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The Neighborhood Justice Center Movement

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I. BEGINNINGS

The Neighborhood Justice Center ("NJC") pilot program was founded by the United States Department of Justice in 1978 in an effort to explore new avenues of dispute resolution. To understand the motivating force behind the eventual establishment and success of the NJC program, it is important to view with broad perspective the events that serendipitously coalesced into the quiet but profound movement that is changing the way disputes are resolved both inside and outside the formal American legal system.

Preceding the presidential election of 1976, Griffin Bell of Georgia, a judge in the U.S. Court of Appeals for the Fifth Circuit, attended the Pound Conference,[1] a unique gathering of some of the brightest minds from the legal profession, other disciplines, and from the general public, to discuss and devise methods of advancing the administration of justice in the United States. The focus of the conference was to address ways in which procedural and substantive areas of law could be improved so that the administration of justice would improve. The theme of the conference was "Perspectives on Justice in the Future."

A few months after the Pound Conference, President Jimmy Carter appointed Judge Bell Attorney General of the United States. One of his first acts as Attorney General was to create the Office for the Improvement in the Administration of Justice in the Department of Justice. He recruited a distinguished professor of law, Dan Meador, from the University of Virginia

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[1] The Pound Conference was named for Roscoe Pound, Dean of the Harvard University Law School from 1916 to 1936. The conference was convened in 1976 by the Judicial Conference of the United States, the American Bar Association, and the Conference of State Chief Justices, some 70 years after Dean Pound's article, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 29 A.B.A. REP. 395 (1906).

School of Law, to direct this office. The new office promptly launched a national pilot project of "neighborhood justice centers." Funding was provided by the Law Enforcement Assistance Administration ("LEAA") under the aegis of the Justice Department. Legal, governmental, and community groups from all over the country were contacted regarding the project and encouraged to submit proposals for funding.

A year later, in 1977, Professor Frank E.A. Sander, of Harvard Law School, whom most professionals in the field acknowledge as the father of the neighborhood justice center movement, provided the following glimpse of the reorientation of thinking that he and others were experiencing as they confronted the continuous and increasing difficulties in the administration of justice:

> [I]t seems to me that up to now we have had far too single-minded a preoccupation on the adversary system as the paradigm dispute resolution process. While the adversary method may be ideally suited to the resolution of sharp conflict over factual issues, there are many other problems for which it is not so well-suited. Take, for example, a dispute between two neighbors . . . about a dog of one that keeps trespassing on the land of the other. Perhaps this festering situation will ultimately degenerate into some kind of physical assault and wind up in the criminal courts. This kind of problem is not likely to be effectively resolved by the criminal adversary process, for the ultimate issue is not who hit whom, but rather how this degenerating relationship can be constructively restructured. For that type of dispute between interdependent individuals, a mediative process seems far more apt than a coercive process. . . .
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> I also sense a perceptible public disenchantment with the increasing complexity and remoteness of the traditional dispute resolution process. Sometimes that process appears to be so cumbersome that it develops a life of its own and loses sight of the underlying problems it was designed to resolve.[2]

II. THE FIRST THREE NJCs (KANSAS CITY, ATLANTA, AND LOS ANGELES)

The basic concept was for three pilot projects across the country to be funded with essentially $212,000 each, for eighteen months. The

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[2] Frank E.A. Sander, Remarks Before the American Association of Law Schools (Dec. 28, 1977) *reprinted in* 80 F.R.D. 186, 187.

groups that bid to be selected were not constrained by the Justice Department in conceptualizing the type of entity or the type of alternative dispute resolution process or processes that a local service provider would use to implement the project. Thus, an emphasis on creativity and diversity of delivery models marked the project from its inception. In essence, one of the main purposes of the project was to determine what method, or combination of methods, will be most effective in delivering alternatives to litigation, namely arbitration and mediation. Atlanta, Kansas City, and Los Angeles were the three cities whose plans to implement the pilot program were accepted. If any, or all, of the programs were successful it was hoped that a model, merging the best aspects of each, could be developed as guidance for other communities nationwide. By spring of 1978, each of the three NJCs had five staff members and between thirty and fifty trained volunteer mediators.

