

## An Overview of Community-Oriented Citizen Dispute Resolution Programs in the United States

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### INTRODUCTION

In this chapter I seek to provide an overview of citizen dispute resolution programs from a perspective that emphasizes community empowerment. A list of such programs might include hundreds, or only two, depending on how citizen dispute resolution is defined. This introduction explains why I have limited my discussion to the few programs highlighted in this chapter.

I headed the administration of justice programs of the American Friends Service Committee (AFSC) in Pittsburgh from 1969 through 1980. In 1971 the Program Committee of the project was introduced to what we now call citizen dispute resolution by an anthropologist committee member, Michael J. Lowy. After a period of initial skepticism we became excited about Lowy's vision of transplanting to this country the informal tribal moot he had studied in Ghana. The idea of people working together to solve their individual problems within the community, focusing on reconciling the parties rather than on assigning blame, was appealing to a Quaker organization. Also attractive was the idea that the people hearing the dispute, unlike professional judges, would come from the same

neighborhood as the people engaged in the dispute. The mediators, as we called those who listened to the problem, would be familiar with the setting, language, and customs of the neighborhood. It was an exciting idea. But just as we began to feel proud of ourselves for discovering this concept, we found that at least three groups were already using it.

The Community Assistance Project, a small justice program run by the black community in Chester (a city southwest of Philadelphia), had a mediation component: People brought their troubles to a staff member described as “motherly.” An imaginative proposal writer called her a “mediator” and received Law Enforcement Assistance Administration (LEAA) funding to underwrite her salary. A few contacts with the court and with justices of the peace assured a more regular flow of cases. But the program never moved beyond that point. When funds were cut and the mediator moved out of town, mediation ended (Wahrhaftig, 1977c).

The American Arbitration Association (AAA) had a few programs in the field. In Philadelphia, AAA handled cases that had been filed in the municipal court and in which the parties had accepted the alternative of arbitration. Hearings were held in AAA’s downtown office before trained lay hearing officers from all walks of life and sections of the city. The 4A program (Arbitration as an Alternative) was later placed under the control of the municipal court, was soon emasculated, and withered away (Dunn, 1977). Other American Arbitration Association Programs lasted longer. In early 1979, 4A programs were sprinkled across the country, in such places as Columbus, Akron, and Cleveland, Ohio; Garden City and Rochester, New York; and San Francisco.

We also discovered the Night Prosecutor Program in Columbus, Ohio, which, as its name implies, operated out of the prosecutor’s office in the central police station. Private citizen complaints to the police about interpersonal disputes were referred to the project, where an evening or weekend hearing was scheduled. Hearing officers were law students who helped the parties to seek an agreed solution or, if the process broke down, could advise them about filing charges. The Night Prosecutor was chosen as an exemplary program by the National Institute of Law Enforcement and Criminal Justice and retains substantially the same form today (Wahrhaftig and Lowy, 1977).

Thus we discovered at the very beginning of our project that this new mediation service was being packaged in three models that differed in terms of whether it was owned by the community, an existing agency, or the justice system. It became clear to us that more was involved than the efficient delivery of a service. But although we had our biases, we did not have enough information to reject any of those forms as effective vehicles for rendering mediation services. A sensitive director could structure a court, an agency, or a community program in such a way that the participants would feel comfortable, talk freely, and work toward some agreement regarding their future behavior. However, once we analyzed the potential of mediation for community empowerment, we began to see some clear distinction.

We saw that dispute resolution, like any other service, tends to benefit the sponsoring organization. Even if the benefit is only patronage or control of federal funds, AFSC is more comfortable when that is lodged in communities.<sup>1</sup> Further, Community Dispute Resolution (CDR) programs tend to enhance the sponsor's reputation as a problem solver. We were more inclined to enhance the reputation of a community organization than that of a court or outside agency.

We also recognized that the dispute resolution process is capable of generating valuable information. Although the participants perceive their dispute and its solution as unique, in fact it often reflects broader community ills. The organization running a mediation program can draw conclusions from individual disputes about generic problems in its jurisdiction. For example, a number of cases involving vandalism could lead the sponsor to conclude that there is a general juvenile problem in the neighborhood around which resources ought to be mobilized. A court or governmental agency probably would not make this generalized analysis; a nonprofit agency might do so but still not take action. The community affected by the problem, however, is likely not only to make the analysis but also to do something about the problem.

Thus we saw the need to establish a resource center that would encourage community groups to develop citizen dispute resolution programs. The Pittsburgh-based AFSC program informally served that function. The Grassroots Citizen Dispute Resolution Clearinghouse evolved from that base in 1977 as a national center for community groups. I gathered the information in this chapter in my capacity as director of that program. Given this perspective, I offer little information on models sponsored by the justice system but rather focus on agency and, especially, community models.

I am aware that the program analyses presented here rest on insufficient quantitative data. Although LEAA gathers many superficial figures, little significant information is available on dispute resolution projects. Caseload counts cannot tell how a program changes the way in which communities function. Similarly, client-satisfaction questionnaires designed to elicit participant appreciation of the process tell us little about a program's impact on the community. I therefore present an analysis of structure and potential community impact, coupled with impressionistic data. Some of the material comes from records, and some from personal observation. It should serve to indicate the directions in which dispute resolution is moving in this country, as seen from a community-empowerment perspective.

## JUSTICE SYSTEM MODELS

The most common dispute resolution projects, as well as the best documented, are those connected with the justice system. The Columbus Night Prosecutor is particularly well known, and in 1974 replication workshops were

<sup>1</sup>See Appendix, "A Note on Community."

held around the country based on that experience.<sup>2</sup> As a result, mediation programs operated out of the prosecutor's office have proliferated, especially in the Midwest.

Court-run programs are probably even more popular, primarily in New Jersey and Florida.<sup>3</sup> Most operate from centralized court buildings, use professional mediators, and serve the entire city or county. In some situations, however, a court-sponsored project can have a neighborhood focus.

