Community Mediation in Dorchester, Massachusetts

William L. F. Felstiner
Lynne A. Williams

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Abstract

In several American communities, paraprofessional mediation has become a substitute for criminal prosecution when defendant and victim have been engaged in a prior relationship. This Report describes such a mediation project in Dorchester, Massachusetts. It analyzes the mediation process, mediator training, referral sources, caseload and caseload problems and compares the costs of mediation to court costs saved. It suggests hypotheses to be investigated in further research and presents conclusions about conditions that affect the success of mediation.

Preface

This report is one part of a larger project designed to study domestic and foreign alternatives to traditional adjudication. Phase One of this project included the identification and description of alternative mechanisms currently used to resolve civil and criminal complaints, as well as an assessment of the statistical dimensions of the judicial systems of seven countries. Three reports were produced from Phase One: Felstiner, W. and A. Drew, *European Alternatives to Criminal Trials and Their Applicability in the United States*; Johnson, E. and E. Schwartz, *A Preliminary Analysis of Alternative Strategies for Processing Civil Disputes;* and Johnson, E., S. Bloch, A. Drew, W. Felstiner, E. Hansen and G. Sabagh, *A Comparative Analysis of the Statistical Dimensions of the Justice Systems of Seven Industrial Democracies.*

Phase Two had three goals: to conduct in-depth analyses and evaluations of three of the alternative mechanisms identified in Phase One, to complete a secondary analysis of four other alternatives and to explore a method for collecting and calculating cost data for all participants in civil and criminal litigation. The dispute processing mechanisms explored in depth include the Dorchester Urban Court, Dorchester, Massachusetts; compulsory mediation of personal injury claims in Wayne County, Michigan; and the Office of the Rentalsman, Vancouver, B.C. Secondary source material provided data and information for analyses of the Public Complaint Board, Sweden; Plea Contracts in West Germany; No-Court Divorce in Japan; and the Comprehensive Accident Compensation Program in New Zealand.

The fieldwork on which this Report is based began in March, 1977 and was substantially completed by the following October. We each spent about nine weeks in Dorchester during that period interviewing project staff, community mediators, court personnel, foundation officials, prosecutors and police officers. We observed mediation hearings, court arraignments and Clerk's hearings. We also reviewed the files of the project's first 500 cases and examined its financial records and the district court's budget. Unless otherwise indicated, the information presented in this Report reflects the situation in Dorchester in the fall of 1977.

An additional report entitled "The Costs of Justice: A Pilot Study of the Expense of Processing Selected Cases in the Regular Courts", addresses the issue of litigation costs to various participants in criminal and civil litigation.

Acknowledgments

Our largest debt in this research is to Lois Gehrman who was the Director of the Urban Court during the period of our fieldwork. Ms. Gehrman had the same respect for our research as we has for her project. Without her help the research would not have been possible: with it, the research was fun as well as feasible. Many other people on the Urban Court staff provided both access and insight, particularly Della Rice, Claire Lenane and John Clough. Richard Dwyer, then the Court Administrator, offered wise counsel as well as rich information. We are also indebted to Neil Houston, then of Justice Resource Institute, and Daniel McGillis of the Harvard Law School, who read and provided useful comment on early drafts of the Cost-Cost Savings chapter. The chapter on Training could not have been written without the cooperation of Ms. Ann Weisbrod and Mr. George Nicolau of the Institute for Mediation and Conflict Resolution and would have been considerably less useful without their comments.

Our follow-up data was secured by the resourceful efforts of Peter Cohen, Charles Foley and Laura Foster. Many of our insights into the mediation process were derived from our observers—Pauline Peters of Boston University and Jill Vorenberg of Columbia University.

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Summary

This report describes the mediation component of The Dorchester Urban Court—a program that substitutes lay mediation for criminal prosecution in cases where the victim and defendant are not strangers. The report discusses the project's training program, the structure of mediation sessions, referral sources, caseload and caseload problems and compares the costs of mediation to court costs saved. Data for the report were gathered (1) by interviewing project staff and mediators and others knowledgeable about the project's origins and operation, (2) by analyzing the files of its first 500 cases, (3) by observing 34 mediation sessions, and (4) by conducting surveys of disputants and mediators. The purposes of the research were to describe the project's training and operation in detail, to identify operational problems and to explore the power of mediation as a form of social intervention into interpersonal problems.

Most of the cases referred to Dorchester mediation come from the Clerk or a judge of the local district court. If the defendant and complainant (victim) agree to mediation, a hearing is scheduled about a week later. At the hearing, two mediators try to get the disputants to settle past differences and agree upon the shape of future relations. If an agreement is reached, it is reduced to writing and signed. There is no pretence that the agreement is an enforceable contract. If it is not kept, however, the court process may start up again. If the agreement is kept, any pending prosecution is eventually dismissed. If no agreement is reached, the case is referred back to the Clerk or a judge.

Most of Dorchester's cases involve assault or threats between intimates. Forty-seven percent of the caseload originates with charges of assault or assault and battery. Two-thirds of the cases involve either assault, assault and battery or threats and harassment. Forty percent of the disputants are either spouses, lovers, ex-spouses or ex-lovers. Adding parent-child and in-law cases to these groups accounts for over one-half of the caseload. These intra-family assault-type cases may be quite serious: weapons of some sort are used two-thirds of the time. These disputes are more likely to be the result of a continuing condition than a single incident. Over one-half of these continuing condition cases involve an underlying emotional or behavioral problem. Alcohol abuse is the most common (26%). It is because the caseload is so markedly intra-family and violence related and because it is faced with continuing conditions reflecting underlying problems that we believe that mediation in Dorchester should be viewed as a factor in *community mental health* and as an alternative to *family counseling*.

Mediation hearings are held in two-thirds of cases referred to the project. Agreements are reached in 90% of these cases. Twenty percent of the disputants report to the project that the agreement has broken down. Although property disputes proved comparatively difficult to get to mediation and to settle at mediation, they are more likely than interpersonal disputes to lead to stable agreements. The data suggest the more serious the dispute, the more likely agreement at mediation and the more likely that the agreement will break down. The explanation appears to be that serious disagreements have serious consequences if no agreement is reached. These cases then lead to vague agreements, easy to negotiate but hard to keep.

Our long-term follow-up confirms the project's data that improvement in the relations between the parties follows successful mediation. Slightly over one-half of the disputants we contacted attributed this improvement to mediation. The most common agreement failure concerned the payment of money and the most common

response of a breakdown was to do nothing. Although most of the disputants believed that the sex or race of the mediators was irrelevant, one-half considered that co-residence of the mediators in Dorchester was important.

One of the project's major problems has been a relatively low caseload. In 1976-77, hearings averaged only 18 per month. The low caseload seems to be a product of poor relations with the police, a clerk who "mediates" cases himself rather than referring them to the project, and the project's lack of an opportunity to offer mediation services early enough in the small claims cycle. The project's caseload strength comes from its relationship with the judges and prosecutors of the district court.

The key to the content of mediation hearings is the content of mediator training. From the beginning, training in Dorchester was provided by professionals in a 40 hour course. This program has been reasonably successful in rapidly transforming community people into paraprofessional mediators, not an easy achievement. We, nevertheless, have reservations about the training's attention to trainee motivation, ambivalence about manipulation, limited use of modeling and its reliance on shuttle diplomacy. The last characteristic may arise from a failure to understand the differences between labor and interpersonal mediation.

Many important mediation techniques are counter-intuitive to untrained personnel. Even where sustained, proven training is provided, mediation is a difficult task and there is a great range to the abilities of different people to learn and apply its techniques successfully. Dorchester, then, like most mediation projects, has been plagued by the problem of identifying and minimizing the poor work of a number of inept mediators.

Our reservation about mediator competence was shared by the mediators themselves—over 40% alleged that other mediators were controlling, too talkative and engaged in unwanted "social work". The inept mediator, we conclude, is as much a part of the mediation picture as the harried judge, the careerist prosecutor and the "disloyal" defense counsel are a part of the orthodox criminal process.

Mediation in Dorchester is an expensive process. The 330 cases referred, 219 hearings and 183 agreements reached in 1976-77 cost $100,000. These costs are about three times the court costs saved by mediation. However, it is important to note that a substantial portion of these costs can be attributed to mediation as it is practiced in Dorchester, rather than to mediation as a process. Dorchester mediation is expensive mediation due to: (1) the time mediators devote to getting behind presenting complaints and the fidelity of mediators to a model in which they suppress fact-finding and judgment formation in favor of disputant-initiated agreements about future conduct; (2) the responsibilities for intake, scheduling and follow-up that have been assigned to mediation staff; (3) the large number of serious cases mediated; (4) the decision to use pure mediation rather than mediation-arbitration; (5) the low caseload; and (6) the late stage at which referrals are made. We estimate that increasing the caseload to the maximum level that could be handled by the staff in place in 1977 and switching to mediation-arbitration could halve the cost-cost savings ratio to 1.5:1 (see chapter VIII for a detailed discussion of this point). One cannot, however, judge the Dorchester program on the basis of a negative cost-cost savings ratio: the comparative benefits of mediation may well outweigh the added costs it produces.

Finally, the report considers the effect of social organization on mediation. Our hypothesis about the production function of mediation, about its limitations in suggesting workable accommodations to disputants, has been demonstrated by the Dorchester experience to be wrong, at least for practical problems that are not imbedded in unhealthy emotional or social conditions. We continue to believe, however, that social organization will have an inhibiting influence on the development of institutionalized mediation in the United States.

The old observation was directed toward the process of mediation: the new is focused on caseload. Mediation programs generally derive cases from two sources—from the justice system (criminal courts, small claims courts, prosecutor's offices, legal aid), on the one hand, and from community agencies and directly through so-called self-referrals, on the other. Dorchester receives almost all of its cases from the

justice system. Despite the project's high visibility, zero cost to the disputants, and record of successfully mediating many disputes, the citizens of Dorchester came unprompted to the project for mediation only four times in 1976-77. Because mediators are strangers with unknown values and life experience, because institutionalized mediation is unfamiliar and its use exceptional, life rather than logic makes self-referred mediation as unpalatable to Americans as it is attractive to the people of other cultures. For this reason, the uneasy fit between mediation and American social needs is not immutable. Americans may gradually become familiar with mediation untied to the justice system, but in the short term we believe it is likely to play only a small role at the margin of dispute processing behavior.

I. Introduction

Many disputes between familiars lead to a criminal prosecution. Two important characteristics of these court proceedings are the efforts made to determine what has happened in the past between the defendant and victim and to identify the rules to be applied to their previous behavior. In this report we will describe a process now in use in the United States which is not only an alternative to legal proceedings, but is also anti-legal, in the sense that the precipitating incident is assigned limited importance and formal rules are generally ignored. This future-oriented technique in which the disputant's values are more important than society's norms is labeled mediation, but it is a much more structured procedure than the mediation we are accustomed to reading about in the anthropological literature (see, e.g., Gulliver, 1969; Collier, 1973: 26-28; Cohn, 1967, 148).

The new American mediation programs have generally provided an alternative to prosecution in criminal cases in which defendant and victim are not strangers. For instance:

> A woman complains to the police that her boyfriend attacked her with a tire iron. Her arm was broken and facial lacerations required 42 stitches. The man is arrested and charged with assault and battery with a deadly weapon. If convicted, he could be sentenced to five years in prison. But he is not convicted: no trial is even held. Instead, two weeks later the man and woman, now complainant and respondent rather than defendant and victim, are mediating their *respective* grievances before two lay mediators, a school teacher and an unemployed carpenter. If the disputants can come to an agreement about the consequences of past quarrels and the terms of their future interaction, the criminal charge will be dropped.

Unlike small claims courts and housing courts, these programs are not watered-down versions of real courts. Their roots are not in Anglo-American jurisprudence, but in African moots, in socialist comrades courts, in psychotherapy and in labor mediation. The alleged virtues of mediation programs are their differences from regular courts. Mediation is conducted in informal settings. It tries to avoid professionals who patronize, schedules that inconvenience and delays that transform useful responses into meaningless ones. Mediators are prepared, even anxious, to indulge digression and emotion. They are concerned with the particular problems of these particular disputants, and they do not care about general rules, consistency and predictability. Above all, they claim to set presenting complaints aside and to confront underlying issues instead.

When our research on mediation was first contemplated in mid-1976, such mediation programs were operating in New York City and Rochester, N.Y.; Philadelphia, Pa.; Miami and Orlando, Fla.; Dorchester, Mass.; and Columbus and a few small cities in Ohio. Several of these projects were sponsored by the American Arbitration Association and most were funded by LEAA. Although several of the projects had been the subject of formal evaluation, no published paper reported any empirical investigation of mediation as an alternative to criminal prosecution. A few articles had discussed the theory of such mediation (see Danzig, 1973; Danzig and Lowy, 1975; Felstiner, 1974, 1975) and two (Stulberg, 1975; LEAA, 1974) outlined the process of the Rochester and Columbus programs. We thus decided to study the operation of one of these projects in detail at a time when a major change in processing minor crimes through mediation seemed possible, but when that movement seemed generally uninformed by prior experience.

Our objective was primarily descriptive: to report the dynamics of mediation in detail, to describe the kinds of disputes it processed, the kinds of disputants who mobilized it, and the results in terms of changes in their lives which it produced, and to report who the mediators were and what kinds of training they received. Once we had selected a project to analyze, we were urged by state officials to examine mediation's costs and the savings in court costs which it produced. To achieve these objectives, we set four criteria for choosing a research site among the available programs.

- The program should be mediation rather than mediation-arbitration.* We were interested in pure mediation because it was the greatest departure from the criminal court system it was replacing and because it provided the fairest test of mediation as an alternative to prosecution. Its training program, for instance, would not be encumbered with material directed toward the needs and responsibilities of arbitration.
- The program should use community people rather than human-relations professionals as mediators. We wanted to study a community mediation program because the growth of mediation as an alternative to prosecution might be jeopardized by dependence on professionals in short supply or requiring significant compensation.
- The program should have processed enough cases so that we could measure the degree of association between different variables.
- The program should permit us to observe actual mediation sessions. We thought that only observation would enable us to describe mediation sessions accurately and

*In mediation, a hearing is terminated when it is clear that the disputants cannot reach an agreement. In mediation-arbitration, the mediators become arbitrators at that juncture and render a decision.

to gain any insight into the psychological dynamics encountered in mediation. In addition, we thought that follow-up of unobserved cases might not be sufficiently informed to focus on issues considered paramount by the disputants.

Only the programs in Dorchester and New York City satisfied the first two criteria. Neither satisfied both of the remainder: New York would not grant us access to the hearings and Dorchester had a low caseload. We concluded that systematic observation was more important—and less likely to be repeated by other researchers—than quantitative analysis of caseload characteristics.

The report is divided into two sections. The first part describes and analyzes various facets of the Dorchester program—its history, procedure, training, caseload and caseload problems, costs and results as seen by the disputants and the mediators. We then present tentative conclusions about mediation as an alternative to criminal prosecution.

II. History and Structure

Like most court reforms, Dorchester mediation has a single parent. In this case it is John Calhoun who in the mid-1970's was the president of Boston-based Justice Resource Institute, a self-styled "Vera North". Calhoun had worked on juvenile and drug-user diversion programs. He was troubled by the degree to which court proceedings appeared to be technocratic events that did not touch the lives of defendants. Newspaper stories about programs in which criminal defendants were forced to confront the effect of their acts on victims or given the choice to avoid jail by performing social services convinced him there could be an alternative. Drawing on these stories and what he had learned about the Night Prosecutor's Program in Columbus, Calhoun set about designing a project which would foster a sense of responsibility on the part of the delinquent and a human connection to the community and the victim. The objective was to change a busy and mechanical urban court into an institution that would produce justice in human terms, as a healing and reconciling experience. The transformation was to rest on three innovations that together were named the Urban Court Program—1) a revised case disposition procedure that would involve community representatives and the victim as well as the defendant and government in making sentencing recommendations to the judge; 2) a mediation program that would be a substitute for prosecution in family and neighborhood cases and; 3) a unit to provide victims with social services and orient them to court process. This report examines only the mediation component of the Urban Court Program.

Calhoun believed that the Dorchester Judicial District would be an appropriate setting for the experiment. Dorchester had a busy urban court serving a mixed-ethnic populace. Most important, its chief judge, Paul King, had a reputation for humanity and for being willing to share judicial responsibility with community members.

Judge King was primarily attracted to the Urban Court program because of the services that it would offer to victims, and because he felt the program would give the community a better appreciation of the complexity of sentencing decisions. He originally viewed mediation as a peripheral activity, as the price that had to be paid for the disposition and victim's services programs because of Calhoun's interest in it (see McGillis and Mullen, 1977: 92).

JRI first approached LEAA in the fall of 1974 about a grant for the Dorchester Urban Court. Although considerable opposition to the program was mounted by local probation officers, the District Attorney's Office and the police (see Snyder, 1978; McGillis and Mullen, 1977: 91-95), LEAA made a grant to the Urban Court of $412,774 through the Massachusetts Committee on Criminal Justice in April, 1975. Federal funding was supplemented by private resources so that $459,000 was available for the first year's operations. LEAA was the major source of Urban Court funding through mid-1978.

The original objectives of the mediation component were (JRI, 1974: 38):

- To resolve potential criminal disputes in a manner that (1) satisfies the parties that justice has occurred and (2) prevents the recurrence of future problems by addressing the basis of the dispute. Strong emphasis will be placed on resolutions being effected as early as possible in the criminal justice process by providing intake capability at the Station House and the Prosecutor's Office as well as the Clerk's Office.
- To test the ability of community mediators to effect such resolutions and to compare their effectiveness with other methods of informal resolution now being employed in the District Courts and the Station House.
- To determine, through careful experimentation, which of a number of arbitration and/or mediation models and intake points is most effective in achieving fundamental resolutions of potentially criminal disputes.
- To build good will in the community toward the court, the police and the Prosecutor's Office.

These objectives have not stood the test of time well. No intake capability was ever developed at the Station House or Prosecutor's Office and the number of referrals from the Clerk has been disappointing. The project has made no attempt to compare its effectiveness with other informal methods of dispute resolution nor has it experimentally varied the model of mediation with which it began. In fact, so little energy was ever devoted to these objectives that it would be absurd to judge its performance in those terms. If one rather were to derive goals from actual efforts, we might say that the mediation program's objectives were:

- To process disputes between people who were not strangers to each other in such a way that (1) they better understood the nature of the conflict and the other party's perspective of it, (2) they were helped to explore arrangements which might eliminate or reduce similar conflict in the future, (3) they were able to agree on behavior or exchanges that mitigated the negative effects of past behavior.
- To provide such services through non-professional local citizens trained by the program in mediation.
- To develop a caseload of interpersonal disputes from the District Court and other referral sources that was large enough to reduce per case costs to a reasonable level.
- To act as a model for similar projects in Massachusetts

and elsewhere and, to that end, to tolerate extensive research on their way of mediating interpersonal disputes.

In one sense, this report is a chronicle and analysis of the effort to fulfill these goals.

Mediation in Dorchester is called "community" mediation. The "community" dimension refers both to the role of the community in policy direction and to the background of the mediators. Community influence on the mediation program is exercised through the Urban Court Subcommittee of the Dorchester Community Court Advisory Board. The Board was the product of an open meeting held by Judge King when he first became chief judge of the court following his predecessor's removal for corruption. The stated purpose of the Board is to channel community expectations and complaints to the court; however, many members feel that the judge uses it primarily to defuse local crises and to secure help for causes important to him.

Once funding for the Urban Court was received, a conflict arose between Judge King and the Urban Court Subcommittee over hiring authority. Under the informal spheres of influence established by the judge and Calhoun, mediation was the province of JRI and was less affected by the hiring battles than the other components. Eventually, the hiring issue stabilized in a two-step process. A committee composed of a subcommittee member and representatives of the judge and the Urban Court staff interviews and ranks all applicants. The judge then selects whomever he wants, but he must provide a written justification for selection of anyone other than the top-ranked applicant. This system has worked reasonably well and has provided some protection for the mediation program from political appointments to which it might otherwise have been vulnerable since the mid-1977 shift in administration of the program from JRI to the city of Boston.

A conflict between the judge and some community representatives also exists at a philosophical level. To the judge, the Urban Court is an adjunct of the district court; its purpose is to improve the performance of the regular court. The Urban Court Subcommittee's role is to help provide a positive image for the whole court program. To the judge, the subcommittee is a counterweight against his enemies among followers of the previous judge, as well as against those police and citizens who feel that the court has failed to reduce crime because it has been too lenient with criminals. To the subcommittee, on the other hand, the Urban Court is primarily a community program. Its purpose is to help people in the community gain control over their own lives.

This difference in perspective has had an effect beyond hiring issues. The mediation component recognizes that its major operational problem is its low caseload. Yet Judge King is opposed to a major effort aimed at generating self-referred cases. From his perspective, the program is a court program and the court is to control the way the program operates. A caseload derived in major part outside the court would jeopardize judicial control. For whatever its relevance, the judge is probably correct in terms of the original understanding. Calhoun certainly intended a program that would improve *court performance*. He also wanted community participation, but like the architects of the War on Poverty, he could define neither "community" nor "participation".

We do not want to leave the impression that the efforts of the Urban Court Subcommittee are limited to squabbling unsuccessfully with the judge about jobs. Many of the committee members are knowledgeable about the Urban Court: several serve as mediators or community representatives on disposition panels. They keep track of operating and personnel problems and consult with the staff about their resolutions. But in this role also, it is clear that the community representatives are only advisory and respected as they are wise rather than as they are representative.

The second dimension of community involvement in the project is the mediators. The original plan was to find or train paraprofessional mediators who would work on a full-time basis. However, concern about burn-out and self-seeking in careerist mediators, coupled with a desire to use people who shared the language and experience of the disputants, led JRI planners to the notion of using a variety of community people on an intermittent basis. It was felt that this arrangement would avoid the problem of mediators patronizing disputants from a professionalized posture.*

This decision was, of course, one of the most important in the history of the project. Given the caseload that did develop, two people working part-time could have mediated all of Dorchester's cases. It would not then have been in any sense a community project and the services that it provided might have been more or less effective or some of both. Only comparison in the field with a project offering similar mediation, but organized on a paraprofessional basis, would tell and to our knowledge no such project currently exists.

The mediation component of the Urban Court has generally been composed of four full-time employees—a supervisor, two case coordinators and an administrative aide. The supervisor allocates and shares the workload with the coordinators, negotiates problems with the Clerk and other court officials, and speaks for the component to central staff. With the case coordinators, she provides intake services, schedules and attends mediation hearings, conducts follow-ups, assists in putting agreements into effect and in training mediators. The administrative aide keeps the case records, prepares the monthly operations reports, and provides secretarial services. General supervision, liaison with Judge King, other city officials and the advisory committee, fund raising, reporting to LEAA and the state crime commission, hiring and training, as well as payroll and bookkeeping services are provided by the central staff.

Two changes in staffing policy and practice took place during the period of our research. In the beginning, Case Coordinators were called Resource Coordinators. The title was changed because there were virtually no resources to coordinate: that is, relatively few social agency referrals were made and even fewer disputants kept the appointments that were made for them (see Table 17). The second change has

*Mediators do not become involved in the program for monetary motives: they receive only $7.50 per session.

been the increasing propensity of Judge King to transfer personnel between the Urban Court and the district court's probation department. At least during the period of our fieldwork, employment as a probation officer was better paid and more secure than Urban Court staff jobs. Although the judge's practice of transferring effective Urban Court people to probation was disconcerting to Urban Court supervisors, it was generally considered fair since the transferees had earned the promotion. But, an instance of a reverse practice—transferring a probation officer to the Urban Court as a punishment—was resented as the placement of someone on the mediation program staff who did not want to be there.

In later chapters of this report, the mediation process in Dorchester is described in detail—intake, hearings, referrals, and follow-up. Briefly, most cases are referred by the Clerk or a judge. If the defendant and complainant (victim) agree to mediation, a hearing is scheduled about a week later. At the hearing, two mediators try to get the disputants to settle past differences and agree upon the shape of future relations. If an agreement is reached, it is reduced to writing and signed. There is no pretense that the agreement is an enforceable contract. If it is not kept, however, the court process may start up again. If no agreement is reached, the case is referred back to the Clerk or a judge. (Appendix B contains observers' detailed reports of two mediation sessions.)

In this introduction, we will discuss only one general process issue—how the court and the project have defined the kinds of cases that are appropriate for mediation. The primary criterion of a mediation case is that the complainant and respondent must have had a prior relationship. Thus, mediation is not used for street crimes—crimes where the victim and defendant are strangers. The theory is that mediation is appropriate only when criminal behavior is incidental to a troubled relationship. In a disturbed relationship both parties have contributed to the problem and both, therefore, can contribute to the solution. But where the criminal behavior is all there is to the relationship, there is nothing to re-construct. The victim, of course, has a claim for restitution and perhaps a need for vengeance or discharge, but these are needs which the ideology suggests are better met through compulsive process after conviction than through conciliatory process as an alternative to prosecution.

But beyond this single rule, the definition process is primarily a matter of exclusion. The court has never formulated, much less published, explicit criteria. When we asked, the judges stated somewhat vaguely that they would refer any prior relationship case that does not involve serious crime (e.g. shooting cases), repeated commission of the same crime, heavy or hard drug use, obvious chronic alcohol abuse or a history of unsuccessful mediation. In other words, it appears that they use mediation where they conclude that the coercive power of the court is not necessary for incarceration or to insure the delivery of a social service or continuing supervision that can be provided only by probation.

The failure of the court to make these criteria a matter of public record raises a fairness question; disputants and their lawyers cannot easily claim a right to mediation as an alternative to prosecution if they can only guess at the working criteria of referral. There is thus a danger that because they do not work in terms of definite criteria, the judges may be treating functionally equivalent cases differently.

From the project's point of view, the staff is content to take whatever kind of case is referred with one exception—they do not believe that it is worthwhile to mediate cases between parties greatly unequal in power. This inequality is most common in cases involving children and their own parents. The project's experience in unequal power cases was that agreements were one-sided because the superordinate party rarely gave away anything and the subordinate party would not articulate its real demands. Children, especially, are cowed in mediation by their parents and have no faith that candor in mediation will not lead to retaliation outside of mediation. The staff eventually persuaded the judges not to refer such cases to them.

III. Dorchester as a Community

Dorchester is the largest of Boston's districts, with a population of 180,000 (U.S. Census of Population and Housing, 1970). It is, however, divided into two distinct "cities", North and South Dorchester, each composed of a number of neighborhoods. These neighborhoods have different population densities, median income levels, racial makeup and types of housing. Dorchester as a whole consists of 60% whites, 30% Black and 10% Spanish-speaking people: the percentage of Black and Spanish-speaking varies from zero in some neighborhoods to almost 60% in others. As of 1970, the largest single ethnic group was Irish (36.7%). There are also many residents of Polish, Canadian and Italian descent. (U.S. Census of Population and Housing, 1970.) As a part of the City of Boston, Dorchester has been subject to the controversial school busing decision. It has not, nevertheless, in recent years experienced widespread racial violence such as occurred in neighboring Roxbury.

North Dorchester, with a population of 101,386, borders on Roxbury, a predominantly poor, black area and its residents are predominantly black. During the 1960's the population of North Dorchester decreased 10%, but its nonwhite population increased by 207%. The majority of the residents did not complete high school and only 4% are college graduates. Sixty-six percent of the families include a husband and wife and 29% are headed by a female. The median income of North Dorchester in 1970 was $8153. Approximately 61% of the population own their own homes. (JRI, 1974, 11-12).

South Dorchester is more like Boston itself. Its population of 75,505 has increased 2% in the last 10 years, 74% of the families include a husband and a wife and 53% of the adult residents had graduated from high school. The median income for the South Dorchester residents in 1970 was $9658; approximately 85% own their own home (ibid.).

The following tables summarize some overall population characteristics of North and South Dorchester. All data are taken from the 1970 Census, U.S. Bureau of the Census, General Social and Economic Characteristics.

One of the most diverse elements of Dorchester is its housing. A highly residential community when compared to the city as a whole, its houses range from very large one and two-family units to deteriorating or even abandoned buildings. Single and two-family houses account for up to 77% of the housing units in some neighborhoods, but as little as 21% in others. In some neighborhoods 70% of the population has lived in the same house for more than 5 years while in others it is only 40%. There are few high-rise apartments or luxury buildings (Snyder, 1977: 15).

Most of the neighborhoods in Dorchester have their own health clinic, emergency information center, adult programs, senior citizen programs, youth counseling agency and bilingual training house. There are a number of local hospitals and alcohol rehabilitation centers, as well as a legal services office and a local community newspaper. Several redevelopment projects in Dorchester try to improve the community and attract new businesses to it.

Massachusetts has a total of 73 lower courts and 72 of these are administered as a single system, with one chief judge, one general reporting system and one set of court rules. The Boston Municipal Court is independent of the others. These

Occupation of Populations of North and South Dorchester

	Total Population		White Population		Black Population		Spanish Population**	
	No.	So.	No.	So.	No.	So.	No.	So.
Professional, Technical	9%	12%	9%	13%	8%	9%	6%	13%
Managers, Administrators	4	6	4	6	3	4	2	7
Sales	5	7	5	8	4	5	2	5
Clerical	25	30	29	30	23	21	11	9
Craftsmen, Foremen	13	12	14	12	11	11	11	7
Operatives, Except Transport	15	11	12	9	20	20	33	26
Transport Equipment Operatives	5	4	5	4	4	4	5	3
Laborers, Except Farm	6	4	6	4	5	6	8	3
Service, Except Private Household	17	14	16	14	20	19	22	27
Private Household Workers	1	*	*	*	2	1	*	*
Farm Workers	*	*	*	*	*	*	*	*
	100%	100%	100%	100%	100%	100%	100%	100%
	No. N=32,793		No. N=23,483		No. N=9,083		No. N=804	
	So. N=28,807		So. N=23,938		So. N=4,657		So. N=460	

*less than .05%

**Spanish refers to those persons for whom Spanish is the mother tongue.

Total Family Income for Families in North and South Dorchester

Total Family Income	Total Population		White Population		Black Population		Spanish Population**	
	No.	So.	No.	So.	No.	So.	No.	So.
Under $2,999	14%	8%	11%	7%	20%	14%	29%	16%
$ 3,000-$ 5,999	21	16	17	14	28	24	31	27
$ 6,000-$ 8,999	22	21	24	19	20	24	18	24
$ 9,000-$11,999	19	21	21	22	16	19	10	15
$12,000-$14,999	11	15	12	16	9	12	6	7
$15,000-$24,999	11	16	13	19	6	6	4	11
$25,000 and over	2	3	2	3	1	1	2	*
	100%	100%	100%	100%	100%	100%	100%	100%
Median Family Income:								
North	$8,153		$ 8,810		$6,272		$4,895	
South	$9,658		$10,210		$7,574		$7,142	
	No. N = 23,605		No. N = 15,894		No. N = 7,532		No. N = 811	
	So. N = 18,983		So. N = 15,274		So. N = 3,489		So. N = 300	

*less than .05%

**Spanish refers to those persons for whom Spanish is the mother tongue.

Number of School Years Completed in North Dorchester and South Dorchester Population

	Total Population		White Population		Black Population		Spanish* Population	
	No.	So.	No.	So.	No.	So.	No.	So.
0-8 years	29%**	23%	30%	23%	27%	22%	55%	39%
1-3 Years High School	26	20	25	19	28	27	18	20
High School Grad	35	42	35	43	35	38	19	23
1-3 Years College	6	9	6	8	7	9	5	9
College Grad or More	4	6	4	7	3	4	3	9
	100%	100%	100%	100%	100%	100%	100%	100%
	No. N = 49,957		No. N = 36,434		No. N = 13,192		No. N = 1,301	
	So. N = 42,343		So. N = 35,971		So. N = 6,016		So. N = 517	

*Spanish refers to those persons for whom Spanish is the mother tongue.

