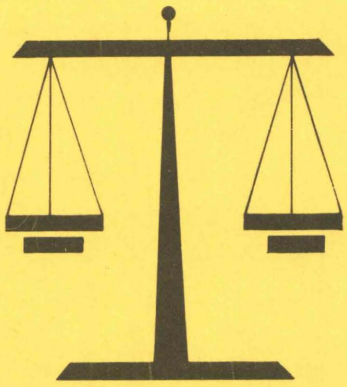
IOWA
JUDICIAL
PLANNING
COMMITTEE

Dispute Settlement Centers

Program Implementation Manual



DISPUTE SETTLEMENT CENTERS

Program Implementation Manual

SANDRA TEDLOCK

PETER K. TRZYNA

Judicial Planning Committee

Iowa Supreme Court

January 1980

T A B L E O F C O N T E N T S

INTRODUCTION

This booklet provides background information about a developing area of legal services: alternative methods for resolving disputes. It should be of interest to anyone intrigued by the new options in nonjudicial dispute resolution and particularly by those groups--judges, prosecutors, local bar associations, and citizens' groups--who potentially could soon be involved in alternative programs in their communities.

Dispute settlement programs offer the parties to the dispute an alternative forum for the resolution of their conflict. These programs are similar to court litigation in that a third party intervenes. The extent of intervention varies according to the settlement technique used. Examples are mediation and arbitration. Unlike adjudication, however, the third party may not impose sanctions on the parties such as imprisonment or fines. In further contrast, third-party settlement programs provide the parties with a more active role in shaping their settlement, and settlements are not limited by remedies available by statutes.

The Judicial Planning Committee of the Iowa Supreme Court has taken the initiative in the development of these projects on an experimental basis in Iowa by providing at least $60,000 in federal funds. While over 200 programs have been implemented in 28 states and have enjoyed considerable success, they are relatively new in Iowa, with only one program which is located in Polk County. This booklet describes the types of programs which have been established in other states, gives information on possible ways to structure and staff these projects, and outlines legal concerns applicable to all projects

and ones unique to Iowa. It is our hope that this booklet will encourage development of alternative dispute resolution projects by providing grantees with a technical understanding of these projects and by encouraging interest and support for program development.

Programs funded by the Judicial Planning Committee will be court-sponsored projects. Designed to provide informal accessible forums for resolution of minor civil and criminal disputes, these programs should be particularly appropriate for disputants who demonstrate some degree of ongoing personal involvement (e.g., neighbors) and may include juveniles. Referrals may come from a number of sources: the police, prosecutor's office, or the judge upon arraignment, or pretrial conference. Complainants may also contact the project directly. In each program a director and a secretary will provide day-to-day management, including recruitment, training, and scheduling of settlement staff; settlement monitoring; and liaison with the court, court clerk, prosecutor's office, police department, and other community agencies. Settlement staff may be volunteers (lay or professional) from the community, law students, or professionals, serving individually or in panels. Staff will be trained in legal principles and the theory of mediation or arbitration. Each center will be designed to be open at times most convenient to parties and witnesses. Records will be kept on the number and types of referrals and the disposition of each case.

District dispute settlement centers will require the active support and involvement of the judge, the prosecutor, and the

community. They will be challenged to develop, but it is a challenge which offers considerable rewards to the Iowa justice system.

Peter K. Trzyna
Director of Court Planning
Iowa Supreme Court

THE DEVELOPMENT OF ALTERNATIVES TO LITIGATION

The FBI reports that 25% of all murders involve family members, and half of these involve husbands and wives. The Law Enforcement Assistance Administration reports that one-third of reported rapes, robberies, and assaults involve people who are related or known to each other as neighbors, business associates, or casual acquaintances. Thus, many felonies develop from intrafamily or "neighborly" conflicts, and many misdemeanors, including threats, trespassing, disorderly conduct, and minor property damage, involve people who have longstanding relationships with each other.

From an historical point of view, the justice system has shown reluctance to become involved in disputes where the parties have an ongoing relationship. This is evident in civil law: for example, intrafamily contracts and torts, landlord-tenant disputes, and certain labor-management disputes. In the criminal area, misdemeanor nuisance cases and domestic disputes, which can range from violation of a court order to a felony, are also good examples.

The reluctance of the justice system is evident from the barriers to entering the system; the tendency is that police do not arrest, prosecutors do not charge, and courts are unsympathetic. There are several explanations for these barriers. Among disputants with an ongoing relationship, specific criminal intent is often unclear, and it is not uncommon for a complaint to be withdrawn. For example, researchers found in a 1977 study of criminal court processing in New York that in 56% of all felony arrests for crimes

against the person, the victim had a prior relationship with the defendant. Of these cases, 87% resulted in dismissals due to complainant noncooperation with prosecution, as compared to 29% in cases involving strangers.[1]

Even if the complaint is not withdrawn, a trial may not resolve the real causes of the dispute because the trial issues may tend to be only symptomatic of the parties' relationship and of relatively minor importance to the disputants. The rigors of a full-blown trial, the delay, cost, and adversary nature of the proceedings can exacerbate the situation, resulting in further disputes or a total breakdown of the relationship.

The quickening pace of modern life has increased substantially the number of potential conflicts between individuals. Additionally, the growth of government has resulted in an increasing number of conflicts between citizens and the state. Although the number of disputes is increasing,[2] some of the traditional dispute resolution institutions such as the family, the church, and neighborhood associations are declining. This places unprecedented demands on the judicial system, causing an increasing backlog of cases.[3] These increases may be an American phenomenon, for the United States appears to be an unusually litigous society. It has been estimated that the civil litigation rate per 100,000 is 5,000 in the U.S., as compared with 307 in Norway and 493 in Finland.[4] The heavy caseload causes delay, frustration, and disenchantment with the increasing complexity and remoteness of the traditional dispute resolution process.

In countries with lower litigation rates than the United States, there tend to be alternatives to litigation for resolving disputes. In African societies, for example, relatives and neighbors discuss disputes at an informal hearing with a local mediator.[5] In China most disputes between individuals are settled by mediation.[6] More formal nonjudicial mechanisms exist in many European nations.[7]

In the early 1970's, there was a marked proliferation of nonjudicial dispute settlement alternatives in this country as well. Ombudsman programs, television/radio/newspaper action lines, and prison grievance programs became extremely popular. Municipalities began referring landlord-tenant disputes to informal hearings. The business community also established numerous programs: the Better Business Bureau, AUTOCAP (a review board that hears automative complaints); FICAP (for resolving disputes involving defective new furniture); ICAP (for insurance complaints); MACAP (for major-appliance-related disputes); the Mail Order Action Line; and the Ford Consumer Appeals Board.

Criminal litigation similarly developed extrajudicial alternatives. Based on their discretionary power to accept or refuse a criminal complaint, prosecutors assumed a more active role in dispute processing by initiating diversion programs. Diversion was initially developed for youth offenders but was also applied to adults, particularly first offenders and offenders with drug-related problems. Thereafter, a wide variety of diversion programs were established, and many states experimented with statutory provisions enabling or directing formal diversion procedures.

Another response to the complexity, expense, and delay of adjudication was the establishment of small claims courts. Simplified procedures were developed for disputes involving small amounts of money. By simplifying the procedures for processing cases, it was anticipated that the expense and time necessary for litigating a dispute would be reduced.

This trend toward development of alternatives to adjudication, plus the popular cynicism and discontent with the existing "system," culminated in the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice (the Pound Conference), which was held in Minnesota in April of 1976. Warren Burger, Chief Justice of the United States, called the conference to ". . . inquire into the nature and utility of our judicial system as it is now constituted . . . to peer into the future, to see where we ought to go, and to develop a roadmap to show us how to get there."[8] With particular interest in programs that seek a permanent resolution to disputes involving individuals with long-term relationships, the Conference recommended as its primary concern that a better means of dispute resolution be developed. In particular, the Conference sought further development of "alternate forums" such as Neighborhood Justice Centers (NJCs). Defined loosely as "facilities . . . designed to make available a variety of methods of processing disputes, including arbitration, mediation, referral to . . . courts."[10]

To ensure implementation of Pound Conference recommendations, a Pound Conference Follow-up Task Force, chaired by Griffin Bell, was formed. Shortly thereafter, as Attorney General of the United

States, he drafted "The Pound Conference Follow-up: A Response from the United States Department of Justice." In this report, Griffin Bell stated:

> The Department of Justice concurs in the view expressed at the Pound Conference that throughout the United States persons often cannot find a satisfactory forum in which to seek redress of grievances involving relatively small amounts of money or arising from altercations with neighbors or relatives. The traditional procedures of the courts are generally too slow and costly to be useful in resolving relatively minor disputes. . . .
>
> In response to this need, the Department is developing a Neighborhood Justice Center Program. Through this program, the Department is endeavoring to provide national leadership in this field by designing, testing, and promoting the widespread adoption of new and improved mechanisms to provide more just and efficient resolution of disputes arising in daily life.[11]

In May 1977 a National Conference on Minor Dispute Resolution was sponsored by the American Bar Association to determine what was being done to address the problem of handling efficiently, promptly, and inexpensively the resolution of minor disputes. Both small claims courts and the resolution of disputes outside the courts were considered at the Conference. The report on the Conference contains a list of the alternatives to litigation which had been established at that time.[12] Subsequently, the Law Enforcement Assistance Administration established three Neighborhood Justice Centers on an experimental basis[13] and is now providing funding for many additional projects, including one in Polk County, Iowa.[14]

TECHNIQUES OF DISPUTE RESOLUTION

Perhaps it is not necessary to emphasize that no single technique is objectively "best" for resolving disputes. The nature of the dispute, the relationship of the disputants to each other and to the community, plus the definition of what constitutes a "satisfactory" resolution of the dispute are all variables which affect the utility of a particular technique.

