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RECENT DEVELOPMENTS IN MINOR DISPUTE PROCESSING

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During the late 60's and early 70's, research studies and various commissions documented the difficulties being experienced by the U.S. courts in processing minor civil and criminal disputes. Recurrent problems found in many courts included extensive delays, high costs, assemblyline procedures, and citizen dissatisfaction with the quality of justice rendered. These findings have led to a growing debate within the judiciary, executive agencies, professional organizations and elsewhere regarding strategies for improving our handling of minor disputes. One product of this debate has been the widespread experimentation with alternatives to adjudication for handling such matters. A wide variety of approaches are being tried including informal telephone conciliation, face to face mediation, and binding arbitration. Projects are being operated by the courts, prosecutor's offices, the local bar, and community agencies, among others.

During the first half of this decade, fewer than a half dozen such efforts were in operation. Currently, experimental projects are operating or being developed in approximately one hundred cities across the nation. This memorandum provides a brief overview of these extensive developments at the local and state levels and discusses project characteristics and their apparent impact.

A more in-depth review of minor dispute processing mechanisms nationwide has recently been commissioned by the National Institute of Law Enforcement and Criminal Justice and is due to be completed in the spring of 1980. The study will draw from the evaluation results of DOJ's Neighborhood Justice Centers field test, as well as from related experiences across the country, in presenting recommendations for future program development in this area.

National groups which have been influential in encouraging experimentation with non-judicial approaches to dispute processing over the past several years include the American Arbitration Association, the Institute for Mediation and Conflict Resolution, and the American Bar Association. More recently they have been joined by the National Association of Counties, which held a national conference on neighborhood justice centers in May, 1978, and the newly formed National Association for Dispute Resolution which represents practitioners in the field. The Department's Neighborhood Justice Center Program has stimulated a great deal of national interest in dispute resolution mechanisms, and the Dispute Resolution Act (S.423) pending in Congress may provide a further stimulus for nationwide experimentation and research.

Local Program Development

Projects for the mediation and/or arbitration of minor civil and criminal disputes have been developed in approximately twenty-eight states during the past five years. The total number of such projects is roughly one-hundred, and some states have been particularly active in project development; (e.g., projects are operational or developing in ten Florida cities, seven

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Ohio cities, seven New Jersey cities, six Massachusetts cities and five California cities). Projects exist in every region of the continental United States and are being planned in Anchorage and Honolulu as well.

The term "neighborhood justice center" will be used as a generic label for all of the non-judicial projects discussed in this memorandum. This term was first used in the American Bar Association's Pound Conference Follow-up Task Force Report, and such centers were broadly defined as "facilities...designed to make available a variety of methods of processing disputes, including arbitration, mediation, referral to small claims courts as well as referral to courts of general jurisdiction (p. 1)." Projects included under this general label have a wide variety of local titles including "citizen dispute settlement center," "community mediation center," "night prosecutor program," "community board program," "urban court project," and others.

### Development of Initial Projects

The earliest neighborhood justice center projects appear to have been developed by prosecutors and courts in response to clear needs for improved processing of minor criminal matters. The Philadelphia Municipal Court Arbitration Tribunal has perhaps the longest lineage of any of the projects, having evolved from a project established in 1969 through the joint efforts of the American Arbitration Association, the Philadelphia District Attorney, and the Municipal Court. The project provides disputants with the option of binding arbitration for minor criminal matters. Shortly, after the Philadelphia project began operation a somewhat similar project was established in Columbus, Ohio by the City Attorney's Office. The Columbus project provides mediation rather than arbitration for minor disputes.

Both the Philadelphia and Columbus projects received LEAA funding, and the Columbus project was designated an Exemplary Project by a board of LEAA officials in 1974. As a result, extensive documentation of the project was prepared, and the National Institute of LEAA sponsored nationwide seminars to advocate replication of the project. Projects modeled after the Columbus project were developed in many Ohio communities. In addition, the Miami, Florida project, among others, credits the Columbus project as a major stimulus to its development, and the Miami project has in turn stimulated the development of projects in nine other Florida cities. Other major projects which have inspired replication include the Institute for Mediation and Conflict Resolution's Dispute Center in Manhattan, the San Francisco Community Board Program, the Rochester Community Dispute Services project, and the Boston Urban Court Program. Recently developed projects often tend to be eclectic and borrow features from a number of the established programs.

