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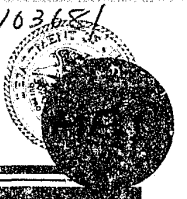

National Institute of Justice / *Issues and Practices*

Community Dispute Resolution Programs and Public Policy

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U.S. Department of Justice
National Institute of Justice
Office of Communication and Research Utilization

Community Dispute Resolution Programs and Public Policy

by

Daniel McGillis

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Issues and Practices in Criminal Justice is a publication series of the National Institute of Justice. Designed for the criminal justice professional, each *Issues and Practices* report presents the program options and management issues in a topic area, based on a review of research and evaluation findings, operational experience, and expert opinion in the subject. The intent is to provide criminal justice managers and administrators with the information to make informed choices in planning, implementing and improving programs and practice.

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Acknowledgements

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Preface

From relatively small beginnings approximately fifteen years ago, the dispute resolution field has grown remarkably. The field includes diverse mechanisms for the settlement of disputes outside of the courtroom through such techniques as mediation, arbitration, fact-finding, and conciliation.[1] The major emphasis of the mediation and arbitration programs developed through much of the 1970s was upon the settlement of civil and criminal matters arising out of everyday life. Disputes between landlords and tenants, conflicts between neighbors, complaints regarding harassment and assaults were the main focus of such community dispute resolution programs.[2] These programs have continued to proliferate.

In recent years the field has expanded dramatically into virtually every area of conflict in society. Innovative programs are seeking to settle major public disputes, such as environmental problems; others are mediating the development of governmental regulations.[3] Major civil litigation is being processed using new techniques, including mini-trials and summary jury trials, which provide highly simplified approaches to resolving civil controversies.[4] In addition, the mediation and arbitration of disputes in such specialized areas as divorce, housing, consumer matters, and the like has grown rapidly across the nation.[5] Diverse forms of alternative dispute resolution are being taught in American law schools; national organizations such as the National Institute for Dispute Resolution, the American Bar Association, and the Center for Public Resources are providing guidance and support for the field, and numerous private sector dispute resolving organizations have emerged.

This report focuses upon one sector of the dispute resolution field—those dispute resolution programs that handle diverse caseloads of relatively minor civil and criminal matters. Such programs go by a wide variety of names, including citizen dispute settlement center, neighborhood justice center, and community mediation center. For the purposes of this report, such programs will be referred to as "community dispute resolution programs." These include all programs that mediate or arbitrate minor civil and criminal cases, either in collaboration with the court or independent of it. A more detailed definition of such programs is presented in Chapter 1.

These programs were the vanguard of the current dispute resolution movement. Judge Earl Johnson noted the catalytic role of such programs by stating, "It is somewhat ironic that 'small' claims and what many deem 'simple' disputes—rather than large cases or complex controversies—have compelled a rethinking of the prevailing model of dispute resolution."[6] This rethinking has helped to illuminate the widely varying assumptions held regarding the appropriate role of the justice system in American society.

Community dispute resolution programs have been established across the nation, and projects are currently in operation in over 180 cities. Some are sponsored by justice system agencies (the courts, prosecutor, and police); others by city and county agencies; and still others by a panoply of private organizations (churches, bar associations, the YMCA). Their aims differ considerably, stressing varying combinations of increased access to justice, greater efficiency in case processing, an improved process for long-term dispute settlement, and community assistance and improvement.

Aims of This Study

This report updates an earlier study published by the National Institute of Justice in 1977. The previous study, titled *Neighborhood Justice Centers: An Analysis of Potential Models* reviewed a sample of community dispute resolution programs which spanned the range of major project characteristics (e.g., resolution techniques, referral sources, organizational affiliations, and mediation staff characteristics) to provide a basis for policy recommendations to the Department of Justice regarding Neighborhood Justice Center experimentation. At the time of the previous study, only approximately one dozen community dispute resolution programs existed within the United States, and most of them had only recently begun operation.

In the intervening years since the earlier report, programs have been established nationwide. Numerous studies have been published assessing dispute processing innovations. Major examples include the National Institute of Justice's evaluation of three experimental Neighborhood Justice Centers established in Atlanta, Kansas City, and Los Angeles, a Vera Institute of Justice study of a Brooklyn dispute settlement program, a National Science Foundation funded investigation of small claims mediation in Maine, a Florida Supreme Court supported study of five mediation programs in Florida, and major research on dispute resolution programs in New York state and Massachusetts. Many additional studies have been recently published or are in progress.

The central goals of this study were:

- to summarize the national developments in community dispute resolution during recent years and chronicle the growth of programs;
- to examine the substantial differences in program philosophies, goals, and techniques that have emerged;
- to assess variations in program structure and intake and their implications for program operation;

- to investigate the complex issues involved in considering the quality of justice rendered by dispute resolution programs and to present empirical evidence regarding the quality of justice;
- to examine the costs and efficiency of community dispute resolution programs; and
- to consider their impact on access to justice.

Each of the above issues is addressed in a separate chapter. A great many goals were asserted for projects in the middle to late 1970s. This report seeks to sort out the degree to which varying goals were met in light of available empirical data. Emerging controversies in the field are also noted and examined in light of available evidence.

The report is designed to be used by program administrators and personnel who are interested in current developments in the field and possible strategies for improving program operation. The document is also intended to be useful for policymakers in legislatures and the court system. The major policy questions regarding the quality of justice, costs, and access to justice are discussed, and relevant data bearing on them are presented. Such information can be helpful in designing programs and deciding upon appropriate funding sources for them. While the focus of this report is upon community dispute resolution programs, many of the policy issues are generic and clearly relevant to many types of experimental alternative dispute resolution programs. Persons planning other types of dispute resolution mechanisms may benefit from learning about the experience of the community dispute resolution programs, particularly since such programs have been in operation longer than most dispute resolution innovations and have been more intensively studied empirically than most other mechanisms.

Needless to say, despite the fact that almost a decade of experience has accumulated since the earlier report on community dispute resolution, much remains to be known about these mechanisms and their role in society. Major unanswered questions include:

- Why have the caseloads of many programs remained relatively low, despite the rapid proliferation of programs? One observer has suggested that this field suffers from the paradoxical combination of extremely high need for the service and relatively low demand.
- Do programs have any adverse impacts upon the justice system's overall capacity to reform the courts by reducing pressure on some inadequate feature of our courts?

- Do programs serve to co-opt the powerless and weaken the force of consumer protection legislation, landlord tenant laws, and related statutes by moving cases outside the courts and beyond the reach of such laws?

These issues and numerous additional ones deserve considerable attention as dispute resolution programs proliferate and become institutionalized into our justice system.

Techniques Used in Conducting the Study

In addition to a review of relevant literature, this report is based upon a variety of sources of information, including:

(1) **A telephone survey of twenty-nine dispute settlement projects.** The programs were selected to represent the range of characteristics currently existing among projects on such dimensions as sponsorship, referral sources, dispute settlement techniques, hearing officer characteristics, and the like.[7] Programs were selected to provide roughly equal groupings of projects operated by justice system agencies and related governmental organizations (justice system-based programs), programs operated by non-profit community agencies that seek referrals of cases directly from the community, rather than from the justice system (community-based programs), and programs sharing characteristics of the two preceding types, typically being sponsored outside of the justice-system, but receiving the bulk of their referrals from the police, prosecutors, and courts (composite programs).

(2) **Site visits to a variety of dispute resolution programs.** Projects visited included those in Atlanta, Boston, Chapel Hill (N.C.), Chicago, Columbus (Ohio), Coram/Suffolk County (New York), Denver, Detroit, Des Moines, Honolulu, Houston, Kansas City, Los Angeles, Madison (Wisconsin), Miami, New York, Rochester, San Francisco, San Jose, and Washington, D.C. In addition, research on mediation programs was conducted in Norway and Alaska in 1980, and in Japan and the People's Republic of China in 1980 and 1984.

(3) **Computer Analysis of the American Bar Association's 1985 Directory of Programs.** The American Bar Association's Special Committee on Dispute Resolution provided the research project with copies of profiles of 328 dispute resolution programs. The profiles will appear in the A.B.A.'s *1985 Dispute Resolution Program Directory*. The following information was coded from the profiles and entered into a computer database: 1) program start-up date, 2) annual budget, 3) funding source, 4) annual scheduled caseload, 5) annual number of mediation hearings, 6) program referral

sources, 7) number of staff members, and 8) number of mediators. The information has been analyzed, and summaries of major findings are presented in the text and in tables and graphics in this report. The assistance of Larry Ray, the staff director of the Special Committee, and his colleagues is greatly appreciated.

(4) **Observation of Congressional processing of the 1980 Dispute Resolution Act.** Subcommittee mark-up sessions were attended, meetings were held with Senate and House Judiciary Committee staff and the author testified at hearings of the Senate Judiciary Committee and House Judiciary and Commerce subcommittees in regard to the Dispute Resolution Act. Justice Department meetings to plan for implementation of the Act were also attended.

Organization of This Report

This report is divided into two sections: Section 1 presents a descriptive account of community dispute resolution programs—their philosophies, settlement techniques and structures; Section 2 assesses the impact of the programs on major goals, inculding the quality of justice, case processing efficiency, and access to justice.

Section 1 is comprised of the first four chapters of this report. Chapter One provides an overview of community dispute resolution innovations in the United States. The origins of nonjudicial dispute processing projects are briefly reviewed, and the current extent of program development is discussed. The broad range of specialized dispute settlement projects that have evolved is briefly described. The chapter also briefly summarizes major controversies in the field and presents an assessment of dispute settlement program achievements.

Chapters Two, Three, and Four provide a discussion of variations in project goals, philosophies, processes for settling disputes, structure and organization, intake procedures, and caseloads. The findings of the telephone survey of twenty-nine programs are discussed in these chapters to indicate the variations among justice system-based, composite, and community-based programs on major dimensions.

The final three chapters of the report form Section II. Chapters Five through Seven assess, in turn, the quality of justice provided by programs, project impacts on case processing efficiency and costs, and impacts on access to justice. In each chapter data from evaluations and related studies are presented to assess the degree to which programs have achieved the goals asserted for them by program planners.

Footnotes

1. E.g., see Golberg, S., Green, E., and Sander, F. *Dispute Resolution.* Boston: Little Brown and Company, 1985 for a discussion of the diverse mechanisms that have evolved to resolve disputes.

2. See Etheridge, J. "Mending Fences: Mediation in the Community," in Levin, et al. (Eds.), *Dispute Resolution Devices in a Democratic Society.* (The Final Report of the 1985 Chief Justice Earl Warren Conference on Advocacy in the United States.) Washington, D.C.: The Roscoe-Pound American Trial Lawyers Foundation, 1985.

3. See Susskind, L., and Ozawa, C. "Mediating Public Disputes: Obstacles and Possibilities," 41 *Journal of Social Issues* (1985), and Harter, P., "Negotiating Regulations: A Cure for Malaise," 71 *Georgetown Law Journal*, 9 (1982).

4. See Green, E., Marks, J., and Olson, R. "Settling Large-Scale Litigation: An Alternative Approach," 11 *Loyola of Los Angeles Law Review* 493 (1978), and Green, E. "The Complete Courthouse," in Levin, et al. (Eds.). *Dispute Resolution Devices in a Democratic Society.* (The Final Report of the 1985 Chief Justice Earl Warren Conference on Advocacy in the United States.) Washington, D.C.: The Roscoe-Pound American Trial Lawyers Foundation, 1985.

5. See Davis, A. *Community Mediation in Massachusetts: A Decade of Development, 1975-1985.* Salem, MA: Administrative Office of the District Court, 1986 for a discussion of specialized mediation services and their relationship to community dispute resolution centers that serve a diverse array of cases.

6. See Johnson, E. "Courts and the Community," in Fetter, T. (Ed.), *State Courts: A Blueprint for the Future.* Williamsburg, VA: National Center for State Courts, 1978. See also Marks, J., Johnson, E., and Szanton, P. *Dispute Resolution in America: Processes in Evolution.* Washington, D.C.: National Institute for Dispute Resolution, 1984. The Marks, Johnson, and Szanton document indicates that community dispute resolution centers have "fueled the growing interest in the broader use of alternative dispute resolution."

7. The telephone survey was originally conducted during the spring of 1982.

Section I

Community Dispute Resolution Program Development and Operation

The four chapters in Section I of this report describe the great variations in community dispute resolution program aims and techniques. Chapter 1 presents a brief history of the development of such programs, describes their growth across the United States during recent years, and discusses controversies regarding the programs and evidence regarding their achievements. Chapter 2 discusses the aims and characteristics of the three basic types of programs that have evolved: justice-system based, community-based, and composite programs. The third chapter presents an overview of the strategies used by programs to resolve disputes including conciliation, mediation, and arbitration. And Chapter 4 reviews program structures, intake procedures, and caseloads. The four chapters set the stage for the analyses in Section II of the quality of justice provided by programs, and program impacts on case processing efficiency, costs, and access to justice.

ONE

Community Dispute Resolution: An Overview

The basic concern underlying the development of community dispute resolution mechanisms is very simple: there must be a better way than routine court processing for handling many disputes among citizens. The simplicity of the field ends there. The types of dispute resolution mechanisms that have evolved vary greatly.[1] The motives for establishing them are similarly diverse, and the debates regarding the potential value or harm of such programs have been lively and complex.[2] This chapter seeks to explain how such an ostensibly simple notion could generate such complexity and result in substantial variations in theory and practice. The basic terrain of the field is summarized here, and subsequent chapters assess what we know, what we do not know, and what we need most to know in the future.

Community Dispute Resolution Programs: What Are They?

The boundaries of any innovative field are often difficult to define. As one researcher noted, efforts at definition serve as the "Bermuda Triangle" of many conferences. The discussion disappears into the abyss and never resurfaces to deal with substantive issues. The discussion of definitional matter will be kept brief here in an effort to avoid that fate. For the purposes of this report, "community dispute resolution programs" will be considered to include all those programs that:

- process a range of "minor" civil and criminal matters,
- through nonjudicial techniques (including primarily mediation and arbitration), and
- thereby provide an alternative to routine court processing.

The disputes handled by such programs tend to include civil matters within the local courts' "small claims" case range (e.g., often under $1,500) and misdemeanor criminal cases. Cases frequently involve everyday disputes between consumers and merchants, neighbors, spouses, landlords and tenants, and the like. The use of the term "minor" to describe the disputes is not intended, in any way, to disparage their importance to the disputants; such conflicts can clearly be major events in the daily lives of disputants. However, the term does distinguish the cases from major civil litigation and from felonies.

Community dispute resolution programs have a wide variety of local titles, including, "citizen dispute settlement center," "community mediation center," "night prosecutor program," "community board program," "urban court project," and others. Such programs are perhaps the most numerous single type of alternative dispute resolution program in the United States. The American Bar Association's 1985 Dispute Resolution Program Directory provides profiles of 182 such programs nationwide. Numerous additional specialized dispute resolution programs focus upon narrow classes of disputes, including consumer, family, housing, and other matters. Such programs are excluded here from the definition of "community dispute resolutions program," but the issues discussed in this report have considerable relevance for them.

Many of the "community dispute resolution programs" began with a primary emphasis upon criminal cases and then later added civil matters from the local small claims court and other sources. Some still receive their major referrals from the criminal justice system, but inevitably deal with the "civil" component of such offenses (such as assault) for the purposes of their dispute resolution hearings. In a sense they convert the criminal matters to civil ones by treating the cases as matters for discussion between the individual disputants and not for processing between the state and the defendant.

The definition of "community dispute resolution programs" intentionally does not restrict the programs to specific forms of sponsorship, types of dispute resolution processes, types of hearing officers, referral sources, or even aims. All of these vary considerably across programs.

Why Have Programs Been Developed?

The earliest community dispute resolution programs appear to have been developed by prosecutors and the courts in response to clear needs for improvements in the processing of minor criminal matters. The Philadelphia Municipal Court Arbitration Tribunal has perhaps the longest lineage of any of the programs, having evolved from a project established in 1969 through the joint efforts of the American Arbitration Association, the Philadelphia District Attorney, and the Municipal Court. The project provides disputants with the option of binding arbitration for minor criminal matters.

At about the same time, the Columbus, Ohio City Prosecutor recognized the severe problems the local justice system had with minor disputes. Minor dispute cases clogged the court, and adjudication did not seem to work well for them. Complainants very often withdrew their complaints as trial neared because their opponent was a neighbor, relative, or acquaintance. The complainants were not seeking incarceration for the adversary or a fine (paid to the state); they wanted changed behavior, an apology, or money paid to them as restitution for the harm done. The Columbus project uses mediation rather than arbitration. It began with two local law professors serving as mediators and expanded to its present caseload of over 10,000 cases per year. Participation in the mediation sessions is voluntary for disputants, and the mediators are trained to help the parties to negotiate a mutually agreed upon resolution to their controversy.

Both the Philadelphia and Columbus programs stimulated the development of similar projects in other cities. Other major projects developed in the early 1970s include the Institute for Mediation and Conflict Resolution's Dispute Center in Manhattan, the San Francisco Community Board Program, the Rochester Community Dispute Services project, and the Boston Urban Court Program. Recently developed projects often tend to be eclectic and borrow features from a number of the established programs.

The reasons for the nationwide development of programs have been numerous and complex. Some programs have been developed by policymakers who were seeking ways to remedy the courts' chronic problems with delays, high costs, assembly-line procedures, and citizen dissatisfaction with the quality of justice rendered by the courts. The Philadelphia and Columbus experiences seem to fall into this pattern. Some other programs have been developed by individuals and groups outside the justice system who were convinced that mediation and arbitration offer far more humane and sensible means of settling citizens' disputes. These groups are motivated by the notion that they can offer a superior dispute resolution process to disputants.

They place less emphasis upon any efficiency advantages to the court. Others have been motivated to increase access to justice and feel that the convenience of dispute resolution programs can attain this goal.

The question of why such programs have emerged at this point in our history is a difficult one. The courts have had well-documented problems for many years (e.g., see the Wickersham Commission report, 1923). The processes of mediation and arbitration are not exotic, high-tech innovations; such processes have been around since early civilizations. Indeed, some nations base their justice systems upon the use of mediation or similar processes. For example, the People's Republic of China reports that it has over 600,000 People's Mediation Committees in operation, and these committees handle the overwhelming majority of disputes in the nation.[3] In the United States, labor and commercial arbitration have extensive histories predating experimentation with community dispute resolution programs.

Several of the factors contributing to the timing of the current "dispute resolution movement" in the United States include: (1) the problems of the courts were perhaps most persuasively documented in the 1960s with the work of the President's Commission on Law Enforcement and the Administration of Justice and other such groups. Such work may have laid the foundation for a consensus on the need for reform and experimentation. (2) Federal funding from the now-closed Law Enforcement Assistance Administration had a powerful effect on stimulating program development nationwide. This effect was sufficiently potent in the late 1970s that commentators of the time viewed the programs as a "fad" product of federal funding and argued that such programs would not outlast their federal sponsorship. (3) Significant leadership has been exercised by many national groups in encouraging program experimentation. Major leaders included the American Bar Association, the American Arbitration Association, the Institute for Mediation and Conflict Resolution, the Ford Foundation, and the U.S. Department of Justice. And, (4) some program directors have been extremely effective advocates for their programs and have encouraged other jurisdictions to replicate their efforts.

In addition, many commentators have suggested that the community dispute resolution programs have evolved to fill a void left in society by the diminished role of the extended family, the church, and other similar indigenous institutions in dispute resolution. The extent to which this analysis is sound is difficult to determine.

The current experimentation with alternatives to adjudication for minor disputes appears to be part of a larger effort at "delegalization" in many areas of the American legal system. Major examples include efforts to simplify

legal procedures (no-fault divorce, no-fault automobile insurance laws;[4] efforts to decriminalize certain offenses, and deinstitutionalize selected convicted offenders;[5] and attempts to apply non-judicial dispute processing techniques such as mediation to major as well as minor disputes (e.g., civil case appellate mediation conferences in California;[6] large scale environmental mediation;[7] and related applications;[8] A Task Force Report of the National Center for State Courts clearly summarized the current trend in American legal procedures in stating that, "In any event, we appear to be moving inevitably in the direction of a drastically revised system of dispute resolution—a justice system more than a judicial system—and one in which non-judicial forums will occupy an important place."[9]

The Growth of Community Dispute Resolution Programs

The number of community dispute resolution programs has grown remarkably since the establishment of the Philadelphia and Columbus programs. In 1975 less than one dozen such efforts were in operation. Their number nearly doubled from 1975-76 to a total of 21, and doubled again in the next two years to a total of 46. According to information from the American Bar Association's 1985 Dispute Resolution Directory (in press) a total of 182 community dispute resolution programs are currently in operation in the United States. Exhibit 1.1 graphically depicts the cumulative growth of the centers. Nineteen eighty-three was the peak year for the growth of new programs, and 34 community dispute resolution centers were established that year.

Exhibit 1.2 presents a summary of the annual development of community dispute resolution programs from 1969-1985. With the exception of 1980, the graph indicates a relatively steady increase in the number of programs developed per year through 1983 and a subsequent diminishing in the number of new programs being established in 1984 and 1985. The reasons for the establishment of only six programs in 1980 compared to 25 in 1979 and 22 in 1981 is difficult to interpret. The Dispute Resolution Act, which was designed to provide federal funding for experimental programs, was signed into law in February 1980 by President Carter, but then never received an appropriation. It is possible that this development had some impact on program development, although it would seem likely to account for only a fraction of the differences among years. The reduced number of program start-ups in 1984-85 may signify a trend in program development due to the possible saturation of major cities with programs or a reduced interest or support for the field, or this drop may represent a brief hiatus comparable to the pattern in 1980.

Exhibit 1.1
Community Dispute Resolution Programs
Growth in Numbers of Programs

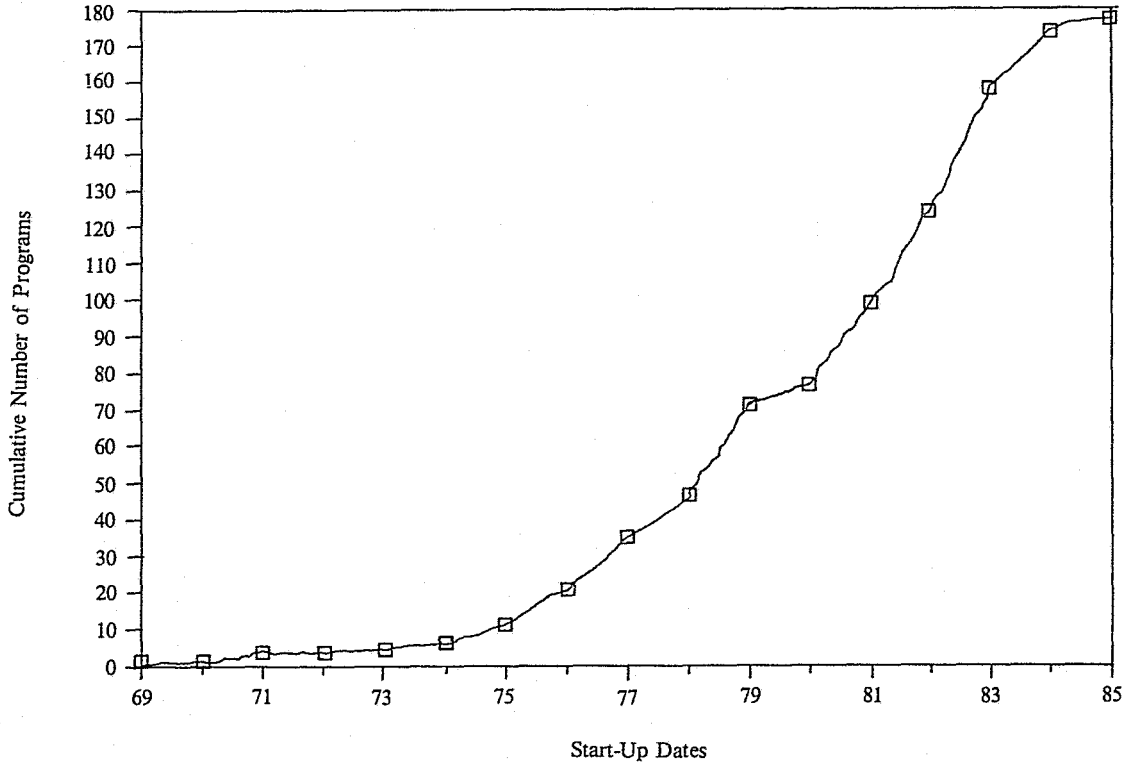
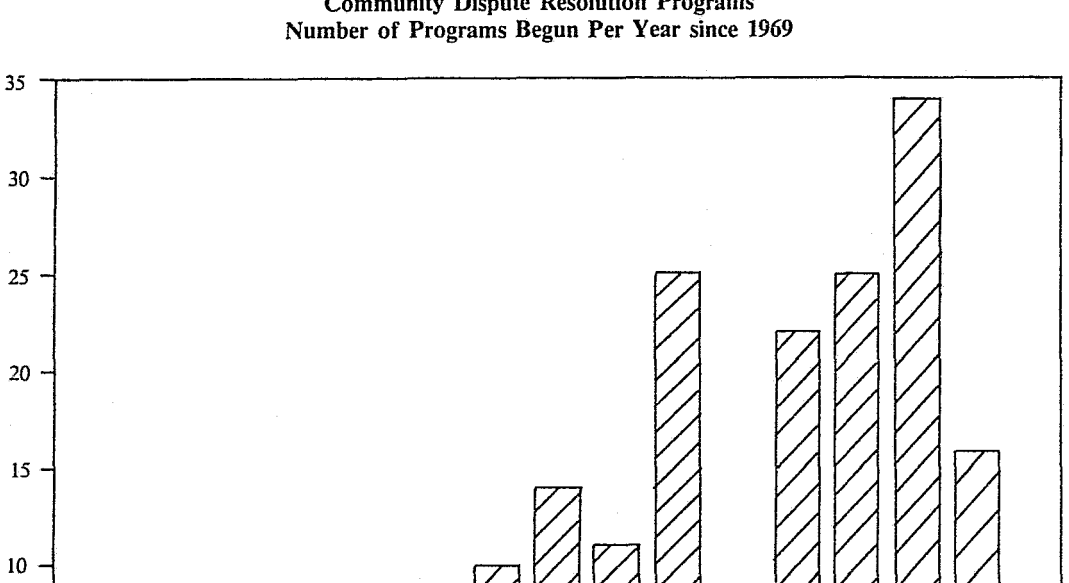


Exhibit 1.2
Community Dispute Resolution Programs
Number of Programs Begun Per Year since 1969



As was noted earlier, specialized dispute resolution programs handling such matters as family, consumer, housing, and juvenile cases have also grown rapidly across the nation. The ABA 1985 Directory provides profiles of major programs of these various types. The extent of growth of differing types of dispute resolution mechanisms was recently highlighted by the development of experimental "multi-door dispute resolution centers." The aim of such programs is to screen incoming disputes and refer them to an appropriate forum for their resolution. They can serve as a clearinghouse for the assignment of cases to the courts or alternative dispute resolution forums in a jurisdiction. As envisioned by Professor Frank Sander of Harvard Law school, such multi-door centers would provide centralized screening facilities that could refer citizens to appropriate processes or sequences of processes for the resolution of their disputes. The concept has been endorsed by Chief Justice Warren Burger and other judicial leaders, and the American Bar Association has established such experimental programs in Washington, D.C., Houston, Texas, and Tulsa, Oklahoma. The efforts are being evaluated by the Institute for Social Analysis under a grant from the National Institute of Justice.

Institutionalization of Dispute Resolution Programs

As was mentioned earlier, many of the interpersonal dispute resolution programs were initially funded by the federal government primarily with Law Enforcement Assistance Administration seed money. With the demise of that agency, widespread predictions of the end of the "dispute resolution movement" were voiced. The typical picture that was painted of the future of the field resembled the final scene of Hamlet; the carnage of dead programs would soon litter the landscape. The programs had survived on the artificial respiration of federal largesse, it was argued, and Congress had now pulled the plug. However, with a very few notable exceptions, the patient confounded the predictions: programs have not died off, but rather proliferated.

A number of factors fueled the massive die-off theory. The closure of a few formerly very visible projects (such as the Kansas City Neighborhood Justice Center), the lack of general exposure to programs and their growth due to their relatively low profile in the media, and the assumption that federally funded experiments routinely collapse all encouraged the vision that we would soon have another extinct social program species. Such a prediction did not seem very far fetched in 1980.[10] But a review of the primary funding sources of programs in the most recent A.B.A. directory indicates that in a great many jurisdictions, local and state governments have stepped

in to fill the vacated role of the federal government. The data in the directory are not extremely detailed but indicate that approximately one-half of the programs handling minor civil and criminal matters now receive significant support from local government. An additional one-third of programs are funded by state government, with other major sources being foundations and miscellaneous other agencies. Funding sources listed for the 182 community dispute resolution programs profiled in 1985 were as follows:

	Number of Programs Indicating Funding
Local Government (including city, county, and prosecutorial budgets)	95
State Government	60
Federal Government	4
Foundations	40
Fees	16
Interest on Lawyers Trust Funds	2
Churches	7

As can be seen from the listing, local and state funding sources make up the overwhelming majority of sources of support for programs. In contrast, the 1981 A.B.A. directory of programs indicated that less than one-third of programs were supported by local governments. Many projects are supported by multiple sources. The Chapel Hill, North Carolina Dispute Settlement Center is an example of a program having multiple sources of support. That program has received funds from the North Carolina General Assembly, the Town of Chapel Hill, the Town of Carrboro, the Town of Hillsborough, the Orange County Commissioners, the United Fund of Chapel Hill-Carrboro, the United Way of Orange County, and the Z. Smith Reynolds and Mary Babcock Reynolds foundations.

