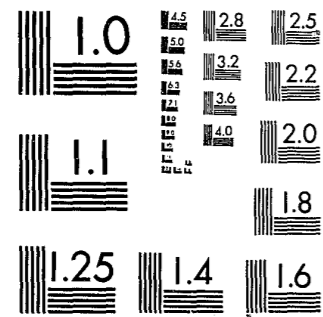


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National Institute of Justice
United States Department of Justice
Washington, D. C. 20531

10/22/82

Proceedings From The Second
Connecticut Justice Academy

WHITE PAPER CONFERENCE

Neighborhood Justice Centers
An Alternative To Adjudication?

84189

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Neighborhood Justice Centers

An Alternative To Adjudication?

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ACQUISITIONS

ACKNOWLEDGEMENT

We wish to express our appreciation to Mr. Larry Ray of the American Bar Association - Special Committee on Alternative Means of Dispute Resolution, for his participation in this conference, in particular for his sharing his knowledge and experience with us.

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A SENSE OF JUSTICE

Carol Anastasio

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The people who administer the justice system maintain a vested interest which is in direct conflict with the procurement of justice on behalf of clients. The above situation necessitates alternatives such as community mediation as a means of assuring justice for all. As Paul Wahrhaftig states: "The court system has all the elements of a zero sum game. At the end of the day there must be an ultimate winner or loser and at each stage of the game, a point won by one party is a point lost by the other. Two important consequences flow from this. First, the criminal trial guarantees that 50% of the parties go away disappointed with the result. Second, the process leads to further alienation and polarization between the parties."

I would like to suggest that community mediation programs offer alternative justice forums that can effectively and efficiently resolve neighborhood and interpersonal disputes and at the same time, enhance neighborhood stabilization and leadership by making the community responsible for conflict resolution and the control of crime. Until recently, there was no option available that would assist people in resolving disputes without exposing them to the trauma and embarrassment of arrest and court proceedings. Neighborhood-based mediation functions as a kind of preventive safety valve by providing a mechanism for disputes to be resolved at an early stage.

Contrary to the courts, where the atmosphere and process are de-personalized, formal, and intimidating, community-based mediation offers a more relaxed, personal

setting where the disputants, in conjunction with the mediators, take the time to explore the conditions and circumstances that precipitated the conflict in the first place. The court system, on the other hand, cannot afford to explore every dispute that comes to its attention. A person who files a complaint is rarely informed as to the outcome of the case. Often, the arrestee, or defendant, is the only person who must show up in court--thus, there is no opportunity to bring the two disputing parties together to confront the problem head-on and to come to some mutually agreed upon compromise or resolution. This is a fundamental reason why disputing parties continue to appear as court and police statistics. At best, people are "spectators" who wind up being removed from their own conflicts and who often see no advantage in pursuing their case in court.

Disputants are reluctant to have a friend, family member, or neighbor arrested, face a criminal record and possible prosecution. In other cases the conflict is not sufficiently serious to justify an arrest or court trial. It is these types of situations that I would point out continue to affect the quality of life for residents by creating tension and stress within the family and neighborhood. They can only be understood within the context of the social and cultural environment from which they emanate.

Community mediation provides a framework within which conflicts are understood and differences are resolved without being removed from their natural environment. This factor is important in terms of one's perception of who "owns" the dispute. Ample opportunity is provided throughout all points in the process for disputants to express their conflict informally, directly, positively, and before the criminal justice system becomes involved--a significant difference between community-based and court-based mediation projects. Additionally, so often

interpersonal disputes and minor crimes are never reported to the police, continue to fester and perhaps escalate into a more serious crime or tragedy.

In conclusion, as Ray Shonholtz so appropriately points out: "A law enforcement/judicial system that forces neighborhoods to tolerate civil and criminal incidents, undermines the safety of communities, and encourages criminal conduct is a dysfunctional system. It does not work. If the people do not readily use the system, do not support it, and seek to avoid its impacts, it is a dysfunctional process for the administration of justice. A legal system that imposes on every conflict a uniform, unworkable procedure weakens the integrity of the system itself.....A separate system of conflict resolution, based in the communities, is urgently needed not only to meet individual conflict and neighborhood needs, but to assure the proper functioning of the traditional justice system for those situations that require the adjudication of matters through the adversary process."

The difference lies in the process and the outcome. Community mediation provides an opportunity for neighborhood involvement in the administration of justice. It allows for the disputants themselves to take responsibility for both the conflict **and** the resolution. Most important, the community has an opportunity to create a structure whose sole purpose is to involve indigenous leadership in problem-solving.

Through the development of natural helping networks, people are able to control the process and apply their own skills to resolve conflicts in a peaceful positive manner.

NEIGHBORHOOD JUSTICE CENTERS AND CITIZENS NEED
FOR A PERCEIVED SENSE OF JUSTICE

Dr. Joseph E. Hickey
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University of New Haven

Since its inception in Columbus, Ohio in 1971 the neighborhood justice center has flourished perhaps faster than any other judicial innovation in our nation's history. In ten years over two hundred centers have sprung up nation wide, and what is more remarkable, less than one third of their operating expense is provided through government funding. Everything from barking dog complaints through serious juvenile and domestic disputes are being routinely handled by local non-professional volunteers utilizing mediational skills in place of the traditional adversarial model of our court system.

Thus, as we enter the third century of our history as a nation, it would appear that a major metamorphosis is taking place at the very center of our democratic process. A growing number of citizens find it preferable, indeed necessary, to pursue justice in non-traditional, extra governmental neighborhood justice centers and, if this is not strange enough, often with the encouragement of local court officials!

The question of course is why this phenomenon has occurred at this juncture in our history. Clearly, the idea of a local court is not unknown. Indeed until very recently routine disputes between neighbors were handled reasonably well by one court or another. But in the past decade or so there has been a growing

disenchantment with government in general and courts in particular. In response, most courts have reorganized themselves. But the disenchantment persists. Somehow, "something" very vital to our justice system and by extension to our nation, is missing, and all the reorganizing in the world isn't going to recapture it. That "something" is what I prefer to call a "perceived sense of justice."¹

By this I wish to convey the notion of a collective value judgment concerning the legitimacy of government in general and the judicial system in particular. It is this collective value judgment on the part of the citizenry which lends legitimacy to claims of governmental sovereignty and authority on the part of the ruling class.