III. CHARACTERISTICS OF THE THREE NJC PILOT PROGRAMS

A. Type of Alternative Processes Used

The three programs independently chose to use mediation as the primary alternative dispute resolution process offered, although Kansas City did conduct some arbitrations as well. The centers chose mediation for a variety of reasons, but the primary reason was that while there were other avenues to access arbitration in some communities, mediation was virtually unavailable. Also, the training of community volunteers as mediators was seen as furthering the objective of having members of a community solve their own particular problems rather than having disinterested outside parties resolve it for them. Thus, the energies and efforts of staff as well as the financial resources of the centers were focused on mediation.

B. The Mediators

The NJCs actively recruited persons from widely different socio-economic backgrounds in their respective communities to determine if persons from a variety of backgrounds could become, with proper training, effective mediators. There was also a concerted effort to recruit and train adults ranging in age from their early twenties to early seventies. Each program was able to reflect the age, race, and socio-economic diversity of its respective community in its staff and in its volunteer mediator groups. The programs also experimented with different approaches regarding the use of single or multiple mediators. Atlanta

adopted and adhered to the single-mediator model, and the other two centers experimented with single and multiple models. No significant difference in the ratio of successful mediations was reported amongst these different approaches. The only difference noted was the fact that sessions with multiple mediators frequently lasted for longer periods of time.

C. Training of Mediators

Each of the three NJCs was allowed to determine how much training its mediators would need and who its trainers would be. After consultation with professional mediation trainers, the programs decided that from forty to sixty hours of training would be needed. Kansas City and Atlanta implemented a forty-hour requirement and Los Angeles chose sixty hours. Each training course was taught by different local and nationally known trainers, and each heavily concentrated on interpersonal skills and the steps of the mediation process through demonstrations and role-playing. The emphasis in the training was to simulate as closely as possible the myriad of disputes and personalities that the mediators could expect to encounter. As a result, all volunteer mediators had to complete forty to sixty hours of training before being certified or authorized to handle a case. All of the training provided involved a significant degree of trainer demonstration, interpersonal communication skills, and role-playing.

D. Professional Staff

Each of the NJCs had five full-time employees: a director, deputy director, two case managers, and a secretary or administrative assistant. The staff members divided amongst themselves the responsibilities of public relations, budgeting, fund-raising, case intake, and management of mediators/volunteers. Each NJC delegated these responsibilities somewhat differently, but all included these aspects in the program.

E. Funding

Each program had an LEAA grant for $212,000 to cover eighteen months, the planned time period for the pilot programs. There was hope for future federal funding if the programs were successful, but no guarantees. Following the eighteen months of funding, one year of additional funding, at $148,000, from LEAA would be granted if the local NJC could raise $12,000 in local monies. All of the NJCs received the

year extension; it was, however, very difficult due to an awareness that the history of so many federal projects was that of starting projects only to "dump" them on local governments. Thus, of all the monies needed to be raised by NJCs, the amount required locally was the smallest, but also the most difficult to raise. Indeed, the pressure was extreme because without the local match, the $148,000 in federal funds would be lost, and the entire NJC program in that community would disappear. Fortunately, all three managed to raise the money for the extra year, after which the NJCs were on their own. No federal monies were available after July 1, 1980.

While new NJC programs envy the pilots for the significant funding they had, the fact remains that local funding was the major obstacle facing the NJCs and that such funding determined the shape and the very existence of the pilots following the end of the federal monies. Funding obstacles continue to be critical factors that all NJCs must learn to hurdle and control.

F. Primary Sponsor for Each Program

In the written application for funding submitted to the Department of Justice, the pilots had to provide a sponsoring entity that would agree to oversee the implementation of the program and the proper use of the grant monies. In Los Angeles, the sponsoring entity was the Los Angeles Bar Association; in Kansas City, it was the city government; and in Atlanta, a totally independent, non-profit, Internal Revenue Code section 501(c)(3)[3] tax-exempt corporation was formed and named "The Neighborhood Justice Center of Atlanta, Inc."[4] If the entity were chosen to receive funding for the project, it would come into existence solely to manage the pilot project. Due to the different organizational structures chosen for the sponsoring entity, Atlanta was the only one of the three that had a board of advisers created solely for the purposes of policy making and carrying ultimate legal responsibility for the NJC. The other two programs had boards of advisers and the like, but the ultimate responsibility for the programs lay essentially with the bar association in Los Angeles and the city government in Kansas City.

