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I. Introduction

Fifteen years have passed since Tom Fee portrayed the champions of the fledgling field of community dispute resolution as intrepid trailblazers:

> Nothing in dispute resolution has been more daring—and audacious—than the creation of scores of community justice centers.
>
> Daring: It took courage to launch on a shoestring a grass-roots, imperfectly understood service housed typically in a storefront or low-rent office building.
>
> Audacious: It was indeed audacious to claim expertise in helping to settle conflicts when the accepted wisdom was that the folks at the courthouse had a monopoly on dispute resolution.
>
> But the daring and audacity of the pioneers who established community justice centers seems to be paying off. An estimated 180 centers are at work around the nation.[1]

Much has changed over the course of time; the label "community justice" has given way to "community mediation," the number of programs has perhaps tripled,[2] and, as evidenced by the range of articles

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1. Thomas Fee, *Introduction* to NIDR FORUM, THE STATUS OF COMMUNITY JUSTICE 2 (1988).

2. An exact count of the number of extant programs is unavailable, but estimates

in this symposium volume, community mediation is not the only challenge to the "monopoly on dispute resolution, held by the courts."[3] And, of course, much has remained the same.

The institutionalization of community mediation within the formal justice system is a divisive issue; proponents hold institutionalization to be the field's pathway to fulfilled promises, while opponents decry it as the road to perdition.[4] However, the dilemma inherent in institutionalizing is not unique to dispute resolution. In fact, forty years ago Toch's studies of social movements led him to argue: "Institutionalization is thus both a negative and a positive process. The positive feature of institutionalization is its concern for self-perpetuation or expansion . . . . The negative aspect of the process is its lack of concern for all ideology, except for beliefs that have immediate survival value."[5]

This article traces the history of community mediation, with particular attention to developments related to institutionalization, and reflects my own concerns about this transformation. Practitioners have observed that the field has "evolved along two different paths—generally parallel, occasionally merged, often philosophically divergent."[6] The destinations of these two paths remain unclear despite the continuation of the often arduous journey.

II. The History of Community Mediation—Creation Myths

To understand the conflicting conceptions of institutionalization, it is useful to revisit the community mediation "creation myths"[7] set forth by their apostles. Predictably, the desirability of institutionalization is closely linked to the *raison d'etre* presented. It is especially instructive to observe who, or what institution, is held to be the primary beneficiary of community mediation.

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range from four hundred to six hundred. The National Association for Community Mediation places the number at approximately 550. *See* http://www.nafcm.org/pg5.cfm (last visited Aug. 4, 2003).

3. Fee, *supra* note 1; Symposium, *Dispute Resolution and Capitulation to the Routine: Is There a Way Out?*, 108 PENN ST. L. REV. 1 (2003).

4. Sharon Press personified these differing conceptions when she framed institutionalization as a "savior" or "saboteur." *See* Sharon Press, *Institutionalization: Savior or Saboteur of Mediation?*, 24 FLA. ST. U. L. REV. 903 (1997).

5. HANS TOCH, THE SOCIAL PSYCHOLOGY OF SOCIAL MOVEMENTS 219 (1965).

6. Scott Bradley & Melinda Smith, *Community Mediation: Reflections on a Quarter Century of Practice*, 17 MEDIATION Q. 315, 315 (2000).

7. *See* Robert Dingwall & Kerry Kidd, *After the Fall . . . : Capitulating to the Routine in Professional Work*, 108 PENN ST. L. REV. 67 (2003).

A. Institutionalization as Promise

The history of informal dispute resolution in the United States is well documented.[8] Nonetheless, the birth date of the contemporary community mediation field remains under contention. Some observers point to the formation of the Community Relations Service, a component of the Civil Rights Act of 1964, as the beginning.[9] Others highlight the efforts in Philadelphia, Pennsylvania and Columbus, Ohio, which began in 1969 as court or prosecutor-sponsored programs to handle minor criminal matters.[10] And still others point to the 1976 National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, commonly known as the Pound Conference.[11] Proclaiming the need for "a better way," Supreme Court Chief Justice Warren Burger declared: "We may well be on our way to a society overrun by hordes of lawyers, hungry as locusts, and brigades of judges in numbers never before contemplated. We have reached the point where our systems of justice—both state and federal—may literally break down before the end of the century."[12] Seeking an alternative to the traditional adversarial process, the recommendations stemming from the Pound Conference included the establishment of the Neighborhood Justice Centers ("NJC") pilot program.