The Dorchester Urban Court in Boston was started in 1975 by the Justice Resource Institute (JRI), which is a nonprofit reform agency that, according to the project proposal, seeks to improve the "quality of justice through assisting public agencies in establishing projects like drug diversion, pretrial diversion and service-delivery programs for female offenders." The proposal describes JRI's operating style: "Probably the chief distinguishing feature of JRI's work is its style. JRI is committed to planning and working with those in the system, realizing that reform can be made permanent only if the established bureaucracy feels itself to be part of the process of change" (Justice Resource Institute, 1974: 14).

JRI designed the Urban Court from the start so that it could be incorporated into the budgetary and administrative structure of the Municipal Court in Dorchester, a neighborhood of Boston, and this has since occurred. The Urban Court occupies a store front, uses community mediators, and has a neighborhood advisory committee. But despite these community trappings, control is vested in the chief judge.

However informal and folksy justice system programs may appear, it is clear that they do not advance community empowerment but rather serve the needs of the justice system. These include the orderly and efficient processing of cases and the freeing of resources to handle cases the system defines as serious. Thus Dorchester was able to operate on a community scale only because Boston still has a highly decentralized judicial system. Virtually all other programs sponsored by the justice system serve cases from the entire jurisdiction of the relevant court or grouping of courts—a constituency that is generally too large to have a sense of ownership of the program. For example, the Neighborhood Justice Center (NJC) in Atlanta was established by an "independent" nonprofit agency that was heavily court dominated. It opened in a neighborhood locale with a mandate to develop a program oriented to that neighborhood. But referrals to the program came from courts and police throughout the city of Atlanta. By late 1979 it was receiving 200–300 cases a month. Thus the Atlanta NJC no longer has any connection to the neighborhood in which it is located and receives very few local cases. It is a citywide agency. The probable reason for this development is that justice agencies are not organized to differentiate between cases on the basis of neighborhoods or communities. Some might even argue that such differentiation would

<sup>2</sup>See U.S. Department of Justice (1974) NILECJ (1974), and McGillis and Mullen (1977).

<sup>3</sup>See Office of the State Courts Administrator, Florida (1979).

present equal protection problems. The goal of the justice system is not to enhance community decision making but to allow courts throughout the system to unload categories of cases.

Although Dorchester avoided this problem because of the unique structure of the Boston courts, it shares other problems with justice system programs. For instance, Felstiner and Williams (1978) have observed that sponsorship by the courts may affect the way in which mediators define the real parties in the dispute. Because court records generally list two parties—a complainant and an accused, a plaintiff and a defendant—the whole bureaucratic structure encourages a finding and report to the court in terms of those parties. Thus, in a case in which the dispute was actually between a party and a witness, the mediators dismissed the witness as irrelevant and did not involve him in the process of building a consensus. Their blinders allowed them to handle the problem only as it was defined in court papers.

Finally, the message these programs proclaim to the public is unchanged: If you have a problem that you can not cope with by yourself, bring it to your local justice system (police, prosecutor, or court), and they will handle it. The program may be packaged more informally and staffed by people who speak the same dialect as you, but you are still dependent on the resources of the state.

## AGENCY MODEL

An agency program that began with an emphasis upon community is the Institute for Mediation and Conflict Resolution (IMCR) Dispute Center in Manhattan. The idea came from two women, Ann Weisbrod and Sandi (Freinberg) Tamid, who had become frustrated in trying to work for reform within the New York City Department of Corrections. Having learned about citizen dispute resolution from the American Friends Service Committee, they quit their jobs, developed a proposal, and searched for an appropriate agency sponsor. This they found in the IMCR, a private, nonprofit agency with a sound reputation for adapting labor mediation to deal with various forms of community conflict.

Their object was to create a “community-involved” program. They began, however, by organizing from the top down, eliciting the cooperation of the police and courts, and then, using demographic and judicial data, selecting their pilot neighborhood—two police precincts on the edge of Harlem. Then followed the lengthy process of selling the idea to the community and recruiting and training community volunteer mediators.

The program opened in a converted brownstone in Harlem. I visited it soon afterwards, early in 1975, and observed:

A story best illustrates the difference between this community mediation program and the traditional criminal justice system. Sandi Freinberg came home from working her 1 to 9 plus PM shift at the center greatly wrought up. An attempt at mediation of a crucial case had not worked

and she felt that one of the reasons was that the atmosphere for the parties was not quite right. Waiting areas are too congested. There is a lot of chaotic movement of mediators, staff and parties in and out of rooms, up and down stairs, and in general the parties were not made to feel properly at ease. [In a sleepless night she developed a solution] which involved moving her office upstairs, which would require her to climb more stairs per day than she would have liked [Wahrhaftig, 1977a].

That emphasis upon keeping the parties at ease in a homelike setting contrasts markedly with what I observed upon revisiting the center in the spring of 1979. It is now run by a second-generation staff in a new location. The Manhattan center (there is also one in Brooklyn) outgrew the old brownstone and relocated in a large building in Harlem that apparently houses many community service agencies. The building looks and feels like the old charity hospital it used to be, and whose name it still bears. One enters past a glassed-in receptionist and takes a cranky elevator to the fourth floor, where an IMCR receptionist sits behind a small desk in the hall. To the right the hall is lined on both sides with plastic chairs on which the disputants sit and wait. There are a number of bare hearing rooms, each painted in institutional pastel colors, with a table and a few chairs. The program now resembles any other big-city charity.

In 1978 the IMCR center handled 2225 cases, of which all but 336 were referred by a criminal justice agency. The cases came from everywhere in Manhattan, and the center extended its jurisdiction to the entire city of New York in June 1979. There are fifty-four volunteer mediators, of whom about thirty-one are active; they receive a nominal stipend that covers only expenses. Each mediator handles an average of 75 cases per year. After four years of funding by the Law Enforcement Assistance Administration the center was incorporated into the New York City budget under the Office of the Mayor. It was immediately required to reduce staff and services.

