The Justice System – The Subtle Side Of Violence

By Maurice J. Attie

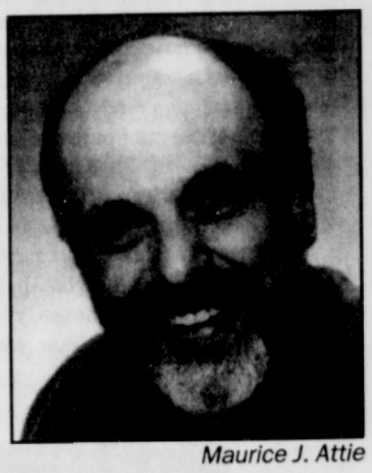
Nicholas Roerich was born of nobility in Russia in the last century. He studied law to please his father, but his true outward passions were th creative arts and archeology. The inner man was a metaphysician. In one of his books, Roerich nonchalantly describes entering a remote village in Asia and seeing a wild dog about to attack a woman. He instinctively focused a thought, and the dog collapsed in death.

Some of Roerich's more esoteric writings emphasized how thoughts are more powerful than words and even deeds. So it is as well with all aspects of law as currently practiced. When we address the question of "violence" in the justice system, we do not need to limit the discussion to police brutality and prison inmate maltreatment.

The adversarial system of law involves accusations, arguments, "spin" (meaning intentional distortion of facts and theories to accomplish specific goals), fault, blame, judgements, penalties and punishments, time and money consumption, and much more. Suffice it to say that the pain suffered by all participants in the adversarial environment, be they lawyers, clients, judges, court clerks, or secretaries, can be far deeper and more lasting than that felt by an accused criminal experiencing a choke-hold by an arresting police officer. But still in all, an examination of the prevailing adversarial environment of law tells only its part of the story. The real story is found in the thought patterns of the disputing parties, because they are the players that set the stage for the stress felt by all persons involved.

Let's examine a hypothetical example of two neighbors with a disagreement over the correct boundary line between their two properties. Attorneys and property line experts are hired, old property records are paid for and retrieved, court filing fees are paid, and the parties are subject to written questions they must answer in writing and oral cross-examination at deposition sessions. Legal secretaries pound out large quantities of documents that the attorneys spend long hours dictating. All of this happens, because the two neighbors have not experienced a communal environment where sitting down and working things out is considered the highest good. The disputants' negative thoughts permeate the entire drama. The negative thoughts are directed towards each other and the opposing attorneys. The energy of those thoughts reflect indirectly towards all of the other participants in the play. The disputants have difficulty walking out of their homes for fear they might run into each other. They also have difficulty sleeping. Attorneys statistically have high incidences of drug addiction, alcoholism, suicides, heart attacks and strokes. Legal secretaries have a very high burnout rate. The average tenure for sitting judges up to voluntary retirement gets shorter every year.

How did this all happen? When societies were formed in the pre-historic ages of Planet Earth, disagreements among members of a clan, and sometimes between clans, had to be addressed and worked out in some manner. In most cases, questions were posed to the elders of the community, advice was given, and the parties involved followed the advice and moved on in their lives. The elders rightfully arrived at their station in life and were trusted. But the complexion of things began to change as our societies became more disparate and complex. Lack of familiarity dissolves trust and breeds fear. People began to feel the need for advocates to support their positions in disputes. Others in the community where the disputants lived and who knew them presented "supporting" or "opposing" testimony about what happened in the dispute. This was the earliest form of the jury system. Formal advocacy followed as people felt less and less empowered to deal with their own disputes. As time moved forward, formal advocacy became a trade and



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then a profession, judges became political appointees and then elected officials, and jurors were required to have no prior knowledge of the dispute or the parties and be impartial. Most importantly, the disempowerment of the disputants was lengthened and deepened by the judges and the advocates (attorneys) through their use of language. A language of jurisprudence was developed, primarily based upon the ancient Latin, that no common citizen understood. This "foreign" language augmented the separation between the parties and the distancing of the parties from the justice system itself.