IV. HIGHLIGHTS OF RESULTS FROM THE THREE NJCS AND SUBSEQUENT NJC PROGRAMS

For two years, the Institute of Social Analysis ("ISA"), under a concurrent, but separate, grant from the Justice Department, studied the

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[3] 26 U.S.C. § 501(c)(3) (1988).

[4] The Atlanta program changed its name to "Justice Center of Atlanta, Inc.," in 1988.

three NJCs as they developed. The decision to conduct a concurrent rather than after-the-fact study, accompanied by its interim reports, significantly contributed to the body of knowledge available to the three NJCs and other programs that came into being during the time period of the pilot program (1978-80). The information contained in the reports enabled the NJCs to make ongoing adjustments in their programs and provided invaluable guidance to newer programs to avoid certain recognized pitfalls. The following results are documented by ISA reports and/or personal observations by the author.

A. Successful Mediations

The types of cases mediated were very similar in that, for the most part, they were either misdemeanor criminal cases or small claims civil cases. The findings of the study were also consistent in that of the actual cases participating in mediation, nearly seventy percent were resolved, and adherence to the agreements reached at mediation was around seventy percent. Interestingly, more than ninety percent of the participants sampled reported satisfaction with the mediation process, the mediator, and the terms of agreement. This twenty-percent difference between the resolution rate and the satisfaction rate indicated that participants did not judge the mediation experience as a success or failure based only on whether an agreement was reached. From conversations with parties over the past fifteen years, this author speculates that other knowledge gained from participation in the mediation process, even if the case was not settled through mediation, made parties feel that the process was worthwhile. Knowledge gained may include a clearer idea of the issues, significant progress in understanding how the conflict occurred, a view of potential ways to prevent similar problems with the same or similar persons in the future, and an appreciation of the variety of options for settlement of the present dispute prior to the court date. Obviously, if the case did settle at the mediation, these other factors were additional benefits.

B. Referrals and the Use of Court Volunteers

The major difference in results among the three pilot projects was in the number of referrals generated over the eighteen-month time period. Because the percentages regarding success rates and compliance with agreements seem to be very consistent among the programs, an analysis of why Atlanta had a two to three times higher caseload referral rate than the other two programs was undertaken. The finding was that more than

eighty percent of the referrals in Atlanta were made by judges from the bench or clerks at the filing desks to NJC court volunteers working with them in the court. This aspect of Atlanta's approach, which has been replicated by many programs, was and is the effective use of a cadre of volunteers, not only for mediators, but also for covering filing desks and court hearings on a routine basis. Mediators may be court volunteers or vice-versa. However, many court volunteers are not mediators, but are students or others who are interested in the court process and want a firsthand involvement with the courts. Obviously, potential mediators can be recruited from the NJC's court volunteer pool. These mediators provide a greater knowledge of the court process and an understanding of the frustration of citizens, judges, and court staff. These arrangements enhance the outreach of a small staff in a geographically large or non-unified court system. Such was the case in Atlanta. These persons gave the program a higher profile with court staff. In their own way, the court volunteers were the best public relations for the NJC program in that they discussed the types of cases that had been settled and took a personal interest in understanding and relieving the burdens of court personnel while processing cases for mediation on the spot. These volunteers were also able to advise the NJC of ways to improve its intake function in the courts by "walking a mile in the shoes" of the court personnel and experiencing the pressures that the court staff encounters on a daily basis.

