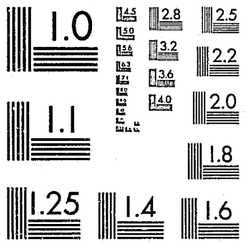

Community Dispute Settlement Centers for Juveniles: TECHNICAL ASSISTANCE MANUAL

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COMMUNITY DISPUTE SETTLEMENT CENTER FOR JUVENILES: A TECHNICAL ASSISTANCE MANUAL

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for
Office of Research and Planning
Supreme Court of Wisconsin

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An important aspect of any criminal justice system is its willingness to experiment, to try new approaches to problems which have confounded or eluded established procedures. Often, however, fiscal constraints limit what communities and courts can attempt. In support of innovative programs designed to provide alternatives to adjudicating disputes involving juveniles, the Office of Planning and Research, Supreme Court of Wisconsin through the Administrative Committee of Courts will provide two year funding support for two or three such programs.

Community Dispute Settlement Centers offer alternative methods--mediation, arbitration, conciliation--for resolving disputes; these methods focus upon the quality of the personal relationships involved rather than solely the issue of facts. Alternatives, further, look toward the fast and effective resolution of the disputes. For adults and juveniles who must continue living and working together these methods might be preferable to court adjudication in handling minor conflicts. For the personnel of the criminal justice system, these programs might provide a response to the problems of court congestion and frustration officials meet from bewildered and impatient citizens.

To provide communities and circuit courts with the necessary theoretical and practical background information on Citizen Dispute Settlement Centers, the Office of Planning and Research commissioned the Center for Public Representation to develop this technical assistance manual. The work should aid planners and officials in developing innovative experiments in the resolution of minor disputes involving juveniles.

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Rob Sikorski
Project Assistant

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INTRODUCTION AND SUMMARY

The Center for Public Representation was contracted by the Office of Planning and Research, Supreme Court of Wisconsin through funds provided by the Wisconsin Council on Criminal Justice to develop this technical assistance manual to aid counties and circuit courts in applying for funds under the Wisconsin Council on Criminal Justice's Program 11E: Community Dispute Settlement Centers (Juveniles)(see appendix 1).

Monies available under 11E are for two year experiments in the employment of alternative resolution techniques to non-petition juvenile matters. The intent of this experimental program is to investigate the effectiveness of alternative methods -- conciliation, mediation, arbitration, crisis intervention, community courts -- for improving the juvenile justice system. Goals of the community dispute settlement centers are effective and efficient processing of minor disputes involving juveniles, lessening of the court's juvenile caseload thereby freeing up time for concentrating on more serious juvenile offenses, and providing for increased community and youth participation in the resolution of conflicts.

Throughout the U.S. similar projects for juveniles and adults are now in operation. A portion of this manual consists of surveying and appraising these programs for possible replication in Wisconsin (see appendices 2 - 5). *It should be made clear from the beginning that any replication of these programs without considering local conditions cannot succeed.* The summaries are intended as succinct overviews of the programs. Counties and courts interested should make further contacts with the programs for more detailed information. The following descriptive categories are presented in the summaries:

1. the nature of the community served;
2. the type of sponsoring agency;
3. ties with local community and service agencies;
4. project office location;

5. project objectives;
6. project case criteria;
7. referral sources;
8. intake procedures;
9. resolution techniques;
10. project staff;
11. hearing staff training;
12. case follow-up procedures;
13. project costs;
14. evaluation.

In some instances programs utilized particularly interesting approaches. We have decided to place an asterisk (*) next to program elements which we consider worth particular consideration for replication. Otherwise, evaluative and critical comments by the Center are left for part 14 of each summary.

In addition to program summaries, the manual expends considerable space in explaining the procedures for planning and implementing programs. Emphasis is placed on:

1. identifying the problems which the proposed programs will address;
2. developing a set of clearly stated objectives;
3. choosing the administrative location for the program;
4. defining the community and the target population;
5. defining the anticipated effect of the new program on existing juvenile justice programs;
6. identifying the available community resources and supports for implementation.

In addition to the description of planning strategies (section II) and the summary of some existing programs (appendices 2- 5), the manual sets out the historical background to the new interest in community dispute resolution (section I). The manual further considers in section III the effect of the Children's Code (Chapter 48) on program procedures. Specifically, the legal

questions discussed are:

1. voluntariness and coercion;
2. confidentiality;
3. double jeopardy;
4. time limits;
5. due process;
6. evidentiary procedures;
7. offenses hearable;
8. staff liability.

Generally, Chapter 48 does not entail any significant barriers to the implementation of community dispute settlement projects. To be sure, some projects operating in other states employ resolution procedures which may be inapplicable in Wisconsin (see comments below: community courts, 28-29). The text of the manual concludes with some critical notes concerning the application of alternative dispute resolution techniques to juvenile problems and with a set of recommendations.

In broad outline, the conclusions reached and recommendations made in our analysis of the successes and problems that community dispute settlement projects have faced and the relevance of these to similar projects in Wisconsin are:

Conclusions

1. that alternatives do broaden access to justice, in particular for people who normally would be reluctant to initiate contact with the judicial system, believing the dispute too minor or the system too unresponsive;
2. that alternatives can facilitate the resolution of broader community tensions such as racial strife in schools through early intervention into conflicts;
3. that, generally speaking, Chapter 48 supports the utilization of alternative resolution methods but may curtail or prohibit community courts and preadjudicatory restitution programs;
4. that the use of other resolution techniques will strengthen the image of the formal adjudication process

by diverting from it disputes better handled in non-adversarial proceedings, thereby freeing up court calendars for more considered examinations of disputes requiring the full panoply of the court.

Recommendations

1. that prior to implementation of any alternative strategy, a thorough survey of resources be required in order to insure maximum utilization of locally available resources;
2. that any community or circuit court implementing a project be required as part of their proposal to include a management information system conforming to standards to be established by the Office Planning and Research or its designee in order to insure the accumulation of comparable data among the programs funded;
3. that programs be broad enough in scope to include youth not only as respondents to a dispute but as complainants, volunteers, and members of a community advisory board;
4. that programs consider the use of volunteer lay advocates to assist youth at hearings in order to avoid too great a power imbalance;
5. that programs develop flexibility as regards hearing times and locations in order to avoid inconvenience to participants and to strengthen the image of a community dispute settlement center as responsive to community interests.

SECTION I

JUVENILE COURT: THE EXPERTS

Although popular dissatisfaction with the court's handling of juvenile crime is a long standing tradition in American life, this dissatisfaction has been transferred increasingly from print to practice. The earliest reforms were responses to the turmoil of the city streets as the number of immigrant children grew to what many viewed as alarming proportions.[1] Before the late nineteenth century, lawyers and journalists were likely to describe juvenile justice as a homespun, neighborhood system. Youth were reprimanded on the spot by a neighbor or local constable. At least, this is the image conveyed in later literature taking its nostalgic look backwards. Our general dissatisfaction with the lack of effective and appropriate responses to the problem of youth crime is always contrasted to some once golden age of law and order. With the possible exception of the Depression and war years, however, youth crime always has been a major social dilemma for our legal system.[2]

The first significant institutional response to the problem of juvenile crime per se was the founding of houses of refuge in the 1820s and 1830s.[3] Administrators of these houses sought to remove from the streets children found in criminal and immoral surroundings or those thought likely to fall into criminal ways. The overall image of youth espoused by the houses and their propagandists was that of the adolescent as victim; this permitted incarceration without indictment or trial.[4]

Leading publicists for social reform portrayed the life of immigrant families as a wretched contrast to American moral standards. By dramatically pointing to the drunkenness, loose morals, shiftlessness, and criminality of the foreigner, one was better able to identify and define the valued qualities

of American life.[5]

The movement for houses of refuge was ineffective in stemming the growing problem of youth crime. The next significant administrative development in juvenile law was the rise of the juvenile courts beginning with Illinois in 1899.[6] The new legislation declared that "no child under sixteen years of age shall be considered or treated as a criminal; that a child under that age shall not be arrested, indicted, convicted, imprisoned, or punished as a criminal."[7]

Although at the time hailed as an advancement in the humane treatment of juveniles -- youth would no longer be labeled as criminal or housed in adult prisons -- the new courts in fact forestalled any progress in juvenile rights until In re Gault [387 U.S. 1 (1967)]. At once the new courts formalized the distinction between the adult and the youthful offender, abrogated the concept of mens rea for juveniles, and established the doctrine of the court's parental right over children.[8] Judges and juvenile officers and custodians acting through the concept of parens patriae -- sovereign power of guardianship over persons under disability -- developed an extensive practice of discretionary and nonreviewable justice.[9]

The intent of the emerging concept of juvenile delinquency was the rehabilitation of the young through early intervention of the state. It further provided that youths would not be subjected to the stigmatization of being labeled as criminals. Punishment and retribution, the popular keystones of the adult system, were no longer the imperatives of the juvenile justice system. The sentences prescribed by judges were not punishments but opportunities to reform children.[10]

The new juvenile court acts solidified the controlling image of young Americans, especially those coming from alien and impoverished backgrounds. The ideology of this system was clearly deterministic: youths could not help their biological

and social heritage. It was the obligation and the right, therefore, of the courts to intervene for their protection.[11] Juvenile judges did not decide on find legal issues nor weigh conflicts of facts and law; they were, instead, experts in social welfare. Their commission was to act in "the best interest of the child." In this new role the judges sat in a preferred position in deciding upon the social and moral needs of the youths appearing before them. Gradually the juvenile judges and other officials of the system began to impose their view on the other major institutions involving children such as family and schools.[12]

In practice, children were remanded to institutions often far worse than their "slum" homes or the adult prisons. Moreover, the monies to provide adequate facilities were rarely forthcoming. State and municipal budgets managed to pay less attention to children's needs than to the needs of the voting constituency. The meager amounts appropriated often were siphoned off by court clerks, judges, and institutional heads. The ideal of reeducation gave way early on to the reality of restricted funds, poorly trained staff, and political patronage.[13]

The upshot of the juvenile court movement in the early twentieth century was not the successful rehabilitation and reintegration of delinquent youths into the social mainstream, but more likely the undermining of non-governmental fora for conflict resolution.[14] The juvenile court emerged as the legitimate site for rectifying a youth's waywardness, replacing local institutions -- churches, ward bosses, the corner cop -- as the active agency. Many authorities began to assume the legitimacy of the juvenile court to act as the expert in the effective resolution of juvenile problems. Cases previously handled locally were, instead, relayed on to the juvenile court. What remained, however, was the irritating gap between the ideal and the real in the court's daily workings.

JUVENILE COURT: RULE ORIENTATION

By the 1960s many of the irritating gaps between the ideal and real had degenerated into systematic abuses of children's rights and lives.[15] In re Gault (1967) and companion cases dictated a new direction for the juvenile courts. The holding In re Gault noted the general movement of juvenile courts toward the imposition of penal sanctions. If, then, these courts were meting out penal sentences rather than fostering rehabilitation, if communities and youth were equating the delinquent with the criminal, youths were entitled to some minimum legal guarantees such as right to counsel and right to confront witnesses. At least in theory, court procedures for juveniles took on a more formal dress with questions of intent, responsibility, right to counsel, and proof beyond a reasonable doubt adhering.[16]

Still, vestiges of the earlier informal paternalism, some good, some not, remain. The increased formalism in courtroom proceedings has had the effect of driving informalism into the court antechambers, places, perhaps, even less visible to outside scrutiny than our courts. Plea bargaining has now become an established part of many juvenile proceedings. The emergence of new informal procedures tends to perpetuate the exclusionary status of the juvenile defendant. Now instead of the judge acting as expert and pronouncing on what is in the best interest of the child, prosecutor and defense counsel may pronounce.

Part of In re Gault, et al., was intended to enlarge youth participation in proceedings. The new model for the juvenile court acted to strike a balance between the paternal and the formal in which rights were guaranteed but also where latitude remained for relaxed consideration of the alleged offense and and offender. Youths through counsel now could introduce their side of the tale. The idea was for judges, prosecutor, defense counsel and social experts to balance the evidence and produce

a resolution in the best interests of the child and the community.

The limitations on the court's holdings were their relatively narrow focus. A far more comprehensive examination of the juvenile justice system was needed if effective rather than cosmetic changes were to be introduced. In Wisconsin the first step was the Juvenile Justice Goals and Standards (1975) followed by additional examinations of the judicial system by such groups as the League of Women Voters and John Howard Association.[17] Then, the 1978 revisions of the Wisconsin Children's Code (Chapter 48) marked a significant move on the state's part to produce a comprehensive reevaluation of juvenile justice.[18] Although the product of many compromises, the Code provides a sound, reasonably integrated approach. At points, the Code extends the limits of the court's requirements such as providing counsel at earlier stages.

Despite the obvious need for the increased protection of juvenile rights and for guaranteeing accountability in the justice system through the application of more formal procedures, a feeling that such formality overly confines a community's ability to meet the problems of its youth has also emerged.[19] Part of the early dissatisfaction with Chapter 48 is a result of misconstruing its intent. The Code was not to provide solutions to the problems of juvenile crime or to modify legal roles, per se; its intent was to establish the boundary of the permissible and to set the challenge for the development of new approaches that paid attention to individual rights and freedoms. Neither the holdings of the courts nor Chapter 48 were meant to inhibit legal innovations. Rather the goal was to establish fairness, equity, and accountability in the treatment of youth, establishing limits to judicial and administrative discretion.[20]

A major thrust of Chapter 48 is the inclusion of the youth as

an active participant in the adjudication process. Technically, the youth is no longer simply the subject of hearings but is able to share in the proceedings through an attorney responsive to his or her requests. Furthermore, the judge at various stages of the proceedings is required to ask the youth if he or she fully understands what is taking place and what rights he or she has.[21] Recognition that a youth has a role to play in decision making establishes the groundwork for the development of alternative dispute resolution methods in which the youth will assume a primary role, actively presenting his or her side and participating cooperatively in achieving a mutually acceptable resolution. Counsel -- professional or lay -- might be present to facilitate a youth's participation, providing moral support and advice.

The movement for the development of dispute resolution alternatives is a continuation of a process begun in the late 1960s aimed at diverting youths from deeper penetration into the criminal justice system.[22] Diversion followed the same theme as the earlier juvenile justice reform movements: separation of the first or minor offender from the serious, hardened offender. In diversion, the youth remains the subject of hearings and treatment.

A response to the movement of youth crime into middle class suburban communities, diversion programs focused on such features as drug counseling, special education, and family crisis intervention. Critics of these programs noted two effects contrary to expectations. First, the programs often included youths who but for the programs would have been let off with a warning. This is the problem of the "net widening" effect.[23] Another consequence, somewhat more problematical, is a pattern of increasing recidivism rates among participants. That is, diversion did not produce a decline in participants' contact with police.

Alternatives are a response, in part, to the difficulties

encountered in diversion programs. Rather than divert a youth from the judicial system, the system is expanded to include non-adjudicative means of resolving disputes. The intended effects are to demonstrate the consequences of acts, to involve youths actively in the resolution of their conflicts, and to illustrate that criminal conflict and legal reaction are not the only means of resolving disputes. For Wisconsin, the interest in alternative adjudications, then, is a response to the challenge of Chapter 48: the development of programs serving the best interests of both juveniles and the community while insuring a balance between the rights of both.

COMMUNITY DISPUTE SETTLEMENT CENTERS: THE NEGOTIATORS

At the same time that juvenile court procedures were becoming more formal under the pressure of Supreme Court holdings and state statutory modifications, criminal justice planners began developing alternative resolutions programs. These planners were interested in adapting labor mediation techniques, anthropological models, consumer advocacy and hotline programs, and compulsory arbitration of small claims and malpractice suits to minor criminal offenses and civil matters affecting the quality of relationships between individuals.[23a] Many national organizations, among them the American Arbitration Association, the Ford Foundation, the American Bar Association, the New World Foundation, and the U.S. Department of Justice, have sponsored experimental projects and research programs to further examine the application of alternative techniques to the problems of crime and community alienation.[24]

Planners established a number of premises and objectives. Key among the premises was the idea that formal court adjudication was often inappropriate for disputes between individuals maintaining ongoing relationships. Because of the "win/loss" outcome of court action, individuals often were reluctant to seek such intervention in instances where their continuing ties were important. The availability of conciliation,

mediation, and arbitration programs was intended to provide resolution approaches conducive to people who wished or needed to maintain relationships.

