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Court Diversion: An Alternative for Spousal Abuse Cases

by Anna T. Laszlo and Thomas McKean*

Perhaps the husband should still be permitted to exercise the right to moderate chastisement, in cases of great emergencies, and to use salutary restraints in every case of misbehavior without subjecting himself to vexations, prosecutions, resulting in the discredit and shame of all parties.

Bradley v. State, Walker 156, 1824

Criminological research clearly reveals that violence is not an uncommon characteristic of intrafamilial relationships. The constant company of the spouse, the stress caused by the closeness, and a sense of insecurity with the relationship provide fertile ground for violent reaction. Cultural approval and acceptance of violence toward one's spouse has been documented.

A recent survey conducted by the National Commission on the Causes and Prevention of Violence suggests that one of every five husbands approves of slapping a wife's face. (McEvoy, 1970)

In recent years, divorce rates have been one of the few areas increasing more rapidly than inflation. Levinger (1966) notes that 37 percent of wives who applied for divorce in one metropolitan area cited physical abuse as one of their complaints.

O'Brien randomly selected families from a population of those in which spouses had initiated divorce action in 1969. Only one spouse in each family was interviewed: 48 percent were men and 52 percent were women. Seventeen percent of those sampled spontaneously mentioned violent behavior. Eighty-four percent of those reports were made by women regarding their husbands. (O'Brien, 1971) These figures probably underestimate the amount of physical violence between spouses because there were probably violent incidents which were not mentioned or listed as the main cause of divorce. However, O'Brien did find that wife beating is prevalent throughout the social spectrum.

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A number of researchers have noted that familial violence most often occurs in the home, with the bedroom and the kitchen the most likely places of assault. (Pokorney, 1965; Gelles, 1974; Straus, 1974) It is only when the violence reaches the extremes of homicide or severe injury to a child that society seems to be willing to acknowledge the existence of family violence. In general, social science literature has tended to ignore violence between husbands and wives. It is only in the past decade that academic researchers have begun to explore the problem.

Accurate statistics on the crime of assault and battery of a wife are unavailable. Van Stolk (1976) found that wife assaults are treated as a social problem, not a crime. Cases are buried in divorce and homicide statistics, making it difficult to pinpoint the scope and frequency. A study of reported cases of spousal abuse in the Boston area indicates that many victims accept abuse in order to maintain their economic security, or in order to maintain the family unit. Other victims cited a belief that the offender would eventually change his assaultive behavior, which the victim perceived to be rooted in alcohol or drug abuse. Further, the decision to call the police and the motivation to go through the court process was often a direct result of the assaultive behavior extending to the children, behavior changes in the children who had witnessed the violence, or the increased seriousness and frequency of the assault.

Studies of murderers and their victims show that the most frequent single category of murderer-victim relationship is the family relationship. Wolfgang's (1956) data on the incidents of husband-wife homicide indicated that "among the 53 husbands who killed their wives, 44 did so violently," with violent behavior defined as two or more acts of stabbing, shooting, or severe beating.

Causes of Family Violence

Gelles and Straus (1976) have identified a number of factors contributing to a theory of intrafamilial victimization. The semivoluntary nature of the family group and the intensity of emotional involvement account for a high level of stress within the group. In spousal abuse, as in other victim-offender relationships, the motivational determinants of anger and power seem to influence the type of assaultive behavior toward the victim as well as the frequency and the violent nature of the assault. (Burgess and Groth, 1977; Laszlo and Levinsele, 1977)

Tarde and others have studied the phenomenon of victim-precipitated crime. (Tarde, 1912; Von Hentig, 1948; Schafer, 1968) Often in family violence, it is difficult to determine to what extent the victim has contributed to her own victimization. It is particularly in these

victim-offender interactions that diversion through mediation is appropriate.

Marital Violence and the Criminal Justice System

Many sources in the literature have documented the crucial role of the police in responding to calls of intrafamilial violence. Bard (1969) states that "of all social agencies, it is the police who are most likely to be summoned during intrafamilial disputes, especially among the less privileged." He further states that these requests for police intervention may be seen as public declaration that acceptable limits of aggression are being reached and that unacceptable violence is imminent. (Bard and Zacker, 1971)

This initial request for help, however, is made to a system which sees itself not as a helping resource, but rather as one empowered to enforce compliance with the rules of acceptable behavior as defined by the law. Hence, while the behavior of the police is usually calculated to force compliance either physically, by legal sanction, or by admonition, the disputants may be seeking relief through immediate arbitration. Limited by traditional role definition to perceive himself primarily as a law enforcer, the police officer may not be able to perceive his hidden agenda. His limited perspective and training determine actions on his part that are inconsistent with the underlying motivation of those who request his intervention. Logically, the dissonance is responsible, at least in part, for 22 percent of police deaths (FBI, 1963) and an even larger percentage of police injuries. Instead of responding as a helping resource, his response as an enforcer can be conducive to tragedy in the family or to himself and also represents a lost opportunity in initiating constructive alternatives to family violence.

Historically, the courts have been reluctant to confront the complexities of spousal abuse. The common law doctrine of the legal identity of the marital partners as one person serves as the foundation of "spousal immunity."

By marriage the husband and wife are one in person in the law, that is, the very being or legal existence of the woman is suspended during the marriage or at least is incorporated and consolidated into that of her husband. (Blackstone, 1768)

In an effort to preserve the privacy of the domicile, the courts have limited their role in familial disputes to matters extending beyond "trivial complaint."

If no permanent injury has been inflicted, nor malice, cruelty nor dangerous violence shown by the husband, it is better to draw the

curtain, shut out the public gaze, and leave the parties to forget and forgive. (*State v. Oliver*, 70 N.C.60, 1874)

In addition, the traditional model of sentencing and the threat of incarceration acts to further divide the already dismembered family unit.

Only recently has the criminal justice system reevaluated its role with respect to both the victims and the offenders of marital violence. (Field and Field, 1973; Bard, 1969; Parnas, 1967)

Some jurisdictions have recognized that the traditional means of adjudicating criminal complaints which result from spousal abuse do not resolve the underlying dispute. They have sought, therefore, to divert spousal abuse cases to alternative forms of dispute settlement, either through an arbitration panel or a mediation panel. The arbitration programs have replaced the former peace bond agreement, whereby the offender would not be prosecuted if he agreed to "cease and desist" in his actions. A violation of the peace bond agreement resulted in either a loss of a money bond or a contempt of court action. (Brakel, 1972; Nimmer, 1974; McDonald, 1976)

This paper will investigate programs which divert spousal abuse cases outside the traditional criminal process. The paper will include (1) an assessment of a 2-year sample of spousal abuse cases in a Boston area district court; (2) a presentation of the mediation component of the urban court program in Boston; (3) a discussion of other court diversion programs across the country; and (4) an analysis of effective diversion for cases of spousal abuse.

