backlogs or successive instances of workplace violence—brings the organization's approach to managing conflict to the forefront. In such extreme instances, Weisbord's (1987) key ingredients for a successful approach to systems learning and change (including conflict management systems) might well be met: a business opportunity, some energized people, and a committed leadership. Even in less troubled organizations, the same key ingredients for change are also necessary, but the degree of opportunity perceived, the energy of participants, and the commitment of leadership may take a longer time to crystallize and mobilize. Some of these challenges to practitioners, managers, and conflict management systems design teams are addressed more thoroughly in subsequent chapters: Chapter Five, "Entry and Contracting" and Chapter Thirteen, "Changing the Culture."

The focus of OD interventions today is to encourage and assist organizations in seeking and sustaining the commitment of employees and other stakeholders to active participation in learning processes that revise and revitalize social and technical operations and performance. The focus of conflict management systems design today is to encourage and assist whole systems in recognizing and identifying conflict, learning how it operates, and actively involving management and stakeholders in designing and implementing systemic procedures that decrease dissonance and dissatisfaction and enhance achievement of the organization's goals. There is thus a correlation between OD and conflict management systems design. Throughout the chapters that follow, we will refer to the implications of OD for effective design work and to the implications of conflict management systems design for the holistic practice of OD. Our belief is that the two fields of practice have much in common and much of value to share. Taken together, they provide the framework for a systemic approach to conflict management.

Chapter Three

Managing Conflict Effectively
Alternative Dispute Resolution and Dispute Systems Design

Some organizations have moved toward more systemic approaches to conflict management. Others continue to use fight or flight methods to deal with conflict or to avoid it. In the middle are those organizations that have designed an alternative dispute resolution (ADR) approach or program to deal with particular types of disputes. These ADR programs usually grow out of a perception by management, consultants, attorneys, or the disputants themselves that traditional methods of dispute resolution are neither working as well as they should nor furthering the organization's goals. Practitioners have frequently used the principles of dispute systems design (DSD) to help organizations establish such alternative dispute resolution programs or processes for settling disputes.

The Emergence of Alternative Dispute Resolution

ADR is any method of dispute resolution other than formal adjudication such as court litigation or administrative proceedings. ADR is not a fancy, new approach but rather an alternative—characterized by common sense and flexibility. It involves the use of a wider array of approaches to resolve disputes than the traditional and often more costly methods of adversarial litigation and administrative adjudication.

Like conflict, ADR permeates our lives. Everyone engages in ADR every day: you negotiate with your co-worker about where to
go to lunch, you call in your neighbor to “mediate” as you and your spouse try to reach agreement on what color to paint the living room, you arbitrate by deciding whether your son or your daughter will get the family car for the evening based on the strength of their respective arguments.

More and more corporations, businesses, individuals, groups, organizations, and courts are embracing ADR as a better way to resolve disputes. Companies such as Motorola and Aetna have ADR programs; government agencies such as the Federal Deposit Insurance Corporation, the Department of Health and Human Services, the Army Corps of Engineers, the Internal Revenue Service, and numerous other federal agencies are using ADR; local courts such as the District of Columbia Superior Court and federal appellate courts—for example, the Ninth Circuit Court of Appeals—have ADR programs; and schools such as the Fairfax County, Virginia, and District of Columbia school systems have peer mediation and ADR programs. Pick up most trade journals or newsletters and you will likely see articles on ADR and advertisements offering ADR services. Newspapers carry stories about the mediation of international conflicts, the arbitration of professional sports strikes, and the negotiation of trade agreements and treaties. Some contract disputes are arbitrated, many labor-management disputes are mediated, and, increasingly, consumer complaints are handled by ombudspersons. (We use the word “ombudsperson” here, although there is no commonly accepted version—some use ombudsman, others use ombuds or ombuds practitioner.) For those practitioners and managers who will be involved in designing and improving “next generation” conflict management systems, an understanding of ADR is essential.

Why has ADR become so popular? What are the various types of ADR and when are they appropriate? Is there a “dark side” to ADR? How is an organization development (OD) approach to conflict management systems design useful in choosing and using ADR options?

**Explosion of Interest in ADR**

Organizations are using it, law firms are marketing it, courts are requiring it. Why? There are a number of reasons.