The widening of access to justice through the availability of alternative techniques is a clear response to the image of the citizen as consumer: to some extent the individual should be able to locate within government methods for moderating conflicts that fit the individual's needs.[25]

Another emphasis was the provision of an efficient and effective program for the resolution of minor disputes. Judicial planners concerned with growing case backlogs in the courts and in the prosecutors' offices viewed alternative mechanisms as a means of partially relieving this load and freeing valuable time and personnel for consideration of major disputes. For the average citizen involved in a dispute, the availability of programs at favorable locations and times reduces further losses through missing work, traveling, etc.[26]

A further stated objective of the community dispute settlement programs is increased community livability. Programs located in the local neighborhoods, according to this rationale, become nodes for the rejuvenation of community life. A key element in these programs is the articulation of local norms against which individual disputes are argued and resolved. Further, the reliance of community-located programs on lay citizens as mediators involves people in the well-being of their community.

Initially, alternative programs were associated closely with local court bureaucracies. Gradually, grass root, community-controlled programs also have developed. The concepts underlying these two program styles -- official and community -- diverge at several critical junctures, most notably in areas of accountability and ultimate purpose.

Among the earliest projects were the Philadelphia 4-A (Arbitration as an Alternative) program, organized in 1969, followed in 1971 by the Bronx Neighborhood Youth Diversion Program Forum and the Columbus, Ohio Night Prosecutor's Program.[27] Alternatives for the handling of minor criminal offenses and civil actions soon emerged in many other states. Daniel McGillis, an early evaluator and critic of community dispute settlement programs, recently noted the presence of more than 100 programs in operation with some states, notably Florida, California, Ohio, New Jersey, New York and Massachusetts, heavily committed to implementing such programs.[28]

The most substantial, if not most significant, move in the field of alternative resolution techniques has been the U.S. Department of Justice's sponsorship of neighborhood justice centers in Los Angeles, Kansas City, and Atlanta. Each program operates from a different model, all are well-financed, and are being closely scrutinized by program evaluators and by private researchers. It is hoped that the final documentation on these programs can help clarify what is to be the role of community dispute settlement programs in the future of judicial administration.[29]

A further recent event was the Congress' passage of the Minor Dispute Resolution Act of 1979 which provides $10 million for the expansion of existing programs as well as for the development of new ones.[30]

SECTION II

PROGRAM PLANNING

In pursuing alternatives to formal court adjudication for juveniles, communities must assume a critical perspective regarding the operation of their juvenile justice system. An understanding of the present juvenile justice system and how it works is a necessary beginning for the development of proposals for alternatives. Among the factors that planners should examine are the goals and accomplishments of various youth service agencies, the burdens under which the present system is operating such as heavy court calendars and high case loads, and the present system's flexibility in responding to community interests.

Planners are advised to examine the actual operations of their juvenile justice system -- including a view of the schools, the county social services, and private agencies -- and not to assume as their starting point a hypothetical model such as is laid out in the statutes or in the circuit court administrative guidelines. Extended conversations and first-hand observations are the best methods for learning about what the juvenile justice system does.

The rationale behind this observational approach is that many offices and officials provide services not indicated in the statutes or guidelines. Planners can utilize their knowledge in two ways. Uncovering informal uses of procedures such as mediation can be the basis for arguing that presence indicates a need not so provided by the formal procedures. Secondly, observations will help indicate areas of political and personal sensitivity that need careful attention or avoidance in drawing up plans for alternatives. Finally, first-hand observation will provide planners with a sense of where an alternative can best be located within the local juvenile justice system.[1]

PROBLEMS AND OBJECTIVES

Once the operations of the system as well as its strengths and weaknesses have been established, planners may begin to develop their proposal for an alternative adjudication program for juveniles. The first step in this, even before considering the alternative resolution method, is to establish the problems facing the present system and the objectives for the alternative. Some of the problems and objectives which might justify experimentation with alternative adjudications are listed below.

Reduction of court congestion. Many programs have developed as a goal a reduction in the delays which individuals face in going to court as well as relieving court officials, district attorneys and defense attorneys from heavy case loads. Planners employing this objective should supply reviewers with the caseload per judge, indicating following the funding guidelines (see appendix 1) that the alternative will seek a 5% reduction in the caseloads. In some counties it may appear that judges are not overwhelmed with cases; if this applies in your county, examine the caseload burden in the office of the district attorney. Sometimes it happens that the burden exists at this point rather than at the court level. Again a minimum 5% caseload reduction should be the stated goal.

Planners should be able to indicate how this reduction in caseload will affect the quality of justice for the remaining cases. Some courts when faced with a caseload reduction decrease court hours rather than make available more time per case.[2] Some assurance that this will not occur should be included in the proposal.

Reduction of costs for courts and citizens. In our austere times, proposals which indicate a cost reduction for services are viewed favorably. Before accepting this as an objective, planners should understand how the economics of justice operate. Cost per case can be calculated from several

different points in the system. The total budget from law enforcement to the courts can be divided by the total number of complaints that police receive or receive and act upon. This tends to give a relatively low figure. Cost per adjudicated case is significantly higher. Planners should be able to supply these figures in the proposal. This should be compared with an approximate program cost per case of $200 based on a minimum of 200 referrals and an annual budget of $40,000. Clearly, if this is the baseline, the number of referrals will have to be substantially higher than 200, since the figure of $200/case is comparable with many present systems' expense.

In the Dade County [Florida] Citizen Dispute Settlement program costs are calculated as follows:

> Total cost of the program in 1976 was $149,954. During that time the project handled 4,149 matters, defined as all cases heard at intake whether pursued further or not. These two figures yielded a per case cost of $36.14. They then set this against a figure of $250, the cost of processing a case from intake at the prosecutor's office through to court. The $250 figure is then multiplied by 4,149, obtaining a figure of $1,037,250 -- the cost to the county if the 4,149 cases had been processed through the regular system. The savings to the county, following this approach, is obtained by subtracting $149,954 from $1,037,250 -- a savings of $887,296.[3]

These calculations, and similar ones, although they present a nice picture are not reflective of the actual comparable costs. A major difficulty is faced in determining how many of the 4,149 cases would have gone from prosecutor's intake to court. Wisconsin counties and circuit courts will confront this problem: how many of the cases handled by the alternative would have found their way into court. The grant guidelines state that there is to a five percent caseload reduction over the course of a year. That reduction, in terms of cost-benefit analysis, is an inadequate justification for the cost of the program. Thus, although reducing judicial expenses may be possible through implementing an alternative, its employment

as a reason for the alternative is among the least valid in light of present research.

Increase the time available to hear disputes. One repercussion of a heavy caseload is the decreased amount of time available for handling individual cases. Employment of an alternative can free up court time for more serious cases and permit more time for considering minor disputes in the alternative. Often these minor disputes are perceived as very important to the disputants and the quick processing of them in court is felt to be unfair by the parties concerned. Alternatives permit the disputants, within certain limits, to judge the amount of time needed to resolve the problem. This objective falls under the general banner of increased official responsiveness to the perceived needs of the citizens. Concomitant with this is the perception on the part of the disputants that in using an alternative they are the primary actors. Too often, disputants feel relegated to minor roles once a dispute enters the judicial system. The use of an alternative may avoid this feeling.

Early intervention will prevent escalation of a minor dispute into a major one. Under the theory of overload at various points in the juvenile judicial system -- from law enforcement to the courts -- minor disputes receive cursory handling because either they would be too expensive in terms of time and money or because law agents are ill-prepared to handle minor, often times recurring disputes. The availability of an alternative mechanism would allow for official intervention and assistance in disputes before they became major civil actions or criminal offenses.

This objective might be considered as a prevention method; it is intended to make available to people means of resolving conflicts before they require full scale formal intervention. Furthermore, participating in an alternative process may help individuals to learn how to handle similar disputes in the future without recourse to an official body.

Make available a process at locations and hours convenient to disputants. Victim/witness surveys often cite the complaint that participation in a hearing costs individuals lost time and money through having to miss work, travel, find babysitters, etc.[4] The same would be true of respondents: for juveniles there is the "cost" of missing school or work. Provision of an alternative in a location and at times more convenient would alleviate a major complaint concerning the judicial system.

Provide wider access to justice. The development of alternatives can assist in overcoming some of the economic and psychological barriers people feel they face in utilizing the judicial system to resolve their disputes. Harried police and prosecutors often present themselves as reluctant to allow individuals into the judicial works. Courtrooms, legal procedures, expenses can overwhelm the average individual. Often citizens view the judicial system as a world unto itself which they are at a loss to understand. An alternative can avoid this problem, for as noted above, it provides a setting in which the disputants are the main actors. People in conflict are able to feel as if they are remaining in control of the process and are active in deciding the outcome.

Providing youth with increased sense of responsibility. A youth who voluntarily choses to participate in an alternative becomes an active participant. The weight of what he/she says is as important as what is said by the other participants. The potential to demonstrate that justice can provide fairly for both parties may help stimulate in the youth an awareness of the consequences of acts. An alternative situated in the neighborhood where the conflict developed permits the youth to see how such conflicts affect the well-being of the entire community and how their resolution makes living there better for everyone concerned.

Decriminalization of minor disputes. Some planners have argued that many disputes would be more effectively resolved if kept out

of the courts. The processing of a conflict as a criminal offense may increase the general level of tension between the concerned parties. Often the all-or-nothing consequence of a courtroom verdict is excessive and, clearly, unresponsive to the problems of minor disputes among individuals maintaining ongoing relationships. Unless individuals seek a complete severance of ties, formal adjudication can produce an outcome more harmful than reconstructive for the relationship.

People also develop strategies in which, much to the annoyance of prosecutors and judges, they press charges, only to drop them at the last minute. This reflects an attempt by people to adapt a court structure to their own needs. They seek the threat of court sanction to facilitate a reduction in the conflict. This approach is utilized because local resolutions options are often no longer available; placement of an alternative adjudication in a local setting revives these resolution procedures and options.

Also, specific kinds of disputes may be better handled outside the courtroom. Factors which may come into play in deciding to remove an offense from the court include the court's failure to deter the behavior in question (school truancy or runaways) or the perception that conflicts between people maintaining ongoing relations -- such as teacher and pupil or parent and child -- are better resolved outside the court.

LOOKING AT YOUR COMMUNITY

Out of these eight categories outlined above, planners can decide which best identify the problems their juvenile justice system faces and which objectives they seek to reach through implementation of an alternative adjudication strategy. Once these problems and goals have been established, the next step is a survey of available dispute resolution resources within the community and court.

Most communities will be surprised to discover the range of alternatives already existing: churches, neighborhood associations, police, business associations, local youth councils, women's groups, the schools, to list a few of the more obvious. Many of these may not be frequently utilized or even may not be the best fora for processing disputes involving youths. Still they should be examined carefully. Possibly, an existing forum can provide the base for a more formalized alternative process, thereby saving the community or court time, money, and the numerous difficulties facing the development of any new program. Working from a pre-existing alternative structure will not disturb relationships between parts of the juvenile system as a new organization will do. It is important that an alternative adjudication plan be developed so that it is minimally disruptive of the present system and organized in a way that does not appear to compete with existing modes of dispute resolution.

A survey of existing resources will, in addition, allow planners to identify available and useful resources for the alternative once it is in operation. For example, the business association in the county might employ an individual to act as a mediator between local businesses and consumers. This person might be an ideal individual to have sit on an advisory board or work as a volunteer. Early identification of resource people in the community will facilitate the development of the program's legitimacy.

IDENTIFICATION OF THE TARGET POPULATION

With some feeling for the rationale and resources in hand, planners should develop a detailed description of the target population. As part of deciding upon a definition of the target population, planners are referred to the project summaries in appendices 2 - 5.

Generally, a community dispute settlement center will include

all juveniles within defined geographic limits as potential participants. Some programs could define that population more narrowly by choice of offenses/disputes to be handled. Geographic definition also limits the numbers included within the jurisdiction of a community dispute settlement center. For example, a community dispute settlement center based in a school obviously excludes youths no longer enrolled. Some counties will have a small enough juvenile population that the community dispute settlement center can target all those from ages 12 to 17. Other counties will need to define their target population more narrowly.

The following are suggested as factors affecting definition of the target population:

1. disputes/offenses to be addressed; most programs include status offenses and misdemeanors and exclude felonies;

2. relationship between the disputants; many programs require that disputants have an ongoing relationship; some exclude family disputes;

3. geographic or institutional location, such as a neighborhood or a school;

4. individual eligibility criteria:
   a. within a specific age range;
   b. extent of previous involvement with the legal system; repeat offenders might be excluded from the community dispute settlement center;
   c. willingness of both disputants to participate.

Once the definition of the target population is established, planners can approximate the number of eligible juveniles. As stated in the guidelines, a program should process at least 200 referrals during the first year of operations. If the

target population is defined too narrowly and if referral from law enforcement or the courts is not automatic, the programs may find it difficult to achieve 200 referrals. Planners should take adequate care so as not to limit too drastically the types of referrals. Unless referrals for a specific offense is automatic upon consent of the juvenile, 10-20% of those offenses entering the juvenile justice system are generally referred to a community dispute settlement program. This means that the pool from which referrals are obtained must number at least 1,000 to 2,000 youths. Based on these figures, many planners should consider a program developed around automatic referral of specified offenses.[5] (See appendix 3.)

RESOLUTION TECHNIQUES

Having established the program's goals both in terms of changes in the delivery of legal services and target population, planners should decide what would be the most appropriate and effective resolution technique to employ. No one technique is best, so planners should develop a flexible proposal.

Choice of a technique will depend on what planners wish to achieve through the resolution process. Some goals of the process are:

1. restitution;
2. instruction in resolving minor personal disputes;
3. increasing youth participation in youth and community problems;
4. increasing ability to reestablish social ties between disputing individuals, thereby furthering social awareness;
5. increasing awareness of social responsibility for the consequence of acts.

With these goals in mind, planners may then select among the various resolution processes available. Below is a discussion

of the various alternative techniques. The overview provides the requisite background both to reading the project summaries and to understanding the theoretical and implementation literature on community dispute settlement centers.

The available methods of resolving disputes are extensive. An individual in conflict with another may choose to "lump it," negotiate with the other, exact vengeance or turn to a third party/ies for assistance.[6]

Citizen Dispute Settlement programs are an example of third party intervention. In contrast to the courts, their focus is on the development of resolutions between conflicting parties rather than focusing on adjudication of fact. Although courts often employ people-oriented rather than rule-oriented resolutions, the dominant image of them for the average individual is that of a rule-oriented forum.[7]

General Criteria. In defining the approaches available to a community dispute settlement center we are confined within a limited range within this wide spectrum of dispute resolution fora. The community dispute settlement process must employ a neutral third party for the purpose of assisting the disputants in resolving the dispute. The program must have as a precondition the voluntary coming together of the parties, although resolution of the dispute may be imposed by the neutral third party. Emphasis is on reaching mutual accommodation rather than making a finding for or against a party. It should be noted that in some alternative adjudications for juveniles, an aggrieved party will not be involved in the dispute hearing. This is a significant variation on the theme.

Within the framework of a community dispute settlement center proposal, the following resolution techniques can be included.

Conciliation. Conciliation involves the informal participation of a third party in a dispute in which the third party acts

as a "conduit" between the opposing sides. The conciliator does not attempt to bring the two parties together. In the process of transporting the conflicting perspectives between the two parties, however, the conciliator may act as an interpreter. He/she, like the mediator discussed below, attempts to demonstrate to each disputant how the other understands the problem and to work toward developing a common view of the problem. Because the two parties remain separated, much depends on how the conciliator expresses each disputant's side. Probably, a higher degree of professionalism is required of the conciliator than for a mediator. Only one program included in the summaries employs conciliation (see appendix 4) and there conciliation is used as the first tier of a two-stage resolution process also including mediation.

In its pure form, conciliation would be little more than a process in which a person acts as the "go-between" for parties unwilling to meet face-to-face. An instance of this would be the friend relaying between two other feuding friends the feelings each was harboring. Conciliation, in this sense, necessitates that the "go-between" maintain a neutral, non-participatory stance. This is not generally feasible in a community dispute settlement program where the "go-between" often possesses knowledge and a perspective unavailable to either disputant.[8]

Mediation. Mediation as a technique of dispute resolution is the most common approach used in community dispute settlement programs. Mediation involves the active participation of a neutral third party in the resolution of a dispute. In most programs, a mediation hearing brings together the disputants with each side allowed to present his/her perspective. The mediator then attempts through questioning to narrow and clarify the questions. By rephrasing statements, the mediator attempts to achieve mutual understanding among the involved parties. Mediators often employ a technique called caucusing in which the mediator takes each of the two parties aside

individually, allowing them to express feelings and opinions that they may have been reluctant to state in the joint hearing. This is especially effective as a technique when there exists a power imbalance between the two parties. The final agreement, however, if achieved is achieved together. Mediators cannot impose an agreement on the hearing participants.[9]

The role of the mediator involves constructing an overarching rule or norm upon which both parties can agree and from which an agreement can be constructed. The ability of the mediator to achieve a successful resolution will often depend on the mediator's understanding of the social and cultural experiences of the disputants.[10]

Mediation proceedings are generally informal with disputants allowed to bring witnesses, to have counsel present, and to speak freely. Rarely do community dispute settlement programs need more than one evening in which to achieve a settlement, if it is to be forthcoming at all.