Because NJCs like Atlanta's are not a division of the local court, the agreement for volunteers to work along with court personnel on a daily basis was carefully and cautiously worked out so as to minimize the administrative burden for court personnel and enhance the service and image of the local mediation program. One of the first community programs to begin operations following the funding of the NJC program, but which received none of the federal funds to do so, was the Neighborhood Justice Center of Honolulu, Hawaii. The Honolulu NJC began operating essentially through significant volunteer efforts. Volunteers covered not only court referrals, but also most of the administrative jobs. The Honolulu NJC has received significant financial support from local and national foundations, the courts, and the state since it began operations in 1979. That support and endorsement came as a result of the collective and impressive efforts marshalled by the local community and sustained by volunteer efforts. This program, like many other successful NJCs, still heavily relies on volunteers at all levels as well as a consortium of private and public monies to maintain and improve its operation.

NJCs like the one developed in Los Angeles, which did not want to work directly with the court systems, found that getting referrals required

intense community work by its staff, and they still did not reach the numbers that programs associated with courts did. The philosophy of mediation was not different, but the access to the system was different. Problems occurred because of the large number of cases and the less than voluntary parties participating on one or both sides. These matters of high volume had to be handled carefully by ensuring that the program had a sufficient number of day and evening mediators to handle a higher caseload. In the early days of the pilot programs, the Justice Department dictated that no daytime mediators would be needed as they assumed that all disputants would prefer to have mediations in the evening. From the inception, fifty percent of Atlanta's caseload preferred mediation during the day. One of the many reasons cited for the preference was that city dwellers do not feel safe outside their homes at night. The desire not to be out after dark was, and still is, an important consideration. This fact is a concern for all NJCs, as their mediators are all volunteers and the majority of them work either full- or part-time and are not available to mediate during the day. As a result, many daytime mediators carry a larger caseload than do their evening counterparts. The three NJCs and subsequent programs all recognize a significant need for mediation services during the daytime hours.

C. Involvement of NJCs with the Local Bar and the American Bar Association

While the original idea proposed by Professor Sander and incorporated by the Justice Department in the NJC pilot programs targeted the moving of smaller disputes out of court, it was assumed by some that the legal community would be skeptical about non-lawyers dealing with matters that were traditionally the province of lawyers and judges. This problem was very real and had to be carefully addressed even though most of the original cases were not expected to involve lawyers because of the relatively small amounts of money in dispute. These were cases for which it was economically infeasible for disputants to consider hiring an attorney.

The three NJCs approached the problem somewhat differently. The Los Angeles NJC chose not to have direct ties with the courts, preferring, if at all possible, to get disputes to mediation before a formal case had been filed. The Atlanta NJC took the opposite approach in that it needed to work closely with the courts to obtain cases before filing, if possible, but at least to receive a case soon after filing.

Sensitivity to the fact that the NJCs were treading on territory that had been primarily the province of the bench and bar was, and is, a

critical factor for programs. Even though there may have been insignificant amounts of money involved in many cases, judges and lawyers were appropriately concerned over issues such as the unauthorized practice of law and the possible infringement of procedural rights of persons using the NJCs. Some programs have not been receptive to lawyers' skepticism of mediation and arbitration. Atlanta's NJC experience, corroborated by those of other programs, proved that working positively *with* the bar association to ensure that participating parties are aware of their right to have lawyers involved in the mediation, or to have them review any potential agreement arising from the mediation before a party signs, was paramount to the local bar's acceptance of the NJC. Certainly, there are lawyers who view alternative dispute resolution as merely a threat to their livelihood. However, most NJCs that have made efforts to provide for the protection of a disputant's legal rights in the mediation process enjoy the support and involvement of a majority of local lawyers, regardless of the amounts of money at stake.

Those in the NJC movement do not believe that a case has to come from the courts to be appropriate for resolution. However, as the court system is the paradigm in our society for resolving disputes, a court's encouragement of parties to seek alternative means of dispute resolution before resorting to the court system is probably the strongest endorsement the NJCs can receive. No article an NJC program publishes can compare to the routine endorsement by the traditional legal system of these alternative methods of dispute resolution. The reasons are clear, but need to be appreciated by anyone working in the ADR field. Persons in our society who have a dispute do not think of the court as the avenue of last resort, but rather that of first resort. The popular television program "The People's Court" advises millions of television viewers on a daily basis: "Don't take the law into your own hands, take 'em to court." While the television program can be applauded for educating the public about the U.S. legal system, this constant endorsement of going to court is a facet of American society that NJC programs must constantly contend with in encouraging persons to participate in an alternative process. Too often we hear of someone who filed suit on the basis of a "principle" and who was vindicated in court only to discover the "vindication" was not worth the serious depletion of financial resources.