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*Overloaded court dockets:* Much has been written about the litigiousness of our society, how organizations and individuals use the courts as the “neighborhood bully” to keep people in line and to protect themselves and their reputations. As a society, we look to our courts to resolve disputes that other cultures resolve on an informal, individual, or group basis. The result of this litigation mind-set and the mountains of new laws, rules, and regulations promulgated every year has been an exponential increase in the number of cases handled by courts at the local, state, and federal level. Court dockets are backlogged; it is not uncommon for a civil case to take four to five years to actually go to trial. Court-ordered ADR programs such as the multidoor courthouse in the District of Columbia or the early neutral evaluation program in federal court in the Northern District of California are ways to clear dockets by using volunteer, court-reimbursed, or staff neutrals.

*Legislation and regulations:* Some recent federal laws and regulations encourage forms of ADR other than arbitration in certain disputes. For example, the Administrative Dispute Resolution Act of 1990 (5 U.S.C. section 581 et seq.) encourages the use of ADR by federal agencies and establishes ADR as a viable alternative procedure for the resolution of many disputes. Certain federal equal employment opportunity statutes and regulations also allow and encourage the use of ADR (29 C.F.R. section 1614); some tax regulations provide for ADR (Internal Revenue Ann. 95–2); and certain government procurement regulations provide for use of ADR (May 16, 1995 Office of Federal Procurement Policy pledge). Recent federal executive orders also promote ADR in a variety of contexts, including in federal labor-management relations (Executive Order 12871) and in the promulgation of federal regulations (Executive Order 12866). As a result of the above legislation and directives, ADR use has increased not only in the federal government sector but at the state and local levels as well.

*Increasing cost and decreasing satisfaction with litigation:* Many companies have grown frustrated with the cost of litigation—in dollars, in personnel time, in lost opportunities, and in the negative effect on ongoing business and employee relationships. Not only have the costs of outside counsel and experts increased but so have those of in-house counsel through overhead and support services. As a result, many corporations have embraced ADR. For example,
Motorola now requires that ADR be considered in all of its cases and has shifted the presumption by requiring its employees to demonstrate why ADR cannot be used (Weise, 1989). Similarly, many corporations have taken the Center for Public Resources’ (CPR) “pledge” to use ADR prior to resorting to litigation with other corporations who have also taken the CPR pledge; many law firms have taken a similar CPR pledge to advise clients of ADR options. Other organizations have adopted ADR programs in an effort to curb outside counsel costs; in 1994, the Federal Deposit Insurance Corporation saved $11.5 million in estimated legal fees and expenses through the use of third-party ADR rather than litigation.

Backlash against attorneys, lawsuits, and legal costs: As a society, we love to hate lawyers; they are the brunt of endless jokes. But many are laughing all the way to the bank. Some large law firms have been known to bill $600 an hour for their services, not including the charges for the hordes of paralegals, experts, consultants, and administrative personnel needed to support them. Organizations are beginning to doubt the need for such high-priced “hired guns” to resolve their disputes. ADR is seen as a less expensive way to resolve disputes, often obviating the need for lawyers or limiting the types of disputes where they are involved.

Societal movement toward more natural and humane methods of dispute resolution: Organizations, groups, and individuals have grown tired of battering and bashing each other in the name of resolving conflict. In the last ten years, there has been an increased emphasis on communication and working together to informally resolve differences through problem solving. “Being tough” and “going for the kill” have given way to more humane dispute resolution methods, including forms of ADR in which the disputants themselves participate more actively in the resolution process. The former methods of amplifying, accelerating, and escalating conflict through litigation and other adversarial methods are in many instances no longer a good fit with evolving societal norms.

Desire to empower disputants to participate in resolving their own disputes: Self-direction and governance, total quality management, and other participatory models for employee involvement have encouraged the inclusion of disputants in the dispute resolution processes affecting them. In many of its forms, such as mediation and joint problem solving, ADR permits the disputants to craft their own solutions to disagreements. If ADR results in resolution, it is the disputants’ success, not the neutral’s. The disputants own and control the ADR process and often craft solutions unique to their circumstance, which they are then more committed to implement.