Factfinding. Factfinding provides for a neutral third party ruling on facts of a dispute but not dictating the resolution agreement. Such an approach has not been employed in community dispute settlement programs, although there is no reason why it could not be utilized.

Findings on the facts can hold an amount of persuasive power. If disputants are arguing over whether a debt is owed, a factfinder establishing that the two parties agreed to a temporary transfer of resources can facilitate resolution of the conflict. A simple example of this is the father who intervenes between two siblings who are arguing over whether A gave B permission to use a certain toy. Confirmation of the fact can permit a narrowing of the dispute to the issue of who should have the toy now. Agreement on facts can make resolutions more harmonious.[11]

Arbitration. Binding arbitration is the most formal of the resolution techniques employed in community dispute settlement programs. Many states have legislated procedures for arbitration which is binding and, therefore, enforceable in court. The Wisconsin Arbitration Act (Chapter 298) provides formal procedures and guidelines for arbitration. Any center employing arbitration would be expected to conform its procedures to Chapter 298.

Arbitration involves a voluntary agreement by the parties to discuss their conflict before a neutral third party who can, at the conclusion, impose a settlement/award. Under the Wisconsin Arbitration Act, the parties sign a contract to arbitrate, agree to a procedure for selecting the arbitrator/s, are cognizant that once arbitration is in process referral to court is difficult, place the agreement in writing, sign such along with the arbitrator/s, understand that any time within a year after the award, any party to the award "may apply to the court in and for the county within which such award was made for an order confirming the award..." [298.09].

Arbitration, then, is a far more formal resolution technique than the three approaches previously illustrated. (Other techniques can, at resolution, produce a contract enforceable in court, but this is clearly contrary to the general intent of the techniques.) The general model for arbitration is, naturally, labor arbitration between unions and management. The transfer of this model to community dispute arbitration has been criticized. Labor lawyers cite as a precondition for arbitration the concept of collective bargaining for which arbitration becomes a fine tuning device. A further problem apparent in the use of arbitration is the level of formality and necessary adherence to technical procedures which tend to lessen the sense of popular participation. Although the process is not itself complex, the consequences of it may be. Instead of relying on results achieved through mutual understanding and awareness, arbitration produces an "award" which

derives its authority and legitimacy ultimately from an outside source: the court. Failure to abide by the agreement can mean further court contact based on that failure. Such a sanction widens the arena for confrontation between disputing parties rather than producing a narrowing of conflict.[12]

Med-Arb. This technique, criticized by some for its hybrid nature, combines mediation and arbitration; the idea is that if mediation fails, the hearing officer can, acting as an arbitrator, impose a settlement. This approach poses at least two problems. The first is the potential for widening the area of dispute through referral of the arbitration contract to court. The second concerns the hearing and hearing officer. In a mediation session, disputants often freely vent opinions and feelings. Parties realize that what they say cannot affect the final resolution unless they are willing to permit it. If mediation fails and the session turns to arbitration, freely expressed statements can be turned against a party in the arbitration decision. Participants in arbitration are out to establish the best case for themselves and are unlikely to make assertions or to express feelings contrary to their case. Imposing an agreement based on a mediation session is the antithesis of the purpose of mediation.[13]

One solution to this problem has been to use two or three hearing officers, one of whom is the designated arbitrator. The remaining officers are involved in mediation caucusing. The isolated officer would then act as arbitrator only if the other two were unable to achieve a mediated agreement through caucusing. This is a cumbersome procedure. Furthermore, awareness on the part of the disputants of the potential for an imposed agreement might cause belligerent parties to hold out in the hearing for an imposed settlement, feeling they could "get more" from arbitration.

Crisis Intervention. This approach contrasts with the previous four in that its defining characteristic is speed rather than

technique. Crisis intervention was developed to provide immediate on-the-scene lessening of tensions or other necessary assistance, generally medical. Programs such as the Bowery Project in New York City for skid row drunks, or the "601" Diversion project in California for juveniles, developed as responses to law enforcement officer complaints that they were being called upon to meet situations for which they were not equipped: family disputes, drug effected behavior, community disturbances, alcohol overdoses. The programs were based on a medical or mental health model of intervention, where the focus of assistance is the individual-in-need rather than the relationship-in-need. The exceptions are the programs which afford family crisis intervention. Even here, however, long-term resolution is defined as the provision of remedial and rehabilitative services to individual family members.[14]

Crisis intervention is listed as a separate technique since a project including it within a broader resolution strategy would be overwhelmed. If a program is to devote adequate resources to crisis intervention, other techniques should not be attempted. Crisis intervention requires intensive training and follow up, perhaps beyond the scope of community based and operated programs.

Community Courts. This approach, most clearly articulated in an article by Eric Fisher, involves the use of "a lay body dealing with a population that has objective features in common, with jurisdiction over offenses otherwise criminal, and with the power to impose meaningful sanctions."[15] Often these programs are referred to as neighborhood accountability boards. Although they are unable to employ imprisonment as a sanction, the general intent is to permit communities to impose lesser punishments, such as restitution. The concept behind the approach is to allow community values greater weight in dealing with local crime and unrest, allowing for a reemergence of the community's sense of cohesion. As two critics have noted, however, "[l]ittle imagination is required to envision Fisher's

community courts readily declining into the legendary forums often associated with Australian marsupials."[16] The prototypes for Fisher's model are the Soviet and Cuban lay tribunals in which community members testify as to their knowledge about the defendant, allowing non-relevant information to affect judgements and not protecting the "accused" from hearsay evidence.

One reason why, perhaps, this approach has gained some popularity nationally, including some areas of Wisconsin, is that communities perceive police and courts as not adequately responding to local crime problems. People feel a need to take charge and to do the work of the police and the courts. Community courts are a product of the frustrations that the other resolution techniques are intended to prevent.

These seven approaches -- conciliation, mediation, factfinding, arbitration, med-arb, crisis intervention, and community courts -- are the major alternatives to formal adjudication now being utilized. Each has weaknesses, some more so than the others; each provides for a particular style of relationship among community members, program staff, and local legal institutions. Communities and circuit courts, having developed an idea of what objectives and problems they have in mind, can then consider which of these approaches will best address them. Examination of the project summaries will aid in demonstrating how some of these approaches can work. Planners can begin to match their needs against those of the exemplary projects in deciding which approaches to utilize.

PROJECT SPONSORSHIP

Once a method of alternative adjudication for juveniles, in general, has been decided upon, additional steps need be taken to establish its functional and administrative location within a county's existing juvenile justice system.

Although the individuals or groups undertaking to develop the

program will by their composition generally determine the location of the program, specific ties with such agencies as the county social services, law enforcement, the prosecutor's office, juvenile intake, and the court need to be defined. The delineation of lines of authority and responsibility will avoid substantial disputes later and will help to maintain the good will of the various agencies.

One recommendation we make is that planners attach the alternative to a specific point in the juvenile justice system. Although later the program can expand out from that point, initial location within the established structure will minimize the legitimacy problem new programs face. Further, as program directors elsewhere have noted, the opportunity to rely on the mundane features of officialdom -- stationery, titles, etc. -- produces a higher percentage of successful responses and hearings than non-attached programs.[17]

Although these programs will have the official sponsorship of the circuit court, they can locate at various points in the juvenile justice system. Suggested locations include the law enforcement system, so that police will make automatic referrals of specific complaints to the community dispute settlement center. At the community dispute settlement center, the disputants can then be given the option of utilizing its services or returning to the court route. Juvenile intake is another key diversion point. The intake officer, through an informal disposition or voluntary agreement with the youth, can direct the problem to the alternative resolution mechanism rather than proceed further. A similar set up might work through the local prosecutor's office or even as late as the preliminary hearing stage. Another possible route is again through the police but this time with referral to municipal court which in turn permits referral to the community dispute settlement center; this would employ the use of citations as provided for in Chapter 48 much as police issue traffic tickets [section 48.17(2)].

Tentatively, according to the guidelines established for the program funding, referral must be made either through juvenile intake or through the juvenile court judge. This would mean either actual contact with the parties or the right of review on referred cases. Local communities are in the best position to determine the preferred routes, depending on both the scope of the community dispute settlement center and the local political climate.

Once a primary point of referral has been established, other referral sources will develop. Self-referrals account for as much as 20% of referrals in some programs; other government agencies as well as legal aid societies probably will make referrals once the program has provided some proof of its worth.[18] *Again all referrals may be subject to either prior review or post-hearing approval by juvenile intake and/or the juvenile court judge.*

ADMINISTRATIVE STRUCTURE

With the goals, methods, and resolution techniques established, the program must be provided with its administrative skeleton. This may proceed in many directions, from all-volunteer to all-professional staffing. The Office of Planning and Research is interested in a combined professional and volunteer approach. The use of professional staff can insure, if properly handled, the administrative daily functioning of a program, while the volunteers can provide the primary handling of the disputes. The employment of volunteers further insures community participation.

The following is a recommended structure for an alternative program:

Circuit court judge. The judge will not only lend authority to the program, but will have final say on the appropriateness of a referral and will maintain a right of review of all agreements which are produced in an alternative hearing. The circuit

court judge is the final authority for any Wisconsin community dispute settlement center.

Juvenile intake workers. This individual provides a primary referral point and may have authority to review referrals. The intake worker can be of substantial assistance in coordinating alternative efforts with other programs in the county. Also, see below under Project Director.

Advisory board. This board, composed of members of referral agencies, community groups, and clients (potential) will be involved in expanding the legitimacy and awareness of the program, making suggestions for new administrative policies, keeping abreast of potential new funding sources, making recommendations for new areas of concentration, and providing for the program's community visibility and accountability. A working subcommittee should emerge from the board, meeting with the project director and the juvenile court judge on a monthly basis.

Program director. This individual would be responsible to the advisory board and the circuit court judge as well as to the Office of Planning and Research and the Wisconsin Council on Criminal Justice, would author the necessary quarterly and annual reports, would develop ties with the necessary governmental and community groups, would be in charge of hiring, and would be responsible for authorizing hearings pending approval of intake and/or the court. It is possible that this individual could be hired as a temporary juvenile intake officer eliminating the need for constant referral to intake. The project director would also be responsible for periodic staff evaluations and monitoring of hearings, as well as for program bookkeeping. The individual hired as project director should be able to demonstrate substantial familiarity with juvenile law, with the services available within the county, with the employment of volunteers and should possess some knowledge of alternative dispute resolution techniques. Many programs have hired lawyers for the post of project director. Although this has

advantages such as familiarity with legal procedures, programs may find they cannot offer an adequate salary and that if they employ a lawyer, they may lose some of the community orientation.

Volunteer coordinator. This individual would be involved directly in the recruitment, training, and monitoring of volunteers. Furthermore, this person would be needed to develop agency contacts. For instance, if restitution was a component of the program, the volunteer coordinator would be delegated to develop the pool of work sites in community agencies and with private businesses. If the program needed to develop referral sources such as drug or alcohol counseling, or GED program locations, that would be the responsibility of the volunteer coordinator. The volunteer coordinator should have prior experience in working with volunteers and in developing a training program. Many programs use a social worker in this position, although there is no reason why this need be the case. Communities will find many experienced individuals who can fulfill the requirements for volunteer coordinator, yet who do not have a degree in social work or social psychology.

Clerk. This individual would be responsible for keeping the program's statistical records, hearing logs, individual case files, would assist the program director in monitoring the dispositions, and would collect follow-up data on the dispositions for use in the annual reports and program evaluations. The clerk would be responsible for mailing hearing notices, for keeping track of service hours for restitution programs, and for general office management.

Volunteers. These individuals would have as their main duty performance as moderators; they would also be responsible for assuring that the information on the disputants was properly logged and that the dispositions were recorded and filed. They might also assume responsibility for the follow-up in place of the clerk. Some programs have attempted this with only marginal success.

Programs vary widely in their source of volunteers and, in addition, some programs provide a per case payment to the volunteers. Volunteers might be professionals, such as lawyers, social workers, psychologists, labor arbitrators; college students; retired persons; and lay persons. No single source of volunteers appears more effective than others. Choice of the volunteer source often depends on program objectives. For example, the Orange County, Florida community dispute settlement program has as an objective the enhancement of the local bar's image; moderators are, therefore, all local attorneys.

Outreach volunteer. One member of the advisory board or, perhaps, one of the working volunteers should assist the program director in advertising the program and, more specifically, help the program in obtaining the materials it might need to supplement state funding. Hunting up office supplies, obtaining donations of furniture, securing free printing would be some of the activities with which the outreach volunteer could be involved. This position would help reenforce the idea that the program was run by and for the community.

This listing provides the core of paid and volunteer workers for any program. Specific programs, depending on funding, might wish to expand the administrative staff. The following are suggested personnel additions:

Field workers. These individuals would act as initial contact persons with the disputants, visiting the individuals to acquire some feeling for the conflict environment and possibly achieving conciliation at that point. Alternately the field worker would be responsible for the continuing supervision of a youth assigned to restitution work. The field worker would assist the youth in choosing a compatible worksite, in monitoring the youth's progress, and in assisting the youth in obtaining additional services such as counseling or entrance into a GED program.

Research assistant. This individual would assist the project director and clerk in monitoring and developing evaluations of the program. The research assistant also would be concerned with monitoring other programs, reporting to the project director on possible innovations in procedures, and developing materials for training and outreach work. The individual, in addition, would keep current the statistical reports for monthly meetings of the advisory board.

The community dispute settlement center professional staff should work to develop a network of professional assistance in such areas as administrative procedures, legal implications, training and hearing methods, and community involvement. Although much of this may come from the advisory board, there will be many other individuals in the community who may be able to offer specific services on a voluntary basis, but who do not wish to act as moderators.

CENTER LOCATION AND HOURS

Depending upon the project's objectives and finances, its office can be located in the county courthouse, in office space near the court, in neighborhood community centers. Moderators should be able to travel to locations suited to the disputants. Generally, the more formal a program, the closer it should locate to other official agencies.

In order to provide for program comparisons, we recommend that one program be located at or near the courthouse while another be decentralized with hearing sites within the communities served.

Hours should reflect the needs of the disputants. This may necessitate evening and, perhaps, weekend hours. Most programs have found that provision of evening hours evokes a positive response from users. Hours more than location appear to be the determinative factor in user satisfaction. Surveys

indicate that hearings in the evening, regardless of location, were "easy to get to."[19]

TRAINING AND VOLUNTEER SELECTION

In any description or analysis of a community dispute settlement organization, particular emphasis is placed on its training component. The ability of a program to achieve a substantial impact relies heavily on the quality of the staff and, especially, of the moderators. As noted above, moderators can be drawn from a wide variety of sources and, in turn, this affects the amount and kind of training necessary. For example, many of the programs in Florida require mediators to be lawyers or other social professionals. Orange County (FL), employing only lawyers, requires no initial training period beyond a session on administrative procedures. Lawyers are thought to have an adequate background and each is expected to develop personal approaches to the mediation hearings. New mediators, though, attend sessions conducted by experienced ones in order to see mediation techniques in operation.

Generally, however, programs require from 40 to 55 hours of training for staff and moderators. The American Arbitration Association, the Institute for Mediation and Conflict Resolution, and the U.S. Department of Justice: Neighborhood Justice Centers all have development training programs and manuals transferable to other community dispute settlement sites.

Since most community dispute settlement programs concentrate on disputes between adults, Wisconsin programs focusing on juveniles will need to expand the training methods to include legal and social service information specifically addressing the needs and rights of juveniles, strategies for balancing power relations between the disputants, and instruction in techniques on overcoming generational barriers.

The following are general suggestions for a training curriculum:

Mediation Training.

