

DEAN OF USC CENTER CITES 'LAW EXPLOSION'

We Need Neighborhood Mechanisms of Justice

BY DOROTHY W. NELSON

In the last generation the United States has undergone a series of acute crises, ranging in scope from civil rights to the antiwar movement to environmental concern. All have one thing in common: Ultimately, the attempt to resolve their underlying issues was made in the courts.

This ever-growing recourse to the courts as a problem-solving device leads us directly into our next and perhaps most crucial crisis—the law explosion.

Like the crises which have gone before, the signs of this law explosion have been with us for some time. As early as 1958, in fact, the late Chief Justice Earl Warren described America's legal system in crisis terms when he said, "Interminable and unjustifiable delays in our courts are today compromising the basic legal rights of countless thousands of Americans and imperceptibly corroding the very foundations of constitutional government in the United States."

If we are to cope with the law explosion within the traditional framework of the rule of law, two major reforms are necessary: the creation of institutional alternatives to the present court system, and the education and training of many more justice-producing persons.

In turn it is essential that these reforms address themselves to what Edgar and Jean Cahn, deans of the Antioch College of Law, have identified as the sources of the law explosion—increasing concern

for individual rights, social grievances and mounting challenges to official discretion.

Persons accused of crimes, tenants in public housing and minority group members, to mention but a few examples, have grown increasingly aware of their legally vested rights. In the criminal field, the re-

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cently expanded right to counsel will require a fivefold increase in the number of public defenders. If the right to counsel is extended to civil cases, the increase will be even more dramatic.

In our communities many grievances seem to deserve some form of redress—yet fall short of the magnitude necessary for legal recognition under current standards. These include such things as physical punishment of Mexican-American children for speaking Spanish on school grounds and the refusal of taxis to pick up passengers in ghettos and barrios. Often dismissed as trivial, it is just such grievances which have made tinderboxes of almost every major urban center in the nation.

We have seen billions of dollars spent by the government to aid the poor, fight crime and eliminate pollution. Where has it all gone? What good has it done? The officials who have administered these governmental programs have been relatively free of any meaningful form of public accountability. As case law develops to permit scrutiny of previously unreviewable discretionary decisions, the court caseload will become even more unmanageable.

Once these concerns have been identified, the need to create neighborhood mechanisms to settle disputes, dispense remedies and enunciate norms of conduct becomes clear. Besides handling most cases of individual rights and grievances more effectively than does the current court system, such mechanisms would free the courts for matters that can only be handled at the judicial level.

A neighborhood center might include an arbitration commission, a referral bureau to assist people with problems and a youth division, administered at least in part by the young themselves. Each of these arms could be manned primarily by neighborhood inhabitants, appropriately selected and trained to fulfill their respective duties as "officers of the court, or center."

The product of this legal system would be situational justice, rather than rule-making and refinement of precedent. Officers of these neighborhood centers would handle some cases not as adjudicators but as participants in a process aimed at bringing people together and reintegrating the antisocial into society.

The model for this system, then, is the family and not confrontation between adversaries. Instead of social distance between judge and disputant, there would be an emphasis on the bond between responsible members of the same community. Rather than having narrow rules of evidence, the neighborhood center would encourage wide discussion so that all tensions and viewpoints relevant to the issues of a case could be discussed. Instead of trying to assess blame retrospectively, the emphasis would be on resolving problems by consensus. Rather than a courtroom studded with symbols of power, which tend to intimidate and inhibit participants, proceedings would take place in familiar neighborhood surroundings.

Any attempt to create dispute-resolving centers on the local level, however, should not disregard the fundamental values protected by procedural safeguards in the current court system. These values cannot be sacrificed in the name of speed, efficiency or even harmony, goals which all too readily can be converted into rationales for favoritism, paternalism or majority tyranny. There must be severe ceilings on the sanctions that neighborhood centers can impose, and provisions for appeal.

Implicit in the idea of neighborhood law centers is the need to train new people to staff them. We know that many jobs now performed by lawyers can be performed successfully by legal assistants, legal technicians and legal paraprofessionals, many of whom now assist attorneys in much the same way that nurses assist doctors. The neighborhood center would also require arbitrators, mediators and ombudsmen.

Many people may be reluctant to alter an institution which has served us as long and as well as our judicial system. The real strength of that system, however, rests not in structure but in popular acceptance of the rule of law—something the crisis posed by the law explosion may erode.

Reforms such as the center will strengthen that popular acceptance, and with it the system of justice it supports.

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