FEDERAL CONFLICT MANAGEMENT SINCE 1995 AND OPTIONS FOR THE ADMINISTRATIVE CONFERENCE

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Overview. In May 2010, the Office of the Chairman of the Administrative Conference of the United States (ACUS) commissioned me to examine and report on recent developments in government agency dispute resolution and conflict management. In carrying out my research, I reviewed relevant literature and interviewed approximately two dozen experts and representatives of affected entities.[2] This resulting report seeks to:

- Briefly survey developments in government agency dispute resolution and conflict management since ACUS was discontinued in 1995;
- Offer advice on how the restored ACUS might support and improve federal agencies' use of innovative conflict management activities to engage members of the public in agency decisions, upgrade agencies' dispute handling, or seek better, more acceptable outcomes; and
- Lay out some possible research and related activities to promote improvements in the fairness and efficiency of agencies' conflict management operations.

ACUS leadership and coordination through 1995. Between 1982 and 1995, ACUS's Office of the Chairman made agency use of alternative means of dispute resolution (ADR) a major focus of its research and staff implementation activity. In establishing a statutory framework for agency ADR, Congress charged ACUS in 1990 with spearheading the federal government's implementation of these consensus processes.[3] Some observers have credited

[1] For 10 years, Charles Pou directed the Dispute Resolution Program at the Administrative Conference of the United States, the agency designated in the Administrative Dispute Resolution Act of 1990 with lead responsibility for promoting federal ADR use. Pou co-authored that statute, and he and other ACUS staff members assisted agency dispute resolution specialists appointed under the Act in the government's implementation of consensus-based processes. Since 1995, Pou has consulted with many agencies setting up or improving conflict resolution programs, served as a neutral in a variety of regulatory and other conflicts, and written on ethics, confidentiality, design, and related issues involving governmental bureaucracies employing ADR. Pou graduated from Rice University and Harvard Law School.

[2] Appendix A contains a list of persons interviewed for this report.

[3] The Wikipedia entry for ACUS states in part:

> The Conference also adopted a series of recommendations that set forth procedures and criteria for utilizing a variety of alternative dispute resolution techniques and approaches for eliminating excessive litigation costs and long delays in federal agency programs. These activities led to enactment of the Administrative Dispute Resolution Act in 1990, which established a framework for agencies to resolve administrative litigation through alternative dispute resolution. ACUS applied a similar approach for consensual resolution of disputes in rulemaking, and its recommendation on negotiating regulations in appropriate situations led to enactment of the

the passage of the Administrative Dispute Resolution Act of 1990[4] (ADRA or ADR Act) and ACUS's implementation role with creating a framework for innovation. ACUS's efforts included:

- Conducting about a dozen research projects leading to recommendations on issues in federal agencies' employing ADR, negotiated rulemaking, and consensus processes to improve decisionmaking;
- Working closely with the ABA to prepare, and support enactment of, two major 1990 APA amendments – the ADR Act and Negotiated Rulemaking Act (NRA);
- Taking lead responsibility under both laws for assisting government agencies to implement the statutes: chairing a Federal ADR Coordinating Committee, creating and providing staff support for several interagency working groups, developing guidance for agencies implementing new conflict management systems, and consulting with individual agencies on implementing new programs;
- Developing publications, videos, topical roundtables, educational programs, training activities, and an ADR Reading Room to help agencies understand and make effective use of ADR methods; and
- Submitting reports to Congress in 1995 documenting agency implementation of – and recommending amendments to, and permanent reauthorization of – ADRA and NRA.

Many of these activities were accomplished using ACUS staff, contractors, and appropriations. Others involved "Visiting DR Fellows" detailed from other federal agencies for 6 to 12 months, interagency fund transfers, and grants from the Hewlett Foundation and others.

Main themes in current federal ADR use. Over the past 15 years, the conflict management landscape has changed considerably. Based on observation, interviews, readings, and related research, I would suggest that these recent trends have emerged:

- Mediation and similar "ADR" methods – once experimental and even problematic in some eyes – have become mainstream in many ways, especially in court settings and some administrative adjudication programs; notwithstanding those developments, ADR processes in agencies are nowhere close to being employed to their full extent or benefit, and often have been confined to collateral disputes or little used to involve affected interests in significant agency decisions.

Negotiated Rulemaking Act. To help implement these statutes, the Conference provided extensive assistance to agencies throughout the federal government. These activities included training programs, interagency working groups to enable agencies to address specific issues through study and sharing of information about best practices, and the publication of two voluminous Sourcebooks for agency reference.

[4] 5 U.S.C. §571-584 (general provisions, confidentiality, administrative arbitration); 5 U.S.C. §556(c) (ALJ authority); 9 U.S.C. §10 (arbitration, judicial review); 41 U.S.C. §604-607 (contract disputes); 29 U.S.C. §173 (FMCS authority); 28 U.S.C. §2672 (tort claims); and 31 U.S.C. §3711(a)(2) (government claims); enacted November 15, 1990 by Pub. L. No. 101-552, 104 Stat. 2736; significantly amended August 6, 1992 by Pub. L. No. 102-354, 106 Stat. 944, and October 19, 1996 by Pub. L. No. 104-320, 110 Stat. 3870.

- Use of some intensive, multi-party consensus processes like negotiated rulemaking has slowed since the early 1990's.
- Personnel at a number of federal agencies (especially those with environmental duties) have made increasing use of collaborative, though not necessarily consensus, approaches to planning, siting, policy development, and other regulatory activities.
- Some public sector conflict managers and private service providers have developed methods for employing computer networks and other technologies to inform members of the public about agency intentions, involve them in decisionmaking, receive relevant input, and obtain timely feedback.
- The conflict management field has devoted considerable thought and activity to "dispute systems design" inquiries, practice statements, and advice intended to ensure that interventions are soundly conceived, are put into practice effectively, and prove fair and acceptable to users. Some federal ADR managers have taken these notions to heart, but many agencies still need sustained exposure to these strictures and the conflict management philosophy they embody.

In addition to the very real, but limited, progress in employing "ADR," new conflict management processes have been developed, and previously existing ones modified or extended beyond their initial applications in courts, agency adjudication, or consensus policymaking. While no one sees mediation and similar ADR methods as having come close to reaching their potential to help agencies improve decisionmaking, some conflict management (CM) practitioners now see "'90's" processes like mediation as somewhat narrowly focused "downstream" – i.e., upon litigation or other disputes involving named parties or more localized or specific issues – instead of "upstream" – that is, uses that involve broader policy or planning questions and large numbers of affected interests.

