Justice in the Community:
Strategies for Dispute Resolution

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Effective dispute resolution is an important attribute of stable community relations. In many western societies, however, traditional court systems have proven incapable of handling the increasing numbers of cases before them. The costs of formal adjudication have also been prohibitive for many groups and individuals. In an attempt to advance a more equitable and more responsive means of resolving community and interpersonal conflicts, mediation and arbitration strategies have been developed in many communities.

Gelblum's article describes the role of dispute centers as an institutional source of conflict resolution. These organizations provide a framework for cooperative, negotiated dispute settlement. The Chapel Hill Dispute Settlement Center is presented as a case study of effective community conflict mitigation.

Disputes seem inevitable, both at the intergroup and interpersonal levels. Conflict has been with us since "time immemorial" and shows no signs of abating as a human activity. Anthropologists Laura Nader and H.F. Todd, Jr. (pp. x-xi) list the following as the components of a dispute: that which is disputed, the parties to the dispute, presentation of the dispute, procedure or manner of handling, termination of the grievance and enforcement of the decision.

mediation versus adjudication

The desire to resolve conflict is a natural function of social organization. Mediation is an embodiment of that desire; its cultural and historical roots are deep. It is a practice, moreover, which has become increasingly important for many American communities in their efforts to create cooperative, productive and healthy social environments.

alienation from the traditional court system

In most developed societies there is a state apparatus for handling disputes: a formal and hierarchial legal system is its usual form. The common law tradition followed in the United States employs an adversarial system of adjudication. Two champions (the lawyers) meet on the field of battle (the courtroom), with one side emerging victorious and the other vanquished. The winner is chosen by a judge or jury with the decision based, theoretically, only on the letter of the law. Despite risks and complexities of the legal process, increasing numbers of Americans are using the courts to resolve their disputes. This heightened demand has created a severe backlog of cases at every level of the judicial system. Compounding the problem is the fact that cases in progress sometimes take years to settle; costs have risen proportionately.

In defense of the legal edifice, one institution deserves at least qualified praise—small claims court. It is used by many as means of redress for minor civil grievances. Small claims courts feature "informality, the willingness to mediate and to concede, the waiving of formal rules of evidence, and, above all, the willingness to substitute goodwill and compromise for the adversary process" (Alper & Nichols, p. xvi). Unfortunately, its limitations—the restriction to civil cases, the minimal amounts that may be sued for, the frequent difficulty of enforcing judgments and the specter of delay—leave many of its users dissatisfied.

Alienation from the traditional court system has become widespread. Many feel that the courts dispense anything but justice, and that only in the most cumbersome and convoluted manner. Into this breach have rushed new community modes of justice, which "do not rest on a foundation of innocent-guilty, right-wrong, win-lose, victor-vanquished. The foundation here is one of healing, of reconciliation of defendant with complainant as well as with the community" (Alper & Nichols, p. xii). It is as if many are saying "justice is too important to be left to the justices."

In places small and large, urban and rural, all over the country, people are involved in alternative programs such as mediation, arbitration, restitution,

victim assistance and compensation, and citizen panels which advise on sentencing. Community participation in the dispute resolution process provides perhaps a negative commentary on our legal system. At the same time, it may be viewed as a positive reflection on the concern and resourcefulness of many citizens nationwide. This is not to imply that grassroots justice has arisen overnight. As Alper and Nichols (p. xvi) note, "the idea of community involvement in the settlement of disputes is as old as the first families of humans who came together to form a clan. Responsibility for the resolution of conflict and the dispensation of justice is the cornerstone of any society."

Even segments of the legal profession have rallied around alternative dispute resolution. Out of a 1976 conference on the "Causes of Popular Dissatisfaction with the Administration of Justice," commemorating a 1906 address by eminent American jurist Roscoe Pound on the same theme,[1] emerged an American Bar Association Special Committee on Alternative Dispute Resolution. Promotion of "dispute resolution centers" throughout the nation is the committee's charge, and it seeks to accomplish that by:

- maintaining a clearinghouse of information on dispute resolution which is easily accessible;
- producing publications including the quarterly newsletter, a bibliography, and a directory, and
- providing technical assistance on request (Ray 1981).

Examples of specific actions taken by the committee are:

> *assisting the United States Justice Department in the development of the Neighborhood Justice Center Demonstration Program and Experimental Grant-in Aid legislation to stimulate further efforts; presentation of a major National Conference on Resolution of Minor Disputes (Columbia Law School, May 1977); maintenance of contact with almost every operational dispute resolution project in the country, with informational data files on each; assisting in the development of the proposed Federal Dispute Resolution Act (PL96-190) [which passed on February 12, 1980. Though not directly funded, under the Act, the Department of Justice is assisting 18 states in formulating dispute resolution legislation* (id., *Foreward)]* (id.).

