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Note: This paper is an edited version of a recent Community Board paper. In it, Raymond Shonholtz, the Program Director, describes the effects of the existing justice system on neighborhoods.

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A JUSTICE SYSTEM THAT ISN'T WORKING

AND ITS IMPACT ON THE COMMUNITY

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Because the justice system isn't working, a myth has grown up to explain why. The myth: the courts are overburdened. The reality is that they are misused. Few civil or criminal cases require the highly complex, formal process of court: lawyers arguing over their clients' problems in front of a judge. Yet because there is no other forum to resolve conflicts, people with a dispute must choose to either tolerate the problem or use the formal court system. Few people decide to use the courts willingly. More often they participate in the court system only, quite literally, as a "court of last resort".

There are many reasons for this reluctance. Among them: victims seldom get satisfaction or restitution; the court imposes an unacceptable formality on those who use it; the process is always professional and often insensitive; and there is a sense of futility that often develops as people use the courts. Generally, the process or its value seems uncertain. People weigh the speculative return against the social, time and money costs. Often they are effectively discouraged from using the court process.

This fact has many impacts in urban neighborhoods.

#### IMPACT 1: It Forces Communities to Tolerate Conflicts

The public generally perceives the justice system to be an ineffectual forum. It delivers neither restitution nor punishment. Therefore, few people willingly participate in it, and most strive to avoid it. Low income people generally mistrust it and cannot afford it. Moderate to affluent people use alternatives to it. The result is that in most urban courts, victims and witnesses refuse to participate in their own cases. This in turn leads to the recent growth of federally-funded "victim/witness assistance projects". This failure of participation translates into case dismissals and plea-bargains on the criminal side. It creates defaults and compromise on the civil side of the judicial process. It is a rare urban court that actually has a court or jury trial on more than four percent of the total cases filed.

By being the reluctantly employed system of last resort, the traditional justice process in effect discourages the early referral of conflicts. It forces individuals and communities to tolerate disputes until they fester to the point of urgency. Over time, a more complex situation develops that requires a greater allocation of social resources for its

resolution than would have been necessary were the problem addressed in a more timely and effective manner. And, it is in the communities where the problem is left to ferment. Thus, entire communities in urban America become the hapless victims of an ineffectual justice system.

The cases that are discouraged entry into the traditional forum or are summarily dismissed from it represent real problems, incidents, and conflicts to people and neighborhoods. The fact that the traditional justice system did not address these issues does not negate their critical importance to the parties involved or to the schools and neighborhoods where the matter arose.

IMPACT 2: It undermines Neighborhood, School and Individual Safety

Long before an incident or conflict becomes a court or law enforcement statistic, people within the person's neighborhood, church, or school community know about it. However, since school personnel, community leaders, church ministers, and other individuals in contact with community problems and conflicts are fully aware of the ineffectiveness of the justice system, they are generally reluctant to involve law enforcement or other agencies in the situation.

Moreover, law enforcement and judicial agencies often act in ways that run counter to the interests of teachers, ministers, and neighborhoods. These people may seek not to punish or impose a criminal record on a person, especially a minor, but rather to find a constructive, non-stigmatizing answer to the problem. The ineffectiveness of the justice process and its insistence on keeping records discourage these concerned individuals from entering the traditional forum for problem resolution. This is particularly true if the conflict is seen as a family, youth, or personal matter.

The prime example of this is wife and child abuse. The neighbors and often school people are aware of abuse. However, it is not until the situation becomes unbearable that anyone responds. Neither neighbors nor school counselors want to call the police on "the family", and only do so after repeated incidents have taken place.

The opinions and attitudes of community people are critical. They see problems in their early states before they are forced into counter-productive systems. The failure of the only existing resolution forum to meet the

needs of parents, school personnel, neighbors, church members, and ministers means the continuation of the problem and, most likely, its repetition. This inability to handle the problem at its early stages becomes an oppressive, festering source of conflict and tension within the home, school, or neighborhood. The vast majority of assault, felonious assault and homicide cases are between parties who know one another. The origin of these conflicts is generally a petty squabble, on-going family dispute, or disagreement over money.

To the degree that these problems are not corrected or constructively addressed, the safety of the family and the stability of the neighborhood environment are threatened in real and visible ways. The community's inability to utilize the existing justice system or to effectively diminish internal tensions and conflicts directly undermines the safety and harmony of the neighborhood, its families and its schools.

### IMPACT 3: It Promotes Criminal Conduct

Beyond its other debilitating effects, the traditional justice system promotes criminal conduct. Consider this constantly recurring situation: a juvenile commits petty theft from a small, neighborhood store or engages in school vandalism. This youth will often find that even after the police have made their arrest nothing really happens to the case or to himself.

There are two primary reasons for this result. First, misuse of the system has generated such a burdensome case load that it is not possible to effectively investigate, review, and assess each case. As a result, only cases in which a "serious matter" is raised (assault with injury; burglary; etc.), or in which the offender is a repeater, receive any genuine attention. The rest - which represent a significant percentage - are processed out of the system under a variety of labels.

The second reason is that the complaining party often refuses - either before the arrest is formally made or after it is executed - to pursue the matter through the prosecutorial stages. The victim declines further involvement generally because there is nothing in the process for him: the likelihood of restitution is small; the amount of court time required is not compensated for; and, the impact on the minor, beyond a criminal record, is dubious. School personnel often view the legal process as ineffectual, time consuming, and counter-productive.

A system of justice that delivers this type of message to juveniles in trouble encourages the continuation of their conduct. Moreover, there is a sense or suggestion of "entrapment" raised by this form of judicial administration. After all, nothing is done to deal with the underlying problems that generated the initial criminal involvement. And this initial contact with law enforcement has been summarily processed. Since there has been no accountability for the conduct, is there not a suggestion that it is permissible until the person is caught again?

