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"ALTERNATIVES TO PROSECUTION"

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THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE HAS OBSERVED THAT THE "...ARBITRARY ASSIGNMENT TO THE CRIMINAL LAW AND ITS PROCESSES OF A VARIETY OF HUMAN CONDUCT AND CONDITIONS HAS COME TO BE REGARDED AS A PROBLEM OF OVERCRIMINALIZATION.^{1/}" THIS PROBLEM IS ESPECIALLY ACUTE AMONG THOSE MINOR CRIMINAL PROSECUTIONS UNDERTAKEN BECAUSE OF PRIVATE COMPLAINTS BROUGHT BY CITIZENS TO THE POLICE OR THE PROSECUTOR'S OFFICE.

COMPLAINING PARTIES OFTEN USE PROSECUTION AS A MEANS OF RETALIATION IN NEIGHBORHOOD SQUABBLES FOR WHICH BOTH PARTIES MAY ACTUALLY SHARE SOME DEGREE OF BLAME. A CRIMINAL COURT PROCEEDING, WHICH CAN ONLY ASSESS THE GUILT OR INNOCENCE OF ONE PARTY--THE DEFENDANT--FAILS TO COME TO GRIPS WITH THE UNDERLYING CAUSES OF A CONFLICT. WHERE THE COMPLAINANT AND DEFENDANT HAVE AN ONGOING RELATIONSHIP, SUCH AS RELATIVES OR NEIGHBORS, THEIR CONFLICT MAY ERUPT AGAIN AND AGAIN, EVEN AFTER A JUDICIAL DISPOSITION OF THEIR DISPUTE, OR, MORE ACCURATELY, A DISPOSITION OF THE CRIMINALLY MANIFESTED ASPECT OF THEIR DISPUTE. MOREOVER, THESE CASES CONTRIBUTE TO AN ALREADY OVERLOADED COURT CALENDAR AND BURDEN THE STAFFS OF THE LAW ENFORCEMENT, PROSECUTORIAL AND INVESTIGATORY AGENCIES, DISTRACTING THEM FROM MORE SERIOUS CRIMINAL MATTERS.

TO HANDLE DISPUTES THAT COMMONLY ARISE IN THE CONTEXT OF URBAN LIVING AND TO RELIEVE COURT CONGESTION, THE 4-A PROGRAM (ARBITRATION AS AN ALTERNATIVE TO THE CRIMINAL PROCESS) WAS DESIGNED BY THE NATIONAL CENTER FOR DISPUTE SETTLEMENT. SINCE THE FIRST 4-A PROGRAM OPENED IN PHILADELPHIA IN 1970, THE

^{1/} PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE. "THE CHALLENGE OF CRIME IN A FREE SOCIETY." WASHINGTON, D.C., 1967, P. 3.

ARBITRATION ALTERNATIVE TO CRIMINAL PROSECUTION HAS CAUGHT THE ATTENTION OF COURT ADMINISTRATORS, JUDGES, PROSECUTORS AND LAW ENFORCEMENT OFFICIALS THROUGHOUT THE COUNTRY. IN 1973, ADDITIONAL 4-A PROGRAMS WERE STARTED IN EAST CLEVELAND AND AKRON, OHIO, AND IN ROCHESTER, NEW YORK. IN JUNE, ANOTHER PROGRAM BEGINS IN KANSAS CITY, MISSOURI AND WE ARE CURRENTLY ENDEAVORING TO INTRODUCE A 4-A PROGRAM IN TORRANCE, CALIFORNIA. IN MANY OTHER CITIES, INTEREST HAS BEEN EXPRESSED IN USING ARBITRATION TO SUPPLEMENT THE JUDICIAL PROCESS. SOME OF THESE CITIES ARE DETROIT, CHICAGO, BOSTON, RICHMOND, ATLANTA, INDIANAPOLIS AND SEATTLE, AS WELL AS CITIES AND COUNTIES IN NEW YORK STATE.

