MEDIATION AND ARBITRATTION AS ALTERNATIVES TO PROSECUTION ON FELONY ARREST CASES

An Evaluation of the Brooklyn Dispute Resolution Center (First Year)

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SUMMARY

This is an evaluation of the first year's operation of the Brooklyn Dispute Resolution Center. The work of the Center resulted from joint efforts by the Institute for Mediation and Conflict Resolution (IMCR) and the Victim/Witness Assistance Project (V/WAP) of the Vera Institute of Justice.* As with any new program, the Dispute Center continues to evolve; it is now a joint endeavor of IMCR and the New York City Victim Services Agency, and the program described and analyzed in these pages has changed subtly since the 1977-78 period under review.

The Center mediated or arbitrated disputes, between persons who knew each other, which had erupted into criminal offenses for which arrests were made. Mediation was offered to complainants and defendants as a voluntary alternative to the conventional process of prosecution in Brooklyn Criminal Court.

The Center was unique in that the great majority of its cases arose from felony arrests, most commonly assault or burglary. Eligibility for mediation was determined through screening by several parties in the Criminal Court complaint room, including staff of the Vera Institute's Victim/Witnesss Assistance Project, the arresting officer, the screening prosecutor, and the complainant. If, at the conclusion of this screening process, all were agreed that mediation would be suitable, approval by the defendant and the judge was sought at arraignment. Cases diverted from Brooklyn Criminal Court to mediation were handled by the staff and volunteer mediators at the Dispute Resolution Center.

During the first year of the Center's operation, about 10 percent of all felony arrests for which there were civilian complainants, or 30 percent of felony cases involving a known prior relationship between complainant and defendant, survived the screening process for diversion to mediation.

*Appendix A provides a brief description of the entire V/WAP program and its evolution, and of the other research reports in this series.

The majority of cases diverted to the Center involved strong ties between complainant and defendant (immediate family members or lovers). Most also involved a history of interpersonal problems between the parties; in one-third, the complainants reported having called the police on a previous occasion. Many cases presented ancillary problems such as chronic unemployment or drug abuse.

Mediation differs radically from the Criminal Court process where cases are handled in an adversarial fashion and the focus is on the legal culpability of and appropriate penalty for only one of the parties to the dispute (the defendant). The prosecution process takes the form of contest or negotiation, conducted by lawyers, from which complainants and defendants are typically excluded. Mediation, in contrast, is a less formal process which explores the causes of the particular dispute from which the arrest arose, the contributory actions of both parties, and the underlying conflicts between them. It is a process of compromise that requires the disputants themselves to reach an agreement disposing of the case. Their search for a mutually acceptable disposition is guided by a mediator, who actively helps each party to see the other's viewpoint, emphasizes social norms of reciprocity and non-violence in relationships, and works to promote a resolution which, in the mediator's view, is likely to serve both parties.

This evaluation aimed to compare mediation and prosecution, as they affected the disputants' satisfaction with the process by which their cases were resolved and the recurrence of hostilities in their relationships. These comparisons were made between an experimental sample of cases referred to IMCR's Dispute Resolution Center and a control sample of cases forwarded to the court. The control sample consisted of cases that survived the complaint room screening process and were approved for mediation, but which, as a result of a random assignment process, were not diverted from the ordinary prosecution process.

The controlled research makes it clear that most cases referred to mediation would have been dismissed if they had instead been forwarded to court for prosecution; only 28 percent of the control cases resulted in misdemeanor guilty pleas or in transfer of the complaint to the grand jury for felony indictment, and in only a handful of these cases were the defendants ultimately sentenced to jail.

During the period covered by this report, the process of mediation or arbitration was actually consummated in just over half (56 percent) of the cases referred to the Center. In the remainder, one or both disputants failed to appear for scheduled mediation sessions (32 percent) or the complainant refused to go forward (12 percent). The complainants who refused mediation when their cases reached the Center often sought to pursue the cases through prosecution in the court, but did not often obtain the outcomes they desired. In contrast, the disputants who failed to appear at the Center seldom sought resolution of their disputes in any forum and typically reduced or completely ended contact with each other. (The disputants who went forward with mediation tended to be those with the strongest interpersonal ties and, perhaps, with the greatest need for resolution of their disputes.)

From the comparison of experimental cases (referred to mediation) and control cases (forwarded to the court), it was apparent that complainants whose cases were referred to mediation felt they had had greater opportunity to participate in resolution of the dispute, felt that the presiding official had been fairer, and felt that the outcome was more fair and more satisfactory to them. Similar but much less marked differences were found between defendants in the experimental and control groups. There was evidence that, during a four-month follow-up period, complainants' perceptions of defendants differed according to the process (mediation or prosecution) by which their disputes were handled. Complainants in the experimental group less often reported feeling angry at or fearful of the defendant and were more likely to believe that the defendant's behavior toward them had changed for the better.

However, there was no indication that conflicts and hostilities between disputants were less frequent in cases that had been referred to the Dispute Resolution Center than in cases that had been handled by the court: the disputants had further contact equally often, reported a similar number of new problems with each other, and reported the same number of calls upon police to intervene again. In addition, the experimental (mediation) and control (court) cases did not differ at all in the frequency with which one party was subsequently arrested on the complaint of the other.

In this report, the view is taken that mediation's comparative lack of effect on subsequent hostilities and criminal complaints between disputants must be considered in context--reports of incidents of renewed interpersonal hostility were low during the four-month follow-up. Regardless of the process by which the initial dispute was resolved, only one disputant in five reported having any problem with the other party to the original case; calls to the police occurred during the follow-up period in only 12 percent of the cases; and new arrests of disputants for crimes against each other occurred in only four percent of the cases.

Although the recurrence of serious hostile incidents was generally low in the cases studied, it was possible to identify a group of cases in which the probability was fairly high. Cases characterized by strong interpersonal ties and in which police had been summoned on earlier occasions were twice as likely as other cases to result in subsequent problems, calls to police, and arrests. The report argues that these disputants may be more emotionally and financially dependent on each other, and may therefore find it more difficult to restructure, reduce, or eliminate contact with each other.

The Dispute Resolution Center was found to have reduced the system's use of pretrial detention resources and its use of arresting officers' time for court appearances. The difficult task of placing dollar values on these savings and on the benefits reported by disputants is not attempted, but the report suggests various adjustments that should improve the cost/benefit ratio. For example, if cases selected for mediation were "pre-arraigned"--that is, if the arresting officers in these cases were excused from attending arraignment and released to regular duty following completion of the necessary paperwork--the Center's operation could result in substantial resource savings to the criminal justice system.

The report attempts to convey, in some detail, results of the first controlled research on mediation as an alternative to prosecution. The purpose is not only to evaluate the Brooklyn Dispute Resolution Center, but also, as enthusiasm for the mediation alternative gains momentum nationally, to inform the development of sound policy and effective programs.

I. INTRODUCTION

"Minimize the big trouble;
nullify the medium trouble."

Chinese-American Mediator, 1971[1]

The Context: Growing Interest in Mediation and Arbitration As Alternatives to Criminal Prosecution

Mediation and arbitration as alternatives to adjudication have roots deep in American history. Arbitration has been recognized by courts, since 1854, when the U.S. Supreme Court upheld an arbitration award that disposed of a debt-collecting dispute. Since then, it has become widely accepted, particularly as a method for resolving labor-management conflicts. In arbitration, disputing parties voluntarily agree to submit their dispute to a neutral third party who is authorized to make a determination which is binding and enforceable in the courts.

Mediation differs from arbitration in that the impartial third party is not empowered to impose a settlement. Instead, he attempts to guide the disputants through a bargaining process toward their own agreement. The use of mediation in this country also can be traced back to the mid-1800's when the first generation of Chinese immigrants came to California and faced racial bias in the courts. The strong anti-Chinese movement at the time led them to form their own dispute settlement program, the Chinese Consolidated Benevolent Association, which they modeled after the pao-chi in China. The Association gained popularity and spread throughout the country; today, it covers 22 cities.

In 1920, to handle problems specific to the Jewish community, a lawyer and a rabbi joined forces to form the Jewish Conciliation Board in New York City. While the Board was the first of its kind in the United States, the concepts behind it were not novel for the Jewish community: the Beth Din, or rabbinical court, has been an essential part

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[1] Doo (1973), p.627

of Jewish heritage since Biblical times and continues in Israel today where certain matters, such as divorce, are within its sole jurisdiction.