The expansive civil rights legislation passed in the United States since 1964 reflects the public's concentration on the development of individual rights under our laws. However, less attention has been placed on the need to discern when it is advantageous to an individual not to exercise his rights. No matter how many cases a NJC settles, it still has to fight the overwhelming media coverage of big verdicts and vindicated rights

that receive so much attention. One of the factors that all programs must grapple with is the perception that settling a case without going to court is somehow second-class justice, downright un-American, or a violation of one's civil rights.

Ironically, one of the rights Americans enjoy under the U.S. Constitution and the laws of the federal and state governments is the freedom to enter into contracts and have those contracts enforced.[5] Courts do not easily void a contract between two or more persons or entities entered into voluntarily without any clear legal disability or irregularity. It follows that there is no requirement that contracts involving settlements of disputes be the products of only those who are lawyers or those advised by lawyers. While in certain transactions it is prudent to employ a lawyer to draw up or review a contract, for the vast majority of the millions of transactions entered into daily, the use of a lawyer is neither necessary nor prudent from a financial and logistical standpoint. The essence of most transactions between individuals and companies would grind to a screeching halt if lawyers were required.

Most NJC programs encourage participants orally and in writing to seek legal advice before coming to a mediation or arbitration session and before signing a mediated agreement if there is any question about the party's legal rights. Programs make it clear that it is inappropriate for the mediator to give legal advice to one or both parties even if the mediator is a lawyer. This practice reinforces the fact that the mediator's role is distinct from that of the advocate or lawyer. Over the years, NJCs have found that in many disputes, the legal points are less important to the parties than the interpersonal dynamics. Thus, the opportunity throughout the mediation process to receive legal advice from persons who are independent of the NJCs is often all the parties need to encourage them to attempt to use the services of the mediator to help resolve the dispute. The choice of seeking legal advice before, during, or after the mediation is strictly left to the participants without any pressure from the NJC. This approach has alleviated most legitimate concerns of participants, lawyers, judges, and others regarding the potential for the unknowing waiver of rights that could occur when parties are not represented by lawyers.

This effort to offer the NJC services to a wide variety of disputants without abridging their right to independent legal advice has legitimized these programs in many communities. Just as the impetus for finding alternatives to litigation began at one of the highest levels of the legal system, the U.S. Department of Justice, the history of the NJCs indicates

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[5] U.S. CONST. art. I, § 10, cl. 1.

that the continued development of these programs will be best accomplished in a manner that ensures the participation of lawyers and judges in advising parties and enforcing the agreements reached in mediation and awards rendered in arbitration.

Another related issue raised by court-ordered or referral mechanisms is the concern that the actual resolution of the dispute be voluntary. Coerced agreements are anathema to any program that practices mediation with the requisite degree of integrity. Training of mediators as to their unique roles in the solving of disputes and the proper awareness by staff of a realistic non-resolution rate have been keys to the local acceptance of NJC community services. Programs that offered unrealistic resolution rates quickly discovered that they had set unattainable goals, and credibility and funding were adversely affected. Conversely, those programs that set conservative estimates of success and thus often exceeded those projections gained credibility from skeptics both inside and outside the court system.

During the late 1970s and the 1980s, while NJC programs were shaping their relationship with the local bench and bar, the American Bar Association ("ABA") was carefully monitoring the NJC results through its Special Committee on the Resolution of Minor Disputes, formed in 1976. The committee communicated its findings to bar associations and other community groups around the country. As the ABA gained greater awareness of the activities of the NJCs, a transformation in dispute resolution began taking place within its own ranks.

During the early 1980s, the ABA responded to these developments in the application of alternative methods by changing the name of the Special Committee on the Resolution of Minor Disputes to the Special Committee on Alternative Means of Dispute Resolution. The name change reflected the development of an experimental use of a new type of arbitration in the court system: non-binding or court-annexed arbitration.