Of course the administration of justice is hardly the only front which has seen a recent resurgence of citizen involvement and participation. Community development has remained vital, even during the "dormant '70s," through the establishment of neighborhood associations, citizen crime-prevention programs, health centers, community schools, food cooperatives and community corporations for the rehabilitation of deteriorated housing (Alper & Nichols, p. xviii).

grassroots justice

Though a broad scale community justice movement is only now discernible in the United States, examples of such abound throughout the world.

legal profession support for alternative dispute resolution models

> *For instance, lay judges now participate in the courts of many European countries, including socialist nations. For many years now, the Scandinavian countries have entrusted the hearing and adjudication of children's cases to child-welfare boards composed of elected lay persons from the community, which take the place of the juvenile court as we know it. The British magistrate's courts continue to operate in a fashion similar in many respects to our American Justices of the Peace. We see the emergence of special courts for labor disputes, as in Israel.*
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> *The approach of community-justice bodies is also being used on an increasing scale in family courts and in the juvenile courts now found in every major country of the world. Housing courts and special tribunals for the hearing of consumer complaints are two additional specialized tribunals coming into their own.*

european systems of law

> *In various ethnic groups we find modern application of a procedure that dates back to biblical times—for instance, the Beth Din found in Jewish communities in the United States, whose roots go back to the Sanhedrin courts. Today's Gypsies, whose origins are lost in antiquity, continue to practice their ancient procedures for resolving disagreements between individual members of their group. The Panchayat courts of India, supplanted during the centuries of British colonial rule by the common-law procedures of the home country, are gradually replacing this alien imposition on their historic ways of administering justice. The socialist countries, none of which has a common-law precedent, especially those whose court procedures are more likely to be derived from Roman or Napoleonic people's courts,*

where lay persons, whether as prosecutors, defense counsels or judges, supplant the legally schooled professionals who administer the courts in our country (Alper & Nichols, pp. xvii–xviii).

impediments to community-based justice

As appealing as community-based modes of justice are, there are impediments to their growth. The above-cited work of the American Bar Association not withstanding, the institutional barriers are, in large part, reinforced by the legal profession. There are, of course, many attorneys supportive of informal dispute resolution methods. On the whole, though, the profession has "little incentive 'to create new legal institutions to facilitate the resolution of disputes outside the courtrooms' " (Nader & Singer, pp. 314–315, in Alper & Nichols, p. 243). These are times of economic scarcity. It is difficult to find examples of economic altruism in any occupation, especially perhaps when the number of practitioners has increased as dramatically as in law. Lawyers are also disproportionately represented at both the state and national legislative levels, where much can be done to retard or foster alternatives to the legal process. Add to this the fact that "the social distance between the legal profession and the mass of middle-income Americans has increased so that most professionals are virtually uninformed about the range and consequences of the legal problems that plague ordinary citizens" (id.), and the magnitude of the obstacles becomes clear.

Impediments (e.g., the legal establishment), which can be confronted directly are sufficiently formidable. Beyond them lies the arguably more fundamental problem posed by a society that has evolved from one consisting of stable, cohesive communities with shared values, to one evidencing great mobility and a disparity of norms within communities. Communities displaying strong consensus around notions of fairness and justice have given way to polarized groupings bonded tenuously by a highly sophisticated legal culture. This state of affairs complicates the process for a transition to grassroots forms of justice.

a lack of incentive to create a new legal institution

Aside from the factors militating against the predominance of community dispute resolution, there is an aspect of the phenomenon which creates cause for concern. Wholesale use of the new schemes could bring many individuals to the "bar of justice" who might not otherwise have been ensnared. That is, if grassroots justice is made widely available and unqualifiedly promoted, numerous complainants may "press charges" concerning matters that could be worked out without institutional aid. The dispute

handling mechanism could become overburdened; just conflict resolution would remain illusive.

The pitfalls notwithstanding, the potential of community-based justice is great. Throughout the country, people are organizing to effect this goal; their success bodes well for all of us. Clearly, if individual conflict resolutions are to command greater respect, they must be the product of an "organic" process embodying community values.

Mediation

In mediation, a third party facilitates agreement between or among disputing parties. "'[T]hird parties have, or should have, the objective of changing the relationship between the parties from a destructively competitive win-lose orientation to a cooperative, collaborative problem-solving orientation" (Fisher, p. 81). A requisite element of the process is the disputants' acceptance of the mediator's intervention. Together, the contending parties and the mediator resolve the parties' differences and attempt to formulate a mutually agreeable settlement. Though mediated resolutions do not legally bind the disputants, it is anticipated that the provisions of any agreement will be honored by virtue of the parties' mutual interest in termination of the conflict.