So the effect and result of this separation, lack of trust, disempowerment, and fear was a so-called "justice" system, which supports and even promotes and encourages negative and damaging thought patterns by the disputants. Put plainly, attorneys encourage the negative thoughts of their clients, because that generates revenues for attorneys. Judges do the same in more subtle ways, because disputes justify their position as the persons needed to make decisions and judgements.

The solution to the unwinding of this unworkable, unconscionable, and "violent" justice system is the return to the dispute resolution environment of pre-historic times. Engendering of the practice law under holistic principles will be a subject discussed in a later article.

A Value Based Court System

By Judge John L. Collins

The entire legal profession, lawyers, judges, law teacher, has become so mesmerized with the stimulation of the courtroom contest that we tend to forget that we ought to be HEALERS OF CONFLICT. For many claims, trial by adversarial contest must in time go the way of the ancient trial by battle of blood. Our system us too costly, too painful, too destructive, too inefficient for a truly civilized people.

Chief Justice Warren Burger

Martin Luther King emphasized that "True peace is not merely the absence of some negative force – tension, confusion or war; it is the presence of some positive force." The great strength of his message can be found not only in its application to the enormously important issues of social injustice he sought to address through nonviolent resistance, but also in the everyday issues facing us as individuals and as a society.

Dr. King emphasized the importance of working for the higher good for both sides. The question is whether his advice can also provide us guidance in our approach to conflict resolution within the court system. I believe it can.

The court system has long focused on the adversarial model. The theory is that with each side of a dispute vigorously presenting their view, truth and the right decision will emerge. While this system has its value in many types of disputes, the courts are finding more and more that the adversarial approach also has its destructive side-effect. In no other area is this more dramatic than the area of domestic relations. Here, parents who engage in adversarial battles for custody of children can emerge with a continuing need to "do war" with the other parent that will cripple their ability to cooperate in a plan for their individual roles as parents. Parents who put on the boxing gloves are often unable to put them down and cooperate in a plan to provide

In May 1954, members of the United States Supreme Court issued a monumental decision. In the case of Brown vs. Board of Education, the court ruled "Separate educational facilities are inherently unequal…segregation is a denial of the equal protection of the laws."

parenting to children who look to both parents for love, guidance and support.

Dr. King advocated five elements to non-violent resistance that can be applied here. First, he noted it takes strength and courage. Adversarial battles can be the easier route to a decision made by a judge. Parents present the best of themselves and the worst of the other and let the judge decide. In mediation, the parents reach a resolution together. They must overcome obstacles, not create them. Those obstacles not only impede resolution of the immediate issues, but also will be obstacles to the cooperation of the parties in the future. It takes moral courage to truly put the interest of children first. It must be done, however, for the children's sake as well as the parents.

Second, constructive dispute resolution should not involve an effort to humiliate the other side. Dr. King believed that the aftermath of conflict can be tragic bitterness while peaceful resolution can bring about a mutual commitment to the higher good.

Third, the effort must be to overcome the underlying problem, not merely to defeat the other person. The adversarial system is classically aimed at "winning." The underlying problems don't get addressed and, in the case of parents, the children suffer as a consequence.

Fourth, constructive dispute resolution should not build negative forces either in the form of external violence, or internal violence of spirit. Bitterness only empowers these forces and the urge to retaliate.

Fifth, it demonstrates the conviction that the universe is friendly and that it can operate to the higher good and on the side of what is the best in people.

Martin Luther King gave us a vision of social justice for our society. It requires individual as well as collective effort in our daily lives. "Courts 2020", a vision and plan for how courts should operate in the year 2020, also gives the courts direction on how to reshape the system of dispute resolution that is at the heart of the court system. A broad range of alternative dispute resolution techniques are being made available across the state, with adversarial litigation as a last resort in many cases. The vision applies not only to domestic relations, but also to many other types of civil and domestic disputes. It is not the critical overriding plan for social justice called for by Martin Luther King, but it is a piece of the pie and something we can apply individually to resolve disputes.