**Percent of adult residents.

Age Group by Area

Age Group	South Dorchester	North Dorchester
Under 5	9%	11%
5-14 Years	18	22
15-19 Years	8	9
20-34 Years	20	20
35-54 Years	20	20
55-64 Years	11	8
65 and Over	14	10
	100%	100%
	(N = 75,505)	(N = 101,386)

lower courts are the entry point for all criminal offenses tried in Massachusetts. Each district criminal court has territorial jurisdiction over a certain geographical area and in Boston there are 8 district courts, each serving a portion of the city. One such court is Dorchester. A district court has concurrent jurisdiction with a Superior Court to try all misdemeanors except libel and over felonies punishable by a sentence of up to 5 years in state prison. They also have original jurisdiction over all local ordinances and bylaws. However, regardless of a crime's maximum sentence, a District Court may not impose a sentence greater than 2½ years for each offense. (Mass. Gen Laws Ann. C218 SS 1, 17, 18, 19, 23, 26, 27).

Dorchester as a political entity is part of the city of Boston. However, it possesses a distinct character that sets it apart from the city. Any program designed to provide assistance in Dorchester must suit itself to the diversity of its residents, the broad range of their incomes, occupations and age groups, and the resulting broad range of service needs.

IV. Training

The training mediators receive has a crucial influence on the product of a mediation program. Not only does it determine how mediators behave during mediation sessions, but it also directly affects the costs of a program by setting thresholds and limits to staff involvement. At the planning stage of the Dorchester project, there is no indication that any of the side effects of the form of training, and therefore of the form of mediation, were considered. The planning staff at JRI knew in a general way the kind of mediation they wished to provide. They then set out to find a group who could train mediators to provide that kind of mediation without paying heed either to the cost consequences of one form of mediation or another or to any operational biases inherent in one program or another.

To be more precise, JRI's basic planning document, *The Urban Court Program,* reflects only two general predispositions toward the form of dispute processing that the Urban Court would provide. The planners were antagonistic to arbitration—"agreements reached through arbitration may be less effective than those made possible by a program which sees its primary task to be mediation, and views arbitration as a partial failure" (JRI, 1974: 37). And second, for generally unstated reasons, the planners advocated the use of community, rather than professional mediators.

As one would expect, the training issue was not faced until the program had been funded. An early application to LEAA had suggested that training might be provided by the American Arbitration Association, then known for its programs in Philadelphia and Rochester. Before any arrangements were made with the AAA, JRI heard about the Institute for Mediation and Conflict Resolution in New York. Presentations and proposals were secured from both the AAA and IMCR. IMCR was selected because of the favorable impression made by its Director, George Nicolau; because IMCR had experience in training community people while the AAA had for the most part trained professionals; and because the Dorchester program believed that IMCR placed more reliance on mediation and less on arbitration than the AAA. There is no suggestion in the Urban Court records or in the interviews we conducted with JRI planners or Dorchester staff that the choice of IMCR was a choice of a form of mediation directly transplanted from labor relations. Nor do the records reflect an awareness that the choice of such a system would lead to required staff attendance (and therefore expense) at mediation sessions and to emphasis on "shuttle diplomacy" at the cost of improving communication between the disputants. We are not saying that the choice of IMCR was unfortunate, nor that the IMCR labor mediation model is necessarily inappropriate for interpersonal disputes, but just that the choice of a trainer was a more important decision than those who made it realized at the time that they made it.

There have been three training sessions for mediators in Dorchester, one in the fall of 1975, one in 1976 and one in the spring of 1977. The same trainee attributes were sought for all three cohorts: listening ability, responsiveness, the capacity to be neutral about values and verbal skills. The occupational background of the people trained to be mediators in Dorchester is shown in Table 1. It is heavily weighted toward housewives, students, and social and community workers (62%). Businessmen and factory workers are unrepresented.

TABLE 1. Occupational Background of Mediators in Dorchester

Occupation		Number	Percent
Social workers		12	22
professional (MSW)	2		
para-prof.	6		
non-prof.	4		
Housewife		10	18
Student		7	13
college	4		
law	2		
graduate	1		
Community/recrea. workers		5	9
Medical technologist		4	8
Secretary		3	6
Minister		2	4
Teacher		2	4
Clerk/receptionist		2	4
Security guard		1	2
Demolition expert		1	2
Nurse's aide		1	2
Private detective		1	2
Hospital administrator		1	2
Operator foster group home		1	2
		53	100

The mediation project tried unsuccessfully to introduce court personnel to mediation by inviting them to participate in the first training group. The Clerk came to the swearing-in and the First Justice came for 10 minutes only. No one else came at all. Three months after mediation had begun, the First Justice "required" all court staff to attend a mock mediation run by the project. A few people from the court came; the Clerk did not.

Our field work was conducted in-between training cycles. The third cohort completed their training on the day of our first field visit. A fourth training group was not scheduled before our field work was completed. Fortunately, IMCR conducted its standard mediation training for a new Vera-IMCR mediation program in Brooklyn while we were doing

field work in Dorchester. They gave us permission to observe the Brooklyn training. We attended all of those sessions except the swearing-in ceremonies. The comments about mediator training that follow are primarily based on that observation.

The training program that we observed ostensibly differed from the Dorchester pattern in two respects. The Brooklyn program was supposed to be 10 hours longer and it was training community people for mediation-arbitration rather than for pure mediation. Whether the Brooklyn program was actually longer than Dorchester training is hard to say. In any event, the same ground was covered and virtually the same training materials were used. At first blush, one would expect the differences between mediation with and without arbitration to make a difference in the training format. They did not. Almost no attention was paid to arbitration except for a formal explanation at the beginning and an occasional reference to the necessity of paying some heed to facts and questions of fairness in case the mediators would "have to go to arbitration". Since the experience of IMCR's Manhattan project is that arbitration is required in less than 10% of its cases, it is not surprising that arbitration was slighted by the Brooklyn trainers. (For a discussion of the implications of a mediation only versus mediation-arbitration model of dispute processing see the extended footnote in Chapter VIII.)

The course was conducted by four IMCR trainers. The director was George Nicolau, a former labor lawyer and arbitrator, once a senior figure in the Peace Corps and OEO, New York City's first Commissioner of Community Development, and an important figure in the rapidly growing field of mediation. Nicolau has an excellent reputation as a trainer in Dorchester. His words are quoted on both sides of mediation issues as if their origin eliminates the need for logic ("George says that if you can't get an agreement in 3 hours, you can't get one" vs. "George says that we should stay here all night if that is what it takes to get an agreement"). Two of the other trainers, one black and one Puerto Rican, are experienced and highly-skilled mediators who are on the IMCR staff. The other two, also a black and a Spanish-speaker, were experienced mediators; one was the manager of community relations for CBS and the other was to be the director of the Brooklyn program. The ethnic composition of the Brooklyn trainees was, like that of the trainers, mixed: 21 blacks, 5 whites and 4 of Hispanic origin. There were 17 men and 13 women in the group.

A. An Outline of Mediator Training

The IMCR mediation model has two stated objectives:

- to resolve disputes in accordance with each disputant's sense of justice, and
- to prevent recurrence of conflict between disputants by "getting at" the underlying causes.

The trainers teach a specific series of maneuvers to be carried out by members of a mediation panel. But they stress that "mediation is an art, not a science", and that rules of order and timing are only basic guidelines.

Before specific techniques of mediation are taught, trainees are educated in basic attitudes and approach. The first goal is to earn the disputants' trust, both in the mediators themselves and in the process. Disputants will have to be ready to take the risk of making concessions. They will be willing to take risks only if they have confidence in the mediators who are in charge of the proceedings. Mediators are to earn the disputants' trust both through specific statements in a formally structured introductory speech which opens the hearings and by their ongoing attitude and behavior.

Trainees are taught to present seven specific topics in their introductory opening statement, which is made before the hearing gets under way.

- Words of welcome and introduction of panelists by name.
- Description of the mediation project and its rationale.
- Explanation of panelists' training and function.
- The rule of strict confidentiality—panelists are sworn to silence about the proceedings.
- The probability that the panel will want to meet privately without any of the participants or with one or two of them, at times.
- The fact that panelists will take notes for use during the hearing only and will destroy them afterwards.
- How the session will be conducted: panelists will listen to everyone, then work with the disputants to explore possible ways to resolve the problem. It will be the disputants themselves, not the mediators, who will fashion any agreement that may be made.

Mediators' principal attitudinal objectives are to be:

- Non-judgmental. A panelist's own value system is irrelevant. Any agreement will be made by and for the disputants. It is their values that count.
- Willing to be educated by the disputants. Intake staff may have gathered a lot of information, and the mediators may even have studied it. Nevertheless, there are two reasons why a mediator should adopt a receptive, listening attitude:
  he will learn a lot about the disputants' sensitivities and priorities, and
  the disputants feel a need to tell their story to a willing listener. Giving them time to vent their anger encourages them to trust the mediation process.
- Slow to come to conclusions. Mediators are to maintain a "provisional" feeling as long as possible, partly because "those who seem to know the answers tend to put others on their guard".

The behavior patterns specified for mediators are to:

- Listen without interrupting a disputant's flow of words. They are to start the session proper with an open-ended question directed to one of the disputants—usually the complainant—and let him talk until he "runs down". Giving him this freedom will encourage him to trust both the mediators and the process. Stopping the disputant's flow of words is to be avoided, as is anything even remotely resembling interrogation. This is one of many ways the trainers distinguish mediation from process in a courtroom.

- Make verbal responses. Trainees are to show they understand what the disputant is expressing, as in "You feel this was uncalled for".
- Give non-verbal indications of attentiveness. Use body language, and "mm-hmm's" to encourage disputants to speak freely.

A mediator's task as a fact-finder is different than it would be in a courtroom or police station. Fact-finding in mediation means "Finding out what the dispute is all about, and what facts are important to its resolution". A basic premise is that mediators may not so much need to know what happened as *why* it happened—the "underlying cause". Mediators are, however, strongly warned against "interrogating" the disputants, even with "why" questions. "Why" questions may sound disapproving. Mediators are to try to limit themselves to what the trainers call "overhead responses" such as: "Tell me more about it"; or "reflective responses" such as "You feel this shouldn't have happened."

In the main, the facts that are to be unearthed are not just what happened, but what aspects of what happened are particularly aggravating to each disputant. Mediators are to listen closely for these points of aggravation. They are told "The disputants will educate you as to what the issues are *for them.* If *they* don't make an issue of something, *it's not an issue*". If a disputant states unequivocally that something is not an issue or a sensitive spot, he is to be taken at his word, and the point is not to be pressed.

After the mandatory introductory explanation, and when each disputant has had generous time to state his views and his "public position" on his wishes for resolution of the dispute (which mediators are to be sure have been made clear), the panel will excuse the disputants courteously and have a first private conference.

In the course of a typical hearing the mediators will caucus together several times. This is a time for taking stock ("What do we know and what more do we need to know?") and planning ahead ("Whom shall we call next, and why? What shall we say to him, and why?") After this caucus, the mediation moves into a stage of shuttle diplomacy—a series of interviews with one disputant at a time, interspersed with more panel caucuses for stocktaking and tactical planning.

The mediators are now to find out what is most disturbing to each disputant, while at the same time "building the will to settle" by finding any small areas of agreement ("You both agree that there is at least a possibility of resolving this problem through mediation") and narrowing the gap between the disputants' positions. Trainees are instructed to identify sensitive sissues for one disputant, bring up these same issues with the other and find some small area of agreement on the second's part to take back to the first. An example: In a role-played case, a tenant was angry at the superintendent of his building for "not keeping the place up". In private session, however, the superintendent came back again and again to his his powerlessness, his inability to keep up a large building with no support from the building's owner. He said "My family and I live in the building, too. We'd like to live in a decent building, too. But there's nothing I can do." Trainees are to carry this area of agreement (BOTH would like to have the building better kept up) back to the tenant.

In their caucuses with individual disputants, the important variables are *what* is to be transmitted from one disputant to another, and how it is to be presented. Facts and offers need not be transmitted at once. When they are transmitted, they can be shorn of negative comments and "shaped to appeal to the self-interest of the party you are addressing". The aim is to start the ball rolling with small areas of agreement, and use these to nudge the parties into other, increased areas of agreement. When an impasse is reached, the mediator is to act as an "agent of reality": that is, he is to focus the disputants' attention on what solution is realistically *possible* and "on the consequences of not reaching agreement".

Trainees are urged to be on the lookout for a sudden flash of agreement, to recognize it, and treat it as such. At this point, the mediators are to bring the parties together, announce "We have an agreement", and sum it up themselves. The role of the disputants is downplayed at this stage. The mediator is to "take over the proceedings and speak for the parties. . . . People are hesitant to make decisions. Letting parties verbalize an agreement as they see it may open the door to a new conflict".

Striking while the iron is hot, mediators are to present the disputants with a drawn-up agreement. Undertakings by all concerned are to be specifically operationalized. Not "No loud music at night", for example, but "Mr. Jones will not use his stereo after ten p.m." The disputants are asked to sign the agreement which has been written up by the mediators. Panel members are to thank the disputants for coming, and once again stress the fact that none of the proceeding will ever be discussed by the mediators. If no agreement has been reached, the parties may agree to schedule a second attempt. Any referral for social services is left to the very end, after the session proper.

B. Critique of Dorchester Training*

Using the IMCR model, Dorchester has been reasonably successful in transforming community people into paraprofessional mediators in the equivalent of one week of training. We do not mean to minimize this achievement by a critique which identifies some of the limitations and effects of this particular training program. Our reservations concern:

(a) The lack of attention to trainee motivation.
(b) The choice of the initial role-play.
(c) Ambivalence about manipulation.
(d) The limited use of modeling.
(e) Limitations of shuttle diplomacy.

(a) Many training courses in helping skills begin with an effort to aid the trainees to understand their needs to be a helper (see Danish & Hauer, 1973). Presumably, mediators who have paid attention to and articulated their own motivation are less likely to be shaken by intractable disputes and disputants or to be defensive about their own sensitivities and

*A more detailed description of the Brooklyn training sessions is presented in Appendix B.

are more confident about their own legitimacy as mediators. IMCR training missed this opportunity.

(b) The initial role-play in IMCR training courses is the Hale case—a woman who wants to be separated from a man who neither wants the relationship to break up nor understands that that is what the woman wants. The Hale case is a powerful medium; because it is first, is pursued at great length and because the mediators are the trainers and therefore very smooth and manipulative. Presumably the Hale case was chosen to illustrate the difference between mediation and marriage counseling and to demonstrate that not every "marriage" can be saved. This choice may be unfortunate. It is easier for mediators to negotiate the terms of a separation than for them to help provide a more positive structure for a disintegrating relationship. The Hale material is not unambiguously a separation case. That it is so treated is a powerful model for mediators to treat most ambiguous living together cases as separation cases, and to push disputants earlier than they should in that direction. In Dorchester, we observed both the tenacity of the Hale case** and its influence in the direction of separation as THE solution to aggravated "marital" discord. Fortunately, perhaps, many disputants stoutly resist the effort to dissolve their relationship.

(c) The training is ambivalent about manipulation and coercion. On the one hand, the trainers stress that free choice is a value—agreements last because they originate with the disputants. Yet, the trainers also indicate that disputants are to be maneuvered into an agreement by the use of ambiguities, by suppressing conflict in the later stages of a session, and by the coercion of the alternative to an agreement, whatever that might be. As we have suggested elsewhere (Felstiner & Williams, 1978), it is possible that a disputant who feels that his freedom of choice has been compromised by such manipulation may respond by subverting the agreement, by retaliating against the complainant outside of the agreement or by shifting his resentment toward himself or a third party. But this ambivalence may also have unintended consequences for the *trainees.* The contradiction between letting the disputants provide their solution to their problem and the mediator's responsibility to maneuver the disputants into making an agreement plagues many dispute processing programs and may be hard for trainees to assimilate when it is not confronted directly in training. We are concerned that trainees may resolve this conflict themselves by rejecting the mediative approach to problem solving and by falling back on the courtroom pattern ingrained through exposure to American culture. Although it would be hard to document such a shift, we suggest it because of the otherwise inexplicable reliance of Brooklyn trainees on interrogation as a mode of interaction (see Appendix A).

(d) Most training courses for paraprofessionals in counseling use the same three techniques used by IMCR: 1) presentation of didactic material, 2) modeling by skilled practitioners, and 3) simulated practice sessions. But IMCR training is more heavily weighted toward practice. Didactic material is to be read through at home, but many trainees seem not to have bothered. Modeling consists almost solely of the initial mediation hearing videotaped by the trainers at the beginning of the course, before the trainees had been exposed to the basic principles and fine points of technique. There is little subsequent use of modeling by trainers.

Thus, each individual trainee does not have much exposure to "correct" mediation, by himself, his peers or the trainers. The instructional modality is chiefly the post-session critique by the trainers. "*You* made the agreement and sold it to them". "You weren't listening". "You missed the important point". This is essentially training by negative reinforcement, and delayed negative reinforcement at that.

Training can, however, be designed so that trainees *experience* use of correct responses or interventions, and are positively reinforced for such behavior. To produce this sequence, trainers must stop the role-play more often, model a better response, have the trainees do it themselves until their performance is tolerable and then tell them "Good. That's right". (See, for example, Danish and Hauer, 1973; Carkhuff, 1969; and Truax and Carkhuff, 1967.) Obviously such a change would disturb continuity—letting the trainees run through an entire caucus or interview with a disputant without interruption. Our impression, nevertheless, is that improved trainee interventions are more important than improved trainee confidence that they can complete a mediation session without trainer assistance.

(e) The ideology of mediation, our data and common sense suggest that communication problems underlie many interpersonal disputes. Mediation can encourage disputants to tell each other about their complaints and what they want done about them. Yet the structure of mediation hearings incorporated in IMCR training—the strict adherence to shuttle diplomacy—is likely to minimize such interchanges.

Mediation project trainers would probably reply that neither the basic structure of IMCR mediation, nor any specific instructions given to the trainees, would prevent them from using direct, rather than indirect, communication when faced with a case in which it seemed appropriate. We believe that such a response would underestimate the power of mediation training as a socializing experience. Dorchester mediators are engaged in a process that was foreign to them before training, and their only model is what they have experienced as trainees. And the only model which they experience as trainees is one of indirect communication.

The indirect communication nature of mediation as taught at IMCR appears to reflect the prior experience of its founders. IMCR was organized and run by labor lawyers with extensive experience in labor mediation. The techniques of labor mediation were first shifted to use in community conflicts, and then to interpersonal conflicts (Nicolau & McCormick, 1972: 99). We were told by the chief IMCR trainer that no explicit attempt was made to analyze the differences between labor and interpersonal disputes, and, therefore, no attempt was made to adapt mediation methods devised in the labor situation to what might be different about interpersonal conflict.

**"This is like the Hale case", said a mediator in a caucus more than a year after her training was completed.

Differences between the types of labor disputes which are mediated and some forms of personal disputes do exist. Labor mediation occurs when the parties to a prospective collective bargaining agreement cannot agree on its terms. Labor mediation is thus episodic, complete, impersonal and delayed. It is episodic in the sense that the disputes which it is mobilized to settle tend to stay settled during the period of the agreement. Terms are not re-negotiated and generally are followed. Although the differences in attitudes which form the basis of labor conflicts remain between points of mediation, the behavioral elements of those conflicts are fixed for a period of time, are generally uncontested for that period of time, and thus there is little need to pay attention to the parties' ability, or lack of it, to negotiate about those issues in the interim.

Labor mediation is complete in the sense that arbitration is available if any major issues are left for interim disposition. Labor mediation is impersonal in the sense that though the disputants' feelings about each other may be important, they are not crucial. They are not crucial because there is not necessarily any interaction between the parties' negotiating representatives in between mediator interventions and because substitutions can frequently be made among negotiators if aggravated problems in the interpersonal relations do occur. Labor mediation is a delayed process in that it occurs only after the parties have failed to agree upon contract terms after prolonged discussion of those very terms.

In the senses in which these terms are used, mediation of many interpersonal cases is not episodic, complete, impersonal or delayed. The disputants do not in mediation attempt to freeze the preponderance of their interaction for a substantial period. They are not writing detailed interaction contracts and they do not attempt to forecast and provide a response to the many turns that their relationship will take over time. Substitutions are not possible. Parties to an interpersonal dispute that comes to mediation may well have tried for a long time to make their relationship more positive, but they may not have confronted directly the issues which prove to be, or ought to be, the gist of the mediation (see Felstiner & Williams, 1978). When labor mediators use indirect communication they may be doing so because direct communication failed. When interpersonal mediators use indirect communication, on the other hand, they may be losing the opportunity for setting up direct communication for the first time. The stark consequence of all these differences from labor relations is that the ability of the disputants in interpersonal mediation to set the framework for continuing and important negotiations may be the core of what the mediation is about. Unfortunately, IMCR's adherence to a format of indirect communication limits the capacity of the process to lay the groundwork for improved direct communication in the future.

Richard Rosellen, a German sociologist, has suggested (1979) that the structure of IMCR mediation may also be based on a naive concept of the nature of conflict. This is Rosellen's argument. IMCR mediation appears to consider conflict as a disturbance in social relations. In this view, although conflict is socially and psychologically conditioned, it occurs only in intermittent, specific instances. On a practical level, if special consideration is given to these causes, the conflict can be resolved by an agreement. If the agreement is followed, the social relations will function well and without conflict (Weisbrod, 1977: 181; JRI, 1974: ii; Wahrhaftig, 1977).

But Rosellen, and most social scientists, believe that a different understanding of conflict is more realistic. In this alternative view, conflict is seen as an integral part of social relations. Social relations function well not if they are undisturbed, but if they succeed in integrating diverging interests through continual confrontation and discussion of the issues, and if they control the explosive force of diverging interests through a continuous modification of the conditions of the relationship (see Coser, 1956: 47-48, 85; Deutsch, 1973; Ackerman, 1958: 85).

Rosellen is obviously referring to disputes between people who are involved in a continuous relationship rather than between people in a sporadic relationship, such as exists frequently between retailer and consumer or landlord and tenant. In continuous relationship cases, the conflict theory of normality suggests that mediation should downplay the utility of an agreement about a particular, concrete dispute and emphasize techniques and skills in conflict management and solving. Operationally, the shift in emphasis would stress direct communication between the disputants at the expense of shuttle diplomacy. It may be beyond the powers of lay mediators in a single two-hour session to employ the codified techniques developed by psychotherapists to improve communication skills between intimates (see Hoper et al, 1975; Saltmarch, 1973). But we agree with Rosellen that a greater contribution could be made by a mediation process which would encourage direct communication between warring intimates instead of defining *the agreement* as the *sine qua non* of success in mediation. It is not entirely clear that the Dorchester project, with its highly structured relationship to the court, could make an appropriate adjustment. One does not know whether the judges would accept a statement from a complainant that a case should be dismissed, not because the presenting problem has been solved, but because the complainant feels better about his ability to get along with the respondent in the future without court intervention. But given the general propensity in Dorchester and elsewhere to throw out cases which the complaining witness does not want to press, the change may be feasible.

Neither Rosellen nor we ought to be surprised by the existence of a naive view of conflict. Folk perspectives are as current in the industrial world as they are in tribal society. The notion that social interaction is generally carried on in an undisturbed state, broken sporadically by conflict, and returned to a conflict-free equilibrium is twin to the myth that most people are constantly law abiding and that crime control is a matter of detecting and punishing the occasional deviant. That our myths are myths is not a secret. That our institutions continue to be based on these myths is also no secret. As Skinner has noted, "Antiquated theories that are ingrained in our language and our culture stand in the way of promising scientific alternatives" (1978: 86).

Retraining

Retraining is to community mediators what supervision is to inexperienced psychotherapists, an opportunity to correct mistakes, to improve technique, to share frustrations and to be reassured about the value of the effort. Despite the benefits to be secured by retraining, it has been difficult to structure successfully in Dorchester.

The difficulties arise, in part, from a conflict in the goals of retraining. Is the process intended to rejuvenate and improve all mediators or is it primarily a device for performance evaluation, a chance to identify and weed out ineffective mediators? The staff tends to shy away from hard evaluation, but their reluctance to grade mediators and act on the basis of negative evaluations is a continuing source of annoyance to many of the better and more experienced mediators who resent serving on panels with those they consider incompetent. These mediators are concerned with the effect of the fumblers on the particular disputes the panel faces, on the reputation of the mediation program and, conceivably, on their own self-image as paraprofessionals. The result of this ambivalence is that the staff and the better mediators tend to have different expectations about retraining and, when it is held, the mediators become even more distressed about the issue of competence because the staff does not use retraining to prune the ranks.

What the staff does do about inadequate mediators is to try to ignore them in forming panels. This effort is partially successful. For long stretches, a high proportion of mediation sessions are conducted by a small proportion of mediators. In June 1977, for instance, 6 mediators (11%) were scheduled to hear 15 cases (51%). Naturally, as the better mediators get most of the business, the gap in skill between mediators widens. This selection process caused a minor revolt in June 1977. The staff agreed to try to spread the burden ratably and in July an effort was made to use all mediators who had been ignored in the past. We had the impression as our fieldwork was finishing, that this effort had waned and that the old practice of distributing the work to those who were available, reliable and experienced had been re-adopted.

The significance of the work distribution practice for retraining is that it is difficult to get the mediators who most need retraining to come to the sessions. Their attendance is poor, first because there appears little profit in further training in a skill they are not given the opportunity to employ. Secondly, when they do attend a retraining session, the format may be intimidating. Retraining, like training, consists primarily in role-played mediation sessions. An inexperienced mediator, playing that role before experienced staff and highly experienced mediators (some of whom have now had experience as trainers), whose performance is analyzed for didactic purposes, is likely to be crushed by the experience. If they do not themselves undergo it, they witness the discomfort of others. In either event, attendance at the next retraining session is unlikely.

The staff had tried to counter the intimidation problem by dividing the mediators into small groups who would meet from time to time with a staff member to discuss and act out problems that they encountered in mediation. Most of the mediators did not show up for these sessions, nor were the staff resources adequate if the mediators had seized the opportunity, and this form of retraining was discontinued.

Retraining problems highlight the issue of the community dimension in community mediation. Whether half a dozen experienced mediators mediate the bulk of cases and do so with a high level of competence and professionalism or whether the caseload is met by 40 to 50 mediators each involved in an occasional mediation is a choice which ought to reflect a considered understanding of what the program is all about. If the basic concern is particular disputants and the failure of the criminal justice system to meet their needs, then mediation services ought to be provided by a small number of experienced, highly motivated, and closely-supervised mediators. If, on the other hand, mediation is seen as an aspect of a community's struggle to settle its own quarrels, to take responsibility for its own social control and its own fate, then the base of mediators must be broad, even at the cost of less effective individual mediations. Otherwise one form of specialist catering to the needs of a passive clientele has simply been substituted for another. Many of the shortcomings of IMCR-type mediator training and of Dorchester's problems with retraining may then be the result of indecision about goals, of ambivalence about whether the program is basically a community program or a mediation program.

V. Referral Sources and Caseload Problems

Courts are swamped, especially by criminal cases. Many of such cases do not reflect predatory criminal behavior. Rather, the defendants have behaved badly on account of passion, misunderstanding, misfortune, depression, substance abuse, jealousy, provocation or the like. Where a prior relationship exists between the defendant and victim, mediation is considered to be an appropriate alternative to prosecution. Given the number of cases of this nature generally thought to be in the criminal justice system, developing an adequate caseload has not been considered a problem for mediation projects. An insufficient number of cases has, however, been the Dorchester program's most serious difficulty.

Caseload was not expected to be a problem. As late as 11 months before the first case was mediated, JRI predicted about 670 referrals per year*, more than double the rate that actually developed. JRI was ambivalent about police referrals: it believed a mechanism for them should be developed, but it was worried that they would not be tolerated by the prosecutors (JRI, 1976: 39, 41). The great bulk of referrals were expected from the Clerk of the court; a few were to come from prosecutors and judges. Apparently no referrals were contemplated from civil court matters, social service agencies, legal aid, other government officers or walk-ins. In this chapter, we will describe the intake process, report on the mediation caseload by source of referral and analyze the contribution and shortfall of each major source of referral.

Table 2 presents the project's caseload by source of referral.

TABLE 2. Caseload by Source of Referral

Source	Absol. Freq.	Rel. Freq. (%)	Cumulative Freq. (%)
Court	299	59.8	59.8
Clerk	144	28.8	88.6
Police	20	4.0	92.6
Other	37	7.4	100.0
Total	500	100.0	

Table 3 illustrates the kinds of cases referred to mediation by the Clerk, court, police and others. It shows that 50% of referred cases concern some type of assault charge, that 70% involve either assault, threats or property damage and that over 94% of the caseload reflects some form of criminal charge. Assaults figure more prominently in court, than Clerk, referrals while the opposite is true for non-support cases. Non-criminal matters form the bulk of police and miscellaneous referrals.

The following figure charts the referrals per month for the court and Clerk, the principal sources of cases. The large number of Clerk referrals in July 1976 occurred when the Clerk was on vacation and section 35A hearings were conducted by his deputy who, at that time, exercised little discretion in making referrals. The low number of court referrals in the period of November 1976 through February 1977 may reflect the unusually severe weather in that period and a resulting depression in either criminal or police activity or both.