Mediation has grown increasingly popular over the past two decades. Creative citizens and organizations have found ways to apply it successfully in contexts as varied as environmental, labor-management, budgetary and interpersonal conflicts (the latter includes domestic quarrels and squabbles involving landlords and tenants, merchants and consumers, and neighbors). The National Center for Dispute Settlement of the American Arbitration Association, the United States Department of Justice's Neighborhood Justice Center and many local groups around the country are actively pursuing the use of mediation (Susskind and Ozawa, p. 22).

Mediation is an appealing form of dispute resolution. The judicial system gains in many ways. Staff (judges, police, prosecutors and the rest) are spared the time and risks involved in cases that go to mediation. For example, family quarrels, which are often mediated when the option is available, account for approximately 20% of police deaths and approximately 40% of police injuries (Alper & Nichols, p. 131). Jails become less crowded and the burden of bail is eased. Perhaps most important is the heightened respect for the legal system that fair mediation engenders. Those who have become alienated from the system may no longer equate justice with harshness and inequality, but may come to view the concept as connoting fairness, restitution, peacemaking and the meeting of needs (id.). Recidivism is understandably low among those whose complaints are resolved through mediation.

the potentials of community justice

The disputants are the beneficiaries of lowered hostility, aggravation and tension when their grievances are successfully resolved. In contrast, judicially settled conflicts tend to inspire sharpened antagonism. Mediation occurs at the convenience of the participants, rather than at the behest of a court. Losses of wages and time are thereby avoided. Most interpersonal disputes can be settled in one to three sessions. The disputants formulate their own decision, rather than having one foisted on them by judges and lawyers. Finally if there is a loser, penance is in the form of payments or constructive tasks, not in the form of a criminal record.

Mediation's greatest beneficiary may be the community. For example, the demoralization resulting from disputes which have been ignored or relegated to the courts is ameliorated. Mediation can allay tensions and possible violence which could result from unchecked community conflict. Indirect benefits include enhancement of a community's dispute handling resources, and an improvement in community ambiance.

accepting a mediator's intervention

Mediation differs from arbitration. Though the two share the negotiation process, the latter entails the imposition of settlement. Acording to Meyer (p.164): "Mediation and arbitration have nothing in common conceptually. One involves helping people to decide for themselves while the other involves helping people by deciding for them."

The Chapel Hill Dispute Settlement Center

Chapel Hill, North Carolina boasts an outstanding example of a community-based mediation service. Though the Chapel Hill Dispute Settlement Center did not open its doors to disputants until summer of 1979, the need for a community-based mediation center was first articulated in the early 1970s. The center was born from a court monitoring program initiated by two women of the local chapter of the Women's International League for Peace and Freedom (WILPF), at the instigation of the Interchurch (now Interfaith) Council. The Center's organizers believed there were better ways than adjudication to handle particular types of disputes, especially those

mediation and arbitration

involving people in ongoing relationships. They felt that court disputants were shortchanged; they also argued that there were better uses for the judiciary's time.

funding for a dispute center in Chapel Hill

Over a period of several years, the women amassed documentation on mediation and assessed its appropriateness for the Chapel Hill area. An important event was a Chapel Hill visit, in 1973, by a representative of the American Arbitration Association (AAA) who had been instrumental in starting the Dispute Settlement Center in Roxbury, Massachusetts. Interest which later bore fruit was piqued at that time.

In the summer of 1976, after three years of court watching, another AAA representative visited Chapel Hill. The result of his well-attended and well-received talk was the successful funding of a local dispute settlement center. The Orange County Board of Commissioners allocated money in October 1976 as did the Chapel Hill Board of Aldermen in spring 1977. The Orange County Bar Association, contrary to the norm elsewhere, helped complete plans for a Center.

staffing the center

With funding still a problem, the nascent Center was fortunate in procuring gratis the training services of a retiring woman attorney from the Community Relations Service of the United States Department of Justice. Of the fifteen mediators trained then, twelve remain with the Center. In the summer of 1979, key subsidies were obtained from the North Carolina General Assembly and the United Fund. The funds were used, in part, to hire a director who in turn procured grants from the Reynolds and Babcock Foundations. Though hardly well-endowed, the Center was able to hire another staff person, and recruit and train people to staff dispute settlement centers across the state. These efforts resulted in the establishment of ten additional centers, in cities and counties around the state. New center locations included Greensboro, Raleigh, Durham, Winston-Salem, Charlotte and Chatham County. Three more, in Burlington, Asheville and Hendersonville, have opened their doors within the past year.

goals of the center

At the Center's headquarters in Chapel Hill, three staff are employed: a director, a caseworker and a clerical worker. Six funding agencies subsidize the Center: the towns of Chapel Hill, Carrboro and Hillsborough, Orange County, and the Chapel Hill-Carrboro and Orange County United Ways. As an indication of the growing demand for the Center's services, in fiscal year 1983, 441 cases were processed; in the next fiscal year, 650 cases were brought to the Center.