Further, one technique usually does not exist in isolation. A community provides many options for individuals to settle a conflict. Because the availability of options will vary locally, the same technique that supplements dispute resolution resources in one community could be duplicative and unnecessary in another community.

The range of techniques are traditionally divided into three categories: unilateral, dyadic, and third-party.[15] Unilateral actions include inaction, active avoidance, self-assistance, etc. Coercion and negotiation are examples of dyadic options. The Iowa 1980 Judicial Action Plan will provide funding for nonadjudicatory third-party dispute settlement programs. Therefore, techniques such as conciliation, mediation, fact-finding, arbitration, and administrative processing are of particular interest.

Conciliation

In conciliation the third party acts only to facilitate negotiations between the disputants, perhaps by initially acting as a "go-between" or by providing the place or occasion for a discussion. The disputants agree to their own compromises in the course of a relatively unstructured discussion. The least formalized and coercive of third-party techniques, conciliation, is possibly best exemplified

by a mutual friend of the disputants who does not wish to risk alienating either party by becoming actively involved in the negotiations, yet will work to ensure that negotiations occur.

For conciliation to be effective, the parties must have a clear interest in arriving at a mutually acceptable resolution. Thus, it has been noted that conciliation is most likely to succeed among mutually dependent parties (e.g., husband-wife, supplier - purchaser).[16] This suggests that the technique is less appropriate for disputants with unequal bargaining positions.

Mediation

Ranging from casual advice to a highly structured format with detailed procedures, mediation seeks to construct a resolution of the dispute. Party interaction is usually oriented toward creating or identifying areas of common agreement from which a dispute resolution plan can be formulated. The mediator is more active than a conciliator in directing the discussion and in suggesting possible settlements. However, the mediator cannot compel a settlement.

For example, in a mutual battery case that erupted when one family's barking dog interrupted the sleep of a next-door neighbor,[17] a mediator might do the following: listen to each party in turn; ask the dog owner if he recognizes the right of a neighbor to uninterrupted sleep; ask the other neighbor if he recognizes the right to keep a dog; after receiving mutual acceptance of the rights of the neighbors, ask whether either party can suggest a plan that can accommodate both rights; if no plan is forthcoming, suggest that the dog owner keep his dog indoors at night.

Nationally, the broad spectrum of clients and disputes referred to mediation programs indicates that the technique has great versatility. In contrast to conciliation, the disputants need not have the same degree of interest in resolving the dispute; indeed, mediation programs have successfully handled disputants having no personal relationship.

Fact-Finding

Fact-finding is similar to mediation except that the third party will pass judgment on issues of fact without specifying the exact terms of the settlement.[18] Though lacking the authority to specify or enforce a settlement, the factfinder derives persuasive power from an unbiased evaluation of factual issues. Disputants may be actively involved in informal hearings or simply rely upon staff investigation of complaints. Fact-finding programs are often utilized to handle citizen complaints, for example, Iowa's Ombudsman Program.[19]

Arbitration

Arbitration has two forms: binding and nonbinding. In both cases, the third party makes a decision designed to resolve the dispute. Binding arbitration is backed by sanctions which vary from paying arbitration costs to court imposition of civil contempt. Nonbinding arbitration is merely advisory. Party interaction is generally carefully structured, and procedures tend to be based on well-established principles developed by the American Arbitration Association, the Institute for Mediation and Conflict Resolution, and state arbitration statutes. Though less structured than formal court processing, rules for the use of evidence and witnesses are not uncommon. A written

opinion by the arbitrator is standard procedure. While arbitration is commonly understood as a labor-management dispute settlement technique, a wide variety of applications have proven successful. By statute, in Wisconsin, all medical malpractice claims are reviewed by a court-sponsored panel of arbitrators. In three years of operation only one claim was appealed to court, and the arbitration award was upheld.[20] In California, by statute, most civil disputes involving less than $15,000 must be brought to arbitration before a court may intervene.[21]

Administrative Processing

Administrative processing is similar to adjudication and yet falls short of a full trial or hearing before a judge. Examples are settling a case out of court and plea-bargaining. The cases are actually filed in court but are settled prior to trial. Some schools, for example, have experimented with youth peer courts, often in administrative processing programs.

Adjudication

The most formalized method for resolving disputes is adjudication. Adjudication consists of a third party (usually a judge) who not only has the power to impose a settlement on the parties but has the authority to impose sanctions on the disputants. Because of the power of the judge to impose sanctions, elaborate rules and procedures have been developed to protect the rights of the parties and to assure that the proper decision is reached.

Combined Techniques

Attempts have been made to combine techniques to increase program flexibility. A "med-arb" program is such a hybrid, which provides

mediation services until it is clear that the disputants cannot reach mutual agreement, at which point the program staff arbitrates the dispute. One drawback of using a sequence of techniques is that the parties may be intimidated or reluctant to speak freely knowing that the mediator may eventually arbitrate the conflict.

Selection of Dispute Resolution Technique

The range of third party techniques for resolving disputes can be seen as a continuum of increasing coercion and third party involvement in the settlement. Conciliation is the least coercive and has the least third-party involvement. Adjudication is at the opposite end of the spectrum, being the most coercive and having the greatest third-party intervention in the dispute. In general, program complexity, staff training, and concern for the disputants' legal rights will increase with the degree of coercion.

It is the characteristics of each technique that make one method more suitable than another for a particular community. The nature of the community is significant because, in all probability, some dispute settlement mechanisms already exist. Cohesive rural communities, for example tend to have churches, extended families, community organizations, local bars, or other forums for informally settling disputes. A technique which would take advantage of existing forums in a cohesive community would presumably be less successful in transient neighborhoods. Such areas would find increased utility in the more coercive techniques.

Further, program success requires broad community acceptance not only from the formal justice system, which will provide many referrals, but also from the community at large, which must be enthusiastic about participating in the program. Settlement techniques must be acceptable to the community that will use them.

IMPLEMENTATION AND ADMINISTRATION

The structure and administration of a dispute settlement program are closely related to the settlement technique. Some factors to be considered are discussed below.

Program Objectives

At the outset, it is worthwhile to specifically determine program objectives. Essentially, objectives are goals or statements explaining what is to be accomplished by the program. Objectives should be measurable, for example, to reduce court time expended on contested dissolutions by 25%. This will provide some basis for evaluating whether the program is successful and will help focus program administration.

Development of Case Referral Criteria

The need to develop criteria to distinguish which disputes should be referred to a program is a topic of considerable controversy. Certain programs operate without formal screening policies, relying either on the decisions of project staff or on a simple "open door" policy, while other programs have developed elaborate criteria.[22] Essentially, programs must recognize the limitations of the settlement techniques used while not denying settlement opportunities to disputants.

To develop specific case referral criteria that are based on program objectives and settlement technique, many programs make reference to the following issues.