Today a variety of concepts (collaborative governance, integrated conflict management systems, workplace and public ombuds offices) bring to bear interest-based negotiation, improved communication, collaborative problem-solving, and similar strategies. While employed in diverse settings with varying goals, these processes all seek to engage individuals and entities in significant agency decisions from the outset, enhance workplace or other relationships, or seek better, more acceptable outcomes than "win-lose" approaches. These initiatives – themselves fairly limited to date – reflect the idea that agencies should not simply react to problems after they occur but should also build internal capacity to manage conflict actively, whether in the workplace, within or among agencies, or with the public.

These recent developments offer new opportunities for ACUS systematically to explore, and advise agencies on, taking better advantage of interest-based decisionmaking approaches and addressing obstacles. Those impediments do not appear to have changed substantially in recent years. They include:

- Most political-level policymakers know little about these processes and their potential uses and benefits
- Many mid-level managers continue to be reluctant to "share" decision-making with outside interests
- In many agencies, ADR programs have been "siloed" or marginalized to the point where decisionmakers and process managers do not consider using the range of available processes
- ADR has not been integrated into most agencies' audit, recruitment, and performance management structures
- There is still a lack of effective, persuasive documentation of the substantive quality and acceptability of decisions reached via ADR, or of their costs and benefits compared to more traditional decisionmaking methods
- Some experts see the OMB Office of Information and Regulatory Affairs' concern that agencies' negotiation of policy issues could limit or affect Presidential oversight as having presented obstacles[5]

Interagency coordination since 1995. In 1996 legislation permanently reauthorizing the ADRA and NRA, Congress directed the President to find a new home within the federal government for some of the coordinating, consulting, and other functions previously performed by ACUS. President Clinton designated the Attorney General as the authority responsible for convening an interagency effort, and Attorney General Janet Reno played an active role in encouraging agency use of alternative means of dispute resolution, particularly in litigation and agency adjudication settings. At its peak, this effort was quite active and consisted of a network that included an Interagency ADR Working Group, four Working Group Sections (Contracts and Procurement, Civil Enforcement and Regulatory, Workplace Disputes, and Claims against the Government), an ADR Steering Committee, and a high-level Federal ADR Council. While the federal Interagency ADR Working Group (IADRWG) had a major impact during Attorney General Reno's tenure and has continued to play valuable roles in certain areas (e.g., promoting ADR in workplace and contracting disputes, preparing a 2007 report to the President on agency uses of ADR), some agency members of the Working Group express frustration and a desire to see it do more going forward to promote improved conflict management in a wide array of settings.[6]

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[5] In *Collaborative Governance Meets Presidential Regulatory Review*, 2009 Jnl. Dis. Res. 343, 344, former OIRA executive Donald R. Arbuckle describes this concern as follows:

> The White House environment, including OIRA's regulatory review process, is not conducive to formal collaboration, as it is described by Professor Harter… White House decisionmaking and OIRA regulatory review have a hierarchical component that is at odds with the horizontal nature of collaboration… [A]ny sitting President would be loath to delegate his authority to a collaborative panel. Nonetheless, the benefits of collaboration can be substantial, and the President could use his authority to encourage the use of collaborative rulemaking…

Philip J. Harter, in *Collaboration: The Future of Governance*, 2009 Jnl. Dis. Res. 411, 445, states that, although E.O. 12,866 directs agencies to "explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking," OMB has in fact "actively discouraged the use of negotiated rulemaking/collaboration and made it difficult for agencies to implement the directive."

[6] One recent product was a 2007 report for the President on ADR use in the Executive Branch. Another effort in 2006 by a subgroup of this entity, the IADRWG Ethics Committee, put forth a Guide for Federal Employee Mediators, which supplements the Model Standards of Conduct for Mediators developed by the ABA, AAA, and ACR by adding some

While the high-level ADR Council has not met in years and Attorneys General since Reno have not emulated her in employing their position as a "bully pulpit" to promote improved conflict management, a recent noteworthy action was Attorney General Eric Holder's issuance of a May 2010 memorandum to all agency heads. It touted ADR as a management tool, announced his intent to reconvene the interagency working group, requested that each agency head appoint a senior level representative who is knowledgeable about ADR use at the agency, and sought detailed information about agencies' current ADR use and plans.

Other recent initiatives and interagency activities. Another set of developments involves the recent rise of some additional federal entities with conflict-related duties. Most significantly, these include the U.S. Institute for Environmental Conflict Resolution (IECR) and the U.S. Institute of Peace (USIP).[7] IECR, part of the Morris K. Udall Foundation in Tucson, AZ, was created by Congress in 1998 to assist parties in resolving environmental conflicts around the country that involve federal agencies or interests. The Institute has become quite active in providing a neutral setting, inside the federal government but "outside the Beltway," where public and private interests can seek to reach common ground.[8] Its staff includes conflict management professionals and it administers a roster of environmental mediators.

IECR, which has recently created a Washington, DC office, has undertaken a number of activities in addition to its case-specific resolution efforts. It has sponsored a well-regarded conference on environmental conflict resolution that is held every other year, begun to develop an evaluation system with sharing of case evaluation methodology, and held quarterly coordination meetings for education and idea exchange that take on a variety of subjects. Several people I interviewed suggested that some of these activities could be usefully extended to non-environmental agencies by appropriate entities.

Federal Guidance Notes. This Guide can be found at http://www.adr.gov/pdf/final_manual.pdf A similar Guide for Federal Employee Ombuds (which can be found at http://www.adr.gov/pdf/final_ombuds.pdf) is also based on private sector standards and offers guidance notes for internal agency ombuds operations.

[7] USIP is an independent, non-partisan, congressionally-funded entity, created initially in the 1980's, with stated goals that include:

- To help prevent, manage, and resolve violent international conflict both within and between states;
- To increase peacebuilding capacity, tools, and intellectual capital worldwide;
- To build and shape the field of international conflict prevention and management and to professionalize its practice; and
- To build knowledge and create innovative tools for peacebuilding.

[8] IECR's primary objectives are to:

- Resolve federal environmental, natural resources, and public lands disputes through assisted negotiation and mediation;
- Increase use of environmental conflict resolution in general and improve the ability of federal agencies and other interested parties to employ ECR effectively; and
- Promote collaborative problem-solving and consensus-building during the design and implementation of federal environmental policies to prevent and reduce the incidence of future environmental disputes.