Methodology

Definition of Terms

For the purposes of this paper, the following terms have been defined:

Diversion: Traditionally, "diversion" has been defined as the channeling of criminal defendants into rehabilitative programs after a disposition of a criminal complaint. For the purpose of the study, we have broadened the definition as described in the report of the corrections task force of the National Commission on Criminal Justice Standards and Goals (1973):

Diversion refers to formally acknowledged efforts to utilize alternatives to the justice system. To qualify as diversion such efforts must be undertaken prior to adjudication and after a legally prescribed action has occurred. Diversion implies halting or suspending formal criminal proceedings against a person who has violated a statute, in favor of processing through a noncriminal disposition.

Operationally, we define "diversion" as the referring of criminal complaints to a mediation/arbitration unit. *Family*: The presence of non-nuclear families requires a liberalization of the concept of family to include spouses of varying marital status. *Spouse*: The "spouse" is defined as either one of the persons in the male-female relationship whether married, separated, divorced, common-law, or in a conjugal relationship for 6 months. *Complainant*: The complainant is defined as the party who seeks the criminal complaint. *Respondent*: The respondent is defined as the defendant in the criminal complaint. *Nonviolent*: Those criminal actions in which the harm to the complainant is nonphysical. *Violent*: Those criminal actions in which the harm to the complainant is physical. *Successful Mediation*: The grant proposal for the Urban Court Program defines "successful mediation" as one in which the disputants arrive at a written agreement. For the purposes of this analysis, we have defined "successful mediation" as one which results in no further criminal complaints being sought by the complainant against the respondent within the span of the study.

Scope

The paper will analyze a study population of 86 cases (defendants) which were processed through the district attorney's office, the district court of Dorchester, Massachusetts, and the mediation component of the urban court program between November 17, 1975, and November 1, 1977. The cases involved disputes between spouses. The defendants ranged in age from 19 to 52 years. There are black, white, and Puerto Rican males in the sample. The marital status of the disputants ranged from married, separated, divorced, common law, or conjugal relationships which lasted for at least 6 months.

Although both felony and misdemeanor cases are included in the sample, the felony charges were reduced by the court to allow the district court to take jurisdiction over the case.

Method of Study

The case files of the district attorney's office were used to assess the date that each case was screened by the prosecutor, the means (summons, warrant, arrest) by which the case came before the court, the number of times the case was before the court, whether or not the mediation agreement was successful, and the disposition of the case. Although the study sample includes 86 defendants, a number of defendants had multiple case files, each representing a separate criminal case with the same complainant.

The mediation agreements and the case followup reports of the Urban Court Program were used to determine the nature of the mediation agreement.

In calculating the data for tables I and II, the more serious charge was tabulated. If the defendant was charged with a felony and a misdemeanor, the felony charge was counted. If the defendant was charged with two or more misdemeanors, the more serious of the charges was counted (i.e. malicious destruction of property and threats were counted under a charge of malicious destruction of property).

Six court diversion programs are studied in the paper. Recognizing that a wide variety of diversion programs exist throughout the country, these six programs were chosen since they shared a number of characteristics. Primarily, extensive information was readily available regarding the nature and function of the individual program. Further, each is located in an urban environment, servicing similar types of clientele, with similar types of dispute. Each project is affiliated, to some extent, with the local court and utilizes community members as mediators and arbitrators.

While all the cases in the sample result from alleged aggressive behavior by the defendant, unless there was physical contact on the person of the complainant, the offense has been referred to as nonviolent. For the majority of the cases, the initial court involvement was a summons. Felony charges of assault and battery by means of a dangerous weapon, attempted murder, and assault by means of a dangerous weapon represented 38 cases, of which 10 came to the court through summons. The remaining 48 cases had a far higher percentage of cases come to court through the summons process, a total of 36 cases or 75 percent of the total sample. This is significant because the summons process has the least disruptive effect upon the defendant while serving as a means of issuing a complaint. An arrest at the beginning of the process might have an effect of making a referral to mediation difficult.

As many defendants were in the age range of 35 and over as under 25 years. This indicates an older group of defendants than the national average. (Hindelang, *et al.*, 1976)

The categories under the heading "marital status" are not always clear-cut. The 49 cases under "married" are those couples who were married and still living together. Whether the couple remain living together often has more to do with the economic situation and personality of the wife than the closeness of the relationship. The 13 cases under "separated" were not only those with legal separation, but also those cases in which the husband had abandoned his family or had moved out of the common residence and was living separately. Those cases considered "divorced" were ones in which a legal divorce

TABLE I
Case Distribution By Misdemeanor/Felony Charge

Misdemeanor charge	Number of cases
Threats	4
Malicious destruction of property	1
Annoying calls	2
Assault and battery	41
Total	48
Felony charge	Number of cases
Assault/dangerous weapon	4
Assault and battery/dangerous weapon	33
Attempted murder	1
Total	38
Total Case Sample	86

TABLE II
Case Distribution By Violent/Nonviolent

Charge	Arrest	Violent		Total
		Warrant	Summons	
Assault and battery	4	5	32	41
Assault and battery/ dangerous weapon	8	17	8	33
Attempted murder	1	—	—	1
Total	13	22	40	75
Nonviolent				
Assault/dangerous weapon	2	—	2	4
Threats	1	1	2	4
Malicious destruction property	—	1	—	1
Annoying calls	—	—	2	2
Total	3	2	6	11
Total Case Sample				86

TABLE III
Demographic Data

Age	Total	Race	Total	Marital status	Total
17-24	23	White	24	Married	49
25-35	40	Black	61	Divorced	11
36-50	19	P.R.	1	Separated	13
51 +	4			Common law	1
				Boyfriend	12
Total	86		86		86

TABLE IV
No Settlement Reached after
Referral to Mediation

Reason	Total
Complainant refused	8
Respondent refused	2
No agreement reached	11
Total Cases	21
Disposition of case	Total
Trial	13
Admission	8
Guilty	2
Not guilty	2
No probable cause	1
Continued without trial	1
Dismissed at request of complainant	5
Default	2

proceeding had been completed. The 12 cases under the category "boyfriend" were relationships which had lasted longer than 6 months, but no marriage had been entered into. The single "common law" case represents a relationship lasting some 7 years with children born to the couple and raised by the couple.

In the 21 cases in which no settlement was reached, there was an almost equal number of instances where the parties refused to attempt mediation as where there was an attempt, but the parties were unable to reach a compromise. These 21 cases were referred back to the court to be resolved through normal court proceedings. There was no form of punishment for either party for the refusal to reach a mediated settlement or for refusal to attempt to resolve the matter through mediation.