The decreasing proportion of federally supported programs is particularly striking. The 1981 A.B.A. directory reported that 28 percent of the existing programs at the time (45 programs) were primarily funded by federal monies; the 1983 directory reports that only 2 percent (2 programs) receive such funding, and only four of the 182 programs listed in the 1985 directory report receiving any federal funding.

The institutionalization of dispute resolution programs is demonstrated by a number of states which are developing novel sources of funding for

programs. For example, the Texas legislature has passed an act which enables dispute mediation centers to be funded by small additional charges to civil court filing fees. Similarly, Florida has passed a statute to enable programs to receive support for their operating expenses from court filing fees, a form of funding similar to the approach used in a number of jurisdictions to fund their county law libraries. The Texas act will enable programs in large counties to be fully funded from the filing fee source. The Florida bill was structured to provide sufficient funds for only partial support of a program's operating budget.

In short, program funding sources are quite diverse. A major evolution has occurred in recent years away from federal funding and toward state and local funding. Yet, the number of projects has continued to grow. A number of states have passed legislation to support experimental dispute processing programs (including Connecticut and New York), and the New York Community Dispute Resolution Center's Program has a budget of over one and one-half million dollars per year. Apparently, while no one was watching, city councils, county commissioners, and other funding bodies have been deciding to fund mediation efforts in their communities.

Differing Perspectives Regarding Dispute Resolution Programs

Any effort at categorizing disparate viewpoints carries with it the inevitable risk of oversimplification. Many subtle shades of difference of opinion exist in the dispute resolution field. But three major schools of thought regarding dispute resolution programs have emerged, and they serve as anchors around which the variations in opinion are arrayed. The "boosters" have a relatively simple approach: simply stated, they feel that programs are clearly useful, and that one should fund virtually all of them by whatever means available (local and state general revenues, court filing fees, foundation support, individual user fees, and so forth). Many policymakers are in this group. They argue that our best strategy is "to let a thousand flowers bloom" (to quote another major proponent of mediation) and let the free market in social services sort out the winners from the losers. Programs providing low quality services or violating the interests of their clients will fade from the scene due to market forces according to this perspective, and the faith is that the vast majority of programs will indeed provide very high quality services.

The "critics," on the other hand, have typically favored the Hamlet solution (of widespread closure of programs) noted earlier, and have been disappointed that the drama did not play itself out in the mediation field in the fashion experienced by that hapless Prince of Denmark. Such critics also have a simple answer to the question of program development: "don't do it." They argue that mediation programs are ill-conceived, faddish, and the product of the overly optimistic minds of misguided reformers. Such programs are said to duplicate (and expensively so) the informal processes already

provided by our friendly neighborhood court clerk and judiciary. In their darker moments they sense a plot by the capitalist ruling elites to relegate the disadvantaged of our society to a second-class form of justice. Mediation is a toothless process designed to disenfranchise and coopt the underprivileged by this line of reasoning. Recent legal reforms such as the growth of consumer protection legislation are being cleverly defanged by the growth of mediation programs around the nation, it is argued. Furthermore, some of the critics assert that mediation programs cannot work anyway in America, and they provide anthropological and historical evidence that the preconditions required for effective mediation simply do not exist in our industrialized, mobile, heterogeneous society.

The third school of thought regarding dispute resolution programs can be labeled the "Yes, but . . ." approach (for the lack of a better label). This group argues that we should experiment with mediation programs, but cautiously, and that we should very carefully measure the outcomes of programs. Persons in this school accept the "boosters" assertions that programs may be very useful, and they respect the "critics" concerns. The literature of the "Yes, but . . ." variety is distinguished from the other two schools of thought in that it is typically empirical in nature. Both the "booster" and "critic" literatures have a very casual approach to detailed empirical information. The "boosters" are in a hurry to get on with the task of reforming the justice system and are satisfied (perhaps prematurely) that mediation is a promising way to start. The "critics" have an affinity for macro level analysis, and sometimes one gets the impression that they feel the use of empirical data immediately moves one from the macro to the mere micro level.

Assessing Program Achievements

The survival and growth in numbers of dispute resolution programs suggests that they must be doing something right, especially given the routine demise of many other 1970s social programs. The question of what in particular they do "right" is an interesting one, and Chapters 5, 6, and 7 provide a detailed discussion of relevant data.

While they have been successful in many respects, the programs have certainly failed to fulfill many of the early optimistic goals laid out for them. They were expected to reduce court caseloads in their jurisdictions, freeing up resources for the remaining cases on the docket. No demonstrable evidence exists that programs have remotely succeeded in this task. A corollary to that goal was an anticipated reduction in justice system costs (because mediation would be very cheap compared to adjudication). The courts have not been reported to be mailing checks of unexpended funds back to governmental

treasuries, however. In fact, some mediation programs are quite expensive on a per-case basis. Programs have also typically failed to develop large caseloads (in comparison to comparable court caseloads). Some programs sponsored by the courts and prosecutors' offices are exceptions to this pattern, and a few process over 10,000 cases per year. But we can probably say with some confidence after approximately ten years experience with such programs that the American people are not eagerly beating a path to the programs' doors, although this may be due more to Americans' focus on court dispute settlement (as idealized on Perry Mason) than due to anything fundamentally wrong with dispute resolution programs.

So what are the mediation programs doing right to justify the investment of scarce local and state governmental resources? The most likely achievement of the programs is that they provide a superior process for many of the types of cases that they handle. Research studies support the casual impression that people like to have their cases mediated. They typically view the process as more fair and more understandable, and they like the agreements that are achieved.[11] Agreements are reached in approximately 80 percent of mediation sessions. Disputants consistently report that they are satisfied with the mediation process and view outcomes as fair (see Chapter 5). Research on the mediation of minor civil cases in the Maine District Courts indicates that defendants in mediated cases are far more likely to pay their settlement in full than defendants in comparable court cases (70% vs. 34%, respectively). Interestingly, when interviewed, 73 percent of such mediation case defendants indicate that they feel some or a strong legal obligation to pay compared to only 12 percent of court defendants. However, improved compliance with agreements for minor criminal rather than such minor civil cases has not been clearly demonstrated by research. The Maine cases dealt with minor civil matters which could be settled with a single act, payment of money, rather than by complex behavioral changes among disputants. The payment of money is a simple task compared to stopping the criminal harassment of a relative or neighbor, and is likely to be an easier obligation to fulfill.

In short, policymakers appear to be drawn to funding community dispute resolution programs because they suspect that their process is better for particular types of cases. Mediation programs clearly have a very mixed record of achievement when assessed against the goals originally stated for them in the early and mid-1970s. They have failed quite flagrantly to reduce court caseloads and court costs, though many recent observers have suggested that such goals were very unrealistic at the outset and argue, for that matter, that the programs have also failed to increase voter registration, decrease hunger, improve SAT scores, and achieve countless other improbable goals.

Programs have also been underwhelming when it comes to receiving large, self-referred, walk-in caseloads. Apparently, program successes in providing a potentially better process for the types of cases they handle have counterbalanced their other shortcomings. Chapters Five, Six, and Seven present discussions regarding the quality of justice of these programs, their efficiency and costs, and possible impacts on access to justice.

Dispute Resolution: Reform and Counterreform

The proliferation of community dispute resolution programs in the late 1970s led many observers to begin to describe the growth as the "dispute resolution movement." More recent developments in the early 1980s have reinforced this image, if one defines a movement as a relatively widespread emergence of a given activity or innovation. Furthermore, the movement towards nonjudicial dispute processing programs appears to be gaining interest in a number of other nations as well. Both Australia and Canada have developed mediation centers modeled after the American programs. The Australian programs in Sydney and Woollongong have recently been very favorably evaluated by the Law Foundation of New South Wales.[12] The Canadian programs exist in nine cities, according to the A.B.A. directory. Both Canada and Australia have justice systems that are similar in many respects to the American justice system.

In contrast, it should be noted that many other societies traditionally mediate a high proportion of civil and criminal matters. In some of these countries, the justice systems are experiencing increasing legalization, rather than delegalization, as is the case in the United States. The Chinese government, for example, has promulgated new civil and criminal codes and increased the role of lawyers (from earlier virtual banishment during the Cultural Revolution) to a more central role in the administration of justice in China. This pattern suggests that legal reforms occur cyclically. Dean Roscoe Pound (1922) noted that there is a "continual movement in legal history back and forth between justice without law, as it were, and justice according to law." In this light, it may be that the present "dispute resolution movement" is only one upward (or downward, depending on one's perspective) thrust on an ongoing sine wave of reform and counterreform in society's dispute resolution machinery.

Footnotes

1. Green, E. "The Complete Courthouse," in Levin, et al. (eds.) *Dispute Resolution Devices in a Democratic Society*. (The Final Report of the 1985 Chief Justice Earl Warren Conference on Advocacy in the United States). Washington, D.C.: The Roscoe Pound–American Trial Lawyers Foundation, 1985.

2. See Rosenberg, M. "Query Regarding Alternate Dispute Resolution," 69 *Judicature* 254 (1986) and Levin, L. "A Fresh Way to Deliver Justice," in Levin, et al. (eds.) *Dispute Resolution Devices in a Democratic Society*. (The Final Report of the 1985 Chief Justice Earl Warren Conference on Advocacy in the United States). Washington, D.C.: The Roscoe Pound–American Trial Lawyers Foundation, 1985.

3. Chen Zhucheng. "China's Criminal Law and Law of Criminal Procedure," 23 *Beijing Review* 17 (1980). Interest in mediation is strong in many Asian nations, and an Asia-Pacific Organization for Mediation has been established. Information regarding the organization is available from the APOM Secretariat, Victoria I Building, 1672 Quezon Avenue, Quezon City, Metro Manila, Philippines.

4. Johnson, E., Kantor, V., and Schwartz, E. *Outside the Courts: A Survey of Diversion Alternatives to Civil Cases*. Denver: National Center for State Courts, 1977.

5. Abel, R. *Delegalization: A Critical Review of Its Ideology, Manifestation and Social Consequences* (unpublished manuscript, University of California, Los Angeles, 1978).

6. See Green, E. "Getting Out of Court–Private Resolution of Civil Disputes," 28 *Boston Bar Journal*, 11 (1984).

7. Carnduff, S.B., and Russell, J.R. *Alternative Environmental Mediation Structures within the Federal Government–Final Report*. Washington, D.C.: U.S. Executive Office of the President Council on Environmental Quality, 1980; and Susskind, L. and Ozawa, C. "Mediating Public Disputes: Obstacles and Possibilities," 41 *Journal of Social Issues* (1985).

8. Bush, R.A. "Dispute Resolution Alternatives and Achieving the Goals of Civil Justice: Jurisdictional Principles for Process Choice," 1984 *Wisconsin Law Review* 893 (1984); and Hensler, D. "What We Know and Don't Know About Court-Administered Arbitration," 69 *Judicature* 270 (1986).

9. Johnson, E. "Courts and the Community," in Fetter, T. (Ed.) *State Courts: A Blueprint for the Future.* Williamsburg, VA: National Center for State Courts, 1978.

10. Galanter, M. *Justice in Many Rooms.* Working Paper 1979, Dispute Processing Research Program, University of Wisconsin School of Law.

11. Chapter 5 presents a detailed discussion of these findings. As is the case with all social programs, assessing the accomplishments and shortcomings of community dispute resolution efforts is no easy task. Selecting criteria for program "success" is challenging, and Merry has reviewed the complex issues in this area (see Merry, S., "Defining 'Success' in the Neighborhood Justice Movement." In Tomasic, R. and Feeley, M. (Eds.). *Neighborhood Justice: Assessment of an Emerging Idea.* New York: Longman, 1982).

    Programs can have unintended negative consequences or fail to reach stated goals, and a number of papers have considered such problems (e.g., see Nader, L. (Ed.), *No Access to Law: Alternatives to the American Judicial System.* New York: Academic Press, 1980; Auerbach, J., *Justice Without Law?* New York: Oxford University Press, 1983; Abel, R., "The Contradictions of Informal Justice," in Abel, R. (Ed.), *The Politics of Informal Justice.* New York: Academic Press, 1982; and Merry, S., and Silbey, S. *Mediator Ideology and Settlement Strategies: Authority and Manipulation in Alternative Dispute Resolution.* Presented at the American Sociological Association Annual Meetings, 1984). The potential problems associated with alternative dispute resolution require careful attention. Eight major critiques that have appeared recurrently in the literature on dispute resolution are summarized and assessed in McGillis, D., *Consumer Dispute Resolution.* Washington, D.C.: National Institute for Dispute Resolution, in press.

    As was noted earlier in Chapter 1, a tendency occurs in the existing literature to present either strong praise or strong criticism of the dispute resolution field. A number of papers have sought to assess the critiques of the field and acknowledge that, in the absence of more conclusive data, both extreme boosterism and extreme criticism are misplaced (e.g., see Johnson, E. "Review of the Politics of Informal Justice." 21 *Journal of Legal Education* (1984); Singer, L. "Non-Judicial Dispute Resolution Mechanisms: The Effects on Justice for the Poor," 13 *Clearinghouse Review*, 569 (1979); Roehl, J., and Cook, R. "Issues in Mediation." 41 *Journal of Social Issues* 161 (1985); McGillis, D. "Minor Dispute Processing: A Review of Recent Developments."In

Tomasic, R., and Feeley, M. (Eds.). *Neighborhood Justice: Assessment of an Emerging Idea*. New York: Longman, 1982; McEwen, C. and Maiman, R. "Mediation in Small Claims Court: Achieving Compliance through Consent," 18 *Law and Society Review*, 11 (1984); and "Review of Justice without Law?" 97 *Harvard Law Review* 607 (1983). Continuing research on alternative dispute resolution will help to sort out the achievements and problems of community dispute resolution mechanisms and their implications for the delivery of justice in the United States.

12. Schwartzkoff, R., and Morgan, T. *Final Report of the Evaluation of Three Experimental Community Justice Centres*. Sydney: Law Foundation of New South Wales, 1982.

TWO

Dispute Resolution Programs: Variations in Program Philosophies

Community dispute resolution programs have been designed by a wide range of groups to serve a broad variety of goals. The Congressional hearings and floor debate on the Dispute Resolution Act brought this fact into clear focus. The Act was designed to provide federal funding for experimental dispute resolution programs and to establish an office within the Department of Justice that would serve as a clearinghouse for the field and support research on dispute resolution mechanisms. A wide variety of groups testified in favor of the bill, including many groups that are normally adversaries on many other issues. For example, both the National Chamber of Commerce and representatives of Ralph Nader's consumers' rights organization testified on behalf of the bill. Similarly, professional groups such as the American Bar Association and '60s-style activists opposed to professionalization in society supported the bill at hearings. The National Conference of Chief Justices supported the legislation as well as people strongly opposed to the current operation of our court system. What brought them all together was the broad notion that the courts, in their present form, were not adequately handling many every day civil and criminal cases. Their specific diagnoses of the problem and solutions to it ranged widely, however. This chapter addresses a number of central questions:

- what types of community dispute resolution programs have been developed?
- what goals are they seeking to achieve? and
- what techniques do they use to resolve disputes?

The descriptive information in this chapter provides a basis for understanding the breadth of dispute resolution experimentation in the nation and serves as a foundation for the later chapters that address the achievements and problems of community dispute resolution efforts.

What Types of Programs Exist?

While community dispute resolution programs vary considerably due to local conditions and defy simple categorization, three basic clusters of project structures and goals seem apparent. These include: (1) justice system-based programs, (2) community-based programs, and (3) composite approaches. Each type of program will be discussed in turn.

Justice System-Based Programs

These programs are sponsored by justice system agencies. The most typical sponsors include the courts (for example, the Lexington, Kentucky mediation program operated by the Administrative Office of the Courts), and prosecutors' offices (for example, the Citizen Dispute Settlement Program of West Palm Beach, Florida operated by the State Attorney's Office). The Columbus Night Prosecutor Program mentioned in the preceding chapter served as the model for many of the justice system-based programs.

The major typical features of justice system-based programs are noted in Exhibit 2.1, along with the features typically associated with the other two major types of programs. Justice system-based programs typically rely upon their sponsoring agency for the bulk of their referrals. They usually apply considerable intake coercion upon disputants, and often suggest to defendants that criminal charges may be brought on the alleged offense if they do not appear. The justice system-based programs, as a rule, hold relatively brief hearings, and these are held in justice system settings such as the prosecutor's office or in empty courtrooms. These programs serve relatively large areas—typically the city or county served by their justice system sponsor, and their caseloads and budgets are relatively large for dispute resolution programs.

Earl Johnson (1978) has grouped many of the goals of dispute resolution into three major categories: (1) *improved efficiency*, which would presumably include more effective screening, reduced court caseload, delay

Exhibit 2.1

Typical Features of the Major Types of Community Dispute Resolution Programs

	Justice System-Based	Community-Based	Composite
Sponsorship	Justice System Agency	Nonprofit Agency	Governmental or Nonprofit
Area Served	Entire City or County	Either Entire or of a City or County	Mixed Approach
Major Referral Source	Justice System Agency	Sources Outside Justice System	Both Justice System and Other Sources
Intake Coercion	Typically High	Typically Low	Intermediate
Hearing Length	Typically Brief	Typically Long	Intermediate
Hearing Settings	Typically Formal	Typically Informal	Intermediate
Caseload Size	Typically Large	Typically Small	Intermediate
Budget Size	Typically Large	Typically Small	Intermediate

reduction, reduced system costs, and as a consequence, an improved justice system image; (2) *increased access to justice* in terms of convenient locations, times, and procedures for hearings and the elimination of costs for hiring an attorney; and (3) *an improved process for case processing*, including more lasting and equitable resolutions for both parties.

The major goals of justice system-based community dispute resolution programs generally fall within Johnson's categories and include:

Screening Cases to Determine Whether Charges Should Be Brought Against the Respondent

Several programs including the Los Angeles City Attorney's Office project view case screening as its primary goal.[1] Staff members are former law enforcement personnel, and hearings often focus on legal issues and factual accounts of the complaint. Resolution of the dispute between the parties is

considered to be a subsidiary goal, although settlements may often be achieved incidental to the effort to ascertain whether legal grounds exist for a charging decision. In contrast, the Columbus program gives roughly equal weight to the screening and dispute settlement function during hearings, but nonetheless serves the prosecutor's purpose of case screening for misdemeanors among parties with ongoing relations.

Diverting Cases From the Court Caseload

The goal of diverting cases to a simpler forum is asserted by some system oriented projects. Problems of court case overload are well known, and some justice system-based projects stress that diversion of "minor" matters to simpler, more direct forms of dispute settlement may reduce court caseloads and free the courts to handle more serious cases. Some justice system-based projects avoid suggesting that court caseloads will drop. These projects state that caseloads are determined by many factors and may even increase after numerous cases are diverted. Furthermore, they note that many diverted cases would probably have consumed very little if any court time. Even projects anticipating an impact on court caseloads are often hesitant to set such a goal at the outset out of concern that the goal cannot be achieved to a striking degree during early stages of project operation when mediation caseloads are low. Court caseloads, in fact, do not appear to have been significantly reduced by mediation programs, and Chapter Seven discusses the complexities involved in assessing a program's impact on court caseload.

Providing More Efficient and Accessible Services to Citizens

Surveys of citizen attitudes toward the courts have indicated the relatively low esteem that courts command. A major cause for citizen dissatisfaction is the inefficiency and inaccessibility of the courts. Common complaints include:

- **The extensive delays often associated with court case processing.** Such delays arise from such factors as court backlog of cases, lenient continuance policies, the encouragement of delay by the court subculture, and dilatory tactics of disputing parties.
- **Low accessibility to the courts** due to inconvenient locations of courts, daytime hearings requiring repeated absences from work, disputant confusion regarding complex court filing processes, and similar problems, and

- **The high costs of court case processing** due to the need for an attorney to assist the disputant in traversing the court's complex pathways. Such legal counsel may be almost entirely unavailable for certain minor civil disputes where little if anything of monetary value is in controversy.

Justice system proponents of community dispute resolution programs often assert that their projects can remedy the traditional court inefficiencies. Case processing can be rapid, because no bottlenecks exist comparable to those in the courts. A dispute resolution program can presumably develop a sufficiently large pool of hearing officers and informal hearing locations to virtually guarantee a rapid and yet detailed hearing. Procedural *delay* tactics are presumably also avoided due to the simple rules and procedures of mediation projects. Although respondents might refuse to participate at all in voluntary hearings, they would be unlikely to attempt to delay proceedings by dilatory continuances.

Hearings can be highly *accessible* when local hearing sessions are provided in nearby public or private facilities. Evening and weekend hearings can be scheduled routinely, and filing procedures can be kept extremely simple to avoid intimidating or confusing potential complainants.

Costs of hearings can be kept at an absolute minimum because representation by attorneys is unnecessary. Presumably disputants attending hearings scheduled for non-working hours incur only the costs of transportation to the hearing sites, and possible childcare costs.

Reducing Case Processing Costs To the Justice System

Some supporters of justice system-based dispute resolution programs have argued that the justice system's costs will be reduced by the operation of such programs. Hearings are anticipated to be far less expensive than court hearings, due to the elimination of (1) police costs incurred in arrests, (2) elaborate paperwork requirements of formal arrests and filing, (3) prosecutor and court personnel time and related expenses. Chapter Six reviews the complexities of the cost savings argument. For a variety of reasons, data suggest that actual cost savings are very unlikely to occur.

Improving the Image of the Justice System

Another goal proposed by some advocates of justice system-based projects is that their sponsorship by the justice system will improve citizens' attitudes toward the system. It is assumed that alleviation of the various system shortcomings cited above for even a limited range of types of cases would

result in a more positive public image that might generalize to the system as a whole. Research studies have not been conducted to assess the impact of dispute resolution programs on the justice system's image.

Providing a More Appropriate Process for Certain Cases

Individuals supporting the development of dispute resolution programs attached to the justice system do not focus solely upon the increased efficiency likely to arise from their use, but also recognize other potential benefits from the resolution process. The typical major benefit claimed is that dispute resolution hearings can deal with the underlying problems leading to a dispute, and therefore provide hope for a longer lasting settlement than might be possible in a court hearing which is limited by rules of evidence and practical constraints (lawyers serving as spokesmen for disputants, the relatively short time available for hearings, etc.). Parties can play an active role in fashioning agreements and potentially benefit from consensual, rather than adversarial resolution of the problems.

In addition, dispute resolution programs may provide the only possible forum for many minor disputes involving acquaintances, because such complainants routinely withdraw complaints and refuse to attend court hearings after they have cooled off, presumably due in part to opposition to the imposition of court sanctions (incarceration, fines) upon the relative, neighbor, or former friend. Mediation hearings can also take into account reciprocal offenses more readily than court hearings and can potentially result in settlements which are viewed as fair by both parties rather than just the victor in the more all-or-nothing approach of adjudication. Chapter Five reviews available data regarding the quality of justice provided by dispute resolution programs. The data strongly suggest that alternative dispute resolution efforts are superior to adjudication for many types of disputes.

Projects Having a Community Emphasis

In contrast to justice system-based projects, community-based projects are typically sponsored by private organizations and focus upon receiving referrals directly from citizens rather than on referral from justice system agencies. Examples of this approach include the San Francisco Community Board Program, the Albuquerque, New Mexico Mediation Center, and the Community Association for Mediation in Pittsburgh.

The community-based projects differ dramatically from the justice system-based projects on virtually every dimension presented in Exhibit 2.1. Some such programs serve entire cities or counties but others serve more circumscribed "neighborhoods" within a city (e.g., the community boards within

San Francisco that each serve areas of approximately 20,000 people). Community-based projects very actively seek referrals outside of the justice system. Techniques used to seek cases include distributing flyers in a neighborhood describing the project's services, speaking at local meetings including church services, advertising project availability through posters, billboards, bumper stickers, public service announcements on television and radio and the like, and distributing literature at busy locales such as shopping centers. The community-based projects tend to use very little pressure in seeking referrals and may visit disputants at their home to describe the benefits of the program. Hearings are often relatively long and held in informal settings such as daycare centers, church basements and similar surroundings. The caseloads and budgets of such programs tend to be relatively low due, at least in part, to their lesser use of justice system referrals and their relatively low intake coercion. This topic is addressed at greater length in the following chapter.

These community-based projects share a number of goals with the justice system oriented projects. They stress *increased access to justice* similar to the justice system-based projects and attempt to provide hearings at convenient locales and times, with simple and accessible procedures, and without the need for hiring an attorney. They also suggest that community dispute resolution programs provide an *improved process* for dispute settlement in comparison to adjudication. These projects place very little emphasis, however, on the various justice system efficiency goals, although they do suggest that their case processing is often preventive justice which can result in improvements over time. They note that the current dispute might not be one requiring court attention, but prevention of the dispute's escalation may eventually reduce the court's caseload and result in justice system savings. A minor assault among acquaintances today can result in a felonious assault or homicide next month or next year if the dispute is allowed to fester, according to community-oriented project advocates.

While the programs differ in their interest in improved system efficiency, the major differences in goals between justice system and community oriented projects are not in any of the above-mentioned areas, but rather derive from the additional goals asserted by the community-based projects. These goals include:

Decentralization of Control of Decision Making

Advocates of community-based projects assert that citizens in urban, industrialized societies often sense that they have very little control over many of the major decisions influencing their lives. Government agencies, large

corporations, and similar entities, it is asserted, increasingly determine how an individual's life is styled. Some recent research indicates that such a loss of sense of internal control over life events can be more than just subjectively displeasing and can even have adverse physiological impacts. An antidote to such a loss of personal control is said to be the decentralization of control of decision-making in important areas of living to increase the "empowerment" of citizens. Decentralized dispute processing is one facet of such a strategy and additional elements include increased decentralization of economic development, decentralized government services, and related functions. Justice system-based projects are often operated by large bureaucracies and staffed by professional mediators. Disputants in such projects may gain some increase in control over their lives, because they are provided an opportunity to contribute to the fashioning of a mutually acceptable resolution to their controversy, but community-based project advocates argue that it would be far better to also have them control the mechanism for dispute processing through community sponsorship and operation and conduct the hearings by using citizens from the community, rather than employ professionals as mediators.

Development of Indigenous Community Leadership

Community-based projects have as an additional goal the development of networks of leaders throughout the community. Project staff and mediators drawn from the community area are, by definition, trained in leadership roles in their work as dispute resolvers and also exposed in detail to the panoply of problems experienced by their neighbors. Community-based project policymakers anticipate that such leadership skills, once developed, will be employed by the project-affiliated individuals in a wide range of problem-solving endeavors in the community. For example, once a group of mediators has become clearly aware of problems of exploitation of tenants in a government project, it is anticipated that they will take steps to have the government remedy these collective problems. Similarly, such persons can provide leadership in efforts to improve the quality of the neighborhood environment and encourage the provision of needed forms of social services.

The goal of leadership development may seem to be quite removed from the more central goal of dispute settlement projects of solving individual controversies. But community advocates argue that such leadership is ultimately needed to solve the common problems that underlie many disputes, especially problems involving misunderstandings and animosity among racial, ethnic, and age groups, and local offenses and exploitative practices by some unethical businesses. Using this approach, dispute resolution projects are

thought not just to solve individual problems, but to train generalized problem solvers and provide them with an unparalleled opportunity to view the range of conflicts present in a specific community, some of which may be amenable to collective efforts at solution.

Reducing Community Tensions

The advocates of community-based projects also believe that dispute resolution centers can contribute to a reduction of the tensions and conflicts commonly associated with density of population, diversity of demographic characteristics, and related aspects of urban living. Such a reduction would come about through the combined effect of (1) the many individual dispute settlements, (2) the collective efforts to eradicate common problems cited above, including intergroup misperceptions in the community, and (3) the development of conflict resolving skills by the disputants themselves. Persons who have participated in hearings as disputants would be expected to be more likely to attempt to negotiate subsequent controversies with adversaries rather than turn to third-party interveners. The participation in hearings would presumably provide some skills in such bilateral dispute resolution efforts, plus the encouragement to think that such resolutions are possible. When such negotiations were not possible or failed, disputants would be expected to turn to the dispute resolution program rather than simply escalate the dispute at hand.

Such hopes on the part of community oriented project advocates admittedly have utopian overtones. Interpersonal conflict appears to be an aspect of the human condition experienced by everyone except perhaps hermits and the comatose. The thought that the degree of tension in a community can be systematically reduced through the provision of conflict reducing services merits exploration, however, since surely the most reliable way to insure that negative predictions regarding tensions are fulfilled is simply to do nothing. Substantial efforts are required by community advocates to conceptualize this goal much more precisely. What types of tensions are considered particularly destructive and warranting attention? Are there types of tensions in the community that are constructive and should remain or expand to find their outlet in litigation or other actions? How can the levels of community tensions be measured? Are surveys adequate, or are direct observations of interpersonal interactions required?

In summary, community-oriented projects share many goals with their system-oriented counterparts, but also assert a number of unique goals, including: 1) decentralization of control of decision making, 2) the development of indigenous community leadership, and 3) reducing community

tensions. All three goals require careful conceptualization on the part of such projects and rigorous efforts to develop operational measures of their achievement. The goals are clearly far more diffuse and ambitious than such concrete aspirations as more rapid case processing and reduction of expense to disputants. These potential community improvement goals have strongly motivated project developers, mediators and some policymakers to take action. However, an effort to define the goals of such projects carefully and then to measure achievement of these goals is necessary. A major study funded by the Hewlett Foundation has been designed to address many of these issues.

