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*ALTERNATIVES TO PRISONS:  
ISSUES AND OPTIONS*

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# CITIZEN DISPUTE RESOLUTION:

## An Answer to the Liberal's Dilemma

By Paul Wahrhaftig

*"Liberals are excellent at defining problems, but the solutions they come up with tend to depend on those in power agreeing with their analysis of the problem."  
(Danzig)*

The Pittsburgh Office of the American Friends Service Committee had been actively involved in pretrial reform for a number of years when Richard Danzig stunned us with the above observation. AFSC, a Quaker based social action agency, had been trying to respond to minority community complaints about the justice system.

The analysis was clear. While some sort of crime control is important, unnecessary numbers of people were being victimized by the justice system. Arrests were made when it seemed unnecessary. People were held in jail in lieu of bail only to be found not guilty. Petty charges went to trial involving expense and dislocation for the defendant only to result in a not guilty or token probation verdict.

Thus AFSC focused on bail reform, pretrial diversion, and the use of summons and citations. After five years it found many of the reforms in place. Citations were sanctioned by statute. Own recognizance releases were common. People were diverted. However, the unnecessary arrests were still being made, people were still awaiting trial in jail because they could not meet the standards of release, and unnecessary cases were still going to trial. In Danzig's analysis, the system agreed that some of the rough edges should be made straight but disagreed with our analysis of which arrests, bails and trials were

unnecessary. Hence, little real change took place.

Danzig defined the dead end well. He also suggested some directions to move that could impact the criminal justice system while not depending on those in power agreeing with the premises of the affected community (Danzig, 1973). One of those ideas is what we now call Citizen Dispute Resolution.

The AFSC program was encouraged in this direction by committee member Michael J. Lowy, an anthropologist who had done his field work in Ghana and had observed how the informal village "moot" provided a first line community justice system while the formalized colonial courts served as a back up. In the moot, disputing parties were brought together before an elder who helped them talk through their problems. Parties were encouraged to develop their own solution to the problem. Rather than focus on placing blame, the moot focused on how relationships could be righted so that conflict will not re-occur in the future.

AFSC's analysis, then, was that some of the disputes which became unnecessary arrest, bail, and trial problems were between people who had some kind of ongoing relationship. These people had a stake in straightening out problems to avoid trouble in the future. Over one-third of the cases appearing in Pittsburgh's City Court involve people who knew each other personally (Goldman, 1977). Many of these cases could be mediated. More importantly, while it would be easier to run a mediation program if those in authority agreed with these assumptions, it was also possible to do it without that agreement. In that case rather than recruiting referrals from criminal justice authorities, community organizing and base building could build up significant intake directly from the community. Thus problems the community deemed appropriate for mediation would be handled whether or not officials agreed. AFSC then sought to encourage community groups to experiment with mediation projects. As a resource, it established the Grassroots Citizen Dispute Resolution Clearinghouse.

Further exploration of the citizen dispute resolution concept led the Clearinghouse to discover some important community-building principles in dispute resolution programs.

A Dutch criminologist, Nils Christie, developed the analogy of disputes as property (Christie). A conflict can be a valuable piece of property which one can use to grow and mature. Today conflicts have been ripped-off by the professionals. Police, judges, social workers "solve" the problem while the disputants acquiesce. Using mediation, the property is returned to the people and, individual participants can become empowered. For example, in a domestic dispute if the parties not only settle the particular quarrel but agree upon a way of structuring communications to settle future conflicts, they have learned and grown from the experience.

The conflict in a sense also becomes the property of the sponsor of the mediation project. If the dispute resolution program is community sponsored, the program can be structured so the community can inventory its "properties"--knowledge gained from solving individual disputes--and can use that information to define and focus upon broader community problems. For example, the community-based Community Board Program in San Francisco settled a particular dispute between a homeowner and the homeowners association. The respondent's home had been burned out and left unboarded, resulting in deterioration to the community. Upon agreeing on a resolution to this particular problem, program participants observed that there were many fires in the subdivision. A community audience member added that the fires resulted from some electrical code violations built into all the homes by the original builder. The Community Board was able to use this information to encourage housing-related community associations to focus on the fire hazard problem.

This theoretical introduction to dispute resolution is important. Citizen Dispute Resolution (CDR) is a very compelling concept. Few disagree that many problems would be better dealt with if people were encouraged to talk them out and reach their own solutions. It is a service that makes sense. However, if only the service is focused upon and not the structural issues, the history of pre-trial reform will be repeated. New services will exist, but somehow the same old problems will still plague the communities supposedly aided by the reform projects.

Dispute resolution programs in this country can be divided into three categories: justice system sponsored,

agency sponsored and community sponsored.

### Justice System Models

Justice system sponsored dispute resolution programs are the most common format in this country. The first prototype was the Night Prosecutor Program which started in Columbus, Ohio in 1972. There people wishing to file private complaints were referred to the prosecutor's office and a hearing was scheduled for a convenient hour (usually nights or Saturdays) before a law student mediator. The parties were encouraged to seek their own solution at the session. This program still exists and has been copied by many prosecutors' offices.

More common now, however, are programs sponsored by courts which tend to appear more neutral. New Jersey and Florida have the highest concentration of court-sponsored programs. These are generally found in a centralized governmental building, often with professional mediators. The Neighborhood Justice Center (NJC) in Atlanta and the Dorchester Urban Court in Boston are examples of court-sponsored programs that are operated at neighborhood sites and use lay mediators.