1. explanation of the role of the community dispute settlement program in communities and the formal legal system;
2. definition of basic terms;
3. explanation of differences between mediation and formal adjudication;
4. explanation and illustration of the roles a mediator can play in dispute resolution:
   a. acting as a calming influence on the parties;
   b. articulation of areas of agreement, focusing of the disputes;
   c. prompter, offering suggestions and directions;
5. controlling procedures and routine of hearing through:
   a. projecting air of neutrality;
   b. facility and clarity of language, ability to explain purpose of hearing and statements of disputants;
   c. empathetic techniques of listening, questioning, and understanding;
   d. sensitivity to need for caucusing and identification of topics important to the disputants;
   e. display of flexibility, adapting procedures to particular disputing environment;
6. detailing of mediation techniques:
   a. trust building;
   b. information gathering;
   c. information transmission;
   d. settlement building;
   e. formalizing the agreements;
7. adequate knowledge of statutes affecting hearings;
8. knowledge of social service referrals and community programs.

Arbitration training includes some of the same elements; it

also excludes a few important features of mediation hearings. Flexibility and responsiveness to unarticulated issues are not components of the arbitration hearing. Caucusing is never employed in pure arbitration. More emphasis on rules of evidence and statutory guidelines will be necessary in arbitration training programs. Arbitration may necessitate more professional moderators due to the legal impact of agreements.

In order to achieve understanding in these training areas, role playing, case studies and participant observation in sessions are essential. Video taping has proven effective in a number of training programs: volunteers in observing themselves become aware of the non-verbal aspects of their behavior which can affect a session's progress.

The Department of Justice's Neighborhood Justice Centers estimate the cost of such extensive training at $5,000 to $6,000 for the first sessions, which generally rely on outside personnel.[20] Many programs have done training for considerably less, having available to them local university personnel or other community dispute settlement program personnel located nearby. Once the core staff has been instructed they can assume the responsibility for subsequent training sessions. A possible means of restricting costs without restricting instruction time is combining staff from several programs for an initial training conference.

An important element of success briefly alluded to above is the selection of volunteers. Program planners vary considerably in their selection criteria for volunteers. At one end of the spectrum the programs in Florida place heavy emphasis on the recruitment of legal and social service professionals; Anne Arundel County (MD) Community Arbitration Program likewise uses lawyers, in their case two paid part-time ones. Toward the middle of this spectrum are programs such as Portland's Neighborhood Mediation Project in which professionals are used at one stage, while lay members of the community participate

as members of mediation boards. At the opposite extreme are such programs as San Francisco's Community Board Program that use local lay community members exclusively for sessions.

Selection procedures appear partially to reflect two primary community dispute settlement objectives: programs in Florida, Anne Arundel (MD), and Columbus (OH) have as a primary objective fast and effective handling of minor disputes in order to free up time in the courts and prosecutor's office for major cases. Programs with this goal rely more heavily upon the use of professionals. The objective of the San Francisco Community Board Program is community organizing, so reliance upon active participation of community members is essential.

Planners should, therefore, carefully consider the objectives when developing their criteria for volunteer selection.

COSTS AND FUNDING

Developing a budget for the proposal depends, clearly, on the amount of funds available. The program 11E funding range is $40,000 to $85,000 with a minimum of $75,000 reserved for a community dispute settlement program in a high crime area. These amounts will fund 2 or 3 programs. Planners should calculate necessary costs using the following general categories:

1. personnel: salaries, wages and fringes;
2. professional services: mediator fees, technical assistance services, training consultants;
3. travel, including reimbursement of mediators for travel outside the normal range;
4. equipment;
5. other operating expenses, such as printing, advertising, postage, insurance, office rental;
6. indirect costs: bookkeeping, purchasing, payroll, planning and evaluation.

In projecting costs, the planner should attempt to find as

many local sources of support as possible. Not only does this spread costs, allowing for a more extensive program, but also demonstrates the extent of community support for the program. For example, planners could arrange through local business groups for bookkeeping assistance, for office supplies, or for free printing. The closer a community dispute settlement center is in its official ties, the more likely it may be able to reduce expenses through receiving low-cost or free rent, technical services, and supplies. Planners should indicate in their proposals the range of financial and administrative supports available in the targeted area.

Although this technical assistance manual applies to funding available under Program 11E, planners should be aware of alternate sources, to support the program if their proposal is not accepted or after the experimental monies are terminated at the end of two years. Important sources in this area may be:

- Youth and Family Aids package. Information on this state reimbursement for community projects involving juveniles can be obtained through local county boards of supervisors or through the Wisconsin Department of Health and Social Services.[21]
- Minor Dispute Resolution Program of the U.S. government, when signed, will make $10 million available for new or expanding programs. Information concerning these funds can be obtained from Maurice Rosenberg, Assistant Attorney General, Office for Improvements in the Administration of Justice, Department of Justice, Washington, D.C. 20530.
- Other LEAA funds. Close contact should be maintained with staff of the Wisconsin Council on Criminal Justice to keep abreast of new projects developed by the Office of Juvenile Justice and Delinquency Prevention, LEAA. Proposal announcements are, in addition, published in the Federal Register. A subscription to the Register would be a wise investment.

- Private funding sources. Planners should be in contact with the Foundation Collection, Marquette University, Milwaukee, for information on state and national foundations interested in crime, school, or youth programs.
- Incorporation into local budgets. This has occurred for several community dispute settlement programs, including those in Portland, OR, Suffolk County, NY, Anne Arundel County, MD, and several Florida programs.

PAPERFLOW, MONITORING, AND EVALUATION

Although form development and paperflow programming are among the most onerous planning tasks, it is essential that planners be able to indicate their ability to develop efficient office management practices, including the maintenance of complete, understandable records. Many programs claiming success have been unable to quantitatively verify their claims because of inefficient recordkeeping.

The community dispute settlement technical assistance program of the Office of State Court's Administrator, Supreme Court of Florida, has developed sixteen model operating forms.[22] We list them here to provide planners with a sense of the necessary paperwork involved in operating a community dispute settlement center:

1. agency referral care;
2. initial contact card;
3. telephone log sheets;
4. intake form;
5. master case log;
6. notice to appear -- complainant;
7. notice to appear -- respondent;
8. letter explaining program;
9. mediation agreement;
10. mediator report;
11. waiver of speedy trial;

12. thank you for participation;
13. follow-up report to referring agency;
14. letter accompanying follow-up questionnaire;
15. follow-up questionnaire -- complainant;
16. follow-up questionnaire -- respondent.

These sixteen forms appear a necessary minimum and do not include informal paperwork and internal forms such as notices to mediators of hearing date and place or letters to other officials such as court or prosecutor indicating disposition. Any letter which will have repeated use should be designed as a form to guarantee standardization of information content.

An important area for systemization of office procedure is the case file. Papers included in the file should have a specific order; file copies of forms should be coded for easy identification in the folders. Every item included in the file should be dated. No item should be removed permanently from the file. Case history materials should be kept succinct, possibly through use of a standardized form. Rambling case notes are useless for follow-up and evaluation.

The data collection forms which the community dispute settlement center employs should be equivalent to those used by the juvenile justice agencies; otherwise important comparisons such as relative recidivism rates cannot be calculated. Planners should indicate in their proposal a knowledge of how juvenile justice agencies collect statistical data. Case files provide the informational core for evaluations; therefore, the following information should be readily available from them:

1. date complaint filed;
2. referral source;
3. complainant and respondent (C & R) zip codes;
4. general category of the dispute;
5. specific type of dispute;
6. relationship between C & R;
7. social history of the complaint;
8. type of disposition;
9. content of disposition;

10. time length from receipt of complaint to disposition;
11. parties' prior contact with community dispute settlement center;
12. parties' prior contact with referring agency;
13. C & R description: individual, couple, business, etc.
14. C & R sex;
15. C & R age;
16. C & R ethnic background;
17. C & R first language;
18. C & R monthly wage and occupation for month prior to complaint;
19. C & R marital status; if married, divorced, widowed or cohabiting; number of children.

This information should be maintained on a monthly basis and a summary of it should be made a matter of public record. The project director should be aware of the general trend of program statistics. If C & R statistics for the community dispute settlement center drift out of balance with other juvenile justice statistics or statistics for the general community population, the project director should, then, take steps to correct the imbalance. Depending on the problem, the project director might find it necessary, for example, to perform new inservice programs with the local police, attempt to interest new community groups in the program, or to redefine volunteer selection guidelines. Among the problems involving statistical imbalances for which the program cannot account in terms of its alternative approach, one stands out nationally. This is police officers developing a selection process, generally discretionary, independent of program eligibility criteria.

This information, plus the follow-up surveys to be designed by the Office of Research and Planning, will provide the basis for program evaluations at the end of each year. Standardization will guarantee program comparability. At some point a more sophisticated survey instrument should be

developed to cover all those involved in the program -- workers and participants alike -- in order to develop a gauge of community dispute settlement impact on the community. Such an instrument is outside the scope of this manual.

MODEL PROCEDURE

Appendices 2 - 5 provide detailed information on how various programs organize their referral, processing, and follow-up procedures. Here, we would like to present one possible model system that reflects elements particular to Wisconsin.

Intake-Mediation Model.

Referrals in this model would originate from:

1. law enforcement;
2. schools;
3. social service agencies

based on the following eligibility criteria:

1. offense is of a minor civil or criminal nature;
2. involves parties with ongoing relationship;
3. youth is between ages 12 and 17;
4. there is not a long history of disputes and referrals between the disputing parties;
5. there is no indication of a major personal problem requiring immediate attention from some other resource such as drug counseling.

Although referrals from other sources would be accepted eventually, concentrating on referrals from these three groups would assist in establishing the institutional legitimacy of the program. Referrals would be directed to the project director for initial screening. Acting under authority and procedures of §§48.24-48.245, the project director would decide if the referral met the eligibility requirements listed above and then would contact the youth and parents for an initial conversation describing the alternative procedure, emphasizing that participation was totally voluntary, that conversations before community dispute

settlement hearing officers are confidential, that agreements from the session are binding only if mutually agreed uon, that the complaining witness or alleged victim cannot use materials and agreements from the hearing in subsequent civil proceedings, that the youth and parents may have counsel present and if the youth chooses not to, a volunteer lay advocate will be available to assist the youth during the hearing; and that a youth or the parents can at any time after the agreement is reached request its cancellation and return to regular formal proceedings (unless the parent is the complaining party).

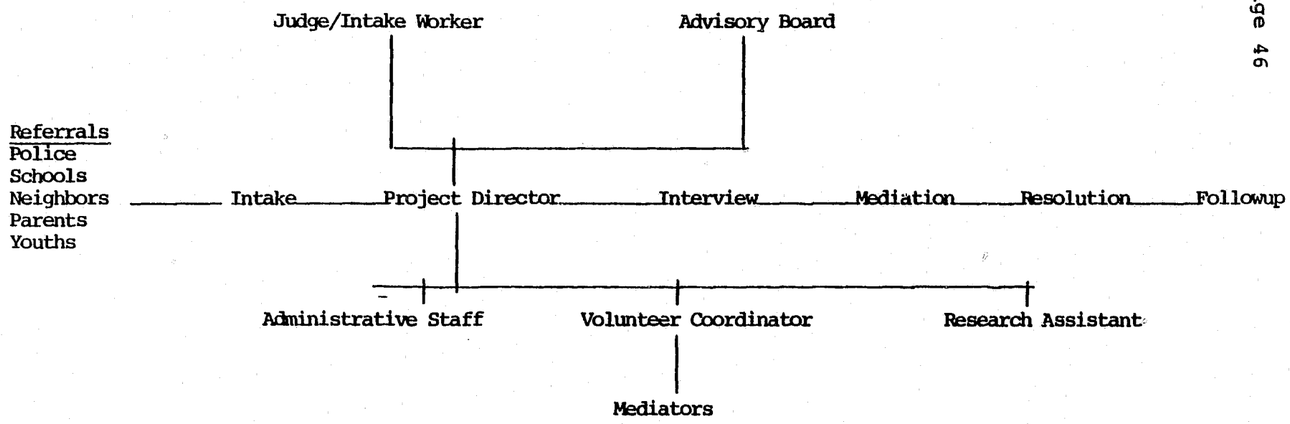

TABLE 1: FLOW CHART OF PROCEDURE AND ADMINISTRATION

If the youth decides not to participate, the case is immediately referred to regular intake channels. If the youth, however, chooses to proceed with the alternative procedures, a date is set for mediation within seven days of the initial interview time. During the interim the project director and volunteer coordinator will arrange for the session mediators and contact other concerned parties. It will be the project director's responsibility to contact the youth and parents to find out if the youth will have counsel present. If not, the director will attempt to arrange an interview between a volunteer lay advocate and the youth in order to explain what will happen in the mediation session and the general features of mediation. The lay advocate at this time should work for trust building, assuring the youth that what he/she will say will be listened to and considered as important as the statements by any other participants, that this is an opportunity for the youth to fashion a resolution and not have it imposed from the outside: no one will be telling the youth what to do. The advocate should emphasize that an alternative hearing does not deal with questions of guilt or innocence but works to arrange a mutual accommodation for the disputing parties.

The session location will depend on the participants. If one of the disputants is a school official, the session site could be the school, unless a more neutral site is deemed more appropriate. Session hours should take into account the school and work schedules of the participants.

The choice of session room can affect the session. The Anne Arundel program uses a courtroom-like environment. In our model, a more informal atmosphere is preferred, which will emphasize that mediation is not an adversarial proceeding. Regardless of the physical environment, the moderator should strive to make participants relaxed and to establish an informal tone for the proceedings. The moderator should first introduce her/himself, then explain the

nature of mediation and the procedures the session will follow. Next the moderator should read a statement of reasons for the meeting. This statement should not only contain the "complaint" but also should include some response from the youth. The latter could be obtained via the lay advocate or the youth's counsel. Participants should then tell their stories. This will be followed by open discussion and, if necessary, caucusing until a consensus is reached or it becomes evident that no resolution is possible.

If the youth or a private party complainant is adamant in refusing to compromise, the case should be referred automatically back to juvenile intake. If the complainant is an institution the session should be recessed during which time a member of the advisory board will be asked to contact the institution to discover if refusal to compromise is a general policy or reflects only on th case at hand. It should be noted that in some programs, the sponsoring judge has been effective in persuading intransigent institutions to compromise and mediate in good faith.

Once an agreement is achieved, a written copy of it should be made for signing by participants, with the moderator and any advocate or counsel present acting as witnesses. This agreement can be entered as an informal disposition governed by the limits of §48.245 if the dispute meets the section's legal sufficiency requirement.[23] One recommendation we make is that upon completion of a successful session, the program provide refreshments, giving the people the opportunity to talk if this appears appropriate. This small gesture is intended to reinforce the idea that there is not a "winning" side. Once the agreement is formalized and signed it should be passed on to the judge for confirmation.

A community dispute settlement program should have three consumer satisfaction follow-ups, with the first taking place within the first week after an agreement has been reached. The parties, including the moderator for

comparison, are simply contacted to find out how they feel about the session and if they expect the agreement to hold up. The community dispute settlement programs in Florida have developed a simple evaluatory survey, intended to indicate performance satisfaction. They contact participants by phone or letter, asking them to rate their satisfaction with the session, with the final agreement, and to rate the extent to which they feel the session improved relations between the disputants. This same survey should be again taken at four to six weeks and, then, at the end of the agreement, if it had a time limit, or at six months.

Since agreements are binding upon the youth for up to six months if one treats the agreements as informal disposition, additional follow-ups with the youth may be important. Beyond ascertaining a youth's satisfaction, the project should attempt to evaluate what effect participation in the session had upon the youth. A more extended survey instrument than that employed for the "general satisfaction" follow-up will be necessary. The intent of the survey would be to gauge the project's impact on a youth's ability to handle disputes in addition to assessing the session's impact on resolving the dispute involved. Depending upon program objectives, the same survey could be used with the other disputing party/ies. [When doing the follow-up surveys, project workers should indicate that answers are voluntary and anonymous.]

SECTION III

COMMUNITY DISPUTE SETTLEMENT CENTER IMPLEMENTATION AND WISCONSIN'S CHAPTER 48

Wisconsin Statutes Chapter 48 will have a significant impact on the implementation of community dispute settlement programs. The degree of effect will correlate with both the type of resolution process employed and the degree of official involvement. A mediation program that is, for instance, totally voluntary, with no ties to the juvenile justice system, and with non-punitive resolutions would not be affected by Chapter 48. It would still, however, be able to benefit from §904.08: "Offers of compromise," protecting session information from use in civil actions except under specified conditions.

The more involved with the juvenile justice system the community dispute settlement program is, the more planners will have to take account of Chapter 48. Contrary to many people's impression, Chapter 48 is not intended to constrict legal innovation. Rather, the intent is to provide for procedural fairness and accountability for a system which previously allowed for little visibility. A clear indication of Chapter 48's effectiveness in this area is the substantial increase in the number of appeals from juvenile court decisions.[1] Rather than inhibiting the ability of a community to deal with youthful offenders, the new code broadens the possible approaches. A major thrust of the Chapter is the inclusion of the youth as an active participant in the adjudication process. While the youth is guaranteed legal support at the various critical stages, this protection acts to open up possible new avenues a community can take. The interest in alternatives, then, is a response to the challenge of Chapter 48: the provision of programs serving the best interests of both juveniles and the community while avoiding the infringement of eithers' rights.