I asked the director, William Madison, how the community (i. e., Harlem) would be different if the program folded. He answered that the situation would revert to exactly what it had been before IMCR started. There would be chaos in the courts and nowhere for people to find help with conflict resolution. George Nicolau, IMCR vice-president, responded similarly. He pointed out that the center's mission was not to change the way in which a community works but to provide a more humane city service. One might ask what this service will look like in a few years when there are more cutbacks and a civil-service mentality sets in.

A closer look at the IMCR center gives some indication why it, like most agency programs, has not significantly changed the way in which the community functions. In making these comments, I do not mean to denigrate the integrity of IMCR staff or mediators. They are committed people with good insight into the problems they handle and appear to be providing a useful service. My point is rather that the imperatives of the agency structure work against them.

What are the imperatives that prevent an agency-structured mediation center from responding to the disputes as those are defined by neighborhood people and from bringing about a change in the way communities function? First, the program was never “owned” by the community. The idea was developed by outsiders—in this case by people working within the criminal justice system. They designed it on the basis of their perceptions of neighborhood problems, drawn from the cases that surface in courts, police stations, and prosecutors’ offices. The package was “sold” first to the criminal justice system, and only then to the community. IMCR was particularly effective in securing community involvement. George Nicolau was the administrator of New York City’s Economic Opportunity Agency before he came to IMCR and thus had good contacts with most poverty and social action agencies in the target area. But community people were never involved in the definition of the problems to be addressed or the design of the program. Their input was sought only as participants.

By adopting a perspective that emphasized court reform, IMCR was able to obtain funding for four years from the Law Enforcement Assistance Administration. LEAA is not concerned with either community development or helping people handle disputes that are not likely to burden the courts. Hence, from the beginning IMCR was under pressure to justify its existence to LEAA in terms of the number of cases processed and the impact on the court system. Therefore, although the program was originally designed to serve a neighborhood, it soon turned out that two precincts in Harlem did not generate enough cases to satisfy the criteria of LEAA: It was not cost effective.

The easiest way to increase both caseload and impact on the court system is to make two closely related changes. First, expand geographic jurisdiction. Therefore, the program began handling disputes from all over Manhattan. Second, invoke the help of the criminal justice system. Since word of mouth and community organizing cannot spread the word and stimulate people throughout the city to use the program voluntarily, IMCR concentrated on increasing referrals from many levels of the court system. Permanent staff are now located wherever cases come into the courts. This increased reliance on court referrals further diminishes the community orientation of the program. Centralized courts, as we have seen, are not structured to differentiate between cases by neighborhood. Hence a program dependent on court referrals, like a program sponsored by the court, will inevitably receive cases from throughout the court’s geographic jurisdiction.

Thus IMCR became a borough-wide program, and now that it has city funding, it is citywide. Only 10.6 percent of its cases come from the community, and even these so-called walk-ins include referrals from other social service agencies, particularly those in the same building. It is clear, then—and readily acknowledged by IMCR—that it is no longer a neighborhood program.

Orientation toward servicing a court influences process within the program.

The complaint comes to the program only after first going to a justice system agency and then being referred. How does the program get the respondent to appear? Although a few disputants may jump at the chance to talk about their problems, most do not. Absent a reliable neighborhood grapevine supporting the project—such as local leaders doing some gentle persuading—IMCR has only two alternatives. Staff time can be spent on the telephone telling the respondent about the benefits of mediation. Or, better still, the respondent can be persuaded by letter. What will best convince a person to show up across town at an unfamiliar agency? The threat of court action will. The respondent therefore receives a letter on the district attorney's stationery indicating that charges have been filed or will be filed and the respondent will be summoned to court unless he appears at IMCR.

Hence the presence of one party is at least partly attributable to the impression that IMCR's ties with the court threaten some sort of sanction. Upon arrival the parties sign an agreement submitting the case to arbitration which clearly states that if they do not agree, the hearing panel can impose a decision. That option is seldom exercised, but its existence presumably has some effect. Finally, in any referral from a court, charges have already been filed and remain pending until the outcome of the hearing, or even afterwards.

The coercion that anticipates and accompanies the hearing continues when it is over. The "arbitration award" is legally enforceable, although the process is so cumbersome and ill-suited to many resolutions that legal action is rarely taken. For example, how would a court enforce an arbitration award requiring one person to play his stereo more quietly and the other to use civil language in addressing the neighbors? However, in a case involving an agreement to make restitution or pay damages, enforcement can be a realistic threat. As a matter of policy, IMCR requests the court to maintain jurisdiction until the respondent has paid off his obligation. William Madison, IMCR Manhattan program director, feels that the threat of returning the case to criminal court is an essential tool in making sure that "awards," as they are called, are complied with.

The coercion involved in the process creates a central problem. One argument for informal dispute settlement is that a mediator who knows the parties, their situation, and the environment is better suited to help them resolve their problems. Program proposals often contrast such an approach with judicial procedures, where a judge hears the cases of people who differ greatly from him in age, gender, education, occupation, race, and culture. As soon as the mediator is given any significant power, however, citizens as well as lawyers balk at using a hearing officer who might be biased. That person is required to be neutral, which is equated with ignorance. Hence any IMCR mediator with direct personal or neighborhood ties to either party is disqualified.

IMCR offers a valuable service that is more humane than the existing court system. But what does the person in the street learn—particularly those in the

original Harlem target area? If one has a problem, one seeks a solution from the relevant governmental agency. No one discovers that indigenous community structures or neighbors are useful resources. Even if one's neighbor is a mediator—and IMCR has trained many qualified mediators who live and function in the target neighborhood—one has no access to that neighbor except through existing agency and court channels. By insisting that hearing panelists be neutral and possess no ties to the parties, IMCR prevents people from discovering those neighbors who might be useful mediators.

It is possible, indeed probable, that IMCR mediators use the insight gained from their training and mediation practice in their everyday lives, with the result that their community leadership skills are enhanced. But this is an unplanned, incidental benefit of the program. It happens despite the structure and was not even mentioned by the leadership when I asked what would be different in the community if IMCR disappeared tomorrow.