Projects Taking a Composite Approach

Many projects combine characteristics of both the justice system and community-based approaches. These composite, or "mixed" projects are sponsored by a variety of types of organizations. Unlike the justice system-based projects cited earlier, composite projects tend to have offices outside of justice system buildings in houses, storefronts, office buildings, and other locations to provide an independent identity. Composite projects receive referrals from the justice system, but also encourage referrals to dispute resolution separately from the community and advertise their services with brochures, radio announcements and other techniques similar to the community-based programs.

The close referral ties to the justice system of many composite projects stands in contrast to the relatively "pure" community oriented projects which have tenuous or no ties to the justice system agencies. Examples of composite projects include the Atlanta Neighborhood Justice Center, the Suffolk County (New York) Community Mediation Center, and the Chapel Hill, N.C. Dispute Settlement Center. These projects all have vigorous referral links with the local justice systems and vigorous outreach efforts to encourage community referrals. All three have a representative sample of community persons serving as program mediator personnel rather than professional mediators, and the Suffolk County program has developed branch community mediation offices to service specific communities within the larger target area. The Atlanta project involves many community people as intake workers at referral agencies, as well as having community people serve as mediators. The Chapel Hill project was begun by a group of citizens who raised funds locally to rent the project's office. The project was subsequently funded by an appropriation from the North Carolina state general fund at the initiative of a local legislator who was impressed by the volunteer community effort. The Chapel Hill project works closely with the local prosecutor, and receives many referrals from that office.

Goals for composite projects typically include a mixture of the goals for system-oriented and community-oriented projects. The weight given specific goals may vary across projects and is dependent upon many factors, including the nature of the sponsoring agency, local needs, the philosophy of the specific project director and governing board, etc.

One potential strategy for projects attempting to maximize goals associated with both justice-system and community-based orientations is a policy of progressive decentralization. Such an approach would involve the initial establishment of a centralized dispute mediation center with ties to justice system referral agencies, as well as community outreach. As the project caseload developed and credibility in the project was established, local community panels of mediators (comparable to those being developed in Suffolk County, New York) could be developed, but in contrast to the Suffolk County project, these panels could be structured to run somewhat autonomously receiving referrals from the central office where appropriate, but also conducting outreach activities of their own and generating their own local caseload.

Conclusion

In short, a wide variety of types of community dispute resolution programs have evolved. Justice-system based programs are typically sponsored by the courts and prosecutors and tend to receive the overwhelming bulk of their cases from justice system agencies. They are often designed to meet justice system needs for faster and less expensive case processing. Justice system efficiency goals are not a central concern for community-based programs. These programs tend to emphasize the improved processing of cases through alternative dispute resolution techniques, increased access to justice by citizens, and benefits to the community arising from the dispute resolution process. Composite programs are typically sponsored by non-profit agencies but rely heavily upon the justice system for case referrals. Their goals are often a blend of those for justice system-based and community-based programs. The philosophies of program developers and local policymakers tend to determine the specific goals and structures of individual programs. However, as Albie Davis' report on community mediation in Massachusetts has pointed out, funding agencies also can have a profound impact on the shape and approach of individual programs, or in her phrase, "form often follows funding." In any event, the rich array of types of community dispute resolution programs in the United States has made the "dispute resolution movement" lively and thought provoking.

Footnotes

1. This project is independent of the Los Angeles Neighborhood Justice Center funded by the U.S. Department of Justice in 1977.

THREE

How Are Disputes Resolved?

Variations in Settlement Techniques

Community Dispute Resolution Programs employ a variety of dispute processing techniques, including conciliation, mediation, and arbitration. Each approach will be discussed briefly in this chapter, and a detailed example of a mediation case is provided.

Conciliation

For the purposes of this report "conciliation" is considered to be any effort by a neutral third party to assist in the resolution of a dispute short of bringing the parties together face-to-face for a discussion of the matter. Such efforts can include holding meetings with individual parties to discuss the controversy and potential solutions to it, contacting individual parties by telephone or mail, and performing "shuttle diplomacy" between the parties and serving as a conduit for information between them. Many community dispute resolution programs attempt to settle disputes through telephone or letter contact with the respondent (defendant) prior to the scheduling of a formal hearing. Some specialized dispute resolution programs, such as consumer complaint projects, limit themselves to this approach and inform complainants that they may proceed to other forums if conciliation fails. Other programs view conciliation as only the first available project option, with mediation and/or arbitration as a sequel if conciliation fails.

Mediation

Mediation is defined, for the purpose of this report, as an effort by a neutral third party to resolve a dispute through the conduct of a face-to-face meeting between the disputing parties. In such meetings the third party is not authorized to impose a settlement upon the parties, but rather seeks to assist the parties in fashioning a mutually satisfactory resolution to the conflict. Mediators vary greatly in how assertive they are in suggesting possible resolutions to a controversy, and the term "mediation" encompasses a broad array of conflict resolution styles by third-party interveners. Face-to-face mediation of conflicts between disputants is a common procedure used in many dispute resolution projects. Techniques of mediation vary considerably, with some projects using panels of up to five mediators (e.g., San Francisco), while others use a single mediator per hearing (e.g., Columbus); some projects tend to have relatively brief mediation hearings (e.g., 30-45 minutes, as in the case of the Miami project), while others typically have quite lengthy hearings (e.g., over two hours on the average in Boston).

The American Arbitration Association (AAA) and the Institute of Mediation and Conflict Resolution both tend to stress the value of private caucuses between individual disputants and hearing officers as a technique for finding the disputant's "bottom line" position for settlement; this approach is used extensively by projects in Rochester and Cleveland, among others. Some other projects, such as the San Francisco Community Board Program, tend to reject the caucus approach and stress the development of communication skills on the part of the disputants by having them carefully explain their positions and having the other party repeat back the essence of the person's position to demonstrate clear communication. Many mediation projects employ written resolutions, and some project dispute resolution forms even state that the written mediation resolution agreement is enforceable in court while others do not use written agreements.

Arbitration

Arbitration is a dispute resolution process whereby a neutral third-party is empowered to impose a settlement upon disputing parties following a hearing between the parties. Arbitrators often seek to mediate a settlement first and impose an arbitrator's award only as a last resort. Programs in which a mediated settlement is conscientiously sought by an arbitrator prior to deciding the matter are referred to mediation/arbitration or "med/arb" mechanisms. Community dispute resolution projects including programs in New York City and Rochester employ arbitration and have the authority to develop binding agreements which are enforceable in the civil courts. These projects typically attempt to mediate the dispute first and resort to imposed

arbitration awards only when all attempts at mediation have failed. The New York City project reports that only approximately five percent of cases processed by the project go on to imposed arbitration; the remaining 95 percent of the cases are mediated, and the mediated agreements are then written up as enforceable consent agreements. The Rochester project uses similar case processing procedures, but reports that approximately 40 percent of cases go on to imposed arbitration.

In New York and Rochester one hearing officer serves as both the mediator and arbitrator for a given case. In contrast, in the San Jose, California small claims project, disputants have the option of sequential mediation and arbitration with different hearing officers at the two separate hearings. Mediators in cases in which settlements are not reached explain the availability of arbitration, and the separate arbitration sessions are often held the same evening as the mediation session. The majority of states have "modern arbitration legislation" and can develop projects using either mediation or arbitration. Comparative data on the relative effectiveness of mediation and arbitration are not available.

The vast majority of community dispute resolution programs offer mediation rather than arbitration, and the bulk of this report deals with mediation efforts and their impacts. A major reason for this is the program's preference to encourage disputants to settle their case through mutual agreement rather than to impose settlements. Recent research, however, suggests that combined med/arb might be superior in encouraging disputants to work hard to settle their conflicts because disputants feel "under the gun" to achieve a consensual settlement and to avoid an imposed judgment.[1] While this work is tentative and preliminary and inevitably raises complex questions regarding what constitutes a "superior" approach, in any event, mediation predominates among existing programs. The difference between mediation and arbitration becomes blurred in some prosecution-sponsored projects, and the threat of criminal charges for failure to maintain a mediated agreement can be very real.

CASE EXAMPLE

An example of a specific case may help illustrate dispute resolution at work. This particular hearing occurred at the San Francisco Community Board project, but the type of dispute is representative of those seen at many projects across the country. The case involved two next-door neighbors.

The presenting complaint was an assault and battery. The complainant (let's call him Mr. Janaslav) had been in a fight with the respondent (Mr. Valdez), and Mr. Valdez had seized a board from Mr. Janaslav's hands and swung it, breaking Mr. Janaslav's arm. Both men were in their 40s. When Mr. Janaslav went to the district attorney's office to swear out a complaint, he told the prosecutor about the dispute's complex history. The prosecutor immediately referred the case to the local mediation program having found such cases to be inappropriate for adjudication in the past. The project scheduled a hearing a few days later. The hearing was held in the evening at a day care center, and both extended families attended. Both the complainant and the respondent presented their views to the mediators, and it became clear that the core of the dispute was really over the complainant's driveway being blocked repeatedly. The Valdez family had five cars, and one of them seemed to be always blocking the Janaslav driveway. Mr. Janaslav's mother lived with him and had to be rushed to the hospital often on short notice for a lung condition. A previous fight over the driveway blocking had resulted in Mr. Janaslav being punched in the nose and retreating to his garage. Since that time Mr. Janaslav reports that the neighboring Valdez children always gave him the "evil eye" as if he were a coward. The Valdez family retorted that Mr. Janaslav was a belligerent person who was always pointlessly harassing them.

The five-person mediation panel guided the discussion of the controversy and attempted to help define the issues at hand. In the early phase of the discussion, the potential for future escalation of the dispute became very clear. Mr. Janaslav (sitting there with his arm in a cast and sling) noted that he had a knife at home, and if he was threatened again, he didn't know what he would do. As the discussion continued, a comment was made which seemed to be a turning point: Mr. Janaslav and Mr. Valdez were both arguing, and Mr. Janaslav said, "Look, I'm afraid of you people. You have more men in your household. I'm scared." The Valdez family members seemed genuinely taken aback that they frightened Mr. Janaslav, since they thought that he was an ogre. The idea that he was actually feeling on the defensive and that he had the courage to say so was somehow a turning point. The Valdez family members began to cautiously apologize at that point, and conversation began to turn toward possible solutions to the controversy. Mr. Valdez offered to paint the curb a foot and a half on either side of the driveway. If a Valdez car ever extended over that point, then Mr. Janaslav was to tell Mr. Valdez, and the car would be moved. Mr. Valdez said the communication should be between the two heads of the households, because "men understand these things better." The women of the two families agreed. The mediation panelists swallowed hard—they clearly did not share the views of the two families that "men understand these things better," yet they remained nonjudgmental to

make the agreement work. The project reports that the agreement was successful; the families report that they are not having problems.

It is useful to picture what would have happened had the prosecutor accepted this particular case. Either it would have been dismissed (perhaps due to the complainant's frustration with continuances) or it would have reached trial and a verdict. The trial would have dealt with the narrow issue of the assault and battery. The other issues that animated the dispute would have been irrelevant and inadmissable for the most part. Communication would have taken place through professional intermediaries, and the court could either find innocence (angering Janaslav further) or guilt (enraging the Valdez family). The kids would still give Janaslav the "evil eye," making his daily life miserable; the driveway would still be intermittently blocked; the two families would continue to live an uncomfortable existence. And the dispute might escalate. Only a few weeks before this fight occurred, a person was shot by his neighbor in San Francisco over a recurrent blocked driveway controversy.

A brief look at crime data indicates the magnitude of the problem. The vast majority of American homicides are not television's stereotyped stranger-to-stranger offenses. They are husbands killing wives, relatives killing relatives, neighbors shooting neighbors. The issues involved are rarely more glorious than a blocked driveway. The Vera Institute of Justice's recent study of felonies in New York notes that, "because our society has not found adequate alternatives to arrest and adjudication for coping with interpersonal anger publicly expressed, we pay a price." The price includes court congestion, high dismissal rates, and ineffective dispute resolution. The Vera researchers recommended experimentation with mediation projects to handle many types of cases.

Hearing Officer Characteristics

Hearing staff characteristics vary widely among the projects and include lay citizens trained in mediation or arbitration techniques by the projects in Boston, Rochester, and New York; law and social work students in Columbus; and lawyers in Orlando. Some telephone conciliation projects, such as the Massachusetts Attorney General's consumer projects, employ undergraduates on internships. The Maine small claims court mediation effort has relied heavily upon retired persons, an approach with interesting parallels to the role of elderly persons as dispute resolvers in many unindustrialized societies.

The Suffolk County Community Mediation Center typifies the selection and training of hearing officers in many programs. The project has trained approximately 140 community volunteers as mediators. The volunteers learn of the project through local advertising, public relations efforts and contacts with friends and others who know of the project. Candidates for mediation training are screened by the Executive Director and the Deputy Director/Training Coordinator. The candidates complete a questionnaire describing their characteristics and are asked a variety of questions in the interview. Basic requirements include that a candidate be:

- 18 years of age or older;
- literate and fluent in English;
- in good health and neat in appearance;
- interested in community affairs and activities; and
- able to relate to others without prejudice.

The Suffolk County mediators vary widely in age, sex, race, income, occupation and other demographic variables. The diversity is considered beneficial to the program because an effort is made to assign mediators systematically to clients. For example, if a dispute involves middle-aged persons, an effort will be made to assign middle-aged mediators; disputes involving a male and a female typically will be assigned a mediation team composed of both a male and a female.

Mediators in Suffolk County receive 42 hours of training over a four-week period. The training sessions include lectures on mediation, role playing of mediation sessions, and video-taped feedback to trainees regarding their mediation style and non-verbal cues. The success of the mediation training is attested to by the fact that approximately 95 percent of the volunteers trained by the project over the past three years are still active mediators with the project. On the completion of mediator training, the mediators are sworn to an oath of confidentiality and impartiality by a judge. New mediators are paired with experienced mediators in their initial mediation sessions to provide them additional training and support.

The American Bar Association's *Dispute Resolution Directory, 1981* provides a summary of the characteristics of hearing officers used. (Later Directories do not provide comparable information.) The directory includes 141 programs (minor dispute centers handling broad civil and criminal caseloads, as well as projects specializing in housing, domestic, and other areas), and the index listing hearing officer types reports that 61 projects use lay citizens as hearing officers, 20 use attorneys, 19 use academicians and students, 55 use social service professionals, and 11 use court clerks. Some projects employ more than one type of hearing officer.

Dispute Settlement Procedures of Selected Programs

Tables IA, B, and C in Appendix A present a summary of the dispute settlement procedures of 29 programs collected through a telephone survey of program directors. Programs were selected to represent major variations within the three basic classifications discussed earlier: justice system-based programs (Table IA), composite programs (Table IB) and community-based programs (Table IC).

The survey showed considerable differences between the dispute settlement procedures of the eleven justice system-based and the nine composite programs surveyed. While procedures in the two types of programs do overlap, the composite programs are more likely to report the use of conciliation, hold hearings in office buildings and informal settings, report longer average hearing lengths, use laypersons rather than law students and professionals, and report lengthier training sessions.

The survey contacted nine community-based programs and found that five programs continued to operate as community-based projects, while four programs originated as community-based programs, but are evolving into composite style programs with greater links to the criminal justice system. As in the case of other types of programs, mediation predominates, but a significant proportion of cases are reportedly handled through conciliation as well. The Cambridge and Albany programs report that their hearings are held in informal settings (daycare centers, churches, community buildings, etc.). The average length of hearings reported are similar to those for composite programs and longer than those for justice system-based programs.

The number of hearing officers used per session in community-based programs is considerably larger than for either justice system-based or composite programs. The San Francisco and Redwood City programs have five hearing officers per session; the Fresno, New Haven, and Albuquerque programs have three, the Cambridge, Albany, and Darby programs have two. Only the Santa Monica program reports the use of a single mediator per session, and that program notes that it uses two mediators in special cases. The use of a large number of hearing officers per session enables community-based programs to project the image of collective problem-solving by the community and also allows for the training of a larger number of dispute resolution personnel.

Interestingly, the programs that continue to operate as community-based projects all report using three or five mediators, while those that are making or have made the transition to composite program approaches use one or two. Laypersons predominate in five of the nine programs. The Santa Monica program uses primarily lawyers, and the Albany program has

trained professional mediators. The remaining two programs (Fresno and Albuquerque) use a mixture of lawyers, laypersons, and ministers. Both programs are operated by the Christian Conciliation Service, and this sponsorship accounts for the mixture of types of mediators. The training of mediators in community-based programs (summarized in Table IC) tends to be roughly comparable to that for composite programs, but somewhat lower in the number of hours required prior to serving an apprenticeship. Seven of the nine composite programs do not provide any payments to the hearing officers, in stark contrast to the practices of the justice system and community-based programs which tend to provide at least minimal payments to mediators.

Conclusion

A number of types of techniques are used by community dispute resolution programs to resolve conflicts. This chapter reviews the characteristics of the three major types of approaches used: conciliation, mediation, and arbitration. A detailed example of one mediation hearing is provided to illustrate the complex variety of issues that can arise in a common, everyday dispute. The chapter also discusses variations in hearing officer characteristics and in the dispute settlement procedures used by the 29 surveyed programs. The different types of community dispute resolution programs vary systematically on a number of dimensions. For example, the community-based programs tend to report longer hearing lengths than justice system-based programs and also have more hearing officers per session. These procedural differences reflect philosophical differences across programs.

Footnotes

1. This research has been conducted by Professor Dean Pruitt of the Department of Psychology of the State University of New York at Buffalo and has not as yet been published.

FOUR

Program Structures, Intake Procedures, and Caseloads

Community dispute resolution programs have been designed to meet a variety of objectives, and programs have evolved highly distinctive structures and procedures to meet these objectives. This chapter addresses the following questions:

- What types of program structures and organization have evolved?
- How do case intake procedures vary across programs, and what role does coercion play in encouraging disputants to participate in the program's services?
- How do program caseloads vary?

The discussion highlights major differences that occur among the three major types of programs, justice system-based, community-based, and composite programs, on the dimensions under consideration in this chapter.

Program Structure and Organization

Dispute settlement programs vary considerably in their structure and organization. The projects included in our survey typify the range of variations in program organization. Appendix A presents tables summarizing the structure and organization of the 29 programs contacted as part of this study.

The separate Appendix tables present information on justice system-based (Table 2A), composite (Table 2B), and community-based programs (Table 2C), respectively.

Justice System-Based Programs. The selected justice system-based programs vary considerably in dates of establishment, and the programs began operations in the following years: the Columbus program was begun in 1971; Cincinnati, Los Angeles, Dorchester, Fort Lauderdale, and Trenton from 1974 to 1976; Portland and Louisville in 1978 and 1979, and Waterbury, Cleveland, and Norman from 1981-82.

Program sponsors include the courts (Fort Lauderdale, Louisville, Dorchester, Trenton), prosecutors' offices (Los Angeles, Cincinnati, Columbus, and Norman), and closely-related branches of government (Waterbury, Cleveland, and Portland). Staff sizes vary greatly depending upon the program's caseload and related factors. The smallest program in the sample was the Trenton, New Jersey program, with only one full-time staff member and two full-time mediators. In comparison, the Los Angeles program has seven administrative staff personnel, counts the district attorney's 100 intake officers as part of the staff of the program, and has 12 staff mediators, all of whom work only part-time on mediation. The Columbus program has the largest pool of mediators with over 60 mediators supplemented by 12 human relations counselors.

The program budgets of justice-system based programs are difficult to estimate in some cases because mediation personnel also perform other functions for the sponsoring agency, such as probation work, case intake screening, and others. The least expensive program in our sample was the Trenton program, with a total annual budget of $35,000 paid for by the local county. In comparison, the Cincinnati program has the largest budget ($320,000), and the costs of the program are shared equally by the City of Cincinnati and the county in which the program is located.

Composite Programs. The nine composite programs sampled also range considerably in their dates of establishment; they vary as follows: Rochester, New York, Coram, and Atlanta began operations between 1973 and 1978; and Washington, D.C., Honolulu, Chapel Hill, Houston, and Dallas were implemented between 1979 and 1981. The range of dates of establishment of the composite programs is roughly equivalent to the justice system-based programs. The composite programs are all sponsored by private nonprofit corporations. In some cases, such as Atlanta, the corporation was developed explicitly for operation of the program. In other cases, programs have become attached to previously existing nonprofit organizations, such as The Institute for Mediation and Conflict Resolution in New York City.

The number of available mediators for the composite programs tend to be considerably larger than those of the justice system-based programs, with seven of the nine composite projects having larger mediator pools than any of the ll justice system-based programs. The projects also tend to have larger administrative staffs. Accurate comparison is difficult, however, because many of the justice system-based programs may obtain the services of agency personnel on a part-time basis and not have this assistance reflected in their overall staff figures.

The composite program budgets tend to be derived from a variety of sources, including city, county, and state funds, foundations, United Way support, and consulting fees obtained for training and other services. The budgets of the composite programs tend to exceed those of the justice system-based programs, again due in part to the need to pay for all their own support services and space rather than receiving substantial in-kind assistance. The Washington, D.C. program does receive considerable in-kind support from the courts and the U.S. Attorney's Office, including space, furniture, screening services, and supplies. These in-kind services are not included in the budget listed on Table 2B. Annual budgets of the composite programs range from $63,090 in Chapel Hill to $419,000 in New York City.

Community-based Programs. The nine sampled community-based projects are of more recent origin than the preceding programs, and their dates of establishment range from 1977 to 1980 for San Francisco, Albany, Darby, Pennsylvania, Santa Monica, and Cambridge; and from 1980 to 1982 for Albuquerque, New Haven, Fresno, and Redwood City.

The San Francisco Community Board Program is the original model upon which many of the later community-based programs have been based. As in the case of the composite programs, the community-based projects are sponsored by nonprofit corporations. Two of the projects included in the sample are sponsored by the Christian Legal Society, one is sponsored by a local bar association, and others are sponsored by agencies developed explicitly for the sponsorship of the program.

Except for San Francisco and Albuquerque, the community-based programs tend to have mediator pools that are considerably smaller than those of the composite programs. Staff sizes and budgets also tend to be relatively small in comparison to either the justice system-based or composite programs. Funding sources for the community-based programs are diverse and include foundations, the United Way, and limited governmental support. The Fresno and Albuquerque programs raise a significant proportion of their budgets from user's fees.

In summary, the three types of programs appear to vary considerably with regard to their organization and structure, based upon the data collected in the survey. The composite programs tend to have the largest budgets, the largest pools of mediators, and highly diverse sources of funding. The justice system-based programs, by definition, are funded primarily with government support; the community-based programs, in contrast, are primarily supported by foundations and other contributions.

Program Intake Sources

Project case referral sources differ considerably among the various dispute settlement projects. The evaluation of the Florida projects[1] noted earlier, which are justice-system based and composite programs, indicated that the police and prosecutor's office are the primary sources of referral for those projects with each contributing 31 percent of the caseload. The remaining 39 percent of the caseload is distributed over ten other case sources, with no single source contributing more than 7 percent of the cases. In descending order, these additional referred sources are: walk-ins, court clerk, legal aid, city hall, news media, consumer protection agency, judges, private attorneys, other governmental agencies, and a residual category labeled "other." This pattern of referral sources is common for many projects, but in certain jurisdictions one source produces the majority of referrals; e.g., bench (Boston), court clerk (Rochester), prosecutor (Jacksonville), and police (Orlando).

Project evaluations have indicated striking differences in case processing data as a function of case referral sources. For example, the Department of Justice Neighborhood Justice Center evaluation[2] indicates that referrals from judges are the most likely to result in hearings being held. The probability of a referral resulting in a hearing declines as referrals are made by the police, the prosecutor's office, legal aid, and others. Conversely, rates of the achievement of settlements at hearings were very similar across various referral sources for the five Florida programs. Cases referred by the prosecutor resulted in agreements in 84 percent of cases reaching hearings; judicial and police referred cases resulted in agreements in 83 percent of cases reaching hearings; the rates of agreement at hearing for legal aid, walk-in, and consumer protection agency referrals were 80 percent, 78 percent and 52 percent, respectively. This relatively slight variation in proportion of cases reaching agreement by referral source in the Florida programs is probably caused in part by variations in the types of cases sent by the different agencies. For example, the Florida evaluation notes that 91 percent of assault

cases result in some agreement once they have reached a hearing, in contrast to only 71 percent of consumer cases and 70 percent of landlord-tenant cases. The assault cases are likely to predominate in the prosecutor referrals, while civil cases predominate in legal aid, consumer protection agency, and other similar referral sources.

Intake Procedures and Their Impact

As was noted in the preceding section, cases are referred to projects from a variety of sources. Once a case is filed by a complainant, a letter is typically sent to the respondent in the case indicating the scheduling of a case hearing. The wording of such letters varies greatly across the diverse dispute processing projects. The letters can be arrayed on the dimension of level of "coercion" of respondents, from very low coercion to compulsory participation in the dispute processing forum. The following examples illustrate the range of variation:

(1) Very low coercion. Projects employing this approach tend to simply inform respondents of the availability of the dispute processing service and suggest that it may be useful for them to participate. This approach especially predominates in community-based projects. For example, the Venice/Mar Vista letter to respondents stated in part, "As intake worker and mediation coordinator, I know that there are two sides to every situation and, therefore, would appreciate your contacting me to discuss this situation from your point of view." An explicit effort is made in the letter to indicate the nonjudgmental nature of mediation, and project stationery is used.

(2) Moderate coercion. This approach is characterized by the use of letters that advise the respondents to attend the hearing; such advice is often represented in brief and official-appearing statements. For example, the Suffolk County (New York) Community Mediation center's letter to respondents has employed the following wording in part, "A review of this case indicates you are qualified to submit this matter to mediation. Therefore, you are advised to appear at the Community Mediation Center . . . for a private hearing on (date and time specified)." Such wording does not provide a threat for noncompliance but does make attendance at the hearing appear urgent and strongly advisable.

(3) Quite high coercion. Projects employing this approach explicitly state possible negative outcomes arising from nonattendance at hearings. Such projects are typically sponsored by justice system agencies and can presumably carry out the threats if they so desire. For example, referral letters from the Miami Citizen Dispute Settlement Program include the statement, "A hearing on the above complaint will be conducted at the above time and date.

Please present yourself promptly. Failure to appear may result in the filing of criminal charges based on the above complaint." The letter is on official court stationery and signed by the state attorney for the eleventh judicial circuit. Similarly, the Dorchester (Massachusetts) Urban Court Mediation Project employs similar wording and also highlights the negative aspects of court case processing, stating in part, "If you fail to appear, the complaint may issue, and this case will then be processed through the regular criminal court procedures with the consequent time, costs and possible penalties." The Rochester Community Dispute Services Project similarly highlights the negative aspects of non-attendance by stating, "failure to appear may result in a warrant being issued for your arrest." All of these form letters use the word "may" in discussing the potential negative repercussions of non-compliance with the request to attend a hearing. Detailed data are not available for the various jurisdictions noted above regarding the proportion of routine citizen complaints that actually result in charges being filed and court hearings. Some have suggested that only a small proportion of the minor dispute complaints brought to the prosecutor or the court actually result in formal court action; if this is true in jurisdictions employing letters threatening possible prosecution, then the threat may be an empty one in many cases.

(4)Very high coercion. Projects in this category indicate to respondents that the justice system will definitely proceed with prosecution if the respondent does not attend the scheduled mediation hearing. For example, the Citizen's Dispute Settlement Project of the Minneapolis City Attorney's Office mails a letter to respondents which states, "it was decided that rather than pursuing criminal prosecution we would offer you the alternative of participating in the Citizens Dispute Mediation Program. In return for your cooperation with the program we would agree to withhold prosecution of the incident. Please contact our office so we can discuss this matter further. If I have not heard from you by (date specified), we will proceed with prosecution." The letter is signed by an assistant city attorney. Similarly, in Chapel Hill, North Carolina, some of the project's cases are referred from the Office of the District Attorney for the Fifteenth B Judicial Circuit. In these instances a warrant is sworn out against the respondent by the complainant, but a letter is sent to the respondent offering the alternative of mediation at the Dispute Settlement Center. Projects employing "very high coercion" essentially offer respondents the opportunity to divert a case that has already been judged to be prosecutable. In the Minneapolis project, an assistant city attorney must find probable cause to proceed with prosecution before a case is accepted by the program and a letter sent to the respondent.

(5) Outright referral to the program. In a number of cities cases are referred to mediation from the bench when the judge feels the case is appropriate for a hearing. For example, in the Maine District Courts small

claims mediation program, judges refer cases to mediation at the time of docket call and often do not indicate the voluntary nature of the referral. McEwen and Maiman report that in a substantial percentage of cases, disputants state that they did not feel they had any choice but to go to the mediation session.[3] The mediation sessions are typically conducted in judges' chambers, empty courtrooms, and other rooms near the courtroom in the Maine program by non-lawyers employed by the court. In San Jose, California, small claims cases are initially referred by the court clerk to mediation. If a complainant persistently refuses the mediation option, the case will be scheduled for court hearing without mediation; very few complainants are aware that they have the option to refuse mediation, however, and simply obey the clerk's instructions. Respondents are subpoenaed to appear at the mediation session as they would be at a normal small claims court hearing; the mediators serve as referees, assisting the judge in the settlement of cases.

(6) Statutorily-based compulsory non-judicial processing. A limited number of jurisdictions, including Pennsylvania, Ohio, and New York have adopted compulsory arbitration of minor civil matters. In each jurisdiction arbitration is typically conducted by a panel of attorneys, and disputants have the right to a trial de novo. The results of such approaches are discussed in a report by the Judicial Council of California[4] and also in a recent Rand Corporation study.[5] The Rand study reports high levels of satisfaction with such arbitration. The National Institute for Dispute Resolution is encouraging the development of court-annexed arbitration nationwide.

