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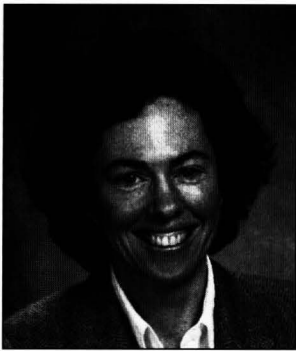
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A TALE OF TWO CITIES: DAY LABOR AND CONFLICT RESOLUTION FOR COMMUNITIES IN CRISIS

By Lela P. Love and Cheryl B. McDonald

When written in Chinese, the word "crisis" is composed of two characters. One represents "danger" and the other represents "opportunity."

A social crisis influences both individuals and groups within a community. How a government and key interest groups respond to the crisis has a similar impact on both the parties and the community-at-large. Therefore, it is important to develop an approach to the conflict that will best move society forward while limiting the danger and costs of discord.

Advocates of litigation passionately champion the value of creating binding precedents that clarify and protect the rights of individuals and groups. However, if a government exists to facilitate its community's economic and social well-being, as well as its constituents' personal safety and fundamental liberties, then enlarging the scope of issues addressed by a conflict resolution process may hold greater promise for recognizing the opportunity inherent in a crisis. In this "tale of two cities" we will describe two remarkably similar situations involving day laborers and argue that one community's choice of mediation after the commencement of litigation resulted in outcomes that addressed and satisfied a wider range of

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constituency interests than those realized by the community that chose litigation alone.

Gathering at the Corner

Glen Cove, N.Y., is a small city on the north shore of Long Island. Agoura Hills, Calif., is a comfortable residential suburb of Los Angeles. As the 1980s drew to a close, each community became aware of an

Where day-laborer litigation led to coercion and distrust in California, mediation brought about cooperation and broader reforms in New York.

increasing number of men who began congregating at specific "shaping points" to seek daily employment from landscapers and other contractors. In Glen Cove, the shaping point was a deli; in Agoura Hills, it was an intersection.

The men were generally Hispanic; 50-100 Central and South American immigrants. The casual labor they might find represented their only means of livelihood. Some were refugees who had fled the political violence of their home countries. Their labor allowed the surrounding middle and upper-middle class communities to enjoy well-tended lawns and gardens, and well-maintained homes at affordable prices.

The presence of these men and their activities also caused conflict in these communities. Local merchants and neighbors expressed concerns about noise, litter, public urination,

catcalling to women and other disorderly behavior. Traffic safety was compromised by men running into the streets to negotiate with potential employers; vehicles would unexpectedly stop in traffic or pull up to or away from the curb as employers made their choices and picked up workers.

Two Cities, Two Responses

As tensions mounted, the cities stepped up their enforcement of traffic laws. Glen Cove city officials urged the U.S. Immigration and Naturalization Service to round up and detain illegal aliens at the shaping point. In Agoura Hills, city officials worked with local businesses to set up a hiring site in a commercial parking lot. While the site provided public toilets, drinking water and a volunteer coordinator, few men actually got jobs through the facility – although it is not clear why this was the case. It was eventually replaced with a telephone exchange, but the informal hiring practice continued.

In both cities, the workers complained that the law enforcement officers used harassing and abusive tactics, unfairly targeting them as criminals while at the same time ignoring their claims or treating them as perpetrators when in fact they were the victims of criminal activities. Both cities attempted to address the problem by holding public hearings, which only engendered strident debate and a hardening of positions.

In 1990, both cities enacted substantially similar ordinances prohibiting solicitation either to or from occupants of vehicles that are traveling on public streets or from cars parked in unauthorized areas of commercial parking lots. The Glen Cove ordinance more broadly prohibited

occupants of stopped or parked vehicles from hiring or attempting to hire a worker.

Seeing these ordinances as unconstitutionally targeted against the Hispanic workers and violating First Amendment rights, civil libertarians and members of the Hispanic community in each city joined to file lawsuits, which in the case of Glen Cove included a class action seeking \$3 million from the city. Plaintiffs in both cities sought preliminary injunctions against the enforcement of the new ordinances.

