

Remarks of Howard Gadlin, Ombudsman and Director of the Center for Cooperative Resolution, National Institutes of Health

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I am very grateful for the opportunity to share my observations about the growth of Alternative Dispute Resolution in the federal government and the direction in which it is developing. Reviewing the past 25 years' activity I have identified five significant developments.

The first is the movement from resolution to prevention. This development is a natural outgrowth of continued experience working to resolve disputes and the learning that comes from this work. Those of us working to resolve conflicts often come to recognize:

- Recurring issues
- Patterns in conflict dynamics – a certain similarity in the dynamics of specific types of conflicts
- Hot spots and problem areas within the agencies and organizations in which conflicts occur
- Issues of which leadership has not been aware

The dispute resolution providers' experience can contribute to a form of organizational learning that allows for the extension of a dispute resolution sensibility into techniques and programs designed to allow for the anticipation and/or early identification of problems, tensions and conflicts within organizations. To my mind these are a much more important measure of the value of ADR than the usual savings and efficiency analysis in which the cost of resolving a dispute via ADR is compared, favorably of course, to what the cost might have been had the dispute gone all the way to completion through a formal process such as an EEO complaint. The lessons from the dispute resolution providers' experience allows organizations either to prevent divisive conflicts or at least to modulate their intensity and to make them more amenable to constructive intervention and resolution. Examples of such organizational learning abound in the federal government.

Most prominent among these is the increased incorporation of an integrated conflict management system (ICMS) approach to addressing organizational conflict. Over the years we

have learned that handling conflicts only on a case-by-case basis prevents organizational learning and is considerably less effective than an approach that promotes organizational self-awareness and cooperative approaches to problem solving. In addition, in an ICMS an organization is not limited to dependence on special experts to address problems and resolve conflicts since the focus of the program is to establish, through educational programs, conflict competence in staff and management. Furthermore, within an ICMS attention is paid to design rights-based and interest-based approaches to handling complaints and grievances so that they work in complementary ways. Here the intent is to integrate policies, practices and procedures toward the same end – a well-functioning organization in which there are multiple entry points through which managers can elicit productive dissent and employees can raise concerns and within which multiple options for resolution can emerge. The program at the Transportation Security Administration is an excellent example of one such program focused on workplace issues while the Department of Interior program demonstrates how the ICMS sensibility can be applied to more than the workplace.

Also quite noticeable, and experiencing tremendous growth in the federal government, are ombudsman programs. The ombudsman provides a neutral, independent and confidential channel within an agency through which people can raise concerns and informally pursue grievances even for issues for which there are not, and cannot be, truly effective formal complaint processes. Typically the role can be adapted to the mission of an organization so that some ombudsmen (external) serve the general public and address the concerns of those affected by the actions and policies of that agency (e.g., the Internal Revenue Service) while others (internal) serve the workplace-related needs of employees and managers within the organization (e.g., the National Institutes of Health). Quite often ombudsmen use individual cases as a window into systemic problems within an organization. In this way the ombudsman can identify emergent problems and can orient interventions, using root cause analysis, to better understand and address policies, practices and procedures that elicit or exacerbate tensions, problems and conflicts. Not having a fixed formal procedure also allows the ombudsman great flexibility in tailoring approaches that are appropriate to the specific features of problematic situations and to help craft solutions designed to address the interests of all parties.

In this year alone, significant new ombudsman programs have developed in Citizen and Immigration Services (statutory), the Office of Personnel Management (handling both employee and constituent issues, and the new Consumer Finance Protection Bureau (statutory

– available to serve both banks and consumers). Among other agencies exploring or developing programs are the Department of Energy, the Food and Drug Administration, the Centers for Disease Control and Prevention and the Federal Bureau of Prisons.

Most recently, a new approach to preventive conflict resolution has emerged with the growing deployment of coaching as an effort to build leadership skills and management capabilities. Management coaches provide ongoing guidance, opportunities for critical self-reflection, as well as training and support. Coaches have been shown to be especially helpful for situations in which people are promoted into positions of leadership on the basis of abilities and accomplishments which are not directly related to the new leadership and managerial responsibilities they are assuming.

The second significant development is a movement away from a focus on conflict alone to a focus on collaboration and collaborative processes as a way of managing difference in a creative and productive manner. This work is much more than an exercise in conflict prevention or resolution because the intent is to structure processes that allow for the fullest possible exploitation of multiple perspectives on issues of controversy or policy formulation. Collaborative processes are designed to allow for the deep and constructive exploration of differences even in circumstances where those differences may not be resolved or even where it may not be desirable to resolve them. Such consensus-based decisionmaking approaches allow for the use of dialog techniques for policy deliberations that require the discussion of highly charged issues and the gathering of conflicting opinions. Other examples of collaborative processes are the construction project partnering agreements pioneered by the Army Corps of Engineers and the recently developed NIH Field Guide to Team Science and Collaboration.

A third development, that does not often get much attention because it occurs without public attention or promotion, is tremendous amount of cross-agency collaboration and cross-fertilization that has grown over the years. Largely because of the Interagency ADR Working Group (IADRWG) dispute resolution professionals in the various participating agencies have become aware of each other's work and turned to each other for guidance, support and assistance in developing programs and formulating new approaches and materials. There is every reason to believe that the kind of sharing that has occurred since the formation of the IADRWG will only continue to grow.

A fourth development to keep an eye on, even though it is in its infancy in the federal government is the movement away from face to face interaction to the increased reliance on on-line and related technology based modes of promoting collaboration and addressing

conflict resolution. The National Mediation Board is the pioneer in this regard – using online workspace to share information and draft agreements. There is also work underway to develop an arbitration site that will allow only online submissions, which is intended to improve the handling of multiple cases with no travel and no meeting expenses.

The final development worth attending to, although it is manifested by the growth of specific programs or new techniques, is the shift away from the very idea of alternative dispute resolution as an alternative. Instead we are at a point in time where it is more apt to speak of appropriate dispute resolution. In many ways the first 10 to 20 years of ADR defined a kind of competitive relationship between adjudicatory and alternative dispute resolution programs. Proponents of each trumpeted their advantages and harped on the weaknesses of the other. Over time things changed and ADR programs were often formulated as complements to more formal adversarial processes, sometimes serving to clear out their caseloads and reduce their costs. But gradually we have moved away from oppositional formulations of different approaches to addressing conflict. Although some still persist in emphasizing the differences, ADR is no longer the new kid on the block nor is it the outsider looking in. ADR is part of the way problems and conflicts are handled. Organizations that use ADR increasingly see it as part of the way they do their work and accomplish their mission. Increasingly the focus is on identifying modes of resolution best suited to the issues and goals of disputants in the context of agency missions and the needs of the public. Over time this has meant a shift away saying “Here’s how you can complain about us” and toward an underlying message that says “Here are the avenues by which we can work together to solve your problem.” We are not there yet but we are many steps closer than we were when ACUS first formulated the idea of the Administrative Dispute Resolution Act.