The six levels of coercion discussed above indicate the major variations in pressure upon respondents to attend nonjudicial hearings, though many additional gradations of encouragement are possible. The selection of a specific level of approach to respondent coercion depends upon a variety of factors, including:

1. The aims of the specific program. Projects designed to attempt to relieve court caseload pressures tend to adopt quite high to very high levels of coercion. Community-based projects tend to avoid the impression of pressuring respondents to attend hearings.
2. Program sponsorship and affiliations. Clearly, the higher levels of coercion are only available to projects that are either sponsored by justice system agencies or tied sufficiently close to them to warrant their confidence in virtually compelling respondent attendance at mediation sessions.

3. Point of intervention in case processing. Some projects seek to obtain cases prior to the filing of any charges on the theory that "voluntary" settlements among the disputants are more likely when no formal court actions have yet commenced. Such projects note that high levels of coercion are antithetical to the spirit of mediation and may actually be counterproductive, reducing the probability of durable settlements. Rigorous data on this point are not available. Such projects have limited opportunities for strong coercion. Other projects assert that dispute settlement is most effectively achieved once a case has already entered the official court system. These projects seek then to divert cases to the alternative procedure. Relevant legal issues associated with the use of coercion are noted in a number of recent articles.[6]

In general, it appears that attendance at hearings does increase as coercion increases. For example, the three Department of Justice Neighborhood Justice Centers employed low to moderate levels of coercion and were not sponsored by justice system organizations. Only 35 percent of their cases proceeded to mediation hearings during the evaluation period. In comparison, the Florida State Supreme Court sponsored evaluation of five Florida dispute centers and reports that hearings were held in 56 percent of cases referred. The Florida projects tend to employ "quite high coercion" levels, informing disputants that charges may be brought if respondents fail to attend hearings, and these projects are sponsored by justice system agencies. The Minneapolis Citizen Dispute Settlement Project sponsored by the prosecutor employs "very high coercion" and reports that 90 percent of its cases result in mediation hearings.

The proportion of cases proceeding to hearings does not adequately measure the success of a project in resolving disputes. Projects do tend to have remarkably similar levels of achievements of written agreements at hearings. For example, the evaluation of the three Neighborhood Justice Centers indicates that 81 percent of cases having hearings result in written agreements; the Florida evaluation also reported that 81 percent of cases in the five projects studied result in agreements. But projects vary considerably on the proportion of agreements reached prior to hearings. Some projects devote considerable resources to attempts at telephone conciliation between the parties, while others invest few resources in the pre-hearing stage and rely upon the hearings for the attainment of agreements. The Florida evaluation reports that 8 percent of cases reach agreement prior to hearings for the five projects, while the Department of Justice Neighborhood Justice Center evaluation reports that 17 percent of cases reach agreement prior to hearings. The

combined hearing and prehearing agreements for the Florida projects results in 54 percent of cases being resolved in comparison to 45 percent of cases in Neighborhood Justice Centers (see Exhibit 4.1). The issue of the longevity of such agreements is addressed in the chapter five discussion of evaluation findings.

Exhibit 4.1

Case Processing Comparisons

	Neighborhood Justice Centers	Florida Projects
Proportion of referred cases in which hearings are held	35%	56%
Agreements reached as a proportion of hearings held	81%	81%
Agreements reached at hearings as a proportion of all referrals	28%	45%
Agreements reached prior to hearing as proportion of all referrals	17%	8%
Total agreements at and prior to hearings as a proportion of all referrals	45%	54%

The proportion of cases resulting in hearings varies dramatically depending upon referral sources. For example, the Neighborhood Justice Center evaluation reports that hearings were held in 82 percent of cases involving bench referrals, but only 20 percent of cases involving self-referrals. It should be noted, however, that only 2 percent of cases referred by the bench were resolved prior to hearing, but 22 percent of self-referred cases were resolved prior to hearing.

Projects need to determine their choice of intake procedures in light of the variety of factors discussed in this section and in light of their available options, given the character of their local justice system.

Tables 3A, B, and C in Appendix A present summaries of the intake procedures of the twenty-nine programs investigated in the telephone survey.

Programs vary considerably in referral sources, types of cases handled, and types of cases excluded. A number of other documents provide a detailed discussion of project intake procedures.[7]

Program Caseloads

The telephone survey also collected data on caseloads, dispute resolution rates, and the outcomes of long-term follow-up for the 29 surveyed projects. (See Appendix A Tables 4A, 4B, and 4C). In most cases, these data were not collected in empirical studies by independent evaluators, but rather were obtained from the projects' internal management information systems. As a result the data may have considerable limitations, and must be viewed with appropriate caution. Furthermore, in a number of projects data are not available regarding resolution rates and long term follow-up.

The three types of programs vary considerably in caseload size with the justice system-based projects tending to have the largest caseloads, the composite programs having an intermediate level, and the community-based projects having the lowest caseloads. This pattern of findings is to be expected. The justice system does not lack for cases in the typical American jurisdiction, and programs based in the justice system have the advantage of receiving cases in large numbers directly from case intake staff in the justice system agencies. Composite programs by definition collaborate closely with justice system agencies but are sponsored by organizations independent of the system. These programs also typically evolve strong referral linkages with local justice agencies and receive sizable caseloads. The community-based projects, on the other hand, often seek referrals directly from citizens or from non-justice system community agencies and groups. This has proven to be a formidable task, and a number of the community-based programs have modified their approach and sought closer ties to justice system agencies in order to receive adequate referrals for continued operation.

Conclusion

This chapter illustrates the considerable differences in program structures, intake procedures, and caseloads among justice system-based, community-based, and composite programs. Justice system-based programs are integrated into the caseflow of the justice system, tend to apply considerable pressure upon disputants to encourage their participation in program services, and have relatively large caseloads. Community-based programs, on the other hand, operate outside of the justice system and seek referrals from a diverse array of sources. These programs do not seek to pressure disputants with threats of potential court actions, but rather attempt

to persuade disputants to take part in program activities. The caseloads of such programs are relatively low. Ten years of experience with dispute resolution has consistently demonstrated the difficulty of receiving large numbers of cases from citizen self-referrals or from community agencies. Composite programs tend to have good working relationships with justice system referral agencies but also are independent of the system in operation. They have intermediate caseload sizes when compared to the other two types of programs.

Programs of all three types are similar in their predominant use of mediation rather than arbitration. The community-based programs use conciliation considerably in their initial contacts with disputants, and these meetings are typically at the disputant's home, in contrast to initial telephone or mail contacts by the other types of programs. All of the programs seek the common goal of resolving a diverse array of citizens' disputes through more informal and participatory means than is routinely available in court hearings.

Footnotes

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2. Cook, R., Roehl, J., and Sheppard, D. *Neighborhood Justice Centers Field Test: Final Evaluation Report.* Washington, D.C.: U.S. Government Printing Office, 1980.
3. McEwen, C., and Maiman, R. "Mediation in the Maine District Courts: An Empirical Study," *Maine Law Journal* (1981).
4. Judicial Council of California, *A Study of the Role of Arbitration in the Judicial Process.* Sacramento, CA: Judicial Council of California, 1973.
5. Hensler, D. "What We Know and Don't Know About Court-Administrated Arbitration," 69 *Judicature* 270 (1986)
6. For example, see McGinness, R., and Cinquegrana, R. "Legal Issues Arising in Mediation—The Boston Municipal Court Mediation Program," 67 *Massachusetts Law Review* 123 (1982); and Rice, P. "Legal Implications of the Mediation Arbitration Alternative to Conventional Criminal Adjudication," from *Alternatives to Litigation and Adjudication*, pp. 42-58, 1982.

7. McGillis, D., and Mullen, J. *Neighborhood Justice Centers: An Analysis of Potential Models*. Washington, D.C.: U.S. Government Printing Office, 1977; Cook, R., Roehl, J., and Sheppard, D. *Neighborhood Justice Centers Field Test: Final Evaluation Report*. Washington, D.C.: U.S. Government Printing Office, 1980; and Felstiner, W., and Williams, L. "Mediation as Alternative to Criminal Prosecution," 2 *Law and Human Behavior* 223 (1978).

Section II

Assessing the Impact of Community Dispute Resolution Programs

Community dispute resolution programs have a wide variety of goals, and Chapter 2 provided a summary of the major goals sought by programs. The three chapters in Section II assess the degree to which community dispute resolution programs have attained their goals. Specifically, Chapter 5 reviews the complex issues involved in assessing the quality of justice rendered by dispute resolution programs and summarizes major research findings in this area; Chapter 6 assesses the case processing efficiency and costs of such programs, and Chapter 7 examines the impacts of such mechanisms on access to justice. These chapters view the impact of dispute resolution mechanisms from varying perspectives. The treatment of the "quality of justice" focuses primarily upon criteria that are important to *individual disputant*—i.e., how satisfied are they with the processes and outcomes of dispute resolution efforts? The discussion of program case processing efficiency and costs focuses, for the most part, on *organizational issues*—how do programs function to achieve efficiency goals and how do they affect other organizations? The Chapter 7 discussion of impacts of programs on "access to justice" focuses on still another level of analysis, and explores from the perspective of the *overall society* how programs affect the level of access to justice. Needs for further research on dispute processing are also discussed at various points in the Section II assessment of program impacts.

FIVE

Assessing the Quality of Justice Provided by Programs

The concept of the "quality of justice" is an elusive one, and yet the goal of improving the quality of justice provided to disputants is a central animating force in the current American dispute resolution movement. Regardless of their individual philosophies, virtually all dispute resolution programs seek to improve the process of settling conflicts and provide a higher quality of justice for certain classes of disputes, such as those involving persons in ongoing relationships or simple commercial relationships. Especially in the case of mediation, the predominantly voluntary nature of the process combined with the absence of such characteristics of adjudication as rules of evidence, the use of attorneys as intermediaries, and the severe time limitations typical of lower court hearings are assumed to encourage a broad ranging discussion of the issues underlying the conflict. Agreements fashioned by the disputants themselves and reflecting the full range of issues in controversy are thought to result in more durable case settlements and greater disputant satisfaction.

Because community dispute resolution programs frequently assert that improved quality of justice is a central program goal, the assessment of program impacts on this goal is critical. To the extent that individual programs find it difficult to reduce court caseloads or costs, they will be increasingly

assessed in light of their capacity to offer an improved quality of justice. Funding decisions may turn on a program's ability to persuasively argue that, for the types of cases they handle, the outcomes for disputants are superior to those arising from court processing. This chapter explores ways of thinking about the "quality of justice" and then provides empirical evidence on the extent to which dispute resolution programs attain varying goals related to the "quality of justice."

Accordingly, the specific questions explored in this chapter include:

- what are the varying conceptions of the "quality of justice"?,
- how can "quality" be measured?, and
- what empirical evidence currently exists regarding the "quality of justice" rendered by dispute resolution programs?

Where possible, the relative quality of outcomes of alternative dispute resolution mechanisms and the courts are compared. Sufficient data are not available from existing research studies to systematically and rigorously compare separately the "quality of justice" outcomes of the three basic types of programs discussed earlier. The findings reported in this chapter are relevant to mediation and arbitration in general and to their relationship with formal adjudication. The bulk of studies of community dispute resolution programs have focused upon those programs offering mediation, and the research findings in this chapter focus predominantly upon mediation research findings.

Complexities Involved In Assessing the Quality of Justice

A wide variety of procedures have evolved to settle disputes and render "justice" to disputants, and earlier sections of this report have discussed some of the primary features of a number of common dispute settlement procedures such as conciliation, mediation, and arbitration. The task of assessing the relative "quality of justice" of differing dispute processing mechanisms is obviously a difficult one, and at a minimum requires some agreement on the major components of "quality."

One simple approach to the problem would be to argue that high quality justice is only possible when a given process is made available to disputants. In the United States, for example, one could argue that high quality justice requires at a minimum the provision of "due process" to disputants. Relevant procedures include speedy, public hearings before impartial dispute resolvers, the opportunity to be informed of the nature and cause of the accusation and to confront witnesses, and to have assistance of counsel. A person highly committed to the Anglo-American adversarial system of justice

might presumably assert that high quality justice is not possible without these provisions. Such an approach would put an end to the search for ways of defining the "quality of justice" by suggesting at the outset that only one set of processes can yield high quality justice. Such an assumption is highly dubious, and this approach is clearly inappropriate if one wants to compare without bias two disparate forms of dispute processing in terms of the quality of justice they render. Instead, one must abstract out those common aims sought by both community dispute resolution programs and adjudication as systems of dispute settlement and compare their achievements on these dimensions.

Four major elements of the "quality of justice" are commonly sought regardless of the type of procedure used:

1. *Precision* in surfacing relevant facts. Thibaut and Walker have explored this dimension in comparisons of the adversarial system of justice and the inquisitorial system common in Western Europe.[1]
2. *Consistency* so that relatively similar outcomes occur for similar cases. This concern is greater for adjudication where decisions are made than for mediation in which disputants fashion their own agreements. Mediators have limited options for constraining variability in outcomes, and only intervene when gross injustices appear likely to take place.
3. Disputant *satisfaction* with the process and outcomes, and beliefs that they are fair, and
4. *Compliance* by disputants with the judgments or settlements produced by the dispute processing approach.[2]

Numerous additional qualitative elements of justice exist including the understandability of the process, the adequacy of opportunities for participation by parties in the case, and the implications of dispute processing approaches for social justice.

The first two elements listed above, precision and consistency, have proven quite difficult to measure, and relatively little research has been conducted on them in the dispute resolution field. Little is known regarding the degree to which different dispute processing procedures surface the relevant facts. The Thibaut and Walker studies, and related research in that tradition, have documented the difficulties of assessing the precision of different processes.[3] Similar problems occur for the assessment of consistency, and increased concern for consistency in adjudication has surfaced in recent years with the development of various sentencing guideline schemes designed to constrain and structure discretion to improve the equity of case outcomes.

The elements of disputant satisfaction and compliance with agreements and judgments have been repeatedly assessed in research studies, and a number of studies have compared mediation and adjudication case processing on these dimensions. These available measures will be focused upon in this chapter as the primary indicators of quality of justice.

Finally, especially when assessing mediation, *dispute resolution rates* must be considered in addition to measuring satisfaction or compliance. Court cases that proceed to trial inevitably result in some sort of decision by the judge. In contrast, the voluntary nature of mediation results in only a portion of cases reaching any disposition. Prior to considering the quality of justice rendered by mediation agreements it is necessary to determine what proportion of cases in fact reach any agreement whatsoever.

In summary, three major types of data that are available from research studies will be reviewed to assess the comparative quality of justice of mediation programs and the courts: (1) dispute resolution rates, (2) disputant satisfaction with the process and outcomes and perceptions of their fairness, and (3) disputant compliance with settlements. Relevant measures and available data sources for each type of information will be discussed in turn.

Major Available Measures of the Quality of Justice

Dispute Resolution Rates

Dispute resolution rates are simply measures of the proportion of mediation program cases reaching agreement either before or after hearings. While most mediation programs take steps to gather such data, the available data are typically not detailed concerning the types of conflicts involved, the types of agreements reached, the disputants' views of the adequacy of the agreements, and similar issues.

Considerable variations exist in the probable reliability of such data, especially for data regarding case settlements prior to hearing. Complainants who have decided not to pursue their grievance to the point of a hearing for any of a number of reasons may inform the project that the matter is settled simply to stop the repeated contacts from the project. Project intake workers may also perceive that a problem is solved by "selectively hearing" the reasons given by the complainant for discontinuing the claim. In short, while project data on dispute resolution rates are the most commonly available measures, they are regrettably the most limited in value due to the probable disparity in definitions of terms and complexities of interpreting the data.

The simple achievement of an agreement at a hearing, while significant, can represent anything from a highly comprehensive and sensitive agreement reflecting an effort to solve the entire range of problems embedded in the dispute to an agreement by the parties regarding a marginal issue that may have some limited importance but leaves the vast bulk of the conflict unresolved. Some programs strongly advise their hearing officers not to settle at all costs and discourage the development of agreements on highly marginal issues solely for the sake of an agreement. Other mediation programs may subtly (and probably unintentionally) convey the message to hearing officers that one's agreement "batting-average" is important and may be a determinant of whether the hearing officers can continue to work with the project. Such pressures are inevitable in a world in which "successful" case statistics are a major determinant of the continued funding of a program. Virtually all programs point with pride to their accomplishments in settling a high proportion of cases at hearings.

Disputant Perceptions of the Process and Agreements

The second major class of data related to the quality of justice is data on disputant satisfaction with the fairness of the mediation process and outcomes. These data are typically collected in evaluations of dispute mediation programs, and are not generally available directly from most programs as was the case with the dispute resolution rates. Major measures of this type include disputant satisfaction with the overall program, the resolution process, the mediator, and the terms of the agreement, and disputant views of mediator and mediation process fairness. Some studies also provide information regarding the content of the agreements. Additional perceptual measures collected in some studies include assessments of the understandability of the mediation process, the degree of opportunity provided to disputants to tell their story, and the like.

A number of studies of dispute mediation resolution have gathered data on disputant perceptions of community dispute resolution programs.[4] In addition, some recent studies have assessed disputant perceptions of programs that handle relatively specialized caseloads including small claims mediation,[5] divorce mediation,[6] and child-parent dispute mediation.[7] The Law Foundation of New South Wales recently completed a detailed evaluation of the perceptions of disputants in three Australian Community Justice Centers.[8]

Ideally the perceptions of dispute resolution program disputants would be compared to those of persons having their cases handled by the courts in order to carefully assess the differences between the two forms of case processing, and the most rigorous approach to form such a comparison would be to have disputants randomly assigned to the two types of forums. Two

studies have used this approach; the Vera Institute of Justice study[9] of mediation in Brooklyn and Pearson's study of divorce mediation. An alternative, and less rigorous approach, would be to form a comparison court sample by matching existing cases on dimensions similar to those predominant in the mediation case sample. The Maine small claims study[10] used a less rigorous quasi-experimental design and compared mediation cases with court cases in courts not having mediation available.[11]

Measures of the Stability of Dispute Settlement Over Time

A number of studies have sought to determine the longevity of dispute resolution agreements. Relevant measures have included data from official records on recontacts by disputants with justice system agencies[12] and interviews with disputants regarding whether the dispute continued to be settled. Typical interview questions include whether the disputing parties have kept all the terms of the agreement, and whether there have been any additional problems with the other party. Many programs also inquire where disputants would go if a similar problem to the one that was mediated arose in the future. Such a measure provides some indication of the overall satisfaction of the disputants with the mediation program.

As in the case of the measures of disputant satisfaction, the available studies vary considerably in their use of rigorous comparison groups. The previously cited Vera Institute of Justice and Pearson studies provide random assignment experimental data comparing the stability of settlements. The other studies provide lesser degrees of rigor, and some studies only provide data on the durability of mediation settlements with no comparable court data to provide a baseline.

Dispute Resolution Rates

A number of evaluation studies have calculated the proportion of mediation hearings that result in agreements. Program rates of reaching agreements are quite similar and average 88 percent per program for twelve programs that have been evaluated.[13] The projects that provide arbitration in cases that do not reach a settlement have the highest dispute resolution rates because they impose settlements on virtually all cases where disputants cannot agree. These data do not provide any information on the quality of the agreements but only indicate if some agreement was reached (and typically written up and signed by the parties) prior to the end of the hearing.

Many projects tend to focus upon the proportion of cases resolved at hearings as a prime indicator of success and quality in case processing. The figures reported in the evaluations and independently by the projects are im-

pressive. But it is critical that these achievements be viewed in the context of the projects' overall caseloads, rather than simply in isolation. Considerable case attrition occurs in all projects prior to the time that hearings are scheduled, and typically only a fraction of cases proceed to hearings. For example, Exhibit 5-1 presents a summary of the total caseloads of five Florida dispute processing programs for the first six months of 1978. As can be seen from the Table, 93 percent of the Florida cases were scheduled for hearings, but only 49 percent of those cases actually proceeded to hearings. Factors causing this attrition included no-shows at hearings by complainants, respondents, or both, withdrawals of cases by complainants, and related causes. While 81 percent of the cases having hearings resulted in agreements, these cases reaching agreement made up only 43.8 percent of the total number of cases received due to the attrition in cases prior to the time of hearings.

The Florida researchers conducted a follow-up survey six to twelve months following the time of hearings in order to assess the degree to which conflicts were resolved. Complainants in Florida reported that total resolution of the dispute occurred in 52 percent of the cases having hearings, and either total or partial resolution occurred in 75 percent of cases having hearings. Adjusting estimates of overall levels of dispute resolution in light of these figures shows that 23 percent of the total number of cases received were fully resolved and 40 percent were either partially or fully resolved following processing by the program. The evaluators did not gather any data on those cases not proceeding to hearings to determine what percentage were resolved prior to hearings.

Similar data on overall caseload performance are available for the Atlanta, Kansas City, and Los Angeles Neighborhood Justice Centers.[14] These three programs held hearings in only 35 percent of all cases as compared to 54 percent of cases in the five Florida programs. The 82 percent rate of agreements reached at hearings is almost identical to the 81 percent Florida programs. The evaluators found that 17 percent of the programs' total caseloads were resolved before a hearing occurred, perhaps due to the Neighborhood Justice Centers efforts to contact disputants by telephone to attempt to arrange a settlement. Overall, the combination of cases resolved at hearings (29 percent of the programs' overall case intake) with cases resolved prior to hearings (17 percent of overall cases) results in an estimate that the three Neighborhood Justice Centers achieve case resolutions in approximately 45 percent of the cases reaching the Centers. The single largest source of case attrition for these programs is caused by respondent refusals to participate in hearings or the inability of the programs to locate respondents (1,297 cases fell in these two categories). Persons advancing the argument that mediation centers extend the reach of social control of the state may

Exhibit 5.1

Dispute Resolution Rates for Five Florida Mediation Programs

Disputes Received	2,448	
Hearing Scheduled	2,276	(93%)
Hearing Held	1,332	(55% of total received) (59% of hearings scheduled)
Agreement Reached	1,075	(49% of total received) (81% of hearings held)
Problem Fully Resolved (Complainants)*		(23% of total received) (52% of agreements)
Problem Partially or Fully Resolved* (Complainants)		(40% of total received) (75% of agreements)

*These data are based upon a follow-up survey of complainants 6-12 months after hearings were held; data from the survey of 290 complainants are extrapolated to the full sample.

Source: Bridenback, M. The Citizen Dispute Settlement Process in Florida; A Study of Five Programs. Tallahassee: Florida Supreme Court, 1979. (The case sample includes all cases processed by citizen dispute settlement projects in Broward, Dade, Duval, Orange, and Pinellas Counties during the first six months of 1978).

be interested in these data. Respondents appear to exercise their right to refuse participation quite readily; an additional group of disputants agree to participate in hearings and then become no-shows or cancel the hearing (623 cases in the sample). Such data are, of course, less heartening to persons seeking efficiency in case resolution or to persons who believe that program services are beneficial but can only help people if they participate.

Court and dispute resolution program case processing differ greatly and make direct comparisons between dispute resolution rates difficult. Both the courts and mediation projects experience considerable attrition of cases

between case filing and disposition. The justice system screens cases at a variety of levels. Court clerks and prosecutors routinely refuse the filing of court petitions in a wide variety of matters because they do not feel that the cases meet technical charging standards, the offenses are too minor to warrant court attention, the office has a policy of not handling the specific type of matter, and so forth. Additional attrition occurs at initial court hearings due to dismissals by judges or withdrawal of complaints by the complainant. Only a small proportion of initially filed cases proceed to trial in America's courts. During the screening process the justice system at times takes steps to settle the conflict by arranging for restitution by one party to the other, advising the parties to stay apart or leave the other party alone. These conciliatory or dispute settlement activities tend to be quite invisible; they are typically not formally recorded in the case file and simply occur informally and then result in the case being marked dismissed, *nolle pros*, adjourned contemplating dismissal, and similar designations. Judges at hearings often take steps to negotiate a settlement to both criminal and civil matters,[15] and additional case dismissals following hearings may result from some mediation efforts. In short, the majority of cases in the typical urban court never reach a hearing. Once they do the judge is empowered to impose a judgment on the matter resulting in 100 percent of cases that are adjudicated having dispositions, by definition.

Community dispute resolution programs also experience a high rate of attrition. These programs cannot impose a settlement if they use reduction and this has resulted in the development of resolution rate statistics as a means of assessing program achievements at hearings. This apples and oranges nature of the comparison between mediation and courts on the global issues of case attrition, proportion of cases going to hearings, and power to impose a judgment at hearings make it difficult to compare the statistics on case resolution rates with any precision. More information is needed regarding the proportion of cases arriving at the courts that result in a settlement satisfactory to the disputants at whatever stage of processing.

Disputant Perceptions of the Process and Agreements

A number of studies have sought to measure the views of disputants regarding mediation case processing, and some of these studies have compared these perceptions to control or comparison groups of persons having their cases handled by the courts. This section provides a summary of such data and focuses on measures of satisfaction with the process and hearing officers, perceptions of the fairness of the process, and satisfaction with the terms of the agreements/settlements reached.

Satisfaction with the Process and Hearing Officers

A number of researchers have conducted surveys to measure disputant satisfaction with the mediation process and hearing officers. For example, the study of the Atlanta, Kansas City, and Los Angeles Neighborhood Justice Centers[16] found that 88 percent of complainants and respondents reported satisfaction with their overall experience at the justice center. Eighty-four percent of complainants and 89 percent of respondents stated that they were satisfied with the mediation process; 88 percent of both groups stated that they were satisfied with their mediator. Similar rates of satisfaction were also observed by other projects. For example, Merry and Rocheleau in their study of the Children's Hearing Project in Cambridge, Massachusetts, a project that mediates between parents and their children, report that 90 percent of disputants indicated that they felt the mediation process was good.[17]

Cook, et al. also collected data on a sample of 66 court cases in Atlanta and Kansas City in order to assess the satisfaction of persons having their cases handled in court. The cases were selected to be similar to those processed by the mediation centers in those cities. Conclusions based on a comparison of the two studies should be qualified, however, as questions posed to the court case participants differed significantly from those given to mediation participants. But the data do seem to suggest greater satisfaction on the part of mediation disputants. While well over 80 percent of disputants indicated they were satisfied with the mediation process and overall experience at the mediation centers, only 33 percent of court case participants in the Kansas City sample stated that their case was handled well by the court (10 percent said average, and 57 percent said case handling was poor). In Atlanta, 42 percent rated their court case as having been "handled well," 28 percent "average," and 30 percent "poor." Similarly, while 88 percent of mediation disputants said they were satisfied with their mediator, only 64 percent of Kansas City and Atlanta court case disputants said that they were satisfied with their judge. While these data suggest that disputants may favor mediation, these conclusions must be qualified by the limits of the study, namely, the court case sample was small, the study involved matching cases rather than random assignment, and the studies used different survey instruments.

Two studies have used random assignment of cases to compare disputant perceptions of mediation and adjudication.[18] Davis et al's study of a mediation program in Brooklyn compared a sample of 160 mediated criminal cases with 119 control cases. Seventy-three percent of complainants in mediated cases stated that they were satisfied with their case outcome compared to 54 percent of complainants having their case handled in court, and this difference is statistically significant. The comparable comparison for

defendants was 79 percent for mediation vs. 59 percent for court cases. The study also investigated perceptions of the process by asking disputants if they felt their story was heard by the judge or mediator. Ninety percent of defendants stated that their story was heard in mediation compared to only 44 percent in court cases; 94 percent of mediation complainants said that their story was heard compared to 65 percent of control group court complainants.

Pearson's 1982 study of divorce mediation in Denver similarly provides a favorable view of mediation when compared to court case processing in terms of participant satisfaction. Though the Denver Custody Mediation Project specializes in divorce matters involving custody and differs significantly from general dispute mediation centers in its type of caseload, the process of mediation used to serve clients is very similar to that in community dispute resolution programs. Pearson conducted follow-up interviews shortly after mediation sessions and 6-12 months following the sessions and found that satisfaction with mediation was considerably higher than satisfaction with court case processing at both points in time. Ninety-eight percent of disputants having successful mediations and 57 percent having unsuccessful mediations indicated that they were satisfied with the mediation process when questioned in the second follow-up period. In comparison only 36 percent of disputants in the control group reported satisfaction with the court process. Since divorce mediation disputants also must have contacts with the court to complete divorce processing, data were also collected regarding their views of the court. Only thirty-eight percent of persons having successful mediations and 36 percent of those with unsuccessful mediations were satisfied with the court process. These findings mirror those of the Brooklyn study of criminal case processing.

McEwen and Maiman's study of small claims mediation in Maine compared findings regarding mediation case processing with data from a comparison sample of court cases that were processed in courts not having mediation services.[19] Fifty-seven percent of mediation participants stated they had the opportunity to explore other issues than the immediate complaint compared to 18 percent of disputants having their case processed through the courts. Eighty-one percent of mediation clients felt that the mediator completely or mostly understood what the dispute was all about compared to 71 percent of adjudication participants. (This finding is reminiscent of the Brooklyn data regarding whether disputants' stories were heard.) Seventy-nine percent of mediation participants indicated that they understood everything that was going on compared to 65 percent of persons having their case processed by the courts. Sixty-seven percent of mediation participants stated that they were completely or mostly satisfied with their overall experience compared to 54 percent of court case participants. These differences

are not as striking as some of the preceding findings but are similar in direction.

McEwen & Maiman reported that when one focuses upon those cases most likely to benefit from mediation, such as those arising out of continuing commercial or personal relationships, other differences between mediation and adjudication become larger. While 80 percent of mediation participants in ongoing relationships report that they are mostly or completely satisfied with the overall experience, 65 percent of those mediation parties having a one-time interaction or who terminated their relationship around the time of the dispute were completely or mostly satisfied. While the typical dispute mediation center discussed in this report tends to handle primarily matters among persons with ongoing relationships, the Maine study demonstrates a more favorable attitude toward mediation than court case processing even among persons who do not have ongoing relationships. This finding was not anticipated by some observers who felt that the only reasonable area of application for mediation was in disputes involving persons in continuing relationships.