The NJC projects were to be operated on an experimental basis for

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8. For an outstanding account of the history of informal dispute resolution, see JEROLD AUERBACH, JUSTICE WITHOUT LAW: RESOLVING DISPUTES WITHOUT LAWYERS (1983). Additional volumes examining the implications of community mediation include: NEIGHBORHOOD JUSTICE: AN ASSESSMENT OF AN EMERGENT IDEA (Roman Tomasic & Malcolm M. Feeley eds., 1982); THE POLITICS OF INFORMAL JUSTICE (Richard Abel ed., 1982); THE POSSIBILITY OF POPULAR JUSTICE: A CASE STUDY OF COMMUNITY MEDIATION IN THE UNITED STATES (Sally Merry & Neal Milner eds., 1993). The most recent National Institute of Justice report is an invaluable reference, too. *See* DANIEL MCGILLIS, COMMUNITY MEDIATION PROGRAMS: DEVELOPMENTS AND CHALLENGES (1997).

9. COMMUNITY DISPUTE RESOLUTION: LESSONS AND GUIDANCE FROM TWO DECADES OF PRACTICE (Patrick Fn'Piere ed., 1991).

10. Karen G. Duffy, *Introduction to Community Mediation Programs: Past, Present, and Future, in* COMMUNITY MEDIATION: A HANDBOOK FOR PRACTITIONERS AND RESEARCHERS (Karen G. Duffy et al. eds., 1991).

11. *See* Frank Sander, Varieties of Dispute Processing, Address Before the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice (Apr. 7-9, 1976). *See also* Deborah Hensler, *Our Courts, Ourselves: How the Alternative Dispute Resolution Movement is Re-Shaping Our Legal System*, 108 PENN ST. L. REV. 165 (2003).

12. Chief Justice Warren E. Burger, Remarks at the American Bar Association Minor Disputes Resolution Conference (May 27, 1977). Justice Burger sprinkled the motif of "a better way" across many addresses and many years, including his comments at the Pound Conference. *See* Chief Justice Warren E. Burger, Address Before the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice (Apr. 7-9, 1976).

evaluation of their potential efficacy. With the assistance of various branches of the Department of Justice, federally funded pilot programs opened in Atlanta, Kansas City, and Los Angeles in 1978, and in Honolulu and Dallas in 1980. These programs joined the pioneering court and prosecutor-sponsored projects in Philadelphia and Columbus in targeting low-level civil and criminal cases in large cities.

These developments occurred before a bleak backdrop, a justice system that was seldom portrayed more darkly than in the NJC Field Test Report:

> For many citizens, the urban judicial system is a foreboding, somewhat mysterious institution whose costs and arcane workings make it practically inaccessible. If the citizen steps into this system, he may find that the costly adjudication process moves at a disturbingly slow pace and that the control of events falls into other hands. Any sense that justice has been delivered is often overwhelmed by feelings of frustration and powerlessness; that one has been dealt with by strangers rather than served by a segment of the community.[13]

To improve the efficiency in terms of both cost and time, reform was in order. The neighborhood justice centers would "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."[14] Program goals focused primarily on the operations of the judiciary, as demonstrated by this 1983 outline of the benefits of incorporating dispute resolution into a small claims court, published through the Department of Justice:

> Increasing the efficiency of case processing,
>
> Reducing court system costs,
>
> Allowing judges to provide added attention to cases on the regular civil docket,
>
> Improving the quality of justice, and
>
> Improving collection of judgments.[15]

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13. ROYER F. COOK ET AL., NEIGHBORHOOD JUSTICE CENTERS FIELD TEST REPORT 2 (1980).