Bertrand De Jouvenel,² in his classic inquiry into the nature of governmental authority, distinguished two fundamental elements. First, there is the undisputed need and, therefore, reality of authority per se. This can take many forms, ranging from despotism through democracy to total anarchy. Secondly, and more importantly for present purposes, he identifies the activities of authority. These include the myriad functions which all governments must perform in the course of governing. De Jouvenel argues that it is precisely this second element which largely determines the legitimacy of a particular government. For De Jouvenel, the sense of fairness or unfairness ascribed by the governed to the acts and policies of the ruler and his agents is

ultimately what vests legitimacy and, by extension, sovereignty in government.

I believe it is fair to say that it is this lack of perceived justice that is currently threatening our governmental institutions, particularly our courts. Whether one wishes to describe this threat in personal, political, social or systemic terms, the fact is that many citizens are turning to alternative means of securing justice. One need only point to the incredible growth in private and industrial security systems, not to mention private detective agencies, to buttress the claim. And now we are witnessing a similar phenomena in our judicial system. How should we respond?

Should we view this shift as some how a threat to our judicial system? I believe the answer is no. Given De Jouvenel's construct, it seems reasonable to accept, and even encourage the growth of neighborhood justice centers as a manifestation of a complex ever changing society struggling to make moral sense out of everyday living. Simply put, our traditional judicial system is no longer able to address many routine disputes in the face of ever increasing caseloads. Yet the necessity to resolve such disputes is in no way reduced. Thus, consistent with the American penchant for problem resolution, a new alternative is emerging. Yet this alternative is not without its potential dangers.

First it is not inconceivable that these centers could end up being courts of last resort for the poor. Given the spiralling

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costs attached to traditional courts, they might well become the only real hope for the disadvantaged, thus essentially creating a dual justice system. Secondly, the problem of legitimacy seems to plague these centers. It is not clear for example, that where ever local court officials actively support mediation programs to what extent they have judicial sanction.

Finally, as the centers develop it is not conceivable that they will under go the same complexification processes as our traditional courts.

All of these dangers notwithstanding, the mediation model holds out a renewed hope in our democratic system by ~~renewing~~ in citizens a belief that inspite of social change justice can still be done.

¹Hickey, Joseph E. Toward A Just Correctional System, San Francisco: Jossey-Bass Publishers, 1980.

²De Jouvenel, Bertrand. Sovereignty: An Inquiry Into The Political Good, Chicago: The University of Chicago Press, 1963.

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COMMUNITY-BASED DISPUTE RESOLUTION

Maxie L. Patterson
Chief of Police, Town of Windsor

Conflict in our neighborhoods and communities have long existed. We possess a monstrous judicial system to handle any and all complaints. Whether that system is functioning effectively is highly debateable. Our courts are laden with non-criminal matters as a result of people, neighbors, not knowing or unwilling to be able to work out differences. As one looks at land resources and population density, it is safe to say that people are going to have close neighbors. As people are brought together, their problems and anxieties become each others. The greater the population density, the greater the chance for conflict.

We cannot continue to turn to the legal profession to work out and resolve matters which can hardly be adequately defined. Children fighting with other children, loud neighbors, and people forced to live too close to other people because of financial limitations, are not the type of problems our courts were designed to handle.

Community-based dispute resolution programs are possibly one way to resolve these ills that society have. In looking at such a program, I will explain the advantages and disadvantages of establishing such a program at the local level vs. the state level.

By organizing a dispute resolution program at the local level, one can tailor the program to the specific needs of the local community. You can also operate independent of established bureaucratic procedures, such as the court. One can gain maximum input from the police, who are often the first formal structure persons benefiting from such a program will come in contact with.

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Early intervention can occur and the disputed parties can be heard while the problem is fresh.

Communities vary from one another. They have their own personalities, ethnic make-up, income levels, and levels of conflict. In establishing such a program, key persons within a given community can organize the effort. Such a committee could represent police, social services, the legal profession, elected officials (local government), youth services, the church, professional persons, the non-working spouse, the working spouse, etc. A committee can comprise of some or all of the above representative groups. This allows for maximum input at a level with which community-based problems can be addressed. As the problems unique to that community change, so can the committee and its focus. The committee represents the residents of the community being served. They live in the same environment and they share many of the same values. They have a vested interest to see to it that the program works.

Organizing a program at the state level also has its advantages. One can argue that a good representative sample of the population can be brought together and operate just as effectively as a locally based program operates and more efficiently. A greater range of resources can be drawn upon and successful programs in one area can be easily spread out to other areas experiencing problems.

From a cost standpoint, it would appear that a state-wide program should operate at a cost less than multiple local programs. Small and similar communities can be combined, whereas large urban areas can be addressed separately. The concept of regionalization has been widely used in many areas and have shown to be more efficient to operate. Regionalization brings com-

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munities together and sets the foundation for people to learn how to work together and recognize their neighbors next door.

Should one proceed with a state-wide concept, I think that it is important to be sure that the program operates in such a way to minimize bureaucracy and insure that the individual(s) feels that their community is taking an interest in them and their problems and that it is not just a 'state' program, such as a mini court. One way to maintain this belief is to organize the program consisting of voluntary board(s) or steering committee(s), absent of legislation.

When one sets up a program through legislation, a new ingredient comes to surface - interest groups. Popular interest groups and unknown groups feel that they must play an active role and compromises start to take place. Well-thinking persons operating on behalf of the "under privileged" and the "unknown" starts to speak and represent persons who, perhaps, do not even though they exist. Political favors take over and a certain type or category of persons end up on legislative mandated boards and committees. Look around you; after serving on numerous programs, you start to see the same faces and hear the same rhetoric. Connecticut, in particular, is noted for this, partly because of the State's size and political way of operating.

A properly established State dispute resolution board should only function to the extent to insure that local communities get organized and become operational. They can also attempt to bring small cohesive communities together, which are similar in population, make-up, and problems. They can provide limited technical assistance by passing on the success of other programs to areas which are having difficulties. They can also strive to promote the program concept to the courts and the legal profession.