In the eight cases in which the complainant refused to attempt mediation, there were two general reasons. First, the complainant felt that mediation would be an insufficient remedy and that the court should exercise its authority over the defendant. Secondly, complainants refused mediation since they wished the matter to go no further in the criminal process and requested that the complaints be dismissed. In order for the complaints to be dismissed, it is necessary for the complainant to come before the court and state under oath that the request to dismiss is given voluntarily and knowledgably and not due to threats. The court has the discretion to dismiss, require a hearing, or continue the matter without a trial in order to ensure against further difficulty.

For the two instances in which the respondent refused to attempt mediation, the most ready explanation is that they failed to appreciate the potential benefit to them of having their case diverted from the criminal justice system. In one case, there was an admission at trial, a requirement that the defendant pay court costs, and a continuance without a finding for 1 year. A condition of the continuance without a finding was that the defendant not see the complainant. In the other case, the complainant requested that the complaints be dismissed.

The matter involved a married couple who had two children. The husband had left the home and had failed to support the complainant and the children. Upon seeing her husband with another woman, the complainant approached him and had words. The defendant struck her. After the incident, however, the defendant has paid outstanding bills and was supporting the victim and the children. The court dismissed the complaints.

In 11 situations in which there was no agreement reached, the reasons varied. In some cases there was a disagreement over the amount of restitution owed. In others, the respondent refused to allow

TABLE V
Settlement Reached After
Referral to Mediation

Results	Total
Dismissed after mediation	48
Settlement reached/ subsequent breakdown	8
Default	9
Total Cases	65

the mediation panel to tell him how to run his life, or felt that he was entitled to see his children whenever he desired. There were other situations in which the parties had resolved the matter to their satisfaction and did not desire to have outside intervention.

When the cases were referred back to the court after no settlement was reached, the court disposed of the cases in various manners. Thirteen cases went to trial. Two cases resulted in the defendant's default. One case was continued without a trial for 1 year. Five cases were dismissed at the request of the complainant.

There was an admission to sufficient facts in 8 of the 13 cases which went to trial. In each of these cases, the court continued that matter without a finding for a period of either 6 months or 1 year. If there was no further difficulty and the defendant complied with the conditions of the court, the case was to be dismissed by the court. The conditions set by the court varied from court costs, to restitution, restrictions on visitation rights, social service referral, to agreements that there be no contact with the complainant.

In the two cases which resulted in guilty findings after a trial, both defendants were given suspended sentences, probation, and conditions of probation. These cases took the form of an arbitration agreement with the court having the power to impose conditions it felt would resolve the dispute and having the power of commitment of the defendant if he refused to comply.

A finding of insufficient evidence to warrant a court finding of guilt or probable cause resulted in only 3 of the 21 cases.

The fact that nine defendants defaulted after having reached a mediation agreement is somewhat puzzling. Presumably, the agreement would not have been reached unless the terms were reasonable and the conditions ones by which the defendant could abide. Either an attitude that the court had no legitimate function in interfering with

domestic violence or a confusion as to the necessity of reappearing in court can be possible explanations. Some of the other cases under the default category might be more appropriately placed in the category of "subsequent breakdown."

The category of "subsequent breakdown" includes eight cases. After a breakdown, the cases resulted in trials or admissions. In one case, even though the breakdown was caused by the actions of the defendant, the complainant requested the case be dismissed. Two of the cases, the court continued without a finding after an admission to sufficient facts. In these cases, conditions were set by the court such as alcohol treatment or payment of restitution. Probation was given in one case. In yet another matter, a 10-day commitment was ordered after a suspended sentence was given and the defendant was surrendered for violation of terms of probations:

X and Y had known one another for seven years and had lived together for a period of time, resulting in the birth of a child. They had broken up six months prior to November 14, 1976. Y had come to X's apartment at 2 a.m., broke the lock on the kitchen door and entered the apartment. Y grabbed X's arm and threatened to kill her if she did not let him in the apartment when he came by to see her. Prior to this occasion, Y had been annoying X at school, when she was at work and calling her at all hours of the day or night. Y also threatened to harm X if she took him to court. X came to court and received a summons for Y to answer the charge that Y "did with offensive and disorderly language accost and annoy X, a person of the opposite sex."

On November 22, 1976, Y came to X's apartment at 11:30 p.m. while she had a male friend visiting her. Y was in the hallway, saw the friend and became enraged, kicking the door to X's apartment. X called the police. Y went to the front of the building and was yelling at X, "Don't come out, I'll kill you." The police told Y to leave. Y returned a short while later. The police again responded and took Y from area. Y then called X and threatened her.

The following morning, X came to court and received a warrant for the arrest of Y on a threats complaint. Y was arrested and the case was arraigned on December 9, 1976. On the first continuance date, there was admission to sufficient facts and the case was continued without a finding for one year on the stipulation the defendant stay away from the victim. A review was ordered for March 31, 1977.

On February 26, 1977, at 7:30 a.m. as X was leaving for work, Y jumped out in the hallway of her apartment and said that he wanted to talk to her. X stated that she was late for work and did not want to talk. There was a cab waiting for X and her son. X tried to get into the cab and Y told the cab to leave. Y grabbed X by the arm and threw her against a van. X told her son to go

upstairs and call the police. Y took X into an armlock and forced her into his car and drove off. Y drove to a location in Roxbury and dared X to get out. X refused and Y drove her to work.

X came to court on March 7th and a summons was issued for Y for March 21st. At that time, the case was continued until April 4th on a charge of assault and battery.

Later in the day on March 21st, Y came to X's apartment. He had obtained a key and walked in. Y refused to leave when X requested. He had on prior occasions intruded into her apartment. X called the police and Y left the apartment before the police arrived.

X again came to the court and received a warrant for Y's arrest on a complaint of trespass. On April 4th, Y was found guilty of assault and battery for the incident of February 26th and given a three month suspended sentence, probation for one year. The trespass charges were filed. There was to be a July 5th review. The threats charge on which Y had been given a continuance without a finding was brought forward and on April 14, 1977, sent to mediation. An agreement was reached on April 21st. The agreement called for Y to stay away from X and to have limited visitation rights with his child. On April 28th, the court determined that Y should have no visitation rights until after a hearing on a probation surrender hearing to be held on May 24th. On May 24th, all matters were continued until August 23rd and on that date all matters were continued until November 22, 1977.

There were three additional incidents for which clerks hearings were held on October 21, 1977. The warrants were not issued on that date, but the matters were continued until November 1, 1977, and Y was told that the warrants would not be issued if there was no further difficulty. The three incidents occurred on October 7, 11, and 13th. At 1 a.m. on October 7, 1977, Y came to talk to X at her home. An argument ensued and Y grabbed for X's throat and began slapping her. The noise awoke the children. Y yelled at them and struck one of the children. At 3 p.m. on October 11, Y came to X's apartment and when told to leave, kicked open the door and threatened to kill X if she called the court. He struck X and then left. October 13, Y broke into X's apartment, slapped her and threatened to burn her house.

