar Association meeting in 1978 when Joe Greenhill, who was then Chief Justice of the Texas Supreme Court, suggested to bar president Bob Dunn that the organization should "look into mediation as a way of alleviating its crowded court dockets."[24] Dunn agreed, and asked Judge Evans, who was standing nearby, to chair a committee to "look into it."[25] He did look into it, and in 1979, a "little group of lawyers went off to look at other dispute resolution centers."[26] When they returned, they filed a report with the Houston Bar, and persuaded it to support implementation of a Houston Neighborhood Justice Center, which opened in 1980.[27] The Dispute Mediation Service of Dallas opened a few months later.[28]

Cyndi Krier commented during an address at the ADR statute's 10th anniversary celebration in 1997 that the "initial idea for ADR legislation did not come *from* the legislature, but *to* it."[29] If that is true, the state bar ADR committee was the first one to get there. In 1981, soon after the dispute resolution centers in Dallas and Houston opened, the committee urged the legislature to pass a bill that authorized counties to establish dispute resolutions systems. The bill also provided for funding through a slight increase in the civil case filing fee. Unfortunately, it did not pass. That bill was the first of many ADR bills (failures as well as successes) that led to the enactment of what is now called the Texas ADR Act, codified at Chapter 154, Civil Practice & Remedies Code.

67TH LEGISLATIVE SESSION: 1981:
It's a nice idea . . . but it ain't never gonna happen![30]

In 1979, Frank Evans presented his ADR vision to the editor of Houston's "biggest" newspaper,[31] a man who was clearly skeptical of an idea that sounded okay, but had, from his point of view, dim prospects. When Evans asked him, "Why not?" the editor replied, "Because the judges and the lawyers won't let it happen!"[32] He was right—it did not happen, not then. Nor did it happen during the 67th Legislative Session two years later, but the judges and lawyers could not be blamed.

At some point before the 1981 session, Evans talked to Ray Farabee, a Texas state senator from Wichita Falls, about introducing ADR legislation. Evans recalls that Farabee said, "Yeah, I'll help you. I think this would be good. I'll tell you what—you need a liberal on the other [House] side of this. Who do you know from Houston?"[33] Evans replied that he had worked with Craig Washington, who was a member of the Texas House of Representatives. Washington agreed to sponsor the bill.

Oscar Mauzy, a Texas state senator who later served on the Texas Supreme Court, authored S.B. 759,[34] a bracket bill[35] that originally targeted areas with large populations, like Harris County. In its introduced version, it authorized counties of 1,200,000 inhabitants or more to "establish alternative systems for the peaceable and expeditious resolution of . . . disputes" and to collect $3.50 for each civil case filed in the county.[36] Only two counties fit into that bracket: Harris and Dallas. The Senate Committee on Intergovernmental Relations adopted a committee substitute that changed the bracket to 500,000 or more, and raised the fee to $4.50.[37] This "lower" bracket would have applied to Harris, Dallas, Tarrant, and Bexar Counties.[38] The bill passed the Senate and was sent to the House of Representatives. The House Committee on Intergovernmental Affairs sent the bill to the Calendars Committee, where it was placed on the Local and Consent Calendar.[39]

Everything was going well until three days before the end of the session, when the bill was inexplicably removed from the consent calendar, a move guaranteed to kill it that late in the session. The May 29, 1981 House Journal entry indicates that it was "withdrawn by objections,"[40] so the bill was almost certainly killed intentionally. On May 30, Governor William P. Clements relayed an emergency message to the House that read: "So that the House of Representatives may consider some important matters in the final three days of the Regular Session of the Sixty-seventh Legislature, and pursuant to Article III, Section 5, of the Constitution of Texas, I hereby submit as an emergency matter the following . . . "[41] The governor's message listed seven bills that he considered emergency legislation, including S.B. 759.[42] Speaker of the House Bill Clayton

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gave notice that a motion would be made to suspend the rules to take up S.B. 759.[43] The motion failed, and so did the bill.[44] Two years later, in a second attempt to pass the legislation, Justice Jim Wallace testified in favor of S.B. 10 (almost identical to S.B. 759) before the Senate Jurisprudence Committee in a public hearing on February 1, 1983.[45] He described S.B. 759's fatal shift in fortune during the waning days of the previous session, and explained that several House members had become angry with Craig Washington and knocked his bill off the Local and Consent Calendar, effectively ensuring its demise.[46]