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Using this organizational concept, one can still insure that the main emphasis is at the local level. Local programs would still be established by local representative groups and they can add or delete to their organizational structure as they see fit. They can seek assistance from the State board or go it alone. Connecticut residents are well noted for their volunteerism and this type of program is well adaptable to volunteerism.

Operational cost should be kept to a minimum.

One might argue that a disadvantage of such a program being run on the local level is that individuals may be too close to the problem, thus causing a conflict of interest. The other side of the argument is that this is the basic principle of dispute resolution. Bringing all affected persons together to resolve their problems. To be truly successful, persons must learn to work out their problems among themselves. In essence, this would be a rebirth of the family concept. The only difference is that the family has grown somewhat to include your neighbor and your community.

Whether on the state or local level, one has to insure that existing persons or agencies involved in these types of problem areas are kept to a minimum. There must be maximum input by the players, members of the community, whose primary reason for participating is to ensure the existence of a cohesive and tranquil community.

In summary, I would argue that the most effective program would operate at its best at the community based level. Legislation is not needed and only seeks to erode the effectiveness of a program. All population groups must be represented, ethnic, race, sex, income level, age, etc. A state-wide system

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may be helpful, but its role must be minimized. Voluntary boards or committees should oversee the programs, utilizing a professional, paid staff.

THE SELLING OF THE JUSTICE CENTER CONCEPT

Thomas J. Quirk
Catholic Family Services, New Britain, Ct.

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It has been written that there is nothing new under the sun. This old adage is certainly true of the Community Justice Center concept. Long before the development of an organized criminal justice system, people utilized mediation as a peaceful avenue for redress of grievances in an attempt to avoid violent means. Examples: cop on beat, African culture, etc.

Whether motivation for developing and implementing community justice centers proceeds from a desire to reduce violence, dissatisfaction with long, costly litigation, or the desire to promote justice, such programs are now recognized by criminal justice professionals, reform organizations, victims, and offenders, as being valuable innovations in conflict resolution, particularly where the disputants are engaged in on-going relationships.

Given the enormous amounts of tax-payers money used in efforts to cage/isolate societal ills, the impossibility of incarcerating social problems, and the uselessness of incarcerating those who reflect these problems, community justice centers, staffed by trained mediators, seeks restoration of the total community as its goal. Unlike the traditional criminal justice process, community based justice centers go beyond identifying faults to concentrate on individuals needs. This is accomplished through reconciliation of both the victim and the offender and an increased use of creative, mutually agreeable community based alternatives to conventional penalties. More over, elementary psychology and fundamental concepts of justice dictate that, when and wherever, larger numbers of human beings are involuntarily brought into

the criminal justice system (victims), there must be effective, credible mechanisms to provide an outlet for the hostilities, frustrations and dissatisfaction. Agreement is virtually universal that community justice centers are safe, efficient, cost effective means of dispersing justice while encouraging non-violent resolutions of conflicts.

The process of implementing an effective community justice center is long and complex. The following pages concentrate on the demonstrated value of justice centers and the major concepts on which effective ones must be based.

COMMUNITY PROFILE

We are using the City of New Britain as a pilot site for the location of a Justice Center for several reasons. In many ways it is a typical city, a microcosm of American Life. In other ways, it is atypical and its make-up and character include characteristics which would both impede and enhance the development of a Justice Center.

New Britain is an industrial community of approximately 80,000 population. It is densely populated and has a rich heritage, once being known as the Hardware Capitol of the world. It was once dominated by nine (9) "home owned" industries but it now has one corporate headquarters and five (5) plants all of whom have become parts of conglomerates. It has a rich ethnic tradition dominated for years by Polish and Italian immigrants and their families. The population also includes significant numbers of various other ethnic groups and cultures, e.g. Irish, English, Swedish, Russian, Greek, Ukrainian, Lithuanians, etc. The community has a wide variety of National Churches and Ethnic related social and political clubs. These groups are frequently isolated from each other and for example, vote in blocks on political issues.

New Britain is a working class community and the neighborhood and frequently ethnic related small stores thrive throughout the city. The black population has remained at about 7% for several years but the Hispanic community has grown to approximately 12% and it is still growing. In addition to Spanish, there are significant numbers of people who speak only Polish or Italian.

It would be fair to describe New Britain, like most communities, as being concerned that Justice be served. The city is beginning to recover from the ravages of a municipal government corruption scandal and it is our opinion that a community justice center would contribute to the continued restoration of a sense of justice and integrity in the system would be timely.

WHY?

The situation in this community as with most cities is that an overcrowded judicial system and over worked law enforcement system has fostered a perception on the part of participants that justice is too time consuming, that in many situations it does not exist, that it is too costly, and that even when the process does end in conviction, the "victory is hollow". The police officer is frustrated in being called to investigate and seeing the same participants and in the same situations. The frustration can increase with the knowledge that an arrest may mean a court appearance as a witness. The Prosecutor, with his large workload, client requests for continuance, need for available witnesses, and community pressure for punishment for lawbreakers, frequently has to settle for conviction on a lesser charge, dismissals, consequently he views a constantly increasing number of cases to be handled.

The Judge is confronted by the constant struggle to administer justice quickly and with a need to be knowledgeable of the facts to make a fair judge-

ment. The knowledge of the long wait for processing and the community reaction to what is perceived as being soft on criminals is always present.

The probation officers responsibility to supervise a huge number of offenders in the community, is an impossible task.

The lawyers frustration with 2 or 3 hour waits in a court, to have a disposition made in 2 or 3 minutes, is another part of the effects of the overcrowding. All of these mentioned above, could be beneficiaries of a justice centers' existence. Referrals of disputes and minor offences to a justice center would affect the workload of the court and allied staff, by diverting situations before they entered the judicial system, or early in the process. This would increase the amount of time that judges, prosecutors and police officers could devote to more serious offences.

