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The Outlook For Dispute Resolution In The United States

MARK L. KAHN*

Fortunately, there is a widening recognition among us that rational, peaceful, accommodative, and equitable methods of dispute resolution (DR) provide the best means of resolving conflicts. This is not merely because they are likely to be quicker and less expensive, but because agreement is greatly preferable to adjudication.

Ideally, all conflicts should be resolved by agreements formulated in negotiation, assisted if necessary by mediation. Next best is voluntary arbitration, conducted under terms of submission, and negotiated and jointly accepted by the parties to the dispute. Litigation belongs at the bottom of the list because it exacerbates antagonisms and produces wins and losses in place of solutions.

The Society of Professionals in Dispute Resolution (SPIDR), founded in 1973, is a product of the increasing demand for professional dispute resolvers in many sectors, e.g., commercial, neighborhood/community, family/divorce, environmental, union-management, and international. SPIDR's membership, which has doubled in recent years, is approaching 2,000. One must be a professional dispute resolver to be a SPIDR member.

Not only is international SPIDR growing, but local chapter activities are rapidly creating new dimensions and attributes of membership. These changes, which have inevitably generated problems and opportunities relating to management and structure, impelled me, as SPIDR president, to create a distinguished Long Range Planning Committee (LRPC) in the fall of 1986.¹ The LRPC anticipates "rapid

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1. The LRPC is chaired by SPIDR President-Elect George Nicolau of New York City, a labor arbitrator. Its other members are Gail Bingham of Washington, D.C., an

change, both within SPIDR and in its larger environment," and expressed these "Assumptions About The Future" in a February 1987 Working Paper:

We expect continued growth in the general public's interest in negotiation, mediation, arbitration, ombuds roles, and other forms of dispute resolution other than litigation or violence. This wider public interest will be particularly great in the negotiation process itself, as people from other professions will begin to use dispute resolution techniques and processes more frequently in their own work. The increase in public interest in dispute resolution will be rapid enough, however, that it is likely to be accompanied by a poor understanding of the field.

As a consequence of the increased public interest in dispute resolution, more people will be interested in becoming neutrals, and we anticipate that they will find paths into the field in a variety of ways—by learning skills in elementary and secondary conflict resolution programs, by enrolling as students in the growing number of university programs, by serving as volunteers in community dispute resolution programs, by altering the nature of their existing jobs, and by taking the initiative to start practices as self-employed neutrals. This will generate both a cadre of younger, knowledgeable dispute resolvers with training and high interest, as well as more mature professionals who have made a shift in mid-career. In addition, there are likely to be more women in the field. We also expect that more formal career paths for neutrals may emerge, with the evolution of more rigorous academic degrees and the formalization of "entry level" job descriptions in certain areas of practice.

The factors affecting the market for neutrals and, therefore, the numbers and needs of our potential members also will change rapidly. Overall, we are quite optimistic that the market for neutrals is susceptible to being enlarged. We anticipate that the labor field is likely to shrink, because of unpredictable labor bargaining relationships and other factors, but we also expect increased use of neutrals in other sectors. Factors affecting the market for neutrals in non-labor arenas will include increased numbers of institutional opportunities for dispute resolution. These institutional changes will be of two types, somewhat following the labor field in that a clearer statutory framework will emerge for some non-labor sectors and, second, that public agencies increasingly will offer dispute resolution services in other than labor disputes. Examples include court-annexed arbitration programs, negotiated rule-making, use of arbitration in enforcement proceedings, required child custody and divorce mediation, required commercial mediation or arbitration, product liability cases, and personal injury claims. Also, social crises, in areas such as insurance, health care, AIDS cases, etc., will create entirely new opportunities for neutral dispute resolvers.

As the market for neutrals expands, external pressures are likely to affect the field qualitatively. For example, there may be increased efforts to regulate and standardize the professions by state legislatures and other bodies. This will come, in part, because of a variety of factors: the growth of the liability issue; suits against mediators; the legal community's concerns about due process and competition; and society's increased attention to ethical issues in general. Because those outside the profession may have a poor understanding of the field from our point of view, there will be a need to watch and to educate other groups. Unless organizations such as SPIDR are effective in such

environmental mediator on the staff of The Conservation Foundation; Albie Davis of Salem, Massachusetts, Director of the Mediation Project in the Trial Court of Massachusetts; Edward Hartfield of Detroit, Michigan, a Commissioner in the U.S. Federal Mediation and Conciliation Service; Christopher Moore, partner, Center for Dispute Resolution, Denver, Colorado; Richard Salem of Evanston, Illinois, a community disputes mediator; and Lamont Stallworth of Chicago, Illinois, professor at Loyola University of Chicago and a labor arbitrator.

educational efforts, we anticipate that inappropriate hybrids of neutral dispute resolution processes will emerge. At the same time, we anticipate constructive diversity in dispute resolution processes caused by the different needs of new parties in new sectors.

The growth in some sectors and the constraints in the labor field are likely to cause more competition among practitioners. Within the field, we expect decreases in quasi-judicial processes and a shrinking of foundation supported programs. We expect an increase in less formal procedures, as well as increases in private sector dispute resolution, university-based programs, public agency services, and fee for service programs.

Finally, our ability to communicate with each other will be affected by several factors. Because of burgeoning activity, it will be difficult to keep track of dispute resolution efforts even locally and regionally, but technology will offer interesting opportunities for education and dispute resolution. There will be increasing linkage with international dispute resolution activities. A variety of specialized organizations will serve the needs of specific fields, and some broader-based organizations may address social concerns, but SPIDR will be needed as an advocate for the profession and to offer opportunities for members to gain recognition and visibility.²

I subscribe to this vision of SPIDR's Long Range Planning Committee. The challenges and opportunities are immense, with much at stake in shaping the kind of environment we want to have to resolve our daily disputes.

2. SPIDR NEWS, Feb.-July 1987, at 7-8 (the newsletter contains the full text of a preliminary report from SPIDR's Long Range Planning Committee). SPIDR NEWS is available upon request from the SPIDR National Office, 1730 Rhode Island Avenue, N.W., Suite 909, Washington, D.C. 20036. The LRPC's Final Report is due in October, 1987.