In recent years, interest has grown in the wider application of these traditional alternatives, particularly as criminal courts in the United States have become overcrowded with cases, a large number of which arise from interpersonal disputes. .Sander (1976) argued that police and courts have been expected to replace the church, family, and other traditional resources as mechanisms for resolving disputes.

But criminal courts are ill-equipped to handle this flood of interpersonal disputes: the result appears to be that the quality of justice has suffered. Certainly, many victims and defendants are left unsatisfied. Yet, when personal conflicts flare up and require outside intervention, the police may be called upon to make an arrest which begins another prosecution in court. Judges, prosecutors, and defense attorneys understandably complain of seeing the same parties brought before them again and again: from experience, they feel that the complainant in such a case (often the defendant last time through) is likely to undergo a change of mind, is likely to refuse to testify against a defendant with whom a relationship continues, or is likely to fail to show up once tempers have cooled. Even when a complainant remains eager to prosecute a defendant for an incident that arose from their interpersonal dispute, it may be far from clear what penalty should follow upon conviction of the defendant; imprisonment may often be the only penal solution to recurring eruptions of anger between the parties, but imprisonment often seems to be, from the broader perspective of the State, an unnecessary and inappropriately severe remedy in such cases.

Consequently, busy legal officials may not give the disputants in these cases the attention necessary to prevent escalation of hostilities. Cases involving a prior relationship between victim and offender are far more frequently dismissed than stranger-to-stranger cases (Vera Institute of Justice, 1977), apparently because of real or expected lack of cooperation from the complainants, but also, at least in some cases, because prosecutors simply do not feel it appropriate to prosecute such matters in criminal court (Cannavale and Falcon, 1976). Williams (1976), who also found that cases involving a prior victim-offender relationship were frequently dismissed, concluded:

> It would appear that when the victim and defendant have a close social relationship, dispute resolution may be occurring outside the courtroom. At best, one can say that such family cases, and perhaps cases between close friends, are best settled out of the criminal setting. At worst, a pattern of violence between a husband and wife may continue with the beaten spouse unable or unwilling to leave the family setting, and hence, unwilling to continue to testify in a criminal case.

When court time and resources are consumed by a large volume of disputes arising from prior relationships, the effect may be poorer handling of stranger-to-stranger cases. A study by the Vera Institute of Justice (1977) pointed out that overcrowding of the courts with cases arising from interpersonal disputes has contributed to delay in the adjudication of serious stranger-to-stranger crimes and, in many instances, has "weakened the ability of the criminal justice system to deal quickly and decisively with the 'real felons', who may be getting lost in the shuffle."

Interest in mediation as an alternative to prosecution has intensified in recent years in part because of concern about the ability of criminal courts to deal appropriately with cases arising from interpersonal disputes and concern about the possibilty that the large numbers of such cases are preventing the courts from dealing appropriately with serious stranger-to-stranger crimes. These concerns helped foster a climate favorable to experiments with mediation and, over this past decade, social scientists proposed several models for decentralized, community dispute resolution centers as alternatives to centralized and bureaucratized criminal courts.

Danzig (1973) proposed one of the initial models for a community dispute resolution center, or "moot". Interpersonal criminal and civil matters would be referred to the moot by social service agencies, police, courts, or individuals. Agreements reached through mediation would be upheld voluntarily by the disputants; that is, agreements would not be enforceable by courts. Danzig felt that community pressure brought to bear upon the disputants would be sufficient to uphold the agreement.[2] He stressed

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[2]However, Felsteiner (1974) maintained that community moots are not viable in a mobile, atomistic society such as ours. The threat of group ostracism might effectively induce individuals to comply with mediation agreements in smaller simpler societies, he conceded, but not in complex societies lacking stable communities.

the importance of mediation as a therapeutic process, citing studies which suggest that complainants often wanted police officers to act as mediators rather than to make an arrest.

Fisher's (1975) concept of community courts was drawn from the Beth Din in Israel. A community court, in a relatively small area such as an apartment complex, would be created by the legislature and would have exclusive jurisdiction over certain matters. Mediators would be elected from the community. Decisions might involve restitution, for example, or punitive measures such as eviction or deprivation of the privilege of using community property. In contrast to Danzig, Fisher would have binding verdicts enforceable in the conventional courts.

Sander (1976) recommended the formation of dispute resolution centers, operated by the government, which would be capable of mediating, arbitrating, or simply fact-finding. If necessary, cases would be referred from the centers to the courts for adjudication. All decisions would be open for court appeal. Sander's model represented a compromise position between the non-coercive moots proposed by Danzig and the highly coercive community courts espoused by Fisher.

In recent years, interest in putting such models to a practical test has grown. Since the advent of the Philadelphia 4A Program, established by the American Arbitration Association in 1971, over 30 cities have set up community mediation programs to mediate and/or arbitrate civil and criminal matters arising from interpersonal disputes. Under the joint sponsorship of the American Bar Association, the Judicial Conference of the United States, and the Conference of Chief Justices, a National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice (the Pound Conference) was held in 1976. A Task Force appointed by the conference stressed, in its subsequent report, the need for alternative forums for processing disputes, including mediation and arbitration. Shortly thereafter, the Department of Justice launched an experimental program of Neighborhood Justice Centers in three communities.

All of the programs that have emerged so far seem to function with the same basic object-- trying to make the process of dispute resolution more responsive to the needs of disputants and to the needs of the community. But

several frameworks have been offered for distinguishing the various program types. McGillis and Mullen (1977) suggested that mediation and arbitration programs might usefully be differentiated by the following variables: (a) nature of the community, (b) types of sponsoring agencies, (c) types of cases accepted, (d) referral sources, (e) intake procedures, (f) types of dispute resolution techniques used, (g) composition of staff drawn upon for hearings, (h) follow-up procedures, and (i) program size and cost. Sarat (1976) has suggested, more simply, four dimensions distinguishing between the various third-party dispute resolution processes; these seem to delineate particularly well the differences between the mediation/arbitration techniques used in community mediation programs and the conventional techniques by which similar disputes are handled in the courts:

(a) Formality

Courts employ routinized patterns of processing disputes and rely heavily on various rituals and symbols--for example, the requirement to rise upon the judge's entry, the raised bench, the judge's robes, and so forth. Mediation, on the other hand tends to be a less structured and less ritualized process.

Further, in criminal courts the real parties in a case assume structured roles, as complainant and defendant; one party is the aggrieved, the other the accused; one will win, the other will lose. In mediation, role distinctions are blurred; both parties are viewed as having been involved in an event for which they share responsibility; successful resolution may require both parties to make concessions.

(b) Degree of Openness

Courts are open forums at which the public is invited to hear whatever the disputants say openly about whatever troubles exist between them. Mediation is private, usually involving only the disputants and the mediator (or a panel of mediators); it does not require disputants to resolve their problems before an audience of strangers.

(c) Scope of Inquiry

Courts are bound by strict rules of evidence and confine the focus of their proceedings to examination of fact or of competing interpretations of rights and rules. In a mediation session, both parties' views may be solicited not only on the facts of the particular incident that brought them to the session, but also on the events that led up to the incident and the underlying causes of hostility; the incident is viewed within an historical context involving the dynamics of an interpersonal relationship.

(d) Decisional Style

Courts have been described as a "zero-sum game" (Aubert, 1963) in which the players (disputants) are strict adversaries and in which the outcome is an "all or nothing" decision. That is, a determination is made whether or not the defendant is legally culpable of violating a law or social norm, and, if so, what sanctions should be applied against him. Mediation, in contrast, tends to be a process of compromise which encourages the disputants to strike a balance between conflicting rights and interests.

To these dimensions proposed by Sarat might be added one more that is key to the present evaluation. That is:

(e) Participation of Disputants

In courts, cases are handled by attorneys. Criminal cases are often decided by negotiation among judge, prosecutor, and defense attorney, from which the disputants are excluded. The defendant is at least represented in these conferences by his attorney; the complainant, however, is not. Negotiations occurring out of the sight or the earshot of disputants may appear conspiratorial, and may alienate them. Since the vast majority of cases in the court process are resolved by informal negotiation between attorneys, not through trial, disputants seldom get a chance to tell their story directly to the judge.