TO EXPLAIN HOW 4-A WORKS, LET ME FIRST LAY ITS FOUNDATION.

COMMUNITY CONFLICTS FIND THEIR ROOTS DEEP IN OUR SOCIETY AND IN HUMAN NATURE. TOO OFTEN WE ONLY SEE THE SYMPTOMS--THE SURFACE EVIDENCE--OF A MORE PERVASIVE PROBLEM. MUCH LIKE THE VISIBLE TIP OF AN ICEBERG, THE PRIVATE CRIMINAL COMPLAINT FREQUENTLY DEALS WITH RELATIVELY MINOR CHARGES GROWING OUT OF DEEPER HUMAN CONFLICT, FRUSTRATION AND ALIENATION. THE CRIMINAL LAW WITH ITS FOCUS ON THE DEFENDANT ALONE IS ILL EQUIPPED TO DEAL WITH THIS BASIC FACT. THE JUDGE OR PROSECUTOR, FACED WITH AN OVERCROWDED COURT CALENDAR, BEYOND-A-REASONABLE-DOUBT CRITERIA FOR CONVICTION, CONFLICTING STORIES, AND "MINOR" OFFENSES, TYPICALLY DISMISSES THE CASE AND LECTURES THE DEFENDANT--THREATENING POSSIBLE PUNISHMENT FOR FUTURE OFFENSES. THIS IS NOT CONFLICT RESOLUTION; IT IS NOT PROBLEM SOLVING IN THE COMMUNITY; NOR IS IT INTENDED TO BE. THE TIP OF THE ICEBERG HAS BEEN VIEWED BRIEFLY, BUT THE UNDERLYING PROBLEM REMAINS UNSEEN AND POTENTIALLY AS OBSTRUCTIVE AS EVER.

NEIGHBORHOOD TENSIONS HAVE NOT BEEN REDUCED. RELATIONSHIPS HAVE NOT BEEN IMPROVED. AT BEST A SHAKY TRUCE MAY HAVE BEEN ORDERED.

THE NATIONAL CENTER BELIEVED THAT THERE WAS A BETTER WAY, AND THE DISTRICT ATTORNEY'S OFFICE OF PHILADELPHIA AND THE MUNICIPAL JUDGES AGREED. AS A RESULT OF THIS AGREEMENT A NEW APPROACH EVOLVED WHERE, IN APPROPRIATE CASES AS DETERMINED BY THE DISTRICT ATTORNEY'S OFFICE AND THE COURTS AND WHEN AGREED TO BY THE CITIZENS INVOLVED, AN ALTERNATIVE COURSE OF ACTION IS FOLLOWED-- THE VOLUNTARY SUBMISSION OF THE DISPUTE TO FINAL AND BINDING ARBITRATION UNDER THE AUSPICES AND ADMINISTRATION OF THE NATIONAL CENTER.

THESE PROCEDURES PROVIDE A GREATER OPPORTUNITY TO DEAL MEANINGFULLY AND SENSITIVELY WITH HUMAN BEINGS IN CONFLICT, TO PROBE FOR THE UNDERLYING CAUSES AND TO ADDRESS THEM, TO REACH AN ACCOMMODATION, AND TO ENGAGE IN MEANINGFUL DIALOGUE. IT ALSO PROVIDES FINALITY THROUGH THE ARBITRATOR'S AWARD. HOWEVER, THE PROCESS ITSELF MAKES THE AWARD RENDERED FAR MORE ACCEPTABLE. THE CONFLICT WHICH ARISES IN THE COMMUNITY IS SETTLED IN THE COMMUNITY UNDER CONDITIONS OF MAXIMUM INVOLVEMENT AND PARTICIPATION OF THE PARTIES TO THE DISPUTE.

