

Diversion and the Emmonak Conciliation Board"

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by

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Diversion and councils: an overview

An emerging trend in modern legal reform is the diversion of private criminal complaints from the criminal justice process. Basically it is a result of the system's need to cull administratively from the judicial process cases which require dispute settlement rather than prosecution.

Whether early diversion of cases occurs by traditional methods of screening by prosecutors or informal resolution by police or by modern techniques of referral or counseling, the suspicion remains that professionals defer to such techniques in order to direct their resources to what they determine to be more important cases. Cases left for resolution or disposition in diversion programs are often cast off as minor, inconsequential, non-criminal, or even laughable by professionals. There is little concern by professionals and administrators of diversion projects to define and employ a criteria by which success of diversion can be measured. In a phrase, the business of dispute settlement which reaches behind the dispute as it is superficially defined is not perceived by professionals as the business of the justice system:

"American courts are reasonably accessible in the geographic sense, but they are slow, expensive and they talk a distant, legalistic language. It is not surprising then that they are not commonly used as

renew the utility of the legal process as a tool for the resolution of everyday problems.

In order to depict a forum that is tied to the court but that is less courtlike, Americans have looked abroad to experiments in Scandinavia, socialist countries, and developing nations. Overlooked are ethnic forums which continue to complement the formal legal process in urban and in rural America.

The authors, in conjunction with representatives of the Alaska legal process, have drawn upon a traditional Alaska forum, the traditional village council, in order to define out of this experience a new para-adjudicatory forum and to test it in a modern Eskimo village.

The Conciliation Board - A New Forum

The authors have found in their review of the development and demise of council justice that several pragmatic considerations remain to justify some preservation of a forum for local dispute settlement.

First, problems which are solvable through council action still exist and, in fact, have been intensified by the importation of liquor into villages, even villages which are legally dry. Private disputes which could be resolved at an early point in time by council members surface as violent acts when one disputant or both drink.

A second inducement is the incidences of juvenile drinking

to another forum. In its employment of this threat, the board acted as do many urban police officers who resolve disputes on the spot without making arrests. It also operated in a manner similar to the village council when it pointed to higher law and higher power which could be brought to bear upon disputants if they failed to reform. In fact, all diversion programs employ this threat of further prosecution.

The Model and the Reality

The village chosen by the authors to define and test a conciliation process was Emmonak, an Eskimo village of 300 persons on the lower Yukon River. The village had a history of council justice and had more recently been afforded a magistrate and local police. Both the local judge and police had cases which they felt could be resolved traditionally. These cases were usually between family members. The new forum was perceived as a means of reinforcing - but not supplanting - the roles of the police and judge in the village.

The basis in Alaska law for organization of a conciliation body is a statute which allows a victim of a misdemeanor to compromise with an offender and to present this compromise to the judge. If the court concurs, its dismissal is a bar to further prosecution of the offense.

The basis for juvenile cases was more problematic. Had the magistrate been a special master for juvenile cases, the conciliation board could have assisted her in counseling the

Case Evaluation

Drinking or the serving of drink figured into nearly every case. Villagers recognized that drinking to excess was often the catalyst for the everyday acts of violence that one observes in villages. The complainants and boards sought to limit excess drinking and attempted to instill some respect for alcohol by pointing to the consequences while the parties were sober.

A second area dealt with was similar to the range of problems and relationships previously handled by village councils. These were relationships which had in them seeds of violence. Thus, the case of a person who teased an older woman about her welfare checks, the case of a woman who had overstayed her visit with a second man when her husband had left early, and the case of a man who attempted to date the wife of another villager while she was separated from her husband and living with her mother reflected this concern for situations which might explode into violence when one or more of the protagonists started drinking.

A third subject involved minor matters of property damage which could be effectively resolved by retribution. Here again, the simple solution was easily effectuated by the board to fend off less pleasant attempts at retribution.

In each of these areas, the board developed a focus that related to traditional and modern conceptions of problems and

In order to enhance their role, the board explained to participants that they could select other conciliators or deselect members who they felt would be prejudiced to their position. No such changes were made in the cases heard by the board.

For a variety of reasons the board was perceived by participants interviewed by the authors as the best and often the only useful forum for their problems. The proceeding was conducted in Yupik. All sides were heard, and their arguments were given careful consideration. No position of guilt or innocence was sought by the conciliators. Rather, the board sought to make the parties cognizant of the benefits of remaining friends, pointing out errors in future conduct which could impair their relationship. Although the advice of the conciliators was informal, their status as negotiators with clear lines of communication and the support of local and state judicial officers was relevant to all participants.

Evaluation of cases "conciliated"

The Eskimo cultural personality predisposed Eskimos away from formal authoritarian solutions for interpersonal problems.

This kind of "legal system" operated in very tenuous institutional forms prior to contact with the U.S. and Anglo-American law. We have further described the manner in which Eskimos responded to the existence of outside supportive authority

was not in the village, but on his return he was sure to hear what had happened.

The board's solution was parsimonious, neat and very Eskimo. They did not view the problem as one of bootlegging or of public drunkenness; these are irritating but not dangerous in themselves. The problem was how to keep Oleanna Jr. from committing murder. The board's solution was that Oleanna Jr. was never officially advised either of the offense or of the hearing. First, Oleanna's wife was brought in to explain her feelings about what might happen and she did so in Ooluk's absence. Then Ooluk was discussed in his absence. When he was invited before the board he was told that giving drinks to friends is good, but only a little should be given Oleanna, Sr.