14. DANIEL MCGILLIS & JOAN MULLEN, NEIGHBORHOOD JUSTICE CENTERS: AN ANALYSIS OF POTENTIAL MODELS 29 (1977).

15. WILLIAM DEJONG, THE USE OF MEDIATION AND ARBITRATION IN SMALL CLAIMS DISPUTES (1983).

While the above list emphasizes most of the major gains anticipated for a court-annexed community mediation program, even broader goals were highlighted in a subsequent Justice report:

> Diverting cases from the court caseload,
>
> Providing a more appropriate process for selected types of cases,
>
> Providing more efficient and accessible services to citizens,
>
> Reducing case processing costs to the justice system, and
>
> Improving citizen satisfaction with the justice system.[16]

The additional emphases on accessibility, client satisfaction, and appropriateness[17] serve to round out the narrower goals of efficiency. Taken together, many felt that these benefits presented a resource too good to leave untapped; the question was not whether or not to institutionalize, but how to do so.

B. Institutionalization as Demise

In contrast to the approach outlined above, other community mediation proponents worked for very different purposes, and toward quite contrary goals:

> [C]ommunity mediation was embraced as an empowerment tool for individuals and communities to take back control over their lives from a governmental institution (the courts) that were seen as not only inefficient, but oppressive and unfair. This vision included equipping citizens to resolve their own disputes and the building of a truly alternative system that would keep many disputants from seeing the inside of a courthouse . . . the "alternative" in alternative dispute resolution was . . . a parallel, citizen-run and community-centered dispute resolution system.[18]

To appreciate the prominence of anti-institutionalization for many

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16. DANIEL MCGILLIS, COMMUNITY DISPUTE RESOLUTION PROGRAMS AND PUBLIC POLICY 10 (1986).

17. The "fit" between a given case and a dispute resolution process has received considerable treatment in the academic literature. *See, e.g.*, Stephen B. Goldberg & Frank E.A. Sander, *Fitting the Fuss to the Forum: A User-Friendly Guide To Selecting an ADR Process*, 10 NEGOT. J. 49 (1994).

18. Timothy Hedeen & Patrick G. Coy, *Community Mediation and the Court System: The Ties that Bind*, 17 MEDIATION Q. 351, 352 (2000).

community mediation proponents, one need look no further than the titles they employed: community moots were proposed as a part of a "complementary, decentralized system" of justice;[19] the editor of the *Citizen Dispute Resolution Organizer's Handbook*[20] also served as director of the Grass Roots Citizen Dispute Resolution Center; the evolution of the Community Dispute Settlement Center was recounted in the book *Peacemaking in Your Neighborhood*.[21]

The goals of these programs were clear, and stood in opposition to the interests of institutionalization proponents. Unlike the NJC programs, centers such as San Francisco's Community Boards were organized around "a different perception of need and a different understanding of the opportunities provided through community-based conciliation mechanisms."[22] Ray Shonholtz, the founder of the program, listed the objectives of these centers:

> Address disputes before they entered the formal legal system
>
> Prevent and deescalate conflicts
>
> Use conciliatory mechanisms as a vehicle for addressing the relationship between disputing parties
>
> Strengthen the capacity of neighborhood, church, organization, school, and social service organizations to address conflict effectively
>
> Strengthen the role of citizens in the exercise of their democratic responsibilities
>
> Use community support to recruit volunteers as diverse as the neighborhoods served and to solicit appropriate conflicts and issues.[23]

The emphases upon relationships, community capacity, and democratic participation resonated in programs throughout the country.

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19. Richard Danzig, *Toward the Creation of a Complementary, Decentralized System of Criminal Justice*, 26 STAN. L. REV. 1 (1973). "Community moots" are derived from an informal dispute settlement process of the Kpelle tribe of Liberia. *See* James L. Gibbs, *The Kpelle Moot*, 33 AFRICA 1 (1963).

20. THE CITIZEN DISPUTE RESOLUTION ORGANIZER'S HANDBOOK (Paul Wahrhaftig ed., 1977).

21. JENNIFER E. BEER, PEACEMAKING IN YOUR NEIGHBORHOOD: REFLECTIONS ON AN EXPERIMENT IN COMMUNITY MEDIATION (1986).

22. Raymond Shonholtz, *Community Mediation Centers: Renewing the Civic Mission for the Twenty-First Century*, 17 MEDIATION Q. 331, 332 (2000).