THE PROGRAM BEGINS TO FUNCTION WHEN A PERSON IN THE COMMUNITY FEELS WRONGED BY ANOTHER PERSON'S ACTS. THE WRONGED PARTY (COMPLAINANT) SEEKS CRIMINAL PROSECUTION AGAINST THE OTHER PARTY (DEFENDANT) BY FILING A COMPLAINT AT THE OFFICE OF THE DISTRICT ATTORNEY, CITY PROSECUTOR, CRIMINAL CLERKS OFFICE OR POLICE DEPARTMENT, DEPENDING ON THAT PARTICULAR JURISDICTION'S PROCEDURE. THIS COMPLAINT FROM A PRIVATE CITIZEN OFTEN RESULTS IN THE ISSUANCE OF A WARRANT FOR THE ARREST OF THE DEFENDANT. MANY OF THESE

COMPLAINTS ARE FOR RELATIVELY MINOR CRIMINAL OFFENSES SUCH AS HARASSMENT, DESTRUCTION OF PROPERTY, SIMPLE ASSAULT, DISORDERLY CONDUCT AND THE LIKE. SUCH OFFENSES AS THESE OFTEN ARISE OUT OF ARGUMENTS BETWEEN FRIENDS OR NEIGHBORS WHICH RESULTED IN ONE PARTY SLAPPING THE OTHER, A MINOR SCUFFLE, A BROKEN WINDOW OR OTHER ACTIVITY NOT UNCOMMON TO URBAN LIVING, BUT NEVERTHELESS IS TECHNICAL CRIMINAL IN NATURE.

IF ALL SUCH CASES WERE PROSECUTED, THE COURTS WOULD BE BACKLOGGED EVERYWHERE AS MANY NOW ARE. EVEN IF THE COURTS COULD PROCESS ALL SUCH CASES, THEY COULD NOT RESOLVE THE REAL PROBLEMS, I.E., THE CAUSES OF THE TECHNICALLY CRIMINAL BEHAVIOR; THE COURTS ARE RESTRICTED TO FINDING THE DEFENDANTS BEFORE THEM EITHER INNOCENT OR GUILTY OF THE ALLEGED OFFENSE AND MUST OPERATE WITHIN VERY NARROW PARAMETERS OF THE STRICT EVIDENTIARY AND PROCEDURAL RULES OF CRIMINAL PROCEDURE.

SO WHAT HAS BEEN DONE? NCDS OPERATED ON THE PREMISE THAT THE CRIMINAL PROCESS WAS NOT THE PROPER FORUM FOR THE SETTLEMENT OF THESE COMMON URBAN LIVING DISPUTES. WHAT WAS NEEDED WAS A PROCEDURE INDEPENDENT OF THE COURT WHICH WOULD BE, QUITE SIMPLY, FAST, CHEAP AND EASY. THE 4-A PROGRAM PROVIDES SUCH A PROCEDURE AND IN THE PROCESS RESOLVES THE UNDERLYING CAUSE OF THE CRIMINAL CONDUCT WHILE PREVENTING A DEFENDANT FROM BEING STIGMATIZED BY A CRIMINAL CONVICTION OR ARREST RECORD.

HERE IS HOW IT WORKS. LET US IMAGINE, IF YOU WILL, THAT A CITIZEN HAS BEEN WRONGED AND GOES TO THE PROSECUTOR'S OFFICE TO REQUEST A WARRANT FOR THE DEFENDANT'S ARREST. AT THIS POINT, THE PROSECUTOR ADVISES THE COMPLAINANT OF THE 4-A PROGRAM IF THE

PROSECUTOR FEELS THAT THE COMPLAINT OR OFFENSE IS ONE OF THE TYPES OF CASES TO BE SO REFERRED. IF THE COMPLAINANT VOLUNTARILY AGREES TO SUBMIT THE DISPUTE TO ARBITRATION, THE DEFENDANT WILL THEN BE CONTACTED BY OUR STAFF, ADVISED OF THE ARBITRATION ALTERNATIVE AND ASKED IF HE OR SHE WOULD LIKE TO VOLUNTARILY SUBMIT THE DISPUTE TO ARBITRATION. IF THE DEFENDANT DOES NOT DESIRE TO SUBMIT, THEN THE COMPLAINANT CAN PROCEED WITH THE COMPLAINT FOR A WARRANT.

