

EMPOWERMENT AND TRANSFORMATION IN THE AMERICAN CONFLICT RESOLUTION SCENE

by Paul Wahrhaftig

NOT → Abstract: The North American conflict resolution movement stems from two roots. One - a desire by professionals (attorneys) to accommodate inefficiencies in the court system. Two, a vision of social transformation. Tensions between these two visions have been constant over the last 20 years. The prophecy that community mediation programs would encourage a shift of political power in urban neighborhoods has occurred. However, 20 years of programs and trainings are transforming the way thousands of people in schools, government agencies, and workplaces approach conflicts and community problems.

Social activism and court reform were the co-stimuli of the American conflict resolution movement. Over the 20 year history of mediation both influences have prevailed, but the community reformist vision, particularly has shifted with the time. It now reflects the American institutional disillusionment of the 1990s.

I am limiting my comments here to the "community dispute" or neighborhood dispute portion of the mediation movement. Conflict resolution approaches have developed in many segments of American society - public policy considerations, governance, environmental and business concerns. But the debate over whether mediation is a social movement or a court reform applies primarily to the community dispute sector.

The modern mediation movement began in the early 1970s. Immediately it reflected two roots. There was a call for reform from within the overburdened justice system. For example, then U.S. Attorney General, Griffin Bell declared.

"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 what 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." 1

In parallel, a social activist model of mediation programs sprang up.

"Demands for community mediation grew out of community organizing and legal-reform efforts in the early 1970s and crystallized into community-mediation programs by the late 1970s and early 1980s. Community-mediation programs often sprang from neighborhood policing and neighborhood watch efforts and from criminal-justice reform movements such as bail reform and prisoner self-governance. At the core of this movement was the hope that handling local problems in community-run forums independent of the legal system would strengthen local self-governance and rejuvenate the self-reliant communities of the past. Community-run forums promised to empower ordinary people by giving them control over their own conflicts. Community mediation hoped to replace the dominance of the legal profession and the courts in the lives of ordinary citizens with the control of neighbors and peers."

The social reformist model advocates, and I was one, often used the term "community empowerment." We saw a need to shift the forum for handling day to day conflicts to the community level as a stimulus for bringing people together to address broader community problems.

"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

1. Paul Wahrhaftig, "An Overview of Community-Oriented Citizen Dispute Resolution Programs in the United States," in *The Politics of Informal Justice, Vol 1: The American Experience*, Richard L Abel, Ed, Academic Press, 1982, p. 89

2. Sally E. Merry, "A Plea for Rethinking How Dispute Resolution Works," *The Citizen Dispute Resolution Organizer's Handbook*, Paul Wahrhaftig, Ed., American Friends Service Committee (mimeographed booklet) 1979, p. 11a

organization running a mediation program can draw conclusions from individual disputes about generic problems in its jurisdiction."¹

It has been difficult to determine quickly which programs are community empowerment and which are court reform ones. The distinction never has been crystal clear. Language sometimes is a clue. The term Alternative Dispute Resolution generally is a clue that the program in question comes from the court clearing model. The assumption there is that the courts are the primary conflict resolving mode and informal processes are an alternative

If terms like "Community," "neighborhood" or even "conflict" instead of "dispute" are used, the program is likely to have been rooted in the community empowerment model. These often have governing structures unrelated to the court system, receive their cases from many sources rather than just court referrals, and use volunteer mediators.

Most of the 700 or so mediation programs in the country today are closer to the court reform model than the community empowerment one. However, a strong minority of community oriented programs continues to exist. They are trying to band together and support each other through a new organization -*National Association for Community Mediation*

1. Wahrhaftig, 1982, p. 77

World View of Founders

But times have changed, and the social goals are changing. Many of the founders of the community mediation movement were activists in the civil rights and peace movements that swept the country in the 1960s and 70s. For example, George Nicolau, who was director of the Institute for Mediation and Conflict Resolution when they established their pioneering mediation center in New York, had served as the administrator of New York City's Community Action agency - the outlet for funding under President Johnson's War on Poverty. Raymond Shonholtz, founder of the Community Boards Program in San Francisco was involved in clinical law practice at the University of San Francisco Law School, which gave him exposure to the legal problems of the poor.

Similarly, Albie Davis, a consistent proponent and organizer of community mediation in Massachusetts was firmly rooted in neighborhood organizing. I, too, fit that model with a background in Southern civil rights movement, peace work, and community organizing with many years spent working for the American Friends Service Committee (Quakers).

difficulty of drawing black and white distinctions is important. A social change ethic is not the exclusive province of community mediation organizers. An informal discussion at a Board of Directors meeting of the Academy of Family Mediators, the professional association of divorce mediators in the USA was instructive. They were all engaged in fee based private professional mediation practices. It was 1990, and we quietly remi-

nisced about what we did before we became mediators. Every member of that board had some peace and civil rights background and saw their present work as a vehicle for improving society.

Early vision of change

My thesis is that the 1960s and 70s vision of change that the founding reformers brought to the field are being supplanted by a 1990s vision.

The founders brought with them some basic assumptions based on their civil rights and peace backgrounds:

- 1) Change comes about when enough people are brought together with a common vision or problem definition and are enabled to voice their views collectively. Martin Luther King's successful Montgomery Bus Boycott that kicked off the modern civil rights movement is significant example. King articulated a collective definition of the problem; that racial segregation of public transportation violated human dignity. He coupled it with a vision that change is possible, and collective action produced results.