In short, a program conceived and implemented by an agency is likely to reinforce dependency on agencies as the appropriate mechanisms for handling problems. This is so whether the sponsoring agency is IMCR, the American Arbitration Association, or the Neighborhood Justice Center of Atlanta, Inc.<sup>4</sup>

Is it impossible for an agency-based program to engage in community building? None has done so thus far. One shows some potential, but since the project staff do not share my community perspective, this potential is likely to remain unfulfilled. The Community Mediation Center, (CMC) in Suffolk County, Long Island, is one of the first mediation programs in a suburban setting. Like IMCR, it began with top-down planning. The idea was conceived by a young lawyer, Robert Saperstein, who was active with a justice reform group and became the director of the new program. The assistant director, Ernie Odom, is a former trainer with a narcotics rehabilitation program. They arranged for the YMCA to be the nominal recipient of their LEAA grant and soon developed an independent nonprofit corporation to oversee the program, with a board that includes mediators and blue-ribbon community leadership.

Because a suburban area was thought to be ill suited to a “neighborhood” program, there originally was no such focus. CMC offered to mediate cases that arose anywhere in Suffolk County, using a centralized location in an office building. Mediators are essentially volunteers and receive a stipend of ten dollars

<sup>4</sup>In this chapter I have omitted extensive discussion of the various American Arbitration Association programs because their definition of *community* is so much broader than that of IMCR. Whereas IMCR initially concentrated on a geographically bounded neighborhood, from which it drew its mediators, AAA centers tend to be located downtown and to have citywide or county-wide jurisdiction. Mediators are “community” people only in the sense that they are not lawyers, but they are more likely to be affluent professionals than ghetto residents. My assessment of the extent to which IMCR empowers courts, agencies, or community people would also apply to AAA programs, where the influence of the community served is considerably weaker.

per hearing. They were recruited through newspaper, radio, and television announcements.<sup>5</sup> The first generation of mediators was trained by IMCR, and subsequent generations by the program itself.

Although the program receives most of its cases from the justice system, it is more sensitive than IMCR-Manhattan is to issues of coercion. For instance, the program began by writing respondents on the district attorney's letterhead but soon abandoned that practice. The current letter warns that a charge may be filed or processed if the respondent fails to participate, but it does not use the official stationery since it seeks to avoid giving the appearance of being linked to a court.

Only mediation is used. Arbitration, in which the parties empower a third person to make a binding decision, was seen as too coercive. The program does not keep charges open to force compliance. If a case is referred from court and a hearing successfully completed, CMC reports only that fact to the court. The program relies on the ability of the parties to arrive at their own solution by discovering a mutual interest, which then provides the incentive to carry out the agreement.

Because the caseload of CMC, unlike that of IMCR, tends to involve disputes over children and dogs, awards rarely require the payment of damages. Showing more consideration toward one's neighbor or spouse and communicating directly are frequent elements of an agreement. Even in those few cases where restitution involved the court does not retain jurisdiction. The parties are informed that the agreement between them is a legally enforceable contract. The program serves as an intermediary in collecting the funds and reminding the party who falls behind in payments. Odom could think of only one case in which payment was not made: The debtor was on drugs and incapable of paying.

In 1978 the Mediation Center opened up two satellite hearing locations, each in a township. Although intake is still centralized and dominated by court referrals, hearings are held in the township when parties from that area are involved. Mediators from that township are used whenever possible, although they are disqualified if they know the parties.

Suppose the center took the additional step of creating advisory committees for each of its decentralized centers, through which to publicize the program in those townships. These centers could then encourage township residents to submit cases directly, could process them locally, and then, in monthly meetings, could discuss the kinds of problems revealed in the hearings. Using that information, they could alert other township organizations to potential problem areas. Each township might be allowed to modify its center to fit local needs while still servicing court-referred cases allocated by the central office. The Centers then might evolve into real neighborhood programs.

<sup>5</sup>The mediators mirrored the demographic composition of both the county population and the CMC clientele—mostly middle class, but with a few poor and a few very rich.

CMC staff members are sensitive to other uses for mediation. They are training school authorities to employ mediation in handling vandalism and discipline problems, and some industries have sought their assistance with personnel issues. In its first newsletter CMC highlighted the experiences of one volunteer mediator who applied her skills at her workplace and in voluntary associations.

Although the styles of CMC and IMCR may differ, the general structure is the same. The message remains: Look to the agency for help in resolving problems. Nevertheless, CMC does legitimate mediation as a technique to be used at school, in industry, and in private associations.

Can an agency-based program be a mechanism for community fact-finding? There are a few mediation centers run by human relations commissions that would seem to be ideal for this purpose. Nevertheless, programs sponsored by human relations commissions in Santa Clara County, California, and Portland, Oregon, see themselves solely as a service to individual disputants. Both programs train their mediators to be humble and to recognize that they cannot change the universe. Neither acknowledges that while mediators are performing their valuable role the information they acquire about community problems could be channeled to their parent organizations, which style themselves as action-oriented agencies.

## COMMUNITY MODELS

Community-based dispute resolution programs are very much in the minority. It appears to be easier to manipulate bureaucracies and obtain outside funding than to engage in the slow and arduous task of community organizing, using volunteers and relying on minimal funding. The community models that do exist, however, can be divided into three categories, which I will label grass roots, homespun, and middle class dominated.