The intent of Chapter 48 should be a premise for the development of community dispute settlement programs in Wisconsin rather than a hurdle that requires clearing. In fact, much of the function of community dispute settlement programs will be to give added visibility to methods of resolution already utilized in the courts. This visibility, moreover, will provide the public with a better understanding of the range of resolution approaches available through the judicial apparatus.

The majority of legal questions which arise out of the implementation of community dispute settlement programs require a return to common sense thinking, with an awareness of what is fair and equitable in a legal system. This section, then, addresses some relevant legal issues:

1. voluntariness and coercion;
2. confidentiality;
3. double jeopardy;
4. time limits;
5. due process;
6. evidentiary procedures;
7. offenses hearable;
8. staff liability.

Voluntariness and coercion. A major precondition for establishing community dispute settlement programs under Program 11E funding is the *voluntary* participation of the juvenile. Program staff should make certain that the youth understands that he/she is free to decline participation. This information should be communicated at the initial screening, any presession interviews, and at the session's commencement. Also if procedures similar to the intake-mediator model are utilized, the youth should be made aware that under §48.245(4) and (5), objection to or termination of the agreement is available at any time. This right of objection or termination adheres as well to the parents, guardian, and legal custodian. On the other hand, the parties should be aware that termination can mean the filing of a

petition and that successful completion of the program precludes further official action on the charges. Although the threat of a return to court is found in most community dispute settlement projects, in actuality a return rarely occurs. Individuals who are responsible for initially explaining to a youth and the parents the alternative program would do better to emphasize the positive aspects of the hearing. A program which uses the "threat" of a return to court but fails to follow through or finds returned cases being dismissed will lose credibility in the community.

The problem of coercion is inherent in any program involving juveniles and can never be totally remedied. The courts, for instance, depend on coercion for a substantial part of their effectiveness.

Since community dispute settlement programs espouse a non-coercive philosophy, adequate safeguards are important. In these programs, coercion is of two types. The first is the coercion to participate and the second is the coerced resolution. Protection against the first, as noted above, depends on emphasizing the voluntariness of participation. In addition, judicial review can help to guarantee voluntary participation. Programs can protect against coerced agreements through constructing a neutral session format and insuring that a youth has every opportunity to express his/her opinion. Moderators need to be sensitive to the extent to which a youth does or does not become involved in the session. Occasionally lay advocates, providing moral support and argument clarifications to the youth, can help to avoid coercion. Caucusing with an advocate or the moderator can provide a youth with an additional opportunity to express personal feelings. Although a youth is free to have counsel present, this is not an adequate measure to prevent a coercive environment. Quite possibly the presence of counsel, adding a degree of formality to the proceedings, would increase the chance for a coerced resolution. Finally, again, the procedure

for judicial review can aid in securing non-coercive resolution.

The only programs noted for problems with coercion and voluntariness are those modeled on community courts. Since they act as alternative adjudicatory bodies -- rather than employing an alternative resolution technique -- coercion is a natural element of their function. For this reason they and any program that focuses on a penal sanction may be afoul of the voluntariness and non-coercion standards.

Judicial review of the agreement and the right to trial de novo provide further guarantees.

Confidentiality. Wisconsin statutes appear to provide adequate protection for community dispute settlement sessions and records: at the least, their records are no less protected than those in the regular juvenile justice system with some exceptions.

To begin, all programs must be equipped with a secure file cabinet in which to keep case files and log books. In addition, staff and moderators should be required to sign an agreement stating that they will not discuss outside the community dispute settlement center any information contained in files or provided in sessions.

If the program comes under court auspices, reports are protected under §48.396(2). In addition, such programs can be provided with a judge-made rule limiting access by other official agencies. Also, an agreement should be worked out with the local prosecutor stating that the office will not attempt to procure community dispute settlement center records.

Programs working through municipal courts are not protected under §48.396(2). In this case agreements with the prosecutor's office and one with the participating individuals that they will not attempt access to the records should be constructed.

Both the state statutes, especially Wis. Stat. §48.396(2), and the recent holding in State ex rel. Herget v. Waukesha County Circuit Court [84 Wis. 2d 435 (1978)] appear to protect hearing and disposition records from use in civil actions except after in camera reviews by the circuit court. [84 Wis. 2d 435, 452 (1978)]. In the ruling opinion Justice Abrahamson notes that "[c]onfidentiality is promised to encourage the juvenile, parents, social workers and others to furnish information which they might not otherwise disclose in an admittedly adversary or open proceeding" [84 Wis. 2d 435, 451 (1978)]. By analogy, since community dispute settlement hearings do not seek to assign guilt, their proceedings would fall within the scope of the holding in Herget.

If the above is not adequate protection, since the sessions are a form of bargaining, §904.08, treating the "offer of compromise," would appear to protect conversations and information recorded during the session from use in subsequent civil actions. In Wis. Stats. §904.08, "Compromise and offers to compromise," evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This section would appear effectively to bar the use of conversations held during community dispute settlement sessions in subsequent civil actions. For example, if during a session the youth stated that he/she broke the complainant's window, this information would not be admissible in court if the complainant brought suit to recover the expense of repairing the broken window. Wis. Stat. §904.08, however, is clearly a supplementary protection. Overall, the best protection for confidentiality of proceedings and records is agreements signed prior to entering a session.

Double jeopardy. The problem of double jeopardy will be a greater concern the more a program approximates a trial of fact. A mutual agreement reached through mediation is not formal intervention and is not punitive. Breakdown of a voluntary agreement either through failure of the youth to abide by the obligations established therein or through the youth's or parent's termination of the agreement does not constitute a threat of double jeopardy. An area where double jeopardy may be an issue is where restitution is part of the agreement. It can be argued that restitution is a denial of property, therefore punitive, and even if voluntary, would preclude added punitive measures once the restitution agreement was fulfilled. Agreements which include restitution will therefore tread a find legal line.

Time limits. A community dispute settlement center totally outside the system is not affected by time limits. Often, moreover, an agreement which emphasizes behavior modification, such as the parties agreeing not to argue in public, cannot be given a specific time limit. A community dispute settlement center within the juvenile justice system should abide by the forty-day limit for obtaining a disposition and the six-month time limit for the performance of the agreement. See Wis. Stat. §§48.24(5) and 48.245(2).

Due process. In terms of a community dispute settlement program, due process may be translated as fairness and accountability. A program should be able to guarantee balance in the hearings. Both sides may have counsel present; parties should understand, however, that the role of counsel is a subsidiary one. Counsel, friends, and lay advocate can be present in order to assist disputants to reach an agreement; they are not there to

challenge evidence and cross-examine.

Following Wis. Stat. §48.243, "Basic rights: duty of intake worker," center staff and moderators should make certain that a youth understands the basic rights and guarantees, such as the right to remain silent or the right to trial by jury. It should also be explained, however, that some adversarial elements are not appropriate in an alternative session, for instance, the right to subpoena witnesses. If a youth, parent, or guardian is concerned about maintaining these rights, an alternative session should not be conducted. The project director should explain that these rights are predicated on the use of adversarial hearings and that mediation or its alternatives rely on different strategies for the fair and equitable resolution of a dispute. Basically, it is essential that the youth and others involved be provided with notice as to the groundrules for the sessions, and that disputants acknowledge an understanding of these session rules. Moderators should be sensitive during a session to the possibility that either side has misconstrued the session's purpose. If this appears to be the case, and the misunderstanding party refuses to follow the rules after they are explained, the session should be terminated without prejudice to either party.

Evidentiary procedures. No formal rules of evidence or discovery are or need be incorporated into an alternative session. Some guidelines concerning hearsay, use of records, and knowledge peculiar to one participant should be in writing.

Evidence in adversarial proceedings is used, primarily, to support issues of fact. In alternative proceedings, the "evidence" presented is aimed more at describing and defining the "hows" and "whys" of the conflict in order to establish a common foundation for the resolution. Hearsay, then, can be important in determining why disputants may feel the way they do. For example, disputant A is told by friend C that

disputant B is an alcoholic, a fact not accurate. Discussion of this fact may assist resolution through the clearing away of misinformation. On the other hand, resort to records would appear unnecessary and, furthermore, beside the point in alternative sessions.

One area of evidentiary procedure requiring more formal action is restitution. Restitution involves a denial of personal property, either through repayment for damages or through reimbursement in community service time. As such, projects need to take greater care in reaching agreements involving restitution. Of fundamental concern is whether a youth is sufficiently responsible to agree intelligently to a restitution plan. A judgment in New Jersey involving restitution for a youth held that final determination of the amount should remain in the office of the court [In the Interest of D.G.W., 361 A.2d 513 (1976)]. A measure of insurance in this regard would be court review for any restitution agreement, allowing the judge to determine the amount of money or community service time. The suggestion is that projects aim first at the resolution of parties' disputes and that restitution be ancillary, arising from the disputants' discussion. If, in principle, the parties agree upon monetary restitution, then the complainant should submit justification for this amount along with the resolution agreement to the reviewing judge.

Moderators through informal control and persuasion should steer sessions toward future oriented resolutions rather than toward compensatory agreements and assessments of guilt. Future oriented agreements focus on the reestablishment of personal relationships or on their redefinition in order to avoid future conflicts. Control of the information communicated in sessions is a prime way of directing parties toward future oriented resolutions, the keystone of alternative sessions.

Session guidelines should provide adequate flexibility for the moderator. Too strict adherence to procedural rules might inhibit session responsiveness to the individual characteristics of the dispute and to the needs of the participants.

Offenses hearable. The question of what offenses justify the use of an alternative presents something of a philosophical rather than legal dilemma to a community dispute settlement project. Since the intent of a community dispute settlement session is the restoration of a balance within a relationship, rather than the determination of responsibility/guilt, framing the conflict in terms of statutorily-defined offenses seems a paradox. Unfortunately the dominance of the adjudicatory mode of dispute resolution requires such a frame of reference.

Offenses coming into an alternative session should be misdemeanors where the important issue is the restoration of a relationship. Although all cases referred to the community dispute settlement center will be of a minor nature, not all misdemeanors are best handled in an alternative session. Some projects have experienced problems with referring agencies, particularly law enforcement, forwarding all misdemeanor complaints. Programs need to make special efforts at educating referring agencies as to alternative session eligibility requirements. A "misreferral" can only add to citizen frustration with the juvenile justice system. The issues that appear most promising for a community dispute settlement project are truancy, neighborhood harassment, unauthorized use, family disputes, school and neighborhood fights, and property damage. If eligibility requirements are met, staff should try to include the youth willing to participate. Failure to include all eligible complainants might open a community dispute settlement project to charges of unequal treatment.

Staff liability. Staff liability does not appear to be a significant issue in the planning and implementing of a community dispute settlement program. Infringement of an individual's civil rights or the question of abuse of 14th Amendment guarantees are not at issue in a community dispute settlement project employing voluntary, non-punitive resolution techniques. Compulsory participation or penal sanctions without trial may violate guarantees of liberty and property. Right to a trial de novo may avoid these problems even in the most restrictive programs, such as community courts.

Community dispute settlement programs are too new, however, for there to exist a body of case law defining the do's and don'ts for their operation. In fact, the development of a body of case law will be an indication that community dispute settlement programs have failed in their objective of providing alternative techniques that are fair and fast. The keys to avoiding legal repercussions are the maintenance of a voluntary and balanced hearing system, accurate records, and high public visibility as well as accountability to the court.

SECTION IV

CONCLUSION

Oftentimes, to the average citizen, the world of law appears inhabited by vicious, untamed technicalities guarded by severe looking police, lawyers, and judges. We can observe but cannot touch -- nor do we feel inclined to try for fear of being bitten. Or, we have the alternate image of the law as who knows whom and who knows how to manipulate what. The dual picture of "zoo and jungle" reflects popular misconceptions abetted by a very real disjunction between the ideal of the law and its daily reality.

The individual, then, concerned about resolving a dispute with a neighbor, with a child, with a student, is not likely to view the courts as a friendly environment. Although the courts can help resolve disputes through mediated agreements and the like, there is not predictability in this occurring. A complainant does not know whether a complaint will be dismissed as trivial, usurped by the legal system, or resolved in a nonadversarial way through discretion on the part of a judge.

Community dispute settlement programs provide a predictable alternative to formal adjudication. Whether they provide an effective alternative is a question that programs funded under Program 11E will help answer. The whole development of community dispute settlement programs is far too new for us to provide any assurance of their effectiveness. This technical assistance manual was written to encourage the development of experimental programs, to provide the State with a chance to look first hand at new ways of delivering justice to its citizens, to attempt to provide solutions to problems which the courts have been unable to handle.

Success or failure of the programs will depend, in part, on

the correctness of the theory behind alternatives. In addition, success will depend on how the theory is applied. A very real tension adheres in alternative resolution programs, one which theorists and planners often overlook. While the intent of these programs is to permit disputants to retain active control over a conflict's resolution, the existence of these programs is saying to potential users: "Come to us, we can do something for you that you cannot do for yourself. We know something that you do not." Resort to any official body, even an official alternative, relieves individuals of some control over their own affairs. Planners should be conscious that alternatives are intrusive, although we feel they can build more harmonious relationships within a community. For this reason we make the following conclusions and recommendations for program development.

Conclusions

1. Alternatives appear to broaden access to justice. People reluctant because of personal characteristics or because of the nature of the dispute to use the courts find alternatives effective in aiding the resolution of tensions. Community dispute settlement programs, therefore, should seek particularly to develop confidence among these groups. For juvenile community dispute settlement programs the obvious focus is the juvenile population. Staff should develop outreach programs that go into schools and youth associations to explain the programs.

2. Alternatives may be effective in the resolution of conflicts involving many parties. An example of this is their employment in relieving tension in racial confrontations in the schools. Staff should educate school and other public officials about the use of alternatives to tackle these problems.

3. The legal implications of community dispute settlement

projects are not barriers to implementation. The legislative purpose behind Chapter 48 includes diversion of children from the juvenile justice system [Wis. Stats. §48.01(1)(d)]; alternative resolution devices provide a major way of realizing this objective. Only those programs which tend to duplicate formal court functions outside the court may be faced with prohibition or curtailment. Community courts and preadjudicatory restitution programs are notable examples of this latter group.

4. Alternative programs should emphasize that they are a complement to the existing judicial structure rather than a competitor. An impetus behind alternatives is to broaden the range of available mechanisms for resolving conflicts. This is part of a much broader consumer-oriented philosophy of public services stressing the development of programs fitted to the needs of individuals. The extent to which individual programs achieve "consumer satisfaction" depends largely on how well they can demonstrate to citizens their responsiveness to "consumer complaints" directed at them.

Recommendations

1. An essential ingredient for any program is a thorough needs assessment prior to implementation. Other counties would do well to examine the needs assessment survey undertaken by the Dane County Youth Commission. Through a survey, planners also will become aware of new sources of assistance for the program. Considered placement of the program and awareness of potential community resources will aid greatly in establishing dispute settlement centers as community-involved projects.

2. Planners should be able to demonstrate that they have developed an adequate management information system prior to program implementation. Standardized data are the only means we have of judging these programs' success. The State should

take the lead in developing the necessary collection forms for the data.

3. Programs will need to demonstrate a high degree of youth involvement. Youth should be encouraged to speak freely during hearings, they should be sought out as active participants in the developing of a community dispute settlement program, and should be included in the volunteer program. Youth can act as moderators, working in tandem with an adult mediator.

4. Community dispute settlement programs should consider using lay advocates in the hearings. The lay advocate could also work towards reaching out to youth, encouraging them to utilize the community dispute settlement program rather than lumping their problems or resorting to self-help.

5. Programs should develop a training component such that they can teach youths the skills used in mediation and other forms of conflict resolution. This might be as important an emphasis as community dispute settlement hearings themselves for the resolution of individual disputes.

6. Projects in order to solidify their status as community institutions should consider holding regular -- perhaps quarterly -- public hearings. During these sessions staff, volunteers, and community members can engage in discussion and criticism of the program.

NOTES

NOTES

SECTION I

1. In general, see Anthony M. Platt, The Child Savers. The Invention of Delinquency, second edition, (Chicago, 1977) and Sanford Fox, "Juvenile justice reform: An historical perspective," Stanford Law Review 22 (1970), 1187, especially 1201.