23. *Id.*

The founders of a pioneering center in eastern Pennsylvania had the following four goals, characterized as "dreams of justice, dreams of peace"[24]:

> They hoped that mediation would provide a genuine alternative to the criminal justice system. They envisioned a burgeoning network of mediation programs as people eagerly sought to resolve their disputes and to help others do the same. Mediators would be peacemakers in their communities. Freeing people from disputes would bring fresh energy to the neighborhoods.[25]

To understand more clearly some of the motivations against institutionalizing, it is best to listen to the actual words of neighborhood activists, who sometimes gave voice to the fears of social control that the establishment of formal centers represented for many. Consider the following exchange between a neighborhood activist and a program designer during the creation of Pittsburgh's Community Association for Mediation in the late 1970s:

> At one meeting one of the ladies said, "Well, all I got to say is we won't have any center here. I see it like this. Once you get a center you have to get the monies from somewhere. We don't have the money to set up the center. Whoever gives you that money wants something for it, and I don't know if I want to give them what they would want."
>
> So we said, "What is it you feel they would want?"
>
> "You have to keep records, and I don't know about you, but I feel that my people have been documented and recorded in everybody's files. I'm not going to put another number on them and put them in another file cabinet."[26]

III. "Form Follows Funding": Institutionalization and Isomorphism

The necessity of funding, and especially the influence it holds over program direction, has received attention since the field's inception. As early as 1979, a useful taxonomy of community mediation program sponsorship was discerned by Paul Wahrhaftig; the three categories were justice system sponsored, non-profit agency sponsored, and community based.[27] Wahrhaftig posited that programs funded through any of these

24. BEER, *supra* note 21, at 203.
25. *Id.*
26. Gloria Patterson, *Homespun Mediation*, 2 THE MOOTER (1978).
27. Paul Wahrhaftig, *A Time to Question Direction*, PERSPECTIVE (1979).

arrangements could successfully deliver informal dispute resolution; he noted, however, that "the political consequences of program sponsorship" require critical examination.[28]

Insightfully, if perhaps paradoxically, the implications of justice system sponsorship were raised in the design phase of the NJC project. To realize the recommendations developed at the Pound Conference, the National Institute of Justice analyzed various models proposed for community dispute resolution, including Danzig's "community moots," Fisher's "community courts," and Sander's "multi-door dispute resolution centers."[29] The resultant report cautioned against following the path of other legal reforms:

> In addition to problems of overbureaucratization, organizations often become diverted from their original goals . . . . Small claims courts in many jurisdictions serve primarily as government funded collection agencies for merchants rather than as mechanisms for resolving the disputes of individual citizens. Neighborhood Justice Centers should carefully guard against similar transformation.[30]

This "transformation" of purpose and structure is a form of isomorphism—a shift toward the look, feel, and operation of another institution.[31] In her analysis of community mediation in Massachusetts, Davis argued that the common wisdom that "form follows function" requires a minor but meaningful revision; in community dispute resolution, "form follows funding."[32] Funding concerns, however, may not have been the sole motivation toward isomorphism.

The pressure to handle many cases in an efficient manner has also led centers to shift their processes and procedures. Consider, for example, the means employed to encourage disputants to participate in mediation. Many programs have adopted the mantle of their powerful institutional partners to coerce disputants to attend mediation. There are reports of centers employing Requests to Appear that are nearly indistinguishable from criminal court summons, or sending correspondence on letterhead from the district attorney's office.[33] This is

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28. *Id.* For further exploration of these consequences see Terry Amsler, *Trends and Challenges in Community Mediation*, 5 NIDR NEWS (1998); Hedeen & Coy, *supra* note 18; Hensler, *supra* note 11; Press, *supra* note 4.

29. *See* MCGILLIS & MULLEN, *supra* note 14, at 34-35.

30. *Id.*

31. *See* Calvin Morrill & Cindy McKee, *Institutional Isomorphism and Informal Social Control: Evidence from a Community Mediation Center*, 40 SOC. PROBS. (1993); *see also* Dingwall & Kidd, *supra* note 7.