Almost 90% of mediation cases have come from the court or Clerk. Court referrals take place at the time of arraignment. The judge conducting the arraignment session, usually the First Justice, makes referrals upon the recommendation of an Assistant District Attorney and, 60% of the time, without any such recommendation. A mediation project case coordinator is always present in court at the time of arraignment. Mediation project staff report that there is substantial variation in the specificity with which the judge describes mediation when he suggests it to a defendant alone, or to a defendant and victim. They believe that the greater the detail employed by the judge, the more likely the parties are to appear at a mediation hearing. The judge, however, sometimes feels overburdened by the task of lecturing a defendant about his constitutional rights and then, in addition, having to describe mediation in detail. In any event, if the judge suggests mediation, the parties present are told that a representa-

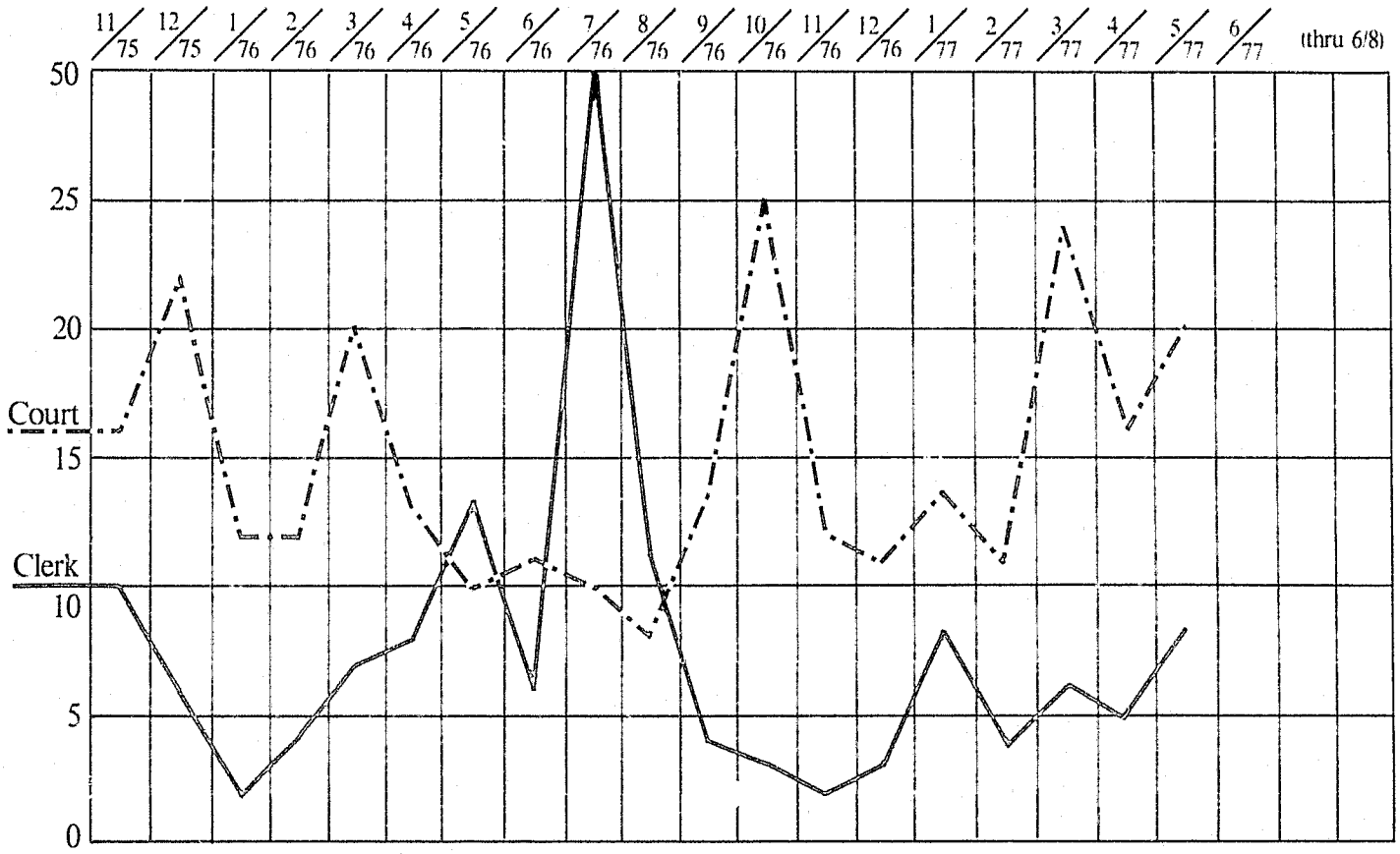
*JRI, 1976 states that 400 mediations were expected to be held in the "first months". We extrapolated 670 referrals annually by converting "first months" into 1 year and transposing hearings into referrals by the program's experience of a 40% withdrawal rate.

TABLE 3. Referral Source by Criminal Charge (11/75-6/8/77)

	Total	Assault		Threats		Harass.		Break-Enter		Trespass		Prop Damage		Larceny		Disturb. Peace		Contrib. Delinq		Delinq. Non-Supp.		Child.		Other	
		#	% row	#	% row	#	% row	#	% row	#	% row	#	% row	#	% row	#	% row	#	% row	#	% row	#	% row	#	% row
Clerk	144	71	49.3	18	12.0	6	4.2	1	.7	6	4.2	13	9.0	3	2.0	2	1.4	0	0.0	7	4.9	11	7.6	6	4.2
Court	299	170	56.9	31	10.4	13	4.3	7	2.3	3	1.0	31	10.4	16	5.4	6	2.0	7	2.3	0	0.0	4	1.3	11	3.7
Police	20	1	5.0	2	10.0	2	10.0	0	0.0	0	0.0	2	10.0	2	10.0	1	5.0	0	0.0	1	5.0	1	5.0	8	40.0
Other	37	7	18.9	1	2.7	4	10.8	1	2.7	0	0.0	2	5.4	1	2.7	0	0.0	0	0.0	0	0.0	8	21.6	13	35.1
Total #	500	249		52		25		9		9		48		22		9		7		8		24		38	
%	100.1		49.8		10.4		5.0		1.8		1.8		9.6		4.4		1.8		1.4		1.6		4.8		7.6

less than 5 in any category

FIGURE Major Source of Referrals over Time



tive of the mediation project is in court and will talk to them about mediation at that time. An intake form is filled out during that conversation and a "referral" has occurred, even if the parties decline on the spot to go to mediation. These referrals take place in the corridor outside of the courtroom, frequently a noisy and turbulent place. The staff of the mediation project is convinced that few disputants would agree to mediation if a case coordinator did not confer with the disputants at this point. Unless they learned something about mediation then and there, the disputants would stick with the court, a better-known process. One coordinator believes that the most important aspect of their presence in court is their ability to convince the disputants that the mediation project is interested in their story and in them: disputants come to mediation not because they understand it, but because someone connected with the project has taken the trouble to listen to them.

If the parties agree to submit the problem to mediation, a stipulation is signed and the court case is continued. If the complainant is not present in court, he is notified of the referral by mail and asked to come to the project office where the mediation program is described to him. Again, an agreement to mediate leads to a court continuance. Project staff report that disputants contacted in court are more likely to show up for a hearing, but that absent disputants who do come to the program office for an interview have a better understanding of mediation as a process than those who learn about it in the tense uproar of the courthouse.

Clerk's referrals are made at a section 35A hearing. These hearings are the vehicle in Massachusetts for a civilian to initiate prosecution of another person who has not been arrested by the police. In Dorchester, they are always held by the Clerk of the court, unless he is on vacation. These hearings, like arraignments, occur four or five times a week and generally follow the arraignment session so that they may be monitored by the same case coordinator who was present at arraignment. The Clerk conducts his hearings from behind a desk in a modest office. He is usually assisted by an elderly and mild-mannered police officer and, in the summer when student assistance is available, by a recording clerk. At the hearing, the Clerk may dismiss the matter, he may issue a complaint which is the functional equivalent to the prosecutor of an arrest, he may try to settle the dispute himself, he may continue it, or he may suggest a referral to mediation. The Clerk does not refer cases to mediation unless both parties are present so the need to notify one of them by mail does not arise. Disputants referred by the Clerk are often interviewed at the project office rather than in the hall adjacent to the Clerk's hearing room.

At these referral interviews the disputants are told about the differences between mediation and court process, about the identity and the objectives of the mediators and about the

course their case will take if it is successfully or unsuccessfully mediated. The case coordinators generally believe in the superiority of mediation to criminal prosecution, but it did not appear to us that they tried to oversell its attributes or to trick or coerce disputants into submitting to mediation.

The remainder of this chapter will discuss the issue of whether the judges, the Clerk, the prosecutors, the police and others could make more referrals to mediation than they do and will identify some of the reasons that may inhibit increased referrals.

Because he conducts most arraignments, Judge King makes more referrals than either of the other judges who regularly sit in Dorchester. Judge King states that he approaches the referral issue with a bias in favor of mediation; he will refer any case unless if fits into a disqualifying category. As noted earlier, these categories are serious crime (e.g., shooting case), repeated commission of the same crime, heavy or hard drug involvement, chronic alcohol abuse, a history of unsuccessful mediation, and, of course, cases in which the defendant and victim are strangers.

How does the notion of the Dorchester court as a hectic, overburdened urban tribunal vainly trying to process 15,000 cases annually (JRI, 1976: 12) square with the facts of sympathetic judges able to identify only 15 cases per month appropriate for mediation? The Court Administrator believes that the judges do not overlook more than 25 mediation cases per year. We observed the arraignment session for five days and did not identify any cases appropriate for mediation which were not referred by Judge King.

One factor bearing on the referral potential of the court is the inaccuracy of its characterization as an overloaded institution. It may, as JRI alleged, have at one time been one of the busiest district courts in Massachusetts. By 1976, however, it ranked 26th out of 72 in the state. Neither Judge King nor Judge Dolan believes that the court is overburdened in terms of its capacity to process cases. (Its ability to provide adequate probationary supervision may be another matter.) The courtrooms of the Dorchester court rarely operate deep into the afternoon. The prosecutors' office is closed by 4:30 p.m. Of the 12,327 criminal cases filed in 1976, 7,887 (64%) were for violation of motor vehicle laws.

In an effort to gauge the referral potential of the Dorchester court's current caseload we began with the 1976 Return of Criminal Cases filed by the Clerk of the court. In Table 4 we present the number of cases filed in that year for the crimes from which it is conceivable that referrals might originate. Excluded as too serious are crimes such as murder and arson. Crimes such as liquor and motor vehicle law violations that are unlikely to involve defendants and victims who are not strangers were also omitted.

Of the 1,614 cases where arrests were made and the case remained in the District Court, only those which involve disputants who have had some kind of prior relationship are appropriate for mediation. Vera's data (1976: 19) for felonies in New York City which are roughly comparable to the crimes in Table 4 indicate a prior relationship in 47% of cases. Our analysis of assault cases in Dorchester involved non-strangers 39% of the time. These studies suggest that the number of

TABLE 4. Types of Criminal Cases as Referral Sources

Crime	Total	Not Arrested	Bound Over	Balance
Assault & att. murder	31	10	10	11
Assault w. dang. weap.	497	93	76	328
A & B	336	64	13	259
Threats	94	28		66
B & E	226	31	21	174
Larceny	702	291	2	409
Dest. & inj. to prop.	171	35	5	131
Trespass	44	14		30
Br. glass	28	9		19
Non-support	85	30		55
Disord. conduct	134	11	4	119
Contrib. to delinq.	14	1		13
Totals	2,362	617	131	1,614

cases qualifying on relationship is somewhere between 629 and 759 per year. In 1976, 145 referrals were actually made by the court. We cannot explain the non-referral of between 475 and 600 cases which probably involve quarrels between people who know each other. Many of them will have been disqualified by prior record or heavy substance abuse. Intuitively, we think that it is unlikely that these factors account for all of the missing cases: our hunch is that the court could refer more cases than it does without seriously violating the judges' own criteria. But only prolonged observation of arraignment sessions can provide a reliable answer to the dilemma of low referrals at the trial level.

Our confidence in locating a shortfall of cases is greater with respect to the Clerk's office. From the perspective of the mediation project the Clerk can "miss" a case when he issues or denies a complaint in a case or "settles" a case appropriate for mediation. The evidence suggests that misses take place both with respect to complaints issued and disputes settled. Mediation staff allege, we observed, and the Clerk agrees that he issues complaints in cases which meet the standard criteria for mediation. These cases are passed on to the court apparently because the Clerk believes that complainants have a right to initiate prosecution if they have been victimized by criminal behavior and because he is reluctant to refer cases that involve substantial violence. From a caseload point of view, the number of cases sent on to court which could have been referred to mediation or the reasons for that treatment are not important. A civilian-initiated case which qualifies for mediation will probably be referred to mediation by the judge at arraignment. The source of referral is shifted from Clerk to court, but there is no caseload effect, although there are obvious cost implications.

We observed the Clerk's hearings for nine days spread over four months. Most "unsettled" cases where a complaint was not issued and a reference to mediation was not made involved either a non-appearing complainant or a complaint that should have been filed with another government office. But there is a leak in the Clerk's hearings. Many cases suitable to mediation were not referred, but were instead "settled" by the Clerk, frequently by means of sermons on neighborly love. The Clerk engages in little interchange with the disputants and his speeches are heavily normative. He appears sincere, but his performance is standardized, using the

same sentiments and language over and over with little focus on specific problems. Although we observed a few sessions in which the Clerk's efforts appeared useful, in most they seemed fruitless.

The Dorchester Clerk's settlement efforts in large part stem from his unique position in the court structure. It is important to understand that in Dorchester the Clerk is not a clerk. He is, in the first place, a lawyer and he is better paid than all figures in the Dorchester district court system other than the judges. His salary is about 30% higher than that of the average prosecutor. He not only supervises a large staff, but through the section 35A hearings he performs a quasi-judicial function. In several district courts in the state, including neighboring Roxbury and in Boston, those hearings are conducted by judges. If the clerk were to refer to mediation the cases which, from the project's perspective he should, he would be giving up the cases through which he now performs his highest status and most gratifying work.

The Clerk refers 7.8 cases to mediation per month, an average of about one referral for every three hearings that he conducts. Without sustained observation of those hearings, it is not possible to estimate with confidence the number of referrals which could be made if the Clerk were to refer qualifying cases rather than try to settle them himself. In the nine sessions that we observed, the Clerk mediated 8 cases that we believe were appropriate for mediation. At this rate, if the Clerk were to turn the responsibility for mediation over to the mediation project where he did not believe a complaint was required, the number of referrals from 35A hearings would nearly triple, resulting in about 170 additional cases per year.

In several jurisdictions, cases which are too serious to dismiss out of hand and too slight to warrant prosecution are referred to mediation programs by prosecutors or by screening personnel in prosecutors' offices. That this kind of diversion does not occur in Dorchester is due to the important role played by the Clerk's hearings, not to any lack of commitment to mediation on the part of the prosecutors. Our interviews with Dorchester prosecutors were peppered with comments like:

> "In many cases there is technically a crime, but no real resolution is possible through the courts. The courts do not get to the underlying problem".
>
> "We may take an hour to explain the alternatives to complainants. We try to get a feeling for what the complainant is interested in. Is it really a breaking and entering case or is it really a landload and tenant dispute?"
>
> "I would not send a case to mediation where the wife is in the hospital. I try to think of what is down the road for the disputants. A lot depends upon the wife's attitude. If a wife who has been beaten by her husband is reluctant to prosecute, then I try to steer them to mediation".

The role of the Clerk's hearing and the legal responsibility of prosecutors to arraign promptly those people charged with crimes virtually eliminates any independent referrals to mediation by prosecutors. Civilian-initiated complaints are channeled to the Clerk. If he declines to issue a complaint, the prosecutor never hears about the matter. If he issues a complaint, the prosecutor cannot dismiss the case but must take it to court immediately. If a case comes to the prosecutor through a police arrest, the prosecutor must either dismiss it entirely or immediately arraign the defendant. Control is lost over cases which are thrown out. The prosecutor cannot say to a defendant that I will dismiss the case against you contingent on your going to mediation. As a consequence, the only kinds of cases dismissed are those where the prosecutor believes that no further proceedings of any kind are warranted—e.g., a subway fight where the parties have no records and where no further contact between them is likely.

The prosecutors believe that they have a better appreciation of the context out of which a case develops, and thus of the propriety of mediation, than does the court. They have had an opportunity to talk to the victim and to witnesses at some length while the court arraignment, the point at which most court referrals are made, takes but a few minutes. That the court actually refers to mediation more than double the number of cases recommended by the prosecutors is probably due to the prosecutors' attitude toward the victim who seems willing to go ahead in court. Prosecutors say that they recommend mediation where there is a prior relationship between defendant and victim, where there is no record of prior violence and where the victim might not show up in court. Mediation is then the outlet for weak cases, for cases that would eventually be dismissed in court because the victim would be an absent, or an uncooperative witness. In cases where the victim will cooperate, the prosecutors seek to prosecute, but the judges frequently refer the cases to mediation anyway.

There are two ways in which prosecutors can have a positive effect on referrals to mediation. A prosecutor may have a better appreciation for the substance of a case than the arraignment judge. He may thus recommend cases for mediation that a judge would otherwise miss. Secondly, once a prosecutor has decided that a case ought to go to mediation, he tries to see that it gets there. A complainant who is reluctant to testify in court *and* reluctant to go to mediation will be told that he/she cannot withdraw easily. If the complainant refuses to go to mediation, he/she will have to explain the reluctance to testify to the judge. Such a complainant is also told that any subsequent complaint will be ignored by the prosecutor. Thus, although prosecutors do not refer cases to mediation, they facilitate judicial referrals.

The police response to mediation has been the most disappointing for the project. For the first 19 months of the program, police referrals averaged one per month. The lack of police cooperation is apparently due to factors inherent in the police role generally, to the hostile relationship between the Dorchester police and Judge King, and to a few unfortunate coincidences. The Dorchester police do not understand and are resistant to the idea of mediation as an alternative to criminal prosecution.

It appears to us that the underlying reason for police resistance to the mediation program is their antagonism to Judge King and to the programs that he has endorsed. The Boston Police Patrolmen's Post, the official publication of the patrolmen's organization, has made vitriolic attacks on the judge. A major police complaint is that the court is exces-

sively lenient. More relevant to the mediation project's caseload are police feelings about the judge's control over their appearance in court and how they are treated by the judge when testifying. Judge King is concerned about the cost of court appearances by the police. To limit police fees, Judge King has discouraged police appearances by doing without the police at arraignments and by requiring only one police witness at the time of trial. He has also reduced police fees by reducing the number of continuances granted. In short, police officers stand to benefit less from making an arrest than they did before Judge King's reforms.

If some officers make fewer arrests because the incentive is lower, others make fewer arrests because, they allege, they are humiliated and ridiculed by the Judge when they do appear in court. This concern is especially prevalent with respect to minor matters. Police officers say that they are told not to bother Judge King with insignificant cases; they are asked why they do not go out and spend their time dealing with serious crimes. We did not spend enough time observing court sessions to determine whether the police reservations are accurate. Certainly, some incidents occur as the police allege. On one occasion we observed a case involving possession for sale of 6 oz. of marijuana. The defendant's apartment was searched pursuant to a warrant describing the seller as a black man, 5'4", 140 lbs. The man arrested was 6'2", 180 lbs. and rather obviously not the man described in the warrant. The Judge said to the policeman who made the arrest: "I'm surprised that you didn't arrest the defendant's mother". Whether this is the type of ridicule which intimidates the police or a more playful form of interchange, we cannot say. Urban Court personnel have told us that the Judge does not appear to them to treat the police differently than anyone else. But for the purposes of analyzing the mediation projects's caseload, it is the police belief, rather than actuality, which counts. The upshot of the police-judge feud is that the number of arrests has decreased. The court has slipped in three years from the 3rd to the 26th busiest district court in the state. The arrests which are not being made are arrests at the less severe end of a minor crime-major crime continuum, or just those arrests which, if made, might have led to referrals to mediation. Thus, the police themselves do not make an appreciable number of referrals and their behavior depresses the number of referrals which can be made by the court.

The mediation project made a concerted effort to establish a working relationship with the police. Soon after the program began, the director of mediation spoke to captains of the two local precincts. The captains suggested that representatives of the mediation program describe mediation to groups of policemen. The mediation people declined: they were skeptical that a one-shot education would be sufficient and were afraid that it would lead to inappropriate referrals and, thus, to unsuccessful mediations. Instead, they suggested that they train one officer in each session house who would act as a continual liaison with the rest. The captains agreed and the officers were selected. But those officers refused to participate unless the program was cleared by the police union. The mediation program has never succeeded in getting the issue on the police union agenda. It first was blocked by personnel changes in the office of the Boston police chief and later by police animosity toward Judge King. Whatever the reasons, systematic police-mediation project cooperation has been absolutely stymied.

Thirty-four of the first 500 cases were referred to mediation by someone other than the Clerk, court or police. These other sources include social service agencies, truant officers, the welfare department, legal aid and other parts of the Urban Court program. There have also been several self-referrals. The important question concerning these referrals is not what they were like, but why there are so few. The problem can lie either with the lack of general awareness of or confidence in the program or with the lack of coercion exercisable against disputants advised by these non-criminal justice agencies to go to mediation. Two factors suggest that the problem is an absence of coercion rather than of public knowledge. First, social service agency personnel probably do know quite a bit about the project. It is a highly visible, store-front operation on the main street of Dorchester, 2 blocks from the courthouse. It has received substantial TV exposure. Its efforts to attract trainees for its mediation and disposition units have produced publicity in newspapers and on radio stations. More important than this activity directed toward general public awareness are the facts that the program is staffed by many people who have worked for local social service agencies, its social service referral activities are conducted directly with local social service agencies, and many of its community volunteers have social service agency ties. Yet that extensive network has produced only five social service referrals in 19 months.

Second is the general proposition that the no-show rate is a function of the level of coercion to which the respondent is subject: the less the cost of rejecting mediation (the less unpleasant the alternative), the less likely the respondent will be to agree to mediation. This logic seems both applicable and inapplicable to Dorchester. It is complicated, but worth exploring. If the respondent in a court or Clerk referral does not participate in a hearing or does not join in an agreement, the consequence may be continued criminal prosecution. Respondents referred by other sources are in no such jeopardy. If the coercion proposition is correct, we would expect to find a lower proportion of no-shows and of unsuccessful mediation in the court and Clerk conditions than when referrals are made by others. As can be seen in Tables 5 and 6, the

TABLE 5. Referrals by Withdrawals

Source of Referral	Frequency of Referrals	Withdrawals	Relative Frequency (Per Cent)
Court/Clerk	413	120	29
Other	47	25	53

TABLE 6. Referrals by Outcomes

Source of Referral	Mediation Held	Agreements Reached	Relative Frequency (Per Cent)
Court/Clerk	291	258	88.7
Other	22	21	95.5

hypothesis is supported by the no-show data, but not by the breakdown of successful mediations.*

The small claims court is a potential source of cases. The reason why only an occasional small claims case has been referred to mediation is clear; the potential in a more favorable context is less certain. Small claims cases could be referred either when they are filed or when they are called for trial. Judge Dolan, who hears most small claims in Dorchester, wanted to give complainants the alternative of mediation at the time of filing. The Clerk refused on the ground that civil referrals must come from a judge, not a clerk. He apparently thought that shifting a case to mediation involved a discretionary, rather than an informative, function. If referral can only be made when a case is about to be tried, the postponement involved in going to mediation is a major disincentive. The parties are already in court and their case will be "settled" within a half-hour. Why wait for the less familiar process?

If the Clerk reversed his stand and offered these plaintiffs the alternative of mediation, the literature on small claims court indicates that it may have a major role to play. Yngvessen and Hennessey's (1975: 253) review of 56 small claims court analyses reports that "most observational studies suggest that formal atmosphere, judicial indifference or aloofness, presence of lawyers, and a crowded schedule, may hinder a full airing of grievances". The remedy frequently suggested for cases "in which the time dimension of the relationship is a deep one" (Yngvessen & Hennessey, 1975: 263) is mediation (McFadgen, 1972). Many small claims cases are collection matters or involve cut and dried factual issues. In many small claims cases at least one of the parties desires a normative outcome, a statement by an authority figure about what happened and what rules are applicable to what happened, even where they have a prior relationship to the other party. But the residual of prior relationship cases where the parties want to work out an accommodation for the future rather than receive an evaluation of the past may be substantial.

*The coercion hypothesis may not work within mediation hearings because "other" referrals who attend mediation, having come out of choice, are more motivated toward settlement than the Court/Clerk referrals.

VI. Caseload Analysis

A. Introduction

This chapter has both a descriptive and an analytical function. In the first part, frequency counts of data relating to the mediation caseload from the beginning of the project in November, 1975 through June 8, 1977 (the first 500 cases) are presented. The frequency counts are supplemented by cross-tabulations of related variables (e.g. outcome by source of referral) and the computation of statistics specifically designed to measure the degree of association between nominal variables. The chapter also includes the results of an in-depth follow-up of a sample of 81 cases drawn from the first 500 cases.

Data collection. All data in this section were collected from the case files at the mediation project. The files included information about intake, referral source, summaries of intake, interviews with the complainant and respondent, the charge or precipitating complaint, any communications between the case coordinators and the disputants, the agreement, if one was reached, and the results of the mediation project follow-up. Most of the files indicated the ultimate disposition of the case (e.g. whether the case was eventually returned to court), whether a weapon was used and what it was, and the problems underlying the presenting complaint.

The reliability of this information is difficult to determine. During the period studied six different individuals performed the case coordinator function. As one would expect, the amount of information and the degree of detail in the actual files varies between case coordinators. The variability lies not with the facts such as referral source, but with the specificity with which matters such as the ostensible dispute or the underlying problems are described.

The raw data were coded at two levels. Most of the data were recorded from the files and transferred directly to data processing format. The category "level of dispute" was coded at a later time, using various items of information about the dispute. Each individual dispute was categorized at one of three levels, varying in degree of seriousness and complexity. When sufficient information was not available, the dispute was not coded. The coding was done independently by two coders, and the initial rate of agreement was calculated. The coders then discussed the cases on which they disagreed and dealt with these cases in one of two ways: either one coder, in re-evaluating the case, decided to recode the dispute level and an agreement was reached or no agreement could be reached and the dispute level was left uncoded. (See Table 7).

The following tables contain three categories of information: information about the disputants, about the dispute and about mediation as a form of dispute processing. From this information, a picture can be formed of the kinds of problems that have been referred to mediation in Dorchester, who they were referred by, which have led to mediation agreements, how durable those agreements appear to be, and what types of problems underlie these interpersonal disputes.

TABLE 7. Coding of Dispute Level

	Frequency	Percent
Initial Phase: Independent Coding		
Total Number of Disputes	500	
Disputes Coded	384	76.8[1]
Number of Agreements	308	80.2[2]
Second Phase: Disposition of Disagreements		
Number of Disagreements	75	
Came to Agreement Through Discussion	60	
Dropped due to Insufficient Information to Reach an Agreement	15	
Final Frequency of Agreement	368	

[1]Percent of total caseload
[2]Percent of total disputes coded

B. The Disputants

This section presents the available data related to personal characteristics of the disputants—the disputants' sex and the relationships between disputants. Unfortunately, the project did not collect demographic data on ethnic origin, income, education or occupation. Although there are 500 cases in our sample, there were more than 1,000 disputants since there were more than 2 disputants in 73 cases.

TABLE 8. Sex and Adult/Child Status of Disputants

	Complainant		Respondent	
	Frequency	Percent	Frequency	Percent
Male Adult	161	27.7	352	59.7
Female Adult	372	63.9	133	22.5
Male Child[1]	20	3.4	52	8.8
Female Child[1]	13	2.2	29	4.9
Family	—	—	1	.2
Child (unknown sex)	—	—	6	1.0
Adult (unknown sex)	9	1.6	8	1.4
No information	7	1.2	9	1.5
	582	100.0	590	100.0

[1]Through age 16

C. The Dispute

This section presents some of the characteristics of the disputes referred to mediation. Included are the details of

TABLE 9. Disputant Relationship

	Frequency	Percent	Adjusted Percent
Spouses	90	21.4	18.0
Lovers	22	5.2	4.4
Ex-Spouses	17	4.1	3.4
Ex-Lovers	30	7.1	6.0
Individuals in Romantic triangle	10	2.4	2.0
Parent/Child	36	8.6	7.2
In-Laws, family	10	2.4	2.0
Friends	25	6.0	5.0
Landlord/Tenant	42	10.0	8.4
Neighbors	98	23.0	19.6
Partners, Employer/Employee, Co-workers	7	1.7	1.4
Teacher/Student	13	3.1	2.6
Business/Customer, Contractor/Client	9	2.1	1.8
Strangers	5	1.2	1.0
Other	6	1.4	1.2
	420	100.0%	
No information	80		16.0
	500		100.0%

TABLE 10. Presenting Complaints

Complaint	Frequency	Percent
Assault, assault and battery	283	47.0
Threats	78	13.0
Harassment	35	5.8
Breaking and entering	12	2.0
Trespass	11	1.8
Property damage	67	11.1
Larceny	26	4.3
Small claim, breach of contract	7	1.2
Disturbing the peace	10	1.7
Contributing to the delinquency of a minor	8	1.3
Stubborn child, runaway, truant	24	4.0
Dog bites, noisy dogs	6	1.0
Non-support	9	1.5
General family dispute	9	1.5
General monetary or property dispute	7	1.2
Other[1]	10	1.6
	602	100.0

[1]Frequency per category less than 5

TABLE 11. Weapons Used in Assault & Battery Cases

Weapon	Frequency	Percent[2]	Adjusted Percent
Gun	13	5.0	6.5
Hands, fists	94	35.2	47.0
Telephone	15	5.6	7.5
Knife	19	7.1	9.5
Shod foot	15	5.6	7.5
Bat, stick	19	7.1	9.5
Brick, rock, bottles	11	4.1	5.5
Other	14	5.2	7.0
	200[1]		100.0
No information regarding weapon	67	25.1	
	267	100.0	

[1]There was a total of 267 cases of assault and battery. Weapons were used in 171 cases. In some cases, more than one weapon was used.
[2]Percent of total number of assault and battery cases (N=267).

presenting complaints, dispute levels, any underlying problems and whether a cross-complaint was involved. Also presented are crosstabulations of related variables such as complaint by dispute level and underlying problems by complaint. Almost 20% of the cases involved two or more complaints.

Description of criteria used to establish dispute levels.

Level 1: One-shot dispute. There is no apparent underlying emotional and/or behavioral problem relevant to resolution at mediation. e.g. a small claim or security deposit dispute.*

Level 2: Not a single incident. Consists of escalating misunderstandings. There are no apparent underlying emotional and/or behavioral problems relevant to resolution at mediation. e.g. ongoing problems with neighbor's children leading to dispute between parents.

Level 3: Not a single incident. Dispute and resolution affected by underlying emotional and/or behavioral problems. e.g. ongoing husband/wife dispute involving chronic alcohol abuse and/or violent behavior.

TABLE 12. Dispute Level of Disputes Referred to Mediation

Level	Frequency	Percent	Adjusted Percent
1	99	19.8	26.9
2	115	23.0	31.3
3	154	30.8	41.8
			100.0
Insufficient information to code	132	26.4	
		100.0	

TABLE 13. Presenting Complaint by Dispute Level

Complaint	Dispute Level[1] 1	2	3
Assault, assault and battery	44 (25.6)[2]	52 (30.2)	76 (44.2)
Threats	5 (14.3)	12 (34.3)	18 (51.4)
Harassment	1 (6.7)	7 (46.7)	7 (46.7)
Breaking and entering	1 (16.7)	2 (33.3)	3 (50.0)
Property damage	13 (32.5)	13 (32.5)	14 (35.0)
Larceny	12 (60.0)	6 (30.0)	2 (10.0)
Disturbing the peace	(—)	4 (57.1)	3 (42.9)
Contributing to delinquency of minor	(—)	1 (20.0)	4 (80.0)
Stubborn child, truant	3 (14.3)	9 (42.3)	9 (42.3)
Dog bites, noisy dogs	3 (50.0)	3 (50.0)	(—)
Non-support	6 (85.7)	1 (14.3)	(—)
General family dispute	(—)	2 (40.0)	3 (60.0)
General money or property dispute	6 (100.0)	(—)	(—)
Other	5 (35.7)	4 (35.7)	4 (28.6)
	99	116	143

[1]Only 358 cases included both a coded dispute level and a presenting complaint.
[2]Row percent.

*Some of the disputes coded as Level 1 did involve serious underlying problems, such as drunkenness and racial animosity. However, these disputants had no ongoing relationship and in a few cases did not ever know each other. Consequently, those underlying problems, although contributing to the occurrence of the conflict, were not relevant to resolution of the dispute.

