Research in conflict resolution can cover topics on everything from peace treaties to post-war interventions to gang violence to how divorcing couples decide custody arrangements. As with all research, research in conflict resolution starts with a question about how conflicts evolve, escalate, are managed or are resolved. For four years, researchers have been attempting to answer one specific question: What is the impact of alternative dispute resolution (ADR) on conflicts that reach the Maryland court system?

Conflicts reach the court when an impartial third party is necessary to end the dispute or render a verdict. Most approaching the court expect the judge to be the deciding third party, and this is often the case. But the court also offers programs that allow parties to sit down with a neutral third party to discuss the issues and try to find a resolution that can be satisfactory to all before, or in lieu of, receiving the judge’s verdict. ADR is an umbrella term for processes such as mediation, facilitation and settlement conferences, all of which allow parties to attempt to settle their own case. Parties who settle their case through a mediated agreement can put that agreement on the record and can be legally bound by that agreement.

Maryland is a national leader in offering exhaustive and innovative ADR programs and has ADR programs in all jurisdictions in the District Court (court of lower jurisdiction) and circuit courts (courts of general jurisdiction). The Court of Special Appeals also has a program. In the circuit courts, parties often receive a referral to mediation long before their trial. In family custody cases, and many non-family matters, mediation is an expected stop on the path to a trial. In the District Court, the ADR office runs a program called Day of Trial Mediation, where mediators are on-call in civil courtrooms to offer parties a chance to attempt ADR before their case is called by the judge.

As ADR has grown over the last 20 years, research into ADR also has grown, done primarily by asking participants who have completed an ADR process questions about their experiences. This is an important metric – courts need to know how participants felt about their experience – but it is an incomplete metric. It doesn’t say anything about the differences between those going through ADR and those going through traditional litigation, and it doesn’t say anything about the differences between different ADR types and practitioners.

Those in the fields of conflict resolution and access-to-justice are confident that ADR provides an equal, if not superior, path to justice when compared to traditional litigation. But so far, no one has been able to prove it. The Maryland Judiciary, Administrative Office of the Courts (AOC), set out to do what no one else has done – they commissioned the first-ever state-wide, quantitative assessment of the impact of ADR on the court system and Maryland citizens. This project, the most comprehensive and scientific study on ADR to date, was funded by the State Justice Institute, a federal grantor dedicated to researching and improving the quality of justice at the state level, and those funds were matched by the AOC. Salisbury University received the primary contract totaling over $750,000, and two organizations worked together to conduct the research: the Bosserman Center for Conflict Resolution on SU’s campus and Community Mediation Maryland. Their respective executive directors are the principal investigators: Dr. Brian Polkinghorn, Distinguished Professor in the Conflict Analysis and Dispute Resolution (CADR) Department, and Dr. Lorig Charkoudian, who earned her Ph.D. in economics from John Hopkins and wrote her dissertation on the impact of mediation on the use of police services in Baltimore. Charkoudian designed the research study, which kicked off in November 2010 with a national meeting of experts in ADR and court research who together revised and refined the methodology.
ACROSS THE STATE

The Honorable Thomas G. Ross, chair of the Conference of Circuit Court Judges and chair of its ADR Committee reflected: “We have a wide variety of strong ADR programs in Maryland. We feel confident that ADR benefits both the court and the participants, but we don’t have any hard evidence on which to base decisions about what types of strategies work best with various case types. With the findings from this major research endeavor, we will be able to better tailor our efforts to bring the most effective techniques to the ADR process and also quantify how courts benefit in terms of cost-savings and efficiencies.”

Collecting the Data

The project is large and expansive — a total of five full-time researchers, including myself as project manager, were hired to collect and manage the data. Together, they observed over 400 ADR sessions, were present for over 600 trials, and surveyed approximately 2,500 participants and attorneys in 16 counties across the state. To examine each case, data was collected at multiple points:

- Each participant’s history, attitude, expectations and demographics before the start of the ADR session and/or trial through surveys
- Each strategy the ADR practitioner used during the session and the responses of the participants through behavioral coding
- The length and result of the trial through observation
- The participant’s attitude, level of satisfaction, sense of closure and fairness immediately after the case concluded through surveys
- Each participant’s long-term attitude, level of satisfaction, sense of closure and fairness three or six months after the case concluded through phone surveys
- Any further litigation, judgment, modifications or appeals to the court case through archival data review

Data was collected on four types of cases in the Maryland courts: small claims cases in the District Court for which ADR is offered through the Day-of-Trial Program; minor criminal cases in the District Court referred to ADR through the State’s Attorney’s Office; family custody and visitation cases in the circuit courts, for which ADR is mandated for every contested case; and civil non-domestic cases in the circuit courts (complex civil litigation) that receive judicial referrals to ADR. Locations for each case type were chosen with the goal of representing all major geographic regions across the state (Eastern Shore, Southern Maryland, Western Maryland, Upper Shore) and representing urban (Baltimore City), suburban (Montgomery, Baltimore counties) and rural (Wicomico, Washington counties) jurisdictions.

There are two things, beyond its size and comprehensiveness, that make this research unique: the use of statistically defensible control groups, and the use of behavioral observations as a research tool.

For three of the four case types, a comparison is being done between cases participating in ADR and cases that are never referred to ADR. To avoid selection bias, the control groups were not created from cases that were offered ADR and declined, but rather cases that were never offered or referred to ADR. Family cases are not included here, as all cases for which ADR is applicable are already mandated to attend. For Day-of-Trial cases, the same researchers who went to observe ADR sessions went to court on days when ADR was not offered and surveyed participants in similar cases before and after their trial. For criminal cases, the State’s Attorney’s Office in Washington County refers cases to mediation at a local community mediation center. Researchers surveyed participants in those cases, then reviewed files of criminal cases in Frederick County to find those that were equivalent to cases being referred to mediation in Washington County and surveyed those participants. For civil non-domestic cases, random assignment is being used to ensure that half of new cases filed in Howard and Cecil counties along specific tracks receive a judicial referral to ADR and half do not. Both types of cases receive the same surveys at multiple points over the life of their case.

In-Depth Analysis

Because this comparison study seeks to measure the impact of ADR, special care is given to determine what differences exist between the groups, so that ADR can be isolated. Charkoudian explained: “because ADR is voluntary and some individuals were offered ADR and chose not to participate, we cannot know for sure whether those who ended up in the control group would have chosen to participate in ADR had they been given the choice. Therefore, we review case characteristics, demographics, and pre-test attitudinal variables with a difference of means and chi-squared tests to identify variables that might be different between the control group and the treatment group.”

This level of analysis allows researchers to determine the impact of ADR not only on individual participants and cases, but also on the length of time the court spends on each case (case-time standards), the cost per case to the judiciary and the cost to other state services. This cost-benefit analysis will allow policy-makers to have concrete data on where services can be increased and costs can be trimmed from the state budget.

It also gives CADR students an opportunity to engage with high-level quantitative statistics, a rarity in a field dominated by qualitative research. The SU Graduate Studies and Research Office sponsored a graduate assistantship for this project, and Matt Swiderski, a first-year graduate student was selected for the position. Dr. Vitus Ozoke, who taught the graduate CADR research-methods course, noticed an immediate difference: “It brought a level of excitement to the classroom. While we were talking about sampling, Matt was grappling with how to randomize court cases for the study. We weren’t just discussing block randomization versus stratified randomization, we were talking about real cases that were going to have different experiences based on how...
the randomization was created. All the students responded to that level of real-world practice being mixed with the classroom theory.”

A Quantifiable Approach

The second unique aspect of this study is the use of behavioral observation and coding. This methodology, used widely in psychology research, only rarely has been used in conflict resolution research. Much research in conflict resolution, and research on mediation in particular, is qualitative. Narrative descriptions of what occurs in mediation abound, but taking the verbal interactions within a mediation session and distilling them down to a sequence of quantitative behaviors only has been done in limited settings, with small sample groups.

Roger Bakeman’s seminal text on this methodology, Observing Interaction: An Introduction to Sequential Analysis, describes behavioral observation as a way of quantifying behavior: “Narrative reports depend mightily on the individual human doing them... In fact, we would be surprised if two reports from different authors were identical.” With systemic observation, on the other hand, the goal is for properly trained observers to produce identical protocols, given that they observed the same stream of behavior” (pg. 3).

A primary goal of this study was to move away from qualitative and narrative research—though both are necessary and integral to conflict resolution research—and move toward quantitative data that can use logistic and other types of regression analysis to isolate the impact of specific mediator strategies on specific types of cases, be they cases where the conflict has escalated to the point of police and other social services interventions or cases where the parties are amicable and committed to maintaining a positive relationship.