2. Charles Silberman, Criminal Justice, Criminal Violence, (New York, 1978), 31.

3. Fox, "Juvenile justice," 1191; M. K. Rosenheim, "Perennial problems in the juvenile court," in M. K. Rosenheim, ed., Justice for the Child, (New York, 1962), 3-5.

4. Fox, "Juvenile justice," 1191.

5. Fox, "Juvenile justice," 1202.

6. Platt, Child Savers, chapter five.

7. Revised Laws of Illinois, 1899, 131-137.

8. F. B. McCarthy, "The role of the concept of responsibility in juvenile delinquency proceedings," Journal of Law Reform 10 (1977), 181-219; W. Vaughan Stapleton and Lee E. Teitelbaum, In Defense of Youth. A Study of the Role of Counsel in American Juvenile Courts (New York, 1972), 9-12.

9. For a polemical view on this change, see Kenneth Wooden, Weeping in the Playtime of Others. America's Incarcerated Children (New York, 1976) and for a more historical perspective, Steven Schlossman, Love and the Juvenile Delinquent (Chicago, 1977).

10. Platt, Child Savers, 141-143.

11. Platt, Child Savers, 43-45.

12. No one work to my knowledge has assessed the impact of juvenile justice reform outside the courts. Such an affect is clear in reading the materials on changing attitudes of police to their function as community peace keepers.

13. See, in general, Schlossman, Love and the Juvenile Delinquent; focuses on Wisconsin.

14. The juvenile court movement was only part of a broadly based trend undermining many local institutions for conflict resolution. The trend can be analyzed in terms of a shift from multiplex personal relations to simplex ones. Industrialization, mass transit, professionalization of services also contributed to this charge.

15. See Wooden, Weeping.

16. We must emphasize that many juvenile courts have not carried out the reforms required by the Supreme Court decisions.

17. League of Women Voters of Wisconsin, Inc., "In the interest of . . ." Juvenile Justice in Wisconsin (Madison, 1976); John Howard Association, Juvenile Court Services. A Statewide Master Plan and Study. Final Report (Chicago, March 1977).

18. Wisconsin Statutes, 1977, Chapter 48 (Children's Code), 1058-1116.

19. The recent legislative session has produced a host of amendments aimed at "freeing" communities from some of the restraints imposed under the Children's Code.

20. Wis. Stats. §48.01, "Title and legislative purpose."

21. Wis. Stats. §§48.23, 48.243, 48.30(2).

22. Donald R. Cressey and Robert A. McDermott, Diversion from the Juvenile Justice System (Ann Arbor, 1973); Edwin M. Lemert, Instead of Court. Diversion in Juvenile Justice (Chevy Chase, 1971).

23. Paul Nejelski, "Diversion: Unleashing the hound of heaven?" in M. K. Rosenhiem, ed., Pursuing Justice for the Child (Chicago, 1976), 94-118.

23a. American Bar Association, Report on the National Conference on Minor Dispute Resolution (Chicago, 1978); Mary Ann Beck, "Alternative approaches to dispute resolution," unpublished paper for National Institute of Law Enforcement and Criminal Justice, April 1977; Frank E. A. Sander, "Varieties of dispute processing," Federal Rule Decisions, 70 (1976), 111.

24. In general, see David E. Aaronson, et al., The New Justice: Alternatives to Conventional Criminal Justice (November 1977) and Daniel McGillis and Joan Mullen, Neighborhood Justice Centers, An Analysis of Potential Models (October 1977).

25. The Ford Foundation, New Approaches to Conflict Resolution (New York, May 1978), 7; where is noted the need to create processes which better address certain interpersonal and group conflicts.

26. Dispute Resolution Alternatives Committee, Office of State Courts Administrator, Florida Supreme Court, The Citizen Dispute Settlement Process in Florida. A Study of Five Programs (1979), 66.

27. Blackstone Associates, Final Evaluation Report: Philadelphia 4-A Project (July 1974); William Statsky, "Community court: Decentralizing juvenile jurisprudence," Capital University Law Review 3 (1974), 1-31 (Bronx); J. W. Palmer, "Pre-arrest diversion -- the Night Prosecutor's Program in Columbus, Ohio," Crime and Delinquency 21 (1975), 100.

28. Daniel McGillis, "Recent developments in minor dispute processing," unpublished paper prepared for former U. S. Atttorney General Griffin Bell, August 1979.

29. David Sheppard, et al., Neighborhood Justice Centers. Field Test. Interim Evaluation Report (February 1979).

30. Senate Bill 423 (1979); see The Mooter 3, 2 (1979-1980), 20.

SECTION II

1. In personal conversations with researchers we have noted their concern that formal programs often replace informal practices which, although informal, were reenforcing and reenforced by numerous social and community ties. Without adequate care, community dispute settlement programs can "professionalize" conflict resolution alternatives rather than aid in moving to informalism. Malcom Feeley, The Process is the Punishment (New York, 1979), 289.

2. Feeley, The Process, chapter eight.

3. McGillis, Neighborhood Justice Centers, 132.

4. Richard Knudten, Victim and Witness: The Impact of Crime and Their Experiences with the Criminal Justice System. Report of the Marquette University-Milwaukee County Victim/Witness Project, (August 15, 1976).

5. See, for example, Carol Blew and Robert Rosenblum, An Exemplary Project: Community Arbitration Project. Anne Arundel, Maryland (Washington, D.C., September 1979), figure 3.1.

6. William L. F. Felstiner, "Influence of social organization on dispute processing," Law and Society Review, 9 (1974), 63.

7. On the distinction between rule-oriented and people-oriented, see Melvin Aron Eisenberg, "Private ordering through negotiation: Dispute-settlement and rulemaking," Harvard Law Review, 89 (1976), 637,681.

8. McGillis, Neighborhood Justice Centers, 10-11.

9. McGillis, Neighborhood Justice Centers, 11-15; Feeley, The Process, 288-289.

10. P. H. Gulliver, "On mediators," in Ian Hammett, ed., Social Anthropology and Law (London, 1977).

11. McGillis, Neighborhood Justice Centers, 19-21.

12. McGillis, Neighborhood Justice Centers, 15-18; Julius Getman, "Labor arbitration and dispute resolution," Yale Law Review, 88 (1979), 916-949.

13. Joseph B. Stulberg, "A civil alternative to criminal prosecution," Albany Law Review, 49 (1975), 367-368.

14. Roger Baron and Floyd Feeney, Preventing Delinquency Through Diversion: The Sacramento County Probation Department 601 Diversion Project: Third Year Report (Sacramento, California, 1974).

15. Eric A. Fisher, "Community courts: An alternative to conventional criminal adjudication," American University Law Review, 24 (1975), 1253.

16. McGillis, Neighborhood Justice Centers, 27.

17. Dispute Resolution Alternatives Committee, Office of State Courts Administrator, Florida Supreme Court, Citizen Dispute Settlement. Guideline Manual (1979), 37.

18. Elaine Walsh, et al., The Neighborhood Mediation Pilot Project. Annual Research Report (Portland, Oregon, June 1979), 3.

19. Dispute Resolution Alternatives Committee, Guideline Manual, 38.

20. The Citizen Dispute Resolution Organizer's Handbook, ed. Paul Wahrhaftig (Pittsburgh, n.d.), 50-56.

21. T. Hamilton, "Discussion of the community youth and family aids proposal," Division of Policy and Budget, [WI] Department of Health and Social Services, January 1979.

22. Dispute Resolution Alternatives Committee, Guideline Manual, 41-42, 124-125.

23. Legal sufficiency would be facts adequate to persuade an intake worker that the court would have jurisdiction, if sought.

SECTION III

1. Information from Peter Plant, Youth Policy and Law Center, Madison, Wisconsin. The Children's Code, court reorganization, and the public defender system have been the three changes affecting not only increased appeals, but increased trial motions.

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APPENDIX 1

PROGRAM 5: COMMUNITY DISPUTE SETTLEMENT CENTERS (JUVENILE)

The administrative Committee of Courts will provide two-year funding for innovative programs designed to provide alternatives to adjudicating disputes involving juveniles. Each funded program will provide a range of services to the court, the juvenile, and the community, including informal resolution of non-petition cases or pre-adjudication matters referred to the program staff by the court or intake staff, development of restitution plans in appropriate cases, and improved court liaison with other community resources. Community involvement through the use of a citizen advisory board and trained volunteer counselors, including peers, will be encouraged. Referrals will be made by the juvenile court judge or intake worker, with the consent of all involved parties.

Potential projects will be developed by local juvenile court branches, in cooperation with the Office of Planning and Research staff; funding will be based upon community acceptance, availability of volunteers, experience of the proposed project director, access to community resources (e.g., drug counseling), and cooperation of the juvenile court. The Office of Planning and Research or its designee will monitor and provide technical assistance to all funded projects during the two-year period. At least one project is to be developed in a high-crime area.

FUNDING INFORMATION

POTENTIAL GRANTEE: local trial courts, including at least one high-crime area court

LENGTH OF PROJECT: two years

MAXIMUM FEDERAL FUNDING AVAILABLE: $155,000 ($75,000 reserved for high-crime area court project)

MATCHING FUNDS TO BE PROVIDED LOCALLY

APPENDICES 2 - 5

INTRODUCTION TO APPENDICES 2 THROUGH 5

The following project summaries have been culled from published evaluations, descriptive articles, and numerous unpublished reports. Several project directors have been invaluable in supplying supplemental information. The summary categories are adapted from McGillis and Mullen, NEIGHBORHOOD JUSTICE CENTERS: AN ANALYSIS OF POTENTIAL MODELS (1977). The descriptive dimensions employed are:

1. the nature of the community served;
2. the type of sponsoring agency;
3. ties with local community and service agencies;
4. project office location;
5. project objectives;
6. project case criteria;
7. referral sources;
8. intake procedures;
9. resolution techniques;
10. project staff;
11. hearing staff training;
12. case follow-up procedures;
13. project costs;
14. evaluation.

No project summarized here can be replicated exactly; to do so would overlook local community conditions and resources. We recommend that planners, once they understand their goals, limitations, and target populations, "go shopping" among the summaries. For each summary we supply a contact person. At various points, we mark with an asterisk (*) features of programs we felt especially worthwhile for consideration. Except for these occasional asterisks, critical comments are left for section fourteen of each summary.

The analytical dimensions of the summary should provide an

adequate basis for comparison of project approaches. We should note here, however, that neither the main text of this manual nor the project summaries fully treat the theoretical literature that has grown up around the question of alternatives to the court. We take as our excuse, in part, that much of the theoretical literature only vaguely addresses the issues raised in practice. In fact, the gap between theory and practice is so significant that further research will be undertaken to explain its existence. That research is for another time and work. For those interested we do include in the bibliography reference to the major theoretical articles on adjudication alternatives.

We should further note that not all possible models are summarized. We have selected four projects which demonstrate major approaches to community dispute settlement approaches involving juveniles and which we feel would be advantageous for and legal in Wisconsin communities. This has meant, specifically, excluding community court programs.

APPENDIX 2

JUVENILE MEDIATION PROGRAM
CENTER FOR DISPUTE SETTLEMENT, INC.

36 WEST MAIN STREET, SUITE 495
ROCHESTER, NEW YORK 14614 PHONE: (716) 546-5110

Contact person: Luis R. Zamot, Mediation Project Director

1.0 Nature of the community served. In general, the program is available to youths between 10 and 17 from the City of Rochester and Monroe County. Between January and September 1979, actual referrals to the Juvenile Mediation program were all between ages 10 and 15.[1] Of these by sex:

Female	66	34%
Male	130	66%

And, by race:

Black	66	34%
Hispanic	17	9%
White	105	53%
Other	8	4%

Extrapolating for the year, the number of referrals would be approximately 270 for Monroe County. This constitutes a small percentage of potentially eligible youths.

2.0 Type of Sponsoring Agency. The Juvenile Mediation Program began in July 1978 as part of the Rochester office of the National Center for Dispute Settlement, American Arbitration Association. The Association is a private organization initially instituted to supply trained mediators and arbitrators for labor-management negotiations. Since the 1960s, the Association has established numerous community programs which attempt to adapt labor mediation practices to interpersonal dispute resolution. The Rochester program was among these experiments. In October 1979, the Juvenile Mediation Program and the parent organization became independent, incorporating locally as the Center for Dispute Settlement, Inc.

3.0 Ties with the local community and service agencies. The juvenile program began through the active assistance of a Family Court judge in Monroe County, so it has been fortunate from the outset to have important ties to the court system. More tenuous ties are maintained with the schools and with law enforcement as demonstrated in referral figures (see below, s. 7.0).

3.1 According to an outside agency report for 1979 the weakest aspect of the Juvenile Mediation Program is its failure to involve the community.[2] To be sure, community volunteers have no influence on the administration of the program except as they can influence the funding sources. Part of the difficulty in developing these community ties resulted from the American Arbitration Association being an outside organization. Since local incorporation, plans have been developed for an advisory board consisting of groups affected by the Juvenile Mediation Program. Presumably the board will have youth members.

4.0 Project office location. The administrative office of the program is located in office building right around the corner from the Family Court. If hearings are school related, hearings are held at the school, otherwise they are at the administrative office.

5.0 Program objectives. In the words of a Juvenile Mediation Program statement, the goal "is to establish the mediation process as a recognized effective alternative to Family Court, and to promote the peaceful resolution of interpersonal conflicts backlogging the Juvenile Justice System." As evidence of the court burden, the program cites an average caseload in 1978 for each of the four Family Court judges of 452.5, not including a substantial unprocessed backlog of school truancy cases.[3]

6.0 Project case criteria. The two main areas of concern in the Juvenile Mediation Program are school-related issues and parent/child conflicts, although general delinquency problems

are heard in substantial numbers. For the period July 1978 to November 1979, 340 cases were processed.[4] Of these:

School-related	45%
Parent/child	14%
Juvenile delinquency	41%

We should note that the program report fails to define "juvenile delinquency," and we are left not knowing if this category includes status offenses.

7.0 Referral sources. According to statistics compiled between January and September 1979, 82% of referrals originated from the Family Court. This may be partly the result of a Juvenile Mediation Program worker spending one day per week at the court. The remaining 18% includes school districts (11%), law enforcement (3%), and assorted community agencies (4%).

8.0 Intake procedures. Intake occurs in person at the Family Court or by phone. The worker discusses with the youth and the parents what is involved in the mediation process and whether the case is appropriate for the program.

8.1 A possible intervening step between intake and a hearing is factfinding. This procedure is used consistently with referrals involving the schools and may be utilized with other institutional referrals. A Juvenile Mediation Program counselor contacts the family for an assessment interview which stresses the following areas: readiness, relationships, rationality, and resources within the family. The intention of factfinding is to gather information on the extent to which the family can support the youth in resolving his/her conflict with the school or other institution.

9.0 Resolution techniques. The Juvenile Mediation Program employs mediation with frequent resort to caucusing. The following format is commonly followed in the hearings: The mediator makes a few personal comments, explains the rationale behind mediation, and indicates what procedures will be followed in the hearing. After this introduction, the petitioner

presents his/her side of the dispute, followed by the respondent's. With the conclusion of introductory statements, the mediator begins questioning back and forth in order to define the field of conflict in specific and mutually understood terms and seeks to uncover common ground for resolution. Caucusing is used to draw out feelings individuals, particularly youths, might be reluctant to articulate in public, possibly for fear of reprisal later. This is often the case in mediation hearings involving school officials. Throughout the process the mediator attempts to clarify and to delineate the points of the dispute, then, to suggest concrete actions for resolving them. The mediator repeats and summarizes points often in order to elicit agreements from each party on a point by point basis. In closing the mediation hearing, the mediator will:

a. summarize the points of accord;
b. place the accord in writing or fill out a non-agreement form;
c. fill out any necessary referral forms, if referral was part of the accord;
d. explain to the parties that the agreement will be typed, signed and notarized with each party receiving a copy;
e. explain to the parties that the program will not refer the dispute back to court for failure to comply although the program will hold an additional hearing or suggest another route.

10.0 Project staff. Three regular staff are attached to the Juvenile Mediation Program; the project director who is in charge of administering the program, the mediator counselor who assists the director in operations and program expansion and coordinates the volunteer mediators, and a part-time clerk-typist.

10.1 The two main sources of paperwork for the program are the case files and the logbook. The case files include intake,

interview, and follow-up forms, copies of the consent agreement or non-agreement form, information release forms, notes and factfinding reports. The materials are arranged in a predetermined order and are, therefore, easy to use. The logbooks keep track of the various mediation stages and are cross-referenced with the files. Quarterly reports containing basic statistical information such as intake numbers, percentage which went to hearing, etc., are supplied to the Rochester-Monroe County Youth Bureau. An annual report summarizing the year's accomplishments and objectives for the forthcoming year is also drawn up.