Very often the victim is the forgotten party. The Justice Center concept brings the victim and the accused together. The participants in the justice center concept would have the opportunity to face the other party and have a greater sense that their actions and responses were heard by each other, directly, their hurts recognized directly and quickly, and that they participated directly in the resolution. The face to face resolution, whether it involved restitution, obligated work compensation, or just direct communication would increase the perception of justice being done. The direct face to face resolution would also diminish the possibility of reoccurrence. The neighborhood likewise, in its mediator representation, would feel more fully a sense of justice and of having participated in the resolution of its members' problems.

ENHANCING FACTOR

Existing Human Service System

A positive element in New Britain which would enhance the potential suc-

cess of a Justice Center is the existence of a superior human service system. The system has outstanding professional and volunteer leadership and a high degree of excellence has been maintained over a long period of time. The system is also characterized by strong relationships between service providers and between public and private agencies. An example of this was the creation of the Juvenile Review Board approximately six (6) years ago. The Juvenile Review Board was created through the voluntary cooperation of all the youth serving agencies who collectively saw a need to attempt to divert pre-delinquent youths toward a constructive solution. Youth exhibiting anti-social behavior, having been suspended from school or having had an early "brush" with the law are referred to the Juvenile Review Board which is made up of representatives of all the counseling agencies, the Youth Bureau of the Police Dept., the municipal Youth Services Bureau, the Juvenile Probation Office, the school dept. and others meet weekly or as needed, in order to confidentially consider specific cases and take corrective action. This may include the involvement of parents, school department personnel and counselors. It can be a form of mediation but it is given as an example of voluntary cooperation within the human service system.

ELIGIBILITY

The community Justice Center would serve people who have committed crimes "not of a serious nature" both civil and criminal. This would include disputes between persons having an on-going relationship, i.e. family members, neighbors, tenant and landlord: involving property, custody, money and human rights.

Participation would be limited to those situations where both parties to the action, i.e. alleged offender and victim, agreed to participate in the process.

REFERRAL SYSTEM

Referrals to a Justice Center would come from two (2) primary sources and two (2) secondary sources. The Court and/or the Prosecuting Attorney and the Police Department and/or the Police Officer would refer cases in which there would be a sanction. These would be furnishing either or both parties an alternative to dealing with the Judicial system. They would be diverted from this system if a successful resolution or reconciliation occurred. If success were not achieved they would be returned to the traditional system, i.e., the Police or the Court.

Secondarily, referrals would be received from various social agencies such as the Women's Center or Counseling agencies or from interested third parties. In these cases, no sanction would be present and the mediation would be entirely voluntary and hopefully the result, preventative. Records of all mediation sessions would be strictly confidential and would not be available for use in any future court action or sessions.

Participants would also be limited to first time offenders. This requirement is not the ideal but is conditioned on political acceptance by the key decision makers of the Judicial system.

HOW?

In order to bring about the existence of a community justice center, sanction and support would need to be received from the local Judicial department, Judge and Prosecutor, from the police department and the Bar Association, all of whom, as referred to previously, are feeling the negative effects of the overcrowded system.

The senior jurist, as well as civil and criminal judges would need to be accepting of the possibility of a dispute resolution center, both lessening

the backlog of cases, while functioning in concert with the current judicial system, not as a substitute. Additionally the resulting resolutions of dispute as based on the experience of well run centers throughout the country, would result in a better perception of the total system as bringing a fair sense of justice being accomplished. The prosecutors office would need to see the justice center's function as taking care of situations which are of a minor nature relative to the enormity of other crimes. Close coordination with the Prosecutor's office about the disposition of cases and follow-up provisions after each settlement would help alleviate some of the fears of the prosecutor's office about public criticism. The police department with positive experiences thru an effective Police Community Relations Division, and a Juvenile Review Board which has been effective in diverting youthful offenders into therapeutic programs, would also benefit from the loss of primary duty time of officers who often need to give court testimony on such cases.

Local attorneys, with Bar Association endorsement could support such a center, and indeed volunteer training time to alleviate a court backlog which many see as destructive to the concept of justice philosophically, and which involves "waiting time" in courts as a practicality.

The total "justice" community needs to participate in some measure to bring about the operation of a center for reconciliation. The practical benefits and the overall sense of a "fair justice", for many who are stereotyped as "garbage cases", and the resultant perception of a more satisfactory resolution, would be beneficial and rewarding to the total community.

SPONSORSHIP

Sponsorship of a Justice Center in New Britain was carefully considered in view of the aforementioned characteristics of the community. We considered

various alternatives and concluded that an existing private, non profit agency which has a high level of credibility in the community with both service providers and potential clientele would be most appropriate. Existing linkage to the Judicial system, the Corrections Department, the Police Department, the Juvenile Review Board, the Probation Department and the Family Relations office would be ideal. But if such an agency does not exist, the second alternative would be to create such a body and to develop the necessary linkages. If a new agency or an advisory committee is to be created, the above mentioned considerations should receive heavy weight and membership should include representatives from the Court, Police Department, Bar Association and motivated community residents. Other options were considered but were eliminated for various reasons including a lack of credibility or community wide acceptance.

LOCATION

Various alternatives were considered in the determination of a location for a Justice Center in New Britain. Considerations were for acceptability of the community and effectiveness with clientele. It was decided that the best location in terms of credibility and community wide acceptance, would be the Court House, which is also adjacent to the Police Station. This would be the central location from which referrals would be made and mediation sessions would be arranged. The mediation sessions would however be held at a wide variety of locations, dependent upon the needs of the involved parties. These sites could include any one of several neighborhood centers, social agencies, Churches, the police department, etc. It would be the intent of the mediator to conduct a session in a setting which would be neutral and non-threatening to all parties.

TRAINING

The training of mediators is a critical part of obtaining the acceptance of

the Justice Center concept. Training should be thorough and comprehensive. Before a person is accepted as a candidate for training, he/she should be screened by competent professionals in order that he/she has the basic qualities necessary in order to absorb the training. A training program should be well structured and should cover the full legal and judicial aspects as well as the counseling skills. A person should be a "good listener" and be objective, neutral, persuasive and be able to facilitate meaningful communication between parties in conflict.