TABLE 14. Underlying Problems

	Frequency[1]	Percent[2]	Adjusted Percent[3]
Alochol abuse	64	12.8	26.0
Jealousy	23	4.6	9.3
Desire for a separation or divorce	20	4.0	8.1
Violent behavior	18	3.6	7.3
Infidelity	17	3.4	6.9
Refusal to accept separation	16	3.2	6.5
Unemployment	15	3.0	6.1
Racial animosity	12	2.4	4.9
Visitation problem	11	2.2	4.5
Physical illness	8	1.6	3.3
Family interference with relationship	8	1.6	3.3
Contributing to delinquency of minor	6	1.2	2.4
Custody problem	6	1.2	2.4
Other	22	4.4	8.9
	246		100.0%

[1]As revealed during the intake interviews.
[2]Percent of total caseload (N = 500).
[3]Percent of total frequency of apparent underlying problems (N = 246).

TABLE 15. Underlying Problems by Dispute Level[1]

Underlying Problem	1	2	3
Alcohol abuse	10 (55.6)[2]	2 (9.1)	42 (30.4)
Jealousy	—	2 (9.1)	10 (7.2)
Desire for a separation or divorce	—	1 (4.6)	14 (10.1)
Violent behavior	—	2 (9.1)	10 (7.2)
Infidelity	—	2 (9.1)	12 (8.7)
Refusal to accept separation	—	1 (4.6)	9 (6.5)
Unemployment	1 (5.6)	—	7 (5.1)
Racial animosity	3 (16.7)	1 (4.6)	6 (4.3)
Visitation problem	—	2 (9.1)	3 (2.2)
Physical illness	—	1 (4.6)	5 (3.6)
Family interference with relationship	1 (5.6)	4 (18.2)	2 (1.4)
Contributing to delinquency of minor	—	2 (9.1)	4 (2.9)
Custody problem			4 (2.9)
Other	3 (16.7)	1 (4.6)	10 (7.2)
	18	22	138

[1]Only files included both a coded dispute level and a description of underlying problems.
[2]Column percent.

The most conspicuous finding from these tables providing information about disputes and disputants is the large proportion of cases which fall into a common category. Forty-seven percent of the caseload originates with charges of assault or assault and battery. Two-thirds of the cases involve either assault, assault and battery, threats and harassment. No other type of case reaches 5% of the total. Forty percent of the disputants are either spouses, lovers, ex-spouses or ex-lovers. Adding parent-child and in-law cases to these groups accounts for over one-half of the caseload. These intra-family assault-type cases may be quite serious—12% involve a gun or a knife and weapons of some sort are used two-thirds of the time. These disputes are, in addition, more likely to be the result of a continuing condition than a single incident: only 27% of the caseload reflected single incident disputes. Over one-half (57%) of these continuing condition cases involve an underlying emotional or behavioral problem. The most frequent are alcohol abuse (26%), jealousy (9.3%), refusal to accept a separation or divorce (8.1%) and chronic violence (7.3%). It is because the caseload is so markedly intra-family and violence related and because it is faced with continuing conditions reflecting underlying problems that we concluded that mediation in Dorchester should be viewed as a factor in *community mental health* and as an alternative to *family counseling*. This caseload and these problems may or may not have been part of the original agenda, but given the sources of referrals, they are what the project has engaged. As a consequence, the long-term evaluation of mediation should not be only in comparison to court services upon which it is probably a clear improvement, but mediation must also be judged in the light of other mental health resources, particularly professional counseling, where its advantages are more problematic.

D. Mediation Procedure

The information included in this section pertains to the mediation procedure itself. It includes sources of referral, eventual disposition of referred cases, outcome of mediation sessions, the results of the mediation project's follow-up, and social service referrals, as well as tables presenting the relationships between these variables.

Table 20 shows that, in general, the complaints in cases referred by the Clerk are similar to those referred by the court. In both instances, slightly over two-thirds of the re-

TABLE 16. Distribution of Referrals

Source	Frequency	Percent
Clerk	144	28.8
Judge, D.A.	299	59.8
Police	20	4.0
Other[1]	37	7.4
	500	100.0

[1]This category includes walk-ins, referrals from friends and past disputants and from various social service agencies.

TABLE 17. Disposition of Referred Cases

Disposition	Frequency	Percent	Adjusted Percent
Withdrawal; complainant no-show	78	15.6	16.0
Respondent refused mediation; went back to court	68	13.6	14.0
Staff settled	3	0.6	0.6
Session held	331	66.2	68.1
Social service referral only[1]	6	1.2	1.2
			100.0
No information	14	2.8	
	500	100.0	

[1]There were 6 social service referrals without mediation being held and 35 referrals combined with mediation. Only 8 of these disputants kept their first referral appointment and only 4 returned for service beyond the first appointment.

TABLE 18. Outcome of Mediation

Outcome	Frequency	Percent[1]	Adjusted Percent[2]
Agreement reached at mediation	294	58.8	89.1
Agreement reached by disputants after mediation	1	0.2	0.3
No agreement reached	35	7.0	10.6
No information	1	0.2	0.3
	331		100.0

[1]Percent of total caseload.
[2]Percent of mediated cases.

ferrals reflect either assaults, threats or harassment. The major differences are that the court refers more cases involving serious property crimes (larceny, breaking and entering) while the Clerk and referrals reflect more non-violent family relations matters (stubborn child and non-support).

Table 21 shows that the Clerk refers a higher proportion of continuing condition and underlying problem cases than the court. We have in Chapter VI noted that the Clerk is inclined to refer cases to the prosecutor rather than to mediation where a clear breach of criminal law has allegedly occurred. This practice coupled to the pattern seen in Table 21 suggests that Clerk and court referrals to mediation differ more by way of precipitating incident than they do by way of underlying problem. Where an underlying problem or condition leads to more aggressive action, the case comes to mediation via the court. When a similar underlying problem or condition leads to less aggressive action, the case comes to mediation from the Clerk. But it is likely that the problem confronting mediation is the same, regardless of how egregious the precipitating incident may be. The programmatic lesson from this finding is that many disputes similar to those processed by mediation exist in the general population and could profit by third-party intervention even though they never erupt into "police" cases. This likelihood means that mediation programs should seek to tap a caseload beyond the criminal justice system, encouraging social service agency and self-referrals.

TABLE 19. Results of Mediation Project Follow-up (90 days)

Result	Frequency	Percent	Adjusted Percent[1]
Agreement working	163	55.4	67.9
Some improvement	31	10.5	12.9
Agreement broke down	46	15.6	19.2
	240		100.0
No follow-up	54	18.4	
	294	100.0	

[1]Percent of total cases follow-up (N = 240).

TABLE 20. Cross-tabulation of Referral Source by Charge

	Referral Source												Marginal Total
	Clerk			Judge, D.A.			Police			Other			
Assault, battery	79	(47.9)[1]	(28.2)[2]	195	(52.1)	(68.6)	2	(8.7)	(0.7)	7	(17.1)	(2.4)	283
Threats	24	(14.5)	(31.3)	50	(13.4)	(63.8)	2	(8.7)	(2.5)	2	(4.9)	(2.5)	78
Harassment	8	(4.7)	(22.2)	19	(5.1)	(55.6)	3	(13.0)	(8.3)	5	(12.2)	(13.9)	35
Breaking & Entering	1	(0.6)	(8.3)	10	(2.6)	(83.3)	0	(0.0)	(0.0)	1	(2.4)	(8.3)	12
Trespass	6	(3.6)	(54.5)	4	(1.1)	(36.4)	1	(4.3)	(9.1)	0	(0.0)	(0.0)	11
Property Damage	16	(9.5)	(23.5)	47	(12.6)	(70.6)	2	(8.7)	(2.9)	2	(4.9)	(2.9)	67
Larceny	4	(2.4)	(15.4)	17	(4.5)	(65.4)	2	(8.7)	(7.7)	3	(7.3)	(11.5)	26
Small Claim	2	(1.2)	(28.6)	4	(1.1)	(57.1)	0	(0.0)	(0.0)	1	(2.4)	(14.3)	7
Disturbing the Peace	0	(1.2)	(18.2)	7	(1.9)	(72.7)	1	(4.3)	(9.1)	0	(0.0)	(0.0)	10
Contributing to Delinq. of Minor	0	(0.0)	(0.0)	8	(2.1)	(100.0)	0	(0.0)	(10.0)	0	(0.0)	(0.0)	8
Dog Bites, Noisy Dogs	2	(1.2)	(33.3)	2	(0.5)	(33.3)	0	(0.0)	(0.0)	2	(4.9)	(33.3)	6
Stubborn Child, Runaway, Truant	12	(7.3)	(50.0)	4	(1.1)	(15.4)	0	(4.3)	(3.8)	7	(17.5)	(30.7)	24
Non-Support	7	(4.1)	(77.8)	1	(0.3)	(11.1)	1	(4.3)	(11.1)	0	(0.0)	(0.0)	9
Gen. Family Dispute	1	(0.6)	(11.1)	1	(0.3)	(11.1)	4	(17.4)	(44.4)	3	(7.3)	(33.3)	9
General Property Dispute	0	(0.0)	(0.0)	1	(0.3)	(14.3)	2	(8.7)	(28.6)	4	(9.8)	(57.1)	7
Other	1	(0.6)	(10.0)	4	(1.1)	(40.0)	2	(8.7)	(20.0)	3	(7.3)	(30.0)	10
	165	(100.0)		374	(100.0)		23	(100.0)		40	(100.0)		602

[1]Column percent
[2]Row percent

TABLE 21. Referral Source by Dispute Level

Referral Source	Dispute Level[1] 1	2	3
Clerk	22 (20.4)[2]	39 (36.1)	47 (43.5)
Judge	64 (29.5)	61 (28.1)	92 (42.4)
Police	4 (30.8)	6 (46.2)	3 (23.1)
Other	9 (30.0)	9 (30.0)	12 (40.0)

[1]Only 368 cases included both a coded dispute level and a referral source.
[2]Row Percent.

TABLE 22. Referral by Problems Underlying Disputants' Behavior[1]

Problems	Referral Source Clerk	Judge, D.A.	Police	Other
Alcohol abuse	18 (24.3)[2]	46 (31.1)	(—)	(—)
Chronic violence	5 (6.8)	10 (6.8)	1 (20.0)	2 (13.3)
Emotional problems, depression	1 (1.4)	4 (2.7)	(—)	(—)
Jealousy	4 (5.4)	14 (9.5)	1 (20.0)	4 (26.7)
Physical illness	1 (1.4)	6 (4.1)	(—)	1 (6.7)
Racial animosity	2 (2.7)	10 (6.8)	(—)	(—)
Unemployment	6 (8.1)	9 (6.1)	(—)	(—)
Contributing to delinquency of minor	5 (6.8)	1 (0.7)	(—)	(—)
Visitation problem	4 (5.4)	6 (4.1)	(—)	1 (6.7)
Desire for separation or divorce	6 (8.1)	11 (7.4)	1 (20.0)	2 (13.3)
Refusal to accept separation or divorce	5 (6.8)	11 (7.4)	(—)	(—)
Family interference	5 (6.8)	2 (1.4)	(—)	(—)
Infidelity	6 (8.1)	9 (6.1)	1 (20.0)	1 (6.7)
Custody problem affecting child	2 (2.7)	1 (0.7)	(—)	3 (20.0)
Other (frequencies less than 5)	4 (5.4)	8 (5.4)	1 (20.0)	1 (6.7)

[1]Only 133 cases included both a referral source and a description of problems underlying respondents' behalf.
[2]Column percent.

Table 23 reflects the difficulty which mediation has with property disputes. Of the twenty-two categories of dispute, only six are primarily property (trespass, property damage, larceny, breach of contract, non-support and general money or property). Nevertheless, four of the six categories of disputes involving five or more cases where less than one-half of referrals led to mediation sessions were property categories (trespass, property damage, breach of contract and general money). Similarly, three of the five categories where the proportion of agreements was less than 90% of the proportion of sessions held were property disputes (larceny, breach of contract, and non-support). Although property disputes are comparatively difficult to get to mediation and to settle at mediation, property settlements once made are comparatively likely to be kept. Only one of the six categories of disputes where the compliance rate is less than 80% of the agreement is a property category (larceny).

TABLE 23. Outcome of Mediation and Follow-up by Presenting Complaint

Complaint	No. of Referrals	Mediation[1] Session Held	Agreements[2]	Some Improvement At Follow-ups[3]
Assault, Battery	287	200 (69.7)	177 (61.7)	124 (43.2)
Threats	80	55 (68.8)	51 (63.8)	36 (45.0)
Harassment	36	26 (72.2)	25 (69.4)	19 (52.8)
Breaking & Entering	13	8 (61.5)	10 (76.9)	7 (53.8)
Trespass	11	4 (36.4)	4 (36.4)	2 (18.2)
Property Damage	67	32 (47.8)	23 (34.3)	22 (32.8)
Larceny	22	19 (86.4)	14 (63.6)	8 (36.4)
Small Claim, Breach Contract	7	3 (42.9)	2 (28.6)	1 (14.3)
Disturb. Peace	11	11 (100.0)	7 (63.6)	4 (36.4)
Contributing to Delinquency Minor	8	3 (37.5)	2 (25.0)	1 (12.5)
Stubborn Child, Runaway, Truant	24	14 (58.3)	13 (54.2)	5 (20.8)
Dogbites, Noisy Dogs	6	4 (66.7)	4 (66.7)	4 (66.7)
Disorderly House	2	2 (100.0)	1 (50.0)	1 (50.0)
Non-support	9	7 (77.8)	6 (66.7)	6 (66.7)
General Family Dispute	9	2 (22.2)	2 (22.2)	1 (1.1)
General Money or Property Dispute	7	2 (28.6)	2 (28.6)	1 (14.3)
Kidnapping	3	1 (33.3)	1 (33.3)	1 (33.3)
Other	5	1 (20.0)	1 (20.0)	1 (20.0)

[1]Number of sessions held per referral.
[2]Number of agreements per referral.
[3]Proportion of positive follow-ups per referral.

Our research plan did not include an inquiry into non-appearing disputants. Possibly compromise, which is the heart of mediation, is less attractive to those who believe they have money claims based on legal rights and who are more interested in compensation for past wrongs than they are in a workable structure for future behavior. In any event, the distinction between mediation objectives—between correcting the past and structuring the future—may explain the greater difficulty in reaching agreement in property cases. When the objective of the process is to correct the past, the means to do so are frequently of a zero sum character—every benefit secured by the compensated party is a detriment to the one doing the compensating. For instance, every dollar received in payment of a debt or to compensate for damages is a dollar paid by the other party. Of course, compromise is possible—the recipient may take less, and the payer pay more than they would want or believe fair. But whatever the concessions, in the residual one gains only at the other's expense.

On the other hand, when a mediation agreement is concerned only with a relationship in the future, one participant does not necessarily gain at the expense of the other. Each may agree to alter their behavior in ways which please the other party, but do not necessarily displease themselves or displease them less than they please the other. The agreement in Case V6, for instance, provided that:

> The situation which took place on June 2, 1977 (assault and battery with a knife) was a misunderstanding between both parties, therefore, both parties agree to never have this kind of situation take place again. Both parties are friendly to each other now and intend to have their relationship stay friendly, and if ever in the future there is any disagreement between them, they will talk it out in a civilized fashion only.

Positive sum agreements may, in fact, be characteristic of disputes grounded in communication problems.

This hypothesis is also consistent with our interpretation of the data summarized in Table 21 and 22. Table 21 indicates that the higher the dispute level—which is a rough way of measuring the seriousness of the dispute—the more likely that an agreement will be reached at mediation. Level 1 disputes arise from single incidents. Presumably an agreement in a Level 1 dispute must rectify the wrong created by the incident. Such a result is much more likely to involve zero sum arrangements than agreements in Level 2 and 3 cases where, because the disputes are part of continuing problems, the main objective is likely to be control over relations in the future.*

Table 22 suggests that the higher the dispute level, the *less* likely a mediated agreement is to be kept. This result is also consistent with the association of Level 1 disputes with past-oriented agreements and Level 2 and 3 disputes with future-oriented agreements. Past-oriented agreements are likely to be kept more frequently than those which speak to the future for two reasons. In the first place, past-oriented agreements may frequently be implemented and completed immediately. Money may be paid or repairs made or the tenant may move while agreements about the future tend to require continuing satisfaction over long periods of time. In the second place, agreements about the past tend to reflect less enduring and less important relationship than agreements about the future and thus derivative disputes are less likely to be rekindled and to jeopardize the original agreement.

Tables 24, 25 and 26 demonstrate the clear relationship between dispute level and the course of a dispute. Table 24 indicates that the higher the level of dispute, the more likely it is to go to mediation. If, as we suspect, the higher the level, the more serious the dispute, the propensity to participate in mediation as the level increases is intuitively sound—the more serious the problem the more egregious the complainant's

*There are, of course, rival explanations. More serious disputes may be more likely to lead to agreements because the consequences of not reaching an agreement are more serious—the parties must still face the unpleasant context that led to the dispute and the respondent may face more severe treatment in court than the respondent in a less serious case.

complaint, the greater the respondent's jeopardy and the more incentive both have to attend a mediation hearing.

TABLE 24. Disposition of Referred Cases by Dispute Level

Disposition	Dispute Level[1] 1		2	3
Withdrawal; Complainant No-Show	18 (18.8) (31.6) (5.0)	Column % Row % Total %	21 (18.8) (36.8) (5.8)	18 (12.9) (31.6) (5.2)
Refused Mediation; Went Back To Court	16 (16.7) (43.2) (4.5)		11 (9.8) (29.7) (3.1)	10 (7.1) (27.0) (2.8)
Staff Settled	1 (1.0) (50.0) (0.3)		(—)	1 (0.7) (50.0) (0.3)
Mediation Session Held	61 (63.5) (23.2) (17.0)		80 (71.4) (30.4) (22.3)	111 (79.3) (42.2) (30.9)

[1]Only 359 cases included both a coded dispute level and a disposition.

TABLE 25. Outcome of Mediated Cases by Dispute Level

Outcome	Dispute Level[1] 1		2	3
Dispute Settled at Mediation	49 (80.3) (22.5) (18.6)	Column % Row % Total %	67 (83.8) (30.8) (25.5)	101 (91.0) (46.5) (38.4)
Dispute Settled by Disputant After Mediation	(—)		(—)	1 (0.9) (100.0) (0.4)
Dispute Not Settled	12 (19.7) (35.3) (4.6)		13 (16.3) (38.2) (4.9)	9 (8.1) (26.5) (3.4)

[1]Only 359 cases included both a coded dispute level and a disposition.

TABLE 26. Mediation Project Follow-up Results by Dispute Level[1]

Level	Agreement Working	Some Improvement	Agreement Broke Down
1	41 (91.1)[2]	1 (2.2)	3 (6.7)
2	40 (70.2)	5 (8.8)	12 (21.1)
3	57 (54.8)	20 (19.2)	27 (26.0)

[1]Includes all successfully mediated cases in which a mediator project follow-up was conducted and for which there was a coded dispute level (N = 206).
[2]Row percent.

Table 25 suggests that the higher the level of dispute the more likely it is to be settled at mediation. However, Table 25 shows that the higher the level of a dispute the more likely it is that an agreement will break down. Measures of association (Tau b and Tau c) indicate that these three relationships are significant at the .01 level.*

Although the results shown in Tables 25 and 26 seem contradictory, they are not. Many of the agreements in Level 3 disputes are very vague. Rather than mandate specific behavior change, they tend to be worded in generalities, such as "Mrs. X will not nag Mr. X and Mr. X will drink less liquor." Because of their generality, these agreements are often more easily reached; however, they are difficult to keep because they involve broad changes in long-term behavior patterns, rather than changes in clearly defined behavior.

*Level by Disposition (collapsing "withdrew" and "refused" categories as well as "staff settled" and "mediated"):
Tau c = .1514, $p < .001$
Level by Outcome (collapsing "settled at mediation" and "settled after mediation"):
Tau c = .1045, $p < .01$
Level by Follow-up: Tau b = .2559, $p < .00001$.

E. Long Term Follow-up

Because the Urban Court follow-up is very brief, consisting only of an inquiry about the present state of the agreement, we decided to conduct a more intensive follow-up of a sample of cases. Our goal was to see if our follow-up data supported the tentative conclusions that we had drawn from the Urban Court follow-up data.

In conducting this follow-up, we sampled from cases in which mediation led to an agreement. We wanted to determine the extent to which problems that brought disputants to mediation were affected by mediation. We also wanted to assess the proportion of agreements which were adhered to, as well as what the disputants thought about the mediation project, mediation as a process and the mediators.

We hired a resident of Dorchester to do the follow-up interviewing. The interviewer was a graduate student in psychology, familiar with interviewing techniques, as well as a mediator at the mediation project. He did not, however, identify himself as a mediator to any interviewee.

The procedure used was to call each disputant and ask them questions from a standardized questionnaire (See Appendix D). Each person was asked the same questions. If the prospective interviewee had no telephone or had an unlisted telephone number, as was quite common, a letter was sent to them requesting that they call the mediation project. If they called, they were asked the standard follow-up questions.

The cases we chose to follow-up were those mediated 8 to 14 months before the follow-up began. This was the period from February 3 through August 30, 1976.

There were 81 cases and 164 disputants in the sample. Sixty (37%) of the disputants in this sample of cases were interviewed and at least one disputant was interviewed in 48 (59%) of the cases. The response rate is, in a sense, a result of success in mediation. Many successfully mediated disputes are separation cases which lead to new housing and unlisted telephone numbers for one disputant, and lack of an address or telephone number accounted for 61% of our failures to secure interviews. Thirty-six (60%) of those interviewed were complainants and 24 (40%) were respondents. In 10 (17%) of the cases in the sample both complainant and respondent were interviewed.

With these response rates, one must be careful in generalizing from the sample to the population of successfully mediated cases in Dorchester. But since the responses in the sample are generally favorable to mediation and the differences between the sample and the population of agreement cases suggest that the uncontacted cases are more likely to have successful long-term results than those in the sample, the results of the surveys are unlikely to have overstated the positive consequences of mediation.

In some respects, the contacted and the uncontacted cases are similar. As seen in Table 27, the distribution of presenting complaints in the cases we followed up is similar to that in the cases where we were unable to contact either disputant. There is, however, a predictable difference between those two groups in the distribution of relationships. In the follow-up sample, 33.4% of the disputants were either spouses, lovers, ex-spouses or ex-lovers. Fifty-eight percent of those not contacted had this type of relationship. This difference is predictable because in many instances the resolution of a dispute between intimates results in a separation, with one or both disputants moving, or securing unlisted telephone numbers, thereby making themselves unavailable. Disputants with other less intimate types of relationships are less likely to move away as a response to the problem and are consequently easier to reach. For example, 27.1% of those contacted were neighbors as compared to 9.1% of those not contacted. These people were less likely to be involved in disputes that occupied a significant portion of their life space and are, therefore, less likely to solve the dispute by as radical a shift as a change in residence.

TABLE 27. Comparison of Group Interviewed for Follow-Up and Group Not Contacted

	Follow-Up Group[2]	Non-Follow-Up Group[1]
Presenting Complaint		
Assault, threats, harassment	32 (66.7)[3]	23 (69.7)
Other	16 (33.3)	10 (30.3)
	48 (100.0)	33 (100.0)
Relationship		
Spouses, lovers, ex-spouses, ex-lovers	16 (33.4)	19 (57.6)
Neighbors	13 (27.1)	3 (9.1)
Other	19 (39.5)	11 (33.3)
	48 (100.0)	33 (100.0)
Underlying Problem		
Alcohol abuse	7 (14.6)	4 (12.1)
Constant violent behavior, jealousy	6 (12.5)	5 (15.1)
Problems with separation, infidelity	10 (20.8)	7 (21.1)
Other	10 (20.8)	13 (39.3)
	33 (68.7)[3]	29 (87.6)[3]

[1](N=48)
[2](N=33)
[3]Percent of group total

The difference in the distribution of relationships does not mean that agreements were more likely to have broken down in the group that we were not able to contact. First, we were unable to contact many of these people because they have separated and moved away, and non-contact is likely to have resolved the problem. Secondly, 58% of those interviewed were complainants. A positive attitude towards mediation and the outcome of any particular case by a complainant is more an affirmation of the utility of mediation than one expressed by a respondent. Were we able to interview all the parties to these eighty-one disputes, the addition of the greater number of missing respondents and disputants involved in separation cases would probably reflect stronger positive effects of mediation than those indicated by our sample.

TABLE 28. Reasons for Not Contacting Disputants

	Complainants	Respondents
Moved away, disconnected telephone, unlisted telephone number	31 (65.9%)	32 (56.2%)
Disputant did not return call or call in response to letter	16 (34.1%)	23 (40.3%)
Other	—	2 (3.5%)
	47 (100.0%)	57 (100.0%)

The aim of this follow-up was to measure the effect of mediation when it worked; that is, in cases which led to agreements. We are faced, however, with the obvious problem of lack of a control group. Our data indicates that improvement in the situation which led to mediation occurred in 78% of the cases in the follow-up sample. How do we know that as much or more improvement would not have occurred as or more frequently if the disputants had never been to mediation? The answer is that we do not know that the improvement was due to mediation, except as the disputants told us so, and even they do not know what the consequences of an alternative course of action would have been. There is, however, no feasible comparison to a control group that could have given us any such "scientific" assurance.

We will explain in Chapter VIII why a random assignment control could not be used. The only possible controls for the follow-up were cases referred to mediation which did not go to hearings and cases unsuccessfully mediated. Assume that we had conducted a follow-up study of either of these groups. They would show either greater, equivalent or lesser improvement rates. Greater or equivalent rates would suggest that mediation was not a comparatively important cause of improvement. Yet, it is very unlikely that we would have found more or as much improvement in the disputes of people who would not even go to mediation or, once there, could not reach an agreement. The lesser rate of improvement, which it is highly likely we would have found, would not have told us anything about the utility of mediation since we would not know whether the difference came from the treatment or from the differences in the disputes which were treated. The meager expected return from use of a control led us to decide not to employ one. Our follow-up may then be understood to suggest, rather than demonstrate, its conclusions.

TABLE 29. Interviews Completed

	Number	Percent[1]
Complainants interviewed	36	60.0
Respondents interviewed	24	40.0
At least one disputant interviewed	48 cases	59.0
Both disputants interviewed	10 cases	17.0
Referral Source		
Clerk	26	43.3
Judge, D.A.	21	35.0
Police	6	10.0
Other	7	11.7
	60	100.0

[1]Percent of total interviewees

TABLE 30. Disputant Responses to Interview Questions

30-1. What was the situation that got you to mediation?

Situation	Frequency	Percent[2]
Assault	27	45.0
Marital argument	18	30.0
Problem with neighbors	17	28.3
Property damage	7	11.6
Family problem	6	10.0
Landlord/tenant problem	5	8.5
Other	14	23.3
	94	

[1]Thirty-four of the interviewees mentioned two situations, therefore, the total situations listed is 94.
[2]Percent of total interviews (N = 60).

30-2. What was the underlying problem, if any?

Problem	Frequency	Percent[1]
Disputant(s) drinking	12	20.0
Marital/lovers problems	11	18.0
Back rent due, poor housing	4	6.6
Racial animosity	4	6.6
Other	4	6.6
	35	51.6
No response	31 cases	51.6
	66[2]	

[1]Percent of total interviews (N = 60).
[2]Two responses were given in 6 of the interviews.

30-3. What has happened to that problem (or problems)?

	Frequency	Percent
Improvement, continued contact	29	48.3
Improvement, no contact	18	30.0
Some improvement	3	5.0
No change	5	8.3
Problem has gotten worse	5	8.3
	60	100.0

30-4. If there has been an improvement or the situation has gotten worse, what produced that change?

	Frequency	Percent
Mediation	32	53.3
Court, police	3	5.0
Behavior change in disputant(s)	6	10.0
Separation, moving	20	33.3
Other outside help	3	5.0
No response	8	13.3
	72[1]	100.0

[1]Two responses were given in 12 of the interviews.

30-5. Did the other party live up to all of the agreement?

	Frequency	Percent
Yes	41	68.3
No	18	30.0
No response	1	1.7
	60	100.0

If *yes,* for how long? Mean length of time = 10.8 months.

30-6. If no, why do you think the settlement broke down in those respects?

	Frequency	Percent[1]
Problems with money or restitution not resolved	4	22.2
Other party's attitude	3	16.7
Drinking, refused help	3	16.7
No threat of enforcement	2	11.1
Mediators bad	1	5.5
No response	5	27.8
		100.0

How long before breakdown? Mean length of time = 3.8 months.

[1]Percent of total number of breakdowns by *other* disputant (N = 18).

30-7. What did you do about those breakdowns?

	Frequency	Percent[1]
Nothing	7	38.9
Went back to court	4	22.2
Talked to the mediation project	3	16.6
Went to a social service agency	2	11.1
Moved away	2	11.1
No response	3	16.6
	21[2]	

[1]Percent of total number of breakdowns (N = 18).
[2]Three of the interviewees stated that they did 2 things about the breakdown.

30-8. Were you able to live up to all of the agreement?

	Frequency	Percent
Yes	56	93.3
No	4	6.7
	60	100.0

If *yes,* for how long? Mean length of time = 11.5 months.

30-9. If no, why do you think the settlement broke down in those aspects?

	Frequency	Percent[1]
Couldn't live up to agreement	1	25.0
Refused to comply	1	25.0
No response	2	50.0
	4	100.0

How long before breakdown? Mean length of time = 3.0 months.

[1]Percent of total number of breakdown by interviewees (N = 4).

30-10. Did the fact that there was a (sex/race) mediator make a difference to you?

	Frequency	Percent
Sex of mediator is important	11	18.3
Race of mediator is important	3	5.0

If *yes,* why?

	Frequency	Percent[1]
Should have equality of sexes	3	27.2
Balance of opinion with both sexes/races	4	36.3
More comfortable with both sexes/races	2	18.1
Family problems should be settled by male and female	2	18.1
Women understand neighborhood disputes	1	9.0
Race is important	2	18.1
	14	

[1]Percent of those responding that sex and/or race is important (N = 11).
Three interviewees stated more than one reason.

30-11. Do you believe that it is important that the mediators lived in Dorchester?

	Frequency	Percent
Yes	28	46.7
No	27	45.0
No response	5	8.3
	60	100.0

If *yes*, why?

	Frequency	Percent[1]
They can best understand Dorchester problems	15	53.6
We live here and they should too	5	17.8
Other	2	7.1
No response	6	21.5
	28	100.0

If *no*, why not?

	Frequency	Percent[2]
They just have to be able to do the job and understand	9	33.3
Everyone has the same problems	4	14.8
No response	14	51.8
	27	100.0

[1]Percent of those responding *yes* (N = 28).
[2]Percent of total responding *no* (N = 27).

30-12. Did you trust the mediators?

	Frequency	Percent
Yes	48	80.0
No	9	15.0
No response	3	5.0
	60	100.0

If *yes*, why?

	Frequency	Percent[1]
Mediators' Attitudes and Behavior:		
Fair, understanding, better than professionals, sympathetic	20	33.3
Mediation Process:		
Tell both sides, confidential, can talk separately	16	26.6
Atmosphere at Mediation:		
Hospitality, can let feelings out, just sit and talk	10	26.6
Other	2	3.3
	48	

If *no*, why not?