On November 4, 1977, Y went to X's apartment and was told to leave. He kicked the door down, slapped X. Y went into his daughter's room and made sexual advances towards her.

The following day, Y was charged with assault and battery, breaking and entering in the daytime with the intent to commit a misdemeanor, and threats. The trial on these matters resulted in a guilty finding and a ten day commitment.

On December 6, 1977, warrants were issued for Y on a complaint of arson. The case is scheduled for trial for December 23, 1977.

Breakdowns occurred in cases in which there was less stability and maturity in the parties involved and the terms of the agreement were insufficient to deal with the problems. This rate of breakdown is perhaps inherent in a structure which has the power to merely seek to facilitate agreements between disputants who often lack insight into the seriousness of their problem rather than the professional personnel who, through arbitration, can impose conditions to modify the parties' behavior.

Most of the breakdowns occurred during the 3-month trial period after the court had allowed the agreement to be tested, rather than prior to the test period. This would lead one to conclude that the defendant-respondent was serious at the time of the mediation and that subsequently the dispute was too serious for mediation or the agreement did not adequately deal with the cause of the violence.

Forty-eight cases or 74 percent of the total sample of cases in which a settlement was reached ended in being dismissed after mediation. The 48 cases represent 56 percent of the total sample of 86 cases. This category must be considered the "success" cases of the sample. It would be narrowminded, however, to assume that the remaining 44 percent were "failures," as the process of sitting down with the goal of resolving disputes not only sets an example to the participants, but also results in positive behavioral changes on the part of many of the defendants. The real failures are those cases in which the mediation process delayed the processing of the case and increased the period of abuse from the defendant. The case history previously noted is an example of such a failure.

There were particular problems unique to particular circumstances. Where the couple had children but were not living together, the issue of visitation rights created conflict. There were not many situations where the dispute arose over financial support. In married couples, the primary complaint was the use of alcohol by the defendant and the resulting violent behavior. In 12 cases, alcohol was mentioned as one of the primary areas for attention. Drug counseling was necessary only once. The low number of psychiatric referrals would be in part because of the requirement that the referral must be voluntary and a general mistrust of community mental health centers as a referral. There were six instances where marriage counseling was sought. These were all cases in which the parties were living together and wanted to improve their marriage. The mediation panel in these instances obviously provided the ideal diversion mechanism.

TABLE VI
Nature of the Mediation
Agreement

Nature of agreement	Total
Agree to get along	25
Alcohol counseling	12
No contact	12
Drug counseling	1
Psychiatric counseling	1
Marriage counseling	6
Visitation	6
Financial agreement	11
Employment counseling	2
Restitution	3
Divorce	3

Restitution is a concept new to the criminal justice system and, like diversion, has the purpose of promoting appreciation by the defendant of the effect of his actions on the victim, was agreed to on three occasions. These were cases in which the victim was not financially dependent on the defendant. Three cases resulted in the agreement to obtain a divorce. The Urban Court Program on these occasions would aid the parties in initiating the legal proceedings and referral to Legal Aid Programs were made. While not having the happy endings of some of the other case histories, these cases may have prevented further violence more than any others.

The category "agree to get along" would seem so vague as to lack meaning, but the further vow to attempt a relationship based on love or at least friendship is an essential first step towards reconciliation. This agreement to get along would often be spelled out in detail in the agreement:

Y is a 36 year old male who had been married to X for a number of years. On January 23, 1977, Y struck X a number of times requiring her to go to the hospital with injuries to the face and hands. The incident resulted from a conversation X initiated after she had opened the mortgage statement. Y had not paid the bill for two months.

X came to court and obtained a warrant and Y was arrested on January 26, 1977. The case was arraigned and referred to mediation. A mediated settlement was reached on January 27th.

The agreement stated that both parties agreed to get along, they agreed to discuss their problems in private and not in front of the children; X agreed to not question her husband about the way he spends the money, to not accuse her husband of seeing another woman, to not inquire about her husband's whereabouts with friends. If the agreement breaks down, X will return to court and file for separation. Y agreed to pay more attention to his wife, to spend more time at home, not to see another woman, not to take the children to another woman's home. The case was continued until May 19, 1977, when the case coordinator reported that X and Y's relationship had improved. The case was continued an additional three months until August 18, when it was dismissed.

The agreement to have "no contact" is the reverse of the agreement to "get along." Violence can be prevented easiest by removing the source of frustration, and agreeing to have no contact is the admission that there is no possibility of resuming the loving relationship. A source of frustration exists in the situation where one party has made a psychological break from the other spouse, but the other party is still dependent and feels increased jealousy of his/her relationship with those of the opposite sex:

Y is a 25 year old male who was separated from his wife X. On November 6, 1976, Y came to X's home to see the children. A discussion between X and Y over the sale of a dog turned into a violent incident. X called the police and Y became upset over the call and picked up a chair and X was hit in the face with it. The police arrived within a short time and Y ran from the scene. X did not go to the hospital, but came to the court for a summons for a hearing on November 22, 1976. The case was sent to mediation. A mediated settlement was reached on December 6, 1976.

The agreement stated that X would allow Y to see the children at any given time if he calls before coming. The children would be picked up from Y's mother's home and Y was not to take the children to the home of his female friends. X was not to harass Y in any manner or to call him. Other than the contact spelled out in the agreement, there was to be no contact between X and Y.

The case was continued for three months on December 13, 1976. On May 16, 1977, the case was dismissed when it was reported, by the case coordinator, that no further difficulty had ensued between X and Y.

In these cases, no contact can prevent further irritation and the resulting violent behavior.

Trends in Court Diversion

The Urban Court Program is only one of many diversion programs. Others are operated out of Columbus, Ohio; New York, New York;

Rochester, New York; Miami, Florida; and San Francisco, California. While there is no specific information as to how each of these programs deals with spousal abuse, this section will describe these six programs, paying specific attention to the referral mechanisms, case criteria, method of resolving the dispute, and goal achievement.

The Urban Court Program, Boston, Massachusetts

The Dorchester community is largely composed (approximately 50 percent) of a white Irish Catholic working class, with family roots in the community and a strong neighborhood identification. In recent years, there has been an influx of the black working class, who have expanded into the traditionally white neighborhood. Interracial conflict has been prevalent in the community, exemplified by the school busing controversy. There is also a small percentage of Puerto Ricans, with their own cultural identity, antagonistic to both black and white.

Existing as a separate entity within the community, the Columbia Point Housing Project is predominantly inhabited by the poor black and Puerto Rican population. Despite this ethnic and racial mixture within the community, Dorchester can by no means be considered an integrated community. The boundary lines between the races are clearly defined.