> When complainants' or defendants' stories are solicited by prosecutors or defense attorneys in private, the conversations are likely to be terse and hurried. Complainants in the court process frequently are not consulted at all. In mediation sessions, however, both disputants are actively involved, under the guidance of a neutral third party, working through their differences in an attempt to arrive at a mutually acceptable resolution. Resolution of the dispute remains under their own control, and depends upon their active participation.

Although mediation as an alternative to criminal prosecution is a relatively new concept, several evaluation studies have already been concluded. They have produced encouraging data about disputants' satisfaction with mediation, about the extent to which disputants perceive mediation as alleviating tensions in their relationships, and about the impact of mediation on caseloads and costs of the criminal justice system (e.g., Anno & Hoff, 1975; Conner & Surette, 1977; Moriarty & Norris, 1977; Bush, 1977).

Three additional studies now underway promise to yield much-needed information on the long-term success of mediation in reducing interpersonal hostilities. These include an evaluation of the Cincinnati Private Complaint Screening Program, by the Cincinnati Institute of Justice; an evaluation of the Department of Justice's Neighborhood Justice Centers, by the Institute for Social Analysis; and an evaluation of the Boston Urban Court Project, by the University of Southern California's Social Science Research Institute. (The last study is also examining participants' interaction in mediation sessions).

The Brooklyn Dispute Resolution Center

The Brooklyn Dispute Resolution Center was set up in July, 1977 by the Institute for Mediation and Conflict Resolution (IMCR) in conjunction with the Victim/Witness Assistance Project (V/WAP) of the Vera Institute of Justice. IMCR had been established, in 1970, as a New York not-for-profit corporation designed to test whether dispute resolution techniques from the labor/management field could be applied to the resolution of community

conflicts. The three basic purposes of IMCR were to mediate community conflicts, to train others in negotiating skills, and to design and develop dispute settlement systems. Since its founding, IMCR has been active in training hearing officers for community mediation programs, establishing grievance procedures in correctional institutions, and mediating conflicts between community groups. In 1975, IMCR established the first program in New York City to mediate cases involving criminal offenses.

V/WAP was launched in Brooklyn in July, 1975 by the Vera Institute of Justice. Its principal aim was to reduce the high degree of witness noncooperation in Brooklyn Criminal Court. Toward this end, the project introduced numerous innovations, including victim services and improved witness notification procedures. Although victims and witnesses used and reported satisfaction with these services, and although the notification systems made the court process more efficient and less burdensome, no significant improvement was realized in the low rate of attendance by witnesses at scheduled hearings (Vera Institute, 1976).[3]

As the V/WAP project analyzed the reasons for its inability to increase witness cooperation, it took note of the Vera Institute's 1977 study, discussed earlier, which found that witness noncooperation ran very high in cases where complainants had prior relationships with defendants, that prior relationship cases were found in the criminal process far more frequently than had previously been believed (even among felony cases), and that these cases often were ultimately dismissed. There seemed little that could be done by the existing V/WAP project services, or its notification systems, to improve the rate of cooperation among these complainants, who seemed not to want what the prosecution process had to offer.

IMCR's success in setting up its mediation project in Manhattan encouraged V/WAP staff to explore the possibility of bringing mediation into the felony complaint room in Brooklyn. After a series of discussions between Vera and

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[3]The Victim/Witness Assistance Project was a comprehensive program, addressed to the needs of victims and witnesses in the Brooklyn Criminal Court, administered by the Vera Institute during the period covered by this research and subsequently absorbed by New York City's Victim Services Agency. Other elements of V/WAP's program are analyzed in other reports. Appendix A provides a brief description of the entire V/WAP program and its evolution, and of the other research reports in this series.

IMCR staff, a jointly-administered mediation program was established in Brooklyn with the cooperation of the Kings County District Attorney's Office, the Legal Aid Society, and the New York City Courts. All cases considered for mediation in Brooklyn came from custodial arrests. From the beginning, it was unique among mediation programs in that felonies comprised the great majority of the caseload.

Cases were screened in the District Attorney's complaint room by a member of V/WAP's staff. If a case met the standards for mediation (see Appendix D for listing of eligibility criteria), a member of V/WAP's staff would attempt to contact the complaining witness to see if he would be interested in mediation. If the complainant agreed or if the staff member was unable to contact the complainant, V/WAP presented the case to the Assistant District Attorney (ADA) on duty in the Early Case Assessment Bureau (ECAB). If the prosecutor screening cases for ECAB approved, the case was tentatively scheduled for a mediation hearing to be held within two weeks at IMCR's Dispute Resolution Center. The court's approval was sought at arraignment--provided that the defendant agreed to mediation and was not discovered to have a serious prior record. If approved by the court, the case was either adjourned in contemplation of dismissal[4] (if the complainant had signed or was available in court to sign the mediation form), or (if the complainant was not present to sign the form) adjourned for three weeks pending the outcome of mediation.

The mediation sessions were held in an office building a few blocks from the courthouse. Mediators were community members who had been trained by IMCR in a 50-hour program which included role playing, lectures, and group discussion. All agreements reached in mediation sessions were written up as arbitration awards, enforceable in the Civil Term of Supreme Court. When a case was mediated, the charges were dismissed on motion made by the prosecutor's office. When a case was not mediated, V/WAP notified the prosecutor's office and recommended either prosecution or dismissal of the original criminal proceeding. (V/WAP recommended restoring such cases to the calendar, if the defendant failed twice to appear at the Center; V/WAP recommended dismissal.) if it was the complainant or both parties who failed to show up).

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[4]Cases adjourned in contemplation of dismissal are routinely dismissed after six months if the defendant has not been rearrested by that time.

The sections which follow in this report discuss findings of Vera's first-year evaluation of the program. The evaluation is a comparative one, which contrasts the effects of mediation and the effects of prosecution as methods for resolving cases that arise from incidents occurring between people who know one another. The central questions addressed by the study are whether mediation is perceived more positively by disputants and whether it yields more lasting solutions to interpersonal problems.

The discussion begins, in the second section, with a presentation of Vera's research design, the focal point of which was random assignment of disputants' cases either to mediation or to court. The third section describes the screening process through which eligible cases were identified for diversion to IMCR's Dispute Resolution Center; it examines the number of cases eliminated from consideration at each of three screening points. The fourth section presents a profile of cases approved for mediation, including an analysis of complainants' desires and expectations of the criminal justice system. The fifth section describes the dynamics of observed mediation sessions. The sixth section compares disputants' satisfaction, with process and with outcome, in mediation and in court; it also compares disputants' perceptions of their relationships during the four months following disposition of their cases by mediation or by the court. The seventh section looks at the cost implications of the program and suggests ways by which resource savings from the program's operation might be increased. The last section is devoted to a few concluding observations.

II. EVALUATION DESIGN

This is the first report of an evaluation using controlled research to assess the relative merits of mediation and prosecution for handling criminal offenses that arise from interpersonal disputes.[5] Yet, since most of the proliferating community mediation programs are styled as alternatives to prosecution, the relative merits of the two processes are of obvious importance to sound program development and to criminal justice policy. It is reasonable to ask for evidence that mediation is an improvement and, if so, in what ways for which cases. This evaluation was designed to respond to such questions.

Research Objectives

The purpose of the evaluation was to examine the efficacy of mediation as an alternative to criminal prosecution in serious (i.e., felony class) cases involving a victim/offender relationship. The evaluation sought to address four issues related to program impact: types of cases diverted to mediation; differences in perceptions of the dispute settlement process between disputants whose cases were referred to mediation and those whose cases were forwarded to the criminal court; differences in the incidence of renewed hostilities after conclusion of the mediation or court process; and benefits (financial or resource savings) to the criminal justice system resulting from the diversion of these cases to mediation.

1. Types of Cases Diverted to Mediation

The case screening process in the complaint room was scrutinized, to assess the types of cases

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[5] The only other study examining whether disputants perceive mediation as more equitable than court, or whether mediation has a greater impact on the recurrence of hostilities, is the Institute for Social Analysis evaluation of the Department of Justice's Neighborhood Justice Centers. The results of this study will be limited, however, by the Institute's inability to randomize assignment of disputants to treatment conditions (i.e. mediation or court).

accepted and rejected for mediation by V/WAP staff and by the screening prosecutor, and the reasons for these screening decisions. Cases rejected by the prosecutor were tracked to find out how they fared in court; for example, to what extent did the court simply dismiss cases that the screening prosecutor rejected because he assessed them as too serious to send to mediation? Cases that survived screening, for acceptance into the program, were analyzed to determine the nature of disputants' relationships, the disputants' demographic characteristics, the nature of the charges, and the complainants' goals.