Result:		
Mediation didn't help much	6	11.1
Mediators' Behavior:		
Took sides	1	1.6
Other	2	3.3
	9	

[1]Percent of total interviews (N = 60).

30-13. Do you think the mediators understood the whole situation?

	Frequency	Percent
Yes	42	70.0
No	10	16.7
No response	8	13.3
	60	100.0

30-14. Do you think the mediators understood and respected your feeling?

	Frequency	Percent
Yes	50	83.3
No	5	8.3
No response	5	8.3
	60	100.0

30-15. Who do you think was mainly responsible for producing the agreement?

	Frequency	Percent
You	11	18.3
Other party	1	1.7
Mediators	20	33.3
You and other party	3	5.0
You and mediators	1	1.7
Everyone	16	26.7
Other	2	3.3
No response	6	10.0
	60	100.0

30-16. Were any social services suggested to you or others by the mediation project?

	Frequency	Percent
Yes	7	11.7
No	51	85.0
No response	2	3.3
	60	100.0

If you were referred to a social service agency, what was it?		
Alcoholic counseling	4	
Psychological counseling	2	
Social Security	1	
Marriage counseling	1	
Counseling at mediation project	1	
	9	
If referred, did you keep the first appointment?		
Yes	3	
No	1	
If yes, what was the result?		
Still going	1	
It's foolish, no good results	1	
Got problems off my chest	1	
If no, why not?		
Mediation project never made the appointment	1	

30-17. Was the mediation project supposed to do anything for anybody after mediation?

	Frequency	Percent
Yes	16	26.7
No	39	65.0
No response	5	8.3
	60	100.0
If yes, what?		
Information regarding various social services	6	
Follow-up case	6	
Help carry out property transfer or other terms of agreement	4	
	16	
If the mediation project was to provide service, did it?		
Yes	8	
No	8	
	16	

30-18. Looking back at mediation are you glad that you agreed to use mediation or do you now believe that you would have been better off in some other agency?

	Frequency	Percent
Glad I used mediation	47	78.3
Better off in:		
Court	3	5.0
Doesn't matter	1	1.7
Other	3	5.0
No response	6	10.0
	60	100.0

If glad mediation, why?

	Frequency	Percent[1]
Mediators' behavior—they listened, understood, were trained to help	9	19.1
The result—came to agreement, worked it out	17	36.1
Didn't want court	8	17.0
Quick, free	4	8.5
Charges got dismissed	2	4.2
No response	7	14.8
	47	100.0

If preferred other, why?

	Frequency	Percent[2]
Can get better compliance through court, more legal	2	33.3
Mediators didn't do anything	2	33.3
No response	2	33.3
	6	100.0

[1]Percent of total preferring mediation (N = 47).
[2]Percent of total preferring other (N = 6).

30-19. If you became involved in another legal dispute of this type with someone you knew, would you prefer to have it handled by the regular court or the mediation project?

	Frequency	Percent
Mediation project	39	65.0
Court	7	11.7
Depends on case	4	6.7
Doesn't matter	2	3.3
Other	2	3.3
No response	6	10.0
	60	100.0
If mediation, why?		
Mediators' behavior (they understood, listened, were there to solve things, could see lies, were more involved)	15	36.6
Mediation process (satisfies both parties, can talk privately)	9	21.9
To avoid courts (impersonal, can only say so much, can get a break at mediation)	10	24.4
Result (mediation helped this time)	7	17.0
	41	100.0
If other, why?		
No results, no justice, with mediation	9	100.0

30-20. Why did you agree to go to mediation rather than pursue this situation in court?

	Frequency	Percent[2]
Didn't want charges or jail for other party	17	28.3
Sent or suggested by court	15	25.0
Dislike court, scared of court	13	21.6
Felt pressured to go	5	8.3
Wanted to expedite matter	5	8.3
Mediation gets at underlying problem	5	8.3
Didn't understand mediation	3	5.0
Not serious enough for court	1	1.6
No response	5	8.3
	69[1]	

[1]Nine interviewees gave more than one reason.
[2]Percent of total interviewees (N = 60).

The most striking findings from the follow-up are*:

1) Assaults are the most common precipitating incident of mediation, and alcohol abuse is the most common underlying problem it faces (Questions 30-1 and 30-2).

2) A substantial proportion (83%) of disputants report that the problem that led to a referral has improved (30-3). Slightly over one-half of disputants believe that the change in the problem was directly produced by mediation (30-4). The other party was reported to have fulfilled the mediation agreement in two-thirds of the cases (30-5).

3) The most common settlement failure concerned the payment of money (30-6).

*The numbers in parentheses are the questions from which the responses come.

4) In the case of a breakdown of the agreement, the most common response was to do nothing (30-7).

5) Most disputants believe that the sex or race of the mediators is unimportant. Among those who believe either factor is important, sex is more than 3 times as important as race (30-10). However, one-half of disputants believe that co-residence of the mediators in Dorchester was important (30-11).

6) More disputants believed that the mediators understood and respected their feelings than understood the situation of the disputants (30-13, 30-14).

7) The mediators were responsible for producing agreements more frequently than the parties (30-15).

8) The mediation project failed to provide follow-up services one-half of the time they were promised (30-17).

9) Four-fifths of the disputants were pleased that they had been to mediation, although only two-thirds would use it again if faced with a similar problem (30-18, 30-19).

10) The most common reason for agreeing to mediation was that court was considered inappropriate (30-20).

VII. The Views of the Mediators

Informal third-party dispute processing is based on the assumption that certain types of disputes are inadequately handled by the courts. If informal mechanisms, such as mediation, are sometimes more effective, their success is due to the difference in process and/or the role of the third-party in that process. In this and the chapter on training, we have explored the role of the community mediator as a third-party in dispute resolution. This chapter presents the results of a mediator survey designed to assess the mediators' opinions about the effectiveness of mediator training. It also attempts to identify the attitudes of mediators about the mediator role and the value of mediation.

The questionnaire was mailed to 55 mediators, the total number on the Urban Court roster at the time the survey was begun. Eight (14.5%) of the mediators had moved and left no forwarding address. We completed three mailings of the questionnaire. Each mailing produced approximately a 15% return for a total of 22 completed questionnaires. One of the respondents did not answer the questions per se but presented his/her opinions, attitudes and experiences in a three-page essay. In the course of this open-ended response, certain parts of the questionnaire were addressed and these responses are included in the tabulations. Most of the questions, however, show the total number of responses to be 21 rather than 22.

Although anonymous, each questionnaire was numbered to allow us to make comparisons with data in the Urban Court files, such as profession and number of mediations conducted.* This information was previously coded on a separate list that included the same numbers and no names. Unfortunately, four of the interviewees removed the numbers from their questionnaire so we were unable to include these interviewees in certain tabulations.

Twenty of the twenty-one questionnaire respondents stated that they had mediated a case while our field work was under way. Since only 33 mediators had heard at least one case in the six months prior to the first mailing, the respondents represent a response rate of 63% of the then active mediators.

The professional/occupational distribution of all of those surveyed and those who responded is presented below. In no category is there as much as 10% difference.

From Urban Court records, we were able to determine the frequency of activity for 17 of the 21 interviewees; this information appears in the table below.

TABLE 31. Occupation of Mediators

Profession	Frequency All Mediators	Frequency Respondents
Para-professional social worker, community worker, organizer	15 (27.8%)	5 (23.8)
Housewife	10 (18.5%)	2 (9.5)
Student	7 (13.0%)	1 (4.8)
Secretary, clerk	5 (9.3%)	2 (9.5)
Health Worker	4 (7.4%)	1 (4.8)
Minister	2 (3.7%)	1 (4.8)
Teacher	2 (3.7%)	2 (9.5)
Professional social worker	2 (3.7%)	2 (9.5)
Security guard	1 (1.9%)	1 (4.8)
Other	6 (11.1%)	—
No information	—	4 (19.0)
	54	21

TABLE 32. Frequency of Mediator Participation

Number of Mediations Conducted (Through August, 1977)	Frequency of Mediators	Cumulative Percent
1-15	8	47%
16-30	4	70%
31-45	2	82%
over 45	3	100%
	17	

Mediators in Dorchester are not an elite selected from a large group of applicants. Although efforts were made to choose people who were tolerant of others' values and possessed some verbal skills, no consistent psychological, educational, occupational or experiential guidelines were used in the selection process. The pool of applicants did not always exceed the number of trainees required by a large margin. Nor were any of the more inept trainees weeded out during training. As a consequence, variation among mediators is predictable on dimensions such as knowledge about good mediation practices and insight into the mediation process.

Questions 33-1 and 33-2 suggest the shape of this distribution, especially the extent of the less competent group. Those tables show that one-third of the respondents have no opinion about how to show empathy or about preferable forms of questions during a mediation session. A crosstabulation of the responses to these two questions shows that it was the same individuals who failed to respond to both of these questions.

Somewhat surprisingly, Question 33-3 indicates that most mediators are dissatisfied with many co-mediators. Over 40% allege that other mediators are controlling, too talkative and engage in unwanted "social work". Fourteen (67%) of the mediators find at least one of the negative traits in other mediators.

*Numbering was also necessary to know who to include in subsequent mailings.

TABLE 33. Mediator Responses to Interview Questions

33-1. What ways do you feel are appropriate ways to show empathy during a mediation session?

Response	Frequency	Percent[1]
Body language	8	38.1
Show that situation can happen to everyone	4	19.0
Be interested	4	19.0
Stroking	2	9.5
Other	4	19.0
No response	7	33.3

33-2. Do you feel that any particular form of question is preferable in mediation?

Response	Frequency	Percent[1]
Non-Judgmental	7	33.3
Open-ended	4	19.0
Non-Threatening	2	9.5
Other	4	19.0
No response	7	33.3

[1]Percent of total interviewees (N = 21).

33-3. Have you found that other mediators with whom you have worked exhibited any of the following traits to a disturbing degree?

Traits	Frequency Yes
Impatient	8 (38.1)
Patronizing (to you or to the disputants)	6 (28.6)
Controlling	11 (52.4)
Too talkative	9 (42.9)
Uninterested	7 (33.3)
Social Work	9 (42.9)
Legalistic	3 (14.3)
Impolite	2 (9.5)
Other	4 (19.0)

To amplify these conclusions, a portion of the one open-ended response is included.

> It has been difficult for me to evaluate my feelings toward the Mediation Project. I entered training with a great deal of trepidation. I am not as a rule comfortable with "role-playing", performing in front of others. This naturally was what the bulk of training consisted of.
>
> Nonetheless, I was *very* excited about the program and its ramifications. I felt strongly that it *could* work. I personally wondered if I was ready to mediate at the end of training but I was encouraged that "on the job" training would make me feel more secure. After training, I waited eagerly to be called. And I waited and waited and waited. Despite the fact that I was not working at the time and had available child care, I was not asked to mediate except for once or twice during the summer. This destroyed what little confidence I had; I felt that I was not called because of incompetency. In the six months after training, I mediated approximately six times and I was appalled at what I saw!! For example—on one occasion, my fellow mediator totally intimidated the teenager who sat before us. He bullied him and pulled a power trip on him. He acted like a know-it-all and mentioned people that he knew (at the boy's school)—all these facts threatened the boy who eventually walked out on the dispute. Granted that the dispute was the mother's idea and that the young man was hostile and uncooperative, it was handled poorly. There was a very poor chance of an agreement because of the hostility present; nevertheless, I was appalled. The mediator I worked with mediated all the time, considered himself a "pro", a social worker and did not listen to a word I said.
>
> Another example: an evening mediation which was *hurried* through so that my fellow mediator could get home to watch Monday night football!! He told me that he felt mediation was a waste of time and that most agreements feel apart. Yet, this person mediated frequently!!
>
> It suddenly became clear to me that the people called to mediate the most were the ones who hung around the Urban Court office—literally! and those who were friendly with the administration. Whether or not one worked did not reliably relate to one's ability.
>
> Let me say, though, that I knew several extremely talented *and* dedicated people who worked very hard and truly believed in what they were doing. They put themselves totally into each mediation and I am sure that this was the essence of the art of dispute settlement that I was exposed to during training.
>
> I basically feel that these dedicated few were indeed a minority and that many others did it to enhance their reputations, add to their resumes, and make some extra $.
>
> The insulting man whom I first referred to often performed this way—everyone knew it—but nothing was done. The follow-up mediation training sessions were ineffective (the 2 or 3 I went to anyway) because people would not admit any problems—"everything is fine"! "We are great mediators". There was no honesty in sharing experiences.
>
> Obviously, I am as guilty of this as anyone else. I did not feel free to approach Lois and discuss my feelings about not being called or even worse, to discuss what I had seen happen in several mediation sessions. I have always regretted that I did not come right out and offer my opinions and share my experiences.
>
> I basically decided that the type of people who would respond to this training opportunity shared some common personality traits which did not lend themselves to dispute settlement. Many of the mediators were arrogant, non-listeners (!!), unsympathetic, chauvinistic and insensitive—
>
> I hope this can be of some help to you. I regret that I am saying so little and so late.

Thus, not only do a significant proportion of the mediators have no opinions, ideas or even knowledge about two of the more important aspects of mediation, but a majority of the mediators find more than a minimal inadequacy in their fellow mediators. This picture of an "inept minority" is very important to the policy implications of this study. Now, and for some time in the future—until a substantial body of detailed empirical work on mediation builds up—there is a great danger of a *false comparison* between criminal and civil actions on the one hand, and mediation on the other. We know, because there has been considerable research on the issue, how the reality of the lower criminal courts and the small claims courts differ from what they are supposed to be. On the other hand, lacking adequate field research on mediation, the tendency is to compare an ideal form of mediation with the reality of the court process—a comparison very much weighted in mediation's favor. A part of the real pic-

ture, of a *true comparison,* is the inept mediator; and the material, supported by Appendix C, is evidence that the inept mediator can no more be ignored than the harried judge, the careerist prosecutor and the "disloyal" defense counsel.

The negative comments about fellow mediators are also surprising because post-session reports which all mediation panels complete almost never contain similar remarks. One question specifically asks "How did the panel work together?" and the typical answer ranges from "good" to "fantastic". If nothing else, this inconsistency suggests the difficulties confronting in-house research efforts that rely on open cross-evaluation.

A major focus of our questionnaire was mediation training. Eighty-one percent of the respondents felt that the training adequately prepared them for mediating disputes (Question 33-4), but 43% state, in response to a later question, that there are specific problems which come up in mediation that they were *not trained* to cope with (Question 33-5). Sixty-two percent state that there are no problems that they *cannot* cope with (Question 33-6). This figure is surprising given the difficulties that staff and researchers believe mediators have with problems which underlie disputants' behavior, such as alcoholism, racism, unemployment and chronic violence. It is possible that the respondents defined "problem" as a matter of process (such as keeping order during the session) rather than a disputant problem. However, Question 33-8 makes it clear that the 38% who listed problems that they could not cope with did define "problem" as disputant problem.

33-4. Do you believe that the training program adequately prepared you to mediate disputes at the Urban Court?

Response	Frequency	Percent[1]
Yes	17	81.0
No	4	19.0
Total	21	100.0

33-5. Do you feel that there are problems presented in mediation that you were not trained to cope with?

Response	Frequency	Percent
Yes	9	42.9
No	12	57.1
Total	21	100.0%

If *yes* what are they?

Response	Frequency	Percent[2]
Many underlying problems[1]	4	44.4
Procedural problems	3	33.3
Other	4	44.4

[1]Includes such underlying problems as alcoholism, racism, chronic violence, mental illness.
[2]Percent of total positive responses (N = 9).

33-6. Do you feel that there are problems in mediation you cannot cope with?

Response	Frequency	Percent
Yes	8	38.1
No	13	61.9
Total	21	100.0%

If *yes,* what are they?

Response	Frequency	Percent[2]
Many underlying problems[1]	6	75.0
Procedural problems	2	25.0
Other	3	37.5

[1]Includes such underlying problems as alcoholism, racism, chronic violence, mental illness.
[2]Percent of total positive responses (N = 8).

33-7. From your experience as a mediator, what types of cases do you feel can be successfully mediated?

Response	Frequency	Percent[1]
Cases where disputants have an ongoing relationship	9	42.9
Parent/Child, Family Disputes	4	19.0
Disputes between neighbors	3	14.3
Husband/Wife, Lover Disputes	2	9.5
Other	6	28.6
No response	4	19.0[2]

[1]Percent of total interviewees (N = 21).
[2]It is interesting and puzzling to note that four mediators who took the time to complete the questionnaire could not mention *any* type of case which could be successfully mediated.

33-8. From your experience as a mediator, what types of cases do you feel cannot be successfully mediated?

Response	Frequency	Percent[1]
Cases with severe underlying problems	8	38.1
Cases with disputants who have strng negative attitudes	7	33.3
Cases with no ongoing relationship	4	19.0
Other	4	19.0
No response	3	14.3

[1]Percent of total interviewees (N = 21).

33-9. What did the training program teach you to do that has proven useful in mediating disputes at the Urban Court?

Response	Frequency	Percent[1]
Everything	8	38.1
Listening	8	38.1
Gaining Trust	4	19.0
Asking open-ended questions	4	19.0
Other	7	33.6
No response	1	4.8

[1]Percent of total interviewees (N = 21).

Question 33-10 indicates that mediation techniques are stable—influenced less by experience than by training.

33-10. Do you feel that the techniques which you use in mediation have changed since you began mediating disputes at the Urban Court?

Response	Frequency	Percent
Yes	6	28.6
No	15	71.4
	21	100.0%

Mediation is designed to be a non-coercive process through which the disputants reach a mutually satisfactory agreement, and the mediators' stated role is to help them reach that agreement. In actuality, Question 33-11 shows that three-

quarters of the mediators find no problem with nudging the disputants, especially the respondent, towards agreement.

33-11. In narrowing this gap between the disputants, do you believe that it is appropriate to point out, especially to the respondent, what is likely to happen if no agreement is reached?

Response	Frequency	Percent
Yes	16	76.2
No	2	9.5
Depends on the case	2	9.5
No response	1	4.8
	21	100.0%

Since IMCR training is based on a labor mediation model, it is not surprising that reaching an agreement is stressed as the primary goal of the process. A fair agreement in the eyes of the mediator is irrelevant in the IMCR program.

The mediator's responses shown in Questions 33-12 and 33-13 present a different picture. At least 30% of the interviewees felt that *improving communication between the parties* was an important enough objective to rank it first or second on a scale ranging from 1 to 6 and more important than the terms of the agreement. At least 50% of the interviewees felt that the *equity* of an agreement was important enough to rank *reaching an equitable agreement* as first or second. These responses lead us to believe that the mediators recognize the importance of communication between parties as well as the importance of fairness in the content of an agreement more than is stressed in training.

33-12. Where mediation has produced an agreement between the disputants, do you believe that the value of the mediation is represented by:

	Response Frequencies (%)		
	Very Important (%)	Somewhat Important (%)	Not Important (%)
The terms of the Agreement?	11 (52.4)	10 (47.6)	0 (0-0)
The improved communication between the disputants?	15 (71.4)	6 (28.6)	0 (0-0)
The opportunity afforded the disputants to voice their complaints and requests?	15 (71.4)	6 (28.6)	0 (0-0)
The increased awareness that other members of the community care about their problems and may have experienced similar problems?	10 (47.6)	9 (42.9)	2 (9.5)

The following results were also mentioned as values transmitted in mediation.

- The opportunity offered to disputants to receive justice from their peers, and to help them help themselves.
- Increased awareness of the other disputant's reality.
- A chance to vent their feelings.
- Non-involvement in criminal charges.
- The possibility for both disputants to volunteer the terms of the agreement.

33-13. Please rank the following possible objectives of mediation in order of their importance to you as a mediator.

Objective	Mean Rank	% ranking first or second
Reaching a realistic agreement acceptable to the parties	2.25	68.0
Reaching an equitable agreement acceptable to the parties	2.55	50.0
Reaching an agreement acceptable to the parties	2.7	40.0
Improving communications between parties	3.3	30.0
Improving the parties' ability to communicate in general	3.6	30.0

Just as volunteers were prime beneficiaries of the Peace Corps program, mediators as well as disputants can be expected to benefit from a mediator project. Question 33-14 suggests the degree to which and the direction in which this has happened in Dorchester.

33-14. Has mediation training and experience improved your ability to cope with problems in your own life?

		Percent
Very much or some	17	81.0
Hardly or none	4	19.0
	21	100.0
In what areas has it helped?		
Problems in immediate family	11	52.4
Problems at work	14	66.7
Problems with neighbors	10	47.6
Personal problems with friends	14	66.7
Mediation training and experience has affected my self-image	9	42.9
Mediation training and experience has changed my attitudes towards my community	12	57.1

VIII. Cost Analysis

This chapter presents information about the cost of operating the Dorchester mediation project, provides an estimate of the costs that the district court would have incurred but for the mediation project, and discusses the relevance of this cost data for mediation programs in general. It does *not* discuss the comparative benefits of mediation and orthodox court processing.

A. Costs of Mediation

Financial records of the Urban Court are not maintained for individual program components. Mediation cost figures were prepared by assigning undivided cost pursuant to time allocations reported by central staff, allocating rent and rental items in proportion to space used, and dividing the remainder of office and administrative items equally between the three program components. Indirect costs of 15% were actual charges by JRI. Costs were tabulated for the period July 1, 1976 through June 30, 1977, primarily because July-June is the fiscal year used by the district court.

Several adjustments to total costs must be made to reflect the normal operating costs of the mediation project. (a) The Research and Evaluation Assistant on the Urban Court payroll performs record keeping and statistical functions for the district court, not for the mediation project. Her salary is a benefit to that court accruing as part of its cooperation with the Urban Court program. (b) JRI's money raising activities reflect the particular initial financing of the Urban Court which required a small private subsidy. Its public relations and development activities are nebulous and unrelated to specific program functions or needs. (c) In the summer of 1976, Dorchester experienced a serious, violent racial conflict. This conflict led to several arrests and referrals to mediation. Ostensibly, these mediations concerned the defendants, victims and individual police officers. In fact, the parties to the mediation were youth gangs and neighborhood organizations as well. The mediators assigned to these cases spent many hours in the neighborhood organizing in preparation for the mediation sessions. Mediator stipends for this single mediation were about 20 times as high as any other case submitted to mediation during the first 22 months of program operation. As a result, it is inappropriate to include the costs of those cases in an effort to determine the cost in Dorchester of mediating interpersonal disputes, which constitute the remainder of its caseload. Total and adjusted costs are presented in Table 34.

B. Court Costs Saved

The most reliable method for estimating the direct costs which the district court was saved from incurring because of

TABLE 34. Costs of the Mediation Project, July 1, 1976 through June 30, 1977

Item		Amount	% of Total
Personnel			
a) Mediation component	$57,020.13		
b) Central staff	19,641.99	$ 76,662.12	70
Consulting & Contracting			
a) Temporary services	$ 499.47		
b) Staff training	1,902.50		
c) Mediator stipends	4,394.50	6,746.47	6
Office and Administration			
a) Rent	$ 1,703.33		
b) Heat	660.10		
c) Alarm	24.67		
d) Electricity	655.82		
e) Supplies	1,514.63		
f) Stationery	1.00		
g) Postage	575.41		
h) Reproduction	1,761.42		
i) Telephone	2,999.36		
j) Training materials	116.69		
k) Advertising	25.00	10,037.43	9
Other			
a) Repair and maintenance		2,044.95	2
Total Direct Costs		$ 95,490.97	
Indirect Costs (JRI)[1]			
a) Money raising (3%)	$ 2,864.73		
b) Grant management (6%)	5,729.46		
c) Supervision (3.5%)	3,342.18		
d) PR & develop. (2.5%)	2,387.27	14,323.64	13
Total Costs		$109,814.61	100
Adjustments to total cost to eliminate items unrelated to normal operations			
a) Research & eval. asst.	$ 4,079.61		
b) Money raising	2,864.73		
c) PR & development	2,387.27		
d) Racial violence mediation	555.00	$ (9,886.61)	
Total Adjusted Costs		$ 99,928.00	

[1]Breakdown per N. Houston, fromer president of JRI.

Costs per unit of mediation activity are presented in the following table:

TABLE 35. Costs of Mediation per Referral, Mediations Conducted, and Agreements Reached 1976-77

Total cost per	
Referral (330)	$332.77
Mediation (219)	501.44
Agreement (183)	600.08
Total adjusted cost per	
Referral (330)	$302.81
Mediation (219)	456.29
Agreement (183)	546.06

the activities of the mediation project would be use of an appropriate control group.* In this procedure, cases qualifying for mediation would be randomly assigned into treatment and control groups. Victims in both groups would be made a tentative offer of mediation. Only victims indicating an interest in mediation after the tentative offer would be retained in the respective groups. Victims in the control group would then be informed that for some reason, such as an overdemand for mediation, their complaint must be processed as an ordinary criminal charge. Presumably most defendants in the treatment group would agree to mediation since refusal to agree might lead to continued prosecution.

The cases in the control group would be followed through the court process in detail. Every appearance before a clerk, prosecutor or judge would be monitored. The cases in the treatment group would also be observed as they were processed by the court system, presumably at less frequent intervals. The time consumed by each such event and the personnel in attendance at it would be recorded. With adjustments for clerical, supply and other support costs, these data would permit one to estimate fairly precisely the non-capital expenditures required from public funds to process these cases which were eligible for mediation, but were not referred to it. These costs would then be compared with the court and mediation costs of cases in the treatment group. The two sets of costs would constitute a cost-cost savings comparison for mediation.

Such a research program was not possible in Dorchester for several reasons. One limitation was the relatively short period of time available for field work. But no matter how long a research period were available, a random assignment experiment was foreclosed in Dorchester by the low mediation caseload. During 1976-77, only 18 cases per month were mediated. In its second year of operation while field research was underway, the mediation project was engaged in an effort to develop credentials with the court and with the community, based upon performing services approved by its clientele, the personnel of the district court and the community. Diversion of a substantial number of prospective cases back into the criminal justice system without mediation would have subordinated program to research objectives. The research effort could have undermined the very program whose results it was trying to analyze. As a result, a second-best, but non-disruptive, research design was formulated.

The basic problem is to determine what the court careers of mediation cases would have been if they had not been referred to mediation. We begin with cases referred to mediation by the court. Upon referral, a case may not be mediated either because the victim and defendant at least allege that they have resolved the problem or because one or the other or both refuse to participate in mediation. Alternatively, the parties may participate in mediation, but not reach an agreement, or they may participate and reach an agreement. Only in the last instance has mediation altered the case's court career. Cases referred by the court are sent to mediation after arraignment, and the technical disposition is continued without a finding. Even after such referral, these cases are open criminal charges and cannot be terminated privately. This means that whatever their subsequent court careers, there is nothing to suggest that cases where no agreement is reached at mediation are treated any differently than if they had never been referred to mediation. Similarly, a mediation referral is not likely to have any impact on court processing for those cases in which the parties reach agreement on their own, or in which the claimant simply decides to drop the charges. In both instances, the case will probably be dismissed, with or without a mediation referral.

The questions then are: what would have happened to those cases which do reach an agreement at mediation if they had not been referred; how many of such cases are there; and what are the costs of the court proceedings through which they would have been processed? We have estimated the hypothetical court careers in two ways. The simplest method was to assume that the distribution of careers for these cases was the same as the distribution of careers for all criminal cases in the district court during the period in question. Even this estimate could not be secured directly because the lag in preparation of court statistics required use of the case distribution for calendar year 1976 although cost figures are for fiscal year 1976-77.

Assuming that the career distribution of agreement cases would be the same as the distribution for all cases assumes that the population of agreement cases closely parallels the population of all cases. But we know that the latter assumption is wrong. In the first place, in almost all agreement cases there is a prior relationship between the victim and defendant, while studies in other courts indicate that such a relationship may exist in only one-half of cases generally (Vera, 1977: 19). In the second place, we know that the distribution of criminal charges is different for the two populations of cases. Table 36 shows those distributions.

TABLE 36. Distribution of Charges by Treatment, 1976

	Defendants				
	District Court			Mediated Agreements	
	#	%	% w/o MV	#	%
M/V	3,594	58			
Assaults	558	10	23	107	59
Larceny	441	7	17	15	8
Narcotics	288	5	11		
B & E	194	3	8	4	2
Receiving	152	2	6		
Dest. of prop.	125	2	5	15	8
Disorderly con.	119	2	5	4	2
Gaming	103	2	4		
Threats & harass.	66	1	3	24	13
Other (less than 100)	455	7	18 (less than 4)	14	8
Total	6,180	100	100[1]	183	100

[1]Total defendants minus those never arrested minus those bound over to Superior Court. Sources: Return of Criminal Cases in the Dorchester Court.

*Mediation cases are referred by the court, the clerk and miscellaneous others—police, truant officers, social service agencies, self-referrals, etc. Estimates of the cost savings to the district court have been formulated for each referral source. It is not feasible to estimate the costs savings to other institutions. The efforts which truant officers or alcoholic treatment centers were saved from making, minus the efforts they were mobilized into making, could not be tracked without the existence of a control group or otherwise reasonably estimated.

The differences in charges are striking. The most important court category, motor vehicle offenses, is not represented in the agreement cases at all. Although assaults is an important category in both distributions, it accounts for nearly three times as high a proportion in the mediation context. Threats and destruction of property are important charges in mediation but not in court; the situation is reversed for narcotics charges and larceny. In general, it is possible that the court cases represent some that are regarded as more serious than the mediation cases (narcotics, breaking and entering) and also many less serious cases (motor vehicle violations).

Estimating the effect of these differences between the two populations of cases on court careers cannot be done with confidence.The more serious cases and the lower level of prior relationships involved in the all case group suggest that those cases would have more extended court careers: fewer would be dismissed because the prosecuting witness did not want to proceed and fewer would receive some form of *de minimus* treatment. On the other hand, the large number of motor vehicle cases in the all case population might produce a high level of summary treatment, thus truncating court careers.

Despite these differences, the profile developed from all cases in 1976 is useful in estimating the hypothetical court careers of mediated agreement cases. It is useful because it corresponds closely to an alternative profile described below.

As part of the recidivism study (see Chapter IX), we identified all the assault and battery and assault and battery with a deadly weapon cases which were filed in the district court in October 1975, the last month before mediation began to operate. In 27 of those cases, we could tell from the file in the Probation Department that a prior relationship had existed between the victim and the defendant. Court files were then searched to determine the disposition pattern of those 27 cases. That pattern and how it compares to the pattern of all cases in 1976 can be seen in Table 37.

TABLE 37. Disposition of Criminal Cases in District Court

	All Cases, 1976		A & B, Prior Relationship Case, October 1975	
	Number	%	Number	%
Guilty[1] C. Rev/Pay C/Disp.	1,624	22	6	23
Not guilty	511	7	2	8
Dismissed	2,861	40	14	53
Default	1,516	21	1	4
CWOF	361	5	3	12
On file	343	5	—	—
	7,217	100	26[2]	100

[1]Definitions of these forms of dispositions are contained in Appendix A. Case Continued for Review and Payment (C. Rev. Pay) are equivalent to guilty findings.

[2]The 27th case was bound over to the Superior Court. See Appendix A.

Source: Dorchester Court, Management Information System, Year End Totals 1976.