10.2 In addition, as of October 1979, there were thirty-one volunteers who received $25 per diem. Thirty of these volunteers were trained as mediators in the adult program. Of the thirty-one mediators, 64% are white, 32% are black, and 3% are hispanic. This approximately matches the racial composition of the youths referred to the program.

11.0 Hearing staff training. Volunteers are trained in interpersonal skill development, collective bargaining techniques, mediation/arbitration techniques in accord with civil law practice, and youth and family-oriented issues. Special instruction on youth issues is derived from crisis intervention projects.

11.1 Staff, especially, have taken advantage of numerous seminars and training programs such as "Youth and Alcoholism Awareness," "Hispanics and the Human Service System," and "Duty of Fair Representation."

*11.2** The Rochester program maintains a training component for its staff and volunteers as well as for outreach into Monroe County communities.

12.0 Case follow-up procedures. Six to twelve weeks after the session, the hearing officer is expected to contact the

parties to find out if there has been compliance, partial compliance, or non-compliance. According to the report by the Rochester-Monroe County Youth Bureau, this has been the Juvenile Mediation Program's weakest point of procedure. In 1979, follow-up was done in only slightly more than fifty percent of the cases reaching accord.

13.0 Project costs. Initially the program was a part of the Rochester AAA project. This involved bookkeeping both in Rochester and at the Association's New York headquarters. As of October 1979 the umbrella program, the Center for Dispute Settlement, Inc., organized as a local independent program with funding from the Monroe County United Community Chest. Present annual budget for the program is $40,000. The program is now beginning a thorough investigation of alternative funding sources.

14.0 Evaluation. The Juvenile Mediation Program reports are frank in stating that they cannot, as yet, assess the impact the program has had on the juvenile justice system, either in terms of reduction of court congestion or in financial savings to the county. We can assume, however, that the program has had some impact on school truancy issues given the percentage of cases involving that area.

14.1 One area of concern which we note here is the content of agreements reached between youths and school officials. A typical agreement might require several behavioral modifications on the part of the youth and parents such as a set time of leaving for school, avoiding troublemakers, referral to counseling, while the school may be required only to assist the youth in honoring the agreement or perhaps, at most, keeping closer tabs on school attendance records. These agreements lack any sense of mutual accommodation -- the goal of mediation.

APPENDIX 3

THE COMMUNITY ARBITRATION PROJECT
JUVENILE SERVICES ADMINISTRATION
102 CATHEDRAL STREET
ANNAPOLIS, MARYLAND 20401 PHONE: (301) 263-0707

CONTACT PERSON: KAY PEACOCK, PROJECT DIRECTOR

1.0 Nature of the community served. The target population for the project includes all juveniels alleged to have committed a misdemeanor or less felony offense. The published materials on the Community Arbitration Project do not contain information which would permit us a composite picture of those youths who enter the hearing stage. In conversation with a project staff person, we obtained some impressions: by three to one, males outnumber females. Racial composition among those entering hearings appears to reflect the overall racial composition for the county with the exception of the City of Annapolis where black male youths, at one time, were disproportionately represented.

2.0 Type of sponsoring agency. The Community Arbitration Project developed under auspices of Juvenile Intake and Probation Services, Juvenile Services Administration.

3.0 Ties with local community and service agencies. The Community Arbitration Project utilizes over one hundred area organizations for post hearing community placements. Among these are Goodwill, nursing homes, day care centers, the Red Cross, art and drama organizations, S.P.C.A., Annapolis Jaycees, and the YM/YWCAs.

3.1 Between April 1974 and December 1975, 354 youths or 31% of the dispositional total were referred to some form of counseling. Extensive use of such referrals required close and constant contact with social service agencies. The variety of social agencies includes Youth Service Bureaus, drug counseling, and ministerial counseling. Location of the project within the administration of the Juvenile Services

Administration provides a significant measure of legitimacy for the program with law enforcement agencies. The project initially did have problems in its contact with local police who tended to over-refer youths to the program. Through outreach and inservice talks, the problem has been corrected.

3.2 Significant contact with the general community is lacking. The project lacks an advisory board and no way of popular input appears to be available.

4.0 Project office location. The Community Arbitration office is located on the ground floor of a renovated brick house two blocks from the office of the Juvenile Services Administration in Annapolis.[1] Hearings under the program, however, are conducted in a county annex building adjacent to Juvenile Services Administration and the courthouse.

5.0 Project objectives. In 1973, David Larom, administrator of juvenile intake and probation services in Anne Arundel County, faced significant caseload management problems. Time which could be allotted to individual juvenile intake was diminishing as the caseload backlogged. After meeting with other juvenile justice personnel including officials from the State's Attorney's office, the Community Arbitration Project was proposed and placed into operation within the year. The problem that Anne Arundel faced was a more than one hundred percent increase in the number of juvenile charges in the five year period from 1969 to 1973: 1,261 to 2,815. In some instances it was eight weeks before a youth could be seen by an intake worker.

5.1 The objectives of the Community Arbitration Project are to provide:

1. immediate response by law enforcement through the issuance of citations;
2. informal hearings by the Juvenile Services Administration within seven working days;
3. opportunities for youths to redress actions in a constructive way through community services.

6.0 Project case criteria. During the initial planning stages, the State's Attorney's Office drew up a list of approximately thirty misdemeanor and less serious felony offenses that would be eligible for the Community Arbitration Project. This list has changed little since. Among offenses included are assault, cruelty to animals, destruction of property, disorderly conduct, larceny under $100, loitering, traffic violations, trespassing, and vandalism. The list is nearly inclusive except for major felony charges such that police could refer almost any youth thought to have violated a law to the program, even if it meant a slight alteration of the charge to meet the eligibility criteria.

7.0 Referral source. The two referral sources are law enforcement and citizen complainants to the police, each constituting about half. Through the issuance of citations similar to traffic tickets a youth and parents are referred to the Community Arbitration Project.

8.0 Intake procedures. The project does not utilize an intake procedure independent of the arbitration hearing.

9.0 Resolution techniques. The Community Arbitration Project does not employ arbitration as a resolution technique despite the name. Although a process of give-and-take can develop between the hearing officer and the youth, the victim or complainant can only present information and is not involved in the resolution process. Moreover, the youth has limited opportunities for affecting a resolution.

9.1 The process begins when a city, county, or state police officer issues a juvenile citation to a youth suspected of having committed one the eligible offenses. A similar citation is used for the youth's parent/s. The issuing officer indicates the date for the hearing on the ticket. If a private complainant or victim is concerned, that person also is notified of the scheduled hearing time.

9.2 The arbitration hearing is conducted in a court-like atmosphere to emphasize to the youth the importance of what is happening. The arbitrator is provided with the following information for use in conducting the hearing:

1. any witnesses' statements;
2. police report;
3. copy of the charges;
4. copies of any prior intake or probation files that exist on the youth.

In the hearing, the youth sits alone, facing the arbitrator, while the parents are seated directly behind. Although the complainant/victim may be present, the arbitrator explains that the hearing is confidential and cannot be used in evidence in subsequent criminal or civil litigation. The child and parents are informed on the procedures, that they may have counsel present (few do) and then are asked if they wish to continue.[2] If Community Arbitration is chosen, the arbitrator will read the police reports aloud, ask the victim to state his/her side, then allow the youth the opportunity to speak. The arbitrator will will ask questions of the youth, the parents, and the complainant/victim. The arbitrator, then, will reach one of five decisions:

1. close the case for insufficient evidence;
2. close the case with a dispositional warning;
3. forward the case to the State's Attorney for filing a petition;
4. informally adjust the case using community service, restitution, counseling; the case then is kept open for 90 days (Maryland's statutory limits for informal dispositions) pending successful completion by the youth of the "agreement";
5. continue the case for additional investigation at the close of which one through four can be applied.

For the Community Arbitration Project, decision four is the key feature. The process of informal disposition begins with the youth acknowledging responsibility for the act/s. After an explanation of why the state chooses to invoke a sanction,

the arbitrator assigns the youth to a work schedule, usually amounting to 10-25 hours of community service. A number of cases also include restitution and, perhaps, counseling. The latter may be utilized in lieu of community service.

9.3 The next step in the process is for the youth to contact the assigned field supervisor. The youth and the field supervisor will discuss and arrange for a program of community service, taking into consideration:

1. choice of a placement at which the youth would want to spend time;
2. choice of a work situation in which the youth would feel involved as a member of a group;
3. choice of a site close to home to alleviate transportation problems and to provide a sense of involvement in one's community.

If the arbitrator stipulated counseling, the field supervisor will visit the youth's home to help in determining the most appropriate counseling agency, selecting from the Youth Service Bureau, traditional family and child counseling agencies, drug and alcohol counseling, county mental health, and ministerial counseling programs.

9.4 The process is completed after the youth has met the requirements of the "agreement." Successful completion is defined as either finishing the length of the assignment or receiving a termination based on a counselor's opinion that further sessions are unnecessary. If the youth is terminated as unsuccessful, the case is returned to the State's Attorney's Office for further action. Such youths at termination are given "dishonorables."

10.0 Project staff. The project director is responsible for overall program operations, meeting weekly with the administrator for the county Juvenile Services Administration, developing and maintaining ties with the community, increasing police cooperation, supervising training for the staff, and providing

counseling assistance as needed. The present project director has a Master's Degree in Social Work and has been director for three years.

10.1 The Community Arbitration Project employs two community arbitrators part-time; both are required to be lawyers. They are responsible for conducting the hearings and determining the appropriate disposition. The community arbitrators appear to place heavy emphasis on due process and avoid as far as possible explicit coercion.[3] Utilization of lawyers in this position adds an air of legitimacy which would be absent if volunteers were employed since arbitrators judge "facts" as well as provide dispositions.

10.2 Two field site supervisors, each with previous experiences in juvenile service programs, are employed. The caseload for each is 100 youths; they are responsible for arranging work placements and counseling, monitoring job sites and hours, and were, in the first two years of operations, responsible for locating new job sites.

10.3 A police liaison handles police complaints about the program and is in charge of outreach to the law enforcement agencies in Anne Arundel County. A community liaison works to maintain ties with community agencies and expand the list of placement opportunities.

10.4 For the office routine of the program, one part-time docket clerk and three secretary-clerk/typists are employed. The docket clerk manages and coordinates the materials relating to the hearings. The typists are, in part, covered through the regular Juvenile Services Administration budget.

11.0 Hearing staff training. Training sessions are routinely provided for staff focusing on such issues as communication and role responsibility. The State will reimburse staff for continuing education courses.

12.0 Case follow-up procedures. Since there is continual monitoring of a youth's agreement until completion or termination, no particular follow-up procedures are necessary.

13.0 Project costs. For the fiscal years 1974 through 1977, the Community Arbitration Project relied upon extensive LEAA funding:

	Federal	State	Total
FY74-75	51,850	5,761	57,611
FY75-76	73,982	8,200	82,202
FY76-77	77,700	8,633	86,333

In April 1977 the project was incorporated into the Maryland State budget with the operating level for FY78-79 set at $79,084, of which approximately 90% was to be spent in salaries. Because of its location within the Juvenile Services Administration, the Community Arbitration Project does not face extensive overhead. The breakdown for FY78-79 was:

Personnel salaries	$70,494
Rent	4,202
Postage and telephone	2,148
Insurance (for youths on work sites)	1,000
Other	1,240
	$79,084

Cost per case amounted to an estimated $30 in 1978 as compared to $37 for regular intake statewide. An individual figure for Anne Arundel intake was unavailable.

14.0 Evaluation. The Community Arbitration Project evaluation for its inclusion in the LEAA Exemplary Project Series focuses on its impact on Juvenile Services Administration caseload, its effect on recidivism rates among participating youths, and its ability to involve victims and the community in the juvenile justice system.[4]

14.1 The impact of the project on traditional caseload appears to be more the effect of employing lawyers at an early stage

in the intake process rather than related to any factor intrinsic to the Community Arbitration concept. Program records indicate that 30.6% of Community Arbitration Project youths had their cases dismissed for insufficient evidence as compared with 4.1% at traditional intake. Twenty-four and one-half percent of the project's cases were closed with a warning and 7.2% were forwarded to the prosecutor's office; this compares with a 75% forwarding rate for traditional intake.[5] Community arbitrators are acting as prescreening agents for the prosecutor's office. Caseload reduction in the prosecutor's office is not indicated, but a substantial reduction should be realized there. The community arbitrators' services, in this way, are not so clearly an alternative to the existing system; they appear more as part of a streamlining process. Perhaps of interest here is the fact that Dane County uses a screening procedure in which the assistant prosecutor and the intake worker make contact daily for a brief screening of all new cases. The evaluation of the project argues that the percentage of dismissals and warnings indicates that the program has prevented a net-widening effect. Critics might respond that the net widened when the police chose to issue a citation instead of giving the youth a warning.

14.2 Examining the relative recidivism rates of a sample of youths in the project and in a traditional intake control group reveals a project recidivism rate of 9.8% compared with a control rate of 14.3%.[6] In addition, the number of rearrests per client was .415 for the project and .659 for the control group. The significant percentage recidivism for the two groups, however, is displayed when measured against specific offenses.

		CONTROL	PROJECT
OFFENSE:	person	12.3%	12.3%
	property	14.8%	6.1%
	nuisance	20.0%	14.1%
	other	11.6%	13.9%

Despite arguments to the contrary in the project evaluation

materials, these differing percentages may reflect more police discretion than program effectiveness. Before a definitive statement can be made about the project's impact on recidivism, we need detailed information on the decisionmaking process of the police. Decreased recidivism for youths cited for property offenses may reflect a positive impact of the restitution element or may reflect the fact that the property offenses in the project were of a more minor nature committed by youths unlikely to have a second contact with the police.

14.3 The project's effectiveness in broadening community involvement is demonstrated through the more than one hundred work sites developed for the program. This is a major positive accomplishment. On the other hand, the program's success in involving the victim was limited. A survey of victims indicated that 80% had no prior contact with the youth; this explains why the project was unable to develop greater victim participation.[7] Generally, programs which intend to increase victim involvement rely on the victim having some previous acquaintance with the offender. The assumption is that the victim will have a stake in determining the future nature of his/her contact with the offender as it is worked out within the legal system.

14.4 Overall, the project is effective in reducing caseload -- though not in substantially reducing caseload cost -- and in developing restitution projects. The project cannot, however, be clearly defined as an alternative to the adjudicatory process; it acts more to shortcut it. The project's inclusion here is necessary since it does incorporate some alternative features and is a major "alternative" model as demonstrated through its status as an LEAA Exemplary Project.

APPENDIX 4

NEIGHBORHOOD MEDIATION PROJECT
METROPOLITAN HUMAN RELATIONS COMMISSION
CORBETT BUILDING, ROOM 312
430 S.W. MORRISON STREET
PORTLAND, OREGON 97204 PHONE: (503) 248-4187

CONTACT PERSON: LINDA ROBERTS, PROGRAM COORDINATOR

1.0 Nature of the community served. The project initially operated out of three community centers, each situated in high crime and high complainant communities. The communities are substantially white, with a minority representation of approximately 15%. For the most part, the neighborhoods can be discussed as communities each having residents of long standing and a sense of identity vis a vis surrounding neighborhoods. Surrounding communities, however, have used the project.

2.0 Type of sponsoring agency. The Neighborhood Mediation Project is under the sponsorship of the City of Portland-Multomah County Metropolitan Human Relations Commission.

**3.0 Ties with local community and service agencies.* As part of the overall structure of the Neighborhood Mediation Project, the Metropolitan Human Relations Commission developed an advisory committee consisting of representatives from the serviced communities and from local referral agencies. Meeting once a month, duties of the committee include:

1. seeking and expanding the project's endorsements from local business, community groups, and legal institutions;
2. public relations;
3. advising on the maintenance of standards.

According to the Neighborhood Mediation Project pilot plan, the advisory committee will help promote the program's local acceptance.

3.1 The breadth of contacts and relations with the governmental structure is indicated by the number of different agencies making referrals to the project (see *7.0 Referral Sources*). In a survey of referral agencies conducted for a June 1979 report, 32 agencies were contacted, of which 29 replied. Agencies felt that the project was prompt in responding to referrals and in keeping the referring agency informed of a case's progress and disposition. Specific comments which illustrate agencies' perceptions included:

"A much needed resource for neighborhood Police Precincts."
"Project staff are very visible in their respective neighborhoods."
"We used to get many more complaint calls -- since the Project began our complaint calls have dropped significantly."

