
Column

The Practice of Public Dispute Resolution: Measuring the Dollar Value of the Field

Lawrence Susskind and Carri Hulet

Public Dispute Resolution Grows Up

Public dispute resolution occupies an important space within the broader practice of conflict management. Professional public dispute mediators have helped to resolve disagreements over the allocation of scarce resources, the setting of standards, and the making of choices over policy priorities at the local, state, and national levels for almost thirty years.

In a public dispute, at least one of the parties, often the convening party, is a public agency or governmental body, and public dispute resolution typically involves a substantial number of stakeholder representatives (gathered on an *ad hoc* basis after a careful conflict assessment) and a “professional neutral” who is adept at facilitating complex and heated deliberations over technically complex issues. Because public agencies are involved, the results of such deliberations must still be acted upon by elected or appointed officials. When public dispute resolution works well, informed consensus is reached in writing, litigation is avoided, and elected officials implement the proposals or agreements put before them.

With great relief, we announce that the field of public dispute resolution has moved out of its adolescence and is now a full-fledged, mature professional service area. Gone are the days when playing the neutral role in a public dispute required three parts boldness and one part ingenuity. Hundreds of practitioners now claim public dispute resolution as their primary occupation, and both private and public institutions exist solely to

Lawrence Susskind is Ford Professor of Urban and Environmental Planning at MIT and founder of the Consensus Building Institute. His e-mail address is susskind@mit.edu.

Carri Hulet was the 2006 Association for Conflict Resolution–Environment and Public Policy Section conference manager. She is building her private practice in public dispute resolution. Her e-mail address is carrihulet@gmail.com.

offer standardized services that only a couple of decades ago were being developed by just a handful of people in a totally *ad hoc* fashion. The substantial literature on the topic — both scholarly and popular — and the many training and degree-earning opportunities are additional indicators of the advancing maturity of the field.

This is all good news, but it is highly impressionistic. What salaries do these practitioners earn? What fees do they charge? What sources of revenue fund this work? Until now, these data have been unavailable. No one has had a clear sense of how the individuals and organizations within the public dispute resolution field stand, either as an industry as a whole or in comparison to each other.

Knowing where we stand will help us determine where we want to move as a field and what it will take to get there. If, for example, we can determine which markets are strong and which are weak, we can strategize about how to leverage our successes. The lack of published principles of practice and industry standards leads to guesswork and inefficiencies in both private practice and decision making within organizations. Furthermore, information sharing and comparative analysis can help to reveal both overlaps and gaps that could be addressed through collaboration, healthy competition, and innovation.

In the spring of 2006 we created and administered two surveys to gather financial and operational data from a small number of leading public dispute resolution practitioners and organizations. Some of the results were presented at the annual conference of the Environment and Public Policy Section of the Association for Conflict Resolution (ACR-EPP), held in June 2006 at the Massachusetts Institute of Technology in Cambridge, Massachusetts. The conference, entitled “Deliberative Democracy: New Directions in Public Policy Dispute Resolution,” was organized around the broad theme of industry growth. Its four subthemes were: public policy dispute resolution as a business, international expansion of the field, strategies for resolving value-based (as opposed to interest-based) disputes, and the possibility of partnering with a broader community of practitioners, including promoters of deliberative democracy and civic engagement.

In this article, we have summarized questions we asked along with the results and our interpretation of the most significant findings. (Anyone interested in the complete survey results can find them at web.mit.edu/publicdisputes.) Our purpose was to provide a current snapshot of the field. We wanted to look at a small group of leaders in the field — not a representative sample but a weighted set of individuals and organizations whose efforts indicate what is happening in the field as a whole. One goal was to tally the amount of revenue that this relatively small group generates. We hoped that our findings would show that, by any financial standard, the field is much bigger than most of us have imagined and consequently worthy of the investments of time, effort, and money that a more rigorous economic analysis would require.

Preparing and Administering the Surveys

We developed the surveys using fairly obvious questions designed to uncover information about the basic business operations and performance of the companies that do this work. For example, how much money do you earn and how much do you spend? What are the key revenue sources on which you depend? For organizations, how are you managed? For individual practitioners, how do you allocate your time?

We sent surveys to twelve well-known solo practitioners and nine prominent organizations.¹ We chose these respondents because they focus primarily or exclusively on public policy issues and because we knew that each one has a consistent workflow. Ten of the twelve individuals work as solo practitioners or principals of their own small firms. One works in an independent capacity with a large firm, and one works for the federal government. Seven of the nine organizations we surveyed define themselves as conflict-resolution or consensus-building organizations. The Public Conversations Project and Search For Common Ground see themselves a bit differently and use different terms to describe themselves, but we chose to include them in the survey because these two organizations are viewed as leaders in the public dispute resolution field.