1. The nature and type of dispute.
2. The seriousness of the dispute.
3. The nature of the disputants' relationship.

Most of the dispute resolution programs handle both civil and criminal cases in varying proportions.[23] Both types of cases are amenable to third party settlement, although there are some indications that a higher percentage of criminal disputes are successfully settled than civil disputes and that criminal disputants are more likely to be satisfied with the results than civil disputants.[24]

In addition to deciding whether to handle civil or criminal disputes or both, a center must also decide whether to handle domestic relations cases and/or cases with institutional parties involved. Although there has been some hesitancy about becoming involved in domestic relations (e.g. divorce settlements, child custody, etc.), a number of commentators have indicated that mediation or arbitration techniques could be successfully used to settle family disputes.[25]

Controversy also exists over whether a dispute settlement center should include disputes in which one party is an institution.[26] In these situations the parties usually do not have equivalent bargaining positions. For example, a complainant seeking to collect a bill or bad check from a regular customer would have limited interest in bargaining for a settlement when a court would adjudicate full settlement. Noncoercive programs - those attempting compromise settlements - may also find institutional clients such as prisons, stores, collection agencies and schools to be troublesome since an extremely favorable bargaining position usually rests with the institution. Noncoercive programs may find it desirable to develop screening criteria which specify that the disputants must have roughly equivalent bargaining power, particularly since preliminary research indicates that a program's reputation can be adversely affected by

attempting to settle issues not amenable to compromise.[27]

The second factor to be considered in deciding the case criteria is the seriousness of the dispute. In criminal matters seriousness is determined by the classification of the offense. Some projects do handle felony disputes, while others limit themselves to handling misdemeanors or disputes having a low probability of ever entering the formal criminal justice system. Mediation has been used to resolve cases involving rape, robbery, burglary, kidnaping, grand larceny, and second-degree assault.[28] The process has been successful when the complainant was deeply involved with the defendant and wished to effect a reconciliation. However, the desire for reconciliation tends to diminish when serious offenses have occurred, limiting the utility of settlement techniques for serious criminal cases. Further, it has been noted that "due process considerations, danger, the need for professional training and dispassionate commitment all make community handling of 'true crime' - crime with victims, crime which provokes a passion for retribution and a need for extended incarceration of the 'criminal' - a poor subject for community-controlled programs."[29]

In civil cases, the seriousness of the case is often measured by the amount of money in dispute. However, a limit is rarely placed on the contested amount which can be referred to a citizen dispute settlement program. It has been observed that there is little connection between the amount in controversy and the appropriate procedure for resolving the dispute: "a small case may be complex, just as a large case may be simple."[30]

Cases may be screened on the basis of the disputants' relation-

ship, with on-going involvement being the primary concern. Common examples of cases referred under this criterion are family disputes including custody cases, fights among friends, neighborhood disputes such as noise or nuisance, or repeated occurences of the same offense with evidence that a dispute is symptomatic of a continuing problem between the parties. Emphasizing the importance of this factor, empirical research indicates that "when a party has the choice of arbitration or adjudication, the most relevant factor in the decision is the relationship of the parties."[31]

Referral Sources

Arguably, a program that receives referrals from all stages of the criminal justice process would be ideal. Indeed, some programs permit referral through the postconviction stage.[32] Most programs, however, do not actively encourage referrals once a trial has begun.

In practice, program objectives will suggest the appropriate referral strategy, depending upon the program's orientation toward crime prevention or toward diversion. A diversion-oriented program will concentrate on obtaining cases that are already in the formal justice system so that referrals will be made primarily by the court and the prosecutor. Alternatively, a preventative program will attempt to identify conflicts that could ultimately erupt into serious offenses, and a predominance of case referrals would necessarily come from the police, juvenile intake workers, the Attorney General's office, mental health programs, county welfare departments, drug and alcohol abuse programs,and other local agencies. Walk-in clients would also be appropriate.

Preventative programs have met with the criticism that they "broaden the web," that cases which do not merit arrest or prose-

cution are being processed by an offshoot of the judicial system. A researcher noted that a program that provides an outlet for otherwise suppressed anger is of unknown effectiveness: "whether it will be good or whether it will simply waste scarce societal resources, we do not know . . . the price of an improved scheme of dispute processing may well be a vast increase in the number of disputes processed."[33]

It appears to be most realistic for a new program to place its initial emphasis on either a preventative or a diversionary strategy and to limit itself to referrals from the related sources. This initial decision will help to direct staff efforts and to avoid overwhelming the project staff with liaison responsibilities. As a general guide, a preventative model is more appropriate for a program employing the less coercive settlement techniques.

Program Location

To some extent, the physical location of the project is related to the nature of its sponsoring agency and the type of technique used. Courts sponsor approximately one-quarter of the existing dispute settlement centers, while prosecutors sponsor an additional quarter. The remainder, including the original Neighborhood Justice Centers funded by the U.S. Department of Justice, are run by private corporations. Most projects sponsored by government agencies are located in government buildings in close proximity to the supervising agency. Private programs tend to be located in store-front or office facilities.

The appropriateness of the project location is related to the settlement technique used. A neutral setting conveys an image of impartiality and accessibility; an informal atmosphere is conducive to mutual bargaining; an official setting may reflect the coerciveness

of the program. In any case, a program should be identifiable as being separate from the formal court system, and accessible to the community and to referral sources.

Staff: Number, Qualifications, and Training

What constitutes a desirable staff configuration will vary depending on the program design, but a minimum staff would probably include an administrator and a secretary. Factors affecting staff size are caseload, settlement technique, and referral source strategy.

The size of the caseload will affect the number of administrators required because increased demand for third party mediators requires increased numbers of supervisory personnel. Generally, less coercive techniques will require one supervisor for every 45 third-party settlement staff. As coercion increases, techniques become more complex and the need for supervision also increases. Highly coercive programs may also require the ongoing availability of a legal consultant.

Different referral source strategies will also affect the size of the staff needed. A preventative model which requires a large number of referral sources to be acquainted with the program will need a larger staff. Responsibilities in a preventative model program may include media liaison, drafting and distributing program advertising, developing a working relationship with community leaders, making contact with existing forums for conflict resolution, and fostering a working relationship with individual police officers. Programs which emphasize a diversion strategy would render this liaison work largely unnecessary, for an automatic notice procedure with the prosecutors and court would be used instead.

The qualifications for staff have been summarized in the following quotation:

> The importance of selecting highly committed, energetic, and politically sensitive individuals for project administration is difficult to overestimate. Virtually all of the Project Directors have noted that this type of resourceful and industrious person is crucial to project success. An insensitive Project Director . . . could easily alienate otherwise positively predisposed criminal justice officials, and a highly effective Project Director could potentially win over initially hostile officials. The recruitment of project staff could clearly be conducted with great care, and efforts should be made to locate indigenous leaders with the background and skills appropriate for the operation of the dispute processing project.[34]

While there is a clear consensus regarding the qualifications of permanent staff, the background most appropriate for third party settlement staff (mediators, arbitrators, etc.) is open to controversy. Some programs use people professionally trained in law, industrial relations, psychology, or social work to hear disputes. However, there are problems associated with professional settlement staff, including cost, settlement staff conflicts with other professional demands, and the diminished sense of "community-based" justice. It can also be noted that lawyers' basic orientation toward adversary proceedings has resulted in criticism of their involvement in non-adversarial techniques.[35]

One alternative to professional settlement staff is employment of college students or graduate students with an appropriate educational background. This source of staff has been demonstrated to be reliable.[36] The number of students can be easily controlled, training can often be absorbed by the school curriculum, and students can be employed at a wage consistent with other part-time student employment. The disadvantage here is that college students are not necessarily reflective of the range of life-styles existing in a

community. The elderly and the poor could conceivably resent intervention by college students.

Another alternative is the use of lay volunteers as third parties. The commitment of a volunteer staff can result in a reliable and qualified group. Consistent with the objectives of encouraging community-based dispute settlement and maximizing citizen participation, this method also provides an opportunity to educate the community on the availability of program services. However, employment of lay staff obviously places increased demands on project administration staff to train volunteers, coordinate schedules, ensure that a sufficient number of settlement officers will be available, and screen unqualified third parties. Use of citizen staff may diminish the authoritative credibility of the program, particularly in highly coercive program models.

Finally, developing a settlement staff from a combination of the groups described could be attempted. No precedent exists for this approach, possibly because some groups of settlement staff may tend to assume a dominant role.

Training will depend on the previous education of the settlement staff and the complexity of the program technique. Mediation programs may offer as much as 40 hours of formal staff training to new staff.[37] Topics include orientation, the theoretical and practical aspects of mediation, case studies, role-playing, and "apprenticing" with more experienced staff.

Consideration should also be given to establishing an administrative board or council to help ensure the compatibility of the

dispute settlement center with the other components of the justice system. The board, acting as an advisory body, may include representatives from the court and various criminal justice agencies, local governing bodies, and other interested persons. The advantages of such an advisory body include providing support for the program, legitimizing the program, and ensuring that the program remains compatible with the community. Weighing against these advantages are the disadvantages that a board may become cumbersome and a lack of harmony on the board may cause problems.

Intake Procedures

At issue in the development of case intake procedures is the degree to which project participation is required. Several states have mandatory participation in alternative dispute resolution procedures when certain types of disputes are involved. For example, in California, most civil disputes of amounts less than $15,000 must be submitted to arbitration.[38]

Mandatory program participation compels disputants to at least appear in person to waive informal settlement opportunities prior to entering the justice system, or certify prior to court proceedings that both parties are not amenable to settlement. There do not appear to be specific statutory provisions permitting or prohibiting the court from developing such a procedure in Iowa. The chief judge of each district could conceivably make such a requirement under his authority to promulgate local rules of procedure.