The proportion of guilty findings in the assault and battery profile is virtually the same as the proportion of guilty, and functionally equivalent, findings in the all case profile. The level of not guilty findings is similarly close. Although a higher proportion of assault and battery cases was dismissed, and a lower proportion defaulted, the sum of these two summary dispositions in each profile are close (57% and 61%). The fraction of cases stayed without a finding or kept on file in both profiles is also nearly the same (12% and 10%).

Confidence in the use of these profiles is also generated by the large margin for error. Table 38 shows the court costs saved by each agreement case depending on what its disposition would have been in court if it had not been successfully mediated.

TABLE 38. Court Costs Saved by Type of Disposition

Type of Disposition	Amount Saved
Guilty	$438.38
C. Rev/Pay	435.96
CWOF	435.54
C/Disp.	192.67
Not guilty	107.00
Dismissal	2.74
Default	—
On file	—

Soure: Table 43 (Court Administrator version).

As far as cost savings go, errors in the correspondence between the profiles and the hypothetical court careers of agreement cases are unimportant between the first three dispositions listed. Only if the proportion of not guilty, dismissed, defaulted, continued for disposition or on file cases is significantly distorted would the court cost savings be affected. If these five categories were under-represented, if more agreement cases would have led to not guilty findings or been dismissed or defaulted or continued for disposition or placed on file than in the profiles, then the cost savings derived from the profiles would have been overstated. An error in that direction is probably unimportant from a policy perspective. A conclusion of this cost/cost-savings comparison is that the ratio of mediation costs incurred to court costs saved in Dorchester is about 2.7:1. If the court cost savings have been overstated, then the ratio will increase and mediation, which from a cost savings view does not appear particularly attractive, will simply appear less so.

An error in the opposite direction, overstating the bottom five categories and understating the top three would reduce the disparity between mediation costs and court costs saved. This reduction would have important policy implications if it were substantial. However, a major error in this direction is unlikely. The argument is simplest if one focuses on the assault and battery profile. On file, default continued for disposition, and not guilty cases cannot be seriously overstated since they total only 12% of all cases. The issue then is how likely is it that agreement cases, if not mediated, would be *dismissed* at a rate substantially lower than the general run of court cases? There are two reasons why such a result is unlikely. The reasons arise from the nature of the parties involved in these cases and from their inclinations toward settling their quarrel. In the first place, the parties in these cases have had a prior relationship and prior relationship is one of the chief causes of case dismissal (Vera, 1977: 20). Secondly, not only have the parties to these cases had a prior relationship, but their attitudes toward each other were sufficiently constructive that an agreement between them was concluded;

hardly a signal that in the absence of mediation a greater proportion of these victims would have pressed for a court sanction than is generally the case.

Before court cost savings are calculated, one more threshold issue requires attention. The court costs include court personnel costs only. The costs of supplies and equipment, of capital investments such as the courthouse and of the few non-court personnel involved in maintaining the courthouse (janitors and cleaning persons) were neither identified nor included. Only the capital costs would have been significant. The costs of supplies and equipment in 1975-76, for instance, were equal to only 3% of the expenditures for personal services. The courthouse is more than 50 years old. Its value as carried on the books of the City of Boston is irrelevant to its market value, and its market value is unknown. Because estimating capital costs would have been either expensive or arbitrary, we have chosen to compare the cost savings in court personnel costs to the personnel costs of mediation, rather than attempt to compare the full costs of one program to the full costs of the other. In a way, this comparison may be unfair to mediation since mediation programs generally operate out of less pretentious and less costly quarters than courts. On the other hand, courthouses frequently represent sunk costs which will not be avoided in any way by the introduction of a mediation project, unless the volume of cases in such that, in the absence of the mediation program, additional courtroom facilities would be needed. In the last analysis, a personnel cost comparison may be more useful for mediation programs in general since personnel costs are less likely to vary widely from area to area than capital investments in real estate.

The detailed determination of court costs saved is contained in Appendix E. The following sequence of calculations was made:

- The average amount of time consumed by each of the events occurring in the profiles (Table 52).
- The average amount of time consumed at different stages of the different forms of dispositions (Table 53).
- The court personnel present at each of those stages.
- The personnel whose activities support the work of those present at court stages.
- The per minute costs of both types of personnel (Table 54).
- The personnel costs for each form of court disposition (Table 54).

The end product is a per case average of court personnel costs saved, reached by combining Tables 37 and 53. This product, Table 39, provides a composite picture of the costs saved by each agreement case using both the all case and assault and battery profiles and the trial breakdowns from the Clerk's records and the Administrator's estimate. That is, depending upon the assumptions made, each agreement case referred by the court saved either $114.24, $118.25, $163.11 or $168.32.

So far, we have estimated the cost savings only for cases referred to mediation by the court. During 1976-77, 91 cases (28%) were referred by the Clerk after a section 35A hearing and 39 cases (12%) were referred by other sources. If cases referred to mediation by any of these sources would, in the absence of mediation, have been sent to court, then the savings in court costs per case would be in the range specified in Table 39 supplemented by the cost of an arraignment.* The extra court costs of an arraignment are about $40.

TABLE 39. Costs Saved by Agreement Cases

Disposition	All Case Profile %	Clerk's Data	Admin. Estimate	Assault and Battery Profile %	Clerk's Data	Admin. Estimate
Guilty	5	$ 22.66	$ 21.92	23	$104.25	$100.83
Not guilty	7	7.49	7.49	8	8.56	8.56
CWOF	5	22.52	21.78	12	54.05	52.27
C/Disp	5	10.38	9.63			
C. Rev/Pay	12	54.10	52.32			
Dismissal	40	1.10	1.10	53	1.45	1.45
Totals		$118.25	$114.24		$168.32	$163.11

TABLE 40. Arraignment Costs Over Costs Already Included

Court personnel	$16.14
Prep. of "Face Sheet & Past Record Information"	4.05
Continuances	.70
Clerical costs	18.83
	$39.72

It is difficult to say whether the Clerk would have sent such cases to court. Section 35A hearings are conducted by the Clerk of the court, except when he is on vacation. The Clerk alleges that he sends to court all cases which he believes are appropriate for court action: that is, where a citizen is entitled to secure a complaint against another person, the Clerk will issue that complaint. Mediation cases, if this is true, would be cases where the Clerk would otherwise deny the complaint, either with or without trying to mediate the dispute himself. We observed the Clerk's hearings on nine days spread over four months. Table 41 shows the disposition of the cases that we observed.

TABLE 41. Disposition of Clerk's Cases

Complaint Issued	18
Complaint Denied, complainant present	1
Complaint Denied, complainant not present	5
Mediated by Clerk	6
Referred to Mediation	1
Complaint withdrawn	4
Other (continued or complainant sent elsewhere)	7
	42

The one case referred to mediation would not otherwise have gone to court. The issue appeared to be who was terrorizing whose little sister or brother. The formal defendant was 11 years old.

Better evidence that referrals from the Clerk do not save court costs comes from observed cases that were sent to court,

*Public funds for personnel are consumed by more than time spent in court. ADAs and Massachusetts Defenders must prepare for cases as well as try them. These lawyers have told us, however, that cases referred to mediation by the court which return to court because no agreement was reached are scheduled for trial quickly. As a consequence the lawyers say that they are prepared to try a case after arraignment whether or not the case is referred to mediation, and the only time saved by successful mediation is time actually spent in court. The cost of case preparation would be saved when referrals to mediation eliminated arraignments. Such costs were not calculated since, as will be seen, few arraignments were avoided.

but that appeared appropriate for referral to mediation. Two examples are quoted from our field notes.

> The fourth case involved a 47 year old white man and a 21 year old white man. The older chap alleged that the younger one broke into his house and later broke his windows maliciously. The older fellow admitted tapping the younger one with a hammer, allegedly to protect his home. The 21 year old complained about the hammer attack: his wounds required 13 stitches. He said he was trying to contact a boarder upstairs in the other's house. The trespass claim against the young man was dismissed. Complaints were issued in assault and battery against the older chap and for property damage against the younger.
>
> The second case was a larceny case between a landlord and tenant. The landlord left a bureau on the porch of the house rented to the tenant, who either confiscated or disposed of the bureau. The landlord wanted the bureau back or the money for it. The complaint was granted.

The first of these cases was eventually referred to mediation by the court, but of course after the costs of an arraignment had been incurred. The second case was observed too late in our fieldwork to know what happened to it. Although the evidence is slim, our observations confirm that the Clerk sends to mediation only cases that he believes are inappropriate for court.

Table 42 reflects the disposition of the 39 cases referred to mediation in 1976-77 other than by the court and Clerk.

TABLE 42. Disposition of Other Referrals by Source, 1976-77

Source	Mediated to Ag.	Self-settled	Staff Settled	Pty(s) Refused Med.	Total
Police	3	1		4	8
Walk-in	4	1		4	9
Soc. serv. ag.	3	1		2	6
Dispo., U.C.	2			2	4
Truant off.	1			1	2
Legal Aid		1			1
Comm. organ.	1				1
Welfare			1		1
Other	5			2	7
Total	19	4	1	15	39

Inspection of the mediation project's files indicates that 15 of these 39 cases might have led to criminal charges against the respondent based on the presenting complaint had not the dispute been submitted to mediation. The charges would have been assault and battery (8), harassment (4), larceny, disorderly conduct and harboring a dangerous animal. In 13 of these 15 cases, an agreement was reached at mediation. The other 2 "criminal" cases were settled by the parties before a mediation session was held. Assuming that all 13 "criminal" agreement cases would have gone to court but for the agreement, the maximum court costs savings for "other referrals" during 1976-77 would have been on the order of $2,700.*

*The maximum post-arraignment cost saving estimate is $168.20 (see Table 39). Court costs of arraignment are $39.72 (See Table 40). Their sum × 13 equals $2,702.96. Out of court lawyers' time is not included, but the difference between the maximum and minimum estimates is $54.06 which would pay for 3.2 hours of lawyer time or 1.6 hours assuming 50% overhead.

Table 43 combines the court costs saved by agreement cases with the number of such cases. It indicates that, depending on the profile and the allocation of actual trial to guilty pleas used, the court cost savings allocable to mediation was somewhere between $15,384 and $21,386 in 1976-77.

TABLE 43. Court Costs Saved by Agreement Cases, 1976-77

	Per Case	Number of cases	Total
Court Referrals			
All case, clerk	$118.25	111	$13,125.75
All case, admin.	114.24	111	12,680.64
A & B, clerk	168.32	111	18,683.52
A & B, admin.	163.11	111	18,105.21
Clerk Referrals	207.92	0	0.00
Other Referrals	207.92	13	2,702.96

Before cost savings are compared to costs, we must face the preliminary issue of whether it makes sense to say that any court costs are saved just because the court was called upon to process fewer cases fully than would have been the situation if no mediation project existed. The argument against any savings is that court employees are already employed, most have a protected civil service status, and the effect of mediation will be to spread less work among the same number of employees, or permit the same number of employees to devote more time to the remainder of the caseload, rather than to enable fewer employees to provide the same level of services to a reduced caseload. This argument has even more force to the extent that the district court already has any excess capacity to process cases.

But we are not sure that what would actually happen in any particular setting when a mediation program is initiated ought for all purposes to determine whether cost savings are relevant or not. The effect of actual events may be crucial to a city council which has to decide how to spend finite resources over a limited period of time. But our charter is to consider mediation as a process of which Dorchester is an example, rather than to evaluate mediation in Dorchester for Dorchester's purposes. Political units must determine the kind and level of services that they will provide over a term longer than a few budgeting cycles. Whether they make such decisions explicity, or let them be made by inertia, there will be a positive connection between the demand for a certain form of service and the resources which will be devoted to that service. If, in any setting in the long run, mediation produces a greater or lesser demand for court services, that change in demand will be reflected in the resources devoted to courts. It may not be reflected isometrically: every man-year saved may not mean one less person employed. Feather-bedding exists. Reductions in force may just mean no new employees are hired. But airline pilots replace railroad firemen and mechanical pickers replace farm workers and, given the demand, mediators and case coordinators will replace bailiffs and district attorneys.

The cost-cost savings comparison presented in this paper, then, does not reflect what actually happened in Dorchester in 1976-77, but it does suggest what would happen over the long run in places which had court and mediation programs like Dorchester's. If you have or want to have this kind of media-

tion and this kind of court and you maintain these activities over many years, then this is what it is likely to cost you and this is what you may save.

Table 44 summarizes the annual personnel costs attributable to mediation.

TABLE 44. Personnel Costs Attributable to Mediation, 1976-77

Direct personnel	$76,662.12
Consulting and constracting	6,746.47
Sub-Total	83,408.59
less subsidy to court	4,079.61
Total	$79,328.98

Two forms of service are included in the costs that are not included on the court side of the comparison—fund raising and other developmental activities and bookkeeping. For purposes of comparison, expenses attributed to those activities will be deducted from mediation personnel costs.* The new total is $73,824.25 or $403.41 per agreement case.

These agreement cases in the 111 instances when referred by the court saved court costs per case of either $114, $118, $163 or $168, depending on the assumptions employed. The ratio then of mediation costs to courts costs saved was between 3.5:1 and 2.4:1. If costs and ratios are averaged, the court costs were $140.98 and the ratio was 2.9:1. The maximum cost savings for the thirteen cases referred by sources other than the court and Clerk was $207.92 per case and the ratio of mediation costs to that figure is 1.9:1. If cases from these two sources are weighted in proportion to their frequency, and if the average for court referrals is used, the weighted court costs saved would be $147.99 and the ratio between the costs of mediation and court costs saved would be 2.7:1.**

But it is perhaps unfair to compare mediation and criminal prosecution on a per case basis. The argument would be that the beneficiaries of mediation are all of the disputants involved, and thus two at a minimum. The beneficiaries of prosecution, in the sense that public resources are devoted to their assistance (the defendant gets a legal trial, a free lawyer, and perhaps counseling from a probation officer), are only one per case. Thus, comparing mediation costs and court costs savings on a per recipient basis reduces mediation costs and the ratio between the two by at least one-half. One problem with this logic is that however persuasive it may be from the perspective of the participants, it makes no sense institutionally. From the point of view of a political unit in which both a criminal court and a mediation project are operating, two parties in mediation will always be required to replace one defendant in court unless the parties have levelled criminal charges against each other.

Even from the point of view of the participants, the argument must be shaded a bit. Many respondents in successful mediation receive little by way of compromise. It is not at all infrequent to encounter a mediation agreement in which the respondent agrees to cease some objectionable behavior and to pay some money while the complainant agrees only to drop the criminal charge. Functionally, such mediation is close to a court proceeding in which the case against a defendant is dismissed after he makes restitution and agrees not to pester the complainant. Nor is it always true that only defendants "benefit" from criminal trials. Victims in Dorchester regularly receive two kinds of returns directly from court proceedings—restitution and psychic satisfaction. For victims who have internalized a high level of rights consciousness, the emotional return for sanctions levied against the defendant may be substantial, legitimating both their complaint and their behavior.

Our cost/cost-savings comparison is, it must be remembered, a case study. Its conclusions cannot be automatically applied to other mediation projects or to other criminal courts. There are at least five characteristics of the Dorchester situation that have an important effect on costs and cost-savings which may not be typical of mediation projects—the form of mediation provided, the type of criminal cases referred to mediation, the extent of the caseload, the point at which cases are referred to mediation and the specific intake procedures used. Each of these characteristics warrants discussion.

From the point of view of cost, the salient features of mediation in Dorchester are the considerable time that is devoted to getting behind presenting complaints and the fidelity of mediators to a model in which they suppress fact finding and judgment formation in favor of disputant-initiated agreements about future conduct. These factors mean that Dorchester mediation is a "deep" variant requiring four times as much time per case as the more directive or more professional mediation used by projects in Columbus and Miami (McGillis and Mullen, 1977). Longer mediation is important financially primarily because it increases the amount of time spent by staff in directing the conduct of proceedings.

Two other dimensions of staff work in Dorchester are costly. First, an attempt is made to match the sex-race characteristics of the disputants with those of the mediators. This and a parallel effort to schedule mediation sessions at the convenience of the disputants compounds an already difficult mediator scheduling problem and is a drain on staff time. Second, the staff's responsibility to keep in touch with the disputants after successful mediation so that the three month report may be made to the judge in cases referred by the court coupled to the staff's involvement in putting aspects of mediation agreements into effect—supervising property exchanges, arranging social service referrals, lecturing defaulting disputants—consume considerable staff time. Mediation programs which were neither saddled with nor assumed these responsibilities would operate with less staff, and obviously then at less cost.

*Thirty-five percent of the 35% of the Director's salary ($2,577.20), and the 25% of the bookkeeper's salary ($2,927.53) allocated to mediation.

**For comparison purposes, Hoff estimates that the total direct costs saved the Philadelphia Municipal Court by diverting civilian complaint cases to the local 4-A project was $144 per case (1974: 43).

Another way to compare costs and cost-savings is to do just that. The personnel costs of mediation were $73,824. The maximum savings for court personnel were $21,386. The ratio between them is 3.5:1. This comparison is unfair to mediation, however, because it includes the costs of mediating cases with no criminal dimension, and thus no criminal court costs saved.

Most mediation projects process misdemeanors.* The jurisdiction of the Dorchester court extends to many crimes more serious than misdemeanors as they are generally defined. The court can try any criminal case for which the punishment does not exceed 5 years in prison. As a result, many of the cases referred to mediation reflect allegations of serious crimes—assault with a deadly weapon, low degree kidnapping, burglary, larceny. Several cases that we observed involved threats by, or use of guns, or attacks with weapons like tire irons. One of the reasons that deep mediation, despite its attendant costs, is appropriate in Dorchester is the gravity of the problems that it faces. But probably more important from a cost perspective is the relationship between the seriousness of many of the matters referred to mediation and the desire of the court's judges to continue to exercise some control over the cases that they refer to mediation. That control is expensive for the mediation project. It requires the staff to conduct follow-up and to make court appearances which could otherwise be avoided.

That mediation in Dorchester is pure mediation rather than mediation-arbitration has substantial negative cost consequences. Earlier in this chapter we argued that court cost savings are produced only in agreement cases. If a mediation-arbitration process had been used in Dorchester instead of pure mediation, the number of agreement cases—that is, cases that would not require full court treatment—would have increased in 1976-77 from 183 to 216. In mediation-arbitration every case heard becomes an agreement case: none go back to court. This change alone would reduce the personnel cost per agreement case from $403 to $342 and the ratio of mediation costs to weighted court costs saved from 2.7:1 to 2.3:1.*

The third factor affecting cost is the caseload level. Mediation was provided to 219 disputes in Dorchester in 1976-77, an average of 18 cases per month. The first question is whether this caseload level is low, compared either to other mediation projects or to the ability of the Dorchester project to process cases with its existing staff and operating procedures. The question of inter-project comparison can be approached on the basis of cases mediated per staff person or of cases mediated per person in the population served by the project. On a hearings per staff person basis, Dorchester is low. McGillis and Mullen's data (1977: Table 1) indicate that the Columbus and Miami projects hear 268 and 309 disputes annually per staff person while the figure for Dorchester in 1976-77 was 54 hearings per mediation component employee. But this disparity simply reflects the differences in the type of mediation provided and in the type of dispute mediated. If Dorchester staff were not required to attend hearings, to attend court and clerk's sessions, and to provide follow-up for the court and with the disputants, then a smaller staff would be required.

A more important inquiry is whether the existing staff could process more cases in the Dorchester mode if more cases were available. We will look at availability first. It is not a question to which there is any easy answer. Table 45 shows the ratios between population served and hearings per month for the mediation programs surveyed by McGillis and Mullen (1977).

TABLE 45. Comparative Rations of Hearings Held per Population Served for Five Selected Programs

Program	Hearings per Month per 10,000 Inhabitants
Columbus, Ohio	3.15
New York, N.Y.	2.00
Dorchester, Mass.	1.31
Miami, Fla.	1.27
Rochester, N.Y.	.60

These ratios were determined from the population which McGillis and Mullen were told was served by these projects and the cases the projects estimate they heard. But one cannot rest entirely easy about Dorchester's caseload on the grounds that it serves a smaller population than the projects with markedly larger caseloads. The Miami program, for instance, hears a high number of cases, but has a low hearing to population ratio because it serves Dade County's 1,467,000 people. On the other hand, if the Miami project actually draws its clientele only from the 355,000 people in the City of Miami, it would hear proportionately four times as many cases as we have extrapolated from McGillis and Mullen's data and 3.8 times as many cases as Dorchester, if population were held constant. And, in fact, our analysis of the Dorchester intake process suggests that had relations between the local police and the First Justice of the court been better, the Clerk of the court been less anxious to mediate disputes himself and the project been able to develop referrals from the small claims

*The IMCR-Vera felony project in Brooklyn is very recent, unusual and its costs are unreported.

*A change to mediation-arbitration might, of course, have other consequences. Wary of arbitration by third parties whose provenance is unclear, fewer disputants might choose diversion in the first place. Facing arbitrated settlements that were imposed on them, fewer disputants might fulfill the terms of agreements. Mediation-arbitration may coerce the respondent to reaching an agreement less than pure mediation where the result of failing to reach an agreement is the possibility of renewed prosecution rather than an award formulated by the mediator-arbitrators. In the absence of research on the issue, we do not know whether the consequences of any lesser coercion are fewer, better agreements or just better agreements or no consequences at all. We also suspect that mediator-arbitrators behave differently during sessions than pure mediators. Having the responsibility to decide the dispute if the parties cannot agree, mediator-arbitrators may make a greater effort to develop a factual background, may focus more on applicable norms and may be more concerned with questions of credibility than pure mediators. However, IMCR staff, who are familiar with both processes, are sceptical of the differences, particularly since imposed awards are infrequent (5-10% in New York) in mediation-arbitration (but see Hoff, 1974: 21; McGillis and Mullen, 1977: Table 1). Only comparative observation would settle the question.

A switch to mediation-arbitration would also have secondary cost consequences. In mediation-arbitration the criminal case is dismissed as soon as the parties agree to mediation-arbitration. All mediation costs associated with further court supervision would be eliminated and the court costs of such supervision would be saved.

court or police, it might have enjoyed a substantially higher caseload.*

The staff of the mediation component believes that they could process 40 referrals per month assuming that the proportion of referrals to hearings remained at its current level (62%). Supervisory personnel believe that an increase to 50 referrals would be workable. If we assume that the current staff could process a level of referrals midway between its and the supervisors' estimate (45 per month), how many of the 210 additional referrals might, given its current caseload, come from the court and thus produce additional costs savings? As reflected in our discussion of intake problems, this query is difficult. The raw numbers suggest that there is adequate leeway. But the judges believe that few additional cases could be referred to mediation. If the proportion of court referred cases remained constant, an annual increase of 210 cases would reduce the mediation costs to court cost-savings ratio to 1.7:1 $(73{,}824 \div [(\frac{183}{330} \times 210) + 183]) \div 148$.** If the current staff can handle 210 more referrals per year, but nothing near that number of new cases can be generated, then presumably a smaller staff can handled the current caseload since the excess capacity is somewhere between 33% and 46%.***

Cases in the criminal justice process in Dorchester are diverted late. The later the diversion, the less the cost-savings. If cases which eventually go to court were referred instead to mediation by the police, the costs of an arraignment, prosecutor and defender preparation time, and, in some instances, of a Clerk's hearing as well as trial and post-conviction expenditures would be saved. If the Clerk referred cases to mediation instead of issuing a complaint, arraignment costs would be saved. Mechanically, earlier diversion is feasible. The criteria used by ADAs to recommend, and the judges to make, referrals would not be particularly difficult for others to apply.

Despite its downstream referrals, Dorchester's loss of significant court cost-savings in comparison to other mediation projects is far from clear. Police referrals have been a problem for many mediation programs. Where, as in Dade County, a police connection has been institutionalized, some observers believe that the cases referred by the police would generally have been rejected rather than filed in court if the mediation project did not exist. In addition, upstream events are financially less important than post-conviction costs. In Dorchester, for instance, probation supervision for guilty findings averages ten times the cost of an arraignment and constitutes 64% of all costs including an arraignment. Even cases destined for dismissal where arraignment is the major cost would have increased savings by only $3,200 in 1976-77 if they had been referred to mediation before, rather than after, arraignment.

The last local factor affecting cost is the mode of intake. Intake of court cases in Dorchester is based on staff attendance at court sessions and Clerk's hearings. Many other mediation projects are able to mobilize screening units in prosecutor's and Clerk's offices to make referrals without cost to the mediation project (McGillis and Mullen, 1977). Looking at the whole system, neither procedure is necessarily superior. Lesser mediation costs are traded off for greater court costs. The choice would be unimportant if the procedures were equally efficient, which they are not. Thus, the problem in Dorchester is not that intake processing is carried out by mediation, rather than court staff, but that so much time is wasted by mediation personnel in court and at the Clerk's hearings when nothing relevant to mediation is occurring.

C. Cost Conclusions

Our cost data is fragile and the information available about other mediation projects is incomplete and tends to be somewhat self-serving. As a result, we are reluctant to propose flat conclusions in the cost/cost-savings area. With that caveat, we offer the following propositions:

- The costs of mediation can be substantial, particularly when deep mediation is not joined with arbitration and where a high level of intake and follow-up services are provided for the court.
- In Dorchester, mediation costs are 2 to 3 times the amount of court costs saved.
- That ratio could be reduced to roughly 1.7:1 if the caseload were increased to the maximum which current staff could handle: it would be 2.1:1 $[(57{,}500 \div 183) \div 148]$ if, given the current caseload, one less case coordinator were employed. The ratio could be further reduced if intake procedures were made more efficient and if the three-month follow-up were either eliminated or made the responsibility of the complainant. In other words, if the court expected less from mediation staff at intake and in follow-up, if it would tolerate some slight delays at intake and amibiguities in follow-up, then it would get more actual mediation for the resources devoted to mediation.
- The savings in court costs would be increased somewhat and the ratio of mediation costs to court costs saved could be reduced substantially if pure mediation were replaced by mediation-arbitration. The original choice of pure mediation was not made on ideological grounds, but because of supposed imperfections in the Massachusetts arbitration statute. That the statute is inade-

*Although an expanded caseload would reduce the per case costs of agreement cases, it would increase court cost-savings only to the extent that the increase in caseload came from cases which would otherwise be processed by the court. If, for instance, the number of agreement cases were doubled by the addition of police referrals in matters which currently are dropped by the police, the cost per agreement case would be halved, but not a penny more in court costs would have been saved. Thus, an increase in caseload would reduce the mediation costs to cost-savings ratio, but it would not reduce the total resources required to run both the court and mediation systems. Successful mediation might, of course, forestall behavior which ultimately would lead to a court case. Such a consequence is part of the ideology of mediation (see Weisbrod, 1977: 181-2), but it would require a difficult field trial to demonstrate.

**Assuming a switch to mediation-arbitration, the ratio of mediation costs to court costs saved would become 1:1 when 805 referrals a year are made, an increase of 2.4 times the current level $(73{,}824 \div 148 = .62x)$.

***A reduction of people performing case coordination functions from 3 to 2 would mean that court attendance and hearing coverage functions would have to be split and compensation time taken in the afternoons. Some help from central staff would be required at times of illness or vacation.

quate is unclear. Inadequate or not, whether the statute should really be a concern is also problematic. Resort to court enforcement of awards made in mediation-arbitration sessions is extremely rare: it has only occurred twice in the entire experience of the New York Dispute Center. Nor do disputants with lawyers in New York appear to be scared away by the arbitration dimension of the process.

- Table 46 is a composite of the estimated mediation costs to cost-savings ratios that could result from various changes in Dorchester's operating procedures.
- Most of the court costs saved by mediation arise from reducing the need for probationary supervision. About one-half of mediated cases would, however, have resulted in dismissals if they had not been referred to mediation. One can then judge mediation as an alternative to cheap court processing (arraignment plus dismissal) in many cases and to expensive probation in significantly fewer cases.
- If mediation-arbitration were substituted for pure mediation and if the mediation staff was reduced by one, both steps that are within the power of the project to take, we estimate that the cost-cost savings ratio could be reduced to 1.8:1. Even with these changes the total costs of mediation would be $382 per hearing.

TABLE 46. Costs, Cost-Savings and Costs/Cost-Savings Ratios in Various Conditions

Condition	Med. Costs (a)	Court Costs Saved (b)	Ratio (a):(b)
Actual	$403	$148	2.7 : 1
Med-arbitration	342	148	2.3 : 1
Reduce staff by one	314	148	2.1 : 1
Reduce staff by one + med.-arb.	263	148	1.8 : 1
Max. caseload with current staff	247	148	1.7 : 1
Max. caseload with current staff + med.-arb.	229	148	1.5 : 1
Med.-arb. + 805 referrals per year	148	148	1 : 1

IX. Recidivism

One way to determine the effects of mediation is to ask the disputants about them. This section describes an effort to identify those effects by a measure which is independent of perceptions of the disputants as related to an interviewer.

We began with the fact that in Dorchester 52% of mediations in which an agreement was reached arose from situations where the respondent was accused of one form or another of assault and battery. In theory, during the mediation of these assault cases, each disputant would get a better understanding of the way in which the other was experiencing their interaction; they would tend to re-define the other disputant as a human being with problems rather than as an unreasonable adversary. Second, each disputant might learn to examine the pattern of their own responses to the behavior of the other and then change those responses as a result of this increased understanding. At the very least, the disputants would have learned something about voicing complaints and making requests, frequently prerequisites for behavior change. And, because an agreement was reached, the disputants would have worked out some kind of a compact about their future interaction. The hypothesis, then, is that disputants who have been through a successful mediation would be less likely to repeat assaultive behavior than similar disputants who had not been referred to mediation by the court.

We constructed a mediation "experimental" group by identifying all cases originating with an assault and battery or assault with a deadly weapon charge that were successfully mediated from December 1975 through September 1976 (42 cases). We then searched the records of the Dorchester court to see whether any of these 42 respondents had been charged with either of these assault crimes in the three years before mediation or in the period between mediation and our search (August 1977).

Of the 42 cases in the experimental group, 26 were referred by the court and 16 by the Clerk. To construct a control group from Dorchester with approximately the same breakdown by referral source, we first searched the Court List for October 1975, the month before the mediation project began to operate and therefore the most recent time period during which no referrals of otherwise qualifying cases were made to mediation. We identified all assault and battery and assault with a deadly weapon cases for that month except those involving an assault on a police officer or where the assault was joined to a more serious crime, such as attempted murder. We excluded those cases since it is unlikely that they would have been referred to mediation, had mediation then existed. We searched the court files maintained on each of the 69 defendants in this group to identify those where information in the file indicated that a prior relationship had existed between the defendant and victim. Our assumption was that the disputants in most assault crimes in which such a relationship was present would eventually have been offered mediation if mediation were then available. There were 27 such cases.

To find disputants who might have been offered mediation by the Clerk in October 1975 if mediation then existed, we searched the Clerk's Hearing Book entries for that month. We extracted the names of 11 respondents against whom some sort of assault charge was made. These 11 cases represent all assault matters in the month except those where the case was referred to court or where neither the complainant nor respondent appeared. The Clerk does not keep files on individual cases so that it was not possible to tell whether a prior relationship existed between the parties. Our observation of Clerk's hearings suggests, however, that applications to the Clerk are generally made by complainants who know the people about whose behavior they are complaining. We then made the same type of search of the court records as was made for the experimental group; we looked to see if any of these 38 respondents had been charged with an assault crime in the three years before, and two years following, their involvement with the court and Clerk. Tables 47 through 49 show the results of these investigations.