The satisfaction levels reported in the above studies are similar to those in numerous studies of mediation that do not include court processing comparison groups.[20] Overall, empirical studies of mediation programs have consistently shown high levels of disputant satisfaction with the hearing process and hearing officers. The findings emerge from programs that differ considerably, and the pattern of results seems robust. When compared to court case processing, disputants appear to consistently view mediation more favorably than adjudication.

Perceptions of Fairness of the Process

As was noted previously, the quality of justice can be measured in a wide variety of ways. One approach is to define quality in terms of the provision of minimal "due process" procedural elements thought to lead to just decision making. Another approach is to consider the justice of the outcomes of a process. These outcomes can presumably be viewed from a variety of perspectives including those of the parties to the dispute, people who deal directly with the parties, and the society at large. Needless to say, it can be very difficult to develop a metric to assess the quality of justice of specific outcomes, especially when considerations of collective justice are entered into the equation of measurement.

In any event, it seems quite clear that if any process claims to render a high quality of justice, the disputants whose cases are handled by the process should view the process as fair. Presumably, esoteric examples could be

generated in which disputants consistently view a process as unfair and yet certain outside observers are moved to label the process as rendering a high quality of justice. Outside of the compass of such examples, however, it seems safe to stipulate that there is something seriously wrong with a justice system process that is not viewed as fair by parties processed through it. It is also likely that when such processes lack legitimacy in the eyes of disputants, compliance with their decisions will be marginal at best.

A number of studies have sought to assess disputants' perceptions of the fairness of mediation hearings and mediators; some of these studies have compared mediation to the courts. Davis et al's study of the Brooklyn mediation center surveyed both complainants and defendants to inquire whether they perceived the judges or mediators to be fair and whether they perceived their case outcome to be fair. While both groups generally felt that the judge or mediator was fair, differences in perceptions of the fairness of case outcomes are quite striking when mediation and court clients are compared. Seventy-seven percent of complainants and seventy-nine percent of defendants in the mediation sample perceived the case outcome as fair compared to 56 percent of complainants and 59 percent of defendants in the court sample. Overall, the portion of dispute resolution program participants who found the outcomes fair was significantly greater than the portion of court participants who were asked the same question. If a central goal of the justice system is to deliver "justice" (as perceived by its clients), then these findings are important.

McEwen and Maiman's Maine small claims mediation study[21] also collected data regarding perceptions of fairness and found that mediation participants viewed their settlements as fair somewhat more often than did court case clients (67% vs. 59%). They further analyzed the data on perceptions of fairness for various categories of cases, defined by the percentage of the original claim awarded in the settlement or judgment. As might be expected, few of those plaintiffs or defendants who lost at trial perceived the judgment to be fair while almost all of those who won viewed the judgment as fair. In contrast, 54 percent of plaintiffs receiving no money after mediation considered the settlement to be fair and 67 percent of defendants who agreed to pay nearly the full amount of the claim considered the outcome to be fair. In another analysis, McEwen and Maiman found that "in mediation it was almost twice as likely as in adjudication that both parties viewed the outcome as fair." In 44 percent of the cases both parties view the outcome as fair following mediation; in comparison 24 percent of the adjudicated cases resulted in both parties viewing the case outcome as fair.

A number of additional studies have assessed disputant perceptions of fairness of mediation but have not compared the data to a court sample of

cases. These studies consistently find high rates of perceptions of fairness. For example, Merry and Rocheleau's study of the Children's Hearing Project of Cambridge, Massachusetts found that 95 percent of parents and 84 percent of children studied in the research viewed the agreements as fair.[22]

In summary, disputants are found in research studies to consistently view the mediation process as fair. Research by Davis et al, comparing mediation and court case processing, shows significant differences between the perceived fairness of mediation and court case outcomes for disputants in the program studied. As in the case of the research on disputant satisfaction with the mediation process, the research on perceived fairness is very favorable to mediation programs.

Satisfaction with the Terms of the Agreement

A number of the research studies dealing with mediation have collected information on the satisfaction of disputants with the terms of the agreement reached. The Institute for Social Analysis study of Neighborhood Justice Center programs in Atlanta, Kansas City, and Los Angeles reported 80 percent of complainants and 83 percent of respondents indicated that they were satisfied with the terms of their agreement. The Davis et al study did not ask disputants directly about the terms of their agreement; however, when asked about their satisfaction with the case outcome, 73 percent of complainants and 77 percent of defendants in the mediation sample indicated satisfaction with the outcome compared to 54 percent of complainants and 67 percent of defendants in the court sample.[23] The Australian study of three community dispute centers[24] reported that 65 percent of disputants at centers indicated that they were very satisfied and 23 percent indicated that they were partly satisfied with the terms of the agreement.

Davis, Tichane, and Grayson have studied the provisions included in mediation agreements at the Brooklyn program. Knowledge of the content of agreements does not present evidence regarding the quality of those agreements and the degree to which they meet the needs of disputants. It is informative, however, to review the primary provisions of agreements to be aware of the types of obligations being incurred by the disputants. The most common provision was the ending of harassment, and 95 percent of agreements included such a provision. Thirty-six percent of agreements placed behavioral restrictions on one or both of the parties to the dispute. Thirty-five percent of agreements stated that parties would use structured methods for handling future problems such as calm discussion or taking the matter to court. Twenty-four percent of agreements included limitations on interaction between the parties including provisions that the defendant or complainant stay away from the other party's place of residence or work. The Brooklyn

program studied by Davis et al dealt with serious criminal offenses between acquaintances and the pattern of agreement provisions reflects the primarily criminal nature of the program's caseload.[25] The Florida programs studied by Bridenback handle mixed caseloads of criminal and civil matters, and the provisions of the mediation agreements reflect this greater diversity.[26] Provisions of agreements that dealt with respondents included disengagement of contacts between the parties (26%), alteration of past behavior (24%), payment/return of money/property (18%), control of animals (6%), development of a cooperative relationship (5%), repair/service of property (4%), domestic/child welfare (3%), maintenance of property (3%), attend designated program (2%), no obligation designated (2%), and other (8%).

Overall, although only limited data are available, the available research suggests that disputants are quite satisfied with the terms of mediated agreements.

The Stability of Dispute Settlement Over Time

All community dispute resolution programs seek to develop case resolutions that will be durable over time and will result in settlement of the matter. Research studies have assessed the stability of dispute settlement in a variety of ways including searches of official records to determine recontacts of disputants with the justice system and surveys of disputants regarding whether the dispute is settled. Some studies provide comparative data from a sample of disputants handled by the court; others do not. The varying measures of long-term settlement over time each have strengths and shortcomings. For example, the use of official arrest records only surfaces those incidents that come to the attention of the police. Obviously, an agreement could break down, and serious conflicts could occur between disputants without an arrest being made. Similarly, self-report data can have shortcomings due to hesitancy on the part of disputants to be candid. Major research findings regarding the stability of dispute settlement are presented in this section.

The Cook et al study of Neighborhood Justice Centers in three cities used follow-up interviews of disputants six months after case hearings to determine whether cases were settled. The majority of both complainants and respondents stated that they had kept all of the terms of the agreement, with a smaller number indicating that they had kept the terms partially. When disputants were asked whether the other party had kept all of the terms of the agreement, over two-thirds of both complainants and respondents indicated that the other party had kept all of the terms of the agreement. Only 28 percent of complainants and 22 percent of respondents indicated that they had experienced more problems with the other party.

A Davis et al study of the Brooklyn mediation program collected comparable data from a control group of court cases using an experimental design. The researchers found that 19 percent of mediation complainants reported problems with the defendant compared to 28 percent of court case complainants. This difference favors mediation but is not statistically significant. The authors found, however, that 62 percent of complainants perceived that defendant behavior had improved following mediation, while only 40 percent of court complainants perceived an improvement in defendant behavior. The defendants reported that complainants' behavior improved in 63 percent of mediation cases and 61 percent of court cases. The frequency of criminal justice system intervention with the disputants during the follow-up period was virtually identical for both mediation and court case disputants. The police were called in 12 percent of mediation cases and 13 percent of court cases, and one of the parties was arrested for a crime against the other in 4 percent of both mediation and court cases. This lack of a difference may in part reflect a floor effect among the sample of cases. The percentages are quite low for both the court and mediation and may indicate a virtually irreducible level of conflict likely to emerge particularly in the serious crime cases handled by the Brooklyn program.

The Brooklyn study also included a number of attitudinal measures that indicate benefits to complainants deriving from mediation. The researchers asked mediation and court complainants how much they feared revenge from the defendant and how angry they were with the defendant. They found that, in each case, roughly twice as many court case complainants experience the negative emotion of fear of revenge or anger than do the mediation complainants. The mediation hearings were also found to result in increased understanding of the defendant's motive by the complainants. Such outcomes are significant; reduced fear and anger can presumably greatly affect the quality of life of disputants.

Pearson's 1982 study of divorce mediation provides information regarding the compliance of spouses with the terms of agreement relating to children and to financial matters. The research found that only 6 percent of parties having successful mediations report serious disagreements arising regarding their settlement compared to 34 percent of parties in court cases. In general, relationships following successful mediation were found to be far better than those following court processing. It is unclear however, whether this is due to the existing predispositions of the parties since long-term follow-up shows that perceptions of relationships following unsuccessful mediation are as bad or worse than following court handling of cases.

The Maine small claims court mediation study provides striking findings of improved compliance following mediation for the minor monetary matters handled by the program. The relevant data are presented in Exhibit 5-2. They report that 71 percent of mediated cases result in payment in full by defendants compared to only 34 percent of court judgments resulting in payment in full. Interestingly, 53 percent of defendants in cases that are mediated but do not reach an agreement pay their court judgments in full. This finding suggests the possibility of a latent positive effect of mediation in small claims cases even when the mediation session does not successfully result in an agreement. (Sixteen point five percent of mediation defendants pay their settlement in part and 13 percent fail to make payment in contrast to 21 percent of court defendants paying in part and 45 percent failing to make any payment). One possible explanation for these findings is the great

Exhibit 5.2

Percentages of Defendants Paying Settlement in Maine Small Claims Cases

	Mediated Cases	Adjudicated Cases	Unsuccessfully Mediated Cases
Paid in Full	70.6	33.8	52.8
Paid in Part	16.5	21.1	13.9
No Payment	12.8	45.1	33.3
	(n = 109)	(n = 139)	(n = 36)

Source: McEwen and Maiman, Small Claims Mediation in Maine: An Empirical Assessment, *Maine Law Journal.*

differences among mediation and adjudication defendants in their views of their obligation to pay. While more than two-thirds of mediation defendants reported some or a strong legal (and moral) obligation to pay, less than one-third of court defendants felt the same way. The researchers argue that the act of entering into an agreement fashioned by the parties themselves leads to this greater sense of obligation. The finding is a fascinating one; in theory, a robed judge making a court judgment is the high water mark of legal obligations in our society and yet only a minority of defendants in the Maine sample feel that such a judgment incurs in them a legal obligation. The defendants

in these cases often do not feel that the judgment is fair and reflective of a full airing of their case and hence do not accord the judgments with the legal legitimacy expected of them by society.

A number of additional factors may contribute in part to the greater likelihood of compliance following mediation, including the fact that mediation led to dollar settlements that were somewhat lower than court judgments. In addition, some level of self-selection by parties into mediation was possible. Both issues are discussed by McEwen and Maiman and are unlikely to account for more than a portion of the difference between the outcomes of mediation and adjudication in Maine. An interesting aspect of the Maine findings is that the Maine researchers found greater differences in compliance following mediation than they did in the attitudes of the parties; most of the preceding studies found substantial differences in the perceptions of mediation and court disputants but smaller differences in compliance. One factor influencing this difference is that the Maine study dealt with minor civil matters which could be settled with a single act, payment of money, rather than by complex behavioral changes among disputants. The payment of money is a highly unambiguous task compared to stopping harassment of another party, and the obligation may be more strongly felt to meet this "easier" responsibility.

A number of additional studies have collected data on the long term stability of mediation agreements but have not provided court comparison data. Merry and Rocheleau's findings regarding the long-term impact of mediation hearings at the Cambridge Children's Hearing Project are particularly intriguing.[27] The study found that over one-half (54%) of family members felt that they had changed the way they handle conflict following participation in the mediation session. Seventy percent of family members reported less arguing and fighting after mediation when initially contacted by the researchers, and nine months after the hearing, two-thirds still reported that arguing and fighting had diminished. Only approximately 20 percent of disputants could attribute the improved conditions to a specific agreement term. These findings suggest a striking impact of the mediation session upon the subsequent behavior of the disputants. One possible factor leading to improved relations is the finding that 59 percent of the disputants reported that they better understood the other person's point of view following mediation.

Evidence regarding the long-term impact of mediation tends to be very favorable. Disputants often appear to improve their understanding of one another, experience reduced anger, and improved relationships following mediation. It is risky to be excessively glib regarding the long-term impact of dispute resolution programs, however, in light of the relatively small

amount of research that has been conducted on the topic. The dispute resolution field could greatly benefit from efforts to replicate the types of studies reported in this section on the stability of dispute settlement over time.

Conclusion

Review of the growing body of research findings leads to the conclusion that dispute resolution programs are often superior to adjudication for the types of matters handled by these programs. This is particularly true if one measures superiority in terms of disputant perceptions of the process and agreements, perceived fairness, and related perceptions. Data regarding the stability of settlements over time favors mediation, but is more equivocal. Detailed information is not available regarding the relative precision of mediation and adjudication in ascertaining the facts of a case, the relative consistency of outcomes across cases (both of these measures may have limited relevance to mediation), or the full implications of the processes for collective justice. Much more research of the sort reviewed in this chapter is needed, however, before we can confidently assess the advantages and disadvantages of alternative dispute resolution mechanisms. Many studies have dealt with newly developed programs, and it is particularly important to assess the processes and outcomes of mature, institutionalized dispute resolution programs. Such programs may demonstrate outcomes that are even more favorable than those presented here due to their greater experience, but it is also possible that bureaucratization, large caseloads, and related factors may lead to a reduction in the quality of case processing over time. The field is still relatively young, and the early reports on the quality of justice rendered by dispute resolution programs are quite favorable.

Footnotes

1. Thibaut, J., and Walker, R. *Procedural Justice.* New York: Wiley, 1975.
2. Fuller has explored the basic elements of justice in detail in a number of articles. For example, see: Fuller, L. "Mediation—Its Forms and Functions," 44 *Southern California Law Review* 305 (1971); and Fuller, L. "The Forms and Limits of Adjudication," 92 *Harvard Law Review* 353 (1979).
3. Thibaut, J., and Walker, R. *Procedural Justice.* New York: Wiley, 1975.

4. For example, a Florida Supreme Court sponsored study of five dispute settlement centers; a National Institute of Justice study of Neighborhood Justice Center programs in Atlanta, Kansas City, and Los Angeles; a Vera Institute of Justice study of mediation in Brooklyn; a study of the Dorchester (Mass.) mediation program by researchers at the University of Southern California; and a study of a Minneapolis mediation center by a local evaluation organization.

5. McEwen, C., and Maiman, R. "Mediation in the Maine District Courts: An Empirical Study," *Maine Law Journal* (1981).

6. Pearson, J. "Evaluation of Alternatives to Court Adjudication." 7 *Justice System Journal* (1982).

7. Merry, S., and Rocheleau, A. *Mediation in Families: A Study of the Children's Hearing Project.* Cambridge, Mass.: Children's Hearing Project, 1985.

8. Schwartzkoff, R., and Morgan, T. *Final Report of the Evaluation of Three Experimental Community Justice Centres. Sydney: Law Foundation of New South Wales, 1982.*

9. Davis, R., Tichane, M., and Grayson, D. *Mediation and Arbitration as Alternatives to Criminal Prosecution in Felony Arrest Cases: An Evaluation of the Brooklyn Dispute Resolution Center (First year).* New York: Vera Institute of Justice, 1980.

10. McEwen, C., and Maiman, R. "Mediation in the Maine District Courts: An Empirical Study," *Maine Law Journal* (1981).

11. The study of the Atlanta, Kansas City, and Los Angeles programs (Cook, Roehl, and Sheppard, 1980) provides limited information comparing mediation and court case processing in Atlanta and Kansas City, but the questions used in surveying the two samples differed, making comparisons difficult. Other studies have measured perceptions of program clients, but have not collected data from a comparison sample of court cases (e.g., Felstiner and Williams, 1980; Merry, 1982; and Schwartzkoff and Morgan, 1982).

12. Davis, R., Tichane, M., and Grayson, D. *Mediation and Arbitration as Alternatives to Criminal Prosecution in Felony Arrest Cases: An Evaluation of the Brooklyn Dispute Resolution Center (First year).* New York: Vera Institute of Justice, 1980; and Felstiner, W. and Williams, L. "Mediation as an Alternative to Criminal Prosecution," 2 *Law and Human Behavior* 223 (1978).

13. Cook, R., Roehl, J., and Sheppard, D. *Neighborhood Justice Centers Field Test: Final Evaluation Report.* Washington, D.C.: U.S. Government Printing Office, 1980, for Atlanta, Kansas City, and Venice/Mar Vista; Birdenback, M. *The Citizen Dispute Settlement Process in Florida: A Study of Five Programs,* Tallahassee: Florida Supreme Court, Office of the State Courts Administrator, 1979, for Broward, Dade, Duval, Orange and Pinellas Counties; Felstiner, W., and Williams, L. "Mediation as an Alternative to Criminal Prosecution," 2 *Law and Human Behavior* 223 (1978), for Dorchester; Davis, R., Tichane, M., and Grayson, D. *Mediation and Arbitration as Alternatives to Criminal Prosecution in Felony Arrest Cases: An Evaluation of the Brooklyn Dispute Resolution Center (First year),* New York: Vera Institute of Justice, 1980, for Brooklyn; Palenski (1980) for Suffolk County; and Anno and Hoff (1978) for Philadelphia.

14. Cook, Roehl, and Sheppard. "Neighborhood Justice Centers Field Test: Final Evaluation Report." Washington, D.C.: U.S. Government Printing Office, 1980 reports the following findings:

Dispute Resolution Rates of Programs in Atlanta, Kansas City, and Los Angeles.

Disputes Received	3,947
Hearing Scheduled	2,000 (50.6%)*
Hearing Held (68.8% of hearings scheduled)	1,377 (34.9% of total received)
Agreement Reached (81.8% of hearings held)	1,127 (28.6% of total received)
Resolved Prior to Hearing	650 (16.5% of total received)
Total Number of Cases Resolved	1,777 (45.0% of total received)

*623 cases were scheduled for hearings but did not result in hearings due to no-shows on the part of disputants or withdrawal of complaints by complainants.

1,297 cases were not scheduled for hearings due to respondent refusals to participate in the program or due to the inability of the mediation center to locate the respondent.

15. Buckle, S., and Buckle, L. *Bargaining for Justice.* New York: Praeger 1977.

16. Cook, R., Roehl, J., and Sheppard, D. *Neighborhood Justice Centers Field Test: Final Evaluation Report*. Washington, D.C.: U.S. Government Printing Office, 1980.

17. Merry, S., and Rocheleau, A. *Mediation in Families: A Study of the Children's Hearing Project*. Cambridge, Mass.: Children's Hearing Project, 1985.

18. Davis, et al's (1980) study of the Brooklyn mediation program and Pearson's (1982) study of divorce mediation in Denver.

19. McEwen, C., and Maiman, R. "Mediation in the Maine District Courts: An Empirical Study," *Maine Law Journal* (1981).

20. For example, Felstiner and Williams (1980) study of the Dorchester mediation center indicates that 78 percent of disputants having cases mediated stated that they were glad that they had tried mediation, and 70 percent stated that they felt they had had the opportunity to air their complaints.

21. McEwen, C., and Maiman, R. "Mediation in the Maine District Courts: An Empirical Study," *Maine Law Journal* (1981).

22. Merry, S., and Rocheleau, A. *Mediation in Families: A Study of the Children's Hearing Project*. Cambridge, Mass.: Children's Hearing Project, 1985.

23. Davis, R., Tichane, M., and Grayson, D. *Mediation and Arbitration as Alternatives to Criminal Prosecution in Felony Arrest Cases: An Evaluation of the Brooklyn Dispute Resolution Center (First year)*. New York: Vera Institute of Justice, 1980.

24. Schwartzkoff, R., and Morgan, T. *Final Report of the Evaluation of Three Experimental Community Justice Centres*. Sydney: Law Foundation of New South Wales, 1982.

25. Davis, R., Tichane, M., and Grayson, D. *Mediation and Arbitration as Alternatives to Criminal Prosecution in Felony Arrest Cases: An Evaluation of the Brooklyn Dispute Resolution Center (First year)*. New York: Vera Institute of Justice, 1980.

26. Bridenback, M. *The Citizen Dispute Settlement Process in Florida: A Study of Five Programs*. Tallahassee: Florida Supreme Court, Office of the State Courts Administrator, 1979.

27. Merry S., and Rocheleau, A. *Mediation in Families: A Study of the Children's Hearing Project*. Cambridge, Mass.: Children's Hearing Project, 1985.

SIX

Assessing Program Impacts on Case Processing Efficiency and Costs

Many community dispute resolution programs have been developed, in part, to provide relief to what is perceived as an overburdened court system. Numerous justice system-based programs and some composite programs have argued that community dispute resolution efforts have the potential to remove those cases from the court docket that are inappropriate and assign them to a more appropriate forum for processing. In contrast, community-based programs generally do not assert that they will have a marked impact upon justice system efficiency.

Three separate justice system-related goals have often been asserted by program planners: (1) increased speed of case processing when compared to the court handling of cases; (2) reduced justice system caseloads due to the referral of substantial numbers of cases to alternative forums; and (3) associated reduced costs arising from the reduced caseloads. Substantial difficulties have been encountered in reducing either court caseloads or costs, and many recent program developers have downplayed or totally dropped these goals.

This chapter addresses the following questions:

- What have been the accomplishments of community dispute resolution programs with regard to case processing time?
- What has been the impact of programs on court caseloads?

- How have programs affected justice system costs?
- What are the major sources of project funds, and what are the typical budgets of projects and trends in their size?

Case Processing Time

A number of studies indicate that community dispute resolution programs do process cases rapidly. For example, the Florida Supreme Court-sponsored evaluation of five projects indicated that for a sample of 1,320 cases that proceeded to a hearing, the average time required from case referral to disposition was 11 days, with a median of 8 days. Hearings were held in 56 percent of all cases. The average time to disposition for cases disputed without a hearing was 11 days (median 8 from a sample of 1,040 cases). These include those cases settled prior to a hearing, cases involving complainant cancellation of complaints, and no-show cases.[1]

Similarly, data from the study of the three Neighborhood Justice Centers funded by the Justice Department found that the average time for case processing from referral to a hearing at these centers was 10 days; disposition of cases resolved without a hearing required 11 days, and cases failing to be resolved required 14 days.[2] Court case processing of similar cases to disposition typically required far more time. For example, the study reported an average time from filing to trial of 98 days in Atlanta and 63 days in Kansas City for cases similar to Justice Center cases. Similar findings are reported in many other studies and project annual reports. Significant differences are, of course, likely, given the fact that the court system is burdened with the vast bulk of the caseload while mediation centers handle only a small select portion of the total caseload. But the case processing achievements of the community dispute resolution programs still seem noteworthy and indicate a relatively high level of internal efficiency in scheduling and case disposition, even with the built-in advantages available to the centers.

Court Caseload Impact

A central difficulty in estimating the impact, if any, of dispute mediation centers upon court caseloads is the problem of determining what proportion of dispute resolution program cases would have proceeded into the courts and how far they would have gone in the process. Without the use of an experimental research design, it is very difficult to determine the amount of court attention that mediation cases would receive. The Florida Supreme Court evaluators of five programs in that state studied the caseloads of those programs and concluded that approximately 78 percent of the cases handled by the mediation centers held the potential for court processing. In any event,

it seems very unlikely that all of the cases handled by a dispute resolution program would have otherwise received court processing, and the assumption made by some programs that all cases would proceed to jury trials is totally implausible.

Spontaneous changes in overall court caseloads due to any of a variety of economic and social factors also make estimates of the impact of dispute resolution programs on court caseloads particularly hazardous. For example, the Columbus City Prosecutor's Office has reported that since the Night Prosecutor Program was established in the office, the City Prosecutor's Office has experienced a 6,000 case decrease in misdemeanor case filings. This decrease is attributed by the City Attorney to the operation of the mediation program, but the project's impact cannot be determined with any precision.

Data on the size of dispute resolution program caseloads cast considerable doubt on assertions that programs currently have a major impact on court caseloads. It appears that mediation centers in virtually all cities handle only a relatively small fraction of the court cases that would be potentially amenable to mediation. For example, the Florida evaluation indicated that mediation centers handle only 2 to 3 percent of the combined civil and criminal caseloads in their jurisdictions. One-hundred and thirty-six dispute mediation centers provided information regarding numbers of case referrals for the ABA's Directory. Of these, only 4 percent indicated that they received over 5,000 referrals annually, and 60 percent of the programs received less than 500 referrals per year.

While the total caseloads are often small, the figures still may be impressive given the considerable resistance to participate in mediation seen in many jurisdictions, difficulties in developing adequate referral linkages with local agencies, and similar problems. When programs are studied individually, receiving 300 or 500 referrals may be a striking achievement in a difficult environment. Nevertheless, these caseloads are relatively low when compared to those of the courts, even when hypothetically correcting to consider only those court cases likely to benefit from mediation. This suggests in itself that the mediation programs as they currently operate are not having a considerable impact on court caseloads. While a few programs that have very large caseloads may have some impact on their local court caseloads, the precise level of this impact is very difficult to measure. Detailed data regarding community dispute resolution program caseloads are presented in the following chapter in the discussion of program impacts on access to justice. That chapter also discusses the complexities of selecting relevant comparison groups of court cases and provides estimates of the proportion of court caseloads handled by dispute resolution programs.

Justice System Cost Impact and Program Costs

Rigorous data comparing court costs with those of dispute resolution programs are not available. University of Southern California researchers[3] have attempted to estimate the costs of court case processing in the Dorchester, Massachusetts District Court and arrived at an estimate of $148 per disposed case; in comparison, the 1980 evaluation of three neighborhood justice centers estimated costs per case in the Atlanta project at $142 per resolved case, and $62 per case referral.[4] Individual case costs were considerably higher in the Kansas City and Los Angeles projects, since they have lower caseloads but fixed overall costs comparable to the Atlanta project ($172 and $202 per referral and $309 and $589 per case resolved, respectively, for Kansas City and Los Angeles). A 1977 study by McGillis and Mullen noted that the range of project costs per case referral in a six-project sample of dispute resolution programs varied from approximately $20 to $300 per referral.[5] Research on New York state funded mediation projects in 1981-83 suggests that conciliation, mediation, or arbitration costs in 1982-83 were somewhat greater than $100 per case.[6] The reasons for such per case cost variations are uncertain, but some major factors likely to influence costs include variations in program sponsorship (public vs. private), case volume, staffing, and hearing length.

Despite measurement difficulties, many projects have claimed large cost savings. For example, one project recently estimated that it has saved the local government over three million dollars due to the processing of 14,310 cases. The project estimated that court processing per case is $200. The project calculation of cost savings is based upon the untested and unlikely assumption that all of the project cases would have been processed by the court. Attempts to estimate cost impacts suffer from the same problems as the attempts to estimate court caseload reductions. We simply do not have reliable information on how far mediation cases would otherwise penetrate into the justice system.

Even if we knew the amount of court processing that would be received by mediation cases, relevant court costs per case are clearly very difficult to calculate. Court costs are comprised of such factors as personnel costs for the judge, clerk, stenographer, bailiff, clerical and other staff, plus costs of retaining lawyers, costs due to lost-time at work, and non-monetary costs such as loss of goodwill with the other disputing party. The allocation of fixed costs such as personnel and facilities to cases could perhaps be done in terms of the time required to process the case, but the collection of accurate data on the time consumed by various phases of the processing of a single case is extremely difficult. In addition, savings due to reduced caseloads are troublesome to estimate. Many court staff members and

facilities are needed, even following substantial reductions in court caseloads, and inertia in the system would also mitigate against any rapid reductions in court system costs in response to reduced court caseloads.

The fact that many mediation programs have relatively low caseloads when compared to the courts exacerbates the problem of inertia in court cost reduction. Presumably, most dispute resolution programs would need to have considerably larger caseloads comprising a substantial proportion of the court budget before any substantial changes would be made in the existing court expenditures. Policymakers have often noted that court personnel will be very hesitant to refer a sufficient number of cases to result in court savings, since those savings would be purchased at the cost of their own jobs—a potentially Catch-22 situation.

Exhibit 6.1 summarizes the budgets of the 153 community dispute resolution programs that provided information on their budget to the 1985 A.B.A. directory. Forty-six programs have budgets ranging from $50,000 to $100,000; forty-three programs have budgets in the $25,000-$50,000 range, and these two categories in combination account for 58 percent of all of the programs responding. Exhibit 6.2 presents a graphic summary of the range of budgets of community dispute resolution programs in the 1985 directory, and the categories generate a normal distribution (i.e., bell-shaped curve) of responses with the peaks being in the $25,000-$100,000 range, as was noted above. Exhibit 6.3 presents a graphic summary of the variations in budgets for programs having progressively more recent starting dates. Programs were grouped into three categories; ones implemented prior to 1980, ones begun between 1980 and 1982, and ones started following 1982. As can be seen from the Exhibit, budgets of the older programs are considerably more likely to exceed $50,000 than are the budgets of the newer programs. Approximately two-thirds of programs begun before 1980 have budgets over $50,000, compared to only one-third of programs begun after 1982. These data suggest that programs may gain increases in budget as they become mature and institutionalized. An alternative hypothesis is that earlier programs were established in those jurisdictions most interested in community dispute resolution and most willing to pay large budgets.