Recently the community has been actively involved in both the politics and the operation of the district court. The black and Puerto Rican population consistently has used the court as the arena for settling interpersonal disputes. In addition, the deterioration of the Catholic parish, traditionally an agent for resolving family disputes, has resulted in an increasing referral of family violence cases to the court.

The Urban Court Program operates from the municipal court of the Dorchester district, Boston, Massachusetts. It became operational in November 1975 with the assistance of the Dorchester District Court, the Suffolk County District Attorney's Office, the Mayor's Committee on Criminal Justice, the Massachusetts Committee on Criminal Justice, the Boston Police Department, and the community representatives of the Dorchester Court Advisory Board. The program was funded through a 3-year discretionary grant by the Law Enforcement Assistance Administration.

The program consists of four separate components, each designed to address specific issues of criminal justice reform:

Disposition Panel: A component of the UCP develops sentencing recommendations to the district court for defendants who admit to sufficient facts or for whom there has been a finding of sufficient facts.

Victim/Witness Assistance Project Case Flow Chart

Referral from clerk Referral from police
Victim/witness interviewed by ADA and/or victim specialist
Prosecute case
Yes No
Obtain facts of incident
ADA prepares case for arraignment. Victim specialist completes interview and orientation of the witness to CJS.
Identify any social service needs of victim/witness
Client needs services
Yes No
Clients accepts services
Yes No
Provide service or complete referral to appropriate agency
Provide postarraignment service
Notify victim/witness of trial
Provide orientation during and post-trial
One-month followup of referral cases
Six-month followup of referral cases
Close case

Victim Services: A component of the UCP which provides specific social services to victims and witnesses who are referred to the unit by the victim/witness assistance project of the Suffolk County District Attorney's Office.

District Attorney's Victim/Witness Assistance Project: This project is housed in the office of the district attorney and is directly responsible to the prosecutor. The unit provides initial intake of all victim/witnesses coming through the court through a process of "intake screening." (Laszlo, 1976) The case flow chart illustrates the primary functions of the unit.

Mediation: A component which offers an alternative method of handling criminal complaints. Complaints referred to mediation characteristically involved disputants who know one another: family members, neighbors, landlord/tenant, etc. The component provides dispute settlement service to the district court by utilizing trained community volunteers to conduct mediation sessions.

Referrals to the unit may be made by the clerk of courts after a 35A hearing, the district attorney after screening, and the bench after arraignment.

Upon referral, an Urban Court staff member is available to explain the program to the complainant and the respondent. The disputing parties consent to mediation by signing a voluntary agreement form. When the respondent is not present at the time of the referral, a letter is sent requesting that he contact the Urban Court offices within 72 hours. Once an agreement is signed by both parties, a panel of two or three mediators is selected and a time for the session is scheduled.

An important difference between the mediation component and many other programs around the country is that it offers only mediation, not arbitration. Matters are referred back to the court when settlements cannot be reached. Either the clerk's office decides to issue the complaint, or the district attorney's office processes the complaint through normal court procedures.

Mediated settlements are written up by the panel, signed by both parties, and witnessed by the panel members. Copies of the agreement are given to both parties. The agreement is not legally binding. The panel encourages disputants to contact the program when problems occur. The panel also informs the parties that a staff member will be in contact within 2 weeks to monitor the agreement.

If a complaint was not issued prior to referral to mediation, the project staff simply notify the clerk whether or not an agreement was reached. If a complaint was issued, then the disputants must appear in court. A copy of the agreement is forwarded to the district attorney's office and the probation department. At this point, the case will either be dismissed or continued for a period of 3 months. After the continuance, the complaints will be dismissed, provided the agreement has not been abridged. According to a recent study, the breakdown of referral sources to the unit indicate the following: police—2.2 percent; district attorney and bench—57.4 percent; clerk—33.4 percent; community organizations and walk-in—7 percent.

Before scheduling a mediation session, the disputants are informed in detail of the component's intent and procedures. A staff member is available at the court each day to speak to disputants once a referral has been made. Sessions are scheduled at the convenience of the disputants, with most sessions occurring in the early evening or the weekend. Prior to the actual mediation session, the panel is briefed on the nature of the dispute.

During the initial phase of the session, the proceedings are explained. There is particular emphasis placed on the nature and function of the unit: (1) that the panelists do not formulate the agreement, but rather act as facilitators to the disputants; (2) that the mediation agreement should be one that the disputants can honor; (3) that the agreement is not legally binding.

The complainant is then asked to relate the incidents of the dispute. The defendant is given the same opportunity. Once the initial information has been elicited, the mediators may question the disputants to determine the underlying causes of the dispute.

The substantive portion of the mediation is accomplished during the individual sessions with the disputants. When an agreement is reached, the mediators reduce it to writing and present it to the disputants. The following exemplifies an agreement between a husband and wife in our sample.

AGREEMENT

We the undersigned, having participated in a mediation session on March 16, 1976, and being satisfied that the provisions of the resolution of our dispute are fair and reasonable, hereby agree to abide by and fulfill the following:

- (1) X and Y agree to a total separation.
- (2) X agrees to accept a referral for personal and legal counselling from the Resource Coordinator at the Urban Court Program.
- (3) Y agrees that when he has the money he will contribute to the support of his daughter. The money will be used only for his daughter.
- (4) X and Y agree to the following terms for Y's visiting his daughter:
 - a. Y will call a day in advance.
 - b. Y will be allowed to visit no more than three times a week.
 - c. His visits at the house will be no longer than two hours long.
 - d. If he takes his daughter out, he will keep her no more than eight hours; he will tell X where he is going and when he will be back and will call X if there are any changes in plans.

Signatures:

We, the undersigned mediators having been in accordance with the Mediation agreement entered into by the above signed and dated March 16, 1976, and having heard these parties resolve their dispute, hereby affirm the above agreement.

At this time, the disputants may request any changes in the agreement. Only when both parties are satisfied is the agreement signed. Agreements generally have dealt with the alleged criminal dispute:

At 8:30 a.m. on December 17, 1976, X was home on Levant Street, Dorchester, where she lives with her mother and a one year old child. Y, the 20 year old father of X's child, came with his new girlfriend to X's home and yelled to X that he wanted to see her and if she did not come to him, he would break her legs. X wanted to avoid any trouble and to see Y. Y began slapping X, kicked her to the ground and continued to kick her in the head. Y then left and X called the police. The police arrived shortly thereafter and took X to the hospital. After being released from the hospital, X came to the court and received a warrant for Y's arrest for assault and battery with a dangerous weapon, to wit, a shod foot. Y was arrested on April 27, 1977, when he again came to X's home. The case was continued the next morning until May 11th when it was referred to mediation. The mediation agreement was reached on May 18th.