TABLE 47. Prior and Post Assault Involvement by Treatment

		Number of Assault Charges: None		One or More	
Experimental Group (mediation)	Prior	33	(78%)	9	(22%)
	Post	38	(90%)	4	(10%)
Control Group (court)	Prior	27	(71%)	11	(29%)
	Post	33	(87%)	5	(13%)

TABLE 48. Recidivism of Prior Assaulters by Treatment

	Number of Prior Assaulters	Number of Post Assaults by Prior Assaulters: Zero		One or More	
Experimental Group (mediation)	9	7	(78%)	2	(22%)
Control Group (court)	11	9	(82%)	2	(18%)

TABLE 49. Recidivism of First Offenders by Treatment

	Number of First Offenders	Number of Post Assaults by First Offenders: Zero		One or More	
Experimental Group (mediation)	33	31	(94%)	2	(6%)
Control Group (court)	27	24	(89%)	3	(11%)

Clearly, the data provide no confirmation of the hypothesis of comparative benefit to be derived from mediation. In fact, exposure to full court treatment appears to have had a more positive effect than successful mediation for subjects who had committed assaults prior to the "experimental" intervention (see Table 48). The differences are, however, much too small to be significant.

X. Conclusion

In this chapter we intend to step back from the data and present the impressions that we have received both as field-workers on the Dorchester project and as researchers who have tried to follow the mediation movement in Europe as well as in this country (see Felstiner, 1974, 1975; Felstiner & Drew, 1978).

Our first reaction is that mediation's capacity to produce positive results is more a function of the level of emotional investment than of the subject matter of a dispute. We earlier argued that property disputes because they are more firmly anchored in the past than relationship quarrels are more difficult to maneuver to agreement. Putting that reservation aside, it does not seem to us that mediation is more successful in family than neighborhood disputes, in landlord-tenant than consumer disputes, in dog bite than assault cases. The difference, rather, is between those cases where problems lie close to the surface, on the one hand, and, on the other, disputes that reflect personal scripts, psychic pre-dispositions or social conditions that have become part of an ingrained response to the dispute or the other disputant.

In the ideology of mediation, courts deal only with presenting complaints while mediation confronts underlying causes. Court dispositions therefore tend towards irrelevance while mediation strikes for permanent solutions. The Dorchester training manual states that mediation "prevents the recurrence of future problems by getting at the basic reasons for the dispute" and "the purpose of mediation is . . . to help parties get at the root of their problems and devise their own solutions to them." Our reservation is that "underlying cause" is a complicated concept and mediation's power to identify and affect underlying causes is a function of the kind of underlying causes that are present in a particular case.

Disputes submitted to mediation may be influenced by several kinds of attitudes, events or conditions. There may, of course, be nothing more at issue than the presenting complaint. The disputants may just differ about facts or norms or values concerning a naked incident. There may be no history to the disagreement nor behavior patterns related to it. On the other hand, the dispute may have a past. It may be affected by earlier incidents that disturbed the relationship between the parties so that they interacted less or coped with each other in some maladaptive fashion. Disputes may also be affected by general social conditions—unemployment, racial hostility, inadequate housing, lack of recreation facilities. All of these conditions may interact with personality dimensions which, although not originating in the dispute, underlie a party's dispute-related behavior. And, of course, disputes may be affected by chronic negative reactions to stress—substance abuse, resort to violence, sexual inadequacy, etc.

These emotional and social conditions and the responsive behavior to which they lead cannot be successfully addressed by mediation, and many disputes that they generate are thus beyond the power of community mediators. But is it possible that we are giving the proponents of mediation credit for trying to do something that they have never attempted to do and then criticizing them for failing to do it? Would it not be correct to say that they do not allege that mediation is an adequate response to underlying causes in the sense of substance abuse, negative coping patterns, poor housing or racial hostility? The objective rather is to expose these problems and to begin to get the parties talking about them. The deep problems are obviously related to the mediated dispute, but they are to be confronted by others after a social service referral. We do not doubt that this rationale is the private belief of the people who train mediators and run mediation programs. But the distinctions are blurred in the training program that we observed and are rarely made clear in public pronouncements about mediation. Trainers teach that "an agreement won't last if it hasn't dealt with the underlying cause". The Dorchester manual states that mediation will "help parties get at the root of their problems and devise their *own* solutions to them". It is true that mediation shares with most interpersonal psychotherapies the aim of uncovering emotional material underlying interpersonal problems and communicating this material to any intimately involved other. An attempt is made to help each disputant understand the other disputant's perspective, to get the feel of "the other man's moccasins". After this, however, mediation is content to deal with *overlying* material—a particular incident precipitated by underlying material. Moreover, the social service referral as the saving grace for deep problems is a myth in Dorchester. We were able to identify 79 instances of alchohol abuse, chronic violence or severe psychological problems in the first 500 cases. Referrals to social service agencies occurred in 35 of these cases, but only 8 disputants kept even the first referral appointment.

Our point is not that mediation does not do enough, nor even that its proponents are not careful enough in distinguishing between what it can and cannot do. It is, rather, that mediation is not psychotherapy and that is what many of the disputes that come to mediation require, if any form of social intervention would be helpful. The problem, then, is not mediation as a process, but either its intake or referral when confronted with problems beyond its power to address. Our primary suggestion to projects that have experience parallel to Dorchester's, then, is to face up to the need to shift "deep" problems to psychotherapy and concentrate mediation efforts on sorting out the practical problems—the assistance in con-

trolling pets, children and noise, in striking bargains over restitution for property damage and theft, in reducing the abrasive encounters of intimates who want to separate—that it does so well.

Our second general comment is related to the first. We do not mean to imply that the universe of interpersonal disputes is split into practical and deep problems and that any fool can easily tell the difference. To the contrary, practical problems may have complicated strands, deep problems can sometimes be helped by surface adjustments, and at the margins one type of problem shades graduatlly into the other. Whatever adjustments in intake and referral are made, mediation will often be operating in the gray area where practical problems have roots in social and intrapsychic conditions. In such cases, the mediation hearing should probably be viewed as an opening intervention rather than as the sole medium for providing service. What we are suggesting may be viewed as a more aggressive and structured follow-up than Dorchester and other mediation programs generally offer. That is, in those cases where the mediators believe that the agreement is incomplete or shaky, where lessons in improving communication may have been imperfectly grasped or where social services are obviously needed, the mediators should as a matter of course organize further mediation sessions or keep in contact with the disputants to monitor their interaction or help staff work with the disputants to keep the spirit of the mediation agreement intact. We believe that this active and persistent follow-up should be provided primarily by the mediators, rather than the staff, because it is the mediators that should have developed rapport with the disputants and should have acquired a broad and intimate feel for their conflicts. To the extent, moreover, that mediation projects are viewed as attempts by communities to take responsibility for their own lives by taking responsibility for their own conflicts (see Smith, 1978: 209), the more active and pervasive the role of community members the better. In sum, we suggest that mediation, if it is to be successful in terms of the lives of disputants rather than in terms of whether agreements were or were not reached, ought to be able to provide sustained support to disputants. The current model of a single intervention, after all, resembles in that respect the court process to which mediation is intended to be an improvement.

Our third conclusion concerns the influence of social organization on mediation. In an earlier paper (Felstiner, 1974: 79), one of us suggested that institutionalized mediation may require mediators who "possess as a matter of existing experience sufficient information about the particular perspectives and histories of the particular disputants to be able efficiently to suggest acceptable outcomes". Since the comparatively atomistic organization of social life in the United States implies low levels of general information about disputants, the prediction for the growth of mediation of interpersonal disputes was gloomy. This emphasis on the production function of mediation, on limitations to the ability of mediators to suggest workable accommodations, has been demonstrated by the Dorchester experience to be wrong. As Danzig and Lowy (1975) noted, production may be irrelevant since mediators may serve disputants primarily by structuring a process in which they provide solutions for themselves. Moreover, the level of information provided to mediators by disputants in Dorchester has been sufficient that they have generally been able to have a *direct* effect on outcomes.

We continue to believe, however, that social organization may have an inhibiting influence on the development of institutionalized mediation in the United States. The old reservation was directed toward the process of mediation: the new is focused on caseload. Mediation programs generally derive cases from two sources—from the justice system (criminal courts, small claims courts, prosecutor's offices, legal aid), on the one hand, and from community agencies and directly through so-called self-referrals, on the other. Dorchester receives almost all of its cases from the justice system. Despite the project's high visibility, zero cost to the disputants, and record of successfully mediating many disputes, the citizens of Dorchester came unprompted to the project for mediation only four times in 1976-77. Dorchester's experience is not unusual. Table 50 reflects the small *number* of self-referrals that lead to mediation hearings in all three federal Neighborhood Justice Centers, regardless of their orientation toward the justice system

TABLE 50. Mediation Hearings by Selected Referral Sources, NJCs (mid-March, 1978 through September, 1978)

		Referral Sources				Total Hearings
		Self-ref.		Community Ag.		
Mediation Hearings	Atlanta	22	(7%)	1	(.3%)	305
	Kansas City	4	(2%)	8	(5%)	172
	Venice/Mar Vista	27	(55%)	7	(14%)	49

Source: Sheppard, Roehl and Cook, 1979: Tables III—3, 6 and 9.

Table 51 indicates that when compared to the populations served, mediation programs are not considered a useful resource by citizens with interpersonal problems unless they have been shunted in that direction by the justice system.*

TABLE 51. Self-Referrals Per 10,000 Population Per Month

Atlanta	.50
Venice/Mar Vista	.46
Kansas City	.11
Dorchester	.02

We do not know precisely how this low self-referral level compares to the use of mediation processes in Africa reported by anthropologists and proposed as models by American reformers (see Danzig, 1973): observers of African mediation do not report rates (see, e.g., Gibbs, 1967; Gulliver, 1963). It does not appear, however, that mediators in tribes such as the Kpelle or Arusha are only mobilized occasionally. When they are used, moreover, it is because a dispute is brought to their attention by the disputants, not by a formal institution of government. The key to the difference, it seems to us, is in the

*An altermative explanation, of course, in that the profile is supply not aware of the mediation programs' existence. A telephone survey by Sheppard, Roehl and Cook in Venice/Mar Vista revealed, however, that 30% of that popululion knew about the Venice/Mar Vista NJC.

relationship between the disputants and the mediators. In both the African and American contexts, the disputants tend to be related and the supply of potential disputants is very large. But in the African situation, the disputants also are related to the mediators (see Gibbs, 1967: 289; Gulliver, 1963). The mediators and disputants are part of a dense interpersonal network, part of each other's life experience. Our hypothesis, then, is that disputants are comfortable in mobilizing these mediators because they are familiar with them as people and with mediation as a process. Disputants are expected and expect themselves to use mediation as a response to conflict.

Very little of this is true for most Americans in most American communities. *Mediators are strangers*—their values and life experience are unknown. Institutionalized mediation is unfamiliar and its use is exceptional. It is thus life, not logic, that makes self-referred mediation viable in one context and not in another. For this reason, the fit between mediation and American social needs is not immutable. Americans may gradually become familiar with mediation untied to the justice system, but in the short term this form of mediationis likely to play only a small role at the margin of dispute processing behavior.

Finally, we will recapitulate the major insights gained in research on Dorchester that seem to us to be relevant beyond its case study borders.

- The key to the content of mediation hearings is the content of mediator training. Training programs should be designed for the kinds of disputes that mediators will hear. They should not assume that mediation techniques that work well for other kinds of conflict such as labor disputes will necessarily be effective in the interpersonal field.
- Many important mediation techniques are counter-intuitive to untrained personnel. Sustained mediation training is therefore critical regardless of the funding or philosophy of particular mediation projects. Whatever the training, mediation is a difficult task and there is a great range to the abilities of different people to learn and apply its techniques successfully. All mediation projects are thus faced with the problem of identifying and minimizing the poor work of a number of inept mediators.
- High volume mediation projects are likely to have important links to the criminal justice system. The connection to criminal justice means that domestic cases involving violence and harassment will constitute a prominent part of the hearing agenda—these cases are the most numerous category in Dorchester, in the Atlanta NJC and in the Brooklyn Vera-IMCR program. Where caseloads are markedly intra-family and violence related, mediation becomes a factor in community mental health rather than community dispute resolution and should be judged in comparison to other community mental health facilities as well as to court services.
- It is difficult to judge mediation programs on a cost basis. The means to measure the benefits of mediation in a systematic and adequate manner have not been developed so that even precise cost comparisons are naked of benefit information or coupled only to impressionistic benefit data. It is nevertheless useful to compare mediation costs to the costs of alternative services, including criminal court processing,and other mediation programs. But the mediation to court comparison will generally be unfair to mediation because in most instances disputants in criminal court cases receive almost no services from the court. The most typical court career is several continuances and a dismissal while a significant proportion of mediation referrals lead to a hearing. Ultimately, then, what can be said about mediation as an alternative to criminal prosecution is that its per case costs can be substantial and may, in some instances, be more than those of lower criminal courts, while its benefits are almost surely likely to exceed those of criminal processing.

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Appendix A. Case Dispositions in Dorchester District Court

Criminal cases initiated in the Dorchester District Court may lead to eight different dispositions.* A case may be *dismissed* without a trial. A defendant may be found *not guilty* or *guilty* after a trial. Trials may be full-scale affairs or the defendant may admit sufficient facts to support a finding of guilty, the Dorchester version of a guilty plea. A *default* may be entered against a non-appearing defendant. In that instance, the case will be re-activated if the defendant is later apprehended in Dorchester. These dispositions are perfectly ordinary, but the remaining four are local usage. Cases may be held *on file*, continued without a finding (*CWOF*), continued for disposition (*C/Disp*), and continued for review and payment (*C.Rev/Pay*). Cases on file are just held in abeyance. If the defendant neither insists upon a trial nor is later charged with another offense, nothing further happens. Cases are continued without a finding for a variety of reasons—during diversion to mediation, while a witness/victim decides whether he or she wants the defendant to be prosecuted, to see whether the defendant engages in similar illegal behavior in the 3, 6 or 9 months succeeding the finding. Cases continued for disposition are referred to the disposition component of the Urban Court, to an alcoholic treatment center and to a JRI-run diversion program. At a later date these cases will produce dismissals or guilty findings. Cases continued for review and payment are held for the period during which the defendant is to make restitution or pay a fine or court costs. Fines and restitution are functionally aspects of suspended sentences and C. Rev/Pays are equivalent to guilty findings. A continuance to pay court costs is an ambiguous finding, neither a dismissal nor an adjudication of guilt.

Four of these dispositions may lead to further proceedings. Periodic review of cases which have resulted in guilty, CWOF, C/Disp and C. Rev/Pay findings determine whether the conditions of probation or suspended sentences have been met and examine the consequences of the diversion of cases to other agencies or programs.

*A ninth possible disposition is to bind the defendant over to the Superior Court. These cases are not discussed nor tabulated since the judges would not refer cases of such gravity to mediation.

Appendix B. Two Illustrative Cases

The Case of the Adjacent Gardens

C (complainant), a black woman in her 40's or 50's, had complained to the police that R (respondent), a white man about 30, had threatened her and had fired a gun as a threat. When the police arrived, they were unable to find a gun and told C to file a complaint in court. She did, and when the case came before the judge he referred it to mediation. Two younger sisters of C, W1 (witness 1) and W2 (witness 2), were present at the mediation, as was W3 (witness 3), the boyfriend of W2 and the owner of the land adjacent to the house in which R lived. W3 was black, in his 40's and from Barbados. The mediators were Mf (mediator female), a black woman, and Mm (mediator male), a black man, both in their 20's. Before the session began the mediators were informed by project staff that R did not want W1, W2, and W3 to be present in the hearing room. The witnesses and C were arguing that they should attend the hearing since they were concerned with the dispute as neighbors of R, because W3 owned the property on which the alleged shooting took place and because W1 was with C when the incident occurred. The mediators did not discuss this question.

At 10:30 a.m. all the parties were ushered into the hearing room. R made it difficult for the mediators to present the standard introduction. Mf's efforts to explain mediation were interrupted by R's aggressive declaration that: "You are the judges, they (pointing to C and the witnesses) are the Union and I am the arbitrator" and "Mediation is the second-hand thing to the loser. . . . I'd win in court. . . . I've done everything I can. . . . I can't do anymore". When Mf said that mediation helps people reach an agreement in an unhappy situation, R said that he and C had already reached an agreement, that that is why he wanted to talk to C alone without W3 who had previously upset matters in court by raising an old incident about his, W3's, dog. At this point the session became chaotic. Mf, C, R and W3 were all talking at once. Mf tried to avoid the old incident by sticking to the current charge. C was saying that the relevant charge was the one she wrote, not W3's complaint. W3 was accusing R of growing and smoking marijuana. R was asking about the assault and battery charge (which he never got a chance to pursue), declaring his fear that W3 would sabotage peace efforts between him and C and asserting that: "I could stop this any time. I could beat it in court. I don't want to".

Mm tried to restore order, to give Mf a chance to explain the process. R would not be quiet. He asserted: "I'm on the offensive . . . I have to be on the offensive . . . Anything taken down can be held against you . . . You're a spanker, a naughty kid has to be spanked. . . . I'm looking at the legal aspects . . . the humanitarian aspects . . . I must be on the offensive even if it was accidental . . . I'll win in court 'cause there is no cause, no proof." R then subsided a little. Mf doggedly went on with the introduction. She met R's interruptions directly and finally finished. What normally takes 3 or 4 minutes had taken 10.

At last, C was asked to explain what had happened. She said that she was working on her garden with W1. The garden is on W3's land which sits directly behind R's garden. C does not live on this block, but comes there often because W2, who apparently lives with W1 and W3, looks after C's children while she is at work. C and W1 heard a bang, a shot, and saw R walk into his house with a gun in his hand. A few minutes later, they heard a second shot. R and his wife were then on their porch. C and W1 then left to call the police.

W1 told roughly the same story. C and W1 said there were no prior incidents with R. R interrupted to say that the prior incidents had been with W3. R said W3 should talk about these incidents. Both mediators said no, let's deal with this matter first. Mf then asked R to speak.

R's recital was confusing. He denied he had shot a gun at C, but "a firearm was discharged" at the dog. He spoke at length about the difference between a human being and a dog, a "mere beast", with "no brain, no sympathy, can't relate like a human being, a dog has no constitutional rights." Mm asked R to be clear. R said he had no intent to hurt C or the children. But a dog is different. He said there was a third party involved. He heard a bang, he is not an expert. He can't tell the difference between a firearm and a firecracker. Kids let off firecrackers all the time. On the 4th of July. He then said that because this recommendation is going to the judge, he had to be on the offensive. He referred to the incident as an accident, that he was sorry and that it would not happen again. R agreed that he would be willing "to write that". C would also. R then asked: "but what about him", pointing to W3.

W3 now reported that during the previous year R had become angry at W3's dog, showed W3 a gun and said that if the dog did not stay away from him and his children he'd shoot it. W3 then described the shooting incident. He added there "was something else". A week after the shooting a cab belonging to a friend of R's blocked W3's driveway. A gang of R's friends were drinking there at the same time. W3 accused R of bringing his friends there "to start a riot".

R told his version of the driveway incident. Earlier in the evening R had become angry at the dog. A friend of W3's had then jumped over the fence, told R's wife that he was going to blow R's head off and showed her his gun. After this threat, R asked some friends from a veterans' club to come over with

some beers. The cab driver was one of those friends. When Mf noted that the purpose of mediation was to see that these incidents did not happen again, R said: "This is my problem—I was in Vietnam at 18." He noted that he sees a psychiatrist every week, that men come back from Vietnam with no jobs, no home, "no one to relate to . . . simulate themselves". C accused R of being childish and W3 criticized him for using the psychiatrist as an excuse for his behavior. The mediators then broke through and said they were going to caucus.

Mm began by interpreting R's circumlocutions about the gun. Since the police did not find the gun, R believes he can beat any gun charge in court. Thus, although he does not deny that he fired a gun, he will not admit it for fear that mediation will break down and he would be confronted with an admission in court. Mm then said that the dog is at the root of the problem; they must "remove" the annoyance of the dog.

R was asked back for a solo session. Mf immediately asked him about the dog. R said that last year the dog had bitten his daughter through the garden fence. R told W3 that if it happened again "the dog would die". He then related the current incident about the dog. R was returning from dinner at a local restaurant with his family. He raced an older daughter home while carrying a smaller child. When he ran past W3's fence, the dog jumped up, startled him and caused him to drop the baby, which he caught in time. He was very angry, swore at the dog, called it "a black son of a bitch", pointing out that the dog happens to be black all over. Then there was "the discharging of firearms", but at the dog (presumably in the direction of, or to frighten, the dog), not at human beings. R said he was jumpy these days because he had been shot "in three places" in another part of town a year before. The mediators then explored with R the conditions of the dog's confinement and whether it was necessary for him to pass by the yard in which the dog was kept. These issues were not clarified very well. R said he would not fire the gun again. He then explained how the gun (which he spoke about obliquely as if its existence were still in question) had been dismantled, partly buried and partly thrown out with the garbage. He was very sorry about it. He didn't want to hurt anybody. His wife does not want any guns in the house ever again.

Mm asked what R thought could be done about the dog. R suggested a shorter leash. If the dog worried him or his children again, he wouldn't shoot it; he would strangle it through the fence. After further inquiries about the physical layout, the discussion shifted to the cab and the "guys". R said that W3 had an unemployed friend who would sit around W3's place a... who had threatened to blow R's head off after R had threa... ed the dog. After being told "I'll beat your white ass", R called his veteran friends "to show the power structure". They had a few beers and joints, but made no threats. Mm tried to get R to say that he was making a show of force because he was expecting a "beef". Mm then switched back to the lay-out and R complained about the deterioration of the neighborhood and the fall in real estate values. R then began a speech about why he must be on the defensive, then the offensive, because the jails are full of people who are there by mistake. Mf cut him short and asked whether he wants the dog's leash shortened. R then said the leash should be taken away, that the dog should not be left out in all weather, that the dog is man's best friend, that it should be in the house.

Mf appeared exasperated. She asked whether R wanted anything else in the agreement. R said no, he did not feel this really was an agreement. Mf replied that he must feel he wanted an agreement. R then went off again. He said that if it is a question of feelings, how do we know what people are feeling. Mf did not respond. R said that a fence is going to be built which will partly curtail the dog's running area. Mf then started to cross out the part of the agreement she had written about the dog. This session with R ended. It had lasted for 40 minutes.

The mediators caucused for about 5 minutes. They wanted to do something about the dog, but were hesitant to talk to W3, given R's attitude. They also considered trying to persuade R to warn his family not to go too close to the fence, but they were reluctant to say this to R. Without deciding what to do about the dog, they invited C to a private session. C was upset that R would not tell the truth about the gun. He has admitted it to her in private, but would not confess in court, to the police or to the panel in public session. She said that she didn't want him to go to jail or be convicted, that he had kids just as she did. She also worried about his friends and hers: that there would be trouble if R went to jail. She would, however, like him to be on probation. She said that other neighbors know him and were afraid of him. Mm pointed out that an agreement will lead to a dismissal of the charges against R only if he lives up to it for 90 days. In a sense, then, he would be on probation. C said she was still worried that R would get high, forget and start shooting again. The mediators tried to reassure her and said they wanted to work on the agreement. C left. This session had lasted for 15 minutes.

In caucus, the mediators decided to refer in the agreement to both firearms and threats. The dog was not discussed. Mf said that she was afraid that R would make them change the wording of the agreement, that he was a very prickly man. Because they were concerned that the agreement not be one-sided, they inserted a provision that C would not provoke R.

C and R, but not W3, returned to the room. Mf read the agreement to them. R objected to the part about C since C had never provoked nor incited him and he did not think that she ever would. C agreed that she would not, but thought that she wanted some statement in the agreement. Mf said that she thinks that C meant that she does not wish him ill in any way, does not want him to go to jail and that is why she wanted something in the agreement about her future conduct. R said alright. The agreement was signed. The mediation lasted for 2 hours and 15 minutes.

The Case of the Wife who Worked at Night

C and R have been married for twenty-three years. Both are middle-aged blacks. The mediators were about 30. Mm was white and Mf was black. Both had been mediating cases for about a year. The standard introduction was uninterrupted by the disputants.

The case had been referred to mediation by the court after C had complained to the police that R had hit her with a plate. C began her recital by alleging that she had "the problems" and her kids had "the problems". She and R had six children. As soon as the children could, they left the house: three were still at home. After a few good years in the beginning, life with R had not been pleasant. She wanted to live by herself. Mm asked C what was causing the problems. C said that she didn't know. Maybe R could say.

C said she worked for the post office at night. Her job was threatened because R kept calling her at work, while calls were supposed to be on an emergency basis only. He called her at work and then swore that he had not. When she came home he sometimes would not let her in and then "fussed" her all night, keeping her from sleep. R then spoke for the first time. He said he never locked her out. She went to work seven days a week and he wanted her to be home sometime. Mf then said that what they were interested in was the charge. Mm asked R whether he had hit his wife. R said that he had been high and didn't remember. He said that he had only called her three times at work. When he did, she was not there. He wondered where she was. As long as she was home he had no complaints. Mf asked R if he loved his wife. R said "oh, yeah; that's why I want her to stay home".

C replied that it was so bad that she couldn't stay there. She went out because it was bad at home, not because she was working all the time. At this point, Mf explained that private sessions would help them work towards an agreement and excused the disputants.

The mediators decided to see C first to find out if she really wanted to "split". Mm was full of opinions—it was pathetic; there is heavy drinking; she can't stay home; it's going to get worse; drinking is a hard problem to deal with at R's age; with elderly drunks, the bottle is their friend. (Since drinking had not been stressed by C at this point, Mm must have been reflecting information provided by the staff.) They called C back to the hearing room.

C was asked to describe more about what was going on at home. She said that he cusses the kids out. They hate him. Neither they nor she can have friends visit them. Her family would not visit her any longer. Years before he had broken her arm and nose. Although they did not fight like that any longer, he needed psychological help. She said that he is not an alcoholic, that he always can get to work. but that he gets drunk on the weekends. C complained that R brought some dollars home but threw a lot of money away. Although she worked because she had to, her relationship with R had been worse when she was at home all the time—"fighting, swearing, neighbors hearing everything".

The mediators then tried hard to get C to decide whether she wanted a separation or not. At various times in the next ten minutes she said:

- R will not move out. Even if he agreed to move, he would not do anything. But then she didn't really know. She had not expected him to show up at the mediation hearing.
- He can have everything in the house, just so she could get some peace of mind.
- He has never moved out before. She would try to live without him. She could try it, but she doesn't think anything is going to work.
- She wanted him out as quick as possible.
- She wanted him to stop calling her at work. She wanted him to stop hitting her. Maybe that would do it for awhile.
- She wanted him to stop drinking so much. She wanted him to stop cussing out the kids. She wanted the mediators to talk to him about a separation.

C was then excused. Mf said that now they knew her bottom line (presumably she meant that C wanted a separation, but that she would accept an attempt at general reform). The mediators then wondered whether the disputants understood what mediation was all about. A member of the project staff was found and asked whether mediation had been explained to the disputants. He said that he had talked to R at court, but he was then drunk. The staff person, when asked by the mediators, suggested that they try to get the parties to agree to a three-month trial separation plus counseling help.

R then returned to the room for a private session. He was asked how things were going at home. He said he only had one complaint: his wife was never at home. He didn't know where she was. She told him not to call her at work, that she was not there. As to the drinking, he only has two drinks on the way home. Vodka. No beer. Then he comes home for food and his wife is not there. He then complained about his wife hitting him, about her swearing, about her gambling, and about the reefers which the kids smoke in the house. He said that drinking was not a problem, that he would sign the pledge that night. He asked whether he could swear back at his wife when she swore at him.

Mf asked R whether he would agree to seek professional help. R said that he did not have any problems, if only his wife would stay at home and not gamble. Mm said you may not have any problems, but she has problems. He then said that R had one problem: "You have a charge over your head". R said: "I hit her on the head?" (During the exchanges, the possibility that R had been drinking while the mediators were talking to C occurred to both mediators and to the observer.) R said that when he has been drinking he does not remember things. But his drinking was not a problem because he goes to work in the morning. He then acknowledged that maybe he had better quit drinking.

Mf asked R what he would like to see as a result of the mediation. R said he wanted to live together with C and be happy. He said that he would do anything that she asked, but that she does not ask. He said that he didn't have time (probably meaning have an opportunity that evening) to talk to her. R then went out to talk to C for about three minutes. When he came back he was asked what C had told him. R said she asked that he stop drinking. Mm wanted to know whether she wanted a separation. He told R that she had said that to them. R was asked whether he wanted a separation. He said that they had been together too long. He did not want to be separated for nothing. He just wanted C to stay home on weekends and on her night off. R said: "So she wants a separation. Does she have somebody else?" R then com-

plained that the food was not ready when he got home. Mm told him he ought to talk to his wife more.

The mediators caucused for six minutes. Mf described how tired she was of husband-wife disputes. She had done 15-20 of them and was mad at the staff who had promised her a neighborhood dispute.

When they called the parties back they announced, perhaps to the disputants' surprise that an agreement had been reached. R will agree not to drink or swear at C. C was silent for a long time. Then she said: "Well, I know you're not going to do it. But don't call me at the job and don't hit me".

The mediators then spent several minutes trying to persuade R to get professional counseling, especially about his drinking. R asked a couple of questions about the available services and then announced that he would quit on his own. C reminded him that he had said that before. R said that now he meant it. C was then asked whether she would agree to stay home one night a week. She said she would try it. The mediators excused the disputants so that they could write up the agreement. Mm said the agreement was a joke and that it made him very uncomfortable. Nevertheless, the disputants were called back and signed the following agreement:

> R agrees to stop drinking, to stop cursing at the kids, to stop calling C at work except in an emergency and he agrees that an emergency will not take place on every day. R agrees that he will stop beating C up.
>
> C agrees to stay home one night a week.

The hearing had taken two and one-half hours.

Appendix C. The Brooklyn Training Sessions

The principal teaching tool of the IMCR training course is the simulated mediation process (with the parts of both mediators and disputants played by trainees). Printed didactic material—a training manual—is presented to the students chapter by chapter as the course goes along. Trainees are asked to read through this material at home.

Each three-hour session began with a brief introduction by members of the training team. On the opening day, introduction of the trainers, of the mediation process, and self-introduction by the trainees were followed by a demonstration mediation session. Two of the trainees played the parts of the disputants. Two trainers mediated the case.

In this case, as in the many simulated mediation sessions to follow, trainees playing the part of disputants were given only the barest outline of a story line (taken from an actual case) and were encouraged to call on their own feelings and experiences to act out their parts. A number of these "disputants" remarked that they got so involved with their roles that they forgot they were playing a part.

A videotape was made of the first demonstration mediation, and this was replayed and explicated at the next meeting. Trainees were asked to note specific details of the mediators' verbal and non-verbal behavior. Much was made of the value of planning ahead, *which* mediator will say *what*, which disputant will be seated where, etc.

It was pointed out that the trainer-mediators asked open-ended questions and only spoke to clarify and re-state disputants' remarks. The mediators were unfailingly courteous to the disputants throughout, calling them by name, rising, and even shaking hands again each time a disputant reentered the room, giving them, in the words of one of the trainers critiquing the tape, "all the respect in the world".