2. Disputants' Perceptions of the Dispute Settlement Process

It was expected that use of the Dispute Resolution Center would increase the satisfaction of parties to criminal cases by giving them a larger role in the resolution (or disposition) of their cases. Disputants' satisfaction can be thought of as encompassing two general aspects: satisfaction with the outcome of the dispositional process, and satisfaction with the process itself. Mediation seeks case resolutions tailored to the needs and interests of disputants (which, in some cases are of a kind not easily met through the court), and offers a process that differs from the court's principally by its active involvement of complainant and defendant.

It was believed that defendants would be more satisfied with case outcomes in mediation principally because there was no risk of penal sanction. However, it was believed that the Dispute Resolution Center's success in increasing complainants' satisfaction with case outcomes was likely to depend upon the frequency with which the complainants were in fact seeking non-punitive outcomes of the kind that mediation can provide (such as restitution, or agreement by the defendant to stay away from the complainant's residence).

It was therefore necessary not only to assess disputants' satisfaction with case outcome, but also to examine their desires in that regard when they were entering the court system. Similarly, in order to understand any difference mediation made in disputants' process satisfaction, it was necessary for the evaluation to try to discover whether disputants in fact wanted to be involved in decision-making about their cases and whether they in fact felt they had been made participants in the process.

3. Frequency of Renewed Hostilities After Case Settlement

Unlike the court, which deals with single criminal complaints, the Dispute Resolution Center attempted to take the etiology of problems into account. This approach seems to assume that resolutions which recognize causes will be more enduring. (In addition, the Center held out to disputants whose cases it handled the option of renewing the mediation process if one of the parties reported a breach of the agreement.) To determine whether mediation produced longer-lasting resolutions, the evaluation staff aimed to discover, from official records and from self-reports by disputants, the incidence of renewed interpersonal problems, calls to the police, and arrests arising from the relationships between disputants, for four months after disposition of the sampled cases in court or at the Center.

4. Benefits to the Criminal Justice System

According to the procedures worked out between V/WAP and the Center on the one hand, and the criminal court agencies on the other, cases selected for diversion to mediation were to proceed to arraignment, where they were to be adjourned to permit mediation, and ultimately were to be dismissed (or, if the attempt to mediate failed, returned to the court for disposition). It was expected that fewer court hearings would be necessary for cases diverted to mediation and, therefore, that these cases would consume less court resources and would require fewer court appearances by arresting officers. It was also expected that the costs of pretrial detention of defendants would be avoided

in cases diverted to mediation. Of course, the extent of any such savings would depend upon the seriousness of cases sent to mediation; if most cases were routine matters, normally disposed at arraignment, savings would be minimal. And any savings would be reduced in cases where the Center was unable successfully to mediate before the adjourned dates set by the court. The evaluation design, therefore, permitted a comparison between the criminal justice resources consumed by cases diverted to mediation and cases approved for mediation but not diverted.

Research Method

To compare the effectiveness of mediation and prosecution in handling cases involving a complainant/defendant relationship, the evaluation employed a randomized experimental design. Because the vast majority of cases handled by the Center were felony arrests, the sample was limited to felony cases only. After a case in the complaint room was approved for mediation by V/WAP, by the complainant (if present) and by the screening prosecutor, a member of Vera's research staff randomly assigned it either to the experimental (mediation) or to the control (court) group. (Cases were excluded from the experimental group even if originally assigned to mediation, when the defendant or the judge refused to agree to mediation at the time that the case reached arraignment, but this loss was under four percent.)

Most questions posed by the evaluation were answered by comparisons between experimental (n=259) and control (n=206) cases. These 465 cases arraigned between September 1 and December 23, 1977 were the principal source of data for the study. Attempts were made to interview complainants at three stages: in the complaint room (or by phone if the complainant was not present at that point in the process); after the case had been mediated or had reached disposition in court; and four months later. Defendants were interviewed once, four months after conclusion of the mediation or court process. The interviews probed disputants' needs and expectations, their perceptions of the process by which their cases were handled, their satisfaction with the outcomes, and the frequency of renewed hostilities after conclusion of the mediation or court process.

Data were collected from court records and from V/WAP's records for both experimental and control cases, and data were collected from the Dispute Resolution Center's files for cases in the experimental group. These data were used for assessment of the success of the dispositional process in each case, and provided some basis for a cost-benefit analysis. Finally,.at the time of the four-month follow-up interview, the files of V/WAP and of the New York City Criminal Justice Agency were searched for new arrests of either disputant.[6]

As it turned out, many of the sampled cases had little exposure to either "treatment". On the one hand, 44 percent of the cases assigned to the experimental group were not actually mediated: in 12 percent, complainants rejected the mediation alternative when they appeared at the Center for the scheduled sessions; in the remaining 32 percent, the complainant, the defendant, or both parties failed to appear for mediation (see Table B-1 in Appendix B for details). On the other hand, 58 percent of the cases assigned to the control group reached disposition in the criminal court process without the complainant ever being present for a scheduled court date. (In most of these cases, though, the complainants had not been asked to come to court--they were excused, or had been placed on alert and were not summoned--because the court process did not in fact require their presence; there is an important way in which these complainants can be viewed as having experienced the treatment assigned to their cases, even though they did not play a part in it. However, in 17 percent of the control group cases, the complainants' presence was required and, as they failed to appear, the cases went to disposition without them.)

Obviously, one would prefer to compare the cases actually mediated with the court cases in which complainants were actually involved. However, to do so would be to

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[6]Information about subsequent arrests of complainants in the sampled cases may not be as accurate as information about subsequent arrests of the defendants. This is because all defendants have had a unique numerical identifier (NYSIID number) assigned to them; the number identifies their fingerprints on file with the State Division of Criminal Justice Services. The lack of such unique identifiers for complainants in the sampled cases--and the evaluation staff's reliance on name alone, when searching V/WAP's and CJA's files for subsequent arrests of complainants--makes it likely that complainants' arrests during the follow-up period were slightly under-reported.

abandon the advantages of the random assignment procedures from which the research design gets its strength. In subsequent chapters, comparisons between mediation and court process are made by comparing the entire experimental and entire control groups. There were several reasons to stick with this design, despite the high rates of non-participation in both groups:

(1) Because the assignment of cases to one treatment or the other was truly random, comparisons that include all cases in each group are guaranteed comparability of the groups before any of the cases received the treatment to which they were assigned; this, in turn, assures that any differences observed between the groups after the conclusion of the court or mediation process are the results of the process and not the results of initial differences between groups of cases being compared.

(2) There is no subgroup of control cases directly comparable to the 56 percent of experimental cases that were actually mediated; although it is clear that a case is not mediated when one or both parties fail to appear or to go forward, the court process can be concluded and cases assigned to it can reach disposition without even the presence of the complainant. (For example, complainants in property cases are often excused from attending all court dates once they have signed, in the complaint room, an affidavit stating that they did not give the defendant permission to take the property.) In short, because the two processes differ precisely in the extent to which complainants' participation is required, the experimental and control groups cannot be fairly compared if cases in either or both are excluded when the complainant does not participate.

(3) In the context of this research, it is reasonable to take a broad view of both treatments--court process and mediation. Viewed broadly, the treatments include the disputants' initial contact with the system and the descriptions offered to them of the processes by which their cases are to be resolved, as well as the subsequent workings and burdens of

those processes. The relevant question to policy-makers is, "What are the net effects of diverting a certain segment of cases to the Dispute Resolution Center?" To answer this question, the treatment variables can be seen as "referred to mediation" and "referred to court." It would be unreasonable to insist that all disputants to whom the initial offers are made avail themselves of them--indeed, the disputants themselves may know best whether or not it makes sense to follow through with the process offered to them. Appendix B details and discusses the reasons why certain cases assigned to mediation were not mediated, and how disputants who did not go through with mediation, despite assignment of their case to that process, had less involved relationships and less need or desire to maintain them; this suggests that mediation was used by those who perceived themselves to be most in need of it.

