

# A Time to Question Direction

PAUL WAHRHAFTIG

*Director, Grass Roots Citizen Dispute Resolution Center*

The pioneers have done their job. Precedent breaking efforts such as the Night Prosecutor Program in Columbus, Ohio, the Urban Court in Dorchester, the Institute for Mediation and Conflict Resolution, and the American Arbitration Association have demonstrated convincingly that new dispute processing formats are needed and can work in American society. The location of the dispute resolving services would appear to be somewhere between the formalized courts and haggling over the back fence.

Once the need has been established and the fund generating potential of the remedy-creating project has been demonstrated, the criminal justice tradition is that new projects should be replicated willy-nilly from coast to coast. Are we ready to ask some of the hard questions about Citizen Dispute Resolution now? Or will we keep copying the Urban Court until the funds run out? Already some process questions are being raised. Are the techniques of mediation that were adapted from labor disputing being properly modified to serve the peculiar dynamics involved in interpersonal conflicts? (Felstiner & Williams, "Mediation as an Alternative to Criminal Prosecution: Ideology and Limitations," to be published in *Law and Human Behavior*.) In this article I will focus on what appears to be one of the most fundamental but seldom articulated questions. If indeed there is a gap in our society's ability to problem-solve, who or what institution ought best fill that gap? That is a political question. It might be analyzed by asking whose ends are served by successfully operating a mediation center.

I suggest two propositions based upon our current knowledge of dispute processing. First, it is possible for almost any institution to run a successful dispute resolution program using informal techniques. The center will attract and satisfy its participants. There may be structural barriers that make it harder for one institution to do it than another, but the possibility still exists.

Second, as a rule, a group or an organization that successfully operates any program benefits from having done so. At a minimum that organization is seen as more legitimate for having performed a new service successfully. Patronage or employment power is increased. Further, the processes of the program will usually be defined in a way that promotes the parent organization's goals.

If my first proposition is right, that any institution can run a mediation program, then the more important direction to focus on is the political consequences of program sponsorship. To date, program sponsorship has roughly fallen in three categories: justice system sponsored, non-profit agency sponsored, and neighborhood or community based agency or association sponsored.

## Justice System Sponsorship

Justice system sponsored models exist today as adjuncts of police, prosecutors, and courts. Some, as the court sponsored Urban Court, have used a storefront model. Lay

community mediators have handled a respectable number of cases. However, beyond settling of individual disputes how has the community been changed? The answer is very little. People with problems look to the court as the legitimate resource. It may have new informal procedures and a comfortable setting, but it still is the court's property. True, where lay mediators are used community people may have been trained in new mediation skills which could be useful in their community. However, access to these new resources is mainly limited to the court storefront intake process. Thus, the model retains the political status quo — the existing judicial system is legitimated as the primary source of aid in filling the gap in dispute processing.

Further, as an example of how ownership of a program can distort it to serve the ends of a host agency, Felstiner and Williams in their critique of a court-owned model described an interesting case. It involved an assault between a respondent and complainant. In the hearing it appeared that the witness rather than the complainant was deeply involved and perhaps was the key to the problem. Yet, the mediators made no attempt to incorporate the third party into the agreement. He was seen only as a "witness." The authors conclude that one reason for not involving the witness more fully is that as far as the court in its structure and record keeping functions is concerned, the papers have been filed by a specific complainant against a specific respondent. The involvement of a third person is structurally irrelevant and that orientation eventually seeps through to the mediators.

## Agency Model

A number of programs are run by large, privately funded (or often LEAA funded), non-profit agencies. The American Arbitration Association, and the Institute for Mediation and Conflict Resolution are the two giants. Others, such as the Community Mediation Center in Suffolk County, New York, are local independent agencies. This model is championed because the independent agency has more openness, commitment, and flexibility than the government, which is seen as riddled with patronage, bureaucratic inertia, and a vested interest in maintaining the status quo. Hence, agencies are more comfortable experimenting, using volunteers, and fighting for their program's integrity.

The flexibility is encouraging. However, is this freedom from bureaucratic inertia an attribute of agencies in general? Or is it an attribute of agencies involved in doing exciting new things? One might look carefully at old time, stable, United Way-funded agencies and particularly those that are doing well-established tasks. Are they significantly more open and experimental than government agencies? If not, then to the extent we assure funding stability and orderly development of private-agency mediation programs do we not assure that they become bureaucratized and sluggish?