Two sessions of about half a day apiece were spent on this conciliation. All the members were told to avoid discussing the problem. But everyone knew they would hint a little bit. This gave time enough for Oleanna Jr. to hear about the offense and the hearing, and to be convinced something was being done to prevent a recurrence of the danger. At the same time, everyone was able to pretend they knew nothing and thus avoid any open discussion of the problem apart from the conciliation board. Thus, careful dissimulation and avoidance of reality were manipulated to achieve an end of avoiding violence.

have when no one is at home to care for them and of the dangers (spoken of in the abstract) of marital infidelity - specifically the breakdown of male friendship - was also detailed.

Teolok and Ula were reconciled as were Teolok and Keokuk. Tealok and Ula agreed that one of them should stay sober at all times.

The board interpreted the problem as a potential disruption of the friendship bond between two fishing partners, leading perhaps to violence. Infidelity was not the crucial issue. In fact, the board knew that the real problem was that Tealok was drunk so often that he was seldom of sexual use to his wife. The board members saw the danger as lying in Teolok's potential violence - so it was he who was the focus of the solution. It was made clear in subtle ways that he would not be considered justified in violence against Keokuk even if Ula was again unfaithful.

Thus, unlike what an outside agent might have attempted, the board in typical Eskimo fashion was not concerned with punishment or even with a deep form of reconciliation. Its only interest was to avoid conflict and to establish a non-supportive environment against violent behavior. Board members privately recognized that the issue of Ula's unfaithfulness would arise again. They were setting groundwork for a more comprehensive solution, not of Ula's infidelity, but of her husband's penchant

grandmotherly woman, in her drunken state probably had let slip her jealousy of Tina's maternity. Una, unable to have children of her own, had adopted and raised 9 of them, one from Tina herself. The problem was merely how to allow an open breach to repair itself naturally with rapidity. In all likelihood, things would solve themselves, but there was Eskimo dancing that very night and Tina and Una had previously always sat side-by-side hand-in-hand.

The board was aware that the real problem was Kukatook's advances to Kilatok. It was a problem not because of moral considerations but because it embarrassed Tina and because Kukatook stood in danger of attack by Kilatok's estranged husband if the situation continued without some resolution. The problem, as the board saw it, was to establish some overt recognition of the burgeoning relationship which would preclude Kilatok's husband from making a scene. They concluded that it was a love affair and hence, "nothing can be done".

The complainant and plaintiff (Tina and Una) were then called in. In a joking series of exchanges Una admitted she was drunk, did not know what she was doing, was sorry and wished once again to be friends with Tina. All was well. Nothing was mentioned about the love affair between Kilatok and Kukatook. However, the board knew its discussions would soon become common gossip and that tacit recognition would be given by the village to the new

the very best families.

The board chose not to deal with the interpersonal aspects of the case but merely to reiterate its support of the men's society and its rules against drinking in or entering the kayigik while drunk.

The problem which the board actually addressed was the problem of old Kayagok's feelings, idiosyncratic though they were. Substantively, there was nothing to do. The great amount of time spent was fully necessary, however, to assuage the old woman's feelings, yet not confront either an informal organization's power, nor break the taboo prohibiting women from castigating men. By talking and not acting, they accomplished all of these purposes.

Some further comments on cases viewed from a cultural perspective

We might note that we had believed at the onset of this experiment that cases following an arrest would be conciliated.

1. In reality the board often acted far ahead of problems which might lead to arrests. By the time an arrest actually occurred because of a violent exchange, it was too late for the board to act.

2. The process was even more personalized than we had expected. The solution to a problem was sought in the complexities of interrelationships which were well known to the members of the board.

ostracism.

7. As did the earlier councils, the board seemed to be dynamically interested in searching out areas of problems to handle. The board shows every sign of expanding its area of concerns into nearly every arena of life which might be a focus of interpersonal conflict.

The importance of such a board, however, can best be seen in comparison to a range of reforms intended both to personalize and professionalize "bush justice". In the bush the two goals are not mutually incompatible. Each has a value in improving desired justice services.

Evaluation of Conciliation in Light of Council Justice

Council justice provided a mechanism for local dispute settlement which was lost with the introduction of a modern state justice process in most villages. Yet the process of dispute settlement was still relevant to many village problems. The conciliation board has demonstrated to the satisfaction of Native participants and Native and non-Native observers that it could afford an original forum for resolving particular problems of village life. Thus the justice system was able to return to its earliest purpose of dispute settlement without diluting the process and its activities at other levels. Both the Alaska Federation of Natives and Native participants at the Second Conference on Bush Justice held in the Athabascan village of Minto in June, 1974 endorsed the use of local bodies as extensions

fundamental problems of life in the smaller societies of villages and urban neighborhoods, they will have to define out of formats satisfactory to potential clients. The development of administrative processes and arbitration afford precedents for similar forums which are subject to review by the courts according to broader criteria of results and procedure. They can escape strict conformance with rules of evidence and the sequence adversarial exploration of facts.