FOLLOW-UP MONITORING AND PROGRAM EVALUATION

If the Justice Center concept is to succeed, a system of monitoring individual cases must be developed. This should include follow-up monitoring of specific cases after a predetermined period of time dependent upon the nature of the case. These individual case monitoring results should be utilized in conducting an on-going evaluation of the success of the total program and a final evaluation to be conducted at the conclusion of the pilot period. Modifications of the system can be made in order to maintain and increase effectiveness after consideration of monitoring and evaluation reports.

The implementation of the Justice Center concept is not seen as a solution to all the problems encountered by the Judicial system. It is however, viewed as presenting a humane alternative to the existing system in some cases.

This paper attempts to touch upon the aspects of a Justice Center which would be necessary to cover in order to overcome potential obstacles. It is a valid concept and it deserves serious consideration.

MEDIATION: AN APPROPRIATE FORUM FOR CRIMINAL CASES?

Pamela J. Bower
Administrative Assistant
Office of Chief Public Defender

Most defense attorneys and prosecutors agree that certain types of "criminal cases" do not belong in the criminal courts. Sometimes they agree on which particular cases belong. The Waterbury Mediation Program, provides for certain criminal cases, an alternative to adjudication, and attempts to address this issue by (1) screening cases that are not appropriate for the adversarial process (2) removing the stigma of a criminal record arising from minor criminal disputes and (3) attempting to solve the underlying causes of recurring minor criminal problems.¹ To meet these goals it is essential to have both careful screening and access to professionals. The professionals would serve as mediators to provide referrals for appropriate counseling and would assist in carrying out agreements which require counseling.

The Waterbury program has guidelines to determine the appropriateness of mediation for particular offenses.² Most cases are referred to mediation by the prosecutor's office; this procedure allows the prosecutor to do the usual screening to determine whether or not the accused is properly charged and to then assess whether or not the case is appropriate for mediation.

Since mediation is an alternative to adjudication the parties have the right to choose between mediation and adjudication and should be advised as such. To allow the parties to

make an informed decision they should be advised of the limitations as well as the benefits of mediation. Firstly, both parties must be advised that the purpose of mediation is to resolve the dispute and is not to determine the question of the accused's guilt. Secondly, both parties must be made aware that mediation proceedings are confidential and that the accused is protected from incriminating statements being used as evidence in any court proceeding. Courts and commentators have suggested that "legislation be enacted to cloak proceedings of this nature with an evidentiary privilege of confidentiality"³ in order to assure the defendant's due process rights. I agree. There must be built-in protections for a defendant to agree to have his case handled outside of the court. It is not enough to promise the case will be nolle and erased within thirteen months if the parties agreement is met. These protections are significant since the defense attorney is out-of-the-picture; he/she can't go to the mediation hearing and can't find out what happened. It is only when mediation fails that the defense attorney becomes involved.

Thirdly, the parties should be advised that the case will return to court for adjudication if no resolution is reached but, if there is an agreement, the defendant must make another court appearance to allow the prosecutor to enter a nolle. It is unclear whether or not the mediation program really saves prosecutor and court time since the defendant must

appear in court even when an agreement is reached. Fourthly, the parties should be advised that financial agreements cannot be made unless the claim is a direct result of the incident and that it is difficult to enforce long-term expensive financial agreements. The victim may feel more comfortable seeking restitution directly through the court. The mediation program is reluctant to oversee long-term financial arrangements due to the likelihood of modifications and inconvenience to the prosecutor if required to reopen the case.⁴

Finally, the parties must be advised that the success of mediation depends upon the parties' willingness to negotiate with one another through a neutral third party. It is important that the parties themselves make the decision to mediate to increase the likelihood that they will attend the hearing and reach an agreement.

In summary, proper screening involves the discretion of the prosecutor as to the appropriateness of the case for mediation and the willingness of the parties to negotiate an agreement which may reasonably be met. To meet the objectives of mediation it is essential that the parties have been advised of the limitations as well as the benefits of mediation. Very often the pressures to prove that a new program is successful overrides a more pragmatic approach. Mediation is only as good as the screening method. I acknowledge that some of my suggestions for advising the parties may already be implemented. My concern is, who acts as the advisor?

The criminal justice system has been plagued with having to handle numerous social problems without the benefit of adequate resources. Programs such as TASC attempted to deal with some of these problems. Unfortunately TASC is defunct, but the social problems which bring cases into the criminal courts are still alive.

Mediation is not intended to deal directly with alcohol, drug or emotional problems. However, many of the cases screened for mediation do involve these problems. One of the most ambitious goals of mediation is to "attempt to solve underlying causes or recurring problems".⁵ The criminal justice system has a significant interest in having this goal met.

The purpose of mediation is to resolve a dispute. I have every confidence that a layperson can be an effective mediator in the narrow sense of facilitating a dispute resolution. However, mediation functions as an "arm" of the criminal court. Even when the parties reach an agreement the prosecutor must go before the court to enter a nolle. The defendant is obligated to appear for this proceeding. If a case is re-opened during the thirteen month period the prosecutor must again go before the court and the defendant must appear. The mediation program must operate to accomodate the criminal justice system.

Inexpensive service is not necessarily better. While the mediation program prides itself in saving court time and operating on a low budget, it cannot ignore the need to

provide access to professionals to meet their goal of preventing recurring problems. In dealing with persons who may have drug/alcohol and/or emotional problems, it is essential to have a mediator who is trained to recognize such problems and make appropriate referrals.

The mediation program has an interest in resolving disputes outside of the courts by encouraging the parties to comply with their agreement. Agreements which address underlying problems may require that one or both parties receive counseling. An agreement for a defendant to stay away from the former girlfriend he allegedly assaulted will not prevent him from abusing another girlfriend. It is appropriate to have professionals oversee this type of agreement.

Despite the fear and intimidation people experience in the court system, I believe people prefer to bring their problems to professionals. An assault victim feels comfort by the fact that the prosecutor asked her to bring copies of her medical bills. Many indigent defendants feel short-changed by the system because they think a public defender is not a "real lawyer". The point is well taken that without professionals, "mediation may well be just another opiate for the masses".⁶ Professionals provide credibility to the system. Perhaps the cost would not be prohibitive if professionals would be willing to do some pro bono work for their community. The criminal justice system will look to mediation as a viable alternative to adjudication if mediation can get to the heart of the matter and prevent some recurring "criminal problems".