PLEASE NOTE THAT I HAVE CONTINUALLY EMPHASIZED THE WORD "VOLUNTARY". THIS MEANS EXACTLY WHAT IT SAYS. WE STRIVE DILIGENTLY TO ENSURE THAT SUBMISSIONS ARE INDEED VOLUNTARY. WE DO NOT WANT CITIZENS REFERRED TO US IF THEY HAVE BEEN COERCED INTO GIVING UP THEIR LEGAL RIGHTS TO "THEIR DAY IN COURT". AS YOU CAN PROBABLY GUESS, DEFENDANTS ARE USUALLY QUITE WILLING TO SUBMIT THEIR CASES TO US.

AT THE OUTSET, BOTH THE COMPLAINANT AND THE DEFENDANT ARE ADVISED OF THE PURPOSE OF THE 4-A PROGRAM, OF ITS PROCEDURES, THE POSSIBLE CONSEQUENCES AND THEIR RIGHTS, INCLUDING THEIR RIGHT TO BE REPRESENTED BY LEGAL COUNSEL, TO PRESENT EVIDENCE AND TO BRING WITNESSES. THESE STATEMENTS ARE ALSO REPEATED TO THE PARTIES JUST BEFORE A HEARING BEGINS.

OF COURSE, THERE IS NO REASON A PERSON WHO HAS ALREADY BEEN ARRESTED CANNOT SUBMIT TO THE 4-A PROGRAM ALSO. MANY JUDGES HAVE REFERRED CASES. IT IS ALSO INTERESTING TO NOTE THAT ONCE THE PROGRAM BECOMES KNOWN TO ATTORNEYS, THEY OFTEN REQUEST THAT THEIR CLIENTS BE ALLOWED TO SUBMIT TO ARBITRATION WITH THEIR CASES BEING CONTINUED IN CONTEMPLATION OF DISMISSAL.

ONCE THE PARTIES HAVE VOLUNTARILY SUBMITTED, THEY ARE NOTIFIED OF A HEARING DATE AT WHICH TIME THEY ARE TO APPEAR IN THE

PRIVATE OFFICES OF THE 4-A PROGRAM AWAY FROM THE COURTHOUSE. ALTHOUGH THE PARTIES HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNE IF DESIRED, OUR EXPERIENCE TO DATE REVEALS THAT THE MAJORITY OF THE PARTIES HAVE NOT CHOSEN TO BE SO REPRESENTED.

THE HEARING IS HELD IN A PRIVATE ROOM WITH THE PARTIES AND THE ARBITRATOR SEATED AROUND A CONFERENCE TABLE. AT THIS POINT THE FLEXIBILITY OF THE 4-A PROGRAM AGAIN REVEALS ITSELF. GENERALLY, THE RULES OF EVIDENCE APPLIED IN THE COURTROOM DO NOT APPLY BUT THIS DOES NOT HAVE TO BE SO. FORMAL OATHS OF ARBITRATORS PARTIES AND WITNESSES MAY BE TAKEN OR NOT TAKEN. WITNESSES MAY BE SEATED IN THE HEARING ROOM OR EXCLUDED EXCEPT FOR THE PERIOD OF THEIR TESTIMONY. THE PROCEEDING MAY BE QUITE FORMAL OR CASUAL WITH SMOKING ALLOWED AND COFFEE SERVED. SOME OR ALL OF THESE VARIABLES CAN BE SET AS GENERAL POLICY OR CAN BE LEFT UP TO EACH ARBITRATOR'S DISCRETION.

NCDS HAS ALWAYS FELT THAT THIS GREAT FLEXIBILITY IN DESIGN AND APPLICATION IS THE GENIUS OF THE 4-A PROGRAM. THIS IS AGAIN APPARENT IN THE RESULT OF A HEARING.