68TH LEGISLATIVE SESSION: 1983
"More failures than successes, but some of the key ones came out nice."[47]

Undaunted, Frank Evans and other ADR supporters in Texas promoted the bill again in the 68th session. Oscar Mauzy co-authored it with Lloyd Doggett, and Anita Hill was the House sponsor, since Craig Washington had been elected a state senator during the interim and was serving his first term in that body. Since S.B. 759 was more a victim of political providence than strong opposition, there was good reason to be optimistic in 1983, and indeed, S.B. 10 encountered no apparent obstacle. When it was introduced, S.B. 10's bracket was at least 100,000 inhabitants, which increased the number of counties that were authorized to establish a dispute resolution system to 23 out of 254.[48] Judge Evans recalled that soon after its introduction, "Dallas wanted in on it, so it got extended to Dallas, and then somebody else, and somebody else, until it was across the board,"[49] so the bracket was eventually eliminated entirely. Apparently, that change worried some people. Nobody testified against the bill in committee hearings, but the house bill analysis reported that opponents were concerned that a judge might misinterpret the language and impose an ADR system on a county with a population too small to support the costs.[50] Still, S.B. 10 passed both houses almost unanimously, with only one "nay" vote each. (Curiously, the lone Senate vote of opposition came from Craig Washington, who had sponsored S.B. 759 in the House the previous session.)[51] At that time, the State Bar ADR Committee was practically non-operational except for Frank Evans and five or six other people, and the bill did not have widespread interest.[52] Evans remarked that when the bill finally passed the House, "I was the only person in the gallery to look at that."[53] Although the 1983 law authorized judges to refer cases to ADR processes on the motion of a party, that provision was rarely invoked.[54]

69TH LEGISLATIVE SESSION: 1985
Two Bad Bills[55]

Frank Evans laughed when he recalled how he first learned about the bills, and how his informant characterized them:

> Someone said, 'Senator Krier's got these two bad bills,' and they were both related. I remember that Ed Sherman and someone else started talking with her. Then, as the talk got on [they] decided to try to give Cyndi a reason to move this into a broader scope and get away from those "bad bills," instead of focusing on this one thing, family law.[56]

The ADR Act may indirectly owe its existence, or at least its present form, to two bills that failed to pass in the 69th Legislative Session. Whether they were "bad" is subjective, but it is likely that the mediation landscape in Texas would have looked very different if these bills had become law. Cyndi Krier had been elected to the Texas Senate in November 1984, and was barely into her first legislative session when she was asked to sponsor two ADR bills:

> Ray Farabee really was the one who handed off to me, because when I first got to the Senate, he was . . . one of the leading senators, who had hundreds of bills . . . and he said, "Here, you take this." At the time, I was really very flattered and thought, I know nothing about this, but became interested in it so I've always credited him . . . Actually, I think I was handed the report. I don't know if the bills had yet been drafted.[57]

The two bills were related only in their general subject matter: court-annexed alternative dispute resolution. One bill was about family law mediation, and the other one was an arbitration bill. The mediation bill appeared to be a direct response to a December 1984 House committee interim report that studied divorce and family issues, and explored alternatives to the traditional adversarial system of settling those cases.[58] Senate Bill 949 related to "mediation of issues in a suit affecting the parent-child relationship and to the appointment and qualifycations of mediators,"[59] so it focused on family law mediation by amending the Family Code. The mediator qualifications in the introduced version of the bill were quite restrictive, particularly in comparison with the family mediation training requirements that are part of the ADR Act.[60] This fact is worth noting, as family law qualifications would be a point of contention during the drafting of the ADR Act in the following session.

Senate Bill 1099 related to the "arbitration of civil suits," as a means to a "more efficient method of settling civil cases to lessen the delay and decrease the expense of the parties."[61] It laid out the circumstances under which a court could order arbitration, defined the qualifications of arbitrators, and directed the supreme court to adopt rules."[62]

Krier comments that "[it] is a proven and true legislative adage that most major legislative changes take more than one session to pass. The arbitration bill and the mediation bill, which had been so carefully drafted in explicit detail to make the new process clear had ended up raising questions about many of those details."[63] Both bills passed the Senate, but died in House committees. However, their fate generated an opportunity to draft legislation that captured the essence of Frank Sander's multi-door concept, and ensured that ADR would become a vital part of the Texas justice system.