### Middle Class Dominated

The most influential low-budget, middle-class-dominated community program is the Community Dispute Settlement Service of the Friends Suburban Project (FSP) in Delaware County, a suburban-rural setting outside of Philadelphia with a population of 583,000 persons. The roots of the project must be traced through its parent organization, Friends Suburban Project, which was founded soon after black power advocates made it clear to liberal whites that the proper role of the latter was in reforming their own community. The Friends had a project house in Chester, a city near Philadelphia with a substantial poor black population. Blacks seized the building, and the Quakers eventually acquiesced, turning it over to black community control. FSP was then founded in the

suburbs and soon concentrated on the criminal justice system. Members became actively involved in court-watching and later engaged in direct action to improve conditions. FSP educated suburban whites and persuaded them to make their property available to a black community organization in Chester so that it could be used as collateral for bail bonds. FSP also founded a Juvenile Advocate group to work with youth in trouble and investigated cases in which citizens had been attacked by police dogs. In 1975 FSP began to explore the concept of mediation, having defined the need through their court-watching project. They were inspired by both the Community Assistance Project (CAP) mediation program in Chester (the same agency that managed the bail fund) and information garnered from the American Friends Service Committee.

In early deliberations, FSP talked of training some of its own liberal white constituency and as many community people as they could reach through the county. They envisioned a network of volunteers and mediation sites linked by a centralized telephone in the FSP office that people could call for assistance. I label this original program "liberal" because it did not envision social structural change but sought to empower residents by exposing them to a better way of problem solving. People whose cases were mediated, as well as the mediators, would learn new skills, which they would then use in everyday life.

The network of mediators turned out to be less broad-based than originally envisioned. Ninety-five percent are white, and most are women, fairly well-off and well educated. While although my initial impression was that this project involved middle-class people helping working-class people resolve their disputes, Deborah Baskin, who is compiling data on the project for her doctoral dissertation at the University of Pennsylvania and who supplied the information in this section, disputes that observation, as do project staff members. They point out that 95 percent of the disputants are also white and tend to be fairly affluent, if less educated than the mediators. The distinction between mediators and disputants, then, is based not on income level but on education and possibly income source.

Cases come from a variety of sources: 55 percent from the court system, frequently the District Justice's Court, 33 percent from other agencies, and 12 percent "self" referrals, many in response to fliers posted in laundromats and supermarkets. The staff stresses that participation is voluntary, even in cases referred from the criminal justice system.

Case load is low. In the eighteen months between March 1977 and October 1979, 160 cases were referred. Many were resolved at intake. Only 44 percent went to a hearing. It is hard to measure the cost effectiveness of the project since paid staff members divide their time between running the mediation project, doing outside training, and running other FSP activities. They estimate annual costs to be around \$3500. Perhaps a better index is that the twenty-one mediators have enough work to feel involved but not overwhelmed.

The program strongly stresses informality, communication, and voluntariness. Court jurisdiction is not retained. If restitution is promised but not paid, the defaulting party will be telephoned and the matter talked out. A second session might be scheduled to get at the root of the restitution problem. Agreements always include some mechanism for the parties to discuss disputes that may arise in the future.

When asked to differentiate their program from an agency model, CDS staff responded with four criteria. CDS uses mediation rather than arbitration. Mediation occurs at sites within the community in which the dispute takes place. The hearing is scheduled at a time agreed to by the parties rather than at one imposed by the program. Finally, the agreement is reached through consensus and is written in the parties' own words. Each of these characteristics can be found, alone or in combination, in many agency models. They reflect the sensitivity of FSP staff rather than structural differences. In fact, though the staff is loathe to admit it, CDS is really an agency model. Certainly, that the program need not account to LEAA helps keep it small, informal, and low key. But the question remains: Is the community changed by CDS? The message to the potential user is still that if your own coping skills are inadequate to the situation, you should look to an agency outside of your immediate community.

Does this program have any greater long-term potential? FSP staff agree that their original vision of empowering people to solve their own problems, by teaching them communication skills is not having much impact. They are therefore working with a small group in Landsdown to set up a storefront mediation center that will be run by a local steering committee. It is unclear, however, whether the program will be run by the community served or by a more educated elite.

A second way a community mediation program can promote change is to help the sponsoring agency—in this case the Friends Suburban Project—to document community ills. FSP can then develop new projects or build coalitions around these issues. The FSP orientation and structure would seem ideal for this approach, and staff say it happens, though they offer few concrete examples. Furthermore, they have been struggling with the extent to which the requirements of neutral mediators and confidentiality conflict with follow-up social action. If people identify Citizen Dispute Settlement with Friends Suburban Project, does FSP advocacy undermine the ability of CDS to mediate?

Perhaps the major contribution of FSP to dispute resolution is training other groups in mediation techniques.<sup>6</sup> They assisted a Latino center in the county and have instructed groups in Syracuse and Schenectady, New York, and

<sup>6</sup>Acknowledging its Quaker roots, the Community Dispute Settlement Service of FSP in mid-1979 began to offer its services to other Quaker institutions in the hope that mediation skills would help those organizations resolve some of the issues that divide them.

Wilmington, Delaware, that have modeled their programs upon FSP. A Kalamazoo, Michigan, program was also inspired by FSP, although its mediators were trained elsewhere.

I visited the New York programs and found them to have problems similar to those of FSP in its early stages. They are funded by tiny grants—\$2000–\$3000—from Quaker and church groups. Their directors receive nominal salaries or are CETA workers. They have been largely unsuccessful in enlisting minority participation in their programs and feel uneasy about that. Very few people respond when they solicit cases directly from the community. Criminal justice officials do not have much confidence in small citizen groups and are reluctant to refer cases. Caseload is so low that mediators are frustrated at their inactivity. A similar, though unrelated, project in Chapel Hill, North Carolina, had comparable problems in its first year.

All these programs feel the need for redirection. Some see their first priority as the building of a community base, but no one has the time to invest in such a task. Creating a sense of real community ownership of a program is an exceedingly difficult job. But without the will or the resources to do this, these programs are doomed either to wither away for lack of a sufficient demand for their services or to become dependent on receiving referrals from courts and agencies.

## Grass Roots

Some projects have been able to establish a community base on which to build. The most prominent grass roots model of dispute resolution is the Community Boards Program in San Francisco. Since it was planned from the beginning as an experiment in community empowerment, this discussion will focus on it.