Most programs expend the largest portion of their budgets on personnel expenses. The number of personnel needed is determined by the program's caseload, its linkages to referral agencies (some referral agencies will have staff conduct intake for a mediation center; others require that the mediation program station a staff member at the intake site), the extent of emphasis on outreach and public relations, and related variables. Staff members' salaries vary considerably across the country, due to regional differences in salary scales. Programs that are not sponsored by justice system agencies

Exhibit 6.1

Annual Budgets of Dispute Resolution Centers

	Number of Programs	Percentage of Programs
less than $500	1	7%
$500 -$15,000	13	9%
$15,000 -$25,000	17	11%
$25,000 -$50,000	43	28%
$50,000 -$100,000	46	30%
$100,000 -$200,000	20	13%
greater than $200,000	13	9%
TOTAL	153	100%
not available	29	

Source: American Bar Association, Dispute Resolution Program Directory, 1986. The Directory lists 182 dispute mediation centers that process diverse caseloads of civil and criminal matters among its listing of 184 dispute settlement programs (other types of programs included in the Directory are targeted on specific types of cases including divorce, juvenile, small claims, housing, and the like). Twenty-nine of the profiles of dispute mediation centers did not include information on annual budgets resulting in the total number of programs for this table being 153 rather than 182. The endpoints of categories are one dollar less than noted; e.g., the $15,000 to $25,000 category actually includes programs from $15,000 through $24,999.

often incur substantial costs for office rental, and the provision of needed support equipment (typewriters, duplicating machines, etc.), and rental of space for mediation hearings. Many justice system-based programs receive in-kind contributions of space, supplies, and clerical support. Program prospects for institutionalization in local governmental budgets are determined in part by their budget size and the efficiency of their operation.

Exhibit 6.2
Community Dispute Resolution Programs
Distribution of Annual Budgets

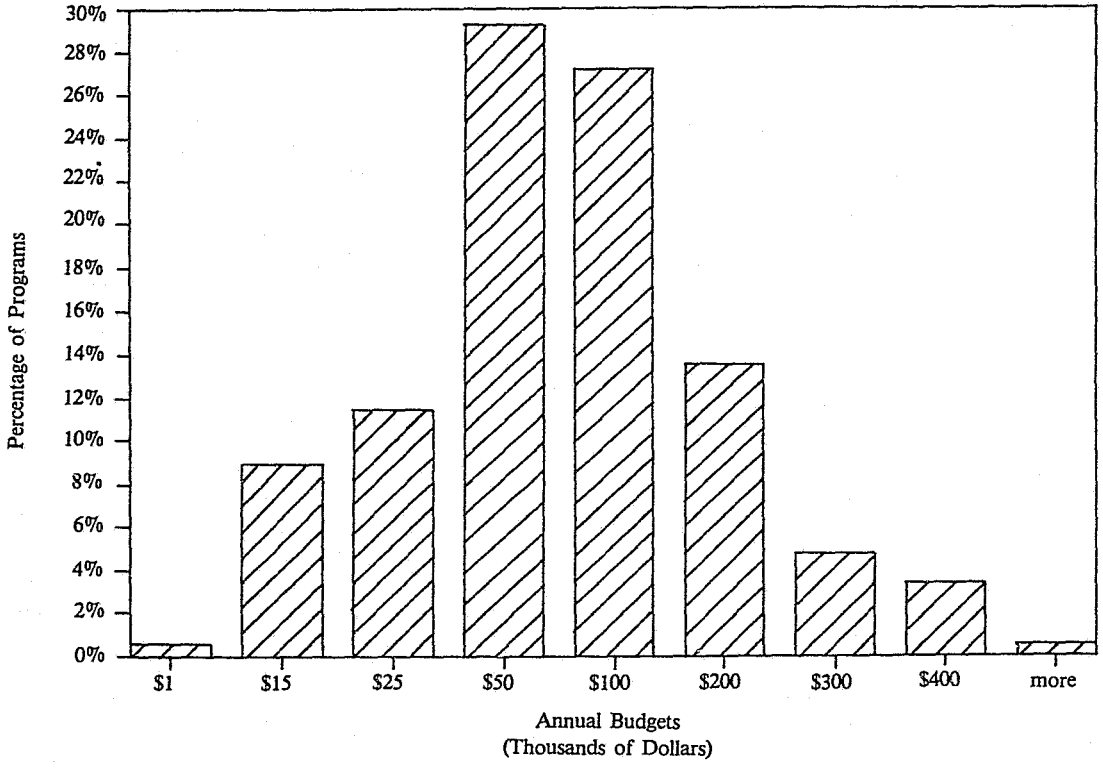
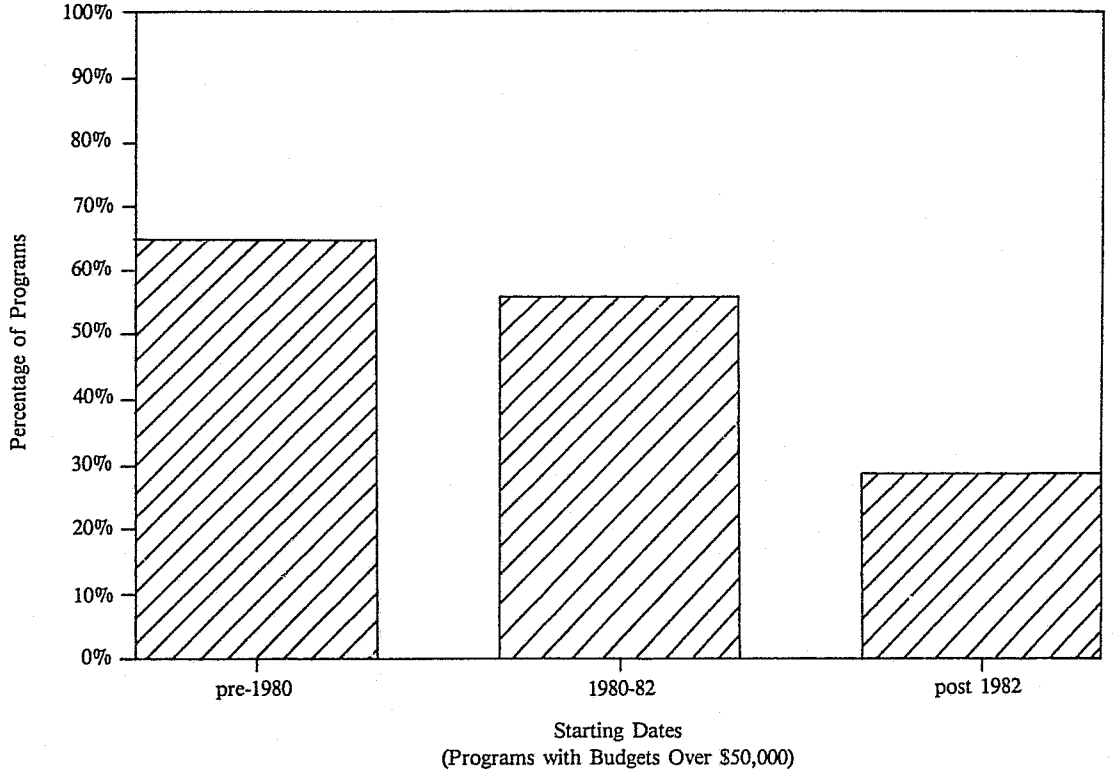


Exhibit 6.3
Community Dispute Resolution Programs
Variations in Program Budgets Over Time



Conclusion

In short, community dispute resolution programs appear to have been successful in processing cases more rapidly than the court. This outcome is somewhat to be expected, given that the programs have much smaller caseloads and fewer logistical problems than the courts. Dispute resolution programs do not seem to have significantly lowered court caseloads or court costs based upon presently available evidence. These goals have been asserted less frequently in recent years, and the goals of faster and higher quality dispute resolution have been stressed more heavily. Pearson has noted that court caseload and cost reductions are unlikely as long as dispute mediation services are voluntary, due to court personnel's hesitancy to make referrals and citizens' reluctance to avail themselves of a new and untested service. She suggested that mediation services be made mandatory and a precondition for litigation to remedy these problems. Under such conditions, both court caseloads and costs would presumably be affected by the presence of mediation programs. Making mediation mandatory raises a wide variety of other policy issues, however. Some claim that "mandatory" mediation is a contradiction in terms and violates a central premise of mediation: that parties voluntarily seek to fashion a settlement to their conflict. Others argue, however, that while intake may be mandatory in mandatory mediation, decisions within the actual mediation sessions can still be voluntary. Pearson's proposal is thought-provoking and deserves attention.

Footnotes

1. Bridenback, M. *The Citizen Dispute Settlement Process in Florida: A Study of Five Programs*. Tallahassee: Florida Supreme Court, Office of the State Courts Administrator, 1979.
2. Cook, R., Roehl, J., and Sheppard, D. *Neighborhood Justice Centers Field Test: Final Evaluation Report*. Washington, D.C.: U.S. Government Printing Office, 1980.
3. Felstiner, W., and Williams, L. "Mediation as an Alternative to Criminal Prosecution," 2 *Law and Human Behavior* 223 (1978).

4. Cook, R., Roehl, J., and Sheppard, D. *Neighborhood Justice Centers Field Test: Final Evaluation Report.* Washington, D.C.: U.S. Government Printing Office, 1980.

5. McGillis, D., and Mullen, J. *Neighborhood Justice Centers: An Analysis of Potential Models.* Washington, D.C.: U.S. Government Printing Office, 1977.

6. New York State Office of Dispute Resolution Annual Report.

7. The New York state Community Dispute Resolution Centers Program operated by the Unified Court System of that state has been the nation's leader in the state level funding of community dispute resolution programs. The Program reports that for the fiscal year ending March 31, 1986 over 60,000 persons in New York state were served through conciliation, mediation, or arbitration at projects funded by the state program. The programs in the state serve citizens in 53 New York counties. The Annual Report for the Community Dispute Resolution Centers Program for the 1985-86 fiscal year provides detailed information regarding the overall case processing activity of the state effort. The Chief Administrative Judge of the New York Court is requesting a budget of 1.7 million dollars for the program for the 1986-87 fiscal year.

   A number of states are using supplementary charges on court filing fees to fund dispute resolution mechanisms (e.g., Texas, Florida, and Oklahoma). For example, in Oklahoma the legislature passed a bill in 1985 that adds two dollars to the filing fees for civil claims. The accumulated fees will be administered by a statewide Dispute Mediation Coordinator who can provide funding for up to 50 percent of a program's expenses (and can provide a higher percentage of funds for towns or counties with populations of less than 15,000). Jurisdictions throughout the state of Oklahoma are being encouraged to establish programs with assistance from the state funding effort.

8. Pearson, J. "Evaluation of Alternatives to Court Adjudication." 7 *Justice System Journal* (1982).

SEVEN

Assessing Impacts on Access to Justice

An important goal of many justice systems is the provision of ready "access to justice." Similarly, many dispute resolution programs indicate that providing increased "access to justice" is one of their major aims. The ability to accurately assess whether access to justice has been increased is important for administrators of community dispute resolution programs. Funding agencies for the programs inevitably have an interest in whether programs are meeting their stated objectives. Likewise, state and federal policymakers have a strong interest in how dispute resolution programs influence "access to justice." The degree to which community dispute resolution programs can help make the promise of access to justice a reality while still maintaining high standards for the quality of justice is an important issue for consideration by such policymakers.

Numerous problems occur in measuring the attainment of this objective. Problems related to measurement include: (1) the difficulty of defining the term "justice," (2) the problem of determining current baseline levels of "need" for the provision of justice mechanisms and the degree to which these needs are being fulfilled, and (3) the question of how large and varied caseloads should be to support the judgment that access to justice has actually been *increased*. Each issue will be discussed in turn.

The Problem of Defining Justice

Definitions of "justice" are concerned with the nature of the *processes* used to render "justice" and with the types of *outcomes* arising from such processes. The minimal required elements typically associated with a "just" process include: (1) an impartial third party, (2) opportunities for parties to fully present their side of a controversy, and (3) relatively equivalent capacities for parties to pursue their claims by means of either simple procedures or the help of professionals when complex procedures are required.[1] The outcomes of such processes should also be "just" in that they are based upon the available facts of the situation and have an end result which is generally consistent with similar cases and representative of societal notions of fairness. While these criteria would appear to be appropriate for both adjudicatory and non-adjudicatory mechanisms, such as dispute resolution programs, assessing the "justice" of particular case outcomes is not an easy task.

For example, the "justness" of an adjudicated case's outcome is often assessed by using criteria related to (1) due process procedural safeguards and (2) the proper application of statutory case law related to the case's fact situation. Appeals are possible when the justness of an adjudicator's decision is in question. While the criteria may appear relatively straightforward, opinions often differ greatly regarding whether "justice was rendered," depending upon the individual observer's evaluation of the facts, relevant precedents, interpretation of statutes, and general views regarding the appropriate sanctions and overall social justice. The present report is not the appropriate forum for a detailed discussion of the "fairness" and "justice" of adjudicated decisions. Suffice it to say that individual visions of justice in adjudication vary enormously even given the constraints of the vast body of common law and statutory provisions.

The situation may be even more complex in the case of nonadjudicatory mechanisms. An observer cannot readily appeal to legal rules in assessing whether a given mediated settlement is "just." Certainly a normative framework is applicable to many mediated resolutions, and parties to a dispute as well as the hearing officer often share a similar view of the relevant societal norms applicable to a controversy and differ only in their assessment of the facts of the case. In other cases, however, the parties may have a view of justice not shared by the hearing officer or the society at large. In such cases the degree of justice may need to be assessed from the viewpoint of the individual disputants. In such cases has justice been rendered if the parties believe that it has? Some advocates of nonadjudicatory mechanisms would answer affirmatively, while others would argue that the justness of a settlement must be viewed in light of statutory law, common

law, and more fundamental considerations of social justice. At present, determination of whether a given settlement is "just" is hardly a straightforward matter.

Given the difficulties of defining "just" outcomes, one approach taken by some observers is to simply assert that access to justice is achieved if disputants have mechanisms available with the minimal elements cited earlier. Procedural mechanisms are established with "unbiased" and accessible qualities and the question of the degree of justice of the mechanism's outcomes is left as an unknowable and academic problem. By this way of thinking, policymakers should focus upon ways of increasing the accessibility of impartial forums. Bars to access to this type of forum are many, however, including monetary costs, inconvenience, disputant ignorance of mechanism availability or hesitancy to employ them, extensive delays, and related problems discussed earlier.

Dispute resolution programs include many features that are intended to increase "accessibility" to justice, such as (1) not charging for services, (2) not requiring lawyers, (3) holding hearings at times convenient to all parties to the dispute, including nights and weekends, (4) providing readily understandable procedures and rules, and (5) providing multilingual staffs to serve non-English speaking disputants.

The degree to which this increased "accessibility" translates into greater real access to justice machinery as demonstrated by active use of the forums by a wide spectrum of citizens is a critical issue. Presumably a mediation program could be highly accessible and yet not actually increase "access to justice" due to underuse caused by ignorance of the project's services or lack of faith in the project's effectiveness. This problem is the topic of our next two sections.

Determining Needs for Justice Mechanisms and Their Degree of Fulfillment

Numerous surveys (e.g., by the American Bar Foundation, the National Center for State Courts, the Boston Bar Association, and others) have attempted to measure needs for civil and criminal legal services. The general conclusions of these surveys have been that substantial unmet needs exist for justice system access, and these studies have underpinned recent efforts to help meet these needs through the development of the Legal Services Corporation, public defenders offices, and other organizations. A key problem with such surveys is how to assist respondents in recognizing a "legal" need when they have one, and a corollary to this problem is whether needs for "justice" exist outside the realm of the "legal" needs specified by the authors

of the surveys. Do citizens require access to forums other than legal mechanisms for the resolution of controversies that may be only partially "legal" in nature?

Suffice it to say that issues of definition in this area are also extremely complex and that no present survey adequately indicates the degree to which Americans experience a need for legal and non-legal routes for the resolution of conflicts that they experience in life. We can probably safely assume unmet needs exist for "non-adjudicatory" forums to handle conflicts outside of the narrow scope of strictly "legal" problems. And such forums may also be the appropriate vehicle for handling many of the unmet "legal" needs as well (e.g., the National Center for State Courts' survey indicates a preference on the part of disputants for mediation centers to handle certain disputes among persons in ongoing relationships).

Rigorous and detailed surveys are needed to determine American perceptions of needs for legal and non-adjudicatory dispute processing mechanisms. Some researchers have argued that Americans are content (or may even prefer) to "lump" many types of grievances and simply cut off interactions with the opposing party. Others have suggested that aggrieved parties seek third-party "non-legal" assistance from friends, the church, local officials, etc. and that these indigenous dispute resolvers are often satisfactory in resolving disputes. These observers would argue that the creation of "official" non-adjudicatory forums may simply have the result of putting many of the "free" and effective indigenous dispute resolvers out of business. Much more work is needed to determine the degree of need (or lack of need) for legal and non-legal dispute settlement mechanisms.

Size and Variation of Caseloads and Prior Justice System Contact

Because of the difficulties in defining "justice" or assessing citizen needs for alternative mechanisms for dispensing justice, policymakers and researchers have used caseload size and the amount of client prior contact with the justice system as surrogate measures of "access to justice." The assumption is that if a program has a large and highly varied caseload, the program is filling a need for a particular type of justice mechanism. Similarly, if the program provides service to clients who have not had prior justice system contact, the program is providing increased access to justice to particular client groups.

The Institute for Social Analysis evaluation of the neighborhood justice centers in Atlanta, Kansas City and Los Angeles documents the high level of diversity in the types of cases handled.[2] The centers handle a wide variety

of civil matters, including landlord-tenant cases, consumer-merchant disputes, bad debts among acquaintances, and the like. Similar diversity occurs in the criminal cases processed. Assaults, harassments, threats, minor property crimes, and other criminal matters are handled. The demographic characteristics of disputants are also diverse, but the disputants are drawn disproportionately from the lower income groups in the cities. The income of the disputants is representative of the typical income of persons contacting the projects' major referral sources.

The Florida evaluation provides data on the degree to which clients of the five Florida justice centers studied had prior contacts with justice system agencies (e.g., police, prosecutor, court clerks, judges).[3] The researchers found that only 25 to 35 percent of justice center complainants or respondents have been involved in court cases previously, and the researchers concluded that, "Overall, this lack of significant contacts with the major system components or with (the mediation center) revealed that the (mediation center) process is, for the most part, providing dispute resolution services to a group of individuals that prior to the development of the (mediation center) program were not availing themselves of any dispute resolution mechanisms." This finding is noteworthy despite the lack of information on levels of needs for such services.

Exhibit 7-1 presents a summary of the numbers of case referrals and the number of mediation sessions held by the dispute mediation centers included in the American Bar Association's 1985 Dispute Resolution Program Directory. It is important to stress that the American Bar Association data are based upon self-reporting by programs across the nation. Hence, the accuracy of the data may vary across programs.[4] Program caseloads vary considerably, as can be seen from the Exhibit. Only six percent (7 programs) of the 136 programs reporting had more than 5,000 referrals per year. All of the remaining programs receive fewer than 5,000 case referrals per year with 13 percent (17) receiving 500 to 1,000 referrals and 47 percent (64) having from 100 to 500.

Data on the number of mediation hearings are also reported in Exhibit 7.1. The data indicate that the largest category of annual hearings is from 100 to 500 (50 programs), followed by less than 100 (43 programs), and 500 to 1,000 (20 programs). Exhibit 7.2 presents the data for the number of scheduled hearings and actual mediation sessions at dispute mediation centers in graphic form. The data reflect the considerable attrition between the number of referrals and the number of hearings.

Exhibit 7.1

Annual Case Referrals and Mediation Sessions: Dispute Mediation Centers

	Case Referrals		Mediation Sessions	
	Number	*Percentage*	*Number*	*Percentage*
less than 100	19	14%	43	32%
100–500	64	47%	50	37%
500–1,000	17	13%	20	15%
1,000–3,000	22	16%	14	11%
3,000–5,000	7	5%	5	4%
5,000–10,000	5	4%	1	1%
10,000–20,000	0	0%	1	1%
greater than 20,000	2	2%	1	1%
TOTAL	136	100%	135	100%
not available	46		47	

Data Source: American Bar Association, Dispute Resolution Program Directory 1983. Data were compiled from the profiles of the 110 programs listed in the Directory that handle diverse caseloads of civil and criminal matters; this table does not include programs specializing in divorce, juvenile, consumer, small claims, housing, and other specific forms of dispute.

Exhibit 7.3 presents a summary of variations in scheduled and mediated cases as a function of the starting date of programs. Programs are grouped together in three categories: programs implemented prior to 1980, programs developed between 1980 and 1982, and programs begun since 1982. The proportions of programs with referrals and mediation sessions exceeding 500 annually are presented in the Exhibit. As can be seen, caseloads increase directly as a function of the age of programs, and 57 percent of programs begun prior to 1980 have referrals in excess of 500, compared to 36 percent of programs developed between 1980 and 1982 and only 14 percent of programs developed since 1982. Similar variations were observed for the number of mediation hearings per year (53 percent of the earliest programs exceeded

Exhibit 7.2
Community Dispute Resolution Programs
Distribution of Annual Caseloads

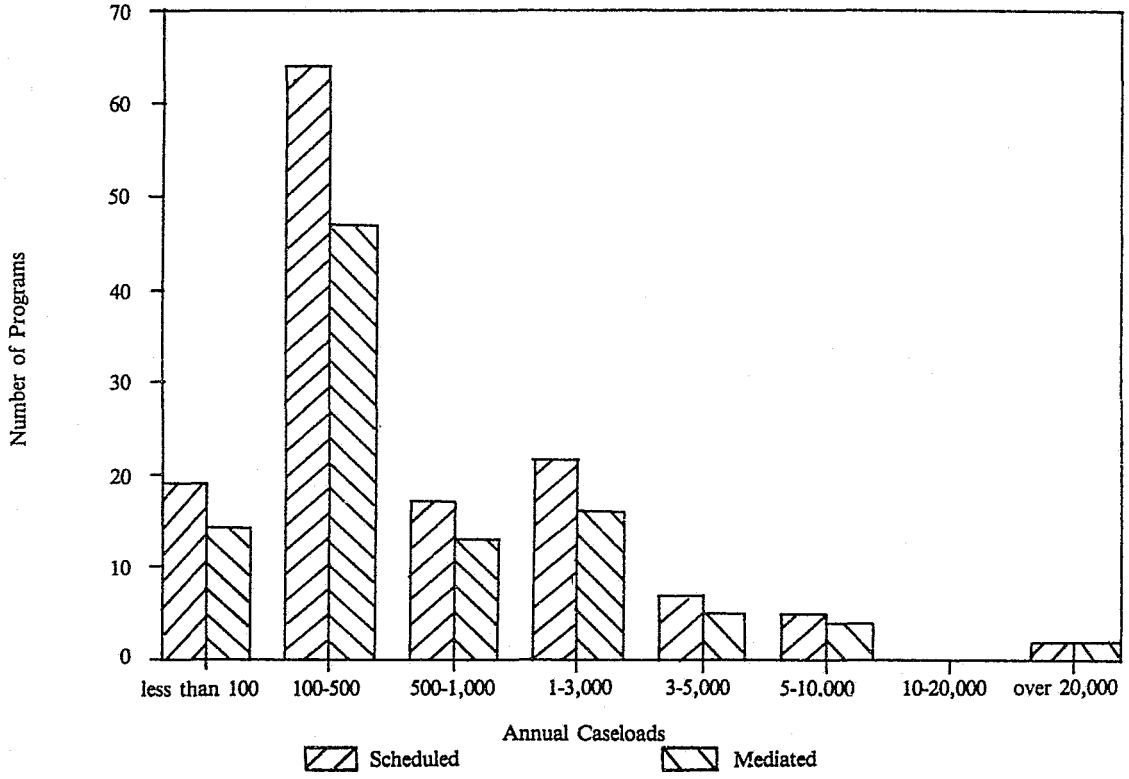
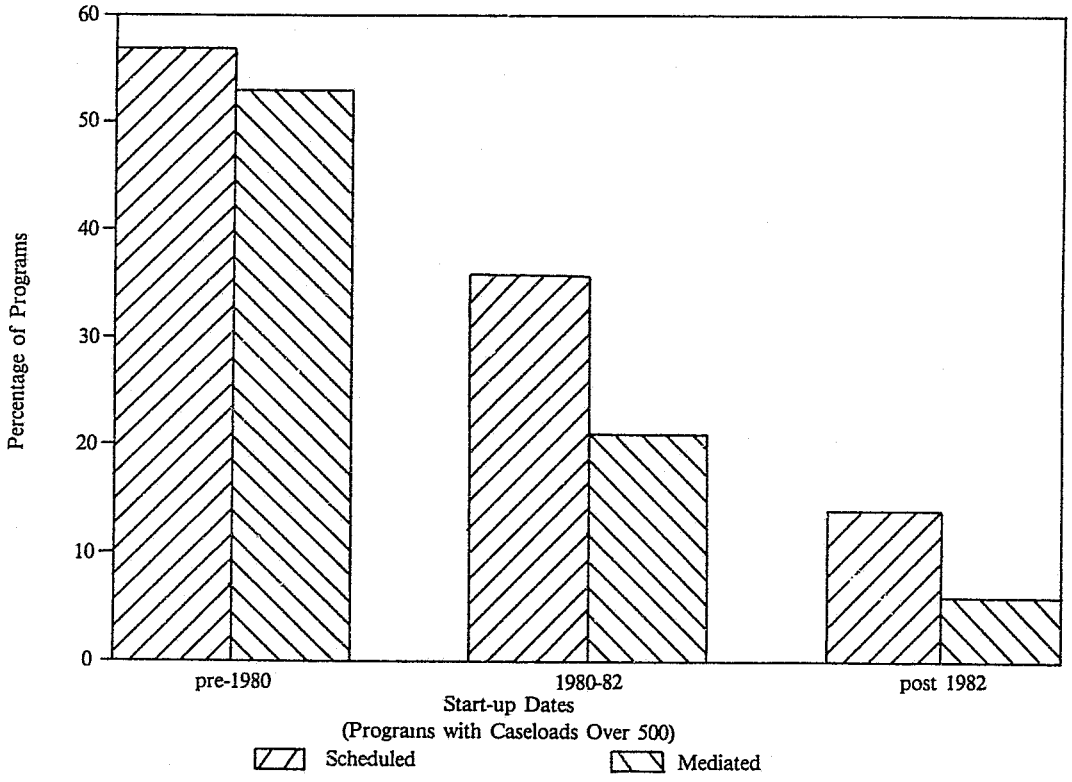


Exhibit 7.3
Community Dispute Resolution Programs
Caseload Variations Over Time



500 sessions per year, compared to 215 for the programs of intermediate age, and six percent for the newest programs). The data suggest that program caseloads steadily increase as programs become institutionalized in their locality. An alternative explanation for the data is that there was something special about the earlier developed programs that would lead them to have high caseloads independent of their longevity.

Whether the caseload numbers should be viewed as quite small or impressively large, of course, depends upon one's expectations regarding appropriate levels of activity in the programs. In the absence of firm benchmarks of how many cases are amenable to mediation and would benefit from it, any discussion of the adequacy of program caseloads exists somewhat in a vacuum. However, most of the caseloads are quite small in comparison to court activity in their jurisdictions. As noted in Chapter Six, the Florida Supreme Court study of five dispute settlement programs in that state compared the mediation program caseloads to those of the local courts (including both the county criminal and civil courts in the jurisdictions). They found that the five programs had received and processed a total of 2,601 case referrals during the first six months of 1978. In contrast, the county criminal courts had processed 52,460 cases and the civil (small claims) courts had handled 39,761 matters, for a total of 92,221 cases passing through the courts in the six month period. The mediation caseload averaged out to 2.8 percent of the court caseloads when the data for the five counties were combined. The portion handled ranged from 9.4 percent in Pinellas County to 1 percent as many cases as the courts in its jurisdiction in Broward County.

A number of problems exist in this comparison, however. The criminal court caseloads include many matters that are not appropriate for mediation (e.g., public disorder offenses such as drunkenness in which there is no specific complainant; the "people" in the aggregate are in theory offended by the behavior but typically no single person could be drawn out of the population and serve as a party to such a dispute). The criminal court caseload used for comparison purposes may also include traffic offenses, stranger-to-stranger crimes, violations of municipal ordinances, and other matters that are not appropriate for mediation. The data collected by the Florida researchers do not subdivide the criminal caseload into matters even remotely amenable to mediation and those clearly irrelevant to mediation. Similarly, many of the small claims court cases are likely to involve collection efforts by finance companies and other commercial enterprises. These cases are also not appropriate for traditional mediation, although some programs have held administrative hearings involving bad checks. In short, while the data do provide an indication of the magnitude of the court caseloads in the jurisdictions, the comparison to mediation programs seems to involve a comparison

of apples to a larger set of apples and oranges with no clue regarding the proportion of oranges in the comparison sample. The inclusion of irrelevant, unmediatable matters in the comparison group does not shed light on how the local mediation programs are functioning.