CASES ARE HEARD BY A MEMBER OF A PANEL OF PERSONS SPECIALLY SELECTED AND TRAINED TO DO THIS WORK. THE PANEL MEMBERS ARE RESPECTED MEMBERS OF A COMMUNITY WHO ARE KNOWN TO BE REASONABLE OPEN-MINDED AND ABLE TO CONDUCT AN INVESTIGATORY HEARING AND RENDER A DECISION IF NECESSARY. THE MEMBERS ARE TRAINED BY NCDS IN THE MANY TECHNICALITIES AND TECHNIQUES REQUIRED IN EXPLORING AND ATTEMPTING TO RESOLVE PERSONAL URBAN LIVING PROBLEMS.

IN ROCHESTER, N.Y., FOR EXAMPLE, SELECTED PERSONS REPRESENT A CROSS SECTION OF THIS COMMUNITY RECEIVE 6 DAYS OF FORMAL TRAINING FOLLOWING THIS TRAINING, THE PROSPECTIVE PANELISTS OBSERVE ACTUAL

ARBITRATION CASES AND THEN PARTICIPATE AS CO-ARBITRATORS WITH QUALIFIED ARBITRATORS TO GAIN ADDITIONAL EXPERIENCE, AND SKILLS. AFTER THIS, IF THE PERSON HAS DEMONSTRATED THE NECESSARY ABILITY, HE OR SHE WILL BE ASSIGNED CASES AS THE SOLE ARBITRATOR.

ALL 4-A PROGRAMS ARE ABLE TO PROVIDE HEARINGS IN SPANISH, AND THE ROCHESTER OFFICE RECENTLY TRANSLATED ALL NECESSARY FORMS INTO THAT LANGUAGE. THIS OFFICE HAS ALSO PROVIDED HEARINGS FOR DEAF MUTES.

AS A HEARING BEGINS, THE ARBITRATOR HAS ONE GOAL: THAT IS, ATTEMPTING TO MEDIATE BETWEEN THE PARTIES TO GET THEM TO AGREE TO A SOLUTION OF THEIR MUTUAL PROBLEM. IF THE ARBITRATOR SUCCEEDS HE WILL SET FORTH IN WRITING THE AGREEMENT AS TO THE COURSE OF CONDUCT WHICH EACH PARTY AGREES TO FOLLOW VIS-A-VIS EACH OTHER AND AS TO ANY OTHER PERSONS INVOLVED SUCH AS THEIR CHILDREN, NEIGHBORS, ETC. THIS AGREEMENT IS SIGNED BY THE PARTIES WITH EACH RECEIVING A COPY.

SUCH CONSENT AGREEMENTS ARE NOT UNUSUAL. MANY TIMES THE HEARINGS MORE TRULY SERVE A THERAPEUTIC VALUE IN THAT EACH PARTY HAS HAD THE OPPORTUNITY TO TELL HIS OR HER STORY TO AN IMPARTIAL "OFFICIAL". ONCE THE PARTIES HAVE VENTED THEIR EMOTIONS AND TOLD THEIR STORIES, THEY ARE MORE WILLING TO GIVE AND TAKE A LITTLE TO REACH AN AGREEMENT.

OF COURSE, THERE ARE MANY OCCASIONS WHEN THE PARTIES WILL NOT AGREE. IN SUCH CASES THE ARBITRATOR MUST ABANDON HIS MEDIATION EFFORTS AND BE REQUIRED TO RENDER A DECISION BASED ON THE FACTS PRESENTED. THE DECISIONS AND AWARDS ARE WRITTEN WITH COPIES BEING SENT TO ALL PARTIES. WHETHER A COPY OF A CONSENT

AGREEMENT OR AWARD GOES TO THE COURT MAKING THE REFERRAL IS DEPENDENT UPON THE DESIGN OF THE PROGRAM IN A PARTICULAR CITY.