The committee's name was changed again in 1985 to the Special Committee on Dispute Resolution. The new name reflected an expansion in thinking regarding the role of alternative dispute resolution in the legal system. The change evidenced a major shift in conceptualization of these alternatives in relationship to litigation. Heretofore, the mediation and arbitration methods were described by the word "alternative." In this context the methods were presented essentially as alternatives to the primary method of dispute resolution: litigation. Inherent in this approach was the notion that litigation was primary and the alternatives merely secondary. However, by the mid-1980s so many different NJC-type programs were experimenting with so many cases, both large and small,

that a rethinking of the dispute resolution paradigm by the ABA occurred. The new name reflected the ABA's attempt to signal a shift in emphasis from litigation as the primary dispute resolution method to simply one of many parallel methods along a continuum from nonadversarial to adversarial processes available. Needless to say, these shifts, though significant, needed external emphasis and dialogue.

Another indication of the efforts of the ABA Special Committee to educate the bench, bar, and public regarding the effectiveness of ADR methods was its publishing of a wide variety of articles and pamphlets on these developing methods. Two of the most helpful and comprehensive pamphlets, *Alternative Dispute Resolution: An ADR Primer for Judges*,[6] and a separate edition for lawyers, *Alternative Dispute Resolution: An ADR Primer*,[7] have been widely circulated. Many NJC programs and bar associations use these informative guides in Continuing Legal Education courses to educate their local legal establishment about these new approaches. The credibility that these materials inherently carry were and are invaluable in the continuing education of the public and of professionals about the use of ADR.

Efforts to bring the use of ADR to the forefront of the legal profession were greatly aided by the ABA leadership when it determined the theme of the annual ABA Convention for 1989 held in Honolulu, Hawaii: "Settling Disputes in Pacific Ways." Every presentation addressed the importance of the array of alternative dispute resolution methods that were available to lawyers throughout the country for an increasingly large number of disputes, both complex and small.

A few years later, the ABA committee's name was changed once again from a special to a standing committee, and in February of 1993, the ABA voted to change the committee to an official section. The ABA's Section on Dispute Resolution is now one of only twenty-two sections recognized by the American Bar Association. This type of permanence, while certainly the result of the work of many persons, was largely due to the tremendous growth and acceptance of NJC programs nationwide since the late 1970s.

As a result of developments in dispute resolution by the ABA and the continuing work of NJC programs, a growing number of states have appointed alternative dispute resolution or dispute resolution commissions to explore the potential use of mediation and arbitration. In addition, a

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[6] STANDING COMMITTEE ON DISPUTE RESOLUTION, AMERICAN BAR ASS'N, ALTERNATIVE DISPUTE RESOLUTION: AN ADR PRIMER FOR JUDGES (1989).

[7] STANDING COMMITTEE ON DISPUTE RESOLUTION, AMERICAN BAR ASS'N, ALTERNATIVE DISPUTE RESOLUTION: AN ADR PRIMER (3d ed. 1989).

number of communities and states have considered, and in some cases have adopted, court rules and/or legislation to govern the manner in which the processes could be delivered on a wider scale to the public.

D. Funding

As previously noted, one of the elements distinguishing successful programs from those that are struggling has proved to be the strength of referrals from courts. Moreover, the stronger the ties to courts for referrals, the less difficult it is to gain credibility and needed sources of revenue from court budgets as well as other public and private sources for the NJC community-based program. In short, if the judges and administrators who run the court system find the NJC program effective and credible enough to contribute some of its budget to support the mediation and/or arbitration services offered through the NJC, other sources of funds and potential cases (school systems, public housing authorities, churches, chambers of commerce, police departments, youth service organizations, the United Way, etc.) are more likely to emerge. Programs can, and do, exist without significant court referrals, but their caseload and funding problems are intensified.

When it became apparent that the three pilot NJCs were not going to receive federal funding after the pilot period, other sources of funding emerged, such as private and public foundations, local businesses, bar associations, states, city and county governments, school boards, churches, civic organizations, and local divisions of the United Way.