But first another well-publicized “grass roots” effort should also be noted. The Neighborhood Justice Center (NJC) in Venice, Los Angeles, is one of three such centers established by the Justice Department in 1977 as alternative pilot projects for a possible nationwide system. Although the Kansas City NJC was viewed as an extension of the criminal justice system, and the Atlanta NJC as a hybrid—location in the community but with strong court sponsorship—Venice was seen as the grass roots program.

I wonder whether Venice might more accurately be called a strawman. Conversations with people associated with the Neighborhood Justice Center effort have convinced me that Attorney General Griffin Bell saw the NJCs as an extension of court services. Even in his public comments (1977a) he defined the problem as increasing access to justice rather than as returning responsibility for dispute settlement to the community.

In many disputes, it costs too much and takes too long to go to court. We are setting up three experimental Neighborhood Justice Centers to develop a mechanism that will provide access to justice for people who are now shut out and to provide relief to our overburdened courts by diverting matters that do not require a full court proceeding.

Bell apparently did not see any role for the community in designing the Neighborhood Justice Centers: "The centers would be developed as pilot projects through the joint efforts of local government, the courts and the bar" (1977b). A grass roots model was included only after protests by community-oriented people. But Venice, when established, was given neither the support nor the resources necessary to become a neighborhood institution.

The Venice NJC was organized from the top down. It was sponsored by the Los Angeles County Bar Association, which still controls its board of directors. Site selection was primarily in the hands of the board. Only later was the community involved in implementing the program. The support of community leaders was solicited, and some became board members. They, in turn, recommended local candidates as mediators and staff. Although the director and research staff do not reside in the Venice-Mar Vista area, many of the front-line staff do. The program has held fiestas, participated in community organizations, and demonstrated mediation through role-playing in order to increase community awareness of the center.

The criteria used to evaluate NJCs reflect their orientation toward the courts (Sheppard *et al.*, 1979). Because this grass roots model generates fewer hearings than the two NJCs that are more directly subordinated to courts, it looks to the evaluators like a more questionable investment. If criteria more related to community development were used, the Venice program might be rated higher. As re-funding of the Venice center has become uncertain, pressure has built to increase its caseload. Originally, all cases were to be referred from the community or from community agencies; now, however, NJC staff are stationed in Small Claims Court in order to identify cases. Even though staff are strongly oriented toward the community, they are constantly under contradictory pressures from the Justice Department.

The San Francisco Community Board Program (CBP), on the other hand, has been able to develop a community model without suffering some of these tensions. Like most of the programs reviewed, Community Boards began as the brain child of someone outside the community who was involved in the criminal justice system. Ray Shonholtz developed the idea while he was clinical associate at the University of San Francisco Law School. From the beginning he saw it as a community-based alternative to the justice system, one in which citizens resolve disputes and complaints in a responsible way. He proposed the CBP as a means by which community people could assess and document struc-

tural problems through their experiences in helping to resolve what initially are identified as individual conflicts. Shonholtz has been able to raise funds from private sources.

The program was organized from the bottom up with community people involved in decision making from the beginning. Neighborhoods were not selected on the basis of crime data and the like, although these were considered. Instead, meetings were held in various neighborhoods to sound out reactions to the concept of mediation. The first neighborhood Visitacion Valley, was chosen in 1976. It contains 5000 households with a diverse racial mix of whites, blacks, Latinos, and Asian-Americans, ranging from poor to middle class. Bernal Heights was selected as a second site in December 1977. Two others were chosen in April 1979.

The next step was to involve the community in program planning. Planning committees that included local people modified Shonholtz's original model to increase community involvement. Then followed a lengthy process of building a community base. Virtually every organization, business, and church in the target area was visited. The program was explained and support solicited. Living-room meetings spread the word further. Finally, "panelists" were selected at open neighborhood meetings, usually held in churches, school auditoriums, or community centers. Although CBP literature refers to this selection process as "elections," that appears to be an idealization. In fact, most of the first-generation panelists were drawn into CBP during the organizing period. One might therefore say that they volunteered but that their selection was subsequently ratified by open community meetings.

Since the project does more than simply help individuals to solve their problems, its structure and the function of the panelists differ markedly from those found in an agency program. Panelists sit in groups of three to five to maximize the number of people involved in working out a problem. Hearings are open to the public to enable people to understand what is happening in the neighborhood, although the sessions are not heavily attended. The panelists also meet as a group and serve as a neighborhood steering committee to oversee the program. They discuss the cases they have heard and identify common neighborhood problems. Members of the Visitacion Valley panel were invited to attend a neighborhood coalition meeting to present their views on local problems in light of their experience as mediators. Furthermore, the coalition recognized the value of the panelists' mediation skills by asking them to run small-group workshops at the coalition meeting.

Each CBP neighborhood has a staff of four, which will be reduced to three when the program is stabilized. A central downtown office provides the neighborhood centers with administrative, fund-raising, and public relations skills. The program has a board of directors that includes neighborhood representatives, but the neighborhood panels are given as much autonomy as possible.

CBP seeks to handle cases before they enter the criminal justice system. Its role is preventive. It assumes there are many disputes or problems that are known to friends, neighbors, and school counselors but that are not reported to the authorities until the situation becomes intolerable. The 1978 case log for Visitacion Valley shows that most referrals originated outside the criminal justice system: Leaflets, security guards, school counselors, newsletters, CBP panel members, and other such sources appear frequently. No case is accepted if a warrant or a complaint has been served.

That all hearings are open may be one reason why Community Boards do not attract many disputes between intimates, although such cases are common in other projects. CBP is more likely to handle loitering, fence disputes, school fights, shoplifting from the local mom-and-pop grocery store, and housing problems. CBP hearings tend to involve more parties than do those in other projects since disputes, if fully explored, usually involve clusters of people and not just the two original disputants.