4.0 Project office location. Initially the project operated with an administrative office and three field sites. Financial cutbacks have eliminated two of the field sites. The administrative office is located in downtown Portland at the headquarters of the Metropolitan Human Relations Commission. The three field sites were placed in community buildings. It was at these sites that mediation sessions were held.

5.0 Project objectives. The plan for the Neighborhood Mediation Project took shape when the Metropolitan Human Relations Commission surveyed county and city agencies concerning the problems they faced in handling the large volume of neighborhood complaints. Agencies, especially law enforcement, felt inadequate to provide remedies for such disputes. Planning, then, centered on the need to provide efficient and effective means for minor dispute resolution at the community level. After a thorough needs assessment, the Metropolitan Human Relations Commission developed a pilot project employing a combination of conciliation and mediation methods.

5.1 The project pilot plan established as objectives:

1. organization within communities of effective mechanisms for neighborhood dispute resolution;
2. diversion of cases from the judicial and agency systems which are inappropriate for their handling;
3. decreasing the duplication of services caused by lodging a single complaint with many agencies;
4. increasing a neighborhood's livability.

6.0 Project case criteria. The Project has established the following criteria for eligibility:

1. persons must be unrelated by blood or marriage; the choice of this restriction was based on the low success rates of other mediation projects with handling husband/wife and relative disputes;
2. specific grievance must be of an interpersonal nature;
3. complaint must be definable as nuisance or misdemeanor.

The program includes adults as well as juveniles; it provides sufficient conciliation/mediation hearings for disputes involving juveniles to justify inclusion as a possible model for replication.

7.0 Referral sources. The project received 756 referrals from 83 different agencies in fiscal year 1978-1979. Of these:

Portland City Service Agencies	31%
City/County Law Enforcement	21%
County Agencies	10%
State Agencies	2%
Federal	>1%
Private Agencies	14%
Self-Referrals	19%
Unknown	3%

Individual agencies making the major referrals included Bureau of Neighborhood Environment (68), Youth Service Centers (32), Mayor's Office (37), Portland Police (146), Legal Aid (61), client calls (60) and neighbor referrals (29).

8.0 Intake procedures. The project makes an initial determination after referral as to whether the disputants meet the eligibility criteria and if the parties are willing to pursue an alternative resolution to their dispute.

**9.0 Resolution techniques.* Within 48 hours of initial intake a staff conciliator meets separately with each of the disputants to determine the details of the dispute. Conciliation may be effected at this stage, requiring no additional contact with the program.

9.1 If further discussion is deemed necessary and the disputants prove willing, the staff conciliator arranges for a mediation hearing at the community project center for within one week of the initial interview. A trained community mediator conducts the mediation hearing which is generally held weekday evenings unless another time proves more convenient to the disputants. Mediators encourage the parties to generate their own resolutions, while reminding them of the costs in time and money in pursuing redress through the judicial system. Parties are assured that disclosures made during the mediation session will be privileged and will remain confidential.

10.1 The project coordinator is responsible to the Metropolitan Human Relations Commission executive director. The duties outlined for the project coordinator are:

1. developing ties with citizen groups at the neighborhood level;
2. budgeting;
3. screening and hiring all project personnel;
4. supervision of community center operations;
5. developing monitoring and evaluation procedures;
6. delivering monthly reports to the advisory committee.

The project coordinator is assisted by a staff person responsible for:

1. preliminary research for budgeting and planning;
2. office management and reception;

and by a research specialist responsible for:

1. developing ongoing evaluations of the project;
2. collecting and analyzing all case disposition follow-up information;
3. preparing the annual report.

10.2 Center responsibilities are divided among the center coordinator who is responsible for:

1. regular verbal reports to the project coordinator in addition to quarterly written reports;
2. hiring, supervising and training of center staff;
3. initial screening of referrals to the center and case assignments to the field specialists;
4. authorization of all mediation hearings;
5. internal evaluation and job performance assessments;
6. supervision of office management procedures;

the center field specialists who are responsible for:

1. regular reports to the center coordinator on conciliation and mediation techniques;
2. intake field coordination, performing initial onsite conciliation visit with complainants and respondents within 48 hours of the project accepting the referral and, when appropriate, scheduling a mediation session within one week of the interview;
3. upon authorization, assigning cases and monitoring the sessions of the community mediators;
4. following up on case referrals;
5. scheduling performance evaluations of mediators in conjunction with the center coordinator;

the senior clerk who is responsible for:

1. coordinating intake information, obtaining the necessary referral information;
2. contacting disputants and agencies after case disposition to keep them aware of resolutions;

3. acting as office manager;

and the community mediators who in order to participate must meet the following eligibility criteria:

1. residence within the general geographic area served by the center;
2. reflect the ethnic-racial composition of the neighborhood;
3. have minimal community activities so time and energies are primarily directed to Mediation Center matters;
4. for individual hearings, not be known to the disputants;

with these criteria met, the selected mediators are responsible for:

1. attending mediation training workshops and ongoing inservice supervision;
2. conducting the mediation hearings;
3. maintaining accurate hearing records incorporating name and address of the disputants, nature of the complaint and results of the hearing;
4. serving a probation period after pre-service training, lasting approximately six weeks, after which the individual will be issued a training certificate.

11.0 Hearing staff training. All staff participated in an initial five-day (fourty hour) training session taught by two members of the San Jose, California conciliation/mediation project. This was followed two months later by training for the community mediators and used by staff as a refresher course. The project now provides its own training and would be able to provide training in local communities.

12.0 Case follow-up procedures. Each year, the project produces an annual research report that comprehensively covers the year's activities and provides a succinct evaluation. The categories that comprise the report include:

1. referral sources;
2. types of cases;
3. demographic data: race, sex, age, employment; length of residence and duration of relationship;
4. neighborhood areas served;
5. prior similar incidents and prior police contact;
6. staff response time from phone intake to interviews and panel hearing;
7. complainant's response to one month follow-up;
8. referral agency responses.

The complainant follow-up one month after the hearing or conciliation is done by each center via phone contact or by written questionnaire. During a ten-month period -- August 12, 1978 to June 8, 1979 -- the centers received an 87% response rate from complainants.

13.0 Project costs. The Neighborhood Mediation Project began initially under funds from the Comprehensive Employment Training Act (CETA). Present operations are covered by the Portland City Council, although the project was forced to close down two neighborhood centers. The budget for the FY 1980-1981 is projected at $81,000.

14.0 Evaluation. The spread of referrals coming to the Portland project is truly impressive. Perhaps, though, limitations on referral sources might better allow the project to assess its impact on agency caseloads and community livability.

**14.1* The most innovative aspect of this program, and one which should be considered for replication, is the two-tier resolution process. (The project was not the first to employ this process; San Jose also uses it.) The conciliation approach is somewhat like the idea of crisis intervention in that it enters the dispute at a very early stage, often while the parties are still actively hostile. It also has a possible advantage of avoiding, at first, face-to-face contact

unless the parties would feel comfortable. The field specialist employs a form of shuttle diplomacy in the attempt to bring about a truce between the disputants. Although the Neighborhood Mediation Project does not act on disputes between relatives, the early intervention of a conciliator in parent/children disputes may prove effective. The project's reason for avoiding such disputes was based on the experiences of programs employing substantially different methods than its own.

14.2 The second step of the resolution process provides for a community mediation hearing. This is somewhat more formal and indicates to the disputants that the community is concerned that the individuals resolve their conflict. The use of local mediators stresses the importance of resolution to the community without forcing resolution. In some ways, the mediators are as much of symbolic as practical importance in the session. As noted in the main text, programs employ a wide variety of individuals as mediators; this project's choice of "community members" narrowly defined reflects the overall project objective of enhancing community cohesion.

**14.3* Also an important aspect of the project is the maintenance of a core of well trained and paid conciliators who are also knowledgeable about the delivery of services to the neighborhood and who maintain a high level of visibility. The positioning of these conciliators before the community mediators is excellent; there is the implication that the community stands above the professional staff.

14.4 The analysis of the one-month follow-up data from complainants for the ten-month period of August 12, 1978 to June 8, 1979, indicates that 79% of those responding believed that the incident had improved and that for 32% of the respondents the relationship had improved while for 64% it, at least, remained the same. Perhaps a more significant figure in terms of the project's impact on official complaint loads was that 95% of the complainants responding indicated

no further contact with official agencies subsequent to the conciliation/mediation in regard to the incident.[1]

APPENDIX 5

NEIGHBORHOOD YOUTH DIVERSION PROGRAM
1910 ARTHUR AVENUE
BRONX, NEW YORK 10457 PHONE: (212) 731-8900

CONTACT PERSON: CYNTHIA CARRASQUILLO, FORUM COORDINATOR

1.0 Nature of the community served. When the program was first initiated, it drew referrals solely from the East Tremont area of the Bronx. In subsequent years it has expanded to cover most of the Bronx. The Bronx is among the classic areas of low income and high crime and as such the implementation of an alternative project in this area bears scrutiny.

2.0 Type of sponsoring agency. The Neighborhood Youth Diversion Program is a private group working under contract from New York City's Social Services for Children office.

3.0 Ties with local community and service agencies. The program maintains little in the way of formal ties with the community. It does not have a citizens' advisory board or open forums for discussion of its work. Its nine years of operation and commitment to the Bronx substitute greatly for this lack of community ties.

3.1 The program's strongest connection with service agencies is with Family Court from which it receives a substantial portion of its referrals. The program maintains an intake worker at the court. In addition, the program has developed close ties with many of the schools -- elementary to high school -- in the area and will receive referrals from them via the office for Social Services for Children.

4.0 Project office location. The program occupies the entire second floor of a modern office building in central Bronx. The building is occupied by numerous city social service

agencies such as Welfare and a methadone clinic. Hearings are held in the office. The forum coordinator stressed, in conversation, the program's attempt to provide an informal environment with couches, plants and free coffee.

5.0 Project objectives. The program developed in 1971 under the auspices of the Vera Institute of Justice and the Institute for Social Research, Fordham University. According to one of the early planners the object was to keep youths out of court through the development of "preventive programs designed to head off defiance of the law" and to develop methods of conflict resolution.[1] When the program first began operations it focused on community disputes. Now the program works exclusively with intrafamily conflicts, although taking into account how problems outside the family affect family management.

5.1 The present objectives of the program are:

1. helping parents to unravel problems in relating to their children and to social service agencies;
2. interesting youths in alternatives to conflict-provoking methods of attaining wants and needs;
3. encouraging self-motivation in youths;
*4. assisting the youth and parents in attending to any special education needs.

6.0 Project case criteria. The program keeps its criteria for eligibility as open-ended as possible. The following are the main guidelines for inclusion within the program:

1. the problem must be intrafamily;
2. the precipitating conflict can be either a delinquency charge or a person in need of services question;
3. the youth cannot have a substantial drug problem;
4. participants must indicate that they are participating voluntarily;
5. youths must be within the age range of seven to fifteen.

7.0 Referral sources. Referrals may come directly or indirectly from the police, intake probation office, family court, parents or guardian, school or other public agency, a private citizen, or the youth. The strongest ties producing the greatest number of referrals is from Family Court and Intake Probation.

8.0 Intake procedures. At intake probation, a probation officer might decide that a family would benefit from the program. Instead of simply keeping the case open for sixty days, the officer explains the Neighborhood Youth Diversion Program and recommends that the family look into it. If the family is agreeable, the probation official calls in the program intake worker assigned to the Family Court. The program worker explains the general format of the program and refers the family to the program for services.

9.0 Resolution techniques. The program provides two major components for referred families. The first is the advocate. This individual is assigned to the youth to assist him or her through any conflicts within and outside the family. This might include helping the youth to find work, contacting the school to see if changes can be made in a youth's educational program, counseling, attending any official hearings with the youth.

9.1 The second part of the program is the forum mediation. Here mediators, drawn from the community, meet with the youth, the parents, and the advocate, to help those involved to develop a rounded picture of the relationship between the youth and the parents. The idea is for a neutral third party to aid the participants in gaining a fuller understanding of the multiplicity of problems facing the family. The goal of the session, in addition to providing greater awareness and sensitivity, is for each participant to agree to one change or behavior modification. This agreement will often include the advocate, requiring him or her to investigate

some aspect not yet treated. The family and the advocate will be requested to return in two weeks for an evaluation of the agreements' progress.

10.0 Project staff. The Neighborhood Youth Diversion Program employs a substantial staff including a director, assistant director, an administrative supervisor, ten advocates, two coordinators, administrative assistant, family court intake worker, recreation specialist, fiscal officer, receptionist and three secretaries.

10.1 The director and assistant director have overall responsibility for the organization of the program and are responsible to their contracting agency, Social Services for Children. The administrative supervisor coordinates the work of the advocates, each having an average caseload of twenty youths. The coordinators are responsible for assisting the advocates, developing training procedures (initially the Institute for Mediation and Conflict Resolution provided the mediator training), and keeping track of mediation sessions and their outcomes. The administrative assistant has primary responsibility for the collection of statistical data, the compilation of the quarterly reports, and the maintenance of program logs and case files.

10.2 At present the program has approximately twenty mediators available. Due to budget cuts this is a low figure for the program and its requirements. Mediators are provided with a $10 stipend for each completed session and $1 toward travel expenses.

11.0 Hearing staff training. The program is in the process of developing a training manual. Several years ago one was developed but focused on techniques for the resolution of community disputes and not intrafamily disputes. The training period lasts six to eight weeks, meeting two evenings each week. Trainees receive the same stipend as hearing

mediators. The program's training stresses role playing and question asking focusing on the problem of putting youthful participants at their ease.

12.0 Case follow-up procedures. Because the program works two approaches together, follow-up is complex. After the mediation session, there is a two week repeat session. In addition, the advocate assigned to the youth might continue the relationship from between six weeks to one year, contacting the youth at least once a week, sometimes as often as meeting three times per week.

13.0 Project costs. At present the budget of the program runs between $400,000 and $500,000 a year. Personnel have not had raises in the past four years, so the program expects a substantial budget increase this year or a cutback in services.

14.0 Evaluation. Although the cost of the program for the number of youths involved -- 350 to 400 per year -- is extreme for any Wisconsin community, it is the general direction of the program that makes it an interesting model. The goal of the program is to provide comprehensive services for the families who enter the program. Rather than refer people to other agencies for special assistance, the program imparts the assistance. When families do go outside for assistance, for instance to legal aid, the advocate stays with the youth. The idea of the program is to provide a secure bridge between the family and the city's social services.

14.1 The program's intensive work with a limited number of juveniles is in contrast with the goals of many other mediation projects. It may be effective, but clearly is not "efficient" if by this we mean over with quickly. It does, however, demonstrate how mediation can be incorporated into a broader plan for provision of assistance to juveniles and as such needs to be carefully considered.

NOTES FOR THE APPENDICES

Appendix 2.

1. Richard Hannon, Rochester-Monroe County Youth Bureau. 1979 Project Review. The Center for Dispute Settlement, Inc. Alternative to Incarceration Project, (1979), 5.

2. Hannon, Rochester, 11.

3. The Center for Dispute Settlement, Inc., Juvenile Mediation Program. Proposal (November 1979), 1-2.

4. The Center for Dispute Settlement, Inc., Statistical Report (December 1979), 1.

In addition to the above sources, see Joseph Stulberg, "A civil alternative to criminal prosecution," Albany Law Review 39 (1975), 359-376.

Appendix 3.

1. Carol Holliday Blew and Robert Rosenblum, An Exemplary Project. The Community Arbitration Project. Anne Arundel County, Maryland (Washington, D.C., 1979), 16.

2. Blew and Rosenblum, Exemplary Project, 48-52.

3. Merry Morash, "Implementing a due process model: The influence of legal training on juvenile intake decision-making," Juvenile Services Administration, State of Maryland (May 1977).

4. Blew and Rosenblum, Exemplary Project, 55.

5. Blew and Rosenblum, Exemplary Project, 61.

6. Blew and Rosenblum, Exemplary Project, 58.

7. Blew and Rosenblum, Exemplary Project, 65.

Appendix 4.

1. Information for this section was drawn from Elaine Walsh, et al., The Neighborhood Mediation Pilot Project. Annual Research Report (June 1979); Elaine Walsh and Karen Powell, Neighborhood Mediation Project Proposal (March 1978), and conversations with Ms. Linda Roberts, Program Coordinator.

Appendix 5.

1. William P. Statsky, "Community courts: Decentralizing juvenile jurisprudence," Capital University Law Review, 3 (1974), 7.

Information on the program's recent operations comes from a conversation with Cynthia Carrasquillo, Forum Coordinator.

END