The Florida researchers present a very important caveat, however—one that is essentially the reverse of the point made above. They ask what proportion of the mediation caseload is relevant to the courts and may have been filed and processed in the courts. Based upon a careful categorization of the types of cases processed by the five dispute mediation centers, the researchers conclude that approximately 78 percent of the programs' caseloads "hold the potential for formal judicial processing." As a result, it is necessary to discount the size of the mediation caseload by a fixed percentage in comparing the caseload to the court. A similar (and probably larger) discounting factor needs to be applied to the court caseload to make the two samples relevant to one another.

The above-mentioned research on the Florida dispute resolution centers has interesting implications for the topic of access to justice. If 78 percent of the cases handled by the five programs studied have the potential for formal judicial processing, then the remaining 22 percent of cases may represent disputes receiving a clear increase in access to justice. That is, the courts evidently would not be suitable for handling them, but the centers could handle them. In addition, presumably some portion of the cases that had the *potential* for judicial processing would not, in fact, have been brought to the courts by the disputants or may have been screened out from such processing. Dispute resolution center handling of those cases would also represent an increase in access to justice to disputants if the dispute resolution centers were effective in processing them. The situation is made more complex by the fact that some other alternative dispute resolution mechanisms in the community (e.g., Better Business Bureaus) might have been able to handle some of the disputes. The community dispute resolution centers may presumably increase access to justice for some disputes but are not necessarily the only resource available outside the courts for such disputes.

In any event, based upon the data collected in the Florida evaluation, the mediation centers in that state in 1978 appeared to be handling only a small fraction of the number of the cases handled by the court. The application of a correction factor to both the court and mediation caseloads would probably result in the mediation programs increasing from 2.8 percent of the court caseload to a considerably higher percentage of the "relevant" court caseload (i.e., those cases in which mediation is even conceivable). This increased percentage is unlikely to be extremely striking, however. The Columbus, Ohio program estimates that it processes approximately one-third

of the relevant misdemeanor caseload in that jurisdiction, and it has one of the largest caseloads in the United States. Research is needed to develop appropriate comparisons between court and mediation caseloads to determine the proportion of relevant cases currently being handled by mediation centers. In the case of the Florida programs, this percentage may have increased considerably in recent years. The Orange County, Florida program received only 372 referrals per year at the time of the study cited above in 1978. The program now receives 3,601 referrals per year, an almost tenfold increase in caseload during the past five years.

Even with the correction factors and increases in caseloads, it is unlikely that the average mediation program handles a very significant proportion of the local misdemeanor or small claims caseload. Justice system-based programs tend to have the highest average caseloads, as we noted in Chapter 4 in the discussion of intake procedures and caseloads. Exhibit 7-4 presents a summary of the numbers of referrals and hearings of the 29 programs included in the telephone survey, and illustrates the differences in average caseloads between justice system-based, composite programs, and community-based programs. The average number of referrals for justice system-based programs included in the sample was 11,894 compared to 3,482 for composite programs, and 373 for community-based programs. Similarly, the average number of hearings held was 7,258 for the justice system programs, 1,428 for the composite programs, and 212 for the community-based programs.

Mediation programs have grown rapidly in numbers during the past decade, but typically process relatively small caseloads given the large number of disputes in any given jurisdiction. When data are pooled over all 29 programs included in the telephone survey, the average number of referrals per program is 5,708, and the average number of hearings is 3,262 (57% of cases proceed to hearings, according to the project reported data). These figures are impressive considering the relatively recent development of mediation programs, but they cannot be assessed with any precision, given the lack of detailed data regarding the number of disputes arising in the jurisdictions that would benefit from mediation. It seems safe to say that the programs are only dealing with a small fraction of relevant disputes that reach the courts, much less the far larger pool of disputes that do not receive third party assistance in their resolution, but would potentially benefit from it.

The existence of a large number of serious disputes not currently appearing in dispute processing forums, of course, raises the question of whether such disputes should, in fact, receive formal attention. Felstiner has argued that in a technologically complex, rich society such as ours, many such disputes can be effectively dealt with through avoidance, and should not

Exhibit 7.4

Reported Caseloads of Twenty-Nine Surveyed Programs

	Number of Referrals		Number of Hearings	
	Total	*Average*	*Total*	*Average*
Justice System-Based Program (n = 11)	130,836	11,894	79,835	7,258
Composite Programs (n = 9)	31,335	3,482	12,851	1,428
Community-Based Programs (n = 9)	3,361	373	1,910	212
TOTAL	**165,532**	**5,708**	**95,596**	**3,262**

Source: Survey of twenty-nine dispute settlement programs.

necessarily be ratified into formal grievances requiring processing through dispute processing machinery.[5] The issue of what suffices as an appropriate level of access to justice is a difficult one, as has been noted throughout this chapter. The development of an adequate understanding of this issue requires a blending of empirical data (that is currently in short supply) with value judgments. Data are needed regarding patterns of disputing and the costs to individuals and society of not being able to expeditiously resolve disputes. These data need to be interpreted in light of normative premises regarding what type of society we want to have. Equally bleak pictures can be painted of societies having inadequate or excessive access to dispute resolving machinery. With inadequate mechanisms conflicts fester and escalate, but a society that is overly solicitous in responding to grievances may result in a lowered threshold of disputing and constant, never ending trivial claims against acquaintances, neighbors, and coworkers. Presumably, a middle ground can be struck in our search for access to justice—one that would equitably blend disputing and avoidance and provide accessible machinery to respond to those legitimate claims pursued by citizens.

Conclusion

Community dispute resolution programs seek to increase access to justice for citizens. This chapter reviews the difficulties in defining justice and measuring access to justice. The dispute resolution programs make substantial efforts to have their services be accessible to disputants. For example, hearings are typically held at convenient locations and at hours that encourage disputant participation. The numbers of citizens participating in community dispute resolution programs is relatively low, however. The theoretical accessibility does not translate directly into high use of the programs. One of the greatest challenges facing America's community dispute resolution programs is to increase "access to justice" by encouraging greater participation in their services. The forums appear to be underused at present. As was noted earlier, the need for programs is great, but the demand is far smaller.

Footnotes

1. Fuller has explored the basic elements of justice in detail in a number of articles. For example, see: Fuller, L. "Mediation—Its Forms and Functions," 44 *Southern California Law Review* 305 (1971); and Fuller, L. "The Forms and Limits of Adjudication," 92 *Harvard Law Review* 353 (1979).
2. Cook, R., Roehl, J., and Sheppard, D. *Neighborhood Justice Centers Field Test: Final Evaluation Report*. Washington, D.C.: U.S. Government Printing Office, 1980.
3. Bridenback, M. *The Citizen Dispute Settlement Process in Florida: A Study of Five Programs*. Tallahassee: Florida Supreme Court, Office of the State Courts Administrator, 1979.

4. The data have not been validated by independent researchers, and it is not possible to determine their degree of accuracy with precision. The accuracy of the data is likely to vary across programs, depending upon the availability of management information systems and computerized data bases that allow for the precise recording of program activities. The reader should be aware of the self-report character of the data in reviewing the information presented here. The relatively low number of cases reported for many programs suggests that exaggeration of caseload sizes to impress local or national policymakers is not prevalent in the data provided.

5. Felstiner, W. "Influences of Social Organization on Dispute Processing," 9 *Law and Society Review* 63 (1974).

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Appendix A

*Characteristics of Twenty-Nine Community Dispute Resolution Programs**

*Program survey conducted in spring of 1982

Table 1A

I. Program Structure and Organization
A. Justice-System-Based Programs[a]

PROGRAM FEATURES \ LOCATION	LOS ANGELES, CALIFORNIA	WATERBURY, CONNECTICUT	FT. LAUDERDALE, FLORIDA	LOUISVILLE, KENTUCKY	DORCHESTER, MASSACHUSETTS	TRENTON, NEW JERSEY
Title:	L.A. City Attorney Program	Waterbury Superior Court Mediation Program	Citizen Dispute Settlement Program	Pretrial Services	Urban Court Mediation Program	Informal Hearing Program
Address:	1700 City Hall East 200 N. Main St. Los Angeles, CA 90012	Superior Court Bldg., Family Services Div. 300 Grand St. Waterbury, CT 06722	236 Southeast First Avenue Ft. Lauderdale, FL 33301	430 W. Muhammad Ali Blvd. Room 206 Louisville, KY 40202	510 Washington St. Dorchester, MA 02124	Mercer County Courthouse Broad & Market Streets Trenton, NJ 08650
Director/Contact:	Connie Seim or Kay Cuttreli, Deputy City Attorneys	Anthony Barbino	Susan F. Dubow	Raymond J. Weis	Della Rice	Thomas N. Farrell, Sen. Counselor
Date Established:	April 1984	July 1981	October 1976	May 1979	September 1975	May 1976 (City) Jan. 1980 (Co.)
Sponsor(s):	Los Angeles City Attorney	State Government--Family Services Division	• Broward County • 17th Judicial Court	Admin. Office of the Courts, State Supreme Court	District Court	County Courts
Staff: Administrative Intake Mediators Total staff	 7 100 12 119	 2 2-3 5 10 (approx.)	 2 (1 PT) 2 20 24	 3 (2 PT) 5 6 (PT) 14	 2 (PT) - 40 42	 1 - 2 3
Budget: Source-Amount	L.A. City Attorney -- Not available[b]	State -- $70,000[c]	Courts -- $140,000	Admin. Office of State Courts -- $175,000	District Court -- $39,000[d]	Mercer County -- $35,000
Total Budget	Not available[b]	$70,000	$140,000	$175,000	Not available[e]	$35,000

[a]The Portland, Oregon Neighborhood Mediation Center is now entirely funded by a local government agency. Although it is not directly associated with a justice system agency it is included in this category because of the similarity in funding sources.

[b]Mediation program has no budget separate from the L.A. City Attorney. Staff of the mediation component work only a portion of their time in that capacity; thus, it is impossible to calculate the total budget for mediation alone.

[c]Special appropriation for the period January 1931 through July 1983.

[d]For salaries of employees assigned to mediation program; presently spending little or none of their time on mediation.

Table 1A *(continued)*

I. Program Structure and Organization
A. Justice-System-Based Programs[a]

PROGRAM FEATURES \ LOCATION	CINCINNATI, OHIO	CLEVELAND, OHIO	COLUMBUS, OHIO	NORMAN, OKLAHOMA	PORTLAND, OREGON[a]
Title:	Private Complaint Program	Cleveland Prosecutor Mediation Program	Night Prosecutor's Program	Dispute Mediation Program	Neighborhood Mediation Center
Address:	City Prosecutor's Office 222 E. Central Pkway, Rm. 2018 Cincinnati, OH 45202	Justice Center Courts Tower 8th Floor 1200 Ontario St. Cleveland, OH 44113	Municipal Court Building 375 S. High St. Columbus, OH 43215	District Attorney's Office Cleveland Co. Office Bldg. 201 S. Jones Norman, OK 73069	4815 N.E. 7th King Neighborhood Facility Portland, OR 97211
Director/Contact:	Terry Cosgrove Program Coordinator	Bradley M. Weiss	Scot Dewhirst	Melvin Hall	Emmanuel Paris
Date Established:	December 1974	January 1982	Fall 1971	January 1982	May 1978
Sponsor(s):	• City Prosecutor • County • Cincinnati Insti. of Justice	• City of Cleveland • Cleveland Foundation (Private)	City Prosecutor's Office	District Attorney	Metropolitan Human Relations Commission, City of Portland
Staff:					
Administrative	3 (1PT)	3	5 (3 PT)	2	2
Intake	-	-	15	-	2
Mediators	15-20	35 (PT)	62-72 (PT)[f]	13[g]	27
Total staff	18-23 (approx.)	38	82-92 (approx.)	15	31
Budget:					
Source-Amount	• City of Cincinnati -- $160,000 • County -- $160,000	• Cleveland Foundation -- $108,000 • City -- $72,000	City General Fund -- $230,000	County Commissioners -- $40,000	City General Fund -- $97,000
Total Budget	$320,000	$180,000	$230,000	$40,000[h]	$97,000

[a]There has not been a specific budget for the Dorchester program since 1978, when the Crime & Justice Foundation handed it over to the courts.

[f]Includes 12 human relations counselors.

[g]Includes five paid staff persons and eight volunteers.

[h]Does not include salaries of administrative personnel, who are paid out of the district attorney's budget.

Table 1B

I. Program Structure and Organization
B. Composite Programs

PROGRAM FEATURES \ LOCATION	WASHINGTON, D.C.	ATLANTA, GEORGIA	HONOLULU, HAWAII	CORAM, NEW YORK	NEW YORK, NEW YORK	ROCHESTER, NEW YORK
Title:	D.C. Mediation Service (DCMS)	Neighborhood Justice Center of Atlanta	Neighborhood Justice Center of Honolulu	Community Mediation Center, Inc.	IMCR Dispute Resolution Center	Center for Dispute Settlement
Address:	Superior Court Building A Washington, D.C. 20001	976 Edgewood Ave. Atlanta, GA 30307	1270 Queen Emma St., Suite 402 Honolulu, HI 96813	356 Middle Country Road Coram, NY 11727	425 W. 144th St. New York, NY 10031	36 W. Main Street Rochester, NY 14614
Director/Contact:	Noel Brennan	Edith Prism	Peter S. Adler	Ernie Odom	David C. Forrest, Jr.	Andrew Thomas
Date Established:	October 1979	January 1978	November 1979	March 1977	1975	November 1973
Sponsor(s):	Center for Community Justice (Private, Non-Profit)	Private, Non-Profit Corporation	Private, Non-Profit Corporation	Independent	Institute for Mediation & Conflict Resolution, Inc. (IMCR)	Private, Non-Profit Corporation
Staff:						
Administrative	5	2	8	4 (1 PT)	8	9
Intake	-	23[b]	-	7 (4 PT)	8	-
Mediators	100	83	85	140	35-40	146
Total Staff	105	108	93	151	51-56	155
Budget:						
Source - Amount	• City -- $185,000 • Bar Foundation -- $5,000	• City of Atlanta -- $70,000 • Fulton County -- $70,000 • United Way -- $44,792 • Dekalb County -- $30,000 • Consulting -- $10,208	• State Judiciary -- (approx.) $80,000 • Hewlett Foundation -- $50,000 • Contributions, Memberships, Consulting -- $50,000 • United Way -- $20,000	• State -- $92,500 • Suffolk County -- $92,500 • Brookhaven (Town) -- $5,000 • Babylon (Town) $5,000 • Mastic Shirley (Town) -- $5,000	• City of Manhattan -- $293,300 • State -- $125,000	• N.Y. Unified Ct. System -- $80,500 • Monroe Co. -- $64,400 • Foundations & Earned Income -- $50,600 • N.Y. State Division of Youth -- $34,500
Total Budget	$185,000[a]	$225,000	$200,000	$200,000	$419,000	$230,000

[a]Does not reflect in-kind services that the program receives, i.e., space and furniture, screening services and supplies provided by the courts and the U.S. Attorney's Office.

[b]Includes 20 volunteer intake counselors.

[c]Funds received from the NC General Assembly and foundations (Z. Smith Reynolds & The Mary Reynolds Babcock Foundations) expired as of June 30, 1983. As of July 1983, the program in Chapel Hill had only $21,000 in available funds for 1983-84.

Table 1B *(continued)*

I. Program Structure and Organization
B. Composite Programs

LOCATION / PROGRAM FEATURES	CHAPEL HILL, NORTH CAROLINA	DALLAS, TEXAS	HOUSTON, TEXAS
Title	Dispute Settlement Center	Dispute Mediation Service of Dallas	Neighborhood Justice, Inc.
Address:	205 N. Columbia Street P.O. Box 464 Chapel Hill, NC 27514	1310 Annex at Live Oak #203 Dallas, TX 75204	301 San Jacinto Houston, TX 77002
Director/Contact:	Lil Smith	Richard Evarts	Mike Thompson
Date Established:	February 1979	August 1981	August 1980
Sponsor(s):	Independent	Private, Non-Profit Corporation	• Private, Non-Profit Corp. • Houston Bar Committee on Alternative Dispute Resolution
Staff: Administrative Intake Mediators Total Staff	 3 (1 PT) - 23 26	 7 - 67 74	 6 (1 PT) 10 120 136
Budget: Source - Amount	• Foundations[c] -- $39,000 • N.C. General Assembly[c] -- $30,000 • United Fund/ United Way $11,000 • Local Governments[d] -- $7,000	• Governor's Criminal Justice Fund[e] -- $150,000 • Residuals -- $18,000 • Meadows Foundation -- $16,000 • Texas Dept. of Community Affairs -- $16,000	• State Criminal Justice Div. -- $180,000 • Foundations[f] -- $90,000 • Businesses -- $30,000
Total Budget	$63,090	$200,000	$300,000

[d]Includes the municipalities of Hillsborough, Chapel Hill and Carboro, plus Orange and Chatham Counties.

[e]Derived from criminal fines. Also, Texas passed legislation in 1983 adding a $5 fee onto every civil case to help fund mediation programs.

[f]Consists of a group of nine different foundations, each contributing $10,000.

Table 1C

I. Program Structure and Organization
C. Community-Based Programs[a]

LOCATION / PROGRAM FEATURES	FRESNO, CALIFORNIA	REDWOOD CITY, CALIFORNIA	SAN FRANCISCO, CALIFORNIA	NEW HAVEN, CONNECTICUT	ALBUQUERQUE, NEW MEXICO	SANTA MONICA, CALIFORNIA[a]
Title:	Christian Conciliation Service of San Joaquin Valley	Friendly Acres Neighborhood Board	The Community Board Program, Inc.	Fair Haven Community Mediation Program, Inc.	Christian Conciliation Service of New Mexico, Inc.	Neighborhood Justice Center
Address:	P.O. Box 1348 Fresno, CA 93715	3430 Michael Dr. Redwood City, CA 94063	149 Ninth St. San Francisco, CA 94103	162 Fillmore St. New Haven, Ct 06513	315 Acno, N.E. Albuquerque, NM 87102	1320 Santa Monica Mall Santa Monica, CA 90401
Director/Contact:	Russell E. Templeton	Jon Hardegree	Raymond Shonholtz	Carol Anastasio	Laury Eck	Lauren Burton
Date Established:	January 1982	July 1982[b]	August 1977	December 1981	May 1980	April 1978
Sponsor(s):	Christian Legal Society	Target Education and Welfare Council, Inc.	Non-profit, private corporation	Non-Profit, Tax Exempt Organization	• Christian Legal Society • Local Churches	L.A. County Bar Association
Staff:						
Administrative	3 (1 PT)	1	12	2	19[d]	3
Intake	-	-	12	-	-	11
Mediators	24	18	300	51	250	25
Total staff	27	19	324	53	269	39
Budget:						
Source-Amount	• Individual, Business and Church Gifts -- $19,000 • User's Fees -- $10,000	• Redwood City City Council -- $18,900 • Raychem[c] -- $18,900 • Ampex[c] -- $1,000	• Ford Foundation -- Not Available • Hewlett Foundation -- Not Available • San Francisco Foundation -- Not Available • Other Foundations -- Not Available	• New Haven Foundation -- $31,000 • Aetna -- $12,000 • Haymarket Foundation -- $11,500 • Office of Urban Affairs (Church) -- $3,000 • Local Corporations -- $1,800	• Contributions -- $81,000 • Proceedings from Filing Fees -- $9,000	• City of Santa Monica -- $35,000 • State Office of Criminal Justice Planning -- $13,000 • Donations -- $5,000 • LA County Bar Association -- $4,000
Total Budget	$29,000	$38,000	~~$400~~,000	$49,300	$90,000[e]	$57,000

[a]The survey of community-based programs revealed several significant changes in status. The Little Italy Dispute Settlement Program in Cleveland, Ohio was discovered to have closed in July 1982. Also, four programs were discovered to have evolved into composite-type programs: Santa Monica, Cambridge, Albany, and Darby. These are included in this table but presented in a separate group above.

[b]Originally opened in July 1982, but reorganized in November of that same year.

[c]Private corporations in the high technology field.

[d]Includes 15 clerical volunteers.

Table 1C *(continued)*

I. Program Structure and Organization
C. Community-Based Programs[a]

LOCATION / PROGRAM FEATURES	CAMBRIDGE, MASSACHUSETTS[a]	ALBANY, NEW YORK[a]	DARBY, PENNSYLVANIA[a]
Title:	Cambridge Dispute Settlement Center	Albany Dispute Mediation Program	Community Dispute Settlement Program of Delaware County
Address:	One West Street Cambridge, MA 02139	727 Madison Ave. Albany, NY 12208	884-B Main St. Darby, PA 19023
Director/Contact:	Beth Schachtman, Mediation Coordinator	Cynthia Urbach Krouner	Anne Richan, Jim Donahue, Program Coordinators
Date Established:	July 1979	January 1977	1977
Sponsor(s):	Cambridgeport Problem Center[f]	Not-For-Profit Organization	Independent Non-Profit Organization[h]
Staff:			
Administrative	2 (1PT)	2	2
Intake	-	2	-
Mediators	20	32	25
Total staff	22	36	27
Budget:			
Source-Amount	• United Way[g] • Private Foundations[g]	• Local Fund-raising -- $29,000 • State Office of Court Administration -- $20,000	• Aetna -- $8,000 • Philadelphia Foundation -- $6,000 • Local Governments -- $5,000 • Other Foundations -- $4,500[i] • Quaker Contributions -- $2,500
Total Budget	$33,000	$49,000	$43,600[i]

[a]In the past, as much as 17% of the operating budget of the New Mexico COS came from foundation support through the Christian Legal Society. At present, however, support from this source is insignificant.

[f]The Center also sponsors two other programs: 1) legal services, and 2) social services.

[g]All fundraising is done by the Executive Director of the Cambridgeport Problem Center; therefore program staff do not know the specific origin of its budgeted funds.

[h]Sponsored until July 1982 by the Friends Suburban Project.

[i]Although the annual budget for calendar 1983 is $43,600, as of early June only $26,000 had been raised. Additional funds are expected to be provided by other foundations.

Table 2A

II. Intake Procedures
A. Justice-System-Based Programs

PROGRAM FEATURES \ LOCATION	LOS ANGELES, CALIFORNIA	WATERBURY, CONNECTICUT	FT. LAUDERDALE, FLORIDA	LOUISVILLE, KENTUCKY	DORCHESTER, MASSACHUSETTS	TRENTON, NEW JERSEY
Major Referral Sources:						
Walk-ins/Self-Referrals	-	-	-	52%[c]	-	-
Police	85%[a]	-	5%	-	8%	5%
Prosecutor	-	-	30%		-	-
Courts	-	100%[b]	-	37%	90%[d]	95%
Community Groups	-	-	-	-	2%	-
Other -- (Detail)	15% -- • UCLA Police • Public Agencies, esp. Health, Building & Safety, Animal Regulation	-	65% -- • County Agencies • Public Relations	11%	-	-
Screening Responsibility:	Deputy City Attorneys	• Prosecutor • Program Staff	Court Counselors	• Program Intake Officers • Prosecutor • Judges	Program Administrator	• Judges • Municipal Court Clerks
Types of Cases Handled:						
Criminal (%)	100%	100%	25-30%	98%	100%	65-70%
Civil (%)	-	-	70-75%	2%	-	25-30%
Other/Detail	• Also handles disputes involving public agencies • Spouse abuse cases • Juveniles included only when victims	• Spouse abuse cases • Juvenile cases	• Divorce disputes • Spouse abuse • Juvenile cases	• Spouse abuse cases • Bad checks	• Spouse abuse cases • Divorce disputes • Juveniles • Have even handled armed conflict	• Custody, visitation cases (approx. 5%) • Small claims up to $1,000 • Monitor spouse abuse cases, only if court also involved
Cases Excluded:	• Drunk driving • Drug cases • Agency cases with no possible resolution	• Gun or knife involved • Police Department involved • Sexual contact	• Attorneys involved • Already in court system • No mediatable dispute	• Most civil cases sent to small claims • Juvenile cases	None	• No continuing relationship or interpersonal disputes • Juvenile cases • 22% of all referrals sent back to court

[a]The L.A. City Attorney Program is part of a criminal prosecution agency. Cases chosen for mediation are civilly compromised and monitored. Mediated cases are put under submission for one year--if no further incident arises in that time period then it is dropped. However, if the disputants reappear the city attorney can reconsider prosecution of the initial case.

[b]A 4-6 week continuance is provided in Waterbury to allow time to mediate the dispute. The case is put on hold for 13 months: If the "defendant"/respondent is picked up again for a similar act the court can revive the case and adjudicate it; if no more activity is reported, then the case is closed and there is no criminal record.

[c]Complainants in Louisville come to the program before filing a formal claim in court and can voluntarily choose mediation. Courts and prosecutors can also refer cases to the program. Judges sometimes even make referrals after adjudication has begun.

[d]The presiding judge has apparently withdrawn support for the Dorchester program and has refused to make referrals to it since the fall of 1982.

Table 2A *(continued)*

II. Intake Procedures
A. Justice-System-Based Programs

PROGRAM FEATURES \ LOCATION	CINCINNATI, OHIO	CLEVELAND, OHIO	COLUMBUS, OHIO	NORMAN, OKLAHOMA	PORTLAND, OREGON
Major Referral Sources:					
Walk-ins/Self-Referrals	18%	-	30-40%	-	30%
Police	80%[c]	65%	50-60%	50%	16%
Prosecutor	-	-	-	20%	-
Courts	2%[c]	-	-	-	-
Community Groups	-	35%	-	-	-
Other — (Detail)	-		less than 10% — • City Agencies • City Officials	30%	54% — • Local Gov't. Agencies (29%) • State & Federal Agencies (6%) • Quasi-Gov't. Agencies (16%) • Private Agencies (3%)
Screening Responsibility:	Part-time students staff Intake Window from 8 AM to 12 PM	Mediators	Prosecutor's Intake Counselors[f]	Program Staff	Program Staff[h]
Types of Cases Handled:					
Criminal (%)	100%	100%	80-85%	95%	35%
Civil (%)	-	-	-	5%	41%
Other/Detail	• Special bad check program - Charge Fee of $8.50/case to companies • Juveniles handled only when victim/complainant	• Domestic violence cases • Juvenile cases handled only if complainant • Bad checks	• 15-20% of cases are "administrative"[g] • 40% of cases involve bad checks • Spouse abuse • Juveniles only as complainants	• Spouse abuse • Juveniles	• 24% Code violations (e.g., traffic, noise, animals, nuisance) • Juveniles • Neighbor to neighbor disputes only
Cases Excluded:	• Felonies • Drug-related cases • Sexual offenses • Landlord/tenant disputes • Traffic cases • Public agency or company involved	Civil cases, unless a possibility of escalation into criminal matter	• Serious violence • Sexual offenses • Criminal record	• Cases involving strangers • Serious misdemeanors • Felonies • Cases involving punishment	• Felonies • Disputes between spouses, relatives

[e]Police in Cincinnati provide a form to disputants outlining the mediation option. Also, all citizens requesting misdemeanor warrants are first referred to the mediation program.

[f]All misdemeanor complaints in Franklin County must come through the prosecutor's intake section, open five days a week from 8 AM to midnight and on weekends. Fifty to sixty percent of the cases are scheduled for night prosecutor's unit, ten to fifteen percent filed immediately, and the balance are resolved at intake.

[g]Administrative cases involve disputes over housing, building code violations and disputes with agencies such as libraries, motor vehicle department, national guard, utility companies, city income tax collectors.

[h]Field interviews are conducted in every case referred to the Portland program. This provides both an opportunity to screen cases and, more important, to resolve the vast majority of cases through conciliation (see Table IV A for reported case outcomes).

Table 2B

II. Intake Procedures
B. Composite Programs

PROGRAM FEATURES \ LOCATION	WASHINGTON, D.C.	ATLANTA, GEORGIA	HONOLULU, HAWAII	CORAM, NEW YORK	NEW YORK, NEW YORK	ROCHESTER, NEW YORK
Major Referral Sources:						
Walk-ins/Self-Referrals	25%	2%	23%	-	7%	-
Police	-	} 10-15%	2%	-	10%	5%
Prosecutor	35%		9%	98%	-	30%
Courts	25%	60%	11%	2%	71%[c]	65%[d]
Community Groups	-	-	3%	-	-	-
Other -- (Detail)	15% -- D.C. Attorneys	23-78% -- • Better Business Bureau • United Way	51% • Government Agencies (25%) • Legal Aid Organizations (4%) • Media • Attorneys • Friends	-	12%	-
Screening Responsibility:	• Program Staff • Family Court Staff • U.S. Attorneys' Paralegals	Intake Counselors	• Staff • Volunteers	• Program Executive Director • Victim/Witness Unit in D.A.'s Office	Intake Interviewers	• Program Intake Staff • Assistant D.A.
Types of Cases Handled:						
Criminal (%)	85%	50%[a]	25%[b]	Not available	90%	65-70%[e]
Civil (%)	15%	50%	75%		10%	30-35%
Other/Detail	• Domestic violence • "Persons in Need of Services"	• Custody and visitation • Juveniles • Spouse abuse	• Spouse abuse • Juveniles -- Special in-school mediation systems being established	• Spouse abuse • Juvenile unit	• Spouse abuse • Juveniles • Bad checks	• Juveniles • Spouse abuse • Limited divorce disputes • Community service--e.g., elections, lotteries, complaints against police, fact-finding for Pre-trial Services
Cases Excluded:	• Unwilling participants • Chronic spouse abuse	• Felonies less likely	• Unwilling parties mediatable issue • Complex auto accidents	• Child abuse and neglect • Alcohol-related cases	• Cases involving violence • Felonies • Drug-related cases • Career criminals • Evictions	Felonies

[a] In Atlanta, as in many other jurisdictions, it is sometimes difficult to distinguish between criminal and civil matters. For example, a probable cause hearing is a civil proceeding which is held to determine whether or not to indict on a misdemeanor charge, a criminal violation. The fact that most mediated disputes never reach the charge stage further compounds the problem of criminal/civil classification.