The surveys were sent by e-mail. Our response rate was 100 percent, with most responses arriving via e-mail, although in one case we gathered the information over the phone. Carri Hulet administered the surveys to the organizations; Tina Rosan (a Ph.D. candidate in the department of urban studies and planning at MIT) administered the surveys to the individual practitioners.

Organizational Survey Results

We surveyed the following nine organizations: Concur, Inc. (<http://www.concurinc.com>), The Consensus Building Institute (<http://www.cbuilding.org>), CDR Associates (<http://www.mediate.org>), The Keystone Center (<http://www.keystone.org>), Meridian Institute (<http://www.merid.org>), Public Conversations Project (<http://www.publicconversations.org>), Resolve (<http://www.resolv.org>), Search for Common Ground (<http://www.sfcg.org>), and Triangle Associates, Inc. (<http://www.triangleassociates.com>).

These organizations have been in operation between nine and thirty-one years. Anyone who is familiar with them knows that their leaders are driven primarily by social-justice goals rather than by a desire to turn a profit, and thus they fall into the category of social entrepreneurs. On the other hand, they must generate revenue to survive. Seven of the nine are nonprofit organizations, most operating principally on a fee-for-service basis. Two are small businesses.

We consider the following eleven points to be our most significant findings about these organizations:

1. Together, these nine organizations generated \$40 million in revenue in 2005.

The smallest recorded more than \$1 million in revenue and the largest reported \$18 million. In our view, these large amounts of revenue provide evidence that the customers and potential customers of these organizations recognize the legitimacy and value of their work. By coupling information about the quantitative value of these services with the other kinds of qualitative evidence that we typically share when we promote the field of public dispute resolution, practitioners can make even stronger arguments about the need for, and the effectiveness of these services.

2. Mediation, consensus-building, and training are the hallmark activities of these organizations. They do little or no research and little or no advertising.

These organizations see themselves as service providers and educators. From a business perspective, this can be problematic because it may indicate an “artisan” mentality; that is, they tend to approach each assignment as a unique problem-solving situation and, thus, cannot “mass market” their services. Public dispute resolution practitioners are less likely to ask, “What do our consumers need and how can we provide it?” than to say, “This is what we have to offer, do you want it?” Many of our industry leaders *do* spend considerable time making speeches and writing articles to share lessons learned and even more time in business development, where they report learning about customer needs. This may not be enough, however. If they do not dedicate more time and effort to analyzing their effectiveness and helping to “market the field” to the public at large, who will?

3. These are small organizations.

Each employs between five and thirty full- or part-time regular payroll employees; most are in the ten-to-fifteen employee range. Their small but growing sizes reflect the still developing field of public dispute resolution. We think their small size also indicates that these kinds of organizations seek to stay nimble and flexible in order to respond quickly to changing demand. They are likely to rely on short-term consultants or to partner with other groups when new assignments come their way, rather than expand, at least until the long-term shape of the field is clearer.

4. There is a market for public dispute resolution in all areas and at all levels.

Eight organizations classify the geographical scope of their work as primarily regional or national. Seven do local work less than 10 percent of the

time. All but two do some international work, and one considers all of its work to be international.

5. These organizations are run by social entrepreneurs.

All but two of these firms are nonprofit organizations, and all of them commit a significant number of hours to *pro bono* work. Based on this information, as well as our own experience, we conclude that people in this field are committed to a social change agenda. (This attitude may also account for some of the lack of interest in business development that we fear could be holding the field back.)

6. One can make a good living doing this work.

Two of the directors of these organizations were paid more than \$200,000 in 2005, and the other seven made between \$100,000 and \$200,000. Senior mediators in these organizations were paid between \$60,000 and \$150,000; mid-level mediators between \$50,000 and \$110,000; and junior mediators were paid between \$20,000 and \$75,000.

7. The government is the primary source of revenue for these organizations.

One firm receives no government funding and another receives very little, but for seven of the nine organizations, 20 percent to 80 percent of their work comes from state and federal governments. One organization receives 40 percent of its revenue from local governments, but for seven of the organizations, local government provides less than 4 percent of their annual revenue. Other sources of revenue include foundations, corporations, international agencies, individual donors, nongovernmental organizations, Indian tribes, and schools.