Increasing interest in flexible dispute resolution: There has been a growing realization that all disputes do not require the same mechanisms for resolution. For example, we currently channel many different types of disputes through the same courthouse doors: antitrust cases, commercial disputes, personal injury cases, neighborhood conflict. Increasingly, however, judges are experimenting with the “multidoor courthouse” in which certain types of cases are funneled first through ADR corridors before they are placed onto a court docket. Some disputants have become so discouraged with crowded court dockets that they hire private “rent-a-judges” or use private mediators or arbitrators instead of judges to resolve their disputes. ADR is seen as a way to introduce flexibility into the dispute resolution process—to tailor the process to the problem.

Interest in confidentiality and avoidance of publicity: Organizations and individuals alike are often reluctant to “air their dirty linen” in public. For example, mediation on the whole is a discreet process and the results can usually be kept confidential. This is often not true with court cases: the proceedings are usually open to the public and even if there is a settlement before the trial starts (or before its conclusion), some judges refuse to seal settlements, to limit public access, or to restrict disclosure. ADR can thus be used to shield disputes and settlements from public scrutiny and to prevent disclosure of repeated violations by the parties or defendants. There can, however, be potential problems with this cloak of confidentiality, as discussed below in the section “The Dark Side of ADR.”

The Spectrum of ADR Options

The continuum of ADR options ranges from those that are least invasive and allow the parties the most control over the process and outcome (such as negotiation) to those that are most invasive and allow the disputants the least control over the process and outcome (such as arbitration). People sometimes mistakenly think that ADR means arbitration. However, arbitration is only one of many ADR choices. There are six broad categories of ADR options: preventive,
negotiated, facilitated, fact finding, advisory, and imposed (see Figure 3.1).

Preventive methods of ADR are used to attempt to preempt disputes. These dispute resolution mechanisms are decided in advance by the parties in order to govern how any disagreement or conflict will be handled. For example, many business contracts now contain specific provisions for dealing with possible future disputes: the parties will give notice of any dispute, negotiate for a certain period of time, mediate, and then submit any unresolved issues to an arbitrator. "Preventive" may be a misnomer for these ADR methods because they do not actually stop disputes from occurring; rather, they channel disagreements into a problem-solving arena early enough that escalation into full-blown disputes can often be avoided. Traditionally, most preventive clauses were arbitration clauses governed by the rules of the American Arbitration Association, but increasingly parties are adding ADR clauses, which utilize a variety of ADR methods, including arbitration. Preventive ADR can also include relationship-building methods such as partnering, consensus building, negotiated rule making ("neg-reg"), and training in joint problem solving. To date, relatively little attention has been focused on preventive methods of ADR, and most ADR models and charts do not even include them. As conflict management systems evolve, preventive methods of ADR will become increasingly important. Such methods recognize that conflict is inevitable and thus establish in advance mutually agreed-upon mechanisms to channel conflict when it arises.

Negotiated methods of ADR include interest-based (also known as principled, mutual gain, win-win), positional (win-lose, power-based), and problem solving (agreeing on the issues to be resolved and setting an agenda for resolving those issues, usually using principled methods). In the negotiated forms of ADR, the disputants reach their own resolution, unaided by a third-party neutral or decision maker. If they cannot come to a satisfactory resolution, the parties are free to terminate the negotiation and to pursue other forms of dispute resolution, including other ADR methods, litigation, or administrative adjudication. Some contracts may require a "cooling off" period once the dispute is identified and then good faith attempts at negotiation prior to resorting to power or rights-based resolutions.

Facilitated methods of ADR involve a third-party neutral assisting the disputants to reach a satisfactory resolution. The neutral merely helps the parties and has no authority to impose a decision or result. Examples include mediation and the use of ombudspersons. In facilitated ADR, it is the parties, not the neutral, who retain control of and resolve the dispute. As in the negotiated forms of ADR, if the parties do not think the proposed resolution is satisfactory, they are free to terminate the ADR proceeding and pursue other resolution options. The parties typically retain control as well over the final selection of the mediator, although some mediation programs assign neutrals to the dispute or maintain panels of neutrals from which the disputants may select. We note for clarification that there is no such thing as "binding mediation," a phrase that is occasionally heard. One can be required to participate in mediation (as in court-ordered mediation), but one cannot be required to agree to a proposed settlement derived through the mediation process. As ombudspersons do not have, by tradition, decision-making authority, they are considered another form of facilitated ADR.