70TH LEGISLATIVE SESSION: 1987
The Draft: *"They've gutted this bill!"*[64]

Referring to a time when S. B. 1436 was still in the drafting

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stage, Frank Evans said he "would have been glad to just to get the policy statement that [said] we're for this!"[65] Fortunately for Texas ADR, he got more than the policy statement. By the time it was clear that the ADR bills introduced in the 69th Legislature were destined to languish in committee, Ed Sherman was already talking to Cyndi Krier about a bill that would take a broader approach. Krier described the effort to come up with a draft that was "purged of the detail and controversy that had hampered passage [of the two failed ADR bills] in 1985:"[66]

> Led by Judge Evans and Ed Sherman, the State Bar's ADR Committee with judges, attorneys, law school representatives, ADR and DRC professionals, and public members worked during the next interim listening to concerns, reexamining approaches in other jurisdictions, and redrafting (and redrafting and redrafting) the legislation. They came back in 1987 with a far more general, far more flexible single omnibus piece of legislation—simple and easier to understand....[67]

The new ADR bill was only a "procedural outline," Evans claims—an outline "that you could fill in later on."[68] Krier also admits that the "strategy . . . was based on . . . [a] legislative truism: *It is easier to amend a statute than create a new one.* So the conventional wisdom was that if we could pass a simple, basic bill in 1987, we could come back and amend it in subsequent sessions."[69] Still, Evans recalls that

> Ed, like a good law professor, wrote and wrote and wrote and wrote, and had this long bill, and it all sounded okay with me . . . and then we got a policy, but who's going to enforce it? We looked around, and said, well, nobody's representing the courts—let's put it on them. Then somebody said, okay, now we've mandated the courts, how do they do it? We've got to give them a referral. So we started writing that information, and all of a sudden, here was the outline of a bill coming up, and it sort of grew. Then someone [in a legislative office] took it and turned it around and frankly, when we looked at it, it was unrecognizable as far as what Ed had written! I mean, it was in a different form. I thought, they've gutted this bill![70]

Evans also noticed that Ed Sherman's procedural details of the five ADR methods had been replaced with brief sections that described each process in concise, but abbreviated points.[71] Sherman notes that the removal of those details

> suggested that the processes were all essentially similar in operation and fungible, which is not true. I think the additions that are in the act clarified how each of the various processes would function . . . Further procedural details might have been helpful, but it would have increased the length of the act (and its conciseness has turned out to be a benefit) and probably wouldn't have greatly altered the choices that have been made.[72]

Looking back, Sherman now considers the act's conciseness and brevity an asset.[73] "[D]are I compare it to the constitution? . . . [the ADR Act] uses some general terms that allow for construction and expansion according to developing norms and needs [and] seems to have stood it in good stead. In contrast, the much more detailed Uniform Mediation Act has generated lots of controversy, and it is still to be seen how widely it will be adopted."[74]

Ed Sherman was a University of Texas law professor when he started talking to Cyndi Krier about drafting an omnibus ADR bill that could be introduced in the 70th Session. The demise of the two "bad" bills in the 69th Legislature presented Sherman and other ADR advocates with an opportunity to craft legislation destined to fundamentally change the way Texas courts handled litigation. Ostensibly, the bill was about relieving clogged court dockets, but the ADR movement clearly had at its core deeper philosophical yearnings, a discussion of which is beyond the scope of this article.

Sherman affirms that during the drafting of S.B. 1436, the "multi-door courthouse was a working model that accounts for the five different forms of ADR prescribed in the Act,"[75] and that "the experience in Houston had already validated the concept that cases should be evaluated upon filing to determine their suitability for ADR and any particular process."[76] The broader scope of the omnibus bill encompassed all civil matters, and described five separate ADR "doors" to which courts could refer cases. The language, however, does not limit the court to those five processes. A subsection of the bill provides that a court may refer cases to "a nonjudicial and informally conducted forum for the voluntary settlement of citizens' disputes through the intervention of an impartial third party, including those alternative dispute resolution procedures described under this subchapter."[77]

Sherman emphasizes that the Texas ADR Act is "heavily home-grown, that "[u]nlike a number of other Texas statutes relating to arbitration and ADR, this statute is not primarily derived from a uniform act or another state's statute. Thus, this statute contains features distinctive to Texas, and its interpretation will often pose matters of first impression for Texas courts."[78] One of those features, and one of the controversies that surfaced during the drafting process, was the issue of mandatory referral. Sherman felt strongly that mandatory referral should be part of the new statute:

> Probably the key objective was to authorize judges to require use of an ADR process and thus to make ADR an integral part of litigation. This was a significant accomplishment. When I went to Louisiana to be Dean of Tulane in 1996, I helped draft a similar act, but the authority to order ADR was taken out in the legislature, and is still not part of the Louisiana Mediation Act. I believe the mandatory aspect of the Texas Act has been important to the widespread use of ADR in Texas.[79]

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Another key issue was the confidentiality clause. Evans asserts that the clause was originally written as a "stand alone," and was intended to apply to both civil and criminal cases, but somehow it ended up in the Civil Statutes. Regardless, the relatively broad confidentiality clause was "in retrospect, an act of genius,"[80] according to Evans. He agrees with those who claim the clause is ambiguous, but considers that ambiguity a strength, not a weakness. "If I had it to do over again, I would purposely make it ambiguous. If you can't agree whether confidentiality applies, you have to go to court."[81] Sherman agrees: "[T]he advantage of the broad, seemingly absolute, confidentiality rule in the Act is that is has enabled the Texas courts gradually to develop exceptions in the context of actual cases. If we had the advantage of foresight in 1987, some express exceptions would have been good, but it would have been difficult to get a consensus on various ones."[82] Sherman also stresses that if the courts had not been allowed to develop those exceptions, the integrity of the ADR Act would be undermined.[83]

The drafting process spanned the interim between the 69th and 70th Legislatures, and Cyndi Krier characterizes the negotiations as a mediation-like process, and credits the cooperative spirit for the bill's success:

> This one, I think, there was a concerted effort to say, this is a new approach. It's not might makes right; it's let's come together and reason together, and come up with a solution that will work for everyone. That was kind of the guiding philosophy that led to the bill's ultimately not having any opposition . . . The last issue we resolved was the training requirement for family law cases, and that had been a compromise, but there was a consensus by everybody involved to practice what we preached, and work out the details agreeably, before bringing this bill forward.[84]

The family law training requirement was not the only issue that came up during the drafting of the bill. Krier explained that "[d]espite our best efforts, some controversial issues did emerge prior to passage of the bill, and had to be dealt with . . . several mediation sessions were needed to resolve the differences."[85] Krier recalls that there was debate about whether ADR should be mandatory or voluntary, and about whether agreements reached in ADR sessions should be binding.[86] There were conflicts about who could serve as impartial third parties, and what their qualifications should be.[87] "These were the issues where the alliance of supporters of the legislation almost dissolved . . . Turf battles emerged. Some attorneys wanted only attorneys to be allowed to conduct ADR sessions."[88] Dispute resolution centers had been handling disputes for many years, and some representatives from those entities felt threatened by the perceived trespass.[89] Social workers and family-law advocates initially could not agree on the way to handle family law cases.[90] Also, there was some discussion "where those that were leery of ADR threw up the roadblock of do you need a constitutional amendment to get around trial by jury? They said, you can't pass this law, or, if you could, it wouldn't matter because you have to have a constitutional amendment."[91] Fortunately, that discussion was quickly dismissed because the ADR processes did not require parties to reach agreements. There was also opposition from some plaintiff's attorneys, but once the act had been in place for a short time, most (not all) of them "were delighted with mandatory ADR . . . because it forced the insurance companies to . . . get serious about their offers."[92]

Once the bill was finally drafted, Krier remembers that when it came time for the Senate Jurisprudence Committee hearing, "we thought everybody was okay with it, but we weren't 100% sure that there wouldn't be people testifying against it." As it turned out, the most difficult part of the process was behind them.

The Legislature: *"We are not going to cram this down people's throats."*[93]

"I think [the idea] began in the 69th . . . there was this fear that if you just crammed it down everybody's throat the first time, that there would be such resistance to its use that we would have never gotten to where we are today . . . especially in Texas!"[94] The wisdom of that philosophy was manifest when both the Senate and the House passed S.B. 1436 unanimously. The details of its bicameral journey are decidedly anticlimactic.

The ADR Act began its legislative life as a random-numbered Senate E & E (Engrossing and Enrolling) draft.[95] After the draft was filed during the 70th legislative session by then-Senator Cyndi Taylor Krier, it became S.B. 1436 and was introduced to the Texas Senate for the first time on April 15, 1987.[96] The House sponsor was Jim Hury, a strong advocate for the bill, who worked hard to get it through the House.[97] Nobody testified against the bill in the Senate Jurisprudence Committee hearing,[98] and the House Committee on Judicial Affairs adopted it without testimony or comment.[99] During the Senate hearing, Frank Evans, Ed Sherman, and Don Graul testified in favor of the bill. Eight others registered their support, but did not testify. It did not generate floor debate in either chamber, and legislative intent seemed unambiguous: to "allow our courts to operate more effectively and more efficiently,"[100] and to "save the state and the litigants money."[101] The fiscal note concluded there would be no financial impact on the state,[102] and Governor Bill Clements signed it into law without ceremony on June 20, 1987, effective immediately.

Astonishingly, the statute has been amended only three times in twenty years: in 1993, 1999, and in 2001. The 1993 amendment added Section 154.055, which provides that a volunteer ADR facilitator is immune from civil liability unless the facilitator acts in "wanton and wilful [sic] disregard."[103] The 1999 and 2001 amendments are conforming amendments: they brought the ADR Act in line with changes in other codes. One of the 1999 amendments reflects changes in the Family Code. Another 1999 amendment deals with confidentiality and disclosure by government entities, as provided in the Government Code. Finally, the 2001 amendment reflects changes in the Code of Criminal Procedure. The effect of these amendments to the Act's substantive provisions has been minimal.

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The ADR Act has aged gracefully, its dignity intact, exceeding even the most optimistic of expectations. It is simple, flexible, and unique. When Frank Evans was asked what he would change about the act if he could go back and do it over, he replied that he might want to tweak the confidentiality provision a bit. Aside from that, he would take his fellow judges to task: "I am being a bit facetious here, but I would emphasize the words that direct the court to *confer with the parties* before making a referral. Also, I think if they're going to be a judge on a court, whether it's trial or appellate, they've got to recognize that they have the responsibility, not just the option, or on a whim, of deciding whether or not to encourage it."[104] With advocates like Judge Evans defending the ADR Act's integrity, we will always have a reason to party. See you in 2017!

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ENDNOTES

[1] E-mail from Sam Millsap, former Bexar County District Attorney, to Cyndi Taylor Krier, former Texas State Senator, San Antonio (Jul. 9, 2007, 11:01:41 CST) (on file with author).

[2] Alternative Dispute Resolution Procedures Act, 70th Leg., R.S., ch. 1121, § 1, 1987 Tex. Gen. Laws 3841 (current version at Tex. Civ. Prac. & Rem. Code Ann. §§ 154.001-154.073) (Vernon 2005).

[3] Michael Schless, Presentation of the Frank G. Evans Award to Cyndi Taylor Krier at the State Bar of Texas ADR Section Annual Meeting (Jun. 21, 2007).

[4] *See, e.g.*, Carrie Menkel-Meadow, *The Silences of the Restatement of the Law Governing Lawyers: Lawyering as Only Adversary Practice*, 10 GEO. J. LEGAL ETHICS 631, 632 (1997); Linda A. Cinciotta, Senior Counsel for Alternative Dispute Resolution, Director, Office of Dispute Resolution, U.S. Dept. of Justice, *Alternative Dispute Resolution Comes of Age in the Federal Government, Remarks at the Nat'l Legal Center for the Public Interest: A Day With Justice* (Oct. 28, 2003), http://www.usdoj.gov/odr/aatllegalcenter102803.htm.

[5] The official title of the Pound Conference is The National Conference of the Causes of Popular Dissatisfaction with the Administration of Justice. It was held on April 7-9, 1976 in Minneapolis, Minnesota.

[6] *See* Frank E. A. Sander, *Varieties of Dispute Processing*, 70 F.R.D. 111 (1976). Sander did not use the term "multi-door courthouse," but it has long been used by others to describe Sander's vision. The concept refers to the idea that a courthouse could conceivably provide the public with many ways to resolve disputes, from traditional litigation, to the many ADR processes.

[7] H. Comm. on the Judiciary, 66th Leg., Interim Report: Arbitration and Overcrowded Courts (Tex. 1978), *available at* http://www.lrl.state.tx.us/scanned/interim/65/j898a.pdf; H. Comm. on Judicial Affairs, 67th Leg., Interim Report to the 68th Tex. Leg. (Tex.1982), available at http://www.lrl.state.tx.us/scanned/interim/67/j897.pdf; H. Comm. on Judiciary, 68th Leg., Interim Report to the 69th Tex. Leg (Tex. 1984), *available at* http://www.lrl.state.tx.us/scanned/interim/68/j898.pdf; H. Comm. on Judiciary, 69th Leg., Interim Report to the 70th Tex. Leg. (Tex. 1986), available at http://www.lrl.state.tx.us/scanned/interim/69/j898.pdf.

[8] Texas General Arbitration Act of 1965, 59th Leg., R.S., ch. 689, § 1, 1966 Tex. Gen. Laws 1593 (current version at Tex. Civ. Prac. & Rem. Code Ann. §§ 171.001-171.098) (Vernon 2005).

[9] Texas Alternative Dispute Resolution Systems and Financing Act of 1983, 68th Leg., R.S., ch. 26, § 1, 1983 Tex. Gen. Laws 118 (current version at Tex. Civ. Prac. & Rem. Code Ann. § 152.001-152.006) (Vernon 2005).

[10] Interview with Cyndi Taylor Krier, former Texas Senator, Austin, Tex. (July 11, 2007) [hereinafter Krier Interview].

[11] Texas Legislative Council, 70th Leg., Summary of Enactments 1 (1987), *available at* http://www.lrl.state.tx.us/scanned/sessionOverviews/summary/soe70.pdf.

[12] *Id.* at 2.

[13] Tex. Civ. Prac. & Rem. Code Ann. § 154.002 (Vernon 2005).

[14] Ralph Bivins, *Alternatives to Courtroom Battles Gaining Popularity*, HOUS. CHRON., Dec. 13, 1987, http://www.chron.com/CDA/archives/archive.mpl?id=1987_508945.

[15] *Id.*

[16] Krier Interview, *supra* note 10.

[17] For a comprehensive discussion and analysis of Texas ADR legislation, see ALAN SCOTT RAU, EDWARD F. SHERMAN & BRIAN D. SHANNON, RAU, SHERMAN'S TEXAS ADR & ARBITRATION: STATUTES AND COMMENTARY, (2000 ed., West Group 2000).

[18] See *id.* for a superlative treatise on ADR laws in Texas.

[19] Cyndi Taylor Krier, A Perspective on the ADR Statute, Remarks at the Fall ADR Conference & Celebration of the 10th Anniversary of the Texas ADR Statute (Sept. 12, 1997), *in* ALTERNATIVE RESOLUTIONS, Nov. 1997 [hereinafter Krier Remarks], http://www.texasadr.org/newsletters9711.html#Remarks.

[20] *Id.*

[21] CHARLES DICKENS, DAVID COPPERFIELD 49 (Trevor Blount ed., Penguin Books 1966) (1849-1850). "To begin my life at the beginning of my life, I record that I was born . . . ."

[22] Krier Interview, *supra* note 10.

[23] Frank G. Evans is a former Chief Justice of the First Court of Appeals in Houston.

[24] Frank G. Evans, *Problem Solving Progress: Peacemakers and the Law*, 11 TEX. WESLEYAN L. REV. 1 (2004).

[25] *Id.*

[26] Interview with Frank G. Evans, retired Chief Justice of the First Court of Appeals, in Austin, Tex. (July 2, 2007) [hereinafter Evans Interview].

[27] H. Comm. on Judicial Affairs, 67th Leg., Interim Report to the 68th Tex. Leg. 4 (Tex.1982), *available at* http://www.lrl.state.tx.us/scanned/interim/67/j897.pdf.

[28] *Id.* at 3.

[29] Krier Remarks, *supra* note 19 (emphasis added).

[30] Evans Interview, *supra* note 26.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] Tex. S.B. 759, 67th Leg., R.S. (1981).

[35] A bracket bill is legislation that is written to benefit a narrow classification of beneficiaries.

[36] Tex. S.B. 759.

[37] Tex. S.B 759.

[38] U. S. Census Bureau, http://www.census.gov/popest/archives/1980s/#county, then follow 1980 to 1989 Population Estimates of the U.S., States, and Counties.

[39] The consent calendar is typically reserved for bills that are noncontroversial, or considered local as opposed to major state business.

[40] H.J. of Tex., 67th Leg., R.S. 3953 (1981).

[41] *Id.* at 4156.

[42] *Id.*

[43] *Id.* at 4157.

[44] *Id.* at 4192.