THE 4-A PROGRAM ALLOWS FOR THE ASSESSMENT OF MONETARY DAMAGES OR OTHER FORMS OF COMPENSATION WHEN APPROPRIATE. THIS MAY MEAN PAYMENT FOR A MEDICAL BILL, A TORN COAT, A BROKEN WINDOW ETC. NEITHER PUNITIVE DAMAGES NOR FINES ARE ALLOWED. AS PART OF THE AWARD, THE ARBITRATOR NOT ONLY MAY DEAL WITH THE PAST AND PRESENT PROBLEMS IN THE CONDUCT OF THE PARTIES, HE MAY ALSO DEAL WITH THEIR FUTURE CONDUCT BY IMPOSING CONDITIONS ON BOTH SIDES, SUCH AS AVOIDING EACH OTHER, THAT WILL LESSEN THE LIKELIHOOD OF FUTURE CONFRONTATIONS. THE ARBITRATORS ALSO MAKE USE OF SEVERAL OTHER CREATIVE REMEDIES, INCLUDING SETTING RULES FOR USE OF DRIVEWAYS, OBTAINING APOLOGIES, REQUIRING A PARTY TO FIND A JOB, REPAIR DAMAGES, SUPERVISE CHILDREN BETTER, RETURN PROPERTY, ETC.

THE L.E.A.A. EVALUTORS WHO RECENTLY STUDIED OUR PHILADELPHIA OPERATION RECOMMENDED THAT THE ARBITRATORS BE EXPRES EMPowered TO REFER PARTIES TO SOCIAL SERVICE AGENCIES SINCE MANY DISPUTES APPEARED TO REQUIRE FAMILY AND MARITAL COUNSELING OR HEL FOR PROBLEMS SUCH AS MENTAL RETARDATION, ALCOHOLISM, AND DRUG ABUSE. ALTHOUGH NOT EXPRESSLY EMPowered BY THE COURTS TO DO SO, SUCH REFERRALS ARE NOT UNCOMMON IN OUR PRESENT PROGRAMS. OFTEN THE SEEKING OF SUCH SERVICES IS DONE ON A VOLUNTARY BASIS BY WAY OF CONSENT AGREEMENTS.

YOU ARE NOW PROBABLY WONDERING WHAT SANCTIONS ARE AVAILABLE SHOULD A PARTY FAIL TO ABIDE BY THE AGREEMENT OR AWARD.

LET US FIRST LOOK AT WHAT MAY OCCUR IF THE DEFENDANT DEFAULTS.

FIRST THE DEFENDANT IS CONTACTED BY THE 4-A PROGRAM STAFF TO DISCUSS COMPLIANCE. IF THE DEFENDANT STILL FAILS TO COMPLY, THE CASE IS REFERRED BACK TO THE COURT. DEPENDING AGAIN ON WHAT HAS BEEN DESIGNED AND THE POINT OF REFERRAL, THE COURT MAY RE-ISSUE THE OLD WARRANT AND/OR MAY USE ITS CONTEMPT POWERS TO ENFORCE THE AGREEMENT OR AWARD. THE POSSIBILITY OF RE-ISSUING THE WARRANT OR USING CONTEMPT POWERS IS EXPLAINED TO ALL PARTIES PRIOR TO THEIR SIGNING THE VOLUNTARY SUBMISSION FORMS TO USE ARBITRATION.

SHOULD IT HAPPEN THAT THE AWARD OR AN AGREEMENT IS NOT HONORED BY THE COMPLAINANT, CONTEMPT POWERS COULD BE USED AGAINST HIM AND, IN ADDITION, HE COULD BE REFUSED THE OPPORTUNITY TO RE-APPLY FOR A WARRANT IN THE CASE IN QUESTION.

