

# Nathan P. Feinsinger and the Origins of Alternate Dispute Resolution

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*With litigation costs skyrocketing, and the courts increasingly overburdened, a search has begun for practical alternatives to standard dispute resolution.*

*Mediation and arbitration, methods in the past confined to the handling of disputes between labor and management, are now being recognized as potential vehicles to the resolution of conflicts outside of the labor sphere.*

*Loosely grouped under the title A.D.R.—Alternate Dispute Resolution—these options may offer swifter and more private settlement of conflicts between parties.*

*More and more, law schools are beginning to offer classes in A.D.R. Harvard, for example, recently offered an optional seminar in negotiation. And Hofstra Law School now claims that it did "much of the pioneering work in the field."*

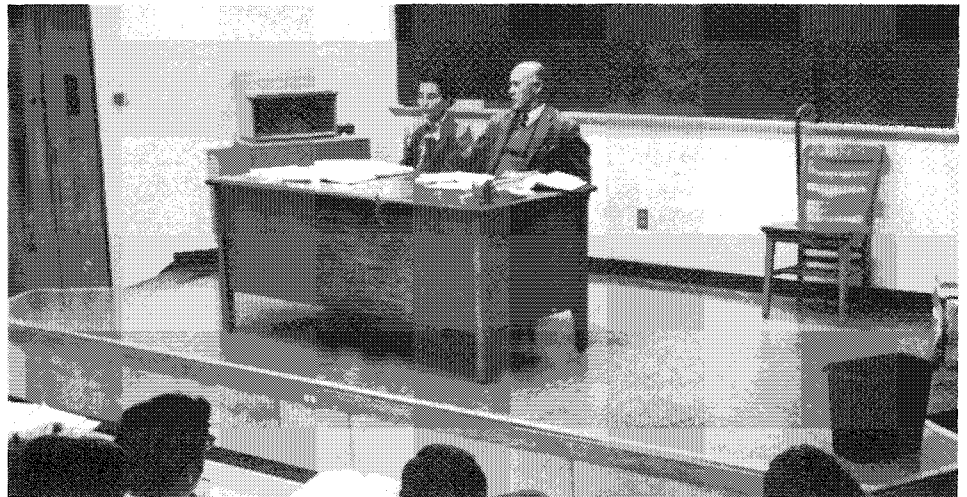
*But at the University of Wisconsin Law School, Professor Nathan P. Feinsinger had expressed ideas about A.D.R. as early as 1960.*

*And in 1966, the Law School curriculum boasted a course called "Methods of Disputes Settlement," instructed by Feinsinger.*

*With colleague Eleanore Roe, Feinsinger also established in 1967 the Dispute Resolution Center at the Law School. There, "techniques were studied for application to all kinds of disputes." The Center's key concept was that "lessons learned in the specific area of labor relations should be capable of some transference to other problem fields."*

*Feinsinger died in 1983, but not before his effort to "re-examine the techniques of arbitration and mediation in light of future and present-day needs" brought him broad acclaim.*

*At the Law School the efforts begun by him have continued and have been expanded. And, more broadly, his notion*



*that arbitration and mediation might be applied to non-labor areas of law is now beginning to be recognized as an idea whose time has come.*

*The article below traces Feinsinger's career and the history of his ideas on A.D.R.*

For the UW Law School, the 1920's and 1930's were important years during which a course and a vision for the future of law and legal education were forged. Promoted was a brand of legal education designed to reach out to help society—the concepts of "law in action" and the Wisconsin Idea.

Under the auspices of Dean Harry Richards, and through close contact with Professors John Commons, Selig Perlman and Edwin Witte of the economics department, work in this direction began in 1924 with a seminar in collective bargaining, taught by Law Professor William Rice. It was "one of the first such courses in the nation."

Other law faculty members with different interests and specialties pursued similar tacks in linking law to broad societal concerns.

Nathan P. Feinsinger was among these. He joined the Law School faculty in 1929, after a year as Visiting Professor of Socio-Legal Research at Columbia University.

His work had already begun to take a functional approach to law: he characterized his year at Columbia as research on "how a law that has passed by the legislature and been tested in the courts actually works out in practice."

Feinsinger came to UW Law school with initial specialties in family law, domestic law and bills and notes. He began as an instructor of domestic relations and insurance law, and also taught a course for the business school.

He was, however, shortly to switch fields and emerge as a leading labor lawyer. When Bill Rice was called to Geneva for a meeting of the International Labor

Organization in 1935, Dean Lloyd Garrison called on Feinsinger to substitute.

It was Feinsinger's teaching of Rice's course that got him into labor law.

Feinsinger had had little experience in labor law. "I hadn't even had the course, much less taught it," he said in an interview in the late '70's. "All I learned about labor law at Law School I learned in a course on equity."

He learned as he taught. And substituting for Rice put him in the position of adviser whether he liked it or not.

When Gov. Philip La Follette sought mediators under the state's "little Wagner" act to settle the burgeoning number of labor disputes, he turned to Feinsinger, whose "outstanding legal abilities" more than made up for his lack of labor experience.

And from 1937–39 Feinsinger served as general counsel to the State Labor Board and special assistant to the State Attorney General.

His first case came in 1941 in Minneapolis at the Honeywell Corporation. U.W. Economics Professor Edward Witte was called up to mediate, but was unable to do so because of a prior commitment. Feinsinger took on the case and handled it successfully.