NOTES

1. The Waterbury Superior Court Mediation Program Goals 1., 2. and 4.
2. Guidelines of the Waterbury Superior Court Mediation Program. The types of offenses to be considered for mediation are: Assault 3rd, Breach of Peace, Criminal Mischief, Disorderly Conduct, Larceny (3rd & 4th), Larceny (Using motor vehicle without owner's permission), Reckless endangerment, Harrassment, Threatening, Trespass, Unlawful Restraint (2nd).
If
Any one of the following circumstances/relationships exist: Apartment dwellers, family relationships - "which are not referred to Family Relations", Friends/Exfriends, i.e. boyfriend/girlfriend, ex-spouses, Landlord/Tenant, Merchant/Customer, Neighborhood Disputes, Stranger v. Stranger, i.e. barroom incidents, street fight, community activities, restaurants.

Types of offenses considered without special circumstances: Health Code Violations and Housing Code Violations (minor violations), Passing Bad Checks (less than \$200).
3. Snyder, PERSPECTIVE, Legal Implications of Mediation, at 15 n. 8, Fall/Winter 1979. A mediation hearing amounts to a "critical stage" of a criminal proceeding. In a mediation hearing, the parties are encouraged to relate their feelings and attitudes; an individual might volunteer incriminating information that one way or another could be used as evidence or lead to evidence in a criminal proceeding later brought against him. The question arises whether evidence can be suppressed as "compelled" from an individual in violation of his fifth and fourteenth amendment due process rights during a hearing that he believed to be an "official" interrogation. Id. at 15.
4. Based upon an interview with Sharon Copes, of the Waterbury Mediation Program, after sitting in on a hearing in which a female assault victim proposed an agreement whereby her ex-husband would pay the \$800 dental bill she claims was a direct result of the injury he caused to her.
5. See n. 1 infra.
6. Snyder, supra, at 16 citing Neighborhood-justice Plan Rapped by McCree, 63 A.B.A.J. 1190 (1977).

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Interviews with Assistant Public Defenders, Francis Fitzpatrick, Richard Ackerson and Sheridan Moore, Assistant State's Attorneys Marcia Smith and Dinah Dee and Tony Barbino and Sharon Copes of the Waterbury Mediation Program. I also observed a mediation hearing to learn about the role of the mediator.

Snyder, PERSPECTIVE, Legal Implications of Mediation, 15, Fall Winter 1979.

A ROLE FOR ATTORNEYS IN MEDIATION

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The increase in the number of mediation programs in the United States during the past 10 years indicates that, if mediation has not yet replaced our nation's judicial system, it has long since passed the stage of being the new kid on the legal block. In his 1982 Annual State of the Judiciary speech to the American Bar Association, Supreme Court Chief Justice Warren E. Burger urged that family and landlord-tenant matters be removed from the courts and encouraged lawyers to seek training in conciliation techniques.¹ Unfortunately, too many lawyers are still unfamiliar with mediation and so are unaware that it has much to offer them, their clients and the legal community at large.

Oftentimes the objections which are raised by attorneys, such as legal issues regarding confidentiality and voluntariness, and the more pragmatic concern of adverse effect on legal business, are cited by those who have little knowledge of mediation. Attorneys who are familiar with mediation know that any successful mediation program has been able to resolve these and other potential problems, in order to secure the cooperation of court officials, lay persons and members of the private bar necessary for the survival and growth of any court-based program.

Attorneys who understand how mediation works, know that mediation is not a threat to their business. In many criminal programs, for example, cases are not selected for mediation until an arrest has been made. At that point, the defendant has likely hired an attorney if he or she can afford to do so. In other cases, either the individual has chosen not

to hire an attorney because the nature of the charges do not warrant, or he or she is going to be represented by a public defender. Attorneys who choose to become involved in various community organizations as a way of making the community aware of their practice, may find that their participation in mediation may, in fact, result in new business.

It is the position of this paper, that, in spite of objections such as the preceding, participation in and support of mediation is an appropriate role for lawyers. It is the purpose of this paper to set forth briefly two variations of that role. As points of reference, the paper will include discussion of aspects of a lawyer's professional obligations as reflected in selected Canons and Ethical Considerations of the Code of Professional Responsibility which has been adopted by the American Bar Association.² The Canons express in general terms the standards of professional conduct expected of lawyers. The Ethical Considerations set forth principles on which lawyers can rely for guidance in specific situations.

I To be familiar with mediation and to recommend the alternative when it is in the client's best interests.

Canon 1 sets forth a lawyer's primary responsibility to the client: To "represent a client zealously within the bounds of the law." In any matter, civil or criminal, this responsibility includes insuring that the client is aware of his or her rights and obligations under the law and also that the client understands the consequences of selecting a given course of action. On the one hand, an attorney must insure, for example,

that the client has notice of any charges or proceedings pending, and that he or she has an opportunity to contest the matter fully. In the mediation context, an attorney representing a client in a criminal matter would be obligated to insure that the client is aware that mediation is available and to advise the client regarding the relative merits of mediation versus other means of disposing of the matter, including plea bargaining and trial. In a civil matter, the attorney would need to make the client aware of the likelihood of obtaining a favorable judgment through litigation and also an estimate of the time and expense involved.

The foregoing examples highlight the attorney's role as adviser to a client, in contrast to the role of advocate which an attorney plays when representing a client in court. Ethical Consideration 7-3 sets out guidelines which a lawyer may follow, depending on whether he or she is serving as advocate or adviser. EC 7-3 states:

A lawyer may serve simultaneously as both advocate and adviser, but the two roles are essentially different. In asserting a position on behalf of his client, an advocate for the most part deals with past conduct and must take the facts as he finds them. By contrast, a lawyer serving as adviser primarily assists his client in determining the course of future conduct and relationships. . . . In serving a client as adviser, a lawyer in appropriate circumstances should give his professional opinion as to what the alternative decisions of the courts would likely be as to the applicable law.