However, it must be acknowledged that adherence to the experimental design stacks the deck against the mediation alternative. Because a substantial number of both groups had little or no exposure to the process to which their cases were assigned, differential effects of the two processes must be large in order to be detected by the comparing of all cases in one group against all cases in the other. Also, it is hard to avoid a suspicion that the evaluation shows mediation at a disadvantage by assigning to the experimental group complainants who refused to go forward with mediation when they arrived at the Center and who would have been excluded from the sample if they had been present in the complaint room to voice this antipathy to the mediation alternative.

As discussed above, the research design called for interviewing all complainants and all defendants, in both the experimental and the control cases. Completion rates for the initial interviews and for interviews immediately following case adjudication were relatively high (68 percent and 61 percent, respectively). But, despite an elaborate program of phone calls, letters and, in some cases, neighborhood visits, only 46 percent of the complainants and 29 percent of the defendants could be contacted and given the interview scheduled for four months after case disposition.

(Defendant follow-up interviews were attempted only in cases for which a complainant follow-up interview had been obtained--see Table C-1 in Appendix C for details.) Thus, even though the random assignment procedure ensured that there were no significant differences between the characteristics of the experimental cases and the control cases (see Table C-2 in Appendix C), bias might exist in the interview data. That is, the low rate of completion for the four-month interviews raises a possibility that pre-existing differences might exist between the subgroups of experimentals and controls who responded. And such bias, if present, would be problematic because several measures of perception about the dispute-resolution processes and several measurements of recidivism are based on data from these follow-up interviews.

Fortunately, an examination of key case characteristics, including the nature of the disputants' prior relationship and the severity and nature of the charges, show no differences between the experimentals and controls who responded to the follow-up interview and those who did not. An exception to this is that interviews were more likely, in both groups, with disputants who attended mediation or court sessions. But, if this would make a difference to comparisons between experimentals and controls, we cannot think what difference it would make. It is reassuring, when weighing the data drawn from the four-month follow-up interviews, to note that recidivism data drawn from these interviews parallel the recidivism data drawn from official records for all disputants.

Several secondary samples were drawn for this study, to supplement data generated by the randomly-assigned sample:

1. <u>All cases commenced by felony arrests during intake period</u>

   Limited data were collected on these cases, to facilitate analysis of the screening process, including: (a) the proportion of felony cases eligible for mediation, (b) the percentage of eligible cases that survived the screening process, and (c) the types of cases that were approved for mediation.

2. Cases rejected for mediation by the screening prosecutor

Cases V/WAP staff deemed eligible for mediation, in which the complainant either agreed to mediation or was unavailable for consultation at the time, but which the prosecutor refused to send to mediation, were tracked through the court process to disposition. The purpose was to determine whether the prosecutor's view that such cases were too serious to be diverted was reflected in the court outcome.

3. Observations of a sample of mediation sessions

Through a special agreement with IMCR, Dr. June Starr, Associate Professor of Anthropology of the State University of New York at Stony Brook, was allowed to observe six mediation sessions at the Brooklyn Dispute Resolution Center on October 16, 23, and 30, 1978. Her observations form the basis of the qualitative analysis presented in Chapter 5.

Greater detail on the methodology of this evaluation is presented in Appendix C.

III. MEDIATION INTAKE

This section describes the intake process for cases, originating in felony arrests, that were diverted to mediation at the Brooklyn Dispute Resolution Center. It shows how, although the universe of cases involving prior relationship between complainant and defendant was large, many cases were eliminated at each stage of the screening process in the Criminal Court complaint room. Still, a substantial number of cases--10 percent of all felonies involving civilian complainants--survived the screening.

The intake process for the Dispute Resolution Center began when an arresting officer arrived in the complaint room. He was briefly interviewed by V/WAP staff, to gather information necessary to contact him and the complainant for court dates and to determine whether the case met V/WAP's basic eligibility criteria for mediation. In cases determined eligible, V/WAP staff approached the complainant (if the complainant was present at the complaint room stage) to determine whether mediation would be an acceptable method for handling the case.[7] V/WAP staff then accompanied the arresting officer to the District Attorney's Early Case Assessment Bureau, where the screening prosecutor on duty would evaluate the case as presented by the officer and would consider the merits of the mediation offer presented by V/WAP. If the case was approved for mediation by the screening prosecutor, a V/WAP representative in the ar-

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[7]During the period under review, the majority of complainants were not brought to the complaint room by arresting officers. Ordinarily, therefore, approval of mediation was sought from all other necessary parties, the complainant was notified to come to the Dispute Resolution Center, and the complainant's approval was sought at that time. It was not until after the close of the period under review in this evaluation that the complaint room for Brooklyn Criminal Court was put on an around-the-clock schedule, that it was moved to the 84th Precinct (adjacent to the borough's central booking facility), and that complainants were as a matter of course brought to the complaint room.

raignment court would solicit the consent of the defendant and judge.

Unexpectedly, some eligible cases were screened out, even before V/WAP applied the eligibility criteria to them, when the arresting officer was asked by V/WAP staff whether there was a prior relationship between complainant and defendant. The arresting officers responded affirmatively in only one-third of the cases; yet, in an earlier V/WAP study, complainants reported a prior relationship with the defendant in close to half of all felony arrests. (This finding was consistent with the 1977 Vera Institute study in which 47 percent of arrests for felonies involving victims were prior relationship cases.) Even when the officer did report a relationship between the parties, his report of the nature of the relationship did not always agree with the complainant's. Overall, the officer's information matched the complainant's report of the relationship in 77 percent of the cases approved for mediation. When the officer's account of the relationship differed from the complainant's, the officer described a relationship more casual than the one reported by the complainant twice as often as he described a relationship closer than the one reported by the complainant. Also, arresting officers did not always have accurate information about the complainant's injuries; their reports of injuries did not match information obtained from the victim in 11 percent of all cases approved for mediation. As with officers' reports of prior relationships, when the officer's account of the injuries differed from the complainant's, the officer was twice as likely to report more serious injuries than less serious injuries.

The arresting officers' tendency to under-report prior relationships between complainant and defendant and to over-report complainants' injuries may often have been the result of simple error: without indications to the contrary, officers may frequently have assumed that no association existed between complainant and defendant, when, in fact one did exist. Similarly, officers may have assumed that complainants who were taken to the hospital were hospitalized, when they actually received emergency room treatment and were released.

However, there were occasions during the evaluation in which it appeared that officers purposely misrepresented information, to keep cases from being diverted to mediation.

For example, sometimes an officer reported to V/WAP staff that there was no prior relationship between the parties when his own arrest report showed the complainant and defendant residing at the same address, and, in at least one instance, bearing the same surname as well. Moreover, it was not uncommon for officers to attempt to discourage complainants from agreeing to mediation when it was offered.

From their experience of working in the complaint room, evaluation staff identified two quite different reasons why arresting officers might misrepresent in this way. At least some officers seemed worried that cases diverted to mediation would be "pre-arraigned"--that is, the officer would be excused from appearing at arraignment and would be returned to normal assignment hours earlier than he would be if the case went through to court in the normal manner. (In fact, cases assigned to mediation were not pre-arraigned during the period covered by this evaluation.) Some of the officers holding this view seemed to fear losing the overtime wages they normally earn when court process extends beyond the end of the tour of duty on which an arrest is made. In addition, some officers seemed to view diversion to mediation with dismay, interpreting it as a signal from the prosecution that the arrest was not worthy of, or serious enough for, prosecution. Whatever the reason for the under-reporting of prior relationships and the over-reporting of serious injuries, quite a few cases were inappropriately characterized by the police and, because complainants were not often present in the complaint room to correct the record, these cases never were considered for mediation.

The first formal step in screening of cases was done by V/WAP staff. Originally, all cases with a known prior relationship between complainant and defendant were to be presented by V/WAP to the screening prosecutor for approval. However, as time passed, it became apparent that the prosecutor was likely to reject particular types of cases. In response, guidelines were derived from the decision-making patterns of the screening prosecutors, and were used by V/WAP staff to exclude categorically certain types of prior relationship cases; these guidelines excluded cases in which complainants were hospitalized as a result of the crimes, cases in which guns or bullets had been recovered, and cases in which the complainants were children or were otherwise incapable of representing their interests. (A copy of these guidelines is found in Appendix D.)