Thus, even when the traditional system is given an "early" sign through the misconduct of the minor, it fails to respond constructively or preventively. The underlying family, school or neighborhood problem remains intact and unattended. The failure to address these problems, which are often of a family or civil dispute nature, invites escalation.

The elaborate institutions for dealing with adversary relations do not respond until the matter becomes violent or nearly intractable. Then if any social service is provided, it is often in the form of custodial care of the psychological casualties of the unattended conflict.

Communities need to have their conflicts resolved and resolved early. Neighborhood and family strife are the point of origin for most criminal cases. In contrast to the delayed response of the traditional system - which increases the number of criminal statistics - a preventive response to conflict would, over time, have a marked impact on crime rates.

#### IMPACT 4: It Suppresses and Evades Conflicts

The entire legal apparatus approaches conflict from a totally negative perspective. This perspective arises because the orientation of the law enforcement/judicial system is punitive. By the time a conflict is "given" its day in court, the factors that generated the incident often appear insignificant compared to the act. The response of the court is to deal with the act's consequences and not with its origins. The court acts to set an "example" to the offender and to others that will deter them from behaving "like this" again. It is the court's response or example that is supposed to confine the conflict's future course. The conflict itself is rarely addressed directly. The court's intention is to suppress the conflict.

The judicial process of fault finding refuses to validate any dispute or conflict. The adversary posture invites parties in civil and criminal cases to evade and manipulate the circumstances, emotions, facts, and definition of the conflict. This evasion of the nature and quality of the conflict is done purposefully - most often by attorneys - to posture the conflict for the least punitive impact or greatest monetary benefit for their clients. Since the court seeks to make a finding of "right" and "wrong", it evades the sensitive and mutual aspects inherent in every conflict. The intention of the court and its conscious evasion of the conflict forces the parties to exaggerate and manipulate the reality of the situation. The parties' actions are motivated, for the most part, by a fear that honesty will achieve a less favorable result.

Even when cases reach a court hearing or trial, the conflict in its full interactive dynamic is either evaded or suppressed. Thus, on the civil side, litigants leave the court angry and hostile. On the criminal side, defendants depart knowing little, if anything, of what really happened. Given these feelings of the participants, it is very likely that the conflict will re-emerge. It is not surprising to find that a significant number of criminal offenders are repeaters and that the criminal recidivist, i.e. repeat offender, rate is high. Nor is it surprising that within the recidivist population there is a noted escalation in the type of offense committed.

The singular and negative approach given to conflicts by the traditional system rules out any discussion of value of the conflict, its true meaning to the disputants, or the critical factors that influenced their actions.

When the hearing is over, these protracted matters and serious incidents are then returned, most likely in a more strained posture, to the community. There the parties sit with the aggravated conflict. And it is there, in the communities, where the next explosion will take place.

#### IMPACT 5: Compromises the Authority of the Family

The adversarial system of justice places families in a contradictory position. The contradiction is often widespread in civil and adult cases, but it is most poignantly seen in juvenile criminal cases.

Most, if not all parents are reluctant to see their children placed in jeopardy, especially in an environment that is unknown, foreign, or perceived as hostile. Most parents, and especially those of low-income

or minority background, have limited experience with courts, law enforcement or legal agencies. They see these agencies as threatening and imposing.

As a result, a minor comes before the courts or other law enforcement agencies, the parents are placed in the posture of comforting and supporting the minor, even when they know that the child has committed a crime. The minor hears the parents and their attorney plead his or her side of the story and urge the lightest punishment. At the same time, the youth knows that the parents are aware of his or her criminal conduct. The parents take their stand out of fear that any other position will place their child in greater jeopardy.

Thus instead of taking a clear and strong position before the court in disapproving the child's behavior, the parent's statement is compromised by the adversary process. The parent is placed in the posture of privately disapproving of the conduct and publicly arguing for and defending the youth's actions. Regardless of the case outcome, the youth has experienced the parents' help in "getting out" of the problem. A significant amount of the family's energy will be spent rationalizing and justifying the child's actions. In the process, the authority of the family in acting as a source of guidance and discipline will be compromised.

Most juvenile criminal cases are frequently a restatement of the fact that the family has problems. The adversary process adds another burden on the parents. Believing that it is not a forum within which they can be honest, parents participate in the deception and manipulation that transpires. This behavior compromises the parents' authority in the home. It allows the child to see that the parents distrust the legal system: they seek to avoid its impact even if it means being manipulative. A direct casualty of this parental practice is the traditional system itself. The parents no longer can demonstrate to the minor unequivocal support for the justice process.

#### CONCLUSION

A law enforcement/judicial system that forces neighborhoods to tolerate civil and criminal incidents, undermines the safety of communities and schools, and encourages criminal conduct is a dysfunctional system. It does not work. If the people do not readily use the system, do not support it, and seek to avoid its impacts, it is a dysfunctional process

for the administration of justice. A legal system that imposes on every conflict a uniform, unworkable procedure weakens the integrity of the system itself.

Within such a judicial system, everyone is made the loser: the victim receives no restitution or satisfaction; the community or school, which is a real party victim, is not improved or made whole; and, the offender, who from a psychological, social or economic perspective may be a victim as well, is given no constructive help in resolving the conflicts that generated the incident in the first place. Moreover, by negatively perceiving the value of conflict and by ignoring the effect of the legal process on the family, the dysfunctional system results in counter-productive public policies.

A separate system of conflict resolution, based in the communities, is urgently needed not only to meet individual conflict and neighborhood needs, but to assure the proper functioning of the traditional justice system for those situations that require the adjudication of matters through the adversary process.