- 2) We also learned that change takes place through negotiated outcomes rather than systemic structural change. Andrew Young, King's colleague who later went on to become a United Nations Ambassador and Mayor of Atlanta, is said to have held primary responsibility for conducting many of the negotia-

tions provoked by King's non-violent confrontations. Governments were not overthrown, but piece by piece change was negotiated.

The social change model promoted by these founders, then, that community mediation programs would bring collective groups together with a common analysis and encourage joint action to negotiate better solutions. Thus, in 1979, when I visited the Community Boards Program in San Francisco, I was delighted observe:

"C.B. members pointed out that their experience in helping people resolve disputes gives them important information about problems in their community. They intend to feed that information into the community coalition at the next meeting."¹

We, the founders, came from an era when we saw real changes taking place and felt more was possible. We were the generation of the Kings and Kennedys, who are long dead.

1990s Change Assumptions

This generation of conflict resolution organizers has been raised in the disillusioning Reagan - Bush years. They have seen little constructive change since the 1960s and often backsliding. Even in the community mediation field they now read the community empowerment model advocated by Community Boards did not fulfill

1. Paul Wahrhaftig, "San Francisco's Community Board Program: How a Community Based Citizen Dispute Resolution Program is Put Together, *The Citizen Dispute Resolution Organizer's Handbook*, Wahrhaftig, ed. American Friends Service Committee, 1979, p 49v.

the vision.¹ That program still thrives but with much more of a service focus and little attention being paid towards stimulating collective community action.

Thus, the newly found *National Association for Community Mediation* makes only an oblique reference to "empowerment" concepts in its literature. "Community Mediation Initiates, facilitates and educates for collaborative community relationships to effect positive systemic change."²

Once again, there are exceptions. Dan Joyce of the Cleveland Mediation Program in Ohio has been a leader and advocate of the community empowerment model. He has been exploring the boundaries between "neutrality" and "advocacy" as his program works with conflicts arising from desperate poverty situations.³

Transformation

The word "community empowerment" has nearly dropped from usage. Instead increasingly we hear the term *transformation*. While transformation has been common in the French mediation litera-

1. Sally Engle Merry & Neal Milner, ed, *The Possibility of Popular Justice: A Case Study of Community Mediation in the United States*, University of Michigan Press (1993) - a collection of essays and studies primarily from the Community Board Program of San Francisco.

2. Brochure: National Association for Community Mediation, 1994

3. "Neutrality - Advocacy: An Electronic Conversation," *Conflict Resolution Notes*, Vol. 11, No. 4, April 1994, p. 146.

ture, it is a new to America. It may not mean the same thing.

In America a transformative model suggests change will come about:

- 1) As individuals learn to understand their conflicts, how to manage their conflicts better, and how to negotiate change.
- 2) As institutions open their processes to include this enhanced citizen discussion.

The emphasis, then, is less on encouraging collective action than on changing the way individuals manage their conflicts. A second step is to make making it possible for existing institutions to what individuals have to say.

Thus, training and education are the new focus. Most community mediation programs have strong training components, and most are actively training in schools. The fastest expanding arena for conflict resolution programs today is in the schools. Funding is fairly easy to find, for these programs are seen as violence reduction resources.

training emphasis was reflected, for example, in an extensive strategic planning process that the Pittsburgh Mediation Center recently conducted. The community based planning commit-

tee grappled with whether the center's primary mission was settling community conflicts or training and spreading conflict resolution skills. Before, training was only a step towards their mission, the resolution of community conflicts. It was a way to provide a supply of competent volunteer mediators. Now it is seen as important a function, in its own right, as the individual mediations

To achieve the second level of transformation, many community mediation programs have become involved in larger public policy work. Some train governmental representatives in meeting facilitation techniques. Others provide facilitation services themselves to promote broad and constructive community discussion of controversial issues.

Observations about Transformative Model

I have argued often that community empowerment models can only work where community voices are heard within the program structure (ie. centers with community boards of directors, often housed in neighborhood settings), the transformative model is broader. It is not limited to community mediation programs. Others, professionals included, are training in schools. It is a revenue source, but as my experience with the Academy of Family Mediators board suggests, often professional mediators also come from a social change oriented background and find training a constructive commitment to social change. They can make an important contribution to transformation through transferring

their conflict resolution skills to a broader public.

Conclusion:

There is no easy answer to whether the American mediation experience is one of court change expediency or social change. Both motivations have been there since the beginning. The early dichotomy between the court clearing and empowerment models has blurred, and a new transformative vision has evolved reflecting the 1990s disillusionment with possibilities of institutional social change. Mediation is a chameleon that reflects the colors and themes of the society within which it exists.

Acknowledgments

Thanks to Stephanie Peters for research assistance.

About the Author

Paul Wahrhaftig is President of the Conflict Resolution Center International, Inc., 2205 E Carson Street, Pittsburgh PA 15203-2107, USA. Tel: 1 (412) 481 5559, Fax: 1 (412) 481-5601, E-mail crcii@igc.apc.org. The Center is a world-wide resource to mediators and others working for peaceful resolutions to racial, ethnic, religious and community conflicts.

He has served as an activist, and chronicler of the American conflict resolution movement since its inception in the early 1970s.

PREPARED FOR: Oñati International Institute for Society of Law:
Workshop on Mediation: 4 - 7 October 1994