The data reveal, however, that V/WAP's screening extended beyond application of its formal guidelines. Informal, subjective criteria developed among V/WAP's staff and, as a result, one in every four cases involving a prior relationship between complainant and defendant was rejected for reasons not contained in the guidelines. For example, prior relationship burglaries and larcenies were more likely to be presented to the screening prosecutor than prior relationship assaults and robberies; these differences were too large to be accounted for by V/WAP's formal guidelines, which excluded a number of first degree assaults and attempted murders, or by the injuries suffered by complainants in the assault cases. Overall, 56 percent of all cases with known prior relationships between complainant and defendant were presented by V/WAP to the screening prosecutor for approval.

Next, screening prosecutors, in the exercise of their own discretion, approved for mediation 58 percent of the cases presented to them by V/WAP staff; the result of these two screening steps was that only 31 percent of cases involving a know prior relationship between complainant and defendant were accepted for mediation at the complaint room stage.

Table 3.1 suggests that both V/WAP staff and screening prosecutors were more reluctant to approve mediation when cases were of kinds that the court was likely to view as serious. For example, among A and B felonies,[8] only 41 percent were accepted for mediation by V/WAP staff, and only 11 percent of these were approved by the screening prosecutor--the result was that only 4 percent of prior relationship cases carrying the most serious charges were eligible for referral to the Dispute Resolution Center. This can be contrasted with the survival rate of prior relationship E felonies--46 percent.

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8. Felonies are crimes for which the New York State Penal Law authorizes imprisonment for longer than one year. For the purpose of specifying maximum and minimum sentences, the Penal Law groups all felonies into five general categories ranging from A (the most serious, carrying maximum terms up to life) to E (the least serious, carrying a maximum term of four years). For most felonies, several degrees of seriousness are specified in the Penal Law and each is assigned one of these labels. Thus, rape in the first degree is a B felony, and rape in the second degree is a D felony. This classification scheme can be seen to depend on factors (such as use of a weapon, harm or injury to victims, value of property stolen, etc.) viewed by the legislature as increasing the seriousness of the offense.

TABLE 3.1
SCREENING CRITERIA REVEALED BY DECISIONS OF V/WAP STAFF AND PROSECUTORS, WHEN DETERMINING MEDIATION ELIGIBILITY FOR CASES INVOLVING A PRIOR COMPLAINANT/DEFENDANT RELATIONSHIP*

NATURE OF RELATIONSHIP	PERCENT ACCEPTED BY V/WAP	PERCENT APPROVED BY PROSECUTOR (BASE=CASES FORWARDED BY V/WAP)	PERCENT SURVIVING SCREENING FOR MEDIATION
Spouses and Blood Relatives	60	71	42
Friends	72	67	48
Neighbors	56	50	28
Marginal (Acquaintances: "knew from neighborhood" etc.)	45	43	19
Other (Includes employer, client, etc.)	57	55	31
TYPE OF CHARGE			
Rape	12	1	<1
Robbery	50	32	16
Assault	56	63	35
Burglary	72	57	41
Larceny	68	70	48
Other	40	56	22
CLASS OF FELONY CHARGE			
A & B	41	11	4
C	51	53	27
D	61	61	37
E	71	65	46
VICTIM'S INJURY			
None	56	54	30
Minor	62	68	42
Emergency Room	58	61	35
Hospitalized	26	19	5
VICTIM'S AGE			
Under 18	36	46	16
18 to 59	58	62	36
60 and over	57	47	27

*This table and Figure 3.1 were compiled from data on all cases screened at the complaint room during the evaluation's intake period, not from data on the randomly assigned sample alone.

Table 3.1 shows a close similarity between the types of cases identified as appropriate for mediation by V/WAP staff and by screening prosecutors. Like the prosecutors, V/WAP staff were more likely to screen cases out, the more serious the charge, the more distant the prior relationship, and the more serious the victim's injuries. The similarity may suggest that V/WAP staff learned to anticipate prosecutors' decisions, and less frequently presented to prosecutors cases they were likely to reject. If true, this would explain why V/WAP staff failed to present many cases to screening prosecutors for consideration, even though the cases fell within V/WAP's formal guidelines.

Screening prosecutors, when determining which cases to approve for mediation and which to reject, did not always appear to be making fully-reasoned decisions. For example, the reasons they stated for rejecting cases did not necessarily coincide with the factors found to be predictive of these decisions: the strength or the weakness of the complainant/defendant relationship was the factor found best to predict their decisions, but was stated as the reason for rejection in less than 15 percent of the cases rejected; and the seriousness of complainant's injury, which was the second most frequent reason given by prosecutors for rejecting cases, had a spurious correlation with the actual decisions (the correlation becomes non-significant when one controls for the type of crime).

Moreover, there were substantial differences among prosecutors, both in the types of cases approved for mediation and in the proportion of presented cases which were approved. The prosecutor whose decisions most closely paralleled V/WAP's, for example, approved 65 percent of cases presented for mediation by V/WAP; in contrast, another prosecutor approved only 42 percent.

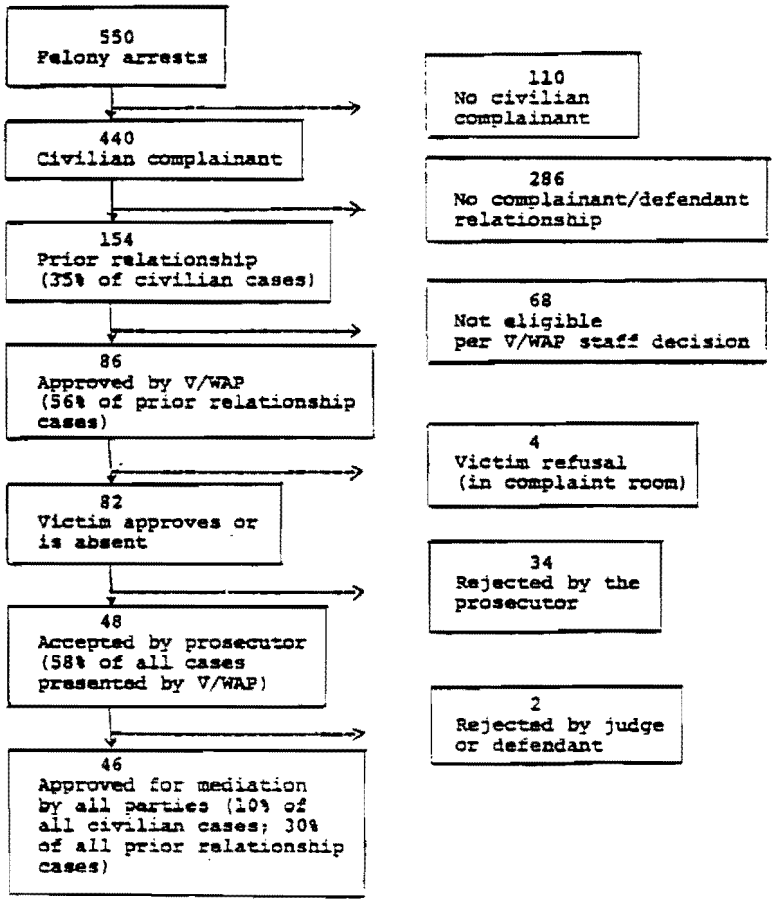
Nevertheless, Table 3.1 suggests that, in the aggregate, the screening prosecutors' decisions reflected the goals of the District Attorney's Office. The prosecutors tended to hold on to the cases which were most likely to be prosecutable, as they involved charges of serious crimes of personal violence and complaining witnesses who were not so closely tied to the defendants that their interest in cooperating with the prosecution would be expected to waver.

Although the bulk of the screening was done by V/WAP and the screening prosecutor, the defendant and the judge also had an opportunity to reject mediation. Rejection by the defendant and judge were rare; of the cases approved for mediation in the complaint room, mediation was rejected by the arraignment judge in only 2 percent, and less than one percent were rejected by defendants. Judges' reasons for refusing to approve mediation centered on the defendant's prior criminal record or on warrants outstanding for his arrest--information unavailable at the time of the screening prosecutor's decision.

Figure 3.1 presents a summary of the mediation intake steps, described above. Roughly 550 felony arrests were made in Brooklyn each week. Of these arrests, 440 (80 percent)

Figure 3.1

Weekly Mediation Intake Summary
9/77-12/77



involved civilian complainants. The arresting officers identified 154 as involving prior relationships between complainant and defendant (35 percent of the civilian complaint cases). Sixty-eight of these cases (44 percent of all prior relationship cases) were screened out by V/WAP, and another four cases dropped out because complainants who were present in the complaint room rejected mediation outright, when it was offered. This left 82 cases to be submitted to the screening prosecutor; he approved 58 percent, sending on to arraignment court the 48 cases that had so far been found acceptable for mediation. Another two cases were lost at the arraignment stage, when the defendant or the judge refused to approve mediation. Thus, 46 cases each week--just over 10 percent of the felony arrests involving a civilian complainant--survived the entire screening process.