A special situation occurs when criminal cases are already before the court. Suspension of prosecution pending settlement could not be guaranteed because it would raise the issue of coercing

the settlement by the threat of continued prosecution. However, this is very similar to plea bargaining, which is authoritatively permissible.[39] Therefore, referral is probably acceptable even in cases before the court.

The alternative to compulsory program participation is voluntary participation. Programs which rely on voluntary participation appear to experience massive attrition between case referral and case hearing; often more than half the referred cases do not proceed to hearing.[40] However, there are indications that many disputants are prompted to resolve their conflicts independently simply by the pressure of having the dispute processed in a program.[41] Other factors include lack of complainant follow-through, lack of interest resulting from a "cooling-off" period, and the popular distrust of institutions meddling in one's private affairs.

With available data suggesting that voluntary compliance can produce low respondent cooperation, programs often structure intake to have a coercive effect on the respondent. After a complaint has been filed with the program, notice is sent to the respondent. The notice provides a description of the program, gives a hearing date, and is worded in an intimidating manner. Typically, the notice is printed on official stationery, signed by the district attorney or other official, and concludes, "failure to appear may result in future legal action."[42]

However, the use of coercive procedures is by no means a necessity. Many projects stress the importance of voluntary participation settlement techniques which involve relatively unhindered

bargaining between the parties.[43] For example, it is unlikely that conciliation could address the fundamental issues of a conflict when one or more parties are predominantly motivated by the fear of court adjudication. Further, arbibration agreements may be subject to court challenge when one party acts under duress.

Rather than employ coercive procedures, some projects have found it useful to obtain signed agreements to participate in the program, a procedure first associated with arbitration.[44] Participation agreements serve the function of symbolizing the willingness of the disputants to seriously address their conflict.

The use of mandatory, coercive, or noncoercive intake procedures is a local option which should be decided on the basis of the program objectives and the settlement techniques used. Intake procedures should be approved by the Chief Judge.

Hearing Procedures

Prior to accepting a complainant into the program, staff must obtain sufficient data to permit client follow-up (names, addresses, etc.). In addition, it is necessary to compare a written and signed description of the nature of the conflict with the program's case screening criteria. Once a complaint is accepted into the program, sufficient notice must be provided to the other disputant to permit participation in the program. Depending on program design, noice should include the date of the scheduled hearing and a method for determining the interest of the other party in third party settlement, such as an agreement to participate.

The variance in program goals and methodologies requires that

hearing procedures be developed locally, with attention to necessary legal safeguards, and with the approval of the Chief Judge. The settlement technique used by the program will generally establish whether a single third party or a panel is necessary.

In addition to considering the technique to be used in settling disputes, the amount of time allocated for the hearing and the specificity of the settlements are factors to be considered in determining hearing procedures. The time allotted for the hearing should be sufficient to allow the parties to fully explain their sides of the dispute and to allow time for negotiation and settlement. However, time constraints on hearings may have the advantages of keeping the hearing schedule accurate and applying psychological pressure to settle the dispute quickly. To facilitate program monitoring, all settlements should be in writing and signed by the parties. Program procedures should also specify any social service referral (e.g. to drug programs, or counseling) which will be made to assist in the resolution of ongoing problems.

The specificity of the agreement has some effect on the satisfaction of the parties and the permanency of the agreement. General settlement agreements have a high satisfaction rate but a low long-term resolution rate. Specific agreements have a lower satisfaction rate, but a higher long-term resolution rate.

Client Follow-Up

Many projects contact disputants within 30 or 60 days of settlement and again after three to six months to determine whether the signed agreement has been effective. Consensus is that the

objective of the follow-up is not to determine whether the settlement has been carried out to the letter, but to evaluate general satisfaction with the outcome. Often, disputants are asked whether their relationship has improved or if, in retrospect, they would have preferred a different method of resolving their conflict. When evidence arises that a respondent has ceased to cooperate with the terms of the settlement agreement, it is not uncommon for a project to contact the respondent to encourage compliance. The offer of further settlement service or social service referral may be appropriate in these cases.

Case follow-up should include notifying the referral source, particularly a prosecutor or court, of the results of the settlement attempts. Additionally, to assist research directed toward determining the viability of dispute settlement center programs in Iowa, projects shall maintain records of all case referrals, regardless of whether a settlement was achieved. These records will include a signed copy of each settlement agreement and verification of agreement compliance. Referrals resulting in unsuccessful resolution or no action should also be explored to determine the causes of the program failure.

LEGAL ISSUES

In establishing a citizen dispute settlement center, many decisions must be made on how to structure the program (e.g., the technique used to resolve disputes, the types of cases handled, staff and training, etc.). A further area of consideration is the legal issues which may arise in establishing and operating a center. Some of the issues which may arise are confidentiality, self-incrimination, right to counsel, due process requirements, the enforceability of awards, and the liability of center employees.

Many of the legal questions which may arise in the operation of a dispute settlement center remain unanswered because very few cases involving settlement centers have been litigated. It is unclear whether the legal issues have not been raised because the participants are satisfied with the centers or whether these programs are still too new to lead to any challenges. Generally, most centers do not deprive the parties of any rights since the parties may usually have a new trial in court. Nevertheless, the legal issues should be considered before the center is established.

Confidentiality

A prerequisite for successfully mediating or arbitrating disputes is effective communication. If the parties are concerned about the confidentiality of the hearings, they may be less willing to communicate, making it more difficult to settle the dispute. Therefore, when establishing a dispute settlement center, attention must be given to protecting the disputants' confidences and communications.

The lack of confidentiality of the dispute settlement center's proceedings or records is most likely to be harmful to the parties

if the statements or records may be used at a subsequent trial or hearing involving either the same dispute or a related dispute. Statements made by a party at a hearing or records regarding a hearing may be reached through the issuance of a subpoena which requires a witness to attend a hearing or trial and testify. Iowa Code § 622.76 provides that failure to obey a valid subpoena without a sufficient cause or excuse renders the party guilty of contempt. If the subpoena is invalid, it doesn't have to be obeyed[46] and a motion to quash the subpoena may be made on the grounds that the scope or validity of the subpoena is faulty.

Even if the subpoena is valid and may not be quashed or successfully challenged, the damaging statements may not necessarily be brought out at trial. All evidence at a trial or court hearing must be admissible under the rules of evidence which are statutory or defined by cases. Two rules of evidence which might make statements made by a party at a dispute settlement center inadmissible are that the statement is "privileged" or that it was an "offer to settle."

A privilege may be established either by case law or statute. An example of a statutory privilege is Iowa Code § 622.10, which provides that a practicing attorney, counselor, physician, stenographer, or confidential clerk of any person who obtains information in the course of employment will not be allowed to disclose that information in the course of a trial. The application of this statute to mediators or arbitrators has not yet been determined in Iowa.

An example of a privilege established by case law is *Francis v. Allen*, Pinellas County Court, Div. No. 78-0008-46 (Fla. March 10,

1978). In this case Judge Howard H. Whittington quashed a subpoena issued to two employees of the Miami Citizen Dispute Settlement Center, stating that "statements made by participants in the Citizen Dispute Settlement Center shall be considered to be privileged and not admissible . . ." The privilege was also extended to all documents prepared by the Citizen Dispute Settlement Center.

At present in Iowa, courts have not determined whether statements made in the course of a dispute settlement center hearing would be privileged under the statute, nor has any case established such a privilege. Other settlement centers have sometimes attempted to deal with the problem of a lack of confidentiality through agreements with the prosecutor or local courts. Although the enforceability of such agreements is questionable, they may be workable. The other alternatives are to seek legislation on the issue[47] or to establish confidentiality through case law, as in Florida.

The second possible prohibition on admitting statements made by a disputant at a settlement center is the policy of excluding any "offers to compromise"as trial evidence. In Iowa, as in most states, offers to compromise are not admissible due to the public policy favoring out-of-court settlements. However, if the settlement offer or negotiations include an admission (i.e., "I did it"), then the statement may be admissible.[49] Therefore, the exclusion of offers to compromise may give the parties some protection, but it would not be applicable to admissions made in the course of the settlement negotiations.

Therefore, it is possible that cases in which statements or records made during a hearing at a dispute settlement center will be admissible at a subsequent trial on the same case (i.e., if an agreement is not reached at the dispute settlement center). This could place a party in a worse position than if he or she had not participated in the settlement process. Given all the possible bars to admissibility (defective subpoenas, claim of privilege, offers to settle, or agreements with the court or prosecutor), such a case should be very rare, and in about a decade of experience with third party settlement programs, has not yet occured. Nonetheless, the issue remains a factor to consider in setting up the procedures and policies of a dispute settlement center.

The application of Iowa's public records law to the records of a dispute settlement center should also be considered. Iowa's public record law applies to "all records and documents of or belonging to this state or any county, city, town, . . . or tax-supported district in this state or any branch,department, board, bureau, commission, council, or committee of any of the foregoing." Iowa Code § 68A.1. Every citizen has the right to examine all public records and to copy these records. Thus, if the citizen dispute settlement center is considered a department of the court (also a branch of state government), then the records would be open for public inspection.

Iowa Code § 68A.8 allows a court to restrain the examination of a specific public record upon a finding that such an examination would substantially and irreparably injure any person or persons. It may therefore be possible for a dispute settlement center to prevent

disclosure of its records through an injunction. The policy against granting permanent injunctions is quite strong, though injunctions sought on a case-by-case basis may suffice.

Self-Incrimination

Related to the issue of the confidentiality of dispute settlement proceedings is the disputants' fifth amendment right to avoid self-incrimination. If a settlement center's records and hearings are privileged so that statements made by the parties are inadmissible at a subsequent trial, then the question of self-incrimination would not arise because the statements could not be used against the party later. The right applies only to criminal cases.

However, if the statements made at a hearing in a dispute settlement center may be used at a subsequent criminal trial, then the parties may be entitled to warnings designed to protect their fifth amendment right to avoid self-incrimination. In the case of *Miranda v. Arizona*, 384 U.S. 436 (1966), the U.S. Supreme Court held that a criminal defendant is entitled to certain warnings before being interrogated. When Miranda warnings are required, the defendant is informed that he or she has the right to remain silent, the right to have an attorney present, the right, if indigent, to have an attorney appointed, and that statements made may be used against him or her.

Miranda warnings are required when an individual is subject to an interrogation while in custody in a criminal investigation.[50] Whether a disputant at a dispute settlement center is in custody depends on where the interrogation takes place and the degree of coercion

involved in compelling the disputant's presence. For example, questioning which takes place in a police station or prosecutor's office is generally held to be in custody unless the defendant appears voluntarily.[51] Thus, if a dispute settlement center uses the threat of prosecution to force the party to appear, the hearing may be considered a custodial interrogation.

Failure to give the disputants Miranda warnings when they are required renders the statements inadmissible.[53] One of a dispute settlement center's concerns would be to protect the confidentiality of its hearings, and failure to give Miranda warnings when required would protect this confidentiality. However, a dispute settlement center must also be concerned with preserving the integrity and reputation of the program. A center which failed to give Miranda warnings when required could be criticized for not respecting the rights of the parties.

Therefore, most citizen dispute settlement centers would want to avoid the need to give Miranda warnings, rather than merely failing to give the warnings. It may be possible to avoid the necessity of giving Miranda warnings by minimizing the coercion in the program or by ensuring the confidentiality of the dispute settlement center proceedings.

Right to Counsel

The right to counsel covers two separate concepts: the right to have retained counsel present and the right to have appointed counsel if indigent. The right to counsel in criminal cases is guaranteed by the sixth amendment.[54] However, the Sixth Amendment right to counsel becomes operative only after the defendant is

formally charged with a criminal offense, (e.g., arraignment, indictment, information, or preliminary hearing).[55] Thus, referral to a citizen dispute settlement center prior to a formal charge being issued in a criminal proceeding would not give rise to the right to counsel under the sixth amendment.

The right to have counsel appointed if indigent has been held to apply to any case in which the defendant may be imprisoned for the offense.[56] Since citizen dispute settlement centers do not have the power to imprison the disputants, regardless of the severity of the offense, it is arguable that the sixth amendment right to counsel will not apply to dispute settlement center hearings.

A right to counsel for criminal defendants also exists under the fifth amendment protection from self-incrimination. As discussed previously, to protect a criminal defendant's fifth amendment rights, Miranda warnings must be given whenever there is a custodial interrogation.[57] These warnings include the right to have counsel present and the right to have counsel appointed, if indigent. Whether a dispute settlement hearing is a custodial interrogation depends on the degree of coercion involved in getting the defendant to appear. If the defendant appears voluntarily, no right to counsel will arise under the fifth amendment.[58] Although the presence of counsel may not be required under the fifth or sixth amendments (and therefore no right to have counsel appointed exists) a right to have retained counsel present may exist under the due process guarantees of the fifth and fourteenth mendments. The fifth and fourteenth amendments prohibit the deprivation of life, liberty, or property by the state without due process of law.[59] For example, due process of law has been construed to include the right to have retained counsel present at

all welfare termination hearings.[60] Since a dispute settlement center hearing may result in the loss of a liberty or property interest (e.g., payment for damages or an order to stay away from someone), the right to have retained counsel present at a dispute settlement center hearing is probably constitutionally protected.

Due Process Requirements

The fifth and fourteenth amendments prohibit the state from depriving an individual of life, liberty, or property without due process of law. A court-sponsored dispute settlement center would be sufficiently connected to the state to make its actions "state action."

Whether a dispute settlement center will have to comply with the due process requirements depends on whether or not the center may deprive an individual of a protected liberty or property interest. Constitutionally created rights clearly fall within the scope of the fourteenth amendment, but due process is not limited to the rights and interests derived from the Constitution. Protected interests may arise from statutes, regulations, or other governmental grants of benefits. These include, for example, the taking of private property, the revocation of a license, or suspension from school.[61]

If the center does not have the power to adjudicate the dispute, then the due process protections do not apply because there can be no deprivation of property or liberty by the state. If the arbitrator can impose a settlement on the parties through arbitration or administrative processing, then due process protections apply.

The requirements of due process vary according to the nature of the individual's interest and the nature of the governmental interest

involved.[62] They are essentially procedural safeguards which ensure a fair and impartial determination of the facts. Three basic rights are usually involved: the right to an impartial decisionmaker, the right to be heard, and the right to a fair notice of the hearing and the charges.[63] Most citizen dispute settlement centers meet these basic requirements in their procedures by utilizing settlement staff that are not acquainted with the disputants as mediators, giving notice to the disputants of the hearing, and allowing both parties to present their side of the dispute.

Enforceability of Awards

Iowa recognizes two types of arbitration: statutory and common law. Statutory arbitration is authorized under Iowa Code § 679.1 - 679.17. Under this statute, a dispute is submitted to arbitration by the parties through a written agreement which specifies the demands to be submitted to arbitration, the names of the arbitrators and the court which is to render judgment on the agreement. The award, which must be in writing, is submitted to the court by the arbitrators, automatically entered on the docket, and has the effect of a judgment by the court. The award may be rejected by the court for legal and sufficient reasons, or it may be re-committed for a hearing to the same or new arbitrators.

If the parties submit a dispute to arbitration without complying with the statute, the award is still enforceable as a common-law award under Iowa Code § 679.18. This section provides that an arbitration award is valid and binding on the parties as a contract and is enforceable, absent fraud or mistake.[64] Thus, an oral agreement to arbitrate is sufficient to make an arbitration award enforceable after the award is made. However, both oral and

written agreements to arbitrate may be withdrawn at any time prior to the award.[65]

The applicability of these statutes to dispute settlement centers agreements is unclear. If the center utilizes arbitration as its method of dispute settlement, then the agreements would be covered by the statute. Mediated settlements may be covered by the statute by analogy or may be enforceable as contracts between the parties.

Liability of Employees

Judges are protected from liability for acts performed in their judicial capacity.[66] This judicial immunity has been extended to individuals or groups acting in a quasi-judicial capacity. For example, a tax assessor[67] or a prosecutor.[68]

Arbitrators are also immune from civil liability for acts performed while exercising their quasi-judicial powers.[69] However, this immunity has not been extended to mediators or conciliators.

PROJECT FUNDING

The 1980 Iowa Judicial Plan provides federal funding of $60,000 for the establishment of district dispute settlement centers. Each funded project will require local matching funds. Funds will be made available for one grantee selected on a statewide competitive basis. In the event of a substantial interest in creating third-party dispute settlement programs in Iowa, the court planning office will seek funding from sources other than LEAA. This would include private foundations and other federal agencies. Grant applications must be approved by an area crime commission and be received by the Iowa Crime Commission by April 1, 1980. Requirements for funding under the Judicial Plan are that the programs be court-sponsored, developed with the approval of the district chief judge, and that they be implemented on a district-wide basis or that plans for such implementation be included in the grant application.

Applications should demonstrate that a comprehensive program has been developed. At a minimum, the following issues should be addressed:

- Type(s) of dispute resolution techniques to be employed;
- Referral sources, including availability to "walk-in" clients;
- Types of cases to be handled and whether case-screening criteria will be developed;
- Staffing required, including administrative staff and settlement officers and hiring/selection criteria;
- Training of settlement officers;
- Whether an advisory board or council will be created and proposed membership and functions;

- Proposed location(s) or criteria for selecting a location.

Assistance can be obtained from Peter Trzyna, Director of Court Planning, State Capitol Building, Des Moines, Iowa 50319. Phone: (515) 281 - 6869.

FOOTNOTES

1. Felony Arrests: Their Prosecution and Disposition in New York City's Courts (New York; Vera Institute of Justice, 1977), p. xv.

2. For example, the number of cases docketed in the Iowa District Courts increased from 72,802 in 1977 to 74,540 in 1978. 1978 Annual Statistical Report of the Iowa Judiciary (Iowa: Court Administrator of the Judicial Department, 1979), p. 62.

3. The backlog in Iowa District Courts increased by 4,719 in 1977 and 4,570 in 1978. Ibid.

4. A. Sarat and J. Grossman, "Courts and Conflict Resolution: Problems in the Mobilization of Adjudication," American Political Science Review, 69, (1975), p. 1208, note 4.

5. See J. Gibbs, "The Kpelle Moot: A Therapeutic Model for the Informal Settlement of Disputes," Africa, 33 (1963), 1; J. Gibbs, "Poro Values and Courtroom Procedures in a Kpelle Chiefdom," Swiss Journal of Anthropology, 18 (1962), p. 41; Danzig, "Toward the Creation of a Complementary, Decentralized System of Criminal Justice," Stanford Law Review, 26 (1973), 1; and D. Smith, "Man and Law in Urban Africa: A Role for for Customary Courts in the Urbanization Process," American Journal of Comparative Law, 20 (1972), 223.

6. See J. Cohen, "Chinese Mediation on the Eve of Modernization," California Law Review, 1541 (1966), 1201; and S. Lubman, "Mao and Mediation: Politics and Dispute Resolution in Communist China," California Law Review, 1554 (1967) 1284, for excellent overviews of Chinese mediation mechanisms. Soviet mechanisms differ significantly from Chinese models; see H. Herman, "The Education Role of the Soviet Court," International and Comparative Law Quarterly, 21 (1972), 8, for an overview.

7. See L. Felstiner and A. Drew, European Alternatives to Criminal Trials and Their Applicability in the United States, (University of Southern California, unpublished mimeograph, 1976) for an interesting discussion of a variety of European dispute processing mechanisms.

8. Burger,"The 1976 Annual Report on the State of the Judiciary," Supreme Court Reporter 96 (1976), 3299.

9. For a concise description of the Conference, see Federal Rules Decisions, 76 (1976), 277-366.

10. Report of the Pound Conference Follow-up Task Force, (American Bar Association), 1976 p. 1.

11. Reported in Federal Rules Decisions, 76 (1976), 321-322.

12. Frank E. A. Sander, Report on the National Conference on Minor Dispute Resolution, (American Bar Association, 1978).

13. David I. Sheppard, Janice A. Roehl, Roger F. Cook, Neighborhood Justice Centers Field Test: Interim Evaluation Report, (Law Enforcement Assistance Administration, February, 1979).

14. Thomas Cree, Polk County Neighborhood Mediation Project: First Year Evaluation, (Bureau of Governmental Research, Drake University, July 1979).

15. Daniel McGillis and Joan Mullen, Neighborhood Justice Centers: An Analysis of Potential Models, (Law Enforcement Assistance Administration, October 1977), p. 4-25.

16. M. Galanter, "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," Law Review, 9 (1974), 128.

17. The example mediation case is discussed in Ross F. Conner and Ray Surette, The Citizen Dispute Settlement Program, (American Bar Association, 1977).

18. A summary of fact-finding programs can be found in E. Johnson, V. Kantor, and E. Schwartz, Outside the Courts: a Survey of Diversion Alternatives in Civil Cases, (Denver: National Center for State Courts, 1977).

19. Iowa Code § 601G.1 et. seq.

20. Wisc. Stat. § 655 et. seq.

21. Cal. Civ. Proc. Code § 1141.11 (West).

22. For example, the Boston Urban Court Program and the New York Institute for Mediation and Conflict Resolution Dispute Center both employ mediation to resolve disputes in an urban environment. The former has no formal case criteria but the latter initially referred only 13 specific offenses.

23. Citizen Dispute Settlement Guideline Manual, (Dispute Resolution Alternatives Committee of the Florida Supreme Court, 1978) p. 5; McGillis and Mullen, p. 57.

24. Guideline Manual, p. 5.

25. Frank E. A. Sander, "Varieties of Dispute Processing," Federal Rules Decision, 70 (1976), 123.

26. McGillis and Mullen, p. 59.

27. Ibid.

28. For example, the Kansas City Neighborhood Justice Center. See also Guideline Manual, p. 58-61 on Florida's programs.

29. Danzig, p. 54.

30. Sander, p. 124.

31. A. Sarat, "Alternatives in Dispute Processing: Litigation in a Small Claim Court," Law and Society Review, 10 (1976), 339.

32. For example, the Boston Urban Court.

33. Sander, p. 113.

34. McGillis and Mullen, p. 62.

35. Ibid. p. 74.

36. Ibid. p. 75.

37. The Boston Urban Court and Rochester Community Dispute Services Project.

38. Cal. Civ. Proc. Code § 1411.11 (West).

39. See Iowa Code § 813.2, Rule 9.

40. The IMRC Project in New York received 1657 referrals in the first 10 months of operation. 662 cases took no action, and 146 cases scheduled hearings but failed to appear.

41. McGillis and Mullen, p. 62.

42. Conner and Surette, p. 31. Other sample forms are contained in Guideline Manual, p. 132-3.

43. The San Francisco Community Board Program and the Boston Urban Court are examples.

44. Such as the Boston Urban Court.

45. Guideline Manual, p. 39.

46. Chambers v. Oehler, 107 Iowa 155, 77 N.W. 853 (1899).

47. Both Florida and California have attempted to establish a privilege for citizen dispute settlement centers through legislation.

48. Sandman v. Hagan, 261 Iowa 560, 154 N.W.2d 113 (1967); Lynch v. Egypt Coal Co., 190 Iowa 1272, 181 N.W. 385 (1921).

49. Langdon v. Ahrends, 166 Iowa 636, 147 N.W. 940 (1914).

50. Miranda v. Arizona, 384 U.S. 436 (1966).

51 See, Mathis v. U.S., 391 U.S. 1 (1968), Oregon v. Mathiason, 429 U.S. 492 (1977).

52. An analogy may be made between citizen dispute settlement center proceedings and grand jury proceedings. Miranda warnings need not be given to defendants testifying before a grand jury. See U.S. v. Mandujano, 425 U.S. 564, (1976) in which the Supreme Court distinguishes between judicial inquiries and custodial interrogation.

53. Miranda v. Arizona, 384 U.S. 436 (1966).

54. The Sixth Amendment states, "In all criminal prosecutions, the accused shall . . . have the assistance of counsel for his defense."

55. Kirby v. United States, 406 U.S. 682 (1972).

56. Argersinger v. Hamlin, 407 U.S. 25, 37 (1972).

57. Miranda v. Arizona, 384 U.S. 436 (1966).

58. See, Oregon v. Mathiason, 429 U.S. 492 (1977).

59. The Fifth and Fourteenth Amendments are only applicable to actions by the state. A program sponsored by the court would have sufficient ties to the state to make the actions of the center "state action." The actions of a privately sponsored center might not be considered state action.

60. Goldberg v. Kelly, 379 U.S. 254 (1970).

61. Board of Regents v. Roth, 408 U.S. 564 (1972).

62. Board of Regents v. Roth, 408 U.S. 564 (1972), Goss v. Lopez, 419 U.S. 565, (1975).

63. Fuentes v. Shevin, 407 U.S. 67 (1972).

64. Thorton v. McCormick, 75 Iowa 285, 39 N.W. 502 (1888).

65. County of Jefferson v. Barton-Douglas Contractors, Inc., 282 N.W.2d 155 (Iowa 1959); Ames Canning Co. v. Dexter Seed Co., 195 Iowa 1285, 190 N.W. 167 (1922).

66. Pierson v. Ray, 386 U.S. 547 (1966), Jones v. Brown, 54 Iowa 74, 6 N.W. 140 (1880).

67. Stevens v. Carrol, 130 Iowa 463, 104 N.W. 433 (1906).

68. Blanton v. Banick, 258 N.W.2d 306 (Iowa, 1977).

69. Hill v. Aro Corp., 263 F. Supp. 482 (N.D. Ohio, 1967), Jones v. Brown, 54 Iowa 74, 6 N.W. 140 (1880).

BIBLIOGRAPHY

Aaron, Carole A. "Juvenile Justice: A Community Concern." Judicature, 61 (1977), 15.

Aaranson, D., Kittrie, N., Saari, D., Cooper, C., Alternatives to Conventional Criminal Adjudication: Guidebook for Planners and Practitioners. Washington, D.C.: U.S. Government Printing Office, 1977.

Aaronson, D., Hoff, B., Jaszi, P., Kittrie, N., and Saari, D. The New Justice - Alternatives to Conventional Criminal Adjudication. Washington D.C: U.S. Government Printing Office, 1977.

American Bar Association. Report on the National Conference on Minor Dispute Resolution. Chicago: ABA Press 1978.

American Bar Association. Report of the Pound Conference Follow-Up Task Force. Chicago: ABA Press 1976.

American University Law School. A Review of the District of Columbia Citizens' Complaint Center. Austern, Rice and Anderson, principal investigators, 1976.

Annual Statistical Report on the Iowa Judiciary. Iowa: Court Administrator of the Judicial Department, 1978.

Bard, M., and Zacker, J. The Police and Interpersonal Conflict Third-Party Intervention Approaches. Washington, D.C.: The Police Foundation, 1976.

Barton, J. "Behind the Legal Explosion." Stanford Law Review, 24 (1975), 567.

Beck, M.A. Alternative Approaches to Dispute Resolution. National Institute of Law Enforcement and Criminal Justice, unpublished manuscript, 1977.

Beresford and Cooper. "A Neighborhood Court for Neighborhood Suits." Judicature, 61 (1977), 185.

Berman, H. "The Education Role of the Soviet Court." International and Comparative Law Quarterly, 21 (1972), 8.

Board of Dade County Commissioners. "Citizen Dispute Settlement Center." Subgrant application for LEAA funding, Bureau of Criminal Justice Planning and Assistance, Dade County, Florida, December, 1977.

Brehm, J., and Cohen, A. Explorations in Cognitive Dissonance. New York: John Wiley and Sons, 1962.

Burger, W. "Agenda for 2000 AD - A Need for Systematic Anticipation." Federal Rules Decisions 70 (1976), 83.

Burger, Warren. "1976 Annual Report on the State of the Judiciary." Supreme Court Reporter, 96 (1976), 3299.

Citizen Dispute Settlement Guideline Manual. Florida: Florida Supreme Court, 1978.

Cohen, J. "Chinese Mediation on the Eve of Modernization." California Law Review 54 (1966), 1201.

"Community Courts: An Alternative to Conventional Criminal Adjudication." American University Law Review, 24 (1975), 1253.

"Compulsory Judicial Arbitration in California." Hastings Law Journal, 29 (1978), 475.

Conner, Ross F. and Surette, Ray . The Citizen Dispute Settlement Program. Chicago: American Bar Association, 1977.

Cree, Thomas. Polk County Neighborhood Mediation Project, First Year Evaluation. Unpublished manuscript prepared for Bureau of Governmental Research, I.P.A.A., Drake Univ. 1979.

Cressey, Donald R. and McDermott, Robert A. Diversion from the Juvenile Justice System. Michigan: National Assessment of Juvenile Corrections Project, 1973.

Danzig, R. "Toward the Creation of a Complementary, Decentralized System of Criminal Justice." Stanford Law Review 26 (1973), 1.

Danzig, R., and Lowy, M. "Everyday Disputes and Mediation in the United States: A Reply to Professor Felstiner." Law and Society Review 9 (1975), 675.

Dellapa, Fred M. "Citizen Dispute Settlement: A New Look at an Old Method." Florida Bar Journal, 51 (1977), 517.

Dellapa, Fred M. Final Report. Administrative Office of the Courts of the Eleventh Judicial Circuit of Florida, 1976.

Doo, L.W. "Dispute Settlement in Chinese-American Communities." American Journal of Comparative Law, 21 (1973), 21.

Edelman, M. Politics as Symbolic Action: Mass Arousal and Quiescence. Chicago: Markham Publishing Co., 1971.

Felstiner, W. "Influences of Social Organization on Dispute Processing." Law and Society Review, 9 (1974), 63.

Felstiner, W. "Avoidance as Dispute Processing: An Elaboration." Law and Society Review, 9 (1975), 695.

Festiner, W., and Drew, A. European Alternatives to Criminal Trials and Their Applicability in the United States. University of Southern California, unpublished manuscript, 1976.

Festinger, L. A Theory of Cognitive Dissonance. Stanford: Stanford University Press, 1957.

Fisher, E. "Community Courts: An Alternative to Conventional Criminal Adjudication." American University Law Review, 24 (1975), 1253.

Florida Supreme Court, Office of State Court Administrator. "Citizen Dispute Settlement: Program Development in Florida." Report to the Conference of Chief Justices, February, 1978.

Frank, A. "State Ombudsman Legislation in the United States." University of Miami Law Review, 29 (1975), 397.

Fuller, L. "Collective Bargaining and the Arbitrator." Wisconsin Law Review, 23 (1963), 3.

Fuller, L. "Mediation: Its Forms and Functions." Southern California Law Review, 44 (1971), 312.

Galanter, M. "Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change." Law and Society Review, 9 (1974), 95.

Gibbs, J. "Poro Values and Courtroom Procedures in a Kpelle Chiefdom." Swiss Journal of Antropology, 18 (1962), 41.

Gibbs, J. "The Kpelle Moot: A Therapeutic Model for the Informal Settlement of Disputes."Africa, 33 (1963), 1.

Greacen, John M. "Arbitration: A Tool for Criminal Cases?" Barrister, Vol. 2, Winter, 1975.

Hochberger, Ruth. "A New Approach to Resolve Private Quarrels." New York Law Journal, May 4, 1977.

Hufstedler, S. "New Blocks for Old Pyramids: Reshaping the Justice System." Southern California Law Review, 44 (1971), 901.

Johnson, Earl Jr., and Elizabeth Schwartz. A Preliminary Analysis of Alternative Strategies for Processing Civil Disputes. Washington, D.C.: National Institute of Law Enforcement and Criminal Justice, 1978.

Johnson, E., Kantor, V., and Schwartz, E. Outside the Courts: A Survey of Diversion Alternatives in Civil Cases. Denver: National Center for the State Courts, 1977.

Judicial Council of California. A Study of the Role of Arbitration in the Judicial Process. 1973.

Keating, J. "Arbitration in Inmate Grievances." The Arbitration Journal, 20 (1975), 177.

Kelley, Thomas M., et. al. "Decentralized Intake and Diversion: The Juvenile Court's Link to the Youth Service Bureau." Juvenile Justice, February, 1976.

Ku, Richard. The Adolescent Diversion Project. Washington, D.C.: U. S. Government Pringing Office, 1977.

Lemert, Edwin M., Instead of Court. Washington, D.C.: National Institute of Mental Health, 1971.

Lubman, S. "Mao and Mediation: Politics and Dispute Resolution in Communist China." California Law Review, 55 (1967), 1284.

McGillis, Daniel and Mullen, Jean. Neighborhood Justice Centers: An Analysis of Potential Models. Washington, D.C.: U.S. Government Printing Office, 1977.

McGillis, D., Mullen, J., and Studen, L. Controlled Confrontation: the Ward Grievance Procedure of the California Youth Authority. National Institute of Law Enforcement and Criminal Justice, Washington, D.C.: U.S. Government Printing Office, 1976.

McGillis, D., and Wise, L. Court Planning and Research: the Los Angeles Experience. National Institute of Law Enforcement and Criminal Justice Monograph Series, Washington, D.C.: U.S. Government Printing Office, 1976.

Maron, Andrew W. "Constitutional Problems of Diversion of Juvenile Delinquents." Notre Dame Lawyer, October, 1975.

Mullen, Joan, The Dilemma of Diversion. Washington, D.C.: National Institute of Law Enforcement and Criminal Justice (undated).

Mund, Geraldine. "The Need for Community Arbitration." Arbitration Journal, 31 (1976), 109.

Nader, L., and Singer, L. "Dispute Resolution." California State Bar Journal, 51 (1976), 281.

National Institute of Law Enforcement and Criminal Justice. "Citizen Dispute Settlement: The Night Prosecutor Program of Columbus, Ohio." Undated memorandum.

National Institute of Law Enforcement and Criminal Justice. Juvenile Diversion through Family Counseling: An Exemplary Project. Washington, D.C.: U.S. Government Printing Office, 1976.

Nejelski, Paul, "Diversion: The Promise and the Danger." Crime and Delinquency, 22 (1976), 393.

Nejelski, P. The Federal Role in Minor Dispute Resolution. U.S. Department of Justice, unpublished address to the National Conference on Minor Dispute Resolution, May 26, 1977.

Nimmer, Raymond T. Diversion: The Search for Alternative Forms of Prosecution. Chicago: ABA Press, 1976.

O'Brien, Kevin E. "Returned to the Streets: Legal Issues Raised by Juvenile Diversion Programs." New England Journal on Prison Law, Vol. 3, No. 2, Spring, 1977.

President's Commission on Law Enforcement and Administration of Justice. Task Force Report: The Courts. Washington, D.C.: U. S. Government Printing Office, 1967.

Redish, M. "Seventh Amendment Right to Jury Trial: A Study of the Irrationality of Rational Decision Making." Northwestern Law Review, 70 (1975), 486.

Rosenberg, J. "Devising Procedures That Are Civil to Promote Justice That is Civilized." Michigan Law Review 69 (1971) 797.