In November 2005, the Office of Management and Budget and the White House Council on Environmental Quality issued a joint memorandum on environmental conflict resolution[9] urging agencies to "develop strategies to prevent or reduce environmental conflicts and generate opportunities for constructive collaborative problem solving when appropriate." The program was designed to provide practical insights to agency officials and employees as to how to use environmental conflict resolution (ECR) successfully. It encouraged agency leadership to promote collaborative processes and directed agencies with environmental responsibilities to report annually to OMB and CEQ documenting their ADR planning and implementation effort. The memorandum set forth several basic principles for agency engagement in ECR and collaborative problem-solving. In early 2006, OMB and CEQ formed a staff level Implementation Steering Group, led by CEQ and IECR, to guide implementation of the Memorandum.

Assessing interagency coordination and potential ACUS roles. While there has been some useful coordination among environmental agencies, as described, recent years have seen a decline in ADR coordination and leadership across government. Although the IADRWG established in the late 1990's had some early accomplishments (especially in the confidentiality arena) and has maintained consistent worthwhile activities in several areas (e.g., workplace, contracting), many agency ADR/CM managers I interviewed expressed the view that greater focus and additional interagency efforts are now needed. They express frustration that, while President Clinton directed DOJ to "convene" an interagency group, there has been recurrent uncertainty and internal divisions as to just what that term encompasses, what coordinating, guidance, and other obligations it imposes on DOJ, what authority the group should have to issue guidance or advice, and how group priorities should be set, activities undertaken, and decisions made. Many people interviewed suggested that, given some perceived inconsistency in the IADRWG's authority and administration, the group needs at a minimum to rethink or clarify its organization, decisionmaking, and leadership. A number of interviews with federal ADR personnel also suggested a strong sense that interagency efforts should focus more broadly on innovative, potentially beneficial uses of ADR and CM processes in policymaking, dispute avoidance, and other arenas besides litigation and the workplace.

One recent related development is an intention, expressed by the DR Specialist at the National Mediation Board, to establish a new interagency group comprised of smaller agencies with components that provide some ADR or CM services; this group, which met for the first time in the fall of 2010, could include "traditional" federal providers like NMB and FMCS, as well as agencies with internal entities (like FERC's Dispute Resolution Service) that offer collaborative process options to private or agency parties in regulatory or other disputes.

Interviews with academics, experts and agency personnel suggest that – given ACUS's prior generally competent work handling its ADR Act mandate until 1995 – a revived ACUS might play potentially valuable roles. There is frustration at the lack of attention paid to

[9] Memorandum on Environmental Conflict Resolution, November 28, 2005.

addressing ADR use, or improved CM, on a government-wide basis, and a sense that DOJ and others could accomplish considerably more going forward. There is also a widespread sense that federal ADR would benefit from ACUS once again conducting credible research; offering well-grounded advice; promoting high-level awareness, sound usage, and inter-agency sharing; attempting to document the value of ADR processes and innovative attempts at collaborative governance; and exerting some intellectual and strategic leadership.

Many people went further. Some agency program managers acknowledged the potential resource burdens for ACUS in playing such CM roles and specifically offered to explore ways to help ACUS meet them. Several argued that ACUS should regard focusing on CM as more than a worthwhile extension of earlier priorities; they believed that, given the critical importance of improving trust in agencies' decisions and decisional processes, ACUS could offer unique benefit by addressing agency processes that could bring people together to solve problems and explore opportunities.

Moving ahead at ACUS. Possible levels of engagement include:

- Basic – Undertaking several research projects on ADR-related issues

- Moderate – In addition, establishing an ACUS Committee on Conflict Management (or Collaborative Governance), comprised primarily or entirely of ACUS members, that focuses on ADR-related research and recommendations and also undertakes a leadership role in identifying and accomplishing other ACUS-sponsored initiatives to improve federal conflict resolution and public involvement

- High – In addition, signaling ACUS's possible interest in reestablishing many or all aspects of ACUS's pre-1995 leadership roles in support of line agencies' ADR implementation and coordination

In finding appropriate roles going forward, ACUS will need to consider closely several priority, resource, organizational, and other considerations. If ACUS does decide to move beyond the first "bullet" to place an emphasis on conflict management, I'd suggest undertaking these near-term actions:

- Announce an *ACUS-sponsored conference* (or co-sponsored "summit") in spring 2011 that would systematically explore current federal ADR and CM activity, assess agency needs, and begin to plot a path forward for ACUS.

- Delegate one ACUS committee to focus on ADR projects, or, better, *create a high profile Committee on Conflict Management* (or Collaborative Governance) with an energetic chair, an active, diverse membership that includes ADR experts, and adequate support by a detailee or ACUS staffer knowledgeable about government

CM.

- *Charge the Committee* on Conflict Management to:

    - Develop an online ADR strategy workplan and for ACUS;
    - Oversee bringing the old ACUS ADR Reading Room and ADR sourcebooks into the 21st century by establishing a computer database that includes good practice statements, research, advice, evaluations, and other resources potentially helpful to those interested in government CM;
    - Working closely with the Research Director, coordinate with current interagency groups and other key ADR entities in and outside of government to obtain feedback on CM research priorities;
    - Assist agencies to address specific issues through study and sharing of information about best practices; and
    - Identify other specific clearinghouse, educational, and other practically beneficial ACUS activities in this area.

- Undertake two or three, and ideally more, *ADR-related research projects* under the relevant committee's auspices.

- *Reach out* very soon at high levels to key entities inside and outside government, possibly including DOJ, US IECR, relevant ABA sections (e.g., Administrative Law and Regulatory Practice, Environment, Energy, and Resources, Dispute Resolution), and a few other entities, to discuss cooperation, priorities, resources, and other concerns.

- If ACUS does decide to give emphasis to collaborative approaches to conflict, *relationships and resources* will be important matters and ACUS should consider re-establishing a few selected pre-1995 ADR programs; these include the Visiting ADR Fellows Program (to obtain resources for new projects by drawing on expressions of interest from line agencies) and the ADR grants program (to reestablish ACUS in the minds of potential grants-makers).

- An area in particular that will benefit from enhanced attention by both ACUS and the interagency group (and whose potential has been comparatively neglected in ACUS's absence) involves *forging long-term, productive links* between federal agencies with ADR programs and professional organizations in the ADR world; as one knowledgeable observer told me, "ACUS's focusing only on Feds inside the government produces the sound of one hand clapping." Thus, ACUS should consider potential advantages in building close ties with and among the Interagency Group, other federal ADR entities (e.g., establishing advisory or consultative roles in planning ACUS ADR research), and private groups, like the Harvard Project on Negotiation's clinical CM program whose students FERC, NIH, and other agency CM programs have employed for design and assessments.