IV. PROFILE OF CASES APPROVED FOR REFERRAL TO THE DISPUTE RESOLUTION CENTER

This section presents a profile of complainants whose cases survived the screening process for referral to the Dispute Resolution Center--both experimental and control cases. It focuses on who the complainants were, what goals and expectations they had as they entered the criminal justice system, and what problems formed the context of their disputes.

Who the Center's Clients Were

A wide variety of felony cases survived screening for referral to the Dispute Resolution Center during the evaluation intake period. They ranged from first degree robbery and first degree assault to criminal mischief and forgery (see Table 4.1). However, over three-quarters of the cases were concentrated among second degree assaults and burglaries. Overall, violent crimes constituted 40 percent of the cases. The majority (70 percent) were D felonies, which carry a maximum penalty of seven years in prison and a $5,000 fine.

These arrest charges give little indication of the complexities that often surrounded the crimes. Knowing who the disputants were, what their relationship had been, how they were affected by the incident that led to the arrest, and whether it was an isolated incident or part of a pattern of interpersonal hostilities--all are essential to understanding the nature of these crimes. The complexity is underscored

TABLE 4.1
TOP ARREST CHARGE IN CASES APPROVED FOR REFERRAL
TO THE DISPUTE RESOLUTION CENTER

Violent Offenses		
Assault	51%	
Assault 1st degree (C Felony)		1
Assault 2nd degree (D Felony)		50
Robbery	6%	
Robbery 1st degree (B Felony)		1
Robbery 2nd degree (C Felony)		2
Robbery 3rd degree (D Felony)		3
Rape	1%	
Rape 1st degree (B Felony)		*
Rape 3rd degree (E Felony)		*
Other	2%	
Reckless Endangerment 1st degree (D Felony)		*
Unlawful Imprisonment 1st degree (E Felony)		*
Criminal Possession of Weapon 3rd degree (D Felony)		*
Property Offenses		
Burglary	29%	
Burglary 1st degree (B Felony)		1
Burglary 2nd degree (C Felony)		13
Burglary 3rd degree (D Felony)		14
Criminal Trespass 1st degree (D Felony)		1
Grand Larceny	7%	
Grand Larceny 2nd degree (D Felony)		2
Grand Larceny 3rd degree		5
Criminal Mischief	3%	
Criminal Mischief 2nd degree (D Felony)		2
Criminal Mischief 3rd degree		*
Forgery	1%	
Forgery 1st degree (C Felony)		*
Forgery 2nd degree (D Felony)		*
Possession Forged Instrument 1st degree (C Felony)		*
	100%	
	(n=465)	

*Less than one percent

by complainants' reports that over half of the offenses were part of ongoing disputes, and that a third of complainants had resorted to calling the police previously. For example, arrests for crimes of violence often had their roots in disputes about property, and arrests for property crimes often arose from relationships characterized more by physical confrontations. Further, over a quarter of defendants interviewed believed that the complainant should have been arrested instead of, or as well as, themselves.

Mediation sessions observed by Dr. Starr revealed another level of complexity in cases referred to the Dispute Center (see Table 4.2)

TABLE 4.2: MEDIATED CASES, OBSERVED AT THE IMCR BROOKLYN, NEW YORK*

Case No.	Complainant	Defendant	Relationship of parties	Basis of Arrest	Other problems	Relationship before Mediation	Relationship after Mediation
1	Harriet, 48 black	Mike, 47 black	common law spouses, 7 yrs.	wounding with knife	drunkeness of respondent; compulsive bingo playing of complainant	reconciled but living apart-- judge's order	reconciled will live together
2	Alice, 25 hispanic	Joe, 26 hispanic	casual lovers	breaking & entering, theft of valium	sought drugs from her.	hostile	avoidance
3	Rose, 17 hispanic	Henry, 23 haitian	lovers of 3 yrs.	beating her, tearing blouse, breaking dishes in foster mother's house	girl had abortion; man wanted child.	tense	man wants avoidance; the young woman wants the man
4	Abe, 43 black	Dick, 22 black	father/son	grand larceny: theft of $1500 from father	youth is alcoholic, lacks work. Drunkeness 7 years.	avoidance	worked out carefully delineated relationship
5	Peg, 26 Jewish white	Mary, 29 Christian white	lesbian lovers live together	verbal abuse and hitting	lack of confidence in relationship-- jealousy and quarrelling	reconciled	relationship validated
6	Ethel, 28 Jamaican	Harry, 28 Puerto Rican	common law spouses, 6 yrs.	breaking furniture, children's beds, very violent	mediator and observer think man is paranoid and removed from reality.	avoidance	woman wants reconciliation, on condition of services; he wants avoidance--gets it, plus court separation in agreement.

*Observed on October 16, 23, 30, 1978. All first names have been changed to protect privacy of parties and no last names are given.

In five of the six cases observed, at least one of the disputants was on welfare; in three of the cases, evidence of drug abuse came out in the session as a contributory problem; and, in one case, one of the disputants was clearly experiencing mental problems. While the number of cases observed was small, these data tend to confirm observations of IMCR's Center staff that there were frequently major external stresses on disputants, and on their relationships, of kinds that would amplify normal interpersonal tensions.

Data from the sampled cases (see Table 4.3) show that complainants whose cases were approved for referral to the Center were mainly young (median age 29) women. They tended to be poor--less than half were employed--and most had not completed high school. According to Center staff, the ma-

TABLE 4.3
DEMOGRAPHICS OF COMPLAINANTS WHOSE CASES WERE APPROVED FOR REFERRAL TO THE DISPUTE CENTER

Sex	
Male	37%
Female	63
Age	
18 or under	7%
19 - 25	28
26 - 35	29
36 - 45	20
46 - 55	11
56 - 65	3
65 or over	2
Education	
Less than 8th grade	13%
Some high school	40
High School	29
Some college	14
College	4
Post-graduate	*
Employment	
Employed	44%
- full time	33
- part time	4
- self employed	7
Unemployed	56

jority of mediation clients were black or hispanic. Many of the sampled complainants told interviewers of property loss or physical injury that resulted from the crime. Twenty-five percent had had property stolen and another 20 percent had had property damaged--the average loss to these complainants was $250. Twenty-five percent reported minor injuries and another 38 percent suffered injuries requiring treatment by a physician or at an emergency room. (Under one percent were hospitalized by their injuries.)

From the sampled case data, it appears that the Dispute Center's caseload consisted mainly of cases involving disputes between persons whose interpersonal ties were very strong--domestic quarrels between spouses (legal or common-law) or between other nuclear family members (see Table 4.4).

TABLE 4.4
COMPLAINANT/DEFENDANT RELATIONSHIP IN CASES APPROVED FOR REFERRAL TO THE DISPUTE RESOLUTION CENTER

Strong Ties		
Married/Common Law	18%	
Other Immediate Family	7	
Boyfriend/Girlfriend	10	50%
Divorced	5	
Ex-Boyfriend/Girlfriend	10	
Moderate Ties		
Friends	7	
Extended Family	6	24%
Neighbors	11	
Weak Ties		
Acquaintances	16	26%
Other	10	
	100%	
	(n=313)	

TABLE 4.5
CHARACTERISTICS OF COMPLAINANTS, IN CASES APPROVED FOR REFERRAL TO MEDIATION, BY STRENGTH OF PRIOR RELATIONSHIP

	Strong Ties (Domestic Disputes) (n=159)	Moderate and Weak Ties (n=154)
Sex		
Male	13%	62%
Female	87	38
Type of Crime		
Violent	63%	46%
Nonviolent	37	54
Dispute History		
Ongoing dispute	74%	39%
No dispute history	26	61

These cases differed in several important ways from the other cases approved for mediation: the great majority of complainants in the domestic disturbance cases were women, but men were most often the victims in cases that arose from other types of relationships (see Table 4.5). The domestic disturbance cases also more often involved violence, and were more likely than the other cases to have arisen from an on-going series of interpersonal problems.