32. ALBIE DAVIS, COMMUNITY MEDIATION IN MASSACHUSETTS: A DECADE OF DEVELOPMENT, 1975-1986 35 (1986).

33. *See* Hedeen & Coy, *supra* note 18; DANIEL MCGILLIS, RESOLVING COMMUNITY CONFLICT: THE DISPUTE SETTLEMENT CENTER OF DURHAM, NORTH CAROLINA (1998).

not a recent development; a 1977 Department of Justice study reported similar practices, including the use of "very threatening letters . . . [of which] the typical closing line is, 'Failure to appear may result in the filing of criminal charges based on the above complaint.'" Official stationery is used and the district attorney or a similar official signs the letter."[34] Community mediation has long valued self-determination and voluntary participation. Thus, as early as 1978 observers rhetorically asked, "How can a program claim to be a non-court alternative while at the same time using mailings which imply that it is part of the court system and must be obeyed?"[35]

Just as pressure to handle large caseloads leads to pressuring disputants into mediation, it also leads to relaxing the screen used to select appropriate cases. Community mediation programs occasionally receive cases that are inappropriate for mediation, whether for reasons related to the case itself or the parties involved.[36] My colleague and I have documented instances in which courts or prosecutors frequently refer such cases, thus producing a dilemma for those mediation centers dependent upon the justice system for both financial support and cases: "Programs are torn between heeding the adage 'Never bite the hand that feeds you,' and staying true to their understanding of the nature and purposes of mediation."[37]

The consequences of institutionalizing are not restricted to coerced participation, an emphasis on cost and time efficiency, or the pressure to mediate inappropriate cases. Institutionalization leads not only *toward* the goals of the justice system, but *away* from other goals, including the community focus and community ownership envisioned by many practitioners. This was noted as early as 1982:

> In examining both the implementation and the evaluation of neighborhood justice centers, it appears that in this uneasy compromise, the judicial definition of need, has taken precedence . . . . Centers are restructured in order to generate large caseloads and

34. MCGILLIS & MULLEN, *supra* note 14, at 63.

35. 1 THE MOOTER 35 (1978).

36. Screening cases and clients for mediation is a complex task requiring further study. A literature has developed around the topics of disputant capacity and competency, as well as the ethical responsibilities of practitioners. *See* Patrick G. Coy & Timothy Hedeen, *Disabilities and Mediation Readiness in Court-Referred Cases: Developing Screening Criteria and Service Networks*, 16 MEDIATION Q. 113 (1998); Susan H. Crawford et al., *From Determining Capacity To Facilitating Competencies: A New Mediation Framework*, 20 CONFLICT RESOL. Q. (2003). To understand issues of party capacity in relation to other ethical concerns, see ROBERT A. BARUCH BUSH, THE DILEMMAS OF MEDIATION PRACTICE: A STUDY OF ETHICAL DILEMMAS AND POLICY IMPLICATIONS (1992).

37. Hedeen & Coy, *supra* note 18, at 358.

> reduce costs while evaluations stress the number of cases handled and the potential reduction of demands on the criminal and civil justice systems . . . . Other goals for neighborhood justice centers have been virtually ignored.[38]

In a 2001 study of seven Florida mediation programs, researchers identified three approaches to court-related mediation: assimilative, synergistic, and autonomous.[39] The assimilative approach is the most clearly institutionalized and isomorphic, as the researchers describe three facets of assimilative practice: "(1) practices that imbue mediation with the authority and formality of the courts, (2) the mapping of legal language onto mediation, and (3) an emphasis on case processing."[40] Taken together, such practices serve to "convey a clear message that the court is in charge of the conflict, and thereby detract from mediation's character as an alternative to the judicial system, by working against party voice and party choice."[41] Assimilation and institutionalization are synonymous in this analysis, as community mediation grows a closer resemblance to the judicial system each year.

Some hoped that community mediation would provide a "first-resort conflict-settlement service for local residents outside the perimeters of the formal legal system."[42] Despite these hopes, the typical program remains neither a first resort nor very far (if at all) outside the legal system. A 2003 survey of the National Association for Community Mediation ("NAFCM") found that court referrals comprise forty-six percent of member programs' caseloads.[43] Trends such as these have led one practitioner to reflect: "We haven't created an alternative to the

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38. Sally Engle Merry, *Defining "Success" in the Neighborhood Justice Movement*, *in* NEIGHBORHOOD JUSTICE: AN ASSESSMENT OF AN EMERGENT IDEA 181 (Roman Tomasic & Malcolm M. Feeley eds., 1982).

39. JOSEPH P. FOLGER ET AL., A BENCHMARKING STUDY OF FAMILY, CIVIL, AND CITIZEN DISPUTE MEDIATION PROGRAMS IN FLORIDA 102 (2001).