ACUS-sponsored conference. A "convening" assessment should precede the recommended conference; it could help structure discussions, identify critical participants inside and outside the government, and offer background to:

- Assess the current federal conflict management landscape, including accomplishments, obstacles, and statutory and administrative frameworks
- Explore possible roles that ACUS and others might play in obtaining high-level agency attention and credibility, advancing these processes throughout the government, and addressing statutory, resource, or other useful improvements
- Identify capacity-building, statutory authority, and other specific needs, and possible joint action
- Explore resources that would be needed for possible ACUS ADR initiatives, and potential sources thereof
- Consider how ACUS, DOJ, US IECR, and other entities might work together to good effect, as well as possible next steps for ACUS

ACUS's approach to planning such a conference, and to most decision-making in this area, should occur in as open, collaborative, and communicative a fashion as possible. Existing ADR entities seem pleased to explore co-sponsoring these efforts with ACUS.

Possible research. A review of ACUS research and recommendations on ADR topics between 1982 and 1995 suggests that, while several issues previously examined may warrant a closer look, few or none need fundamental rethinking. While research decisions will depend on priorities and resources, I have set forth some possibilities in rough priority order, as follows:

The rise of "collaborative governance": Implications for federal agencies. Consensus processes like negotiated rulemaking emerged in the 1980's as an alternative to traditional procedures for developing environmental and other public policies and proposed agency regulations. The essence of these processes – which are at their core nothing more or less than large scale, multi-party mediations – is that in certain situations it is possible to bring together representatives of an agency and the various affected interest groups to negotiate the actual text of a proposed rule or policy. However, as Jeffrey Lubbers and others have written, reg-neg use per se has waned since an initial flourishing in the late 1980's and 1990's.[10] A recent, related development is the rise at all levels of government in what has come to be called "collaborative governance": approaches to developing solutions that seek to involve the public and affected government entities at all levels earlier, more continuously, and more effectively than traditional "one-way" methods.

[10] *Achieving Policymaking Consensus: The (Unfortunate) Waning of Negotiated Rulemaking*, 49 So. Texas L. Rev. 987 (2008).

It appears that collaborative governance (CG) has achieved a certain cachet. It is less clear just what activities and goals collaborative governance encompasses; how well these processes are typically employed; and what legitimacy, accountability, quality and other concerns they may give rise to. The very term "collaborative governance" is much used, but is defined differently by those who use it; some fear that it too broad and misunderstood a notion to coalesce around or study effectively. However, most experts see a very close connection between ADR and collaborative governance, with the latter representing in many respects a creative expansion and application of the ADR sensibility and techniques to issue-based, multi-party disputes involving organizations. (One interviewee observed informally, "Take ADR, throw in a bit of systems theory and a bit of organizational development theory and practice, and you have collaborative governance.")

Jody Freeman, in her influential 1997 article,[11] was an early advocate of collaborative governance, which "seeks to respond to the litany of criticisms about the quality, implementability, and legitimacy of rulemaking by reorienting the regulatory enterprise around joint problem solving and away from controlling discretion."[12] CG approaches – whether or not all are technically "ADR" – employ the same structured communication and consensus-building methods to incorporate the interests and perspectives of a variety of stakeholders, foster exchange of knowledge, adduce improved information, and yield better, more acceptable outcomes.[13]

In their 2008 article *Collaborative Governance in Theory and Practice*,[14] Chris Ansell and Alison Gash document the expanding use of CG approaches:

> Over the last two decades, a new strategy of governing called ''collaborative governance'' has developed. This mode of governance brings multiple stakeholders together in common forums with public agencies to engage in consensus-oriented

[11] *Collaborative Governance in the Administrative State*, 45 UCLA L. Rev. 1 (1997).
[12] Id. at 22.
[13] Freeman summarized the characteristic components of these CG processes as follows:
"1. A problem-solving orientation. The focus is on solving regulatory problems. This requires information sharing and deliberation among parties with the knowledge most relevant to devising and implementing creative solutions.
"2. Participation by interested and affected parties in all stages of the decision-making process. Broad participation has an independent democratic value and may facilitate effective problem solving. It may take different forms in different contexts.
"3. Provisional solutions. Rules are viewed as temporary and subject to revision. This requires a willingness to move forward under conditions of uncertainty. It also demands a willingness to devise solutions to regulatory problems without foreclosing a rethinking of both solutions and goals. To this end, continuous monitoring and evaluation are crucial.
"4. Accountability that transcends traditional public and private roles in governance. Parties are interdependent and accountable to each other. New arrangements, networks, institutions, or allocations of authority may replace or supplement traditional oversight mechanisms. These might include self-monitoring and disclosure, community oversight, and third-party certification. In these arrangements, traditional roles and functions are open to question.
"5. A flexible, engaged agency. The agency is a convenor and facilitator of multi-stakeholder negotiations. It provides incentives for broader participation, information sharing, and deliberation. It acts as a capacity builder of parties and institutions by providing technical resources, funding, and organizational support when needed. While the agency may set floors and ceilings and act as the ultimate decisionmaker, it views regulatory success as contingent on the contributions of other participants." Id.
[14] *Collaborative Governance in Theory and Practice*, 18 J. Pub. Admin. Res. & Theory 543 (2008).

> decision making. In this article, we conduct a meta-analytical study of the existing literature on collaborative governance with the goal of elaborating a general model of collaborative governance. The ultimate goal is to develop a contingency approach to collaboration that can highlight conditions under which collaborative governance will be more or less effective as an approach to policy making and public management....
>
> Although collaborative governance may now have a fashionable management caché, the untidy character of the literature on collaboration reflects the way it has bubbled up from many local experiments, often in reaction to previous governance failures. Collaborative governance has emerged as a response to the failures of downstream implementation and to the high cost and politicization of regulation. It has developed as an alternative to the adversarialism of interest group pluralism and to the accountability failures of managerialism (especially as the authority of experts is challenged).[15]

Lisa Bingham defines CG broadly: "Collaborative governance can take many forms, including many experiments in deliberative democracy, collaborative public or network management, and appropriate dispute resolution in the policy process; these processes all share a related role by providing ways for people to exercise voice and to work together in governance."[16] Philip Harter, on the other hand, notes an "ongoing debate as to whether the term 'collaborative governance' includes simply the process of parties with varying interests working together or whether it requires an actual decision that will be implemented – the 'governance' side of things."[17] In Harter's view, it is the effort actually to work out a specific, mutually acceptable decision that gives collaborative processes their greatest potential value.

Whatever the precise definition, many proponents[18] and users have found CG a term that describes a range of useful public involvement activities that goes beyond "old wine, new bottles" to include innovative civic engagement processes, e rulemaking, and a variety of online conflict management and other inclusive technology-enabled innovations. In large

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[15] Id.