Here the tales of the two cities begin to diverge.

Agoura Hills

In Agoura Hills, representatives of the workers attempted to negotiate with the city, but made no progress. Following the denial of their preliminary injunction, the workers appealed. The California Court of Appeals denied the appeal in a published decision upholding the ordinance and finding no evidence of its unconstitutionality application to the plaintiffs.¹

Three years later, while crowds of 100 men no longer congregate in one place, the nature of the situation depends on who you ask. The City of Agoura Hills contends the problem has gone away. While a few transients still gather to seek work, the "regulars" seem to have moved elsewhere. The Los Angeles County Sheriff's Department, with whom Agoura Hills contracts for police services, has assigned a bilingual ordinance enforcement officer in order to improve communication with the day-laborer population. As of July 1, 1997, the telephone exchange was shut down.

Representatives of the day laborers tell a different story, however. They report that 60-80 workers still solicit work each day in Agoura Hills, but do so in smaller, geographically scattered groups of 8 to 10 men. With a penalty of \$271 per citation, the workers are cautious and disperse when a sheriff's vehicle comes into sight. Moreover, they contend that the sheriff continues to hassle workers and that the presence of a bilingual officer

has neither eased the distrust held by the workers toward the city and police officials nor substantially improved communication. In some cases, the sheriff has used back-up units and helicopters to round up workers.

Glen Cove

As with Agoura Hills, a state court denied a preliminary injunction against the Glen Cove city ordinance. Facing the prospect of laborious and possibly

Among other things, local public policy mediations require thoughtful consideration of who should be in the room, and how the mediation costs should be paid.

unsuccessful litigation that would leave broader concerns unaddressed, plaintiff CARECEN (Central American Refugee Center) was receptive to alternatives. The city was also open to alternatives, having hired outside counsel to defend the lawsuit and facing sizeable legal expenses if litigation continued. In early 1992, Hofstra University Law School Professor Baruch Bush suggested mediation and recommended a possible mediator. Both sides agreed to participate.

The mediation was held in April 1992, in a conference room at the Glen Cove Public Library. In two full-day sessions, which were spaced a week apart, the parties raised and addressed a broad range of issues. By the end of the second session, they reached an understanding as to the general substance of an acceptable accord. In December 1992, many drafts and conference calls later, the parties signed a final agreement, which included an amended ordinance.

The structure and timing of the sessions were designed to create an environment that would foster understanding and collaboration, and comport with political realities. In the first

session, the parties were invited to describe their perspectives and concerns in an effort to gain – for the entire group – a more comprehensive understanding of the situation. No solutions or proposals were to be put forward at this session.

Many first-session presentations included the sharing of perspectives and stories that may not have been heard in a litigation context. Two day laborers, for example, described the hardship created by the hostile environment. The deputy chief of police and a city council member talked about the situation's impact on the police and town residents. An anthropology professor described how the Salvadorans' historical experience with repressive governments and brutal police tactics made them particularly vulnerable to perceived or actual hostility from the government.

This first session not only educated the participants about each other's realities, but also humanized and connected the parties. This reduced the prior acrimony that the litigation and press coverage had inflamed, and set the stage for tackling the issues.

The week between sessions gave the parties the opportunity to explore with their respective constituents possible proposals to address the issues raised. In the second session, the parties discussed and shaped proposals, and the Glen Cove mayor's visit to the working session enhanced a growing spirit of collaboration.

Notably, the agreement between the parties addressed concerns much broader than those raised by the litigation. These included:

- posting city notices in Spanish as well as English;
- use of the city soccer field by the Salvadoran community;
- collaboration between the city and advocacy groups to create an alternate site for employers to connect with day workers;
- hosting of community meetings by CARECEN to educate the day laborers about community responsibilities;
- cultural awareness and Spanish

language training for members of the police force;

- the institution of a police protocol for interventions in which a party does not speak English; and
- the collaborative drafting of an amended ordinance that both promoted the City's traffic safety concerns and satisfied CARECEN's concerns about discrimination and the protection of constitutional rights.