40. *Id.*

41. *Id.* at 103. The autonomous approach seeks to maintain "a separate identity from the court . . . allow[ing] the program to ground itself in the traditional values of the mediation community, and resist assimilation to the values and norms of the judicial system." *Id.* Alternatively, the synergistic approach notes: "The benefits of a court connection are valued; yet the constraints of the court context are acknowledged and respected. Every effort is made to honor the historical vision and values underlying the mediation process, by preserving party voice and choice as much as possible . . . ." *Id.* at 105.

42. Raymond Shonholtz, *Justice from Another Perspective: The Ideology and Developmental History of the Community Boards Program*, *in* THE POSSIBILITY OF POPULAR JUSTICE: A CASE STUDY OF COMMUNITY MEDIATION IN THE UNITED STATES 205 (Sally Merry & Neal Milner eds., 1993).

43. This survey also found that twenty-eight percent of program centers receive at least three-quarters of their cases through court referrals. Timothy Hedeen & Erika Acerra, Unpublished Survey (Feb. 2003) (on file with author).

courts. We've become an alternative to the courtroom."[44]

IV. Conclusion

Another article in this volume recommends that the field of dispute resolution should "yearn for paradise, live in limbo."[45] Coincidentally, sociolegal scholars tracing a regional history of restorative justice—an umbrella term for community dispute resolution processes employed as a response to crime, and a close relative of community mediation—have described a phenomenon similar to "limbo." They observe that local restorative justice efforts began as a non-governmental, "communitarian" enterprise, one that has now been adopted by the formal criminal justice system. Many communitarian restorative justice practitioners have long operated outside the perimeters of the formal system and express dismay about the appropriation of their processes by government. They cannot fail to recognize, however, that through the criminal justice system comes broader acceptance, awareness, and use of restorative justice. The simultaneous attraction toward government-sanctioned legitimacy and repulsion from governmental cooptation leads to an "oscillating space."[46]

Community mediation resides in a similar space, as the field has maintained an ambivalent relationship with the courts. The ties between these institutions have been dynamic, with each exerting influence on the other, sometimes moving in unison, other times in very different directions. The enduring problem that continues to haunt community mediation is perhaps best represented by a careful reading of the values and goals of NACFM. Community mediation centers belonging to NAFCM embrace nine values, including these five:

> The use of trained community volunteers as providers of mediation services; the practice of mediation is open to all persons.
>
> [The] mediators, staff and governing/advisory board [are] representative of the diversity of the community served.

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44. BEER, *supra* note 21, at 206 (quoting Eileen Steif).

45. David Sally, *Yearn for Paradise, Live in Limbo: Optimal Frustration for ADR*, 108 PENN ST. L. REV. 89 (2003).

46. Robert S. Ratner & Andrew Woolford, *Nomadic Justice? Restorative Justice on the Margins of Law*, 30 SOC. JUST. 1 (2003). In their final analysis, the authors offer that restorative justice will always be "nomadic," as it will perpetually occupy an oscillating space. *Id.* Through my years of research and practice, I have found no description of community mediation's relationship with the courts to be as clear and precise as this. During the panel presentation that led to this article, I demonstrated oscillation with a banana and a bottle of spring water. No editorial commentary should be inferred from my representation of the court system as a commodified natural resource and community mediation as a colorful, organic fruit.

> Providing direct access to the public through self-referral and striving to reduce barriers to service including physical, linguistic, cultural, programmatic, and economic.
>
> Providing service to clients regardless of their ability to pay.
>
> Initiating, facilitating and educating for collaborative community relationships to effect positive systemic change.[47]

The emphases on access, diversity, volunteerism, and change represent community ownership of disputes and dispute resolution. But they are also reminiscent of one of the most powerful speeches in the history of the United States. Just as President Lincoln resolved at Gettysburg to preserve democratic governance, many community mediators—myself among them—are steadfastly committed to a vision of dispute resolution "of the people, by the people, and for the people."[48]

As inspiring as that vision is, one should not overlook that Lincoln questioned then, as I question now, whether such an endeavor can long endure.

47. *See supra* note 43 and accompanying text.
48. Abraham Lincoln, The Gettysburg Address (Nov. 19, 1863).