### Project Characteristics

Projects vary widely in their approaches to non-judicial dispute settlement. Major differences include: (1) the types of disputes processed, (2) project sponsorship, (3) case referral sources, (4) dispute settlement techniques used, and (5) hearing officer characteristics. Each dimension will be discussed briefly in turn.

### Types of Disputes Processed

Projects vary considerably in the types of cases handled. Some projects process a broad variety of minor civil and criminal matters while others limit themselves to specific types of disputes such as small claims cases or criminal, domestic, consumer, or housing related matters. Regardless of the types of disputes processed, virtually all projects tend to place their primary focus upon disputes occurring among individuals who have an ongoing relationship, whether as relatives, landlord/tenant, employer/employee, neighbors, etc. These cases are viewed as amenable to mediation and arbitration due to the possibilities for compromise and the potential interest of the parties in arriving at a joint settlement. The following examples illustrate the variations in case criteria among dispute settlement projects:

Broad Range of Civil and Criminal Matters. Many projects have very broad case criteria and accept a wide variety of civil and criminal matters for processing. The Neighborhood Justice Center projects in Atlanta, Kansas City and Los Angeles have all adopted this approach. Criminal matters tend to include assault, assault and battery, criminal mischief, larceny and similar matters while civil matters typically involve landlord/tenant, consumer/merchant, and employer/employee disputes. Strict categorization of many matters as either criminal or civil is, of course, not possible. For example, an assault may be treated as a criminal matter or as a tort case, and handled in criminal or civil courts, or both. In attempting to categorize cases roughly as either criminal or civil a recent Florida Supreme Court-sponsored evaluation of five dispute settlement projects defined criminal matters as "any act by an adult where a possible violation of a state statute or municipal/county ordinance has occurred," while civil matters included all disputes where "no possible governmental sanction or penalty can be levied." By this approach matters such as assaults would be defined as criminal cases. The Florida evaluators report dramatic differences in the criminal/civil case mix of Florida projects, with, for example, 84% of the Jacksonville Citizen Dispute Settlement project's caseload being classified as criminal while only 19% of the St. Petersburg/Clearwater project caseload is criminal in nature. (Of the approximately 2500 cases studied by the evaluators for the five Florida dispute settlement projects 41% were categorized as criminal and 59% as civil.) A similar classification of cases for the Justice Department Centers indicates that the Atlanta, Kansas City and Los Angeles caseloads include approximately 40%, 72% and 42% criminal matters respectively. The wide variations in the actual caseload mixes of various projects typically reflects differences in primary referral sources; the various projects have established differing ties to criminal and civil court related agencies.

In the civil area, many of the projects are hesitant to process disputes between disputants varying greatly in power because of concern that the more powerful party will have little incentive to compromise; thus disputes between individuals and large organizations are often not processed. Some mechanisms have been considered for encouraging more powerful parties to participate. For example, in Fairfax County, Virginia, merchants are required to agree to process consumer complaints through mediation at the consumer's request as a precondition for membership in the local Chamber of Commerce.

In the case of criminal matters most projects handle only misdemeanors, but the New York Institute for Mediation and Conflict Resolution Dispute Center processes felonies (such as felonious assaults and rapes) occurring among acquaintances as well as misdemeanors. An experimental center has been established in Brooklyn, New York that mediates only felonies. This latter project was begun in part due to recent findings of the Vera Institute of Justice. The Vera Institute reported in a study of felony prosecution in New York that felony cases among acquaintances are generally not successfully prosecuted. Such cases comprise a large proportion of the court's caseload (e.g., 56% of violent crime cases and 47% of combined violent and property crime cases in New York City). In New York, the majority of such cases are dismissed due to lack of complainant cooperation. In Washington, 75% of assault cases involve persons with prior relationships (according to a study by the Institute for Law and Social Research, INSLAW), and nearly 90% of these cases are dismissed. Both the Vera and INSLAW researchers called for alternatives to the present choice between full prosecution and outright dismissal, and recommended mediation as a promising option.

The Florida project evaluation cited earlier has noted the value of mediation in criminal cases. The researchers concluded that the five Florida projects studied were effective for both civil and criminal cases but that "disputants referred to (mediation) programs by criminal justice personnel were the most likely to appear for scheduled hearings, reach agreements, and be satisfied with the (mediation) process." Preliminary findings from the Institute for Social Analysis study of the Justice Department Neighborhood Justice Centers also indicate that criminal justice system referrals are more likely to result in hearings than other types.

Some projects process a large volume of "bad-check" cases in addition to the rest of their civil and criminal caseload. For example, the Columbus Night Prosecutor Program handles over 10,000 such cases per year. Many critics have stressed that this type of case is not suited for mediation and have noted the possibility that processing such cases can severely harm the image of a project--making it appear to be a collection agency. Supporters of "bad-check" case processing, on the other hand, have argued that informal "mediation" hearings are a far more humane approach to settling bad check cases than arrests or threats of arrest and that such administrative hearings are in fact successful.

Small Claims Matters Only. The district courts of Maine and Massachusetts have begun to experiment with the mediation of small claims matters. The Ninth District Court of Portland, Maine began to experiment with the mediation of such cases in the fall of 1977. The pilot project was a joint effort of the Maine Council for the Humanities and Public Policy, the Main Labor Relations Board, and the Cumberland County Bar Association. Disputants are provided the option to mediate their small claims case prior to formal adjudication, and the project operators report that approximately 75% of cases going to mediation are successfully resolved. A professor at Bowdoin College is conducting an evaluation of the Maine experiment in mediation and reports that the effort has been expanded in limited fashion to district courts in Lewiston, Bangor, Brunswick and Augusta in addition to Portland. Consideration is being given to expand case criteria beyond small claims matters, and some domestic matters such as alimony and custody disputes have been recently processed on an experimental basis.

The 1978 court reform legislation in Massachusetts mandated that disputants involved in small claims cases must have the option to have the matter handled through mediation. A committee of district court judges is now developing guidelines for the implementation of this mandate, and it is anticipated that complainants in small claims cases will be informed of the availability of mediation at the time of filing court papers as well as through announcements from the bench at the time of court hearings. This is apparently the first case of statutorily mandated availability of small claims mediation. A number of jurisdictions in Pennsylvania, Ohio, and New York have developed compulsory arbitration of small claims matters falling within a given monetary range. In each jurisdiction arbitration is typically conducted by a panel of attorneys, and disputants have the right to a trial de novo, for which the appellant must pay the arbitration costs. In New York City parties involved in a small claims dispute are given the option to have the dispute arbitrated by an attorney. The choice of arbitration waives the parties' right to appeal but is likely to be less expensive and less time-consuming than court processing. In California, the arbitration of small claims within a given monetary range is voluntary for the plaintiff but compulsory for the defendant if the plaintiff chooses to have the matter arbitrated. The Los Angeles NJC has been quite heavily involved with the mediation of small claims matters and referral forms to the justice center are appended to local small claims court case filing forms. The project also stations mediators at the court to mediate small claims cases referred directly from the bench at the time of adjudicatory hearings.

Criminal Matters Only. As was noted above, some of the projects having case criteria which allow for the processing of both civil and criminal matters may in fact process primarily criminal matters (e.g., 84% of the Jacksonville caseload and 72% of the Kansas City caseload involves such cases), and the Brooklyn experimental project processes only criminal felony matters. Very few projects focus exclusively upon criminal misdemeanors; the primary example of this type of project is the Massachusetts Adult Mediation/Restitution Program developed September, 1978 as part of the current LEAA restitution project discretionary funding cycle. This project operates in three Massachusetts District Courts (Woburn, Lowell and Cambridge) and has the interesting characteristic of dealing primarily with cases between strangers rather than prior acquaintances. The reason for this different case emphasis is that referrals are received quite late in case processing--from the bench at court hearings--and defendants must admit to sufficient facts before the judge will continue the case and refer it to the mediation project. The program focuses primarily upon minor property offenses; a representative sample of community people have been trained as mediators; and mediation sessions tend to focus upon the specific terms of monetary or service restitution. In this latter respect, the project differs considerably from other mediation projects which typically initiate hearings with the assumption that either or both of the parties may have committed offenses against the other. The discussions in the Adult Mediation/Restitution Program can involve compromises between the two disputants but do not have the initial neutral stance typically associated with mediation.

Domestic Matters Only. Mediation serves as an adjunct to many family crisis intervention programs. In some projects social workers meet with the

two members of a married couple individually and attempt to arrange suitable referrals and assistance while in other cases the two parties are brought together for informal mediation of problems. These projects often focus upon problems of family violence but also attempt to mediate divorce related issues such as child custody and visitation. Some family crisis intervention projects are operated by police departments (e.g., the Police Foundation supported an experimental project in Norwalk, Connecticut) while others are operated by probation departments (e.g., the Aid for Battered Women project in New Bedford, Massachusetts) or private agencies.

Consumer Matters Only. Numerous consumer non-judicial dispute processing efforts have evolved in recent years. The Better Business Bureau has developed programs in many cities which provide for the sequential conciliation, mediation, and arbitration of consumer disputes, and most of the cases processed by the program are settled prior to arbitration. The National Association of Home Builders has established the Homeowner's Warranty Corporation which employs a three-step approach similar to the Better Business Bureau. The Magnuson-Moss Warranty Act has encouraged the development of this type of dispute processing program to enforce product warranties and has designated the Federal Trade Commission as the agency to facilitate the resolution of warranty disputes. The Ford Motor Company and other automobile companies are experimenting with different approaches to the mediation of automobile warranty cases. In addition, numerous trade association projects have been developed such as the Major Appliance Consumer Action Panel and the Furniture Industry Consumer Action Panel. These groups investigate complaints by consumers and make non-binding recommendations for their resolution. In a number of states' Executive Offices of Consumer Affairs and/or the state's Attorney General's Office provide consumer complaint processing departments which typically process complaints via phone conciliation or through letters to consumers and merchants.

Housing Matters Only. Many projects have been developed during the past few years exclusively to mediate housing related matters such as landlord/tenant disputes. Housing mediation projects are particularly prevalent in California and have some very large caseloads. For example, the San Jose Housing Service Center processed over 34,000 housing case referrals from August 1975 through April 1979. Some of the California projects have modest budgets and serve small communities (e.g., the Mountain View Rental Housing Mediation Project). The California legislature recently passed a resolution recommending the development of housing mediation projects statewide. ACTION has funded a housing mediation project in Denver, Colorado recently, and the program is sponsored by the Denver Commission on Community Relations and the Colorado Bar Association. The Department of Housing and Urban Development has funded an extensive research and technical assistance program to support improved judicial and non-judicial housing dispute mechanisms. The project is operated by the American Bar Association and is titled the National Housing Justice and Field Assistance Program.

## Program Sponsorship

Three major types of sponsors of non-judicial dispute settlement projects are common:

(1) Public Sponsorship. Project sponsors have included state level agencies (e.g., Massachusetts Attorney General's Office consumer complaint project), the courts (e.g., the Miami Citizen Dispute Settlement Program), the prosecutor (e.g., the Columbus Night Prosecutor Program), a city manager's office (the Kansas City Neighborhood Justice Center), and county government (e.g., the Portland, Oregon Neighborhood Mediation Project). The Kansas City Police Department sponsored an experimental project a number of years ago, and many police departments sponsor family crisis intervention units which may mediate family-related disputes.

(2) Private Sponsorship with Close Ties to the Justice System. A number of projects have been sponsored by private organizations with close ties to the local justice system including the Orlando Citizen Dispute Settlement Project sponsored by the local bar association, the Rochester Community Dispute Services Project operated by the American Arbitration Association, and the Institute for Mediation and Conflict Resolution Dispute Center in New York.

(3) Private Sponsorship with a Community Rather than Justice System Orientation. Projects have also been developed under the sponsorship of local private organizations which rely primarily upon community control of operations and the referral of cases directly from the community rather than from the justice system. The San Francisco Community Board Program and the Los Angeles Neighborhood Justice Center both have this orientation. Projects of this type tend to stress the value of decentralization of power, return of control regarding major decisions to the community, increasing leadership skills within the community and related issues along with improved dispute processing and potential aid to the justice system.

## Case Referral Sources

Project case referral sources vary considerably among the various dispute settlement projects. The evaluation of the five Florida projects noted earlier indicated that the police and prosecutor's office are the primary sources of referral for those projects (each contributing 31% of the caseload), the remaining 38% of the caseload is distributed over ten other case sources with no single source contributing more than 6.7% of the cases. In descending order these sources are walk-ins, court clerk, legal aid, city hall, news media, consumer protection agency, judges, private attorneys, other governmental agencies, and a residual category labeled other. This pattern of referral sources is common for many projects, but in certain jurisdictions one source produces the majority of referrals, e.g., bench (Boston), court clerk (Rochester), prosecutor (Jacksonville), police (Orlando), and walk-ins (Los Angeles Neighborhood Justice Center).

## Dispute Settlement Techniques

Projects employ a variety of dispute processing techniques including conciliation, mediation, and arbitration. Each approach will be discussed briefly in turn:

(1) Conciliation. Many projects attempt to settle disputes through phoned or letter contact with the respondent (defendant) prior to the scheduling of a formal hearing. Some projects limit themselves to this approach (e.g., various state level consumer complaint projects) and inform complainants to proceed to other forums if conciliation fails. Others view conciliation as only the first available project option with mediation and/or arbitration as a sequel if conciliation fails. The San Francisco Community Board Program contacts the respondent in person in most cases to discuss a resolution rather than relying on the mails; some other projects routinely mail out announcements of hearing dates without personal contact.

(2) Mediation. Face to face mediation of conflicts between disputants is a common procedure used in many projects. Techniques of mediation vary considerably with some projects using panels of up to five mediators (e.g., San Francisco) while others use a single mediator per hearing (e.g., Columbus); some projects tend to have relatively brief mediation hearings (e.g., 30-45 minutes as in the case of the Miami project) while others typically have quite lengthy hearings (e.g., over two hours on the average in Boston). The American Arbitration Association and the Institute for Mediation and Conflict Resolution both tend to stress the value of caucuses between individual disputants and hearing officers (with the other disputant leaving the room for a short while) as a technique for finding the disputant's "bottom line" position for settlement; this approach is used extensively by projects in Rochester and Cleveland among others. Some other projects tend to reject the caucus approach and stress the development of communication skills on the part of the disputants by having them very carefully explain their positions and having the other party repeat back the essence of the person's position to demonstrate clear communication (e.g., the San Francisco project). Some mediation projects employ written resolutions (e.g., Boston) and the Los Angeles project resolution forms even state that the written mediation resolution agreement is enforceable in court. Other projects such as the Columbus program do not employ written resolutions of agreements.

(3) Arbitration. Projects which employ arbitration (e.g., New York City, Rochester, and Kansas City) have the authority to develop binding agreements which are enforceable in the civil courts. These projects typically attempt to mediate the dispute first and resort to imposed arbitration awards only when all attempts at mediation have failed. The New York City project reports that only approximately 5% of cases processed by the project go on to imposed arbitration; the remaining 95% of the cases are mediated, and the mediated agreements are then written up as enforceable consent agreements. The Rochester project uses similar case processing procedures but reports that approximately 40% of cases go on to imposed arbitration. The majority

of states have "modern arbitration legislation" and can develop projects using either mediation or arbitration. Comparative data on the relative effectiveness of the two approaches are not as yet available. The difference between mediation and arbitration becomes blurred in some projects in which the prosecutor is the sponsor, and the threat of criminal charges for failure to maintain a mediated agreement is very real.

#### Hearing Officer Characteristics

Hearing staff backgrounds vary widely among the projects and include lay citizens trained in mediation or arbitration techniques by the projects in Boston, Rochester, and New York; law students in Columbus; professional mediators such as clinical psychologists and social workers in Miami; and lawyers in Orlando. Some telephone conciliation projects (e.g., the Massachusetts Attorney General's consumer project) employ undergraduates on internships. The Maine small claims court mediation effort has relied heavily upon retired persons, and this approach has interesting parallels to the role of elderly persons as dispute resolvers in many unindustrialized societies.

#### Tentative Evaluation Findings Regarding Current Projects

Limited evaluations have been conducted of a number of neighborhood justice center projects including those in Miami, Ft. Lauderdale, Jacksonville, Orlando, St. Petersburg/Clearwater, and Philadelphia. Studies are in progress in Boston, Brooklyn, and the Maine District Courts, in addition to the Department of Justice study of the Atlanta, Kansas City, and Los Angeles Neighborhood Justice Centers. Less formal descriptive studies have been conducted on the Columbus, Rochester, San Francisco and New York projects. The data from available studies are quite tentative in nature, and the Justice Department study and other current evaluations are likely to add greatly to our knowledge regarding dispute processing projects. Tentative assertions which appear to be reliable at this point include:

(1) Projects Process Cases Rapidly. Projects report that cases usually receive hearings within 7-15 days of initial referral. Court processing of comparable cases is often reported to require ten weeks or longer.

(2) Projects Improve Accessibility to Justice. Projects do not charge for services, do not require lawyers, hold hearings at times convenient to all parties to a dispute, and often provide multilingual staffs to serve non-English speaking disputants. Data are needed on the degree to which the increased accessibility translates into greater real access to justice as demonstrated by active use of the forums. Presumably a program could be highly accessible and yet not actually increase access to justice because of ignorance of the project's services or lack of faith in the project's effectiveness.

(3) Projects by Definition Provide Opportunities to Explore Underlying Causes of Disputes. This exploration is an inherent property of both mediation and arbitration hearings. Data are needed on the degree to which this process facilitates long range settlements in comparison to adjudication.

(4) Projects Appear to be Positively Viewed by Disputants. Preliminary survey data from the Institute for Social Analysis study of the Justice Department Neighborhood Justice Centers indicates that for the three centers, 78% of complainants and 82% of respondents express satisfaction with the terms of the agreement reached; 86% of complainants and 83% of respondents state that they are satisfied with the mediation process, and 88% of complainants and 87% of respondents express satisfaction with the overall experience at the justice center. Comparative data for similar disputants processed by the courts would be valuable in helping to evaluate these data.

The current ongoing evaluations are likely to provide many answers to additional central questions regarding justice centers including: (1) the long term impact of the centers upon disputes (tentative data are quite positive), (2) the relative costs of non-judicial and adjudicatory approaches, (3) the impact of justice centers on court caseloads, community tensions, and other variables, (4) the comparative precision of mediation and adjudicative decisions, and similar matters. At present the effort to develop non-judicial mechanisms for the processing of minor civil and criminal disputes is in its infancy; much remains to be learned regarding both its promise and problems.

#### State Level Initiatives

As the interest in non-judicial dispute processing mechanisms has increased a number of state level initiatives have begun including: (1) proposed legislation, (2) statewide technical assistance and evaluation, and (3) state studies of dispute processing needs. Each type of initiative will be discussed briefly in turn.

#### Proposed Legislation

Three states have proposed bills for the encouragement of non-judicial dispute processing projects, California (AB 2783), Florida (HB 707), and New York (A 6188). None of the bills have been passed as yet, and all have been subject to considerable revisions. Major provision of the bills include:

Funding: The New York bill would appropriate three million dollars for the support of non-judicial dispute projects. The California bill as initially drafted would provide one and one-half million dollars for project funding; this provision was dropped following the enactment of Proposition 13 and the resulting lack of general revenues to support the program. The Florida bill has not included an appropriation for project funding.

Confidentially Safeguards. All three of the bills provide confidentially safeguards for case-related material. The California bill notes that all memoranda, files and written agreements are confidential and privileged and are not subject to disclosure in any judicial or administrative proceedings. Similarly, all communications are privileged. The Florida bill provides a very broad safeguard: "any information received by any person employed by, attending or present at or volunteering services to a Citizen Dispute Settlement Center...is privileged and confidential." A legislative provision of confidentiality of information presented at a Neighborhood Justice Center would be very valuable. At present, projects must rely on attempts to negotiate agreements from local prosecutor's offices that information will not be demanded from mediators or staff members.

Limitations on Staff Civil Liability. The Florida bill provides an additional safeguard against the civil liability of staff members stating, "a Citizen Dispute Settlement Center may refer the parties to judicial supportive service agencies without being held liable for any civil damages for such action."

#### Statewide Technical Assistance and Evaluation

In Florida the Supreme Court has instituted a state-level project for the support of citizen dispute settlement projects. The program is operated by the Office of the State Courts Administrator and provides Florida jurisdictions with technical assistance for establishing projects, has evaluated five Florida projects, developed a detailed manual for use by projects, conducted a statewide conference for projects, and plans to develop a statewide public information campaign. In New Jersey, the Department of the Public Advocate recently sponsored a national conference on dispute resolution mechanisms, and representatives from the various New Jersey dispute settlement projects participated in the meeting.

#### State Studies of Dispute Processing Needs

In many states bar association committees, judicial special committees, and other groups are studying the need for non-judicial dispute resolution mechanisms. The Alaska Judicial Council recently completed such a study as did the Special Committee to Study Alternative Means of Dispute Resolution of the Massachusetts District Court. The latter study resulted in the recommendation for experimentation with mediation projects and the subsequent funding of experimental projects in Salem, Framingham, and Taunton, Massachusetts. Recently promulgated Standards for the Prosecution and Defense in New York State cite the development of accessible non-judicial dispute processing mechanisms as a top priority.

#### Relationship of Dispute Settlement Projects and Restitution Programs

In recent years a large number of projects have been developed with the common label "restitution projects." Some researchers involved in the study of such projects have considered neighborhood justice centers

to be one form of restitution project having special characteristics distinguishing it from most other such projects. These characteristics include: (1) the pre-adjudicatory nature of justice centers, (2) the face to face contact of disputants at mediation hearings, and (3) the tendency for any restitution agreements ensuing from justice center hearings to involve restitution directly to the victim. In contrast to these characteristics of justice centers, traditional restitution projects tend to (1) be post adjudicatory and typically operated by probation, parole and corrections departments, (2) not involve face to face contacts between victims and offenders. Victims are often contacted by phone to elicit their views on appropriate levels of restitution but do not generally meet with offenders, and (3) often involve community service restitution rather than direct restitution to the victim. In addition many of the traditional restitution projects provide offenders with employment assistance to help insure that they can meet their restitution obligation, and some of the programs are residential (e.g., the Minnesota Restitution Center) and process parolees. In general, restitution projects tend to focus more on the issue of guilt or innocence than justice centers even when the projects are pre-adjudicatory (e.g., the Salt Lake Restitution Work Program), and the issue of guilt is a foregone conclusion in post-adjudicatory projects. The Massachusetts Adult Mediation/Restitution Program discussed earlier in this memorandum is perhaps the only restitution project in the country which has all of the characteristics of justice centers noted above. And even in the case of that project the issue of guilt and innocence is critical, and offenders must admit to sufficient facts and have their case placed on continuance by a judge before they are actually referred to the project. In addition to holding mediation/restitution hearings with the victims and offenders, the project also provides employment assistance typical of many restitution projects. The Pima County Attorney's Adult Diversion Project in Tucson, Arizona, is reported to employ similar pre-adjudicatory victim-offender meetings in some cases, and certain juvenile diversion projects such as the Community Accountability Program of Seattle and the Community Arbitration Program of Annapolis, Maryland bear some similarities to justice centers in their processing of some cases. In general, however, neighborhood justice center processes tend to differ greatly from traditional restitution projects as suggested above. In addition restitution projects focus primarily on stranger to stranger cases and relatively serious offenses; justice centers focus upon cases involving acquaintances and relatively minor offenses.

#### Conclusion

It is clear that many important topics can be treated only slightly or may even be omitted entirely in a brief memorandum. Some of the more important issues not discussed here but needing attention and future research include: (1) the question of the quality of justice rendered by justice centers and appropriate methods for measuring "quality," (2) the issue of how to encourage the institutionalization of successful projects into local budgets, and (3) the potential pitfalls that are associated with the development of social programs such as the justice centers including over promising potential achievements and subsequent disillusion, and the problem of possible excessive bureaucratization of projects once they are fully institutionalized.

The possibility that someday we may develop a more highly differentiated and coordinated justice system, with different forums and procedures suited to different types of human conflicts has also not been explored. A recent Task Force Report of the National Center for State Courts appropriately noted this possibility in stating that, "In any event we appear to be moving inevitably in the direction of a drastically revised system of dispute resolution--a justice system more than a judicial system--and one in which non-judicial forums will occupy an important place."

To: *McJrd*

**ACTION TAB**

To: *McJrd*  
From: *NACD Liberty*

Date *7-1-80*

- FOR YOUR COMMENTS
- FOR YOUR APPROVAL
- TAKE APPROPRIATE ACTION
- CALL ME
- SEE ME

- FOR YOUR INFORMATION
- NOTE & RETURN
- NOTE & FILE
- FOR YOUR SIGNATURE
- \_\_\_\_\_

**COMMENTS:**

*As requested*

JUL 3 1980

ACQUISITIONS

**END**