Fact-finding methods of ADR may be binding or nonbinding depending upon the agreement of the parties. These methods
utilize a third party or technical expert to make findings (usually on factual issues). For example, in neutral expert fact finding, the parties may use a third party to make findings of fact regarding technical issues such as asset valuation, biotechnical data, actuarial statistics, or construction specifications. The parties can agree in advance on whether or not they will be bound by the findings and whether the findings will be admissible in any subsequent proceeding. Again, the parties typically retain control over the selection of the neutral expert fact finder, who is usually a subject-matter expert and brings substantive expertise to the dispute.

In **advisory methods** of ADR, a third-party neutral (usually selected by the parties) reviews certain aspects of the dispute and renders an advisory opinion as to the likely outcome. These methods include outcome-prediction mediation (sometimes called rights-based mediation), early neutral evaluation (ENE), mini-trials, summary jury trials, and nonbinding arbitration. For example, the parties may choose to use a third-party ENE early on to provide an opinion on a legal issue in dispute, such as a contract provision or point of law, or they may decide to hold a mini-trial in which the attorneys for each side present the major aspects of their case to the clients and a presiding neutral; the neutral may then advise as to the probable outcome, working with the clients in particular to facilitate a settlement, if possible.

**Imposed methods** of ADR are those in which a third-party neutral makes a binding decision regarding the merits of the dispute. Most often, these methods use some form of binding arbitration—either with a single arbitrator or with several (a panel). Such arbitration is usually the result of an alleged breach of contract or agreement between the parties. Standard industry practice, regulations, or a statutory regime, as is the case with grievance arbitration in labor-management disputes, may require the use of binding arbitration as well. In these imposed forms of ADR, the parties have the least control over the process and the outcome. Binding arbitration is the method of ADR that comes closest to traditional forms of dispute resolution such as court litigation. There is a very limited right of appeal from an arbitration award, based on such extraordinary circumstances as fraud, duress, or coercion. Imposed methods of ADR, particularly where panels of arbitrators are used and the proceeding is formal and court-like, can be quite expensive and time consuming. In fact, some research suggests that certain types of arbitration are not necessarily faster or cheaper than litigation.

**ADR as Appropriate Dispute Resolution**

In designing and improving conflict management systems, the idea of ADR as alternative dispute resolution is perhaps less useful than the concept of ADR as appropriate dispute resolution. That is, the method of dispute resolution must be appropriate for the particular dispute or problem; there must be a fit between the process and the problem. ADR methods are not necessarily interchangeable; mediation may work in some disputes, early neutral evaluation in others, and an ombudsperson in still others. In Chapter Seven, we explore more fully the whole issue of design architecture and how to choose appropriate methods of ADR and select appropriate cases.

What is relevant here is that some organizations say that they have had bad experiences with ADR. Practitioners working in or with such organizations will hear statements such as, “We tried ADR and it just didn’t work” or “ADR might work for other organizations, but it just didn’t work for us because we are different.” Often, the problem is not that ADR was inappropriate for the particular organization; rather, the method of ADR chosen was inappropriate for the particular dispute. For example, an imposed method of ADR was used when perhaps a facilitated method would have been more appropriate or congruent with the organization’s mission, culture, or disputes. Unfortunately, as most practitioners know, managers and disputants rarely make this distinction, and the conclusion that is drawn (perhaps incorrectly) is that ADR as a whole does not work, not that the particular type of ADR does not work. For this reason, it is important that practitioners be familiar with the entire spectrum of ADR options so that they can accurately advise disputants and stakeholders as they design conflict management systems together.

**The Dark Side of ADR**

When is ADR not appropriate? When may traditional rather than alternative methods of dispute resolution be preferred? Once
again, the link between OD principles and conflict management systems design provides guidance. Respecting the OD values of participation, openness, and feedback and using them as a backdrop allows both the practitioner and the organization to see ADR through a variety of lenses.