Bakeman continues: “The twin hallmarks of systemic observation are (a) the use of predefined catalogs of behavioral codes (b) by observers of demonstrated reliability. The entire process of defining and developing coding schemes followed by training observers to acceptable levels of agreement can be both time-consuming and demanding. But without such an effort, the investigator who goes no further than only telling others what he or she sees runs the risk of having skeptical colleagues dismiss such narrative reports as just one person’s tale” (pg. 4).

Training the Researchers

As Bakeman predicted, the process of developing the behavior codes—a codebook of all possible strategies a mediator might use, and all possible responses from the participants, with definitions for what is included and excluded from each code—and training observers was a demanding process. Five full-time researchers spent six months watching and coding videos of role-play mediations, live mediations and other behavioral interactions before the required reliability was reached. As researchers left the project and were replaced, new researchers were trained to identify the same codes.

For this level of research, staff with graduate degrees in the field of conflict resolution or other areas of the behavioral sciences were recruited and hired. Two of the researchers were former social workers. One was a former attorney. The rest were mediators. Two researchers and one graduate assistant were SU alumni from the CADR Department. Approximately 15 interns from CADR and Psychology departments worked on the project in varying capacities, doing everything from conducting surveys in courthouse hallways to stuffing envelopes, to tracking down participants by phone to conduct follow-up surveys, to designing websites to distribute results.

Emmett Ward earned his M.A. in CADR from SU in 2011 and joined the project the same year as one of the original researchers. He took courses on mediation as part of his graduate studies, became a trained mediator through the Bosserman Center and was an active mediator in the Bosserman Center’s Community Mediation Initiative.

“I was excited about this project from the beginning,” Ward said. “As a mediator myself, I know how complex and nuanced the interactions between the mediator and participants can be. Mediation sounds simple, but in reality, there are so many different tactics you can use. I wanted to know which would be most effective.”

After six months of training and another six months observing mediations and surveying participants, he was ready to go back to being a mediator: “There’s a very hands-off nature to research. As a mediator, you can help people move forward from their conflict. As a researcher, you can’t do that. You can only observe and report where they are now.”

It was a struggle the researchers felt throughout the course of the study. As almost all were trained mediators themselves, observing and recording such personal, intimate and at times emotionally charged moments without interfering or impacting the very interactions being researched could be difficult. Equally difficult were the days spent surveying cases that could have benefited greatly from an opportunity at mediation and knowing that mediators were not available because the research required a control group for comparison.

Analyzing the Results

Researchers hope the results, in being able to isolate and quantify the impact of mediation, will lead to more effective and efficient programs that advance the courts’ mission of fostering fair, efficient, timely and accessible justice for all Marylanders.

The results of this study are being analyzed now, and reports will be published by the Administrative Offices of the Courts throughout the summer and fall 2014 on various pieces of the data. Preliminary analysis and published reports, along with more detail on the project, can be found at www.marylandADRresearch.org.
Committed to community engagement — with opportunities for children and adults, certificate programs, professional conferences, and services to support the Delmarva Peninsula — SU offers a variety of programs that strengthen the connection between the community and the campus.

**Athletic Camps:** SU is host to over a dozen summer camps that provide young athletes with the skills and experiences that only the country’s best coaching staff can provide.

**Science Nights:** High school students interested in studying mathematics or the sciences in college are invited to explore their options at SU and benefit from its faculty and facilities.

**Lower Shore Child Care Resource Center:** The center promotes excellence in child care by providing high-quality training, program resources and technical assistance.

**Bienvenidos a Delmarva:** This network of over 70 service providers works to find appropriate solutions to better serve the immigrant population of the Delmarva Peninsula region.

**Bosserman Center for Conflict Resolution:** The center’s staff of trained mediators foster peace building through the teaching and training of both conflict analysis techniques and conflict process skills.

**Richard A. Henson Medical Simulation Center:** Students and local caregivers practice potentially life-saving skills and develop evaluation and treatment techniques to best care for patients.

**Student Community Service Projects:** Supporting SU’s mission of community and civic engagement, the SU Volunteer Center connects students with local service needs. In addition, hundreds support the annual Big Event and I Love Salisbury community outreach events.

**Cultural Enrichment:** SU is a cultural hub for the Eastern Shore, sponsoring numerous arts opportunities through its Delmarva Public Radio, Nabb Research Center for Delmarva History and Culture, Ward Museum, SU performing ensembles and galleries, and semester-long cultural series.

**Senior Learning:** SU collaborates with the Institute for Retired Persons and Association for Lifelong Learning to offer a robust roster of learning and social opportunities for retirement-age citizens.

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