The agreement became a final judgment of the court in the lawsuit and terminated the litigation. Since many of its provisions required ongoing collaboration between the parties, the dialogue between them continued past the mediation sessions.

Today, Hispanic advocacy groups in Glen Cove report a working "shaping point" with toilet facilities provided by the city and a variety of supportive services for the day laborers. While the shaping point took several years to materialize, the mediation was a component of the change in climate that resulted in the new facility.

Keys for Success

In one sense, each community achieved its desired goal of eliminating both a substantial traffic hazard and dispersing the large conglomeration of men and vehicles. However, Glen Cove was also able to improve understanding and relationships among parties who shared a common community by making effective use of mediation to resolve the conflict. Government officials and key interest groups began to collaborate in a problem-solving process to address the troubling issues they faced. A host of issues were addressed rather than just legal causes of action. The costs and risks of further litigation, for both sides, were eliminated.

Despite these attractive advantages, multi-party public policy mediation poses some problems. Elected officials are directly accountable to their constituents for their success or failure in managing social problems. When their approach to crisis deviates from the orthodox,

they increase their risk. While multi-party negotiations are certainly somewhat commonplace, more formalized multi-party mediations still are not yet widely used, particularly at the local levels. Therefore, participants may be vulnerable to criticism for bargaining about presumptively established rights and obligations. As a result, difficult questions must be thoughtfully answered before such a mediation begins, including:

Who will the mediator be? The mediator must be comfortable and skilled in managing multiple parties with diverse interests. He or she must be knowledgeable about critical dimensions of the controversy without being identified with either side. Critically, too, all parties must trust the mediator. In the Glen Cove situation, the mediator was an academic, which in that case helped establish both credibility and neutrality.

It is also important to remember in this regard that the way the mediator is defined and selected can affect whether interested parties choose to participate. While the absence of some players may not derail the mediation process in its entirety, it may limit the scope of the problems that can be effectively addressed.

How will the mediator be paid? In situations in which some parties are unable or unwilling to pay for the mediation, there is a tension between the potential perception of mediator bias and the need for unrestricted access to the process for all stakeholders. In the Glen Cove mediation, the mediator served pro bono. This solution is not always viable and may not be optimal, as financial contributions may increase commitment to the process. Where parties cannot equally contribute to the mediation, however, alternative sources of funding should be explored.

Who are the stakeholders and who represents them? In the two cities here, stakeholders included: workers (citizens, legal and illegal immigrants), city officials (both elected and law enforcement officials), residents (homeowners and rental tenants), the business community (both retailers

and contractors), community groups (legal advocacy groups and churches), and motorists.

Critically, though, someone must take the lead in deciding who needs to be brought to the table. Not infrequently, advocacy groups and various individuals will vie with each other to be the designated spokesperson. Such issues must be resolved thoughtfully, both before the mediator is selected and as the process moves forward.

Even when these hurdles are successfully negotiated, one must also remember that mediation does not create legally binding precedents. Fundamental interests acknowledged and addressed in a mediated resolution are not automatically transferable to others who are similarly situated. While a mediation may stimulate positive shifts in culture, its impact on other communities will depend on informal transmission, or the "ripple effect."

Also, unless the process creates structures to carry the parties' vision beyond changes in political administration or other shifts in leadership, benefits derived from mediation may be lost. Parties must be concerned both about the resolution of the issues at hand, as well as their continued capacity to address the interests which have been brought to light.

Clearly, there is no single process or approach appropriate for every social crisis. Important community interests and values must shape the response of all participants, particularly that of city officials. However, in a democratic society, the principles of participation and dialogue that we hold dear should incline government officials toward institutionalizing processes that bring multiple affected parties together when challenges arise like those faced by Glen Cove and Agoura Hills. Thoughtfully constructed, mediation offers the chance to seize the opportunity inherent in community crisis.

ENDNOTE

¹. Juan XILLOJ-ITZEP v. City of Agoura Hills, 24 Cal.App.4th 620 (1994).