The use of ADR raises questions about private justice and whether only the wealthy or resource-rich can afford to buy it. Should large organizations, such as banks and securities brokerage firms, be allowed to require that everyone doing business with them resolve disputes using a particular form of ADR? So far, many courts seem to say yes, as long as the customer is informed in writing at the time the business relationship is begun and there is no fraud or coercion. Should large companies be allowed to develop their own "private law" and "private justice" through commercial arbitration? Again, so far, the answer is yes. Finally, what happens to the "little guy," the small business owner who cannot afford to pay his or her share of a panel for an ADR proceeding?

The question of whether some disputes are simply inappropriate for ADR also arises. Should domestic violence cases be kept out of court-ordered mediation on the theory that there is such an imbalance of power between the parties, even if represented by counsel, that the process is invalid and somehow flawed? Should cases raising constitutional issues, such as violations of civil rights laws or sexual discrimination laws, be deemed inappropriate for ADR and steered through the more traditional door of litigation? Should certain public policy issues, such as disposal of environmental toxins or biological research waste, be reserved for the judgment of courts or administrative bodies?

Another instance in which ADR may be inappropriate is where it is used to cover up systemic or repeated violations. For example, a hypothetical state agency may have an ADR program that makes mediation mandatory for all equal employment opportunity (EEO) disputes prior to the filing of a formal action or complaint. Ninety percent of all cases are resolved at the mediation stage, and almost all of the remaining cases settle before an actual investigation is conducted. An outside conflict management consultant notices that more than 80 percent of all cases coming through the mediation program are from two divisions in particular and that most of the complaints seem to be by Hispanic female secretaries against African American male senior supervisors and managers. When the consultant mentions this to the manager who oversees the ADR program, the manager comments that the agency is aware of this but that since the mediations are confidential, the public and other employees in the organization are not aware of the problem and that it is one of the reasons that the agency likes to "push" mediation to get rid of these kinds of disputes.

Here, there may be both ethical and public policy reasons to question using ADR in this fashion. Although formal processes remain available to the complainants, it appears that this agency uses mediation and negotiation to resolve these disputes in order to shield them from the public domain and scrutiny. In particular, as the agency is a publicly funded entity, it is subject to relevant state and federal laws and regulations regarding EEO. Thus, using ADR in this manner may raise serious ethical issues and violate the core principles of openness and feedback in conflict management systems design. By using ADR as a method of preventing public disclosure of statutory violations, this agency may be co-opting the process for its own organizational interests and benefit. Moreover, it may be using ADR in these cases as a means of avoiding taking remedial and preventative action in the cluster of disputes emanating from the two particular divisions. In this way, its EEO office has walled itself off from important information and feedback from its environment, acting as a "closed system." As a result, the agency runs the risk of suffering the higher ultimate costs of low morale, lowered productivity, difficulty in hiring and retaining qualified employees, and escalating litigation, with possible awards of compensatory damages resulting from its misguided efforts to use ADR to contain rather than to expose and remedy the conflict in the divisions.

It may also be inappropriate to require the disempowered to use ADR mechanisms where they have been given no choice in the matter, do not understand their rights and choices for alternative relief, or have had no hand or representation in creating the dispute resolution mechanisms in the first place. For example, this may be so in our hypothetical agency if many of the EEO complaints are filed by non-English-speaking, lower-graded employees who do not understand that being required to participate in mediation does not mean that they lose their right to pursue more formal methods of resolution. This is even more the case if these employees have not had any involvement in designing the ADR procedures, either
through union representation or through representative participation on design task forces and working groups. In these circumstances, use of ADR may not only be inappropriate but also unethical under OD as well as ADR values, practices, and principles of client self-determination.

The Emergence of Dispute Systems Design

Like ADR, dispute systems design is in its infancy. DSD grew out of the ADR movement in the late 1980s as certain dispute resolvers with national and international reputations used their experiences and talents to help clients establish new forms and applications of dispute resolution methods.