Ruhnka, John C. and Weller, Steven. "Fifteen Small Claims Courts Examined." The Judges Journal, Vol. 16, No. 4, Fall, 1978.

Ruhnka, John C., and Weller, Steven. Small Claims Courts: A National Examination, National Center for State Courts.

Sander, F. "Varieties of Dispute Processing," Federal Rules Decisions, 70 (1976), 111.

Sarat, A. "Alternatives in Dispute Processing: Litigation in a Small Claims Court." Law and Society Review, 10 (1976), 339.

Sarat, A., and Grossman, J. "Courts and Conflict Resolution: Problems in the Mobilization of Adjudication." American Political Science Review, 69 (1975), 1200.

Sarat, A., and Grossman, J. "Litigation in the Federal Courts: A Comparative Perspective." Law and Society Review, 9 (1975), 321.

Sheppard, David I., Janice A. Roehl, Royer F. Cook. Neighborhood Justice Centers Field Test: An Interim Report. Washington, D.C.: U.S. Government Printing Office, 1979.

Shonholtz, R. Review of Alternative Dispute Mechanisms and a Government Proposal for Neighborhood Justice Centers. San Francisco Community Board Program, unpublished manuscript, 1977.

Smith, D. "Man and Law in Urban Africa: A Role for Customary Courts in the Urbanization Process." American Journal of Comparative Law, 20 (1972), 223.

Snyder, Frederick E. "Crime and Community Mediation--The Boston Experience." Wisconsin Law Review, (1978) p. 737.

Stulberg, Joseph B. "Programs for Mediating Neighborhood Disputes: A Perspective." American Arbitration Association, undated.

Stulberg, J. "A Civil Alternative To Criminal Prosecution," 39 Albany Law Review, 319 (1975), 359.

Yngvesson, B., and Hennessey, P. "Small Claims, Complex Disputes: A Review of the Small Claims Literature." Law and Society Review, 9 (1975), 219.

Zehnle, R., and Zuehl, J. Background Research Report for the ABA Special Committee on Resolution of Minor Disputes. American Bar Foundation, unpublished manuscript, 1976.

ACKNOWLEDGEMENTS

In prearing this Manual we were assisted by a similar booklet entitled "Alternatives to Litigation and Adjudication: Program Designers' Guide" by Peter K. Trzyna and Karen M. Knab of the Office of Planning and Research, Wisconsin Supreme Court (December 1978). We would like to thank Ruth Bernhagen for typing the drafts and final copy and Mary Ann Joynt for proofreading.

Sandra Tedlock

Peter Trzyna

Judicial Planning Committee

IOWA SUPREME COURT

PETER K. TRZYNA
DIRECTOR OF COURT PLANNING

STATE HOUSE
DES MOINES, IOWA 50319
(515) 281-3852 or 8870

Thank you for your registration for the Conference on Dispute Settlement Centers to be held on January 11, 1980. We have received your $10.00 registration fee.

Enclosed is a copy of *Dispute Settlement Centers: Program Implementation Manual*, which will provide you with some background information about dispute settlement centers and the future programs in Iowa.

Very truly yours,

Sandy Tedlock

Sandy Tedlock
Assistant Court Planner

ST/rmb

Encl.

CONFERENCE

ON

DISPUTE SETTLEMENT CENTERS

January 11, 1980

Holiday Inn Downtown
1050 Sixth Avenue
Des Moines, Iowa

9:00 - 9:30	REGISTRATION	
9:30 - 9:45	OPENING REMARKS	Peter Trzyna
9:45 - 10:00	KEYNOTE ADDRESS	Chief Justice W. W. Reynoldson
10:00 - 10:45	OVERVIEW OF PROGRAMS	Daniel McGillis
10:45 - 11:00	COFFEEE BREAK	
11:00 - 11:45	DISPUTE RESOLUTION TECHNIQUES	Joseph Stulberg
11:45 - 12:30	IMPLEMENTING A PROGRAM	Fred Dellapa
12:30 - 1:30	LUNCH	
1:30 - 2:15	STAFF AND TRAINING	Jeff Jefferson
2:15 - 3:00	LEGAL ISSUES	Paul Rice
3:00 - 3:30	PROGRAMS IN IOWA - CLOSING REMARKS	Peter Trzyna

Conference Topics and Speakers

OVERVIEW OF PROGRAMS — Daniel McGillis

Recent developments in minor dispute processing across the nation will be reviewed, including the U. S. Department of Justice experiments with three neighborhood justice centers in Atlanta, Kansas City and Los Angeles. Efforts to develop federal legislation to support innovative dispute processing mechanisms will be noted along with a discussion of state level initiatives by legislatures, courts, and agencies. Tentative findings regarding the impact of experimental dispute settlement projects will also be discussed.

Daniel McGillis is a Research Associate for the Center of Criminal Justice at Harvard Law School. He is currently conducting a national survey of dispute processing projects for the Department of Justice which will be published in the Spring of 1980. He is also conducting a study of Boston dispute settlement projects with the support of a Ford Foundation grant. Among Mr. McGillis' previous publications are Neighborhood Justice Centers: An Analysis of Potential Models, and related articles in various law journals. Mr. McGillis has a Ph.D from Duke University and has previously been a lecturer at Harvard University, an Assistant Professor at Williams College and an Instructor at Duke University.

DISPUTE RESOLUTION TECHNIQUES — Joseph Stulberg

This presentation will examine various methods of informal dispute settlement-conciliation, mediation, and arbitration. It will identify the purposes and dynamics of each procedure as well as their strengths and weaknesses. Hypothetical cases will be discussed both to illustrate the different tactics and strategies the third-party settlement staff adopts in each procedure and to indicate the types of skills which the neutral needs in order to discharge his or her function.

Joseph Stulberg is the Director of the Dispute Resolution Institute, a consulting firm specializing in designing and implementing nonjudicial dispute resolution systems for public agencies and private organizations. Mr. Stulberg also has a private law practice. He previously served as Vice President and Director of Community Dispute Services where he was responsible for the development and implementation of negotiation, mediation and arbitration services for the American Arbitration Association. Mr. Stulberg has a law degree from New York University and a Ph.D from the University of Rochester. He has published several law journal articles on community dispute resolution and serves as an active member of the New York State Public Employment Relations Board mediation panel.

IMPLEMENTING A PROGRAM — Fred Dellapa

This will be a presentation on the organization and administration of a dispute settlement center: funding, interfacing with other agencies, staffing, policymaking, and intake, hearing and posthearing procedures. An analysis of the needs of the community and factors to be considered in selecting alternative programs will be included. Involvement of the community in dispute settlement centers will also be examined.

Fred Dellapa is currently the Education and Training Coordinator for the Eleventh Judicial Circuit of Florida. Mr. Dellapa previously served as the Project Director of the American Bar Association Special Committee on Resolution of Minor Disputes which developed policies for the ABA regarding alternative dispute resolution methods and provided technical assistance to alternative programs. Mr. Dellapa was also the Director of the Dade County Citizen Dispute Settlement Center, an extremely successful dispute resolution project. He has considerable experience as a technical consultant to dispute resolution programs and has written many publications on the subject. Mr. Dellapa received his law degree from the University of Toledo.

STAFF AND TRAINING — Jeff Jefferson

The focus of this discussion will be the staff needs of a dispute resolution center including both administrative and third-party staff. Included will be selection of the staff and third parties based on desirable staff characteristics. The type of training needed for mediators/arbitrators, the amount of training needed, and how the training can be provided will also be discussed.

Jeff Jefferson is the Vice President for Training at the Institute for Mediation and Conflict Resolution, where he trains mediators and arbitrators in interpersonal and community dispute resolution techniques, conducts lectures and seminars in conflict resolution at colleges, governmental agencies and private corporations. He also serves as a third-party neutral in community and interpersonal disputes. Mr. Jefferson background experience includes: former Director of Community Economic Development, City of New York, and a former member of the New York City Public Speakers Bureau. Mr. Jefferson attended the City University of New York and Pace University, earning a degree in Economics.

LEGAL ISSUES Paul Rice

This presentation is an overview of the legal issues involved in establishing mediation and arbitration programs as an alternative to the criminal justice system. Issues addressed will include the equal protection implications of screening, the procedural due process rights that may arise in the adjudication and termination stages of the programs, the right to counsel, and confidentiality.

Paul Rice is a Professor of Law at American University and a Special Master for the U.S. v. A.T.& T. antitrust litigation. He has a law degree from West Virginia University and an advanced legal degree from Yale Law School. His background as a law professor includes administration of legal services clinics at the University of Connecticut and American University. He has also served as Special Assistant State's Attorney for the Hartford County (Connecticut) Superior Court. His extensive list of publications includes numerous articles on criminal defense procedures. He served as a principal investigator for American University's evaluation of the District of Columbia Citizens' Complaint Center.