I saw one case involving a housing association president who complained that an owner had not boarded up a burned-out, abandoned house. The latter responded that there were many fires in the subdivision. A member of the audience then produced the missing link between this case and the broader problem. She corroborated the frequency of fires and pointed out that the main problem was the substandard electrical wiring installed by the housing developer twenty years earlier, and she listed its defects. The ensuing conversation explored the role the housing association should take in relation to the larger problem. This redirection of the discussion was strongly supported by one of the panelists, who lives in the subdivision. No specific solution was proposed at the hearing, but the community nature of the problem was acknowledged and the housing association was designated as the appropriate organization to work on it.

Community involvement also helps to explain how CBP, which is so detached from the criminal justice system, persuades respondents to appear. Shonholtz (1977) attributes this to "the involvement of neighborhood-oriented people in the application of personal and collective approval and disapproval mechanisms, as the basis for encouraging people to come to the Community Board, follow through in the Board process, and abide by the Board resolutions."

The use of a carefully constructed community network is illustrated in a case where staff were ultimately unsuccessful in getting one party to appear. An old man fed pigeons from his back porch, an act he felt to be a religious obligation. Neighbors suffered significant property damage from the bird droppings. CBP staff feared that an armed confrontation was near and tried to get the pigeon feeder to participate in a hearing. They visited him once in his home and returned a second time, but he remained adamant. Believing the case to be important, staff learned which church he attended and asked his pastor, a CBP supporter, to intercede. When that failed they went to the Kiwanis lodge, in

which he was very active, and its leadership tried to persuade him to attend. After that, the staff felt they had run out of options. The man's reluctance may have been related to his conviction that God had directed him to feed the pigeons. Community pressures are more likely to work when their object is more mundane.

Information about cases of general interest, community problems, and Community Board developments is published in *Community Board News*, which now has a circulation of approximately 22,000. Case volume was very low in the first six months of operation but has begun to pick up. By early 1979 hearings were frequent. Shonholtz stresses the enormous amount of work necessary to create a sense of community ownership sufficient to motivate people to use the project.

Community Boards, then, exemplify the successful effort of a professional to graft the idea of dispute resolution onto a community base. A sense of pride and ownership has developed, and community people have begun to use the program to attack larger issues.

Are there any problems? Two that are closely intertwined may arise soon. First, what happens when the initial source of money dries up? Foundation support was generous when the program began, but the model needs a continuing subsidy of approximately \$145,000 per year per neighborhood. No community can generate that amount by itself. Will government fund the boards? That is apparently the hope of CBP staff, who are supporting state and national legislation to fund dispute resolution programs. Second, is government funding consistent with community empowerment, or will CBP find itself under pressure to count heads and process cases in the most "cost effective" way? The future may tell.

What if funding simply disappears? CBP neighborhoods would probably be in a better position than IMCR neighborhoods to regroup and carry on the project. All CBP mediators live in the neighborhood and are known in that role to many neighbors since the process is local and open. Cases always came from the neighborhood and therefore could be processed at least in the interim, by some local agency. Thus, even in the worst situation it is possible that CBP has already brought about lasting change in the way the neighborhood functions.<sup>7</sup>

Had it recruited its panelists by other criteria, CBP might leave a more valuable legacy of dispute processing institutions if funding were eliminated. CBP

<sup>7</sup>When I offer this analysis of what happens when the money runs out, I am generally accused of negativism and of undermining the cause. But in fact I am being realistic. However committed one is to CDR, it is essential to realize that others are equally committed to their own service-rendering, change-oriented, money-saving reforms, and new competitors for the limited funds will arise in the future. CDR advocates should fight for the funds they need but simultaneously plan for the survival of their programs should funding fail. Seymour B. Sarason urges that we look at networks of people and agencies as economic resources for program ideas (e.g., Sarason *et al.*, 1977).

organizers apparently assumed when they began that no indigenous dispute solving institutions existed between the efforts of random individuals and those of formalized agencies. Although this hypothesis may be correct, it was never tested empirically. It is certainly just as plausible that many neighborhood people were already settling disputes in their roles as block association leaders, involved parents, or politicians. Rather than to ask panelists to volunteer or agencies to nominate them, CBP might have tried to identify and involve indigenous problem solvers. Those who volunteered may in fact have been indigenous problem solvers, but no one bothered to find out.

Had CBP employed the strategy just described, it might have taken less time to persuade people to bring their cases to this newfangled project. Community residents would be approaching someone they already knew as a mediator, and that person's skills would be improved. Then, if the funding ended, the community would not have to graft the remnants of the program onto preexisting community structures. This strategy has been tried in Pittsburgh.

### Homespun

Community Association for Mediation (CAM) in Pittsburgh has attempted to build the concepts of mediation and community growth found in CBP directly into the fabric of a black neighborhood. Unlike most community dispute resolution project organizers, Gloria Patterson, its originator, is an active community worker in the target area. She was involved in most volunteer groups in her neighborhood and had built a wide range of contacts before becoming a staff member of the AFSC Justice Program. While serving with the latter, she learned about mediation and dispute resolution programs around the country, particularly Community Boards.

Lacking financial backing, she simply identified those people in her community whom she already knew to be problem solvers: agency paraprofessionals, block club leaders, involved parents, and social workers. They met informally in Patterson's home over dinner and talked about mediation. Some discovered that this fancy new label simply described what they were doing already. They saw a need for additional training to enhance their skills and designed a program of continuing education. Concurrently, CAM notified and met with existing community leaders to inform them of the new project. Thus they were able to avoid jurisdictional jealousy and to solicit cooperation.

Although Patterson had envisioned taking the further step of establishing a center, the informal group disagreed. To do this would require a grant, and the grantor would demand reports and records. The group felt that "our people have been recorded and studied enough already." No center was established. Community Association for Mediation persists as a network of people who completed

training together. They mediate disputes that come to them primarily through their individual networks of jobs and then meet together biweekly to discuss their experiences. Through occasional radio interviews and similar media exposure their central telephone number is disseminated, but the calls that result represent a distinct minority of the cases.

In the summer of 1979 CAM sought to expand its network. A group of residents in a housing development interviewed their neighbors about the kinds of disputes that occurred and asked to whom they would turn for assistance if they were involved in such a "fuss." CAM hopes to gather better information about what kinds of fusses bother people and whom to involve as additional problem solvers.