8. Foundation funding is a lightly tapped resource.

Seven of the nine organizations have received some foundation support over the last five years, and all the firms together received a combined total of \$10 to \$15 million in grants or gifts. Nevertheless, most firms report that less than 15 percent of their annual revenue comes from foundations (in some cases, much less than 15 percent). One firm generates 30 percent of its annual income from foundations. Only two foundations (Hewlett and Rockefeller) were mentioned as revenue sources more than once, but twenty-five other foundations were listed as recent benefactors (or supporters of particular projects).

We conclude that most organizations in this field have not made a concerted effort to tap the very wide array of philanthropic resources available in the United States. Those that have looked beyond the best-known foundations that have historically supported the public dispute resolution field have been successful. We assume that many of these

organizations will be able to attract additional philanthropic support once they focus their requests on substantive programmatic activities rather than seeking general support.

9. Advanced degrees are the norm and most professionals in this field have backgrounds in public policy or urban planning.

Eight of the nine organizations provided data on the educational backgrounds of their staff. Half of the firms require masters degrees, even for their junior-level mediators, and the percentage rises with mid-level and senior-level positions. Doctorates are also common (67 percent of the staff members of one organization hold Ph.D. degrees). Only two firms have a staff where as many as one-third have only a bachelor's degree. Most of the degrees reported are in urban planning, public policy, or environmental science. Interestingly, only one organization reported a staff member with a degree in dispute resolution.

10. Most firms employ at least one intern, but there is no standard for how interns are paid.

All but one of these firms hire at least one intern each year. Some interns are unpaid but receive academic credit. Many are paid hourly in the range of \$15 to \$25 per hour.

11. These organizations are the big fish in a small pond.

When we asked these entities who they think of as their primary competition, nearly all listed the other firms on the list. (Note that none of the firms were told which other firms were included in the survey.) Meridian and RESOLVE were each named four times, CDR and Keystone three times, and CBI twice. Some firms mentioned individual practitioners and other organizations that compete in their local areas.²

Individual Survey Results

We also surveyed the following twelve individuals: Bob Barrett, Howard Bellman, Susan Carpenter, Jeff Edelstein, Ken Feinberg, Michael Lewis, Carl Moore, Lucy Moore, Paddy Moore, Suzanne Orenstein, Bill Potapchuk, and Jonathan Raab.

These individuals have a wide range of experience as solo practitioners. Some started their practices in the mid-1970s while others began in the late 1990s. We consider the following to be the most significant findings from our analysis of their answers to our questionnaire:

1. Mediation pays the bills.

Seventy-five percent of those surveyed take home more than \$100,000 a year and everyone working full-time earns more than \$50,000 a year (after expenses). Only one of the twelve practitioners surveyed has another job to

bring in supplementary income. All but two work full-time. All but one said they are satisfied with the amount of money they make.

2. Individual practices in the United States may generate more than ten million dollars annually.

When we tally our sample of eleven (one did not answer this question), we find that their total gross revenue was more than \$2 million in 2005. Assuming there are at least fifty additional public dispute resolution mediators in the United States (and we think there may be twice that many), full-time public dispute mediators easily generate \$10 million a year in earned revenue.

3. Mediators love their jobs.

Eleven out of the twelve said they are “extremely satisfied” with their job. The twelfth checked “satisfied.”

4. Solo mediators have a diversified revenue stream.

Although government work dominates the revenue stream for solo practitioners, some do no government work at all. In fact, in all categories (government, private, foundation, international agencies, nonprofits, schools), solo mediators are much more diversified. The category that currently provides the least support for solo mediators is foundations. Again, this resource is probably underutilized.

5. These practitioners look to their professional associations to be industry analysts and advertisers.

Solo practitioners belong to a variety of professional associations such as ACR, ACR-EPP, the New England Association for Conflict Resolution, the American Bar Association, the American Arbitration Association, the International Association for Public Participation, American Public Health Association, various state mediation associations, and numerous state bars. In their responses, the individual mediators reported they would like these groups to take the lead on conducting research about the field. Some respondents suggested that these groups should undertake more in-depth study of cases and outcomes and develop a database. Other suggestions included undertaking an examination of issues facing the field and tracking activities related to environmental dispute resolution specifically.

6. Solo practitioners do not invest a great deal in advertising; their work comes mainly from referrals.

Ten of the twelve solo practitioners surveyed spend \$2,000 or less per year on advertising. When they do advertise, they do so in trade association journals, on the Internet (including their own web pages), in the Yellow

Pages, and in directories and rosters. One practitioner noted that professionals in this field invest more time than money in advertising in the form of giving presentations, publishing articles, and attending professional association events. Eleven of the respondents said 30 percent to 100 percent of their work comes from referrals from stakeholders or clients, and nine said that 10 percent to 40 percent of their work is from referrals from colleagues.