The Center divides its cases into two sources, "Court" and "Community". The former includes cases referred by the District Attorney (a longtime friend of the Center), private attorneys, "self", the police, judges, magistrates, the Sheriff's office and "other." What they all have in common is that a warrant has been issued in the matter; if it is resolved, all charges are dropped. Cases referred range from assault (from simple assault to assault with a deadly weapon), to communicating threats, trespass, injury to property, breaking and entering, and larceny. The court category accounted for 53% of the Center's cases in the 1984 fiscal year.

"Community" cases are those brought to the Center directly by local citizens. Forty-seven percent, or 226 of fiscal 1984's cases, arose in such a manner. The most numerous categories of such cases are "Domestic/Family," "Roommates," "Money Claims," "Neighborhood," "Landlord/Tenant," "Customer/Business" and "Miscellaneous."

Within the last two years a Hillsborough satellite office has opened. Its case load currently represents about 31% of the Center's total. Interestingly enough, Hillsborough's Court/Community mix is the reverse of that in Chapel Hill. Whereas 65% of the cases handled at the Chapel Hill office stem from the community, 65% of those in Hillsborough are subsumed under the court label. As popular as the Center has become with the authorities in Chapel Hill, in Hillsborough it is even more so; there, many of the same defendants habitually move through the judicial system on charges such as drunkenness and barroom brawls.

The Centers' services are offered absolutely free, though most disputants heed the fact that contributions are welcome. The only exception to the no fee rule is for divorce and separation cases, where $10 per couple is charged for the first session and $20 for any subsequent ones. The average annual income of the Center's disputants is under $10,000.

Fitting the overall mediator staff to the demographic profile of the community, and each case's mediation team (Center mediators work in pairs) to the disputants, is important to the organization. Correspondingly, 29% of the mediators are black and 58% are women, with ages ranging from early 20's to 80. Three male mediators were recently added, bringing the total of all mediators to 34 (26 in Chapel Hill, 8 in Hillsborough).

The director describes the Center as having three

main goals: help disputants find a mutually agreeable solution while maintaining their dignity; create a more harmonious relationship between the disputants; relieve tension in the community. The Center's success is testimony to the effectiveness of mediated dispute resolution. In a survey of mediations conducted 4½ years ago, 85% of Center-facilitated resolutions were still intact. Also, of 172 cases commenced, 156 were successfully mediated to an agreement in fiscal 1984 through the first three quarters of this fiscal year.

Justice, of course, has many different meanings to many different people. Most would probably agree, however, that community roots are desirable in a system of dispute resolution. This is what institutions such as the Chapel Hill Dispute Settlement Center have to offer, and nurturing of such places by communities seems well-advised as part of a plan to improve morale and the quality of life.

A Role for Planners

The fact that there is little recognition of a specialty within the field called "justice planning" notwithstanding, it arguably behooves professionals working in all aspects of human services to foster non-adjudicative modes of dispute resolution. In 1959, President Dwight Eisenhower said, "[P]eople want peace so much that one of these days government had better get out of their way and let them have it." Though people may well want alternatives to litigation as badly, planners should do more than get out of their way. They should, through demographics, court statistics, and consultation with legal system personnel and community representatives, endeavor to ascertain a desirable alternative dispute resolution mechanism for the community in question. Clearly, a planned response to frustration with the judicial system makes far better sense than an ad hoc one.

Postscript

Given the current funding priorities and political interests of the Reagan administration, it is clear that communities can expect little support from the federal government. In the name of market-motivated prosperity, towns and cities have been left to drift. There seems to be little on the horizon, in terms of federal initiatives, that promises to ameliorate the plight of those passed over by Reagan's magic wand. These, arguably, are the ones with the most to gain from the advent of community-based dispute resolution. Not that such a program could ever be a panacea for the woes of those who have "fallen through the cracks," but dispute resolution on a more human scale might serve as some sort of lightning rod for community tensions. One senses that, in some quarters, as straitened conditions give rise to an escalating level of interpersonal conflict, alienation from the court system may likewise increase.

justice planning

future prospects for financial support

NOTES

1. Among Pound's concerns were the limited access to justice caused by the delay, high costs, and intimidating character of the courts; the failure to achieve substantive justice caused by the nature of the adversary process and overriding concern with the etiquette of the law; and the inevitable inability of courts, guided by general legal principles, to make decisions responsive to the subtle variations among cases (Dubois, p. 61).
2. To date, 170 communities in forty states have established "dispute centers" (also known as "neighborhood justice centers," "citizen's dispute settlement programs," and "night prosecutor's programs"). In addition, more than 400 private agencies and city government entities are involved in providing informal processes to resolve citizens' problems (Ray 1981, Foreword).

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