[b] The Honolulu NJC is divided into three distinct program areas: 1) Family Mediation Service (FMS), which handles custody and visitation disputes, juveniles, domestic violence, etc. and constitutes 75% of the center's workload; 2) Neutral Ground, which handles community disputes such as landlord/tenant, consumer/merchant and neighborhood problems, constituting 20% of the overall workload; and 3) the Conflict Management Program, handling disputes with government agencies, environmental and land use issues, which constitutes 5% of the center's workload.

Table 2B *(continued)*

II. Intake Procedures
B. Composite Programs

PROGRAM FEATURES \ LOCATION	CHAPEL HILL, NORTH CAROLINA	DALLAS, TEXAS	HOUSTON, TEXAS
Major Referral Sources:			
Walk-ins/Self-Referrals	-	5%	-
Police	15%	4%	5%
Prosecutor	80%	7%	85%
Courts	-	Minimal	7-8%
Community Groups	-		2-3%
Other -- (Detail)	5% -- Social Service Agencies	82% -- • Church Groups • Urban League • Hispanic League • Social Services • EEOC (10%) • Private Attorneys (6%)	-
Screening Responsibility:	• District Attorney • Program Case-Workers	Program Administrative Officer	• District Attorney Staff • Police Juvenile Unit • Program Interns
Types of Cases Handled:			
Criminal (%)	55%	20%	50%
Civil (%)	45%	80%	50%
Other/Detail	• Juveniles -- project with local schools • Use of gun or deadly weapon • Roommate disputes	• Limited spouse abuse • Juveniles • Divorce (29%) • Commercial relations (51%)	• Spouse Abuse • Juveniles • Paranoid schizophrenics
Cases Excluded:	• Sexual contact • Domestic violence • Bad checks • Shoplifting • DUIs	• Pending Court action • Serious felonies • Insanity	None

[c]IMCR referrals from the courts break down as follows: 66% from the Summons court for Bronx and Manhattan (IMCR staff conduct screening for court); 2% from Manhattan Criminal Court; and 3% from the Bronx Criminal Court.

[d]The major source of referrals in Rochester is the pre-warrant screening process conducted by a program intake worker and an assistant D.A. in the complaint clerk's office.

[e]The Rochester Center for Dispute Settlement is divided into three program areas: 1) 4A (arbitration as an alternative), handling adult civil and criminal matters; 2) a juvenile program; and 3) family dispute mediation program (for which a fee is charged).

Table 2C

II. Intake Procedures
C. Community-Based Programs

PROGRAM FEATURES \ LOCATION	FRESNO, CALIFORNIA	REDWOOD CITY, CALIFORNIA	SAN FRANCISCO, CALIFORNIA	NEW HAVEN, CONNECTICUT	ALBUQUERQUE, NEW MEXICO	SANTA MONICA, CALIFORNIA
Major Referral Sources:						
Walk-ins/Self-Referrals	-	-	-	-	25%	5%
Police	10%	-	-	60%	-	50%
Prosecutor		-	-		-	10%
Courts		-	-		-	-
Community Groups		-	-		-	-
Other -- (Detail)	90% -- • Church, Pastors • Friends	100%[a]	Specific figures are not available pending completion of ongoing evaluation. Referrals are received from all of the above sources.	15-20% 20-25% -- Schools	75% • Lawyers/Bar/ Legal Aid (25%) • Churches/ Pastors (25%) • Counseling Agencies (25%)	35% -- • Legal Services/ L.A. County Bar (15%) • Media (10%)
Screening Responsibility:	Program Director	Program Director	• Office Staff • Casework Committee members	Program Staff[c]	Program Staff[d]	Program Staff[c] -- • Secretaries • Intake Volunteers
Types of Cases Handled:						
Criminal (%)	5%	10%[b]	50%	60%	5%	55%
Civil (%)	45%	90%	50%	40%	95%	45%
Other/Detail	• 50% Divorce • Spouse abuse • Juvenile (Civil)	• Spouse abuse • Juveniles • Any 2-party dispute	• Spouse abuse • Juveniles	Juveniles	• Domestic cases (35%) • Spouse abuse • Juvenile • Rape • Child molestation	• Domestic violence (first instance) • Divorce • Juveniles
Cases Excluded:	Parties unwilling to mediate according to biblical/ Christian principles	Probably will not take divorce cases	• Unwilling parties • Alcohol abuse	• Domestic violence • Divorces • Felonies	Cases involving govt. agency as party (because) of church/state separation)	• Chronic spouse abuse • Unwilling parties • No mediatable dispute

[a]The Friendly Acres Neighborhood Board is newly-reorganized and is presently conducting an outreach campaign to inform appropriate referral sources of their services. The public agencies and private community groups being contacted include: courts, police departments, housing agencies, humane society, etc.

[b]These statistics for Redwood City are based on less than ten cases mediated as of August 1983.

[c]A staff person in New Haven regularly reviews the arraignment docket.

[d]The New Mexico CCS charges a $50 filing fee, which may be waived if a client is indigent.

Table 2C *(continued)*

II. Intake Procedures
C. Community-Based Programs

LOCATION / PROGRAM FEATURES	CAMBRIDGE, MASSACHUSETTS	ALBANY, NEW YORK	DARBY, PENNSYLVANIA
Major Referral Sources:			
Walk-ins/Self-Referrals	-	-	30%
Police	-	7%	-
Prosecutor	-	-	10%
Courts	50%[f]	80%	25%
Community Groups	-	-	-
Other -- (Detail)	50% -- • Legal Services • Social Services • General Publicity	13%	35% -- • Phone Book (20%) • Legal Assistance (15%)
Screening Responsibility:	Mediation Coordinator	Program Director	Program Coordinators
Types of Cases Handled:			
Criminal (%)	50%	100%	-
Civil (%)	50%	Rarely	Majority[g]
Other/Detail	• Spouse abuse • Juveniles • Small claims	• Spouse abuse • Juveniles	Juveniles
Cases Excluded:	• No 2 identifiable parties • No mediatable dispute	• Felonies • Disputes involving money in excess of $1000	• Physical violence • Spouse abuse

[e]Santa Monica charges a $5 case processing fee.

[f]The Cambridge Dispute Settlement Center gets the majority of its referrals through: 1) contacting all citizens filing small claims disputes; 2) contacting individuals going to show-cause hearings; and 3) reviewing the D.A.'s cases each day prior to arraignment.

[g]The respondent in Darby felt unable to cite specific percentages because the distinction between criminal and civil matters is not always clear. (see also footnote a, Table IIB.)

Table 3A

III. Dispute Settlement Procedures
A. Justice-System-Based Programs

LOCATION / PROGRAM FEATURES	LOS ANGELES, CALIFORNIA	WATERBURY, CONNECTICUT	FT. LAUDERDALE, FLORIDA	LOUISVILLE, KENTUCKY	DORCHESTER, MASSACHUSETTS	TRENTON, NEW JERSEY
Approach:						
Conciliation	-	-	30-40%	-	-	-
Mediation	100%	100%	60-70%	100%	100%	100%
Arbitration	-	-	See Below	-	-	-
Other	-	-	-	-	-	-
Detail/Comments			Arbitration is used in juvenile cases only			
Hearing Location:						
Justice System Bldg.	100%	100%	100%	100%	-	100%
Office Building	-	-	-	-	-	-
Informal Setting	-	-	-	-	-	-
Other	-	-	-	-	100% Storefront[a]	-
Average Hearing Length:	1 hour -- Criminal Matter 20-30 minutes -- Agency Case	30 minutes	1 hour	45 minutes	2 hours	1 hour
Number of Hearing Officers/Session	1	1	1	1	2	1
Hearing Officers: Background	Laypersons -- Long-term law enforcement & sociology background stressed	Professional Mediator, Family Relations Counselors	Varied -- Law Students, Lawyers, Retired Judges, Profes. Arbitrators, Social Workers, Laypersons, etc.	Lawyers, Graduate Professionals	Laypersons	Professional Mediators
Training	None -- rely on previous experience	• 14 hours • Conducted by Program Director • Videotaped	• Provide extensive materials for review • Observation & co-mediation program • Conducted in-house	• 2-week on-the-job training • Participant observation • Supervision by Hearing Officer • Aided by Coordinator of Court Services	• 38 hours over 3.5 week period • Conducted by Administrator and Mediators	• 3 days training by N.J. office of the Public Advocate • 2 day seminar at AAA in N.Y. • 1 month observation by Senior Counselor • On-going workshops and seminars
Payment	$24,000-$31,000	Reimbursed for cost of a meal and parking only	None	$6.00/hour	$10.00/session	$11,800-17,000 -- Counselor $14,800-20,800 -- Senior Counselor

[a]The Dorchester program used to be located in a storefront next to a pizza place. That building has now been sold, so future mediation sessions will take place in the courthouse.

Table 3A *(continued)*

III. Dispute Settlement Procedures
A. Justice-System-Based Programs

PROGRAM FEATURES \ LOCATION	CINCINNATI, OHIO	CLEVELAND, OHIO	COLUMBUS, OHIO	NORMAN, OKLAHOMA	PORTLAND, OREGON
Approach					
Conciliation	-	-	-	-	96%
Mediation	100%	100%	100%	100%	4%
Arbitration	-	-	-	-	-
Other	-	-	-	-	-
Detail/Comments		Some effort at conciliation at initial interview	Prosecutor's Intake Section resolves as many as 40% of the disputes that come into the office		Conciliation accomplished by home visits and phone contact
Hearing Location:					
Justice System Building	100%	100%	100%	100%	-
Office Building	-	-	-	-	-
Informal Setting	-	-	-	-	98%
Other	-	-	-	-	2% — Public Facilities
Average Hearing Length:	30 minutes	45 minutes	1 hour	45 minutes	2.5-3 hours (No time limit)
Number of Hearing Officers/Session	1	1	2 • Hearing Officer • Human Relations Counselor	1	3
Hearing Officers: Background	Law Students (50%) and Graduate Students (50%)	Law Students (100%) (several have remained after becoming lawyers)	Law Students, Lawyers, Professional Mediators, Social Workers, Counselors	Law Students (38%) and volunteer Laypersons (62%), incl. Educators, Labor Relations Experts	Laypersons (74%), Law Students (22%), Professional Mediators (4%)
Training	• 30-60 hours • Observation • Supervised on-the-job training • Conducted by staff of Cincinnati Institute of Justice • Twice annually	• 20 hours over weekend • Extensive screening & evaluation • Observation • Individual videotaping • Conducted by Program Director	• 40 hours initial training • Carefully screened for skills in law and crisis intervention • Constant evaluation, computerized performance appraisal	• 16 hours initial training • Observation period (2 weeks to 2 months)	• 8 hours initially • Role-playing sessions • Co-mediation with experienced panel for 3 sessions
Payment	$4.50-$4.80/hour	$4.75-$5.25/hour, depending upon experience	$4.00-$6.00/hour	• $500/month — 20 hours/week at $6.25/hour - to employees • None to volunteers	$10.00/session

Table 3B

III. Dispute Settlement Procedures
B. Composite Programs

PROGRAM FEATURES \ LOCATION	WASHINGTON, D.C.	ATLANTA, GEORGIA	HONOLULU, HAWAII	CORAM, NEW YORK	NEW YORK, NEW YORK	ROCHESTER, NEW YORK
Approach:						
Conciliation	14%	20%	35%	-	-	-
Mediation	86%	80%	60%	100%	90%	85%
Arbitration	-	-	-	-	10%	15%
Other	-	-	5%	-	-	-
Detail/Comments			Collaborative Problem Solving/ Conflict Anticipation			No arbitration in disputes involving juveniles
Hearing Location:						
Justice System Bldg.	100%	-	-	-	25%	
Office Building	-	-	75%	-	-	-
Informal Setting	-	100%	20%	100%	75%	90%
Other	-	-	5%	-	-	10%
						-
Average Hearing Length:	2 hours	2 hours	• Neutral Ground--3 hours • Family Mediation--4-6 sessions, 2-3 hours each • Conflict Mgmt.--Multiple sessions in a year	2.5 hours	1-1.5 hours	2-2.5 hours
Number of Hearing Officers/Session:	2	1	• MC--3 or 4 • FMS--2, Male and Female • CM--2+	2	1	1
Hearing Officers: Background	Laypersons (100%)	Laypersons (100%) (prefer adults age 25-73 years)	Laypersons (79%) Lawyers (21%)	Laypersons (100%)	Laypersons (99%) Lawyers (1%)	Laypersons (100%) --community volunteers
Training	• 30 hours • Followed by probationary period • Conducted by Citizen Complaint Center staff trainers • Held 1-2 times annually	• 40 hours • 15 in-house trainers • Held every 18 months	• 40 hours standard • 20-30 hours advanced training for FMS • CM requires apprenticeship • Extensive screening • Attempt to match with mediator partners	• 42 hours • Conducted by Executive Director	• 55-60 hours • Observation on 3-5 cases • Evaluation • Conducted by IMCR	• 25-30 hours--classroom • 12-15 hours--apprenticeship • Mentor, Co-Mediation Evaluation • Staff Trainer, aided by Board Members
Payment	$5.00/session	$15.00/mediated case	None	$12.50/case	$13.00/case	• Juveniles & 4A--$25.00/case • Community Service--$35.00/session • Divorce--$35.00/session (average 5 sessions)

Table 3B *(continued)*

III. Dispute Settlement Procedures
B. Composite Programs

PROGRAM FEATURES \ LOCATION	CHAPEL HILL, NORTH CAROLINA	DALLAS, TEXAS	HOUSTON, TEXAS
Approach:			
Conciliation	2%	55-60%	12%
Mediation	98%	40-45%	88%
Arbitration	-	-	-
Other	-	-	Minimal
Detail/Comments	Conciliation conducted by both phone and letter	• Phone conciliation used to agree upon specific performance plan • Only mediation is used in domestic disputes	• Conciliation conducted by phone, letter, & personal visits • Sometimes provide advocacy, working with one disputant in absence of other party
Hearing Location:			
Justice System Building	-	-	100%
Office Building	100%	100%	-
Informal Setting	-	-	-
Other	-	-	-
Average Hearing Length:	1-1.5 hours	1.5 hours	1-1.5 hours
Number of Hearing Officers/Session:	2	• Usually 1 • 2 in domestic relations area	• Usually 1 • 2-4 if fairly complicated dispute
Hearing Officers: Background	Laypersons (100%)	Laypersons (67%) Lawyers (33%), 22% Bilingual	Lawyers (50%), Social Workers (25%), Law Students, HSW Candidates, Laypersons
Training	• 18-20 hours -- classroom • 10 hours-- internship • Conducted by Program Staff • Held once a to fill vacancies	• 40 hours • 6 months probation • Executive Director principal trainer • Also use Communications Specialists	• 40 hours initiall • Addtl.20 hours throughout year • 2 month observation period • Conducted annually by program staff
Payment	None	$15.00/each 3-4 hour time frame (committed to 12 hours/month)	$10.00/evening (once/month)

Table 3C

III. Dispute Settlement Procedures
C. Community-Based Programs

PROGRAM FEATURES \ LOCATION	FRESNO, CALIFORNIA	REDWOOD CITY, CALIFORNIA	SAN FRANCISCO, CALIFORNIA	NEW HAVEN, CONNECTICUT	ALBUQUERQUE, NEW MEXICO	SANTA MONICA, CALIFORNIA
Approach:						
Conciliation	20%	-		30-40%	2%	10%
Mediation	60%[a]	100%		60-70%	88-93%	90%
Arbitration	20%	-		-	5-10%[c]	-[f]
Other	--	-		-	-	-
Detail/Comments	Reconciliation Counselling--2 parties are encouraged to reconcile their differences according to the scriptures before mediating		Conciliation (at home visits) and mediation hearings are both used but no specific percentages are available	Home visits to both parties are conducted in every case	In 5-10% of disputes, parties are spread across state or nation, so mediation or arbitration may occur without a face-to-face meeting	Phone resolution particularly successful in consumer/merchant disputes
Hearing Location:						
Justice System Bldg.	-	-	-	-	-	-
Office Bldg.	5%	-	-	-	-	-
Informal Setting	90%	100%	100%	100%	100%	100%
Other	5%	-	-	-	-	-
Average Hearing Length:	2-3 hours	• 2 hours with disputants • 40 minutes for Mediator Board to discuss	2-3 hours	1.5 hours	1.5-2 hours (usually multiple sessions)[d]	2-3 hours[g]
Number of Hearing Officers/Sessions:	3[b]	5	5	3	3[e]	• Usually 1 • 2 in special cases
Hearing Officers' Background	Lawyers, Laypersons, Businesspeople, Pastors	Laypersons (100%) incl. Youth, Businesspeople, & Neighborhood Residents	Laypersons (100%)	Laypersons (100%)	Laypersons (38%), Lawyers (32%), Pastors (30%)	Lawyers constitute majority; balance are Laypersons, incl. Social Workers, Psychologists, Teachers, Businesspeople, etc.
Training	12-16 hours	• 27 hours • Additional training modules, e.g., for young mediators	• 26 hours • Conducted by local psychologist	• 20 hours • Co-mediation with experienced mediators • Session conducted totally in Spanish, Summer 1983 • Mediators conduct sessions • Usually once/year	• 30 hours initially • 10-12 hours periodic specialized training, e.g., in handling domestic disputes • Program staff conducts sessions • Usually 3 times/year	• 30 hours intensive • Assess individ. skills after initial training & suggest termination, observation, co-mediation as necessary • Sessions conducted by program • Usually once/year
Payment	None	None	None	$10.00/case mediated	Out-of-pocket expenses only	None

[a]The San Joaquin Christian Conciliation Service (CCS) uses a combined approach of mediation and arbitration. During the first portion of the hearing mediators try to get the parties to agree to a resolution of the conflict; however, if this is unsuccessful the panel will impose a settlement.

[b]The panel of mediators in the San Joaquin CCS usually consists of a lawyer, an elder of the church and an individual knowledgeable in the area of the dispute, e.g., a businessperson if the dispute is business-related.

[c]The Christian Conciliation Service (CCS) of New Mexico also uses a combination of mediation and arbitration. The program will mediate up to 14 hours; then the case is reassessed to determine if arbitration is necessary. If imposed, an arbitral agreement is legally binding under New Mexico law.

Table 3C *(continued)*

III. Dispute Settlement Procedures
C. Community-Based Programs

PROGRAM FEATURES \ LOCATION	CAMBRIDGE, MASSACHUSETTS	ALBANY, NEW YORK	DARBY, PENNSYLVANIA
Approach:			
Conciliation	-	3%	3%
Mediation	100%	97%	97%
Arbitration	-	-	-
Other	-	-	-
Detail/Comments			
Hearing Location:			
Justice System Building	-	-	-
Office Building	100%	100%	-
Informal Setting	-	-	100%
Other	-	-	-
Average Hearing Length:	2-2.5 hours	1.5 hours	2 hours
Number of Hearing Officers/Session:	2	2	2 minimum
Hearing Officers: Background	Laypersons (75%), Lawyers (20%), Law Students (5%)	Trained Professional Mediators	Laypersons (100%)
Training	• 20 hours • Observation & staffing role • 2 hours/month in-service training • Conducted by Program Staff	25 hours	• 20 hours • Apprenticeship involving participant observation, co-mediation • To date, conducted by Friends Suburban Project
Payment	None	None	None

[d]The New Mexico CCS does not bring parties together in initial meetings; mediators meet with each party separately and bring them together only when it seems appropriate.

[e]Each team of mediators in Albuquerque is handpicked by the pastors of the parties to the dispute, and consists of one attorney, one pastor, and one business or professional person with relevant expertise.

[f]Although a dispute has never been arbitrated in Santa Monica, in some cases parties sign agreements agreeing to arbitration if mediation fails to resolve conflict.

[g]Divorce disputes in Santa Monica usually take 2-3 sessions of 3-4 hours each to come to a resolution.

Table 4A

IV. Reported Case Outcomes
A. Justice-System-Based Programs

PROGRAM FEATURES \ LOCATION	LOS ANGELES, CALIFORNIA	WATERBURY, CONNECTICUT	FT. LAUDERDALE, FLORIDA	LOUISVILLE, KENTUCKY	DORCHESTER, MASSACHUSETTS	TRENTON, NEW JERSEY
Annual Caseload:						
Number of Referrals	28,800	1,400	3,600	20,000	325	900
Number of Hearings	28,800	1,282	2,700	6,000	244	774
Comments	All referred cases must have hearings		Hearings are held in 75% of all referred cases	14,000 cases went to affidavits	1981 figures -- no cases have been mediated since November 1982 (see also footnote d, Table IIA)	
Resolution Rates:						
% Resolved Prior to Hearing	-	-	Not available -- unwilling respondent	23-26%	-	Less than 10%
% Resolved with Hearing	83%	87%		72-75%	89%	78%
% Cases Not Resolved	14%	30%		2%	11%	22%
(a) No Shows	6%	15%		-	Not available	Majority
(b) Failure to Agree	8%	15%		2%	Not available	-
(c) Other	-	-		-	Not available	-
Long-Term Follow-Up:						
Time Period	None	None	Not available	• 30 day follow-up • Yearly random sampling	One year	None
Results/Comments				75-80% success rate reported		Used to send letters at 30 days & 6 months but no longer do because of a limitation on clerical assistance

[a]Percentage of referred cases resolved without prosecution or mediation.

[b]Percentage of hearings scheduled where both parties showed up and the dispute was resolved. This figure represents an average of the success ratios in the different types of cases handled by the program. In addition, it is reported that 5% of scheduled hearings never take place because the parties reach an agreement themselves.

Table 4A *(continued)*

IV. Reported Case Outcomes
A. Justice-System-Based Programs

PROGRAM FEATURES \ LOCATION	CINCINNATI, OHIO	CLEVELAND, OHIO	COLUMBUS, OHIO	NORMAN, OKLAHOMA	PORTLAND, OREGON
Annual Caseload:					
Number of Referrals	7,500	15,000	50,000	2,900	411
Number of Hearings	3,250	9,000	27,171	600	14
Comments	• 50% of scheduled hearings never take place • 20% of cases are referred to courts, 7% at intake and 13% after hearing	Hearings are held in 60% of referred cases			Of the 411 referrals, 409 were accepted for a field interview, another 49 cases were declined after the field interview
Resolution Rates:					
% Resolved Prior to Hearing	5%	Small but significant	30%[d]	26%	89%
% Resolved with Hearing	35%	85-90%	95%[b]	53%[d]	3%
% Cases Not Resolved	10%	10-15%	5%[c]	47%	-
(a) No Shows	Majority	-	-	39%	1%
(b) Failure to Agree	-	Majority	5%	1%	-
(c) Other	-	-	-	7% -- Referred to Prosecution	7% — • Party unavailable • Inappropriate • Other action • Party referred
Long-Term Follow-Up:					
Time Period	Variable	2 weeks	2-6 weeks	Within 30 days	One month
Results/Comments	Cincinnati Institute of Justice conducts client survey	75-80% remain resolved	Continued resolution in 80-90% of all cases[e]	70% remain resolved	• Situation in dispute -- Improved 88%, Same 10%, Worse 2% • Overall relationship -- Improved 60%, Same 38%, Worse 2%

[c]Percentage of cases where formal charges are filed. Some cases are not resolved because of no-shows, but the number of such cases is not available.

[d]Including no-shows; of the hearings held, 90% were resolved.

[e]Of total referrals; of hearings held, 10% remain unresolved.

Table 4B

IV. Reported Case Outcomes
B. Composite Programs

PROGRAM FEATURES \ LOCATION	WASHINGTON, D.C.	ATLANTA, GEORGIA	HONOLULU, HAWAII	CORAM, NEW YORK	NEW YORK, NEW YORK	ROCHESTER, NEW YORK
Annual Caseload:						
Number of Referrals	2,119	2,500	100	1,700	17,336	1,470 (approx.)
Number of Hearings	756	1,500	30-40	700	6,316	865 (approx.)
Comments	• Caseload has increased significantly in 1983 • Hearings are held in 35-40% of cases referred	Nearly 50% of all referrals never get to hearing stage & are not included in statistics below	Many cases involve multiple hearings		In 53% of referred cases the respondent cannot be located, the case is inappropriate, or it is referred elsewhere	
Resolution Rates:						
% Resolved Prior to Hearing	14%	15-20%	23%	8%	3-5%	12%
% Resolved with Hearing	79%	65-75%	22%	84%[d]	75%	82%
% Cases Not Resolved	7%	10-15%		-	Not available	12%
(a) No Shows	26%[a]	See note above		-	37%	-
(b) Failure to Agree			8%	7%	-	12%
(c) Other	19%[b]	-	47% --	-	-	-
	Cancelled	-	Closed cases: Withdrawn, no show, or referred elsewhere			
Long-Term Follow-Up:						
Time Period	One month	60-90 days	3 months	None	None	6 months
Results/Comments	• 77% reported that hearing was helpful • 68% said agreements held up • 90% satisfied with mediators • 80% generally satisfied with service	• 70-75% totally adhered to agreement • 15% breached agreement in part • 10-15% did not keep agreement at all	• In family mediation service component--95% remain resolved		Offer compliance service--will check within one year to determine whether agreements, binding & enforceable in civil courts, are being abided by	• 92% of agreements in juvenile division were upheld • 85% of agreements in 4A (adult) division were upheld

[a]Of total referrals.

[b]Overall settlement ratio of 48%, taking into account unidentified respondents, etc.

Table 4B *(continued)*

IV. Reported Case Outcomes
B. Composite Programs

PROGRAM FEATURES \ LOCATION	CHAPEL HILL, NORTH CAROLINA	DALLAS, TEXAS	HOUSTON, TEXAS
Annual Caseload:			
Number of Referrals	360	1,250	4,500
Number of Hearings	124	300	2,250
Comments		• Respondents cannot be located in 20% of cases • In another 20% the disputants are unwilling to mediate	Respondent cannot be located in 20% of referred cases
Resolution Rates:			
% Resolved Prior to Hearing	-	90%	12%
% Resolved with Hearing	92%		42%
% Cases Not Resolved	5%	10%	45%
(a) No Shows	-	-	28%
(b) Failure to Agree	5%	-	-
(c) Other	-	-	17% -- • 12% counselled/ advocacy • 5% cancelled
Long-Term Follow-Up:			
Time Period	No standard	6 months	None
Results/Comments	Sample survey of total caseload revealed that 85% of resolutions were intact	Only in some cases--no aggregate statistics	

[c]Of hearings held; 34% of total referrals.

[d]67% mediated, 15% arbitrated

Table 4C

IV. Reported Case Outcomes
C. Community-Based Programs[a]

Table 4C

IV. REPORTED CASE OUTCOMES
C. COMMUNITY-BASED PROGRAMS[a]

PROGRAM FEATURES \ LOCATION	FRESNO, CALIFORNIA	REDWOOD CITY, CALIFORNIA	SAN FRANCISCO, CALIFORNIA	NEW HAVEN, CONNECTICUT	ALBUQUERQUE, NEW MEXICO	SANTA MONICA, CALIFORNIA
Annual Caseload:						
Number of Referrals	288	6	500	173	1,500	387
Number of Hearings	160	2	100	70	1,100	269
Comments				Figures are for December of 1981 through April of 1983	Cases are not scheduled for hearings because: • Matter resolved informally • Referred elsewhere • Respondent refusal/no contact	Respondent refusal is the major reason for cases not being heard
Resolution Rates:		Not available[b]				
% Resolved Prior to Hearing	40-45%	-		30-40%	-	90%
% Resolved with Hearing	90%[a]	80-86%		93%[a]	70%[e]	
% Cases Not Resolved	10%	-		29%[c]	0%[f]	10%
(a) No Shows	-	-		-	-	-
(b) Failure to Agree	Majority	-		7%[d]	-	Majority
(c) Other	-	-		26% -- • Respondent refuses to mediate • Cannot locate parties • Referred elsewhere	27% See note above	-
Long-Term Follow-up:						
Time Period	None	Not yet determined	None	2-3 months	None	30 days standard but tailor to individual agreements
Results/Comments				Overwhelming majority remained resolved		• Client adherence 89% • Client satisfaction 92%

[a]Of hearings held.

[b]Friendly Acres program has handled fewer than 10 cases in its first 3 months of operations under its reorganized structure, thus no statistical analysis of case resolution is possible yet.

[c]Of total referrals.

[d]Of hearings held.

Table 4C *(continued)*

IV. Reported Case Outcomes
C. Community-Based Programs[a]

PROGRAM FEATURES \ LOCATION	CAMBRIDGE, MASSACHUSETTS	ALBANY, NEW YORK	DARBY, PENNSYLVANIA
Annual Caseload:			
Number of Referrals	280	160	67
Number of Hearings	52	140	17
Comments	Cases are not mediated due to respondent refusal and parties reaching agreement		Respondent refuses to mediate in those cases that are not scheduled for hearings
Resolution Rates:			
% Resolved Prior to Hearing	Not statistically significant	5%	3%
% Resolved with Hearing	90%	80%	90%
% Cases Not Resolved	10%[f]	15%	Not available
(a) No Shows	24%	Not available	-
(b) Failure to Agree	10%	Not available	-
(c) Other	-	-	-
Long-Term Follow-Up:			
Time Period	1-3 months	Not available	2 weeks & 2 mos.
Results/Comments	90% success rate	90-95% compliance rate	• Not done systematically, due to lack of personnel • In most cases, the situation giving rise to the dispute is reported to have improved

[e]60% through mediation, 10% through arbitration.

[f]All cases that go to hearings are resolved because parties agree to binding arbitration should mediation fail to result in resolution.

[g]Of total referrals--cases withdrawn and/or respondent refuses to mediate.