It is virtually impossible for an outsider to make any reliable observations about how CAM works. No records are kept. Mediation does not take place in a definable location or at a preappointed time. Members mediate in homes, bars, on the telephone—anywhere and any time. If the program works as I have described it, many of the goals of Community Boards may also be achieved by CAM. The unresolved disputes that fester in the gap between informal dispute resolution resources and formal agencies are handled, and the skills of indigenous mediators are enhanced. Community growth is fostered at the biweekly meetings of mediators, which discuss not only the effectiveness of mediation techniques but also the substantive problems encountered. Mediators are linked with most of the agencies in the target area, so that the information can be channeled to an appropriate body when intervention is necessary. They are part of nonagency community networks that can be mobilized. Thus, in a case that initially involved a confrontation between a neighbor and a young single mother who had left her eighteen-month-old child at home unattended, CAM members were able to integrate the mother with others on her block who could watch her child while she ran down to the grocery store.

CAM thus quietly operates to build a community. It is probably unknown to most people in the local criminal justice system and will never have a demonstrable impact on their caseload. Can it be copied? Is it even capable of surviving in its unfunded ad hoc form? Patterson was thoroughly indoctrinated in mediation through her AFSC employment, but other community activists could also obtain the necessary training. AFSC paid her salary during part of the organizing period; at other stages she received only unemployment insurance. But what will happen if she gets a regular job that takes her out of the neighborhood eight hours a day? Patterson maintains that CAM is designed to be an after-hours operation: All meetings and business take place after work. It therefore should continue.

The conditions that will determine CAM's survival are different from those of funded programs. As long as people see CAM members as viable problem solvers, they will bring cases to them. As long as CAM members feel their efforts are worth while, they will continue to mediate. The cost is volunteer effort.

When the payoff, in terms of dispute settlement and community development, is felt to be less than that cost, CAM will fail. If these are kept in balance, CAM has a chance of survival.

## CONCLUSION

This overview of citizen dispute resolution activities in the United States is written from a community-empowerment perspective. Most CDR programs now in operation are designed as adjuncts to the existing justice system. Therefore, although they are more informal and humanistic, they preserve the existing relationship between the communities served and the justice system.

A number of agency-sponsored programs exist. They also tend to serve the ends of, and to benefit, their sponsors. Citizens are encouraged to rely on agencies, rather than on the justice system, to solve their problems, and a network of agencies is often strengthened through the development of an interlocking referral system.

Community-based programs are rare since they require extensive preliminary effort. Few community organizers are able to obtain the resources, both money and people, to perform that task. CDR programs that are truly operated by the community served would appear to have great potential for legitimating and strengthening local problem-solving resources. But it is too early to assess the long range impact of CDR programs on community structure, particularly in light of the meager resources available.

## APPENDIX: A NOTE ON COMMUNITY

In this chapter I have avoided defining *community*. It is no easier for those involved in CDR programs to define *community* than it is for criminal justice personnel to define *justice*. In either case the word is a shorthand that allows people of diverse interests to cooperate even though their ultimate goals may differ.

Criminal justice planners often use *community* to mean an identifiable geographical neighborhood that can be outlined on a map. Social action groups such as the American Friends Service Committee tend to use a more political definition: a group of citizens who are oppressed or powerless, such as an ethnic minority community. Another approach is to identify a group of people linked by a network of personal relationships. Such a community might, but need not, be bounded geographically or ethnically.

For example, the Community Assistance Project in Chester, Pennsylvania, covered an identifiable geographical community—one that would be acceptable

to courts and LEAA. But the program was actually geared to that half of the approximately 50,000 Chester residents who are black; hence it served a minority community, whose bail project could be supported by Friends Suburban Project. This latter community was so tightly knit that staff people either knew, or knew someone who knew, every black person in the city. This generated remarkable community support for CAP. For instance, when someone stole the program's electric typewriter, the director cornered some addicts she knew. Through them she put out the word that whoever stole the typewriter took it from the community and that it had to be returned that day with apologies. The thief returned the typewriter that afternoon and made his apologies (Wahrhaftig, 1977c).

IMCR, on the other hand, serves a geographical and ethnic community—Harlem—but it is one where such a network of relationships is inconceivable. Many Harlem residents probably go through life without meeting or having any significant contact with neighbors four blocks away. There is no way that a network could link all the inhabitants of Harlem. There is no community of functioning relationships that could support or assert ownership of the IMCR program. Hence, by default, the program is owned by and serves agencies and the courts, whose definitions of community it then must meet.

Visitacion Valley, a CBP site, is a geographical community that can be recognized by funding sources. Its multiethnic residents are relatively powerless and are therefore an appropriate locus for social activism. Is it also a community of relationships? I do not have the data to answer this question. My superficial impression is its 5000 households constitute a neighborhood that is sufficiently small and cohesive to sustain a large number of face-to-face relationships. A Samoan-American from one end of the valley may meet a Mexican-American at their common grocery store, or their brothers may work at the same factory. It is possible that creating a CBP project in an area with potential for further face-to-face relationships could serve as the catalyst to enhance community ties.

In reviewing these CDR projects, I have reached the tentative conclusion that a program can be operated by and benefit a community only where the latter is a network of relationships, regardless of geography, population size, or ethnic composition. Of course, the economic and racial makeup of the community remains relevant to the political question of whether it is one into which the organizer wishes to put his or her efforts. Nor is it necessary that a community be a neighborhood; it could also be a workplace, school, prison, or any other locus where people interact.

Perhaps in the future a person will have the choice between taking a dispute to a CDR program in his residential area, workplace, or even his leisure or religious association. It is likely that such decisions will be made without the theoretical problems that plague law students in conflict of law courses. Since mediation is voluntary, a complainant is likely to choose the forum where he feels most confident and which also inspires the trust, and therefore will secure the appear-

ance, of his respondent—which will probably be the “community” in which both parties interact most regularly.

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