7. Internships are rare.

Only two of the twelve solo practitioners hire interns, and none of those individuals are paid, though one does receive college credit.

8. Working from home is the norm.

Eight of the twelve practitioners work out of a home office. The three who rent a commercial space spend between \$3,500 and \$18,000 a year on rent.

9. Graduate degrees are also the norm.

Of the twelve practitioners, three have Ph.D. degrees, four have master's degrees, four have law degrees, and one has only a bachelor's degree.

10. Fees vary from mediator to mediator, and depend on the client.

Nine of the twelve charge different rates for different kinds of clients. Government and nonprofit clients tend to be charged less, while corporations and individual clients are charged more. Hourly fees range from \$100 to \$650. Daily rates range from \$800 to \$2,500. One bills a flat fee for projects, and some noted that they negotiate their fees on a case-by-case basis.

Some Overall Conclusions

We draw three main conclusions from these data. First, with combined annual revenue of at least \$50 million, public policy dispute resolution is not the cottage industry many have believed it to be.

Second, although the government is the primary client for public policy dispute resolution, the experiences of some of the individuals and groups in this survey suggest that corporate and foundation support could probably be tapped much more successfully by the field in general. The fact that some of the firms and individuals we surveyed have been successful in developing business with nongovernment entities indicates that the problem is not in the availability of such clients. Not surprisingly, the organization we surveyed that receives the most foundation funding has a highly developed business strategy that specifically targets foundations. We believe an industrywide effort to develop business relationships with foundations and corporations might unlock new funding opportunities. When the field is able to present a unified front, it is much more likely to gain

attention and credibility with philanthropic and business organizations, which may otherwise find it difficult to evaluate each individual request for support they receive.

Third, this is a particularly good time to be working in the public dispute resolution field. The field is old enough to merit the attention and resources worthy of a respected industry, but young enough to allow for operational diversity and personal adaptability. Unlike most mature industries, no two firms or private practices look alike, have all the same customers, charge the same rates, or define their work the same way. The professionals in this field have come to their work from markedly different places. They work from home or from an office, run their own business, and set their own terms or work within a small firm or arrange something in between. Some may argue that these advantages could be lost if we adopt a trade association mindset, but we do not believe that is the case. It is important to recognize the things that make our industry unique, but we must recognize that banding together to grow the market offers untold opportunities.

Rather than continuing to pursue our work as distinct, loosely affiliated entities, we advocate an industrywide effort to expand the demand for our services. A critical first step is to build on the data collected here. We must produce more comprehensive data on the work we do so that we can promote and improve the field. We need to make a collective effort to educate public agencies, corporations, and foundations about what we do and what the “value proposition” is regarding public dispute resolution (i.e., what added value do we bring when we get involved?). We urge the various professional associations that serve as hubs in our field to take responsibility for convening working groups comprising individual practitioners, heads of firms, satisfied clients, theory builders, and others from adjacent professional fields to examine alternative strategies for enhancing the demand for our services and ensuring a matching supply of qualified professionals. Any efforts to develop the field — from marketing to expanding internationally to crossing disciplines — will be aided if we can gather more meaningful data on the value added of public dispute resolution practice.

In our increasingly contentious society, the broader involvement of public dispute resolution professionals could help restore faith in government and help us better realize our democratic ideals. Right now, productive deliberation in the public arena is severely limited. Even in those instances in which officials claim to be committed to greater public involvement in government decision making, the usual exchange of views rarely leads to informed consensus. We believe this is due, in large measure, to the lack of skilled management of collaborative problem-solving processes. The continued development of the public dispute resolution field offers an effective way to fill that gap.

NOTES

We sincerely thank the Massachusetts Office of Dispute Resolution, Maryland Mediation and Conflict Resolution Office, and the Center for Collaborative Policy at California State University, Sacramento for their cooperation and look forward to doing a more complete survey of state agencies involved in public dispute resolution.

1. In addition to the nine organizations included in the results, we asked three state agencies to respond but found that their operations and funding patterns were too different to aggregate with the private organizations.

2. One respondent suggested we consider the competition question in a different way — distinguishing between “internal” competition, self-proclaimed dispute resolution entities, and “external” competition, entities that provide legal or other consulting services but include public dispute resolution as part of their package. He noted that internal competition is mitigated by similarities in theories of practice and a tendency to collaborate and partner with each other, while external competition introduces the need for clients to make sophisticated distinctions among various dispute resolution services.