ANOTHER WAY TO ENFORCE AN AWARD IS TO FILE A CIVIL ACTION. MANY STATES, INCLUDING NEW YORK, HAVE MODERN ARBITRATION STATUTE MAKING ENFORCEMENT QUITE SIMPLE. THOSE STATES WITHOUT SUCH LAWS DO NOT LEAVE THE AWARD UNENFORCIBLE. IN THOSE STATES, A SIMPLE CONTRACT ACTION BASED ON OLD COMMON LAW PLEADINGS IS ADEQUATE.

THESE COMMENTS ON STATUTORY LAWS LEADS US TO YOUR NEXT LOGICAL QUESTION; "WHAT ENABLING LEGISLATION IS NEEDED TO ESTABLISH THIS PROGRAM?" THE ANSWER IS SIMPLE: ABSOLUTELY NONE. AN EXAMPLE OF THIS IS OUR KANSAS CITY PROGRAM WHERE POLICE OFFICERS WILL BE MAKING 4-A REFERRALS AT THE SCENE OF A DISTURBANCE CALL. THE STATE OF MISSOURI HAS NO ARBITRATION LAW WHATSOEVER. THERE WE SIMPLY RELY ON THE COMMON LAW THEORY OF CONTRACT, THAT IS, TWO PARTIES AGREE TO HAVE A THIRD IMPARTIAL PARTY RESOLVE THEIR PROBLEM

AND THEY AGREE TO BE BOUND BY THE RESULTS. IT IS NOTHING MORE THAN A SIMPLE CONTRACT,

THROUGHOUT MY TALK SO FAR, I HAVE BEEN REFERRING TO TWO PARTIES: A COMPLAINANT AND A DEFENDANT. THIS IS NOT ALWAYS THE CASE AS I AM SURE YOU REALIZE. MANY DISPUTES ARE MULTI-FACETED. A GOOD EXAMPLE OF THIS IS THE CASE RECENTLY REFERRED TO THE ROCHESTER OFFICE BY ONE OF THE LOCAL JUDGES. THAT CASE INVOLVED 9 PARTIES WITH 13 SEPARATE BUT INTER-RELATED CHARGES AND COUNTER-CHARGES. AS ONE PERSON STATED, "IF YOU BELIEVED EVERYONE IN THIS CASE, THEY WOULD ALL GO TO JAIL AND SOME OF THEM WOULD HAVE TO GO TWICE." THIS CASE WAS SUCCESSFULLY RESOLVED BY THE USE OF EXTENSIVE MEDIATION EFFORTS.

THE 4-A PROGRAM IS BUT ONE ALTERNATIVE TO PROSECUTION. THERE ARE OF COURSE MANY OTHERS INCLUDING FIRST OFFENDER PROGRAMS, DRUG REHABILITATION PROGRAMS, SPECIALIZED COUNSELING PROGRAMS AND SO ON. LACKING EXPERTISE IN THESE AREAS, I SHALL HAVE TO LEAVE THEM TO THE EXPERTS.

HOWEVER, I WOULD, FOR A BRIEF MOMENT, LIKE TO REFER TO ANOTHER ALTERNATIVE PROGRAM OPERATING IN ROCHESTER, N.Y. THAT IS PRE-TRIAL RELEASE PROGRAM, INC.

THAT ORGANIZATION TAKES DEFENDANTS WHO ARE UNABLE TO POST A BOND AND ARRANGES FOR THEIR RELEASE ON A CONTRACTUAL RECOGNIZANCE BASIS. AN ACTUAL CONTRACT IS ENTERED INTO BY THE DEFENDANT IN WHICH CERTAIN CONDITIONS ARE STIPULATED THAT THE DEFENDANT MUST PERFORM IN ORDER TO STAY OUT OF JAIL UNTIL HIS TRIAL DATE. NCDS HAS NO INVOLVEMENT IN NEGOTIATING THIS CONTRACT