In order to objectively weigh the pros and cons of mediation as a means of resolving a particular matter, attorneys may have to consciously remove their "advocate" hat and don their "adviser" hat. The mediation process is not totally foreign to all members of the legal profession, especially those who engage in the practice of labor law or family law. However, mediation is fundamentally different from the adversary process in several respects, most notably the legal advocate's desire to do everything within the bounds of law to win the case, versus the mediator's desire to resolve the problem to the satisfaction of both parties. As mediation becomes available in more and more jurisdictions, attorneys may need to polish their advisory skills in order to competently counsel their clients regarding the merits of mediation.

II To work with mediation programs in order to improve the legal system.

According to Canon 8 of the Code of Professional Responsibility, lawyers have an obligation to assist in improving the legal system. Those familiar with mediation generally acknowledge that, for the resolution of certain types of criminal and civil matters, mediation is far superior to the regular court system. Mediation programs which handle minor criminal matters, with which this writer is most familiar, are able to:

1. Reduce court caseload by removing cases that do not require the full resources of the judicial system, thus increasing the time available to judges and prosecutors for the disposition of serious cases;
2. Reduce costs by using mediation to solve the underlying causes

of recurring minor criminal problems, thus reducing the likelihood of further related disputes;

3. Expedite the resolution of criminal matters. (The Waterbury program holds hearings within seven days of filing the complaint. Most matters are resolved at this hearing.)

4. Provide a resolution satisfactory to both the victim and the complainant by enabling both parties to participate in the negotiation of the solution;

5. Remove the stigma of a criminal record;

6. Provide a forum available to participants both during and after regular working hours.³

Most of the advantages of mediating minor criminal matters apply to civil matters as well. On the civil side, especially in family cases, a large portion of the attorney's time is, of necessity, devoted to mediation-type negotiations with the opposing attorney. As in criminal matters, the primary reason for this is that court dockets simply do not permit the trial of more than a small percentage of divorces and post-divorce support and custody disputes.⁴ In addition, most lawyers would agree that negotiations worked out through the participation of the parties are more likely to hold up over time than settlements imposed at trial.

In view of the advantages of resolving certain matters through mediation rather than court processing, it would appear that participation in ongoing mediation programs, whether as voluntary mediators, or advisory

boards, or in some other capacity, would fulfill the charge of Canon 8.

Conclusion

In his article on "The Future of the Legal Profession in Connecticut,"⁵ Professor Quinton Johnstone stated that the legal profession "like all human institutions, is in a constant process of change."⁶ He observed further that "change in Connecticut appears to be more rapid and extensive than at most times in the past"⁷ and that "this accelerated pace and scope of change seem likely to continue during the foreseeable future."⁸ Lawyers are beginning to accept those changes, including the use of non-judicial alternatives for the resolution of legal matters, especially when it is clear that change is inevitable. It is this writer's opinion that, to paraphrase a popular jingle, "lawyers who don't like mediation, haven't tried mediation," and that as they become more familiar with the mediation alternative, will support it for the most fundamental of reasons, because it is in their own best interests to work with mediation programs and to influence the direction which they will take.

1 "Burger Urges Mediation To Ease Court Burden," Washington Post, Monday, January 25, 1982.

2 The Code also includes Disciplinary Rules which are mandatory and which set forth the minimum level of conduct expected of lawyers if they are to avoid disciplinary action. Canons and Disciplinary Rules were recommended by the House of Delegates at the Connecticut Bar Association for adoption and were approved, and the Ethical Considerations were approved, in principle, by the judges of the Superior Court, effective October 1, 1972.

3 From the "Goals" of the Waterbury Superior Court Mediation Program, 1982.

4 Family matters are routinely referred to the Family Relations Division of the Superior Court and many judges refuse to hear contested matters until an attempt has been made to reach an agreement through mediation or mediation-type discussions.

5 55 Conn. Bar Journal 256.

6 Ibid.

7 Ibid.

8 Ibid.

VII

INNOVATION, CHANGE AND RESISTANCE

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To assess the potential for successfully implementing a program such as the Neighborhood Justice Centers, it should, at the first instance, be recognized that alternate strategies within the state justice system have not met with a high level of success in the recent past. While it may appear that Connecticut would make an ideal site for innovation, a review of several efforts over the past few years will indicate that success does not come easy.

Connecticut has a very controllable geographic size and a single court system. These two ingredients, while not totally unique, are not often found in tandem in many jurisdictions. A number of programs funded on a statewide basis over the past decade, primarily with Federal L.E.A.A. (Law Enforcement Assistance Administration) funds encountered serious, if not fatal problems. In 1977, a Restitution Program funded with L.E.A.A. funds, was started on a statewide basis. Housed in Hartford, the project was to serve all Judicial Districts and attempted to divert cases and assist the prosecutorial and court systems through defendant restitution. The project never appeared to achieve full acceptance within the system and was prematurely terminated by L.E.A.A. over certain definitional problems arising over the collection of data. Certain staff and program responsibilities from this project were absorbed into the Department of Adult Probation, but the overall

effort could not be considered successful. At approximately the same time and also under the financial auspices of L.E.A.A., a statewide Victim-Witness network was established to provide direct and indirect services to the victims of crimes and other individuals involved in the criminal justice process. The project was aggressively undertaken but met with mixed results around the state and was unable to attract sufficient support to capture continued funding from state sources when federal funds were terminated after the second year of funding.

Connecticut had more than its share of successful programs resulting from the application of Federal funds, but most were local or regional rather than statewide in nature. It would be an oversimplification to try to pinpoint a single cause for this but certain trends can be identified. While the state no longer has a county form of government, strong regional feelings still exist within Judicial Districts. Both large urban areas such as Hartford, New Haven and Fairfield and smaller areas such as Litchfield and Windham are greatly dissimilar. It is difficult to design a program for one region that will easily fit into another without what would amount to be major modifications. In the past, the downfall of many programs resulted from an inflexible model that could not be adjusted to the specific needs of sometimes distinct areas of the state.

Juxtaposed over this is the fact since neither judge nor prosecutor in Connecticut are elective positions, there is no underlying need for promoting a program for purposes of public recognition.