The agreement consisted of Y's promise to avoid contact with X, not to go to X's home, to plead guilty in a paternity suit to be filed by X at her earliest convenience and to pay X \$25/week starting the following week. X agreed to stay away from Y and that she would allow their child to be picked up by the sister of Y for a few hours visit each Sunday afternoon at 1 p.m. starting the following Sunday.

The charges were dismissed on September 1, 1977 upon request of the Resource Coordinator, who indicated that the agreement was working. The report further noted that "neither party is able to be in court today, because they are taking their baby to the hospital for an eye appointment."

Social service referrals are available to both parties and are often a part of the mediation agreement:

X and Y had been married for a long period of time. Y, a 52 year old male with an alcohol problem, came home Saturday morning, March 5, 1976, picked up a knife and threatened X that he would cut her head off. The incident resulted in no injury to X.

The following day, X came to court and received a summons for a hearing for March 21st. On that date, both X and Y were referred to the mediation panel and an agreement was reached on March 24th.

Since it was clear, in this matter, that Y needed alcohol counselling, the case was continued without a finding on the stipulation that Y seek appropriate counselling through the Mediation Project. The case was dismissed on June 20, 1976 when the Resource Coordinator reported that Y had been keeping his alcohol counselling appointments at the Dimick Street Health Center and that he had obtained employment.

Each case is reviewed by the court 3 weeks after arraignment. If an agreement has been reached, the case is continued for 3 months. If no

further difficulties arise, the court dismisses the criminal complaint at the end of the 3-month continuance. If the mediation session is unsuccessful, that is, no agreement is reached, or the mediation agreement breaks down, the district attorney's office proceeds with the prosecution of the complaint.

According to recent evaluations of the Urban Court Program, 36 percent of the cases referred include "family" disputes, 20 percent neighborhood disputes, 17 percent interpersonal disputes, 18 percent landlord/tenant disputes, and 17 percent miscellaneous disputes.

The project accepts referrals of both felony and misdemeanor cases. However, in order for the court to take jurisdiction over the case, the felony charge must be reduced to a misdemeanor. This process requires the consent of the district attorney's office.

The mediation component has not been involved in family disputes of an economic nature, such as "non-support" or "illegitimacy." The component does not mediate "bad check" cases.

Primary goal achievements have included citizen involvement in the dispute settlement process and community education about the function and limitations of the court, as well as diversion of potential criminal cases from the court. It is hoped that through mediation the offender gains a better understanding of the impact of his actions on the victim and the community. The victim and community members thereby become involved as participants rather than observers in the mediation process.

The Columbus Night Prosecutor's Program. Columbus, Ohio

One of the first experiments in dispute settlement through diversion, the Columbus Night Prosecutor's Program (CNPP), is operated by the city attorney's office in Columbus, Ohio. The program serves Franklin County, with a total population of 921,000, with the city of Columbus accounting for approximately 67 percent of the population.

The program was established in November 1971 as a collaborative effort between the city attorney's office and the Capitol University Law School. It received block grant funds from the Law Enforcement Assistance Administration in September 1972 to allow for an expansion, and more recently, the CNPP has been incorporated into the city budget. The program is housed in the office of the city attorney.

The CNPP receives referrals from the police and the prosecutor's screening staff. The complainant is interviewed to determine whether the case would be appropriate for mediation, or whether the complaints are sufficiently serious to demand that a criminal charge be issued. When the case appears appropriate for the CNPP, a date for the hearing is set at the convenience of the complainant, and the

respondent is notified. The respondent is informed that "failure to appear may bring further legal action."

CNPP utilizes mediation as the method for dispute settlement. Law students from Capitol University Law School act as mediators. Attorneys occasionally accompany the disputants, although the program discourages the presence of counsel during the mediation sessions.

Hearing officers begin the session by explaining the purpose of the process to the disputants. The complainant is then allowed to present the facts of the dispute, followed by an account of the incidents by the respondent. An effort is made to enable the two parties to present their interpretation of the dispute without interruptions from the other party.

Once the initial facts of the dispute have been presented, the hearing officer encourages the disputants to explore the underlying causes of the dispute. The goal of the program is to have the parties arrive at a mutual agreement. Occasionally, a witness, usually a friend of the disputants, present at the mediation session, may be able to suggest terms of an agreement. If the parties are unable to arrive at an agreement, the hearing officer will suggest a solution which he sees as likely to be acceptable to both parties. At this time, the hearing officer informs the parties of the law and the criminal sanctions which may be applied to the incident; however, the hearing officer does not act as an arbitrator.

The program does not use written agreements; however, if the disputants request a written agreement, the hearing officer summarizes the resolution and presents a copy to the disputants. The disputants are informed that they are placed on "prosecutor's probation" for a period of 60 days. The aim of this procedure is to emphasize to the respondent that criminal charges could be brought. In fact, the "prosecutor's probation" has no independent legal force and the threat of filing a criminal complaint stands more on the merit of a repeated offense than on the violation of the mediation agreement.

The CNPP focuses on criminal conduct involving interpersonal disputes in which there is a continuing relationship. This has included complaints of assault and battery, threats, destruction of property, and petty larceny. The program also accepts referrals for "bad check" cases. A recent evaluation of the program indicated that the breakdown of cases was 61 percent bad checks and 39 percent interpersonal dispute. (McGillis and Mullen, 1977)

The development of the CNPP has provided the city attorney's office with a mechanism for diverting a complex array of misunderstanding, hostilities, and distrust, common in citizen complaints, without having to bring the matter before the court. It was hoped that

through mediation, prior to issuance of a criminal complaint, the caseload of the court would be considerably lightened.

Although the program maintains limited records of its cases, it has been noted that of the 6,429 interpersonal disputes handled by the program only 2.5 percent or 161 cases resulted in the issuance of a criminal complaint. The bad check cases likewise resulted in a relatively low rate of criminal complaints, with a total of 1,104 from a total sample of 10,146 cases mediated. (McGillis and Mullen, 1977) Thus, an estimated 92 percent of the cases were diverted from the criminal justice system.

The program does not have a means for estimating whether the cases selected by the project would have been processed through the criminal justice system. Clearly, many of the disputes are technically chargeable criminal offenses, but it remains unclear what proportion of the cases would have been removed from the system by the prosecutor's intake screening program, or would have been dismissed at the request of the complainant.

The Miami Citizen Dispute Settlement Project. Miami, Florida

The Miami Citizen Dispute Settlement Project (MCDS) is operated by the administrative office of the courts of the 11th Judicial Circuit of Florida. The project was developed in the fall of 1974 and became operational through block grant funds from the Law Enforcement Assistance Administration. The project serves Dade County, with a population of 1,467,000. It is housed in the Metropolitan Justice Building, which also houses the criminal courts and the prosecutor's office. Branch offices of the project have also been established in the lower courts.