WITH THE DEFENDANT NOR IN SEEING THAT THE TERMS ARE MET. HOWEVER, WE HAVE RECENTLY AGREED WITH PRE-TRIAL RELEASE PROGRAM, INC., TO PROVIDE AN IMPARTIAL HEARING AND MEDIATION PROCESS ON GRIEVANCES ARISING OUT OF THESE CONTRACTS. IN EFFECT, IT IS A DUE PROCESS HEARING ON ALLEGED VIOLATIONS OR ABUSES OF THE CONTRACT WHICH IS GIVEN TO THE DEFENDANT BEFORE THE CONTRACT IS DECLARED TO HAVE BEEN BREACHED AND THE DEFENDANT IS SURRENDERED TO JAIL TO AWAIT TRIAL.

OUR ROLE IS OF MEDIATOR ONLY. WE CANNOT ORDER THE PARTIES TO DO ANYTHING, NOR CAN WE ALTER THE TERMS OF THE CONTRACT OR ASSESS FAULT. WE SIMPLY ATTEMPT TO GET THE PARTIES TO RESOLVE THE GRIEVANCE ARISING OUT OF THE CONTRACT. NOTHING THAT OCCURS IN THE MEDIATION SESSION WILL BE REPORTED TO THE COURT AND NOTHING WILL BE RECORDED EXCEPT FOR THE FINAL AGREEMENT. THESE HEARINGS ARE CONFIDENTIAL.

THE 4-A PROGRAM, AS WELL AS ALL OTHER NCDS' DISPUTE SETTLEMENT EFFORTS, RESPECTS THE PRIVACY OF THE PARTIES INVOLVED AND PROTECTS THE CONFIDENTIALITY OF ANY PROCEEDING ON THE SAME PRIVILEGED INFORMATION BASIS AS DO ATTORNEYS FOR CLIENTS AND DOCTORS FOR PATIENTS.

THERE ARE MANY OTHER ALTERNATIVES TO PROSECUTION-- SOME FORMAL, SOME INFORMAL--IN WHICH THE NCDS AND OTHER ORGANIZATIONS HAVE EXPERIENCE. MUCH OF OUR WORK INVOLVES ESTABLISHING MECHANISMS TO RESOLVE PROBLEMS AT AN EARLY STAGE IN THEIR DEVELOPMENT BEFORE THE FRUSTRATION OF INDIVIDUALS OR ORGANIZATIONS IS MANIFESTED IN CRIMINAL CONDUCT. EXAMPLES OF SUCH MECHANISMS WOULD BE THE ARBITRATION OR MEDIATION OF DISPUTES ARISING OUT OF SUCH RELATIONSHIPS

AS LANDLORD-TENANT, CONSUMER-RETAILER, STUDENT-FACULTY, INMATE-ADMINISTRATION, POLICE-COMMUNITY, AND SO ON.

ANOTHER WAY WE PROVIDE ALTERNATIVES TO PROSECUTION IS TO PROVIDE TRAINING TO A BROAD VARIETY OF COMMUNITY, BUSINESS AND GOVERNMENTAL GROUPS AS WELL AS INDIVIDUALS IN THE AREAS OF NEGOTIATION TECHNIQUES AND THE USE OF THIRD PARTY IMPARTIALS. WE ARE OF THE BELIEF THAT IF PEOPLE HAVE KNOWLEDGE OF WAYS IN WHICH DISPUTES CAN BE SETTLED WITHOUT RESORTING TO ANTI-SOCIAL BEHAVIOR, AND HAVE THE ABILITY TO UTILIZE SUCH METHODS, THAT THE NEED FOR PROSECUTION IN COMMUNITY PROBLEMS WILL BE DIMINISHED.

IN EFFECT, WHAT I AM SAYING IS THAT WE SHOULD ALL STRIVE TO PROVIDE THE MECHANISMS AND KNOWLEDGE AND TO TRANSFER THE NECESSARY SKILLS TO THE PEOPLE SO THAT THEY WILL BE ABLE TO AT LEAST AGREE TO DISAGREE AGREEABLY.

THANK YOU.

END