As the course went on, the trainees were given very specific instructions on how to conduct the successive phases of the mediation process.

The introduction: Heavy stress and a lot of time went into practicing the mandatory seven-part introduction, which explains the process to the disputants. Trainees were taught to agree together (before calling the disputants) which mediator would "cover" which of the required subjects. This structuring of the first minutes with the disputants seemed to be designed, in part, to help various mediators feel that they are in control of the situation.

First public session: Emphasis was placed on the fact that the first public session is a time for the disputants to talk and the mediators to listen. One point in the introduction is that the mediation process gives disputants more time than the courtroom hearing would. Disputants are to be given "freedom and space" to tell their side of the dispute, how they feel about it, and what they would like to have done about it.

Trainees are asked to avoid asking direct questions, not to try to establish a chronology of events. "If it's not important to *them* who hit whom first, it's not an issue, period". If the discussion becomes heated, they are asked to "take a deep breath and try to tolerate it". They are not to interrupt the disputants unless absolutely necessary.

There is to be little effort now to persuade the parties of the likelihood of an eventual agreement. Agreement is the farthest thing from their minds at this moment. The principal product of this first public session is a "public position" for each disputant, a place to start doing "shuttle diplomacy" *from*. It is most important that mediators have recorded notes of these "public positions".

First panel caucus: As one would expect, the great preponderence of training effort is on the sessions at which disputants are present. The handling of the private panel caucuses is taught in much less detail.

The trainers stress that it would be premature for mediators to start thinking about possible solutions at this point. Each disputant has heard his opponent's public stand, so he will recognize concessions as they come along. But this public stand is only a place to start. Disputants often change their stance quite rapidly in private sessions.

The basic training tool for this and succeeding panel caucuses is a series of questions repeated over and over: "What do you now know? What more do you need to know? Whom will you call next? What for?" Mediators are to start trying to determine what the central (or underlying) issue is for each disputant.

Caucusing with individual disputants: Mediators are to start exploring possible avenues of agreement, looking for movement no matter how small. They are to try to develop mutual understanding and clear up misunderstanding between disputants. Keeping mainly on the subject of the desired agreement, they are to ask "reality questions" like "How could Mr. Thomas pay for a new TV set for you?" This encourages a disputant to come up with his own proposal to his opposite number (example: $10.00 a week).

Offers and concessions are to be transmitted to the other party delicately, not falsely but with the abrasive edges off. "What, When, and How to transmit is an art learned by experience". Mediators are to downpedal the bargaining, or "quid pro quo" aspect of shuttle diplomacy. They don't say, "Mr. Jones will apologize *if* you'll do such and such", but "He will apologize, AND he's asking you to do such and such".

Mediators are to be more in control now, acting as go-be-

tweens. They do not want a husband and wife, for example, making or messing up their own agreement in the anteroom during a private panel caucus. They say explicity: "*We* will transmit this offer to your wife". They are to ask each disputant how he thinks the other person will respond.

The agreement: There was little didactic emphasis on writing up agreements. Only at the last sessions did simulated mediations progress that far. Trainees were told to be very specific about "dates, places, times and amounts". They were to offer the help of mediation project staff and assistance with any transfer of money or property. The traineers recognized that they slighted this phase and scheduled follow-up sessions to cover it in greater detail.

Throughout the role plays, the fact that there were three mediators on each panel—a "moderator" flanked by another mediator on each side—seemed to create problems. Mediators in the outside positions remarked over and over again that they felt out of contact with each other.

When trainees questioned the need for three panelists, the trainers tended to answer that it was the responsibility of the moderator to unify the panel ("he can hear the mediators on both sides of him") and to coordinate its activities. In actuality, women panelists tended to defer to men throughout the training, regardless of who was "moderator".

One obvious advantage of the use of three mediators in the training is the opportunity it gives to trainees to take turns as mediators. One of the trainers mentioned that three people on a panel can generate more ideas, while at the same time "fragmenting the responsibility". It also helps, he added, in situations in which a disputant has taken a dislike to one panelist.

The training program was generally well designed. The training manual was clear, concise, and calculated to encourage the novice. The two principles of planning and flexibility were stressed throughout the course. The major didactic instrument (the role-playing mediation hearing) was an effective choice. Each trainee had the opportunity to participate several times both as disputant and as moderator.

The course proceeded from the easier to the more difficult tasks required of the trainees. Those acting as mediators were permitted to refer to training notes in the early sessions, but soon were asked to work without them. In the early role-plays, trainers stopped the action more frequently than they did later. As the course proceeded, trainees were expected to proceed without interruption or assistance farther and farther through the stages of the hearing to the final agreement.

The instructors were excellent. Observation of sessions led by different trainers made it clear that the trainers shared a single philosophy and method and imparted it in the same way. Trainees were rotated from one trainer to another, to give them experience with the "styles" of the several instructors, but these styles were remarkably uniform. The trainers presented the same material in the same way. They provided for the novice mediators a model of unflagging courtesy, listening skills, and powers of deduction and persuasion.

But in spite of the uniformly sound instruction from the trainers, most of the trainees failed during the training program to master most of the basic principles and techniques the trainers were trying to teach.

They made rapid improvement, it is true, in the area of general demeanor. Trainees taking their first turn as mediators were ponderous, unctuous and unnatural. After repeated modeling by the trainers, most of the novices were able to look and sound much more natural and at ease.

The two principal problem areas seemed to be 1) attitudes and approach, and 2) listening skills.

Attitudes and approach: It was dinned into trainees' ears from the very first session that "this is not a courtroom, and you are not judges", and "judges judge. Mediators *listen*". Trainees were told repeatedly not to interrogate the disputants (most particularly in the opening session), not to try to establish a chronology of events, not to appear to agree with or side with one party and not to seek admission of guilt on top of an effort to make amends. They tended to fall down on all these counts throughout the training.

Most showed no perceptible improvement at the end of the course. They interrupted disputants to ask questions like "How many men do you employ at your gas station?" or "What is the year of your car?". They persisted in "wanting all the facts" although the trainers said over and over "You don't need all the facts". In spite of being told to avoid direct interrogation, they were distressed when more questions didn't occur to them. "I just couldn't think of anything else to ask". With a client who seemed nervous they mused in private panel caucus "What shall we ask him to make him relaxed?". It seemed that the trainees did not accept the notion that interrogation was not their job.

Listening skills: It may be the somewhat disconcerting nature of the situation where trainee-mediators were constantly evaluated by expert trainers as well as by fellow trainees that kept the trainee-mediators from hearing explicit and implicit material presented by disputants. Whatever the reason, this training group failed to learn to listen.

In case after case, mediator after mediator would simply miss a disputant's statement about such important matters as marital status or history, job situation, or number and ages of children. One woman who had already said she had a four-year-old son was twice asked the age of the boy.

Trainees not only missed specific statements of fact. They failed to hear urgent, emotionally-charged expression of feeling. They did not seem to notice even often-repeated cries of anguish like "I JUST WANT HIM TO LAY OFF MY KIDS!". They missed specific, expressed demands ("I want a new TV set for the one he smashed") and they missed offers of "deals" when disputants let them slip out ("Maybe I'd keep quiet about his drug-dealing if he'd be reasonable.").

The trainers seemed disheartened by this poor showing at developing listening skills, but they did not really attack the problem systematically. After the first new training sessions they would just keep asking unbelievingly "Weren't you *listening?*".

Mediation projects which believe that it is important to use community people as mediators, and which do not have a large pool from which to select trainees, may be forced to sacrifice other aspects of training to devote more time to developing listening skills. Psychotherapists have codified techniques to improve communication skills, especially listening (See Hoper et al, 1975), and IMCR might profit from experimenting with them.

Appendix D. Questionnaires and Instruments Used in This Study

URBAN COURT PROGRAM

560A WASHINGTON STREET
DORCHESTER, MA. 02124

CENTRAL AND MEDIATION PROJECT
825-2700
DISPOSITION AND VICTIMS SERVICES PROJECTS
825-4900

Cover Letter-Telephone Follow-up

Dear

I am conducting a follow-up study of Dorchester residents who participated in a mediation session at the Urban Court. I would like to ask you a few questions about the session and what has happened since then. Your answers will be kept absolutely confidential.

I have been unable to reach you by telephone. I would very much appreciate the chance to talk to you and ask that you call me at _____, any _____ between _____ and _____.

Sincerely yours,

TELEPHONE FOLLOW-UP

Hello, My name is _____ and I am working with the staff of the Dorchester Urban Court. I am calling you because you participated in a mediation session at the Urban Court and I would like to ask you some questions about the session and what has happened since then. Your name will not be used. This is a study to help us provide better service to you and the residents of Dorchester. We would certainly appreciate your cooperation.

All of the questions are short and with some of them I will give the responses for you to choose from.

Do you have any questions?

1) How were you referred to the Dorchester Urban Court?
a. Clerk b. Judge c. D. A. d. Police e. Other _____

2) What was the situation which got you to mediation? (Get as much detail as possible. We will code later.)

(If the respondent refers to a specific incident try to find out what they felt the underlying problem was: i.e. A & B caused by the defendant's drinking.)

3) What has happened to that problem (or problems)?

4) If there has been an improvement or the situation has gotten worse, what produced that change?

5) Did the other party (_____) live up to all of the agreement?
a. yes b. no

IF YES --- 6) For how long?

IF NO --- 7) Why do you think settlement broke down in those aspects?

IF NO --- 8) Inquire as to time, extent and quality of compliance.

IF NO --- 9) What did you do about that (those) breakdown (s)?

10) Were you able to live up to all of the agreement?
a. yes b. no

IF YES --- 11) For how long?

IF NO --- 12) Why do you think the settlement broke down in those

respects?

IF NO --- 13) Inquire as to time, extent and quality of compliance.

I NOW JUST HAVE A FEW QUESTIONS FOR YOU ABOUT WHAT YOU LIKED AND DIDN'T LIKE ABOUT THE MEDIATION ITSELF.

14) Did the fact that there was a _____ (woman/man, white/black, Spanish-speaking, or other) mediator make a difference to you (or important to you)?
a. yes b. no

If yes, why?

15) Did you trust the mediators?
a. yes b. no

Why (or why not)?

(If answer ambiguous, such as "Because they were fair" inquire about what they mean by "fair".)

16) Do you think the mediators understood the whole situation?
a. yes b. no

17) Do you think that the mediators understood and respected your feelings?
a. yes b. no

18) Do you believe that it is important that the mediators lived in Dorchester?
a. yes b. no

Why (or why not)?

19) Who do you think was mainly responsible for producing the agreement?
a. you b. the other party c. the mediators d. other_____
(CIRCLE MORE THAN ONE IF APPROPRIATE)

20) Were any social services suggested to you or others by the Urban Court?
a. yes b. no

21) If you were referred to a social service agency, what was it?

22) Did you keep the first social service appointment?
a. yes b. no IF YES- What was the result?

IF NO- Why not?

23) Was the Urban Court supposed to do anything for anybody after the mediation?
a. yes b. no IF YES- What?

If it was to provide service, did it do so?
a.yes b. no

24) Looking back at the mediation are you glad that you agreed to use mediation or do you now believe that you would have been better off in some other agency?
a. mediation b. some other agency IF SOME OTHER AGENCY, what?
a. court b. other_____ c. nowhere
WHY?

25) If you became involved in another legal dispute of this type with someone you knew would you prefer to have it handled by the regular (Dorchester) court or the Urban Court?
a. regular court b. U. C. c. some other means
WHY?

26) Why did you agree to go to mediation rather than pursue this situation in court? (Record in full and we will code later.)

27) By the way, what were the details of the agreement?

THANK YOU.

(Interviewer's comments, observations, notes, etc. on back of page.)

UNIVERSITY OF SOUTHERN CALIFORNIA
SOCIAL SCIENCE RESEARCH INSTITUTE
UNIVERSITY PARK
LOS ANGELES, CALIFORNIA 90007
(213) 741-6955

Cover Letter-
Court Time Estimate Questionnaire

To the Justices, District Attorneys, Massachusetts Defenders and Court Administrator of the Dorchester District Court.

As some of you know, we have been doing field research on the mediation component of the Urban Court Program since March, 1977. One part of that research is to estimate the cost saved, if any, to the criminal justice system by the use of mediation. Information derived from the enclosed brief questionnaire is crucial to that effort. We very much hope you will take the time to answer the questionnaire and return it to me in the stamped envelope which we have provided. Individual answers will naturally be kept confidential. If you have any questions about the questionnaire,please call me collect at 805-969-3454. Thank you very much for your assistance on this and other occasions.

Sincerely yours,

William L. F. Felstiner
Senior Research Associate

Court Time Estimate Questionnaire

For each of the following stages of court proceedings, we would very much appreciate your estimate of the time required to process a case which involves a complainant and a defendant who have had a prior relationship. Assume that the charge in these cases is something similar to assault and battery, malicious damage to property or harassment. Please answer the questions as if referral to mediation was not a possible disposition. For each stage, please try to estimate the average, minimum and maximum times consumed.

Stage of Court Proceeding	Average Time Taken	Minimum Time Taken	Maximum Time Taken
Pre-trial Stage			
Arraignment (including bail hearing)	_____	_____	_____
Trial Stage			
Actual trial	_____	_____	_____
Admission of sufficient facts	_____	_____	_____
Request for dismissal (whether made by Comm., for want prosec., no probable cause, indicted, after rev/payment)	_____	_____	_____
Post-conviction Stage			
Probation terminated	_____	_____	_____
Surrender hearing (viol. of probation)	_____	_____	_____
Review (3 month)	_____	_____	_____

UNIVERSITY OF SOUTHERN CALIFORNIA
SOCIAL SCIENCE RESEARCH INSTITUTE
UNIVERSITY PARK
LOS ANGELES, CALIFORNIA 90007
(213) 741-6955

Cover Letter - Mediator Questionnaire

Dear

As you probably know, Lynne Williams and I have been conducting research on the Mediation component of the Urban Court for several months. Our research is not intended to, and will not, evaluate the work of individual mediators, nor do we intend to rate the performance of the mediation component as a whole. Rather we are interested in learning more about the operation and results of the mediation process as a process.

In order to complete this research we want to learn about your views about mediation and thus are asking you to fill-out the enclosed questionnaire. The questionnaire has been read and approved by Lois. Your responses will be kept absolutely confidential. Please send it back to us in the enclosed, stamped envelope, even if you have not recently been active in the mediation program.

We thank all of you for your cooperation, and doubly thank th oe of you who were involved in mediation sessions which we, or one of our colleagues, observed.

Sincerely yours,

William L.F. Felstiner
Senior Research Associate

WLFF:pdb
Enclosure

MEDIATOR QUESTIONNAIRE

If you wish to answer a question in more detail than allowed in the space provided, please write on the back of the sheet.

TRAINING

1. What is your general opinion of the mediation training which you received?

2. Do you believe that the training program adequately prepared you to mediate disputes at the Urban Court?
   Yes_____ No_____ Partially _____

3. What did the training program teach you to do that has proved useful in mediating disputes at the Urban Court?

4. What did the training program fail to teach you which would have been useful in mediating disputes at the Urban Court?

CONDUCT OF MEDIATION

5. What is your main objective when mediating a dispute at the Urban Court?

6. Do you feel that there are problems presented in mediation that you were <u>not</u> <u>trained</u> to cope with? Yes _____ No _____
   If yes, what are they?

7. Do you feel that there are problems in mediation you <u>cannot</u> cope with? Yes _____ No _____ If yes, what are they?

8. Do you feel that the techniques which you use in mediation have changed since you began mediating disputes at the Urban Court?
   Yes _____ No _____ If Yes, in what way have they changed?

9. What do you feel are appropriate ways to show empathy during a mediation session?

10. Under what circumstances do you feel that it is appropriate to ask questions during a mediation session?

11. Do you feel that any particular form of question is preferable in mediation?

12. How important do you feel it is to find out what has happened between the disputants?
    Very important _____ Important _____ Not very important _____

MEDIATION QUESTIONNAIRE

(Cont.)

13. Do you feel that it is important to learn the disputants' "public positions" by any particular point in the mediation session?

14. Once you believe that you have learned the disputants' "bottom line" positions, how do you feel it is appropriate to narrow the gap between them?

15. In narrowing this gap between the disputants, do you believe that it is appropriate to point out, especially to the respondent, what is likely to happen if no agreement is reached?
Yes _____ No _____

16. Please rank the following possible objectives of mediation in order of their importnace to you as a mediator.

The most important objective should be ranked 1, and so forth.

		Rank
a)	improving communications between the parties.	_____
b)	improving the parties' abilities to communicate in general.	_____
c)	reaching an agreement acceptable to the parties.	_____
d)	reaching an equitable agreement acceptable to parties.	_____
e)	reaching a realistic agreement acceptable to the parties.	_____
f)	other. Please specify _____	_____

17. Have you found that other mediators with whom you have worked have exhibited any of the following traits to a disturbing degree?

a)	impatient	Yes _____	No _____
b)	patronizing (to you or to the disputants)	Yes _____	No _____
c)	controlling	Yes _____	No _____
d)	too talkative	Yes _____	No _____
e)	uninterested	Yes _____	No _____
f)	social work	Yes _____	No _____

g) other negative behavior. Please specify.

TYPES OF CASES

18. From your experience as a mediator, what types of cases do you feel can be successfully mediated?

19. From your experience as a mediator, what types of cases do you feel cannot be successfully mediated?

MEDIATION QUESTIONNAIRE

(Cont.)

20. Where mediation has produced an agreement between the disputants, do you believe that the value of the mediation is represented by:

    a) the terms of the agreement?

    Very important ___ Somewhat important ___ Not important ___

    b) the improved communication between the disputants?

    Very important ___ Somewhat important ___ Not important ___

    c) the opportunity afforded the disputants to voice their complaints and requests?

    Very important ___ Somewhat important ___ Not important ___

    d) the increased awareness that other members of the community care about their problems and may have experienced similar problems?

    Very important ___ Somewhat important ___ Not important ___

    e) some other benefit? Please specify.

OBSERVERS

21. Have you participated in a mediation session at which an observer was present? Yes _____ No _____

    If you answered yes to #20, please answer questions 22-24.

22. If yes, do you feel that the presence of the observer affected your behavior at the mediation session(s)? Yes _____ No ____
    If yes, how was your behavior affected?

23. Did you mind having an observer present? Yes _____ No_____
    Why did you mind,or not mind?

24. Do you believe that the presence of the observer had an effect on the behavior of the disputants? Yes _____ No _____
    If yes, what effect do you believe it had?

UTILIZATION

25. When did you participate in mediation training?

26. Approximately how many times have you been asked to mediate disputes since then?

27. Approximately how many times have you agreed to mediate disputes since then?

28. Approximately how many times have you mediated disputes since then?

29. Are you called on to mediate
    too often _____? not enough _____? just right _____?

MEDIATION QUESTIONNAIRE

(Cont.)

SUPPORT

30. While conducting mediation sessions, do you receive adequate support from the Urban Court staff with respect to:

    a) information about the disputes? Yes _____ No _____ Not relevant _____

    b) legal questions? Yes _____ No _____ Not relevant _____

    c) special problems with particular disputants? Yes _____ No _____ Not relevant _____

    d) framing agreements? Yes _____ No _____ Not relevant _____

    e) services offered by the Urban Court? Yes _____ No _____ Not relevant _____

    f) services offered by others? Yes _____ No _____ Not relevant _____

31. Have you attended any re-training sessions held by the Urban Court? Yes _____ No _____

32. If yes to #31, did the re-training session(s) help to refresh or augment your mediation skills?
    Very much _____ Some _____ Not at all _____

33. Have you found any portion of re-training sessions to be embarrassing or intimidating?
    If yes, what part of re-training has been embarrassing or intimidating?

EFFECT ON OWN LIFE

34. Has mediation training and experience improved your ability to cope with problems in your own life?

    Very much _____ Some _____ Hardly or Not at all _____

    If Very much or Some, has mediation training and experience improved your ability to:

    a) cope with problems in your immediate family, Yes ___ No ___

    b) cope with problems at work, Yes ___ No ___

    c) cope with problems with neighbors or in your neighborhood, Yes ___ No ___

    d) cope with personal problems with friends, Yes ___ No ___

    Please give examples, if possible.

35. Do you believe that mediation training and experience has affected your self-image? Yes _____ No_____
If yes, please try to explain the change.

36. Do you believe that mediation training and experience has changed your attitudes toward your community and its citizens?
Yes _____ No _____ If yes, please try to explain how.

If there are any matters relevant to mediation which are important, but which we neglected to ask about, please describe them below.

Thank you.

Appendix E. Calculation of Court Cost-Savings

The first step in calculating court cost-savings was to secure estimates of time consumed by different stages of court proceedings from two of the three judges in the district court, from a prosecutor and from the Court Administrator.* These estimates were averaged and are presented in Table 52. The stages of court proceedings and the disposition profiles use somewhat different terms. To translate from court stages to dispositions, the following rules need to be followed:

- all dispositions require an Arraignment (or surrender on a warrant)
- not guilty findings require an Actual Trial
- cases are dismissed only after a Request for Dismissal
- cases end up On file and in Default without any particular post-arraignment proceedings
- all the remaining dispositions require either an Actual Trial or an Admission of Sufficient Facts

It is not possible to determine the ratio of Actual Trials to Admissions of Sufficient Facts from the source of disposition data, the court management information system. The Clerk's office has maintained records from which it is possible to calculate that ratio on a monthly basis since March 1977. From March through June 1977, those records reflect 326 Admissions and 834 Actual Trials (28 and 72%). We were sceptical of the high proportion of Actual Trials, and the Court Administrator agrees that is probably overstated. He estimated that Actual Trials constitute about 45% of the total. We have estimated time consumption using both breakdowns.

The personnel present at each stage of court proceedings were calculated by the Court Administrator. Except that the number of court and probation officers often exceeded the figures suggested by the Administrator, his estimates were confirmed by two weeks observation of court sessions at various times from March through August, 1977. Because the period of observation was short and we did not keep a tally on personnel throughout, we have used the Administrator's estimates *in toto*. For all stages of court proceedings except reviews, the Administrator calculated that the following personnel would be present in the courtroom:

1 judge
1 assistant District Attorney
2 court officers
1 clerk
1 probation officer

In addition, a police witness would be present 25% of the time and a Massachusetts Defender would be present unless private counsel were employed. To determine the proportion of time that private lawyers were used, we searched the Court List for June 1977 and counted the number of court appearances made by people who had hired private counsel. Fifty-six of 259 represented defendants were represented by private lawyers. We, therefore, added .78 Massachusetts Defenders to the list of personnel present at these events. At reviews, probation officers tend to act for the state and a prosecutor does not attend. Personnel active in the courtroom are often supported by other people whose work is directly related to court proceedings. Thus, account is also taken in these calculations of the secretarial staff of the judges, prosecutors and Massachusetts Defenders, and the clerical staff of the probation and clerk's offices.

As an example of the method used to determine the time consumed by cases leading to the different dispositions in the all case and assault and battery profiles, we will present the calculations used for C. Rev/Pay (case continued for review and payment) outcomes. Such cases begin in court with an arraignment. But cases referred by the judge to mediation also are arraigned, and therefore no arraignment costs are saved by mediation cases which originate in court.* An unusual characteristic of the Dorchester district court is the rarity of pre-trial motions—to suppress evidence, to reduce bail, for a speedy trial. The court has not kept track of the number of

TABLE 52. Time Consumed by Various Stages of Court Proceedings

Stage of Court Proceeding	Average Time Taken	Minimum Time Taken	Maximum Time
	minutes	minutes	minutes
Pre-Trial Stage			
Arraignment (including bail hearing)	9.25	4.75	20.00
Trial Stage			
Actual Trial	41.25	20.00	105.00
Admission of Sufficient Facts	9.38	6.00	18.75
Request for Dismissal (whether made by Commonwealth, for want prosec., no probable cause, indicted, after review and payment)	6.25	3.75	15.00
Post-Conviction Stage			
Probation Terminated	6.75	3.75	15.00
Surrender Hearing (viol. of probation)	21.25	12.50	37.50
Review (3 month)	5.00	3.25	10.00

*Estimates were also sought, unsuccessfully, from the public defenders.

*Unlike many other jurisdictions, cases are almost never referred to mediation directly by the District Attorney. Instead the ADAs make recommendations of referral to the judge at arraignment. See chapter V.

motions since May 1976, but when they were counted there was only one motion for every 30 arraignments.* They are ignored in these calculations.

C. Rev/Pay cases, as an example, require a trial—either an actual trial or an admission of sufficient facts to permit a finding of guilty (in which case the DA describes the defendant's behavior to the judge). Using the Clerk's division between the two types of trials, the average would consume 32.3 minutes (72% at 41.25 minutes and 28% at 9.38 minutes). If one uses the Administrator's estimates, the average trial would take 23.7 minutes (45% at 41.25 minutes and 55% at 9.38 minutes). Trials resulting in C. Rev/Pay dispositions require three subsequent reviews 70% of the time (see Appendix A), or 10.5 additional minutes of court time (.7 × 15). In the district court there are approximately .22 continuances for each other court event. As a result, the post-arraignment events in a C. Rev/Pay case would produce .7 continuance, or 1.4 minutes of court time. The court consumed by each form of disposition is shown on Table 53.

TABLE 53. Post-Arraignment Court Time Consumed by Forms of Disposition

	Trial			
	Clerk	Admin.	Post-trial	Continuances
	minutes		minutes	minutes
Guilty	32.3	23.7	12.0	1.4
C. Rev/Pay	32.3	23.7	10.5	1.4
C. Disp.	32.3	23.7	3.6	.4
CWOF	32.3	23.7	10.9	1.4
Not guilty	41.25	41.25	—	.4
Dismissal	6.25	6.25	—	.4
Default	—	—	—	—
On file	—	—	—	—

Definitions of these forms of disposition are contained in Appendix A.

We now know who is present in court for each stage in the proceedings and the average amount of time which each stage consumes. The next step is to fix a cost per minute for each of those people present in the courtroom and any associated support personnel. The cost per minute for each position was determined by dividing annual salary plus the cost of fringe benefits by the estimated number of minutes worked per year. Salaries of court personnel were derived from the City of Boston and County of Suffolk, 1976-77 Program Budget. Salaries of District Attorneys and Massachusetts Defenders were based on interviews with representatives of those offices. The Court Administrator estimated the hours worked by court personnel. The hours worked by publicly-funded lawyers were fixed after an interview with an assistant District Attorney. Where more than one person performed a function (there are, for instance, 9 court officers), an average of the total number was used to determine the salary for that position. Table 54 shows the costs per minute used in the cost savings calculations.

*The infrequency of pre-trial motions may be attributable to convicted defendants' power to secure trials *de novo* in the Superior Court, to the judges' practice of setting low cash, rather than high bonded bails, and to a caseload which does not spell long trial delays.

TABLE 54. Cost per Minute for Personnel Involved in Court Proceedings

Position	Cost Per Minute
Judge	$ .362
Judicial Support	.113
District Attorney	.156
District Attorney Support	.052
Massachusetts Defender	.125
Massachusetts Defender Support	.041
Probation Officer	.198
Probation Office Support	.069
Clerk	.202
Court Officers (2)	.370

Based on one secretary per judge and 5 probation support persons per probation officer. City of Boston and County of Suffolk, 1976-77 Program Budget.

Based on .57 support persons (average for grade R6 and Range 1 — Asst. Attorney) and Mass. Defenders, per interview.

Before we can calculate the avoided costs associated with each type of court disposition, four other factors must be taken into consideration. In cases involving multiple, indigent defendants, conflicts of interest may exist between them. In such a situation, Massachusetts Defenders can only represent one of the defendants; the balance are represented by counsel appointed and paid for by the court. The cost of appointed counsel was $55,000 in 1976-77; divided by the total number of defendants arraigned (7,217), it was $7.62 per case. In agreement cases, appointed counsel would be required only at arraignment, which involves 17% of total case time. Each agreement case thus saves $6.32 (83% of $7.62) of appointed counsel costs.

The second factor is the costs associated with clerical personnel involved in the paperwork required by court proceedings. There are five different kinds of cases in the district court—criminal, civil, juvenile, children in need of support (CHINS), and small claims. Extrapolating from the management information system data available on civil cases from September 1976 to March 1977, and assuming that juvenile and CHINS cases on the average require two court appearances each, the total number of court proceedings in the district court was 28,547 in 1976. The total clerical personnel costs in 1976-77, including the cost of fringe benefits, was $440,474, or $15.43 per court proceeding. Salaries and fringes paid to the Court Administrator and his assistant totaled $26,079.61 in 1976-77. These costs have also been allocated to court events on the basis of 28,547 events per year.

Even agreement cases in Dorchester require two post-arraignment court proceedings. After the mediated agreement is reached either the parties or a staff member must report the agreement to the judge on the continuation date. At that time the judge continues the case for an additional three months, and after that period dismisses the case unless the complainant alleges that the defendant has not fulfilled his or her part of the agreement. Our survey indicates that the time consumed in the formal dismissal hearing was 6.25 minutes. The staff of the mediation project reports that in 90% of agreement cases only 30 seconds are required for a dismissal. Each agreement case, therefore, saves 5.18 minutes at the time of dismissal (5.75 minutes × .9 cases), but requires .5 minutes for the inteim report, so that the total saving is 4.68 minutes.

The fourth factor is the probation officer and probation officer support time expended in connection with the periodic reviews conducted in guilty, continued without a finding (CWOF), continued for disposition (C/Disp) and C. Rev/Pay cases. As of December 31, 1976 probation officers were supervising 908 adult cases. Probation supervision continues on the average of 9 months per case. The 29 probation officers, thus, supervise an average of 60.55 adult cases per year (908 ÷ .75 ÷ 20). Each case involving formal or informal probation consumes, then, 26.59 hours. The Chief Probation Officer estimates that guilty, CWOF and C. Rev/Pay cases require probationary supervision in roughly equal proportions, and that such supervision is exercised in C/Disp cases about one-third as frequently as in the other three types of dispositions.

We can now present the avoided costs for each type of disposition.

TABLE 55. Avoided Costs by Type of Court Disposition

	C. Rev/Pay		C/Disp		CWOF		Guilty		Not guilty	D
	C. Est.	A. Est.	C. Est.	A. Est.	C. Est.	A. Est.	C. Est.	A. Est.		
Trial										
ct. personnel	$55.88	$41.00	$55.88	$41.00	$55.88	$41.00	$55.88	$41.00	$71.36	$ 9.06
police	8.75	8.75	8.75	8.75	8.75	8.75	8.75	8.75	8.75	8.75
app. counsel	6.32	6.32	6.32	6.32	6.32	6.32	6.32	6.32	6.32	6.32
Post-trial reviews	16.49	16.49	5.65	5.65	17.11	17.11	18.84	18.84	--	(.82)
Continuances	2.43	2.43	.70	.70	2.43	2.43	2.43	2.43	.70	(.70)
Cler'l costs	58.63	58.63	29.16	29.16	58.63	58.63	58.63	58.63	18.83	(18.83)
Prob. supvn.	298.18	298.18	97.97	97.97	298.18	298.18	298.18	298.18	--	
Ct. admin.	4.16	4.16	3.12	3.12	3.12	3.12	4.23	4.23	1.04	(1.04)
Total	$450.84	$435.95	$207.55	$192.67	$450.42	$435.54	$453.26	$438.38	$107.00	$ 2.74

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