The MCDS accepts referral from the prosecutor's office, the Miami Police Department, and the public safety department. Additional cases are referred by community organizations and walk-in clients.

Complainants are interviewed at the prosecutor's office by the intake-screening clerk and are referred to the project when the dispute meets the case criteria. A project counselor then interviews the complainant to determine whether the case is suitable for mediation or would be better handled by another agency (i.e., legal service, welfare department, consumer protection). If the case is accepted for referral, a hearing is scheduled and the respondent is notified that a complaint has been lodged against him and that "failure to appear may result in the filing of criminal complaint based upon the above complaint." If no criminal action has occurred, the respondent is advised that the failure to appear at the mediation hearing may result in the aggravation of the situation.

The project utilizes mediation as the technique for dispute settlement. Mediators are professionals, representing a diversity of disciplines (social work, law, sociology, psychology). They have been trained through a program designed by one of the mediators. The purpose of the training had been to ensure that the mediators have common experience in approaching the types of disputes handled by the project, rather than to teach actual techniques of dispute settlement.

Mediation sessions are held in one of the courtrooms. At the beginning of the session, the disputants are informed of the nature of the CDSP and reminded that the proceeding is not a formal court hearing, that no decision of guilt or innocence will be made, and that the purpose of the hearing is to attempt to resolve the dispute.

The complainant is asked to relate the incident, followed by comments from the respondent. The mediator then attempts to identify the dispute issues and assists the disputants in reaching a mediation agreement. The parties are encouraged to arrive at a written agreement, although a written resolution is not a requisite of the process.

Case followup occurs the following day. In cases in which there has been an agreement, the matter is considered closed and the original complaint is dismissed. If the parties have not reached an agreement, the case is reviewed with the complainant for possible recommendation for prosecution. The project also provides referral to social services if requested by the complainant or respondent.

The MCDS accepts referrals for both criminal and civil complaints. The project's grant application cites nine offense areas which are particularly amenable to the structure of dispute settlement. These offenses, in order of priority, are: disorderly conduct, assault and battery, malicious mischief, trespass, animals, family and child, possession of stolen property, petty larceny, and loitering. According to court records, it is estimated that these comprise 60 percent of the total misdemeanor cases which enter the criminal justice system. The civil complaints handled by the project have included landlord/tenant disputes, neighborhood problems, consumer complaints, and domestic problems.

Current assessment of the project indicates that the total case intake was 4,149, and of those, 98.6 percent were resolved by mediation. The remainder of the cases were returned to the State attorney's office for prosecution. (McGillis and Mullen, 1977)

No formal evaluation of the project has been done. As with the CNPP, it is impossible to determine how many of the cases would have been screened out of the criminal justice system by the prosecutor's screening process. Thus, the exact impact of the project

upon the caseload of the prosecutor's office and in the court is difficult to estimate. Furthermore, estimates of cost savings cannot be determined as there are a number of different estimates as to the cost per case. It is apparent that, until an evaluation of the project is available, its impact on the dispute settlement process, the relative success of the mediation agreements, and the cost savings will remain unclear.

The New York Institute for Mediation and Conflict Resolution Dispute Center. New York, New York

The New York Institute for Mediation and Conflict Resolution (IMCR) became operational in June 1975 through a grant from the Law Enforcement Assistance Administration. The center is sponsored by a private nonprofit organization, which was established under a Ford Foundation grant to train community mediators in mediation techniques. The center is located in an office building in Harlem and services Manhattan and the Bronx.

IMCR received the majority of its referrals from the police department during the first year of operation. However, recently the referral source has expanded to include the summons court of the criminal court, the criminal court, and walk-in clients.

In cases in which there was no arrest made, the police refer directly to the center. In cases in which an arrest is made, a dispute center staff member reviews the case to determine if the dispute is appropriate for referral. The case is then reviewed by the district attorney's office and the court division of the Manhattan Criminal Court, and if diversion appears appropriate, the matter is referred to the center.

In addition to police referrals, the summons court may divert cases to the center. The IMCR staff member reviews the case, explains the process to the complainant, and a hearing date is set. If the mediation/arbitration is successful, the court is notified that the case may be dismissed from the docket.

The center utilizes a combination of mediation and arbitration techniques; however, mediation is preferred as the form of conflict resolution. Mediators are community members who have been trained by the Institute for Mediation and Conflict Resolution.

During the initial phase of the mediation process, the program is explained to the disputants. The complainant and respondent are then given an opportunity to relate the facts of the dispute. At this time, the role of the mediator is to assist the disputants to reach a settlement. If no agreement is reached, the mediator arbitrates the dispute and an "arbitration award" is made.

Enforcement of the "arbitration award" involves making a motion to the civil term of the New York Superior Court. If confirmed, the

motion is followed by a motion for a particular judgment, usually a financial award, or contempt of court action in cases of behavioral agreements.

The center accepts referral for a wide variety of both criminal and civil complaints. The offenses generally include various degrees of harassment, disorderly conduct, assault and battery, and trespass. The center's own assessment of its case processing indicates that the vast majority of these offenses are settled by mediation, rather than arbitration.

As with other programs, the impact of the IMCR Dispute Center on the caseload of the prosecutor and the court is difficult to assess. It remains unclear whether the cases handled by the center would have penetrated the criminal justice system. It may be argued that cases referred by the police would have been dismissed by the summons court, although that factor alone does not necessarily indicate that the center is not providing a valuable diversion for the court. Since there is no data available on the rate of return of cases in which there was a breakdown of the mediation, it is difficult to determine what portion of these "diverted" cases do reappear on the docket with more serious complaints.

Rochester American Arbitration Association Community Dispute Services Project. Rochester, New York

The Rochester Community Dispute Services Project is operated by the American Arbitration Association and is funded by block grant monies from the Law Enforcement Assistance Administration. The CDSP serves Monroe County, including 19 towns, 10 villages, the city of Rochester, with a total population of 711,917. Project offices are located in Rochester in an office building near the court.

Referrals to the CDSP are primarily from the clerk's office in the various courts in Monroe County. The procedure is to schedule a hearing prior to the issuance of a warrant for the defendant. At this time, the disputants must agree to binding arbitration. At the hearing, a member of the clerk's office, a CDSP staff member and an assistant district attorney discuss the nature of the complaint with the complainant and the respondent. If the dispute cannot be resolved at this initial hearing, the disputants are referred to either the arbitration panel or the court for the filing of charges.