From there he won wide renown as a skillful mediator. During the war years he served on the National Defense Mediation Board; from 1951 through 1953 he

was chairman of the National Wage Stabilization Board. Feinsinger, then, had quickly established himself as "one of the superstars of the mediation and arbitration field."

He later became permanent arbitrator in labor disputes between General Motors and the United Auto Workers (1954–68), and helped to engineer scores of successful settlements including the New York City Transit Strike of 1966, and the Detroit Newspaper strike of 1967–68.

### The Human Factor

U.W. Law Professor Arlen Christenson, who specializes in arbitration, remembers having Feinsinger as a professor in 1958 and 1959.

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"As long as I can remember," Christenson said, "Feinsinger had been asking himself and his students whether mediation and arbitration techniques were transferable," that is, applicable to other areas of law.

Feinsinger was an early believer that mediation and arbitration techniques need not be confined to use in labor disputes. Perhaps it was his recognition of the human factor in labor and management disputes that convinced him of this.

"The only way to settle labor-management problems is to treat them as human problems," he said. "Eventually each of the parties will discover that the other fellow doesn't have horns."

Feinsinger shortly had an opportunity to exercise his mediation skills in a non-labor dispute.

In 1966, he "calmed hot tempers in the racial struggle between the whites-only Eagles Club and the Milwaukee Youth Council of the NAACP, spearheaded by Father James Groppi."

Later, Feinsinger noted that "there is hardly a controversy mentionable—including the one in Vietnam—that cannot be mediated."

This conviction—that the "techniques used to settle labor disputes could be applied to virtually any type of social problem"—led him and a colleague, Professor Eleanore Roe, to form the Law School's Center for Teaching and Research in Disputes Settlement in 1967.

Eleanor Roe, Robben Fleming and Nathan Feinsinger



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The Center was established at UW with the financial support of labor and industry and the "cooperation of other universities and colleges." Through seminars and research, it sought to "discern ways to better mediate in various areas of human relations."

Though the concept was new, "Feinsinger's extensive experience as arbitrator, fact finder and mediator provided ample subject matter for the seminar."

The first seminar, in fact, was offered before the Center was fully functioning, in the fall of 1966:

*Methods of Disputes Settlement:* This seminar consists of a study of "voluntary" methods of disputes settlement including mediation as contrasted with settlement imposed by military force, economic force, compulsory arbitration and the like. Students undertake a research project which attempts (a) to define the techniques of mediation and the attributes of a good mediator, (b) to determine whether those techniques and attributes can be taught, and (c) to determine whether mediation proved to be successful in one area of conflict such as labor-management disputes, can be transferred to other areas such as civil rights, international disputes, etc.

### Seminal Role Recognized

In October of 1969, the Center sponsored a Conference on Studies in Disputes Settlement. The conference sought to explore "what other organizations and institutions—public or private, academic or otherwise—have and active interest in disputes settlement, and to exchange helpful and relevant information among those interested."

Transferability of mediation techniques emerged as a key theme of the conference.

And Feinsinger's "great contribution to the development of mediation, arbitration and conciliation techniques in the settlement of labor management controversies" met with great praise. So did his effort to "re-examine these techniques in light of present-day needs in this and all areas of conflict."

Feinsinger retired in 1973 after 43 years of teaching. Until 1977, however, he continued to direct the Center for Teaching and Research in Disputes Settlement with Eleanore Roe. He died in 1983 at the age of 81.

For a brief time after Feinsinger's death, the center was run by Emeritus Professor Abner Brodie. Brodie had joined the faculty in 1950, and had worked with Feinsinger as an associate General Motors-United Auto Workers umpire. Brodie later succeeded him as umpire. He took on emeritus status in 1976.

Since 1977, disputes settlement research and teaching has flourished at the Law School. Through the work of the Disputes Processing Research Program, part of the Law School's Institute for Legal Studies, "empirically-grounded theory about conflict resolution is developed through research and intellectual exchange." The DPRP emerged from the "tradition of interdisciplinary research on disputing" of which Feinsinger's pioneering work was also a part.

### Ground Breaker

When Nathan Feinsinger recognized the potential for expansion of mediation and arbitration uses, the idea was a novel one.

And his "Methods of Disputes" Seminar, and the Center for Teaching and Research in Disputes Settlement were important beginnings to the emerging options to slow, costly, and sometimes excruciating litigation.

A.D.R. today, still in its infant stages, has a promising future. And a substantial beginning to that future was made by Feinsinger's ground-breaking work.

### Disputes Processing Receives Hewlett Grant

Professor Marc Galanter, Director of the Disputes Processing Research Program, has announced that DPRP has been awarded a two-year grant from the William and Flora Hewlett Foundation. DPRP fosters interdisciplinary and empirical study of dispute resolution through a coordinated program of research, visitors, conferences, workshops, seminars, publications and training. The Hewlett Foundation will provide DPRP with \$220,000 in outright funds and an additional \$80,000 in matching funds over two years. The grant is part of the Hewlett Foundation's program in conflict resolution, and provides general program support for DPRP.

Professor Galanter indicated that the Hewlett support will allow DPRP to enhance current program activities, and develop new linkages to scholars working in this area. DPRP plans to embark on new areas of research that promise useful insights into the development of conflict resolution, to meet annually on particular topics of broad interest, and to facilitate the training and support of younger scholars interested in this field. DPRP will continue to act as a clearinghouse for developments in dispute resolution.

DPRP is an outgrowth of the efforts begun here under Nate Feinsinger, and is part of the Law School's Institute for Legal Studies.

Prof. Marc Galanter