In 1983, five foundations and corporations formed the National Institute for Dispute Resolution ("NIDR") in an effort to encourage the growth and development of dispute resolution. NIDR is the only organization with the ability and funds to bestow grants that is devoted entirely to the area of conflict resolution. A great deal of the research and practitioner knowledge currently used in the field can be accredited to NIDR and its fundraising, which enabled the NJCs to continue experimenting. For example, NIDR sponsored grants that enabled mediation practitioners in California and Georgia to experiment with the use of mediation in the nursing home industry. In another unique undertaking, NIDR funded the development of a practical guide, *Community Dispute Resolution Manual: Insights & Guidance from 2 Decades of Practice*,[8] for persons who were contemplating opening

[8] COMMUNITY JUSTICE TASK FORCE, NATIONAL INSTITUTE FOR DISPUTE RESOLUTION, COMMUNITY DISPUTE RESOLUTION MANUAL: INSIGHTS AND GUIDANCE FROM 2 DECADES OF PRACTICE (unpublished draft 1991).

community mediation programs or neighborhood justice centers and for those already operating such programs, but who might benefit from the shared experience of the field. The contributors to the publication consisted of a veteran director of NJC programs and representatives of state-run court programs from throughout the country.

Another foundation, the William and Flora Hewlett Foundation of Menlo Park, California, began directing attention to the area of dispute resolution in the early 1980s. The Hewlett Foundation designated that a portion of its monies were to be granted to a variety of organizations engaged in the practice of these alternative dispute resolution methods and/or in the study and research of these methods. Since the beginning of the Hewlett grants, millions of dollars have been advanced by this foundation to NJCs, courts, universities, and other organizations to enhance the knowledge and application of alternative dispute resolution methods and services.

One of the most dramatic manifestations of the effect NIDR and Hewlett Foundation funding has had on NJC-type organizations is the mediation of the so-called "Presidential Parkway" dispute in Atlanta, Georgia, in 1991.[9] The dispute arose from plans to build a four-lane highway that would connect disparate sections of the greater metropolitan area and allow easier access to the Carter Presidential Library, but would also run through one of Atlanta's inner-city historic neighborhoods. After years of litigation in state and federal courts, the case was referred to mediation at the Justice Center of Atlanta ("JCA") by a state level judge. The JCA had recommended that a mediator be brought in who had no connections with Atlanta because of the twenty-year protracted, bitter, and widespread history of this dispute in the political and neighborhood communities of Atlanta. The JCA recommended Michael Keating of Rhode Island, and the judge accepted Mr. Keating as the lead mediator and appointed the JCA to assist with the mediation and in all other matters pertaining thereto. Financing for all costs associated with this mediation was provided by a portion of the Hewlett Foundation grant to the JCA and an NIDR grant to the JCA. The cost of the disputed road as proposed was twenty-seven million dollars. The parties in the case were the City of Atlanta, the State of Georgia, and twenty-four neighborhood coalitions represented by an umbrella association named "Caution."

Funding for the mediation effort was a critical stumbling block, as some parties were initially reluctant to pay, even though eager to mediate.

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[9] The following observations are based on this author's participation as a co-mediator in the "Presidential Parkway" dispute.

While the parties were properly funded, the potential of having to incur more expense without assurance of a resolution was an excuse raised by some that the JCA had to eliminate. To get these parties to the table, it was imperative that the JCA overcome this obstacle. After six mediation sessions, between March and June of 1991, the grant monies were exhausted. However, from their mediation experience in the spring of 1991, the parties realized that mediation would lead to a better resolution than a court decision and thus agreed to absorb the costs of the three remaining sessions that were needed to reach an agreement.

Although the Presidential Parkway case was important to the citizens of Atlanta, it was perhaps of even greater importance to the alternative dispute resolution field, and to mediation at NJCs in particular. The interest of NIDR, the Hewlett Foundation, and the JCA in the Presidential Parkway dispute demonstrated a possibility that the original pilot NJC project had not even envisioned: large cases are not only appropriate candidates for mediation, they may even be more susceptible to resolution by mediation than many smaller disputes.