*(Continued on Page Fourteen)*

## A Time to Question' (Continued from Page Thirteen)

Further, from a political perspective, how have agency-run programs changed the way people perceive their options for problem solving? Instead of turning to government for help, the person on the street learns to look to the private agency sector. Some external bureaucracy is still seen as the influential resource to go to in time of trouble.

### Community Based Models

The most conscious effort at this kind of organizing is the Community Boards Program in San Francisco. They see their role as not only helping individuals problem solve but also increasing their community's resources for handling broader social problems. Through community based, door-to-door organizing in two neighborhoods, a structure was built for the Boards so they are not seen as a product of an outside agency but a community institution. It is neighbors who are running it, solving problems, and demonstrating that they are an effective resource. Mediator-panelists and community people learn from problem solving in open sessions. Their observations can be discussed and generalized, thereby becoming the base for community-wide attempts to solve more generic community problems. For example, in a case I observed concerning problems arising after a home was burned down and vacated, it appeared that many fires had taken place in that tract. Panelists learned that wiring was substandard in all the tract houses. They then could make the connection that fires were not just individual accidents but a generic problem of the neighborhood. Homeowners associations were questioned, some were present at the hearing, and the suggestion was made that there is a role for community organizations to play in this situation. At least they could notify all homeowners of the hidden defects and possibly could organize further action.

Thus Community Boards has a political perspective of bringing people together with their neighbors to solve immediate problems and to move on towards more general or long range ones. However, the program to date is dependent upon generous foundation support. The present model requires extensive staffing. What will happen when the foundation money runs out? Can one rely on neighbors when they are not backed by a foundation? Are we really empowering neighbors or foundations? Can the government take over to subsidize the program as might be possible under bills currently before the U.S. Congress and state Legislatures of New York and California? Or will government funding with all of its reporting and accounting requirements lead to the same kind of agency bureaucratic inertia that turns community people off?

It may be that by the time funding has run out not only will neighborhood people be trained in mediation techniques but a community-owned network for reaching them will be in place. That infra-structure, if solidly built, could conceivably survive the funding loss and continue as an indigenous part of community life.

A variant on the Community Boards model that tries to avoid the "ultimate funding dilemma" is the Community Association for Mediation (CAM) in Pittsburgh, Pa. A local black woman identified people in her community who are already seen as problem solvers; thus she involved some block club leaders, agency para-professionals, some

mothers, and the like. They met at her house and discussed new conflict resolution skills. They defined a useful training program and carried it out themselves with donated services from professionals where needed. They have no center, no records, no fancy intake processing since people seek out the mediators in their existing roles as elders or trouble shooters, and no outside funding. The members return to their original positions as problem solvers but with two important changes. First, their skills are enhanced. Second, they are now part of a network of like-minded community problem solvers who meet together informally to share their successes and problems. As in Community Boards, these neighbors are increasing their prestige and position as problem solvers. Through their get-togethers they are able to share information and generalize from their problems. Their network includes ties to most social action groups and agencies in the neighborhood. Thus, generalized problems can be presented to the appropriate community organization for action.

CAM seems to be telling us that the pioneers have shown the need for the utility of new dispute processing procedures, but they have not demonstrated that a formal, funded project is *the* answer. Possibly the most productive direction to move is towards building mediation into existing community networks and strengthening those networks. If CAM can continue in this informally structured format, change will be taking place. Indigenous leadership structures will have been enhanced through the process of settling disputes.

### Conclusion

In this article I have tried to raise questions about the direction in which the dispute resolution movement is going. Project organizers should avoid the easy route of carbon copying existing "successful" programs. Rather, they should critically re-examine every stage of the dispute solving process. Careful attention should be paid to the political significance of the potential program structure. What segment of our society needs strengthening through the operation of a mediation program? It is not too early to try to project ten years into the future to try to predict in what way, if at all, the society served will be different as a result of a dispute resolving program having been organized today.

---

REPRINTED  
by permission of the publisher  
Crime and Justice Foundation  
31 St. James Ave.,  
Boston, Mass. 02116

**GRASSROOTS CITIZEN DISPUTE  
RESOLUTION CLEARING HOUSE**

4401 FIFTH AVENUE  
PITTSBURGH, PA. 15213

[412] 621-3050