Like the New York project, the CDSP maintains that mediation is the preferable form of conflict resolution, with imposed arbitration as the alternative if mediation is unsuccessful. The project's data indicate that in the majority of cases, mediation is unsuccessful. If there is a breakdown of mediation attempts and no settlement is reached, the mediator acts as arbitrator and imposes a resolution. Once the

arbitration award is made, the disputants may return to the project and renegotiate the terms of the award if they both agree that changes in the award are desirable.

The enforcement of the award is through the civil term of the New York Superior Court, and like the New York project, motions for a specific judgment or contempt of court action are filed.

Case criteria has remained constant since the beginning of the program and the distribution of the types of cases referred to the project has remained relatively stable. (McGillis and Mullen, 1977) Offenses deemed suitable for mediation/arbitration include interpersonal disputes, violation of city regulations, landlord/tenant matters, "bad check" cases, and consumer complaints. The project does not accept referrals for cases which may be more appropriately handled by the family court or small claims court.

A study of the Rochester project states that 58 percent of the cases referred were resolved by the disputants at the initial hearing. The remainder of the cases never reached the hearing due to the refusal of the disputants to participate, the resolution of the dispute prior to the hearing, or a decision to prosecute the case. Of the mediated cases, 98 percent have not required a return to the project with the same problem. (McGillis and Mullen, 1977) This data must be assessed with a number of reservations. First, the project does not monitor mediation agreements, thus there is no available data on cases which initially are mediated and then breakdown. Furthermore, it cannot be determined whether these "diverted" cases reappear in the courts with new and more serious complaints.

Clearly, the prewarrant hearing procedure may eliminate some potential cases from the system. However, some of these cases may have been screened out of the system either by the clerk of courts or by the prosecutor's screening process. Like the other programs, the project's impact on the caseload of the court and the prosecutor is indeterminable. It is unclear to what extent the cases processed would have penetrated the criminal justice system.

The San Francisco Community Board Program. San Francisco, California

Although currently in the developmental stages, the San Francisco Community Program is included in this study as an example of a dispute settlement program which totally encompasses the concept of community justice. Unlike other programs described in this paper, the San Francisco model intends to intervene earlier, with no referrals expected from the court or the prosecutor.

In developing the theoretical framework for the program, two primary arguments were advanced for establishing a nonjudicial

system for dispute settlement and social service delivery. First, the need to narrow the scope of the criminal process through a "front-end" service delivery approach. It was argued that a nonjudicial system for minor cases would permit the reallocation of criminal justice resources to more serious crimes and that social service delivery would not be delayed until formal court proceedings were completed. Second, there is a need to overcome "civic dependence and ignorance" and to redirect formal criminal justice resources by involving citizens. It is envisioned that the community board will provide the system with a preventative measure to circumstances which could develop into violations of the law, relying on citizen participation and the delivery of services in lieu of arrest rather than as a condition of probation.

Summary and Conclusion

In conclusion, it must be noted that when two parties and more specifically, spouses, have a dispute which results in violence towards one party, there are several alternatives available to the victim. First, there is inaction—an alternative often chosen. Secondly, there is active avoidance through the termination of the relationship. While this response may be appropriate for some, the emotional involvement and economic dependence of a spousal relationship often precludes this alternative. The voluntary use of social service agencies and other assistance programs requires a genuine concern for personal improvement, insight into individual needs, and self-motivated action on the part of the individuals involved. It is beyond the scope of this paper to assess the use of these agencies. It is only when the above alternatives are not exercised that the dispute would be the subject of this paper.

The victim, in all models discussed, sought resolution of the dispute through a third party. Each model has the similarity of attempting to resolve the potentially criminal matters through diversion from the criminal justice system, while utilizing the court's authority to either enforce the mediation agreement, or to serve as a coercive threat in order to bring the respondent before the mediators. The programs varied, to some extent, with respect to referral source, types of cases accepted for mediation, extent, and nature of followup. Their commonalities lie in their affiliation with the local court and the emphasis on community involvement in the dispute settlement process.

With the exception of the Miami program, nonprofessionals are used as mediators/arbitrators. Clearly, mediation rather than arbitration is the preferred form of dispute settlement. This is partially based on the premise that an agreement made voluntarily by the disputants is more likely to resolve the underlying problem, since the parties must recognize their individual responsibilities in preventing any further

violence. The assessment of the 2-year sample of cases in the Boston area supports the theory. However, it must be emphasized that a form of coercion, whether through an "arbitration award" or the threat of criminal sanctions, is an essential component of dispute resolution in spousal abuse cases. It gives the court the necessary control over the defendant to ensure that the terms of the mediation agreement are honored, while assuring the victim that the court is necessarily responsive to her request for assistance.

The community-member-mediator provides an appropriate mechanism for dispute settlement. It allows the parties to the dispute to reach a resolution with the assistance of individuals with whom they have some identification, and whose recommendation for social services may be more readily accepted.

In developing a model of diversion, each community must consider a number of factors. The nature of the local court and the community accessibility of the court are important if a mediation model is to either accept referrals from the court or use the sanctions of the court as a monitoring tool. Further, an understanding of how the police handle family violence cases is crucial if the mediation model is to rely on police referral. In addition, the role of the district attorney and his option to prosecute a particular criminal complaint must be clearly defined.

Goal achievement is a prime consideration. Issues of whether the model will concern itself with "quantity rather than quality" must be considered. An effective dispute settlement program may in fact divert a large number of cases from the criminal justice system and provide extensive followup, especially in cases of spousal abuse, but may not save the court in its expenses. Furthermore, in assessing a particular spousal abuse case, the "number" of diverted cases becomes secondary to the appropriateness of diverting the case. As noted in the data sample, certain cases were more appropriate for prosecution rather than diversion.

Certainly, a number of models of dispute resolution may be effective, given the nature of a particular community. Court diversion of spousal abuse cases allows the parties to recognize the underlying issues resulting in violent behavior, and hopefully provides both the disputants and the criminal justice system with a more sensible method of conflict resolution and a precaution against further violence between the spouses.

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Response of Yolanda Bako*

Morton Bard and Harriet Connolly have presented their perspective on the role of police in intrafamily violence and the effectiveness of crisis intervention training for developing more sensitive, adept, and well-rounded police officers. The implementation of programs that attempt to increase the efficiency of our police departments is to be welcomed.

However, I believe it would be useful to bring the limitations of the role of the police in familial violence into a clearer perspective with relationship to the whole problem. Bard and Connolly find: "Ironically, at the same time that the police have been seeking to improve their methods of managing violent family encounters, organized criticism of their response to instances of wife abuse has been escalating." It seems to me reasonable that public awareness, including both criticism and suggestions for improvement of police involvement, would increase in direct proportion with the amount of public awareness around the issue of wife abuse in general. Rather than ironic, I have found that in any process of social change there is always an inherent tendency to focus attention on the problems of the victimized population—in this case battered women. Part of that focus is to identify the intervening

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END