When the court was looking for a faster and potentially more equitable means of resolving the Atlanta dispute, it turned to the local NJC in Atlanta, and the NJC was successful. This episode speaks volumes for the impact the NJC movement has had on Atlanta and on other parts of the country where courts or other public entities are making similar requests. Without the encouragement and assistance provided by outside funders, the impact of the NJCs would not be what it is today. It has been a dynamic partnership of practitioners, academics, and private and public fundraisers whose synergy is changing the face of dispute resolution.

Foundation monies have also served as a key component to a unique national conference of ADR practitioners and academics, and other persons interested in the ADR field, held every eighteen months since the early 1980s. This conference, the National Conference on Peace-Making and Conflict Resolution ("NCPCR"), was the brainchild of an NJC mediator, Dr. Margaret Herrman from the Carl Vinson Institute of Government at the University of Georgia. Dr. Herrman perceived a desperate need for a national forum where veteran ADR practitioners, novices in ADR, academics and researchers from many disciplines, students, diplomats, lawyers, and other interested persons could congregate periodically and exchange information on the emerging and exploding field of conflict resolution. Her unfailing commitment to this enterprise sparked the interest of others and attracted significant funding support from foundations. As a result, the NCPCR had four meetings in

the 1980s and one in 1991, and another is scheduled for 1993. Today, the NCPCR has a mailing list of more than 18,000.

V. THE PAST AS PROLOGUE

When the NJC pilot program began in 1977, it was hoped that these new methods for resolving disputes, mediation and arbitration, would have a significant degree of success in moving smaller disputes more quickly out of the courts to make way for the more complex and time-consuming cases. While the programs were successful in resolving minor disputes, for every case taken out of the court, filings multiplied. In other words, the litigation explosion of the 1980s had begun and the hope that the NJCs would divert cases to alternative forums before filing quickly faded. This phenomenon clearly illustrated that changing the mindset of the general public from litigating to mediating would take a much longer period of education, training, and experience than had been contemplated.

As a few years passed and the original NJCs were joined by new programs, an expansion of the scope of the application of mediation began slowly, quietly, and carefully on a case-by-case basis. For example, Atlanta was one of the first NJC programs to begin mediating disputes in the area of services for handicapped or disabled students. Federal law, requiring all public school systems to provide a free and appropriate public education for those who qualified, thrust schools and parents into the unfamiliar world of suing each other over benefits guaranteed by law. When the state school system in Georgia approached the Atlanta NJC in 1979 and asked if mediation were applicable to these kinds of disputes, Atlanta accepted the challenge. Fourteen years later, the mediation efforts begun by the Atlanta NJC in the area of educational mediation have spread to sixteen states and to two federal systems: the Stateside Dependents Schools and the Overseas Dependents Schools operated by the U.S. Department of Defense.

Other NJC programs have developed significant new fields of service, including those in the environmental and public policy arenas. Programs were approached by interested citizens and/or public officials, and the staffs embraced the opportunity to try mediation, arbitration, and other alternative methods in an ever-expanding arena of cases. The Houston Dispute Resolution Center, which formerly had been known as the Houston Neighborhood Justice Center, and the Multi-Dispute Resolution Center of the Superior Court of the District of Columbia, are prime examples of comprehensive, multi-faceted programs that offer a wide array of dispute resolution processes to all types of cases.

VI. THE NJC MOVEMENT IN THE 1990S

As new NJCs and court-annexed or court-housed programs arise, it is hoped that the lessons learned from the NJC movement will not be lost. The strength of the NJCs lies with a few key ingredients:

(1) volunteer community mediators;

(2) access to services for small and complex cases as well as those with unlimited and limited financial resources;

(3) a diversity of funding sources;

(4) involvement by the legal community in advisory, board, and mediator positions; and

(5) wide community involvement through recruitment of mediators, staff, and board members.

If experimentation with different processes can proceed without losing any of these elements, greater strides in revolutionizing the way conflicts are settled can be made. The legacy of the NJC movement is dependent on avoiding the temptation to take an easier road in tight economic times. It should be remembered, however, that although the NJC movement was a product of Jimmy Carter's presidency, it continued to grow and prosper under twelve years of Republican administrations. The strength of the NJCs lies not in their political affiliations, but in the diversity of the support they garner in the community, among funders, and within the legal community.