In these jurisdictions where those criminal justice officials must face the elective process the promotion and support of an innovative program by an incumbent or aspiring candidate for public office can add impetus to the potential acceptance and success of a new strategy. Under such circumstances, significant pressures can be brought to bear on those individuals who may dictate the ultimate success or failure of a new program.

If a concept such as the Neighborhood Justice Center is to be even remotely successful in Connecticut, the agencies and individuals interested in putting the concept into place must retrospectively analyze the fate of similar efforts and design a plan that will build on or benefit from these experiences. Project personnel from those earlier efforts are, for the most part, still involved in the justice system within the state and would be available to provide historical input into this analytic process. In far too many instances, programs begun with L.E.A.A. funding would be developed in total isolation to other, similar efforts and fall into the same dilemmas that earlier programs fell victim to.

A well executed plan for success would mandate recognition of Connecticut's highly unique judicial structure. Appropriate steps should be taken to tailor those plans to compliment the status quo rather than running cross purpose to it. In addition, a Neighborhood Justice Center program should include a refined monitoring system that will parallel the development of the program. Justice programs in Connecticut during the life of L.E.A.A. had a weak almost

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nonexistent monitoring component. As a result, project problems were never examined or, if they were examined, were ignored. Unfortunately, many of these problems could have been isolated and corrected early in the project's life. Left unattended, these problems often contributed to the demise of the project with the termination of outside funding. A strictly defined and carefully followed monitoring process could insure that Neighborhood Justice Centers maintain a level of feedback necessary to make adjustments in the early, critical stages of the project.

In summary, an innovative process such as the Neighborhood Justice Centers need not follow the fatalistic path beaten by previous programs but careful attention must be given to the potential pitfalls that await a poorly planned and unrealistically implemented program.

VIII

A Consensus Paper NEIGHBORHOOD JUSTICE CENTERS AN ALTERNATIVE TO ADJUDICATION?

In recent years the growing backlog of court cases has produced a situation in which all parties in the judicial system are overextended and frustrated with their incapacity to administer justice.

Part of this backlog of cases involves a whole variety of complaints that are basically of an interpersonal nature and do not lend themselves to mutually satisfactory resolutions by the court system.

The workload of the court and allied staff has increased to the point where staff cannot devote the time needed to review cases on an individual basis.

Judges are confronted with constant pressure to administer justice quickly and, on the other hand, to be sensitive to the community reactions to crime, the victim's plight, and the need to be fair; all of which become impossible under the circumstances.

The pressure felt by the prosecutor to dispose of cases through dismissal and lowering of charges results in personal frustration and leaves the underlying issues unresolved. Additionally, the police are placed in the position of having to respond to repeated incidents and disputes knowing full well that an arrest is not going to solve the problem.

All of these key actors within the system face day to day pressure and frustration which work against the efficient and equitable administration of justice. These circumstances also detract from the

amount of time that judges, prosecutors and police officers can devote to more serious crimes. Often times, parties in the dispute, perceive justice as too time-consuming, too costly, too impersonal and too intimidating. Even when resulting a favorable decision, the court "victory" appears hollow.

Although people feel that justice has not been served and they are continually dissatisfied with the process and the outcome, they continue to look to the courts for redress, because there has been virtually no other legitimate alternative. This legacy of unsolved conflicts often fosters more serious recurrences. The Justice Center concept offers opportunities for the disputants to become directly involved in determining what is an acceptable resolution of the problem by allowing them to explore the underlying factors that created the problem.

There are a number of recommendations to be considered in order to achieve a viable Neighborhood Justice Center (NJC) program:

1. Insure the involvement of community people, i.e., neighborhood leaders, local police, prosecutor, etc. Additionally, the program should be representative of the community it serves, in terms of ethnic make-up, income levels, race, sex, age, etc. It is also necessary to provide for continued maintenance of local control. This would insure proper focus of the program and allow for more immediate and responsive adjustments to the local community as natural changes occur.

2. Develop evaluation criteria and insure that periodic evaluation occurs. This recommendation is made in light of the LEAA experience where many well-funded programs often failed because of an inability to demonstrate positive results.

3. Mediation programs, particularly, those which handle criminal matters, need to develop procedures for determining types of cases which are appropriate for mediation. These standards should be precise enough to reflect some consensus on the part of the principle decision makers, whether court officials or lay persons, whose support is needed to insure the program's success. At the same time, the standards must be flexible enough to take into consideration the wide range of disputes which may be appropriate for resolution through mediation.

4. Participation in and support of mediation is an appropriate role for lawyers. Two possible aspects of that role are:

- A. To be familiar with mediation and to recommend this alternative, when it is in the client's best interests, and
- B. To work with mediation programs in order to improve the legal system.

An attorney representing a client who selects mediation as the means for resolving a dispute should not participate directly in the mediation hearing, and should so advise the client. Such participation would be in violation of the intent of mediation as a problem solving rather than an adversarial proceeding. However, the attorney has an obligation to insure that the client understands how the mediation process works and the relative merits of mediation versus court processing. Attorneys who choose to participate in mediation programs, whether as board members or volunteer mediators, may help to insure that legal issues, such as confidentiality, and coercion versus voluntariness are fully explored and resolved.

Descriptions of the various NJC models are included in the accompanying papers. The most significant common element is that they bring

to the administration of justice a positive approach in which cooperation replaces the traditional adversarial model. It seems, then, that consistent with the American penchant for problem resolution, a new alternative is emerging. Yet this alternative is not without its potential danger.

First, it is not inconceivable that these centers could end up being the preserve of the poor. Given the ever increasing costs of traditional courts, they might well become the only real hope for the disadvantaged, thus creating a dual justice system. Secondly, there is always a danger that the NJCs could ultimately become crippled by over-bureaucratization.

These concerns notwithstanding, there is strong unanimity within the group to support the concept, development and implementation of NJC's. There are a number of different ways to structure a program, but there is clear agreement that an alternative means of dispute resolution is needed, and the NJC meets this criteria.

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Printed at the Connecticut Justice Academy
Haddam, Connecticut

June 30, 1982

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