

ADR and Access to Justice
Appreciating our Legacy and Engaging the Future Conference
Jackie Nolan-Haley, Fordham Law School

Four days have passed since the “Appreciating Our Legacy and Engaging the Future” conference at Pepperdine School of Law and I am still inspired by so much of what I heard from so many excellent speakers. I hope that there are many blog posts that will highlight the important discussions throughout the conference.

For me, one of the most thoughtful and critical discussions was “ADR and Access to Justice,” a topic which I admit is close to my heart. Cynthia Alkon, Jen Reynolds, Andrea Schneider, and Jean Sternlight engaged with an attentive (and “eager to participate”) audience in considering questions about the meaning of access to justice, how ADR has both enhanced and diminished access to justice, and the future direction of ADR as a source of access to justice. I offer here some brief highlights of this session which by no means do justice to the depth of richness in the discussion.

Cynthia Alkon led the first discussion about the meaning of the term “access to justice.” After offering multiple definitions from both domestic and international law sources, she asked the audience for its views on the meaning of access to justice. Her question prompted a wide variety of responses, some focused on the many meaning of justice, others, on the concept of access.

Andrea Schneider addressed the question of how ADR has provided access to justice in the past. Focusing on three categories -- process, lawyers, and better outcomes, she noted that Dispute System Design (DSD) gives us the possibility of providing access to justice without lawyers.

Jean Sternlight’s remarks concerned how ADR has been detrimental to achieving access to justice and she pointed to human nature and power as the source of the problem. Not surprisingly, she offered as her prime example of the bad guy here, mandatory arbitration. It both impedes arbitration and imposes high costs on access to justice.

Jen Reynolds concluded the initial panel conversation by addressing the question of how ADR can in the future improve access to justice. Noting that the early ADR movement was concerned with important issues such as inequality, bias and privilege, and that the trend today is towards resolving dispute, she challenged the group to think about where we can do something about the systemic sources of conflict.

In the midst of an idealistic discussion of ADR’s future potential as an access to justice tool, John Lande observed that we should have realistic expectations of how ADR can change the world. Questions from the “eager to participate” audience included: Has ADR contributed to the access to justice problem? ADR as a source of access to justice compared to what? Does ADR have a different meaning in ODR?

The panelists' concluding comments urged that we help students to see beyond the actual cases they are working on and to develop conflict literacy, that we look at who gets to design processes and understand their goals, that we work towards more transparency, and that we be willing to learn from failures of the past.