Spurred by the desire to encourage less adversarial and less costly dispute resolution and guided by the principled, interest-based negotiation techniques of Getting to Yes (Fisher and Ury, 1981), these individuals worked separately to develop new methods and procedures to resolve disputes. They ran into a host of different challenges: what should the new systems look like; who should be able to use them; what types of alternatives should be offered; how should the procedures be structured; what factors determined whether people used the new methods; and what motivation, skills, and knowledge did people need to use the new alternatives? Other dispute resolvers who were facing similar challenges came forward and a new interest group appeared within the practice of ADR: the dispute systems designers. In 1990, the central theme of the conference of the Society of Professionals in Dispute Resolution was "Designing Dispute Resolution Systems."

At about the same time, the first book on DSD was published: Getting Disputes Resolved (Ury, Brett, and Goldberg, 1988). Subtitled "Designing Systems to Cut the Costs of Conflict," this text was revolutionary: it provided for the first time (through a case study of the authors' actual experience working with coal miners, their union, and management) a systematic way of looking at dispute resolution procedures. It set forth a classic DSD model composed of three primary dispute resolution methods, six principles for setting up dispute resolution procedures, and four stages of dispute systems design. An understanding of these methods, principles, and stages is essential for the conflict management practitioner, so we briefly review them here.

Power, Rights, and Interests

*Power-based methods* rely on who has more power, as illustrated by violence, war, and strikes. Today, strikes are perhaps the only form of true power-based resolutions seen in organizations in the United States. In a distressed dispute resolution system, many disputes are resolved through power; in an effective system, few (if any) disputes are resolved through power. An example of the result of years of power-based dispute resolution practices is, for example, a plant closure where the intractability of labor and management disputes has led to a "lose-lose" lack of confidence in company, employee, and product reliability by customers and financial backers.

*Rights-based methods* are grounded in fixed rules or principles: they impose a determination based upon entitlements, merits, credibility, and positions. Examples include litigation and binding arbitration. Third parties such as arbitrators and judges determine who is right in a given dispute, as measured against the contract, the accepted practice, or the law. In rights-based methods, questions of equity and justice are resolved through determinations devoid of power contests.

*Interest-based methods* are those in which the parties identify their concerns, needs, and desires as a starting point in addressing the issues in dispute. They indicate the "why" of a problem or issue and then use methods grounded in such principles to arrive at resolutions that are mutually acceptable and satisfactory. These resolutions take into account all of the parties' interests. Such methods include mediation, facilitation, and interest-based problem solving. In an effective dispute resolution system, most disputes are resolved on the basis of the interests of the different parties involved.

The DSD model posits that interest-based methods of dispute resolution are less costly (in overall terms, not just dollars) and more satisfactory (addressing more of the disputants' concerns) than rights-based methods, which are in turn less costly and more satisfactory than power-based methods of resolution. The overall prescription for improved dispute resolution encourages parties to resolve their dispute first by using interest-based methods and then by using low-cost rights-based methods where necessary. Interest-based methods are considered better methods of dispute resolution because they result in lower transaction costs, greater
satisfaction with outcomes, less strain on the parties' relationship, and lower recurrence of disputes.

Six Principles
The DSD model also sets forth six practical principles to guide those who design dispute resolution mechanisms:

1. Put the focus on interests (encourage the use of interest-based methods such as negotiation and mediation).
2. Provide "loop-backs" (make procedures available that allow the parties to return to a lower-cost method, such as negotiation).
3. Provide low-cost rights and power "backups" (offer low-cost alternatives such as arbitration if interest-based procedures fail).
4. Build in consultation before and feedback after (notify and consult before taking any action and provide postdispute feedback to prevent similar disputes in the future).
5. Arrange the procedures in low-to-high cost sequence (encourage negotiation before mediation, then mediation before arbitration).
6. Provide the motivation, skills, and resources necessary (ensure that the procedures are supported and therefore used).

Four Stages
Finally, the DSD model advocates four stages (strikingly similar to basic OD tasks) to guide dispute systems designers in their work: (1) diagnosis; (2) design; (3) implementation; and (4) exit, evaluation, and diffusion. The designer performs the necessary tasks at each stage, makes recommendations, and, assuming client approval, moves on to the next stage, thus completing the design for the organization or institution.

The Dark Side of DSD
The DSD model was revolutionary, and it has provided critical guidance for those who design and improve conflict management systems. However, as practitioners (and OD practitioners in particular) have used the DSD model, certain loopholes have emerged when the model is applied in an organizational context.