It is unusual, however, for a court-sponsored program to service only a specific neighborhood or community. Courts receive their cases from throughout their jurisdiction and see their need as servicing whole categories of cases. They are not geared to giving different treatment to cases from a specific neighborhood. Hence, the Atlanta NJC, in spite of its neighborhood location, services cases from throughout Atlanta. Dorchester is unusual. There, a decentralized District Court with neighborhood jurisdiction already existed and so draws court cases from its neighborhood.

Justice agency programs, like all others mentioned here, have the potential of empowering individuals to seek solutions to their own problems. However, the process legitimizes the justice system as the first line problem solver. The service is in a new, more informal package, but it is to a court or prosecutorial agency that people in trouble go. In doing so, people are limited by the system's definitions in handling disputes. If it is too "serious" (in court terms), it will go to trial. If it

is too frivolous it will not be handled at all. For example, a prosecutor in a recent conference saw neighbors' complaints about an old man who religiously fed pigeons in his back yard as too frivolous. To devote scarce resources to this dispute would be out of the question. From the neighbors point of view, significant property damage was involved as well as a real potential for violence.

In less obvious ways the court's definitions rule how disputes are handled. In Florida, a recent survey of their justice system-dominated programs indicated that cases referred from traditional justice agencies are more likely to appear at hearings, reach agreements and stick to them than cases that come in from community sources (Dispute Resolution Alternatives Committee--1979). Is this finding a result of the reality of peoples' problems or simply an indication that the mediation system was geared by criminal justice people to handle problems well which had been identified by that system? Are the justice system's definitions of cases appropriate for mediation consistent with the community's analysis?

#### Agency Models

One step removed from the justice system is the agency model of dispute resolution. The American Arbitration Association and the Institute for Mediation and Conflict Resolution in New York are the two giants in the field. Many smaller local agencies such as human relations commissions and newly incorporated non-profit organizations also run programs. Their approach tends to be more flexible than court-sponsored ones and they are more likely to use lay mediators in informal settings. Community people are often involved in the implementation of the program, usually as mediators. Organization tends to be from the top down in the sense that the programs were designed and the neighborhood locations selected by the agency and then volunteers were recruited to mediate.

Once again, if the programs are successful in running good hearings, individuals are empowered by this service to seek their own problem solutions. Agency projects tend to be less coercive than projects operated by the justice system, i.e., they tend not to impose decisions upon the participants. However, the lesson learned by community

people is that when they have troubles they cannot handle the appropriate body to turn to is the social service agency.

Most agencies receive the bulk of their cases as referrals from the criminal justice system. It is easier to establish these relationships than to do the long slow base-building necessary to get referrals from the streets. To the extent that a mediation program is dependent on justice system referrals, it is dependent on that system's definition of what the problems are and what cases are appropriate for mediation. Thus, they become dependent for their survival on the system agreeing with them.

Virtually no agency has yet grasped the potential of capitalizing on the "property" aspect of disputes. A Human Relations Commission (HRC) mediation sponsor, for instance, would be in a good position to use information from individual disputes to document broader community problems. However, HRC-sponsored programs in Santa Clara and Portland do not see that role as appropriate.

#### Community Models

There are a limited number of programs that are governed by the community being served. The Community Board Program (CBP) in San Francisco is a highly structured, well funded, conscious experiment in this area. Community Association for Mediation (CAM) in Pittsburgh is an attempt to run a community controlled project on virtually no money.

In both cases planning and design were from the bottom up. An idea person brought the concepts of mediation to community people. Formal and informal meetings, casual conversations, bulletins and newsletters were all vehicles for involving people. To build their cadre of volunteers and to make the services known and available to community people, two approaches were used. Community Boards concentrated on extensive community education. They talked the concept up in meeting after meeting. CAM analyzed the pre-existing indigenous system of problem solvers already at work trying to help people--block club presidents, active mothers, agency para-professionals--and involved them. Both cases resulted in referrals coming directly from the community. With Community Boards,

people became familiar with the new neighborhood controlled service and began to use it. With CAM people turned to the influential neighbor up the street. That person already had a reputation as a problem solver but now had greater skills.

In both programs mediators come together periodically to discuss their cases. They build from their shared experiences to improve their techniques and to discuss further any general community-wide problems revealed. In both programs, mediators are involved with and tied into existing community action organizations. They can use those contacts to mobilize the appropriate organization around the newly documented community problem. Here, the community directly benefits from fully owning the dispute.

In these programs the problem of being limited by the extent to which the justice system agrees with the reformers premises is avoided. The justice system intake is by-passed. In fact, in Pittsburgh although project organizers informed officials of their initial plans, criminal justice agencies are virtually unaware of the program. It may be that CBP and CAM will eventually reduce the system's caseload, but that reduction is not the community's goal. Better handling of disputes that were not previously serviced or were mis-serviced by the courts is one goal, and increasing the capacity and legitimacy of community structures is the broader program goal.

### Conclusion

This brief sketch has looked at three potential program structures for citizen dispute resolution. Criminal justice system, agency, and community programs were analyzed in terms of their ability to bring about significant change in the way community disputes are processed and in the way communities work. The program based in the community being serviced is the one with the greatest potential of operating consistent with community definitions of the problem. There lies the potential for change.

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