[16] Lisa Bingham, *Collaborative Governance: Emerging Practices and the Incomplete Legal Framework for Public and Stakeholder Voice*, 2009 Jnl. Dis. Res. 269.

[17] Philip J. Harter, *Collaboration: The Future of Governance*, 2009 Jnl. Dis. Res. 411, 445.

[18] Among the most active promoters of CG are the Policy Consensus Initiative and the National Policy Consensus Center. PCI seeks to work with state leaders to bring about better governance via joint efforts to address complex problems through involvement from all sectors. PCI:

- Provides workshops and materials to help build the capacities of leaders, citizens and centers to employ collaborative governance practices,
- Designs systems and models of collaborative governance for particular issues and contexts and tests and disseminates them,
- Carries out research and recommends steps for overcoming barriers to the use of systems for coordination and collaboration across sectors and levels of government, and
- Provides informational materials, case studies and tools, and consultation and design services for state leaders and others.

part, CG represents a fresh approach to thinking about a broad array of consensus and non-consensus options for involving members of the public that, compared to "old fashioned consensus," may increase comfort levels among political leaders and offer a bit more intellectual currency and acceptability among public administration academics. CG also reflects many experts' belief that "single agency decider" models are increasingly unrealistic and a growing number of planning and regulatory activities require decisions affecting multiple agencies or sectors.

CG processes generally have not yet received the scholarly attention they warrant. This stems in part from the fact that, rather than having been employed consistently or systematically, they have tended to "bubble up" – often in non-federal settings – where a state or local leader decides to play the role of convener who brings together organizations, businesses, citizens and government to address a specific, pressing public problem. A systematic ACUS examination and assessment of how some of these processes have been employed in various situations to address or avoid conflicts involving federal entities could aid our understanding: e.g., when to consider various kinds of collaborative approaches to involving members of the public in policymaking and other governmental settings; what kind of framework would enable government leaders to best use these processes; available group management, remote conferencing, feedback, online, and other options that have been used to effectuate participation; their theoretical and practical strengths and weaknesses; what factors have affected outcomes and acceptability when these processes have been employed; effective executive oversight; potential impact of developing best practices statements; and any practices that might be encouraged, discouraged, or improved on. A useful – though potentially difficult – goal of such a study might also be to begin to assess (impressionistically, not as a quantitative evaluation) the quality, implementation, and acceptability of the outcomes of those CG processes that seek consensus compared to outcomes of processes that seek more limited agreements (e.g., agreement in principle, generalized policy advice) or other goals.

The study could also examine both the organizational and the interaction phases of several large-scale CG processes that addressed complex, contentious issues to see how the sponsor designed the process. A successful collaborative process often requires a pre-negotiation assessment that involves conferring in confidence with many or most identifiable interests to identify reasonable goals and issues, find affected interests whose stake initially may not be immediately apparent, recommend whether collaboration is appropriate and timely, and if so, advise on such things as representation, the "shape of the table," and other process specifics. Since this assessment and related advance preparations are likely to be important to a successful outcome, ACUS's examination of, and advice on, considerations in structuring, preparing for, and participating in CG processes could promote sound usage.

FACA and other legal issues affecting ADR and collaborative governance. A closely related area that many experts recommended for study is the sometimes uncomfortable fit between CG processes and other statutes, especially the Federal Advisory Committee Act (FACA) that structures governmental consultation with non-federal entities.

Whereas negotiated rulemaking and some other consensus processes provide advice or recommendations to agencies and clearly fall under FACA, not all CG processes do so. Moreover, most federal advisory committees are established as a framework for obtaining various experts' opinions, rather than for consensus-building purposes; as a result many agency and other FACA experts do not fully understand the structure or operation of those groups that are established to reach consensus. As a result:

- Neutrals and agency personnel often complain that, given the novelty and diversity of many new planning or other collaborative processes, agency attorneys too often provide policy makers and potential participants with confused or needlessly restrictive FACA advice.

- Federally sponsored public-private groups can end up offering "proposals" or advice to agency contractors, who then forward them to the agency, all in an effort to reduce FACA concerns.

- Excessive committee approval and other reviews involving FACA delay, or obviate, the start of time-constrained processes.

- Artificial time limits impinge harmfully.

Several practitioners and agency ADR managers whom I interviewed saw utility in a "classic ACUS study" leading to useful recommendations on FACA's practical impact all along the "collaborative governance spectrum," what roles GSA or others should be playing, and ways to offer clearer guidance that improves understanding and assures compliance.

Related, though less pressing, is what some scholars see as a need to re-examine our framework for policy-making, implementation, and enforcement to encompass explicitly these new collaborative governance activities. Lisa Bingham writes, "[W]e are in the 'let the thousand flowers bloom' stage of collaborative governance, in which new processes for citizen dialogue and deliberation in the policy process are emerging daily. Legal infrastructure should not inhibit this experimentation; instead, it should authorize and legitimize it."[19] She has suggested legislation, modeled on the federal ADR Act, specifically authorizing collaborative public management and collaborative governance.[20] Others

[19] Lisa Bingham, *Collaborative Governance: Emerging Practices and the Incomplete Legal Framework for Public and Stakeholder Voice*, 2009 Jnl. Dis. Res. 269.

[20] Id. at 323-4. Bingham suggests examining these questions:

- How can we empower agencies to participate in networks that can take action consistent with notions of delegated authority constrained by legislative standards that courts can use in judicial review?
- How do we facilitate collaborative public management in a way that is consistent with transparency in government?
- How do we foster effective participation in collaborative governance by citizens and stakeholders to provide greater transparency?
- How do we foster broader civic engagement in public management networks?
- What forms and methods of accountability are appropriate in collaboration?

suggest that focusing on legislation is premature, and might even chill experimentation. These observers see CG as less a pattern of governing than as occasional one-time initiatives that leaders may employ when pressed to reach decisions that need to be accepted and get implemented. They also wonder what particular changes would actually need legislation to be effectuated, i.e., what would a Federal Collaborative Governance Act offer comparable to the 1990 and 1996 ADR Acts' spelling out confidentiality, voluntariness, and party choice protections and delineating arbitration and other process options.[21] Nonetheless, an ACUS look at the legal and advisory frameworks within which these CG activities might be employed, and what experimentation or sound practice they may inhibit or affect, could inform these discussions.

Best practices for protecting ADR confidentiality. The Federal Administrative Dispute Resolution Act encourages federal agencies to employ alternative means of dispute resolution, in part by providing broad, powerful protection (based largely on ACUS Recommendation 88-11, "Encouraging Settlements by Protecting Mediator Confidentiality") for communications made in DR proceedings.[22] The ADR Act's confidentiality section defined these protections in detail. In addition to forbidding neutrals from disclosing or being "required to disclose" DR communications, with narrow exceptions, the Act also prohibits party disclosure, subject to a broader set of exceptions. The Act requires prior notice to parties in any case where arguably protected data are sought and an opportunity for the parties or neutral to contest disclosure. Where disclosure is contested, the decision maker is a federal judge, not an agency. The Act provides for "over-rides" by which admittedly protected material can be revealed – to overcome a manifest injustice or to protect the public health and safety – if a judge decides, based on a specific balancing test that employs statutory criteria, that the particular need is more important than protecting confidentiality.

During the 20 years since the Act's initial passage, a number of questions and concerns have arisen involving its confidentiality protections.[23] Several may merit ACUS attention. Some

[21] Several CG processes have been mandated by state legislatures, so those statutes may be useful in addressing these matters. Chris Carlson of PCI, in *Policy Consensus Initiative's Role in Building an Infrastructure for Collaborative Governance*, states that some of the questions that should be considered include:

- Who gets to participate? How are collaborative groups chosen?
- Do there need to be specifications about how representative or inclusive they are?
- What authorities do these groups have? Are they advisory or decision-making?
- Who has rights to be involved, to influence, to be heard, and to challenge the exercise of power?
- What access do these groups have to resources – time, space, information, data, skills? Do they have access to funds?
- What procedures, if any, guide how they operate?
- Who are they accountable to: the state, community, or other?
- How and when do they need to be linked to traditional democratic mechanisms?

[22] 5 U.S.C. §574. The ADR Act's intentionally very broad coverage applies to any "dispute resolution proceeding" – i.e., any process in which an "alternative means of dispute resolution" is used to resolve an "issue in controversy" relating to a federal "administrative program" in which a "neutral" is appointed and specified parties participate.

[23] An example of this involved the problematic interplay between the 1990 ADR Act's confidentiality provisions and the Freedom of Information Act ("FOIA"). While the 1990 Act set forth in great detail provisions governing the confidentiality of communications made in the course of a dispute resolution proceeding, it also provided, somewhat

concerns that have arisen include:

- Confidentiality of new processes. Several recent trends in agency CM largely postdate the ADR Act and involve activities that are not consistently protected by ADRA's confidentiality protections. These include, for instance, many aspects of workplace and external ombuds offices' operations and conflict coaching. Advice on structuring these activities to provide maximum protection and avoid surprises could be useful.

- Party confidentiality. While the ADR Act generally prohibits a party's disclosure of DR communications, Section 574(b)(7) excludes from this general protection disclosure by a party of any "DR communication… provided to or… available to all parties to the DR proceeding." Thus, unlike with most other ADR statutes, documents provided and statements made in joint session appear not to be protected by the ADR Act against disclosure by an agency or other party.

- In-house neutrals. Many agencies now employ in-house neutrals and program administrators for many ADR-related purposes in lieu of private sector contractor mediators or neutrals; this can raise unique questions relating to how much information received during convening, intake, mediation, and other ADR activities is handled and protected or not. (See also, possible project on systems design, below.)

- Other statutes. A related issue that a few agencies have had to face involves conflicts with other laws and policies that afford access to government information. While ADR statutes' policies against disclosing dispute resolution communications tend to be clear, occasionally situations have arisen when a party, an investigator, or other entity has sought to compel disclosure of protected ADR communications under claims that its request supersedes any restrictions on disclosure. On occasion, their divergent priorities, and arguable conflicts with other laws and policy goals, have produced unpredictability that has undermined parties' confidentiality expectations and proved detrimental to long-term acceptance of government ADR.

Confidentiality concerns – in federal agency and other settings – have given rise to enough uncertainty and worry to lead some authorities to seek to minimize future problems. Several recent projects have sought to develop practice statements and advice on an array of confidentiality issues agency ADR programs, neutrals, and parties may face. These recent

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anomalously, that it did not exempt disclosure of these communications under FOIA. As a result, many feared that a mediator or case intake manager who is a government employee (as is common in federal agencies' Equal Employment Opportunity mediation programs and some other disputes) might be forced to reveal documents received from a party or to disclose his or her notes. A 1995 Administrative Conference-sponsored study and recommendation, followed by a coordinated public-private effort in which the ABA played a major role, produced amendments when the Act was permanently reauthorized in 1996 that addressed this concern by creating a tightly drawn exception preventing disclosure, under FOIA or otherwise, for communications between a party and the neutral.

projects – undertaken largely in response to a widely criticized Fifth Circuit decision[24] nullifying ADR Act confidentiality under a USDA-sponsored farm mediation program – produced considerable agreement. An ACUS look at confidentiality that addresses the above questions and also looks at the following collaborative efforts could provide considered recommendations to agencies and practitioners on good practices and methods of protecting protected communications. The recent projects were:

- The ABA Committee on Federal ADR Confidentiality developed a guide that offered analysis and advice on data handling and confidentiality, and sought to promote a consensus that might reduce future disagreements and uncertainty. Two dozen Confidentiality Committee members reached unanimous agreement on a *Guide to Confidentiality under the Administrative Dispute Resolution Act*[25] that sought to aid agencies in dealing with issues like intake, preliminary conflict assessments, confidentiality agreement drafting, document handling, access requests, and training.
- The Federal ADR Council – the group created by Executive Order whose members are drawn from federal agencies active in ADR – issued (in conjunction with the U.S. Department of Justice) a guidance document entitled *Confidentiality in Federal Alternative Dispute Resolution Programs.*[26] This document, whose development was coordinated with the ABA Confidentiality Committee, noted that confidentiality is "a critical component of a successful ADR process," and suggested several practical steps to minimize the likelihood of disclosure disputes.
- The Federal Interagency ADR Working Group then followed up in 2006 with a manual – *Protecting the Confidentiality of Dispute Resolution Proceedings: A Guide for Federal Workplace ADR Program Administrators*[27] – containing detailed advice that was almost identical in substance to that in the ABA *Guide*.

An ACUS study examining confidentiality issues and recommendations on good practice under the ADR Act could be valuable. That said, there are some unanswered – and, some fear, potentially controversial – questions as to the relation of the ADR Act and a few other statutes, notably the Inspector General Act. An ACUS study that focuses on whether most agency confidentiality concerns can be addressed effectively within the current statutory framework could improve day-to-day practice without opening fundamental questions. Any decision to undertake a fresh look at the Act's confidentiality provisions or agency practice under the Act probably should be done cautiously and after consultation with potentially affected entities.

Design and practice issues for governmental entities. As agency dispute resolution activity becomes increasingly institutionalized, the need will grow for those who administer ADR

[24] In re Grand Jury Proceeding, 148 F.3d 487 (5th Cir. 1998), *cert. denied sub nom.* Moczygemba v. U.S., 526 U.S. 1040 (1999); *see* Charles Pou, *Gandhi Meets Eliot Ness: 5th Circuit Ruling Raises Concerns about Confidentiality in Federal Agency ADR*, Dis. Res. 9 (Winter 1998); *reprinted in* Admin. L. & Reg. News 5 (Spring 1999).

[25] http://meetings.abanet.org/webupload/commupload/DR030450/relatedresources/CopyofGuideFinalJul05.pdf

[26] 65 Fed. Reg. 83,085 (Dec. 29, 2000).

[27] *Available at* http://www.adr.gov/guidance.html

programs to act effectively, fairly and appropriately.[28] If ADR initiatives are to prosper, non-federal users must trust them and see potential value. This will require that agency administrators and neutrals understand and adhere to quality, ethical, and fairness precepts.

While these entities' operations have stimulated little objective scrutiny or systematic commentary, knowledgeable professionals have begun to address quality issues relating to the administration of ADR programs: intake, matching, quality, selection, administration, access, oversight, data handling, advice-giving, and design issues that converge when public and private entities provide parties with ADR services. Recognizing that program administrators' actions can affect the long term credibility and viability of ADR methods, several entities – e.g., the CPR-Georgetown Commission on Ethics a decade ago – have recommended approaches to addressing administrative fairness and acceptability issues.[29]

Helping agencies carry out these activities well may warrant systematic attention and self-examination – whether cast as recommendations, practice guidance, or just "things to think about." Some tentative steps have been taken to promote a growing sense that federal program administrators are professionals, and engage in worthy activity that they can perform well or poorly. An ACUS project or seminar series with experts and administrators converging to discuss how to do these jobs ably may be valuable. Also, ACUS may be able to assist agency provider organizations themselves to do more to share information and experiences, think through matters of effective design and evaluation, and focus explicit attention on "best practices" much as other groups have begun to do. The U.S. IECR has begun to assist development of evaluation tools for cases in that area, and the National Association For Community Mediation recently completed a successful effort to develop an assessment tool for community mediation programs; these examples of how providers are beginning to work together to address and improve ability to assess and inculcate ADR quality may be worth highlighting.

"Can we all get along?" Openness and transparency meet public involvement and conflict management. Over time, advocates for involving members of the public in agency decisionmaking have taken a variety of approaches. Initially this gave rise to public involvement offices within agencies. In the past decade or so, some agencies ADR or CM programs have sought to offer their own approach to involving affected interests in certain agency decisions, and many did so with relatively little concern for sharing with, or building on the experiences of, their public involvement colleagues.

On his first full day in office, President Barack Obama committed to create "an unprecedented level of openness in Government" and "a system of transparency, public participation, and collaboration" to strengthen democracy, ensure the public trust, and

[28] *See, e.g.*, the CPR-Georgetown Commission on Ethics, *Principles for ADR Provider Organizations* (2001), advising ADR provider organizations on the delivery of fair, impartial, and quality ADR services. The document also includes a taxonomy suggesting the breadth and diversity of ADR provider organizations. http://www.cpradr.org

[29] Id. at 7-13.

"promote efficiency and effectiveness in Government."[30] The process by which this commitment to public participation and collaboration was implemented has left many federal public involvement and ADR personnel feeling marginalized at the expense of technology experts more interested and expert in "Web 2.0" issues.

This appears to be a classic case of government "siloing." It is likely that each set of specialists can offer major contributions to agencies on effectively expanding public involvement, and each group is likely to be able to learn from the experiences of the others' efforts to promote open government via innovative uses of technology and process. In particular, ACUS appears a natural place to assist agencies to think more intelligently and strategically about when and how to deploy these resources.

An ACUS-sponsored examination of these "schools" of involvement, and each one's strengths, weaknesses, and potential contributions, could help general understanding, enhance coordination of effort, and assist agency managers faced with real-time process decisions. There are already some examples of collaboration that may merit study – one is the NMB's joint effort with the Center for Information Technology and Dispute Resolution at the University of Massachusetts (aided by NSF grants) that is developing new online systems for mediating labor conflicts. An ACUS study could also allow ACUS to begin to get a handle on legal, administrative, access, and openness issues raised as agencies adapt decisionmaking and involvement processes to the new online technologies and move to draw on crowd-sourcing, user participation, and similar trends.

Assessing ADR and CM processes. Several people saw great value in having ACUS focus some early priority efforts on seeking to document (or aid in developing methodologies that could promote and ease assessment of) the value of ADR and other CM processes. They noted that ACUS should not be praising, and promoting growth of, ADR and collaborative processes in a simplistic manner without also furthering substantial evaluative assessments of what does and doesn't work. These assessment activities might examine selected practices and programs with attention to analyzing their operation and impact and identifying areas in which improvement is needed. One person saw potential in focusing on developing measures of success that might be used with OMB and other managerial and budgeting entities. While IECR has taken steps to develop such measurement tools in environmental settings, most observers see considerable room for developing or improving on efforts elsewhere.

Managing federal workplace conflict. ACUS might study the experience of workplace ombuds offices and other ADR-based innovations aimed at "giving voice" to agency personnel and raising significant line issues to higher levels. A 2001 GAO study examined several federal organizational ombuds entities,[31] which were relatively few at the time of

[30] Transparency and Open Government: Memorandum for the Heads of Executive Departments and Agencies, 74 Fed. Reg. 4685 (Jan. 26, 2009).

[31] *The Role of the Ombudsman in Dispute Resolution* (2001). One of the final ACUS-sponsored studies completed just before its 1995 closure was Leah Meltzer's *The Federal Workplace Ombuds*, 13 Ohio State Jnl. Dis. Res. 570 (1998).

ACUS's demise but have grown in number since. Some agencies' organizational ombuds,[32] like the one at the National Institutes of Health, appear to be innovative and well-regarded, while others are assessed as less successful. For example, a DHS OIG report[33] on the TSA Ombudsman in 2008 found that many employees "lack trust and confidence in the Ombudsman's functions" and identified a number of shortcomings.

The same DHS OIG report, conversely, found TSA's Integrated Conflict Management System (ICMS) to be a potentially valuable tool in encouraging transportation safety officers' involvement in significant agency decisions. ICMS seeks to embed a set of core principles into the fabric of the organization (fairness, inclusiveness, open communication and collaborative decision-making) and promote an environment where issues, ideas and concerns can be raised with confidence that they will be respectfully received and responsibly addressed. The TSA ICMS is designed to provide TSA employees with skills, structures, and support mechanisms to enhance communication, cooperative problem solving, and conflict management and prevention. TSA management worked collaboratively to design the ICMS with representatives from key groups and various sized airports.

An ACUS-sponsored study of selected programs that seek to enhance the managerial and administrative functioning of the federal government by offering workers feedback loops and conflict resolution options, and of issues affecting their implementation and effectiveness, might prove edifying.

Public ombudsmen. In 1990 ACUS commissioned a study of public (as opposed to organizational, or workplace) ombuds in federal agencies; it included case studies on six ombuds offices and an overview of the ombuds movement in the U.S.[34] The report supported an ACUS recommendation (90-2, "The Ombudsman in Federal Agencies") that encouraged, and offered some rudimentary standards for, establishing ombuds offices in federal "agencies that administer programs with major responsibilities involving significant interactions with members of the general public."

Jeffrey Lubbers' report[35] to the National Taxpayer Advocate examined approximately two dozen of these offices in 2003. He found an increasing number of ombuds, discussed standards of conduct for them, and described some of their variances in jurisdiction, resources, and independence. Another recent study by the Congressional Research Service has sought to take an ever broader look at these entities.[36] Moreover, in 2004, the ABA

[32] "Organizational" ombuds have a mandate to facilitate fair and equitable resolutions of concerns within an entity and act as an early warning mechanism for broad and systemic problems. Organizational ombuds typically are confidential, independent and neutral.
[33] *Transportation Security Administration's Efforts to Proactively Address Employee Concerns* (May 2008).
[34] David Anderson and Diane Stockton, *Ombudsmen in Federal Agencies: The Theory and Practice*, 5 Admin. L.J. 271 (1991).
[35] Jeffrey Lubbers, *Independent Advocacy Agencies within Agencies: A Survey of Federal Agency External Ombudsmen*, Report to the National Taxpayers Advocate (2000, updated 2003).
[36] Wendy Ginsberg and Frederick Kaiser, *Federal Complaint-Handling, Ombudsman, and Advocacy Offices* (2009).

adopted *Standards for the Establishment and Operation of Ombuds Offices*. These standards go well beyond the substance of ACUS's 1990 recommendation to address ombuds who are appointed to handle complaints within government, academia, and the private sector; they set forth detailed advice as to essential characteristics of all effective ombuds, including independence, impartiality in conducting inquiries and investigations, and confidentiality.

Given all these developments since 1995, it may be timely to take another look at these complaint-handling entities and consider revising or expanding the 1990 recommendation to take into account the numerous developments since it was approved.

Reconsidering voluntariness: presumptions, commitments, and assessments. Given broad consensus that ADR has been underused at many agencies, does it make sense to revisit the ADR Act's voluntariness requirement,[37] i.e., that all parties must agree in advance to employ ADR? Such an inquiry might examine how departures from voluntariness in federal or other settings may have affected processes' usage, quality, or legitimacy, neutrals' and parties' behavior, and settlement rates. These could include looks at partial measures intended to encourage ADR use, such as agency pre-commitments to agree to ADR (USPS REDRESS mediation, EEOC-mandated mediation of complaints at many federal agencies), required explanations for declining an ADR offer (federal contracting ADR), mandatory attendance at a scoping/convening session (FERC), congressional mandates for an agency to engage in negotiated rulemaking (Education higher education rules, HHS health care implementation),[38] or others.

Settlement judges. ACUS's 1988 recommendation encouraged use of settlement judges and offered basic advice on setting up a settlement judge program, then relatively new. We now have an added 25 years' experience to draw on, and some ALJs and Chief ALJs have proven quite effective as dispute resolution program managers and as settlers of adjudications before their own offices or conflicts involving other parts of their agencies. An ACUS study might yield additional lessons.

[37] "An agency may use a dispute resolution proceeding for the resolution of an issue in controversy that relates to an administrative program, if the parties agree to such proceeding." 5 U.S.C. §574(a).

[38] One person I interviewed noted, as regards the issue of voluntariness, some statutorily mandatory processes in recent years for negotiation between tribes and federal entities over the implementation of education statutes. These resulted in part from tribes negotiating insertion of a mandate in the legislation itself as a way of insuring that they would have a strong voice in the regulations that eventuated. Such strategic uses of mandated participation could prove interesting to study.

APPENDIX A

ACUS CONFLICT MANAGEMENT REPORT

PERSONS INTERVIEWED

Federal Sources

Rachel Barbour, ADR Office, National Mediation Board (formerly)

David Batson, Center for the Prevention and Resolution of Conflict, OGC, U.S. EPA

Deborah Dalton, Center for the Prevention and Resolution of Conflict, OGC, U.S. EPA

Howard Gadlin, Ombudsman, National Institutes of Health, DHHS

Deirdre Gallagher, Manager, Dispute Resolution Service, FERC

Elena Gonzalez, Director, Office of Collaborative Action and Dispute Resolution, Department of the Interior

Joanna Jacobs, Acting Director, Office of Dispute Resolution, U.S. Department of Justice

Deborah Katz, Director, Office of Collaborative Strategies, Transportation Security Administration, Department of Homeland Security

Leah Meltzer, Deputy Dispute Resolution Specialist, OGC, U.S. Securities and Exchange Commission

Richard Miles, Director, Office of Administrative Litigation, and former Director, Dispute Resolution Service, FERC (retired)

Suzanne Orenstein, Director of Washington Office, U.S. Institute for Environmental Conflict Resolution, Tucson, AZ

Deborah Osborne, Director, Dispute Resolution Service, FERC

Daniel Rainey, Director, Alternative Dispute Resolution, National Mediation Board

State and Private Sources

Francis X. Cameron, former Dispute Resolution Specialist, Assistant General Counsel for Rulemaking and Fuel Cycle, and General Counsel for Litigation and Enforcement, Nuclear Regulatory Commission

Christine Carlson, former Director, Policy Consensus Initiative and National Policy Consensus Center, Portland, OR

Philip J. Harter, Vermont Law School and former ACUS ADR consultant

Robert Jones, Director, Florida Conflict Management Consortium, Tallahassee, FL

David B. Lipsky, Professor of Dispute Resolution and Director, Scheinman Institute on Conflict Resolution, ILR School, Cornell University

Suzanne Marshall, Settlement Judge, State Office of Administrative Hearings, Austin, TX

Jeffrey Stockholm, Director, Office of Hearings and ADR, New York Department of Public Service, Albany, NY

Micheal Thompson, Director, Iowa Mediation Service, Des Moines, IA