First, the classic DSD model tends to cast the designer in the role of "expert" in the diagnosis, design, implementation, and evaluation stages of revising an existing dispute resolution system. The designer personally assumes the burden of identifying the root causes of dissatisfaction with the existing system and of redesigning it to build in more interest-based options and opportunities (such as problem-solving negotiation and cooling-off periods). Although the model advocates establishing a "design committee," participation as a value put into action is not paramount in all stages of the intervention. Rather, in the DSD model, ultimate responsibility for success appears to lie with the designer instead of the stakeholders themselves. As Weisbord, Senge, and others have cautioned OD practitioners and managers, an "expert" approach does not result in the organization (and its members) collecting information and learning about itself, determining as a whole how to remedy what is unacceptable in the face of organizational and environmental factors, and committing itself to seeking and sustaining change. In addition, the model suggests medical attributes, with the designer diagnosing the dispute resolution program, pronouncing it ill, prescribing a cure, administering the medicine, and determining whether the prescription has worked.

Second, the classic DSD model takes a somewhat linear, mechanistic approach toward building dispute resolution systems, seen most clearly through its focus on matter-specific and single disputes (or clusters of disputes) rather than on conflict as a whole. The DSD model works with disputes and builds dispute resolution mechanisms; it does not accept conflict or view disputes as a byproduct of underlying conflict nor does it address larger systemic conflict management issues such as organizational and individual responses to conflict and the "fit" among organizational mission, culture, and conflict management.

Third, the classic DSD model does not rely heavily on prevention as a necessary aspect of dispute resolution programs. As noted previously, interest-based methods such as conciliation, consensus building, and facilitation can be used in advance to prevent disputes before they happen, as can inclusion of dispute resolution
clauses in contracts and agreements, teaching communication skills, and instituting certain forms of predispute negotiation.

Finally, and perhaps most troubling for practitioners who have worked with it, the classic DSD model fails to adequately consider organizational dynamics. It discusses the need for participants to develop knowledge, skill, and motivation to use a newly imposed dispute resolution system and acknowledges as well that the organization operates in a larger environmental and cultural context. However, the DSD model fails to address critical organization dynamics that have a direct impact on effective implementation, including organizational culture, resistance to change, and incentive and reward structures.

The Continued Evolution of Resolution

Taken together, OD, DSD, and the interest-based concepts of ADR provide the necessary ingredients to create effective conflict management systems. We call this synthesis of “best practices” from OD, DSD, and ADR interest-based conflict management systems design. We have illuminated some aspects of the negative aspects of both ADR and DSD for the express purpose of encouraging the evolution of this synthesis in the most principled manner possible.

As the history of conflict management systems, processes, and techniques evolves, we believe organizations and individuals will become more aware of their fight and flight responses to conflict and choose to adopt more systemic approaches to the management of such conflict. Moreover, stakeholders will seek an ever greater involvement in the process of designing conflict management systems. As a result, we believe that practitioners will be pressured to discover and utilize increasingly sophisticated interest-based design practices in order to create conflict management systems with stakeholders, not for them.

Chapter Four

Involving the Stakeholders
Interest-Based Conflict Management Systems

Practitioners who actually design dispute resolution systems, including alternative dispute resolution programs, have relied on a variety of practices and techniques to guide them in their interventions. Some of these practices are grounded in organization development (OD) principles, others derive from alternative dispute resolution (ADR) techniques, and still others stem from dispute systems design (DSD) principles. As societal, political, and economic forces nudge organizations toward more systemic conflict management models, however, we believe that practitioners will also be expected to integrate systems-oriented and participatory practices into their design interventions. They will be expected to design interest-based systems with stakeholders, not for them. If you build it, they may or may not use it. On the other hand, if they build it, they will use it, refine it, tell their friends about it, and make it their own.

We suggest that this is a “next generation” approach to design interventions and call it interest-based conflict management systems design. We see this model of organizational conflict management systems design as a commonsense evolution and synthesis of OD, ADR, and DSD “best practices.”

The Evolution of Resolution

As practitioners have probably already recognized, interest-based conflict management systems design is neither radical nor revolutionary. It is simply further movement along the continuum of the