Complainants' Reactions to the Crime

Being the victim of a crime at the hands of a stranger is likely to be sudden and unexpected, but when the victim knows the defendant--especially when they have lived in close proximity--the hostility that flares into a crime is often an integral part of the relationship, embedded in their habitual responses to each other. It may therefore not be surprising that an earlier Vera Institute study (1979) found that complainants who knew the defendants in their cases were more traumatized by the crimes than were complainants in stranger-to-stranger cases. The fears of complainants in many prior relationship cases appeared well-founded in their knowledge that they could not avoid encountering the defendant in day-to-day life.

In the entrance interview for this study, complainants were asked the same series of scaled questions about their reactions to the crime that had been asked of complainants in the earlier Vera study. Over half reported feeling angry at the defendant, and a similar proportion reported fearing that the defendant would seek revenge against them for reporting the crime. Complainants were most upset in the cases that involved close relationships or persisting patterns of interpersonal hostility, and this appeared unaffected by the nature of the arrest charge (personal or property crime). Again, the data suggest that the penal law label attached to the incident giving rise to the arrest may be less significant to the parties than the context within which it occurred. A later section of this report examines the extent to which either mediation or the court process reduced complainants' fears and emotional distress.

Complainants' Desires and Expectations of the Process

Most complainants whose cases were approved for referral to mediation did not desire the defendant to be punished (see Table 4.6). When asked what they hoped to get from the court process, only 5 percent said they thought the defendant should be jailed, and 13 percent said they wanted the charges dropped. Many sought relief from being harassed or assaulted by the defendant (40 percent), while others sought restitution (16 percent), punishment short of jail (4 percent), or psychiatric help for the defendant (4 percent).

TABLE 4.6
PRINCIPLE OUTCOME SOUGHT BY COMPLAINANTS
IN CASES APPROVED FOR MEDIATION

Stop defendant from harassing	40%
Obtain restitution	16
Put defendant in jail	15
Drop charges	13
Seek help for defendant (psychiatric)	4
Minor punishment (non-jail)	4
Don't know	8
	100%
	(n=306)

The dispositions complainants sought differed by the nature of their prior relationships with the defendants, and by whether there had been a history of prior disputes between them (see Table 4.7). Complainants with the strongest ties to defendants (immediate family or lovers) were the most likely to be seeking protection; that they were also the least likely to want the defendant punished illustrates their dilemma. In contrast, those with the weakest ties to the defendants were the most likely to be seeking restitution. It was the group of complainants who had moderate ties to the defendants who were more likely than either of the other groups to want the defendants punished; they shared with the "weak ties" group a relative lack of interest in (non-punitive) protection from the defendants. These data

TABLE 4.7
WHAT VICTIMS WANTED, BY TYPE OF COMPLAINANT/DEFENDANT RELATIONSHIP AND BY WHETHER THE ARREST AROSE FROM ONGOING DISPUTE OR SINGLE INCIDENT

	Strong Ties		Moderate Ties		Weak Ties	
	Ongoing Dispute	Single Incident	Ongoing Dispute	Single Incident	Ongoing Dispute	Single Incident
Jail/Other Punishment	16%	5%	48%	20%	39%	16%
Make Defendant Stop Harassing Complainant/ Psychiatric Treatment	75	47	41	21	22	25
Restitution	1	16	4	32	35	43
Drop Charges	8	32	7	28	4	16
	100% (n=106)	100% (n=38)	100% (n=29)	100% (n=34)	100% (n=23)	100% (n=49)

in Table 4.7 make almost poignant the dilemma of complainants with strong ties to the defendants. Their relationships with the defendants were far and away the most likely to be plagued by ongoing disputes, they were more likely to be traumatized by the crime leading to the current arrest, they were the most likely to be fearful and to feel a need for protection--but, unlike even those with moderate ties to the defendants, they had ambivalent feelings about the prosecuting and jailing of persons on whom they were emotionally or financially dependent.

Whatever the closeness of the prior relationships, complainants placed greater emphasis on protection from the defendants in cases where they reported a history of interpersonal problems. Across all relationship categories, complainants involved in ongoing disputes were more likely to seek an end to the defendants' harassment of them or to seek the defendants' punishment. Complainants involved in cases arising from single incidents were more likely to seek restitution or to want charges dropped.

Cases characterized by the more intimate complainant/defendant relationships and by recurring patterns of hostility are, then, the most likely to produce emotional stress and a desire for protection. They may also be the most difficult to resolve successfully, because the antecedents are the most complex and because these disputants are the most likely to continue frequent contact.

The complainants in our sample of cases approved for mediation had what might be viewed as surprisingly high expectations of the criminal justice system. Eighty-nine percent expected the court process to yield the resolution that they wanted, and 90 percent felt they would have an opportunity to tell their side of the story in court. Most complainants expressed a desire to be involved in the process by which their cases would be handled; three-quarters stated a willingness to attend court dates, and 68 percent said they wanted to be in court on the disposition date. Half expressed explicit desire to participate in the decision-making process.

The concept of mediation seems suited to this population of complainants. Most did not seek punishment of the defendant, even though the initial interview was conducted shortly after the crime had occurred (when it might be assumed that complainants would be most fearful, angry and distressed). Most expressed willingness to cooperate with criminal justice officials, and interest in participating in the process of resolving their cases. However, a substantial minority of these complainants gave interview responses suggesting that referral to mediation was (or, in the case of control group complainants, would have been) inappropriate for them, either because they did want the defendant punished or because they had no interest in being present at or participating in the process through which their cases were to be resolved. Part of the reason why many complainants whose cases were referred to mediation expressed such sentiments was because referrals to the Center frequently occurred prior to consultation with them (as was the case when complainants in eligible cases were absent from the complaint room). This referral policy led to a high incidence of complainants refusing mediation at the Dispute Resolution Center, or simply failing to show up for the mediation sessions which had been scheduled for them. (This problem is explored in greater depth in Appendix B.)

Because of their relatively low interest in punitive outcomes and their relatively high interest in relief from harassment, complainants with strong ties to defendants may be bringing cases particularly suitable for diversion from the court. And that their cases also tend to involve histories of hostilities with the defendant suggests that an overburdened court may have particular difficulty resolving them successfully. Finally, various data suggest that complainants with stronger

ties to the defendants may feel more urgent need to resolve the dispute, and may therefore be more motivated to participate in attempts to do so. These themes are taken up in later sections of the report.

V. THE MEDIATION SESSION

This chapter describes the process of mediation--the principles involved, the relationship of mediators to disputants, and the agreements reached. It is based upon Dr. Starr's observations of mediation sessions at the Brooklyn Dispute Resolution Center.

The traditional role of the disputants in criminal court adjudication has been an extremely circumscribed one. The primary concern of criminal courts has been to determine the veracity of charges brought against defendants and to impose appropriate sanctions. Information that is not within rules of evidence is technically irrelevant, although in a "prior relationship" case the nature of the disputants' relationship and the complainant's interests are frequently considered informally in plea negotiations (Smith, 1979). Disputants in Criminal Court are usually excluded from the process; the major decisions are typically made in private negotiating sessions by the attorneys and the judge. Rarely does the complainant have an opportunity to testify; his story will be heard by the court only if the prosecutor chooses to present it, for it is the State's case--not the complainant's. The defendant's role, too, is usually minimal, but for the opposite reason--it is his defense, but his communication with the court is almost always through his attorney.

In contrast, mediation does not focus exclusively on the incident that led to arrest, but is concerned with uncovering the dynamic of the interpersonal problems from which the incident arose. While the initial focus of a mediation session may be the incident, the mediator guides the disputing parties towards an agreement which is intended to minimize future conflicts rather than apportion guilt and sanctions. Based on an assumption that there is an underlying problem, a mediator attempts to elicit facts that aid him, the complain-

ant, and the defendant to understand and to solve the dispute from which the incident arose. Thus, both complainant and defendant are encouraged to present their sides of the story and to propose solutions acceptable from their respective viewpoints.

Stages of Mediation

A mediation session at the Brooklyn Dispute Resolution Center may be thought of as having consisted of four stages. In Stage 1, the mediator (or mediators -- the Center often used more than one mediator in a case) was introduced to the parties and described the mediation process on which they were about to embark. The mediator told the parties of their rights, and of the fact that the complainant, by agreeing to mediation, was agreeing not to press criminal charges against the defendant. The parties were also informed at this first stