

Outline of Comments by Ken Starr

- I. Access and the Culture of Market-Sensitive Justice Delivery Systems
 - A. The Lamentation of the Vanishing Trial
 - B. ADR as a response to the ongoing democratic conversation and unfolding market demand—access to courts is severely limited (e.g., the Dunlop Commission on the Future of Worker Management Relations)
 - 1. The voice of Congress (1990 - CJRA); (1998 - ADR Act).
What the Congressional (bipartisan) response says about the modern American attitudes toward crafting less formal paths to seeking justice
 - 2. The experience of “the laboratory of the States” (a very brief tour of the horizon)
 - 3. Evaluation/assessments/pros/cons of public ADR programs
 - 4. The private sector:
 - a) The management of disputing: addressing the culture of conflict and incivility; creating a culture of communitarian problem-solving
 - b) The holdouts: traditional litigation tactics as a deterrent to the advancement of claims (examples)
 - c) The goal: crafting an integrated institutional approach to resolving disputes and restoring community
 - d) Arbitration as the new form of traditional, costly litigation—a bright spot? Securities claims arbitrations (which have largely replaced traditional litigation)
 - e) The explosion of on-line dispute resolution: The unfolding success story of Square Trade and harbingers of the future
 - f) Exporting dispute management: the global market for non-traditional litigation
 - C. The dangers lurking in informal/alternative methods of dispute resolution
 - 1. The tendency to limit unfairly procedural protections
 - 2. Obstacles to achieving balance/procedural fairness in alternative pathways
- II. The Supreme Court—Granting the Green Light for Exiting the Courthouse
 - A. The culture of solicitousness for arbitration and maximizing arbitral power (a brief reflection on the Court's pro-arbitration jurisprudence)

- B. A recent example of Supreme Court succor: Buckeye
- III. The Unfolding, Multi-faceted Conversation about Rights and Remedies: Congress and the Court
 - A. Democratic theory/pragmatism as constraints/institutional capacity on judicial unilateralism
 - B. A case study: The rights of the States—the Eleventh Amendment and its uncertain future
 1. Seminole Tribe's tenth anniversary reveals an uncertain future
 2. Central Virginia Community College v. Katz
 3. The most significant event in recent Supreme Court history: The departure of Justice O'Connor and the arrival in her place of Justice Alito
 - C. The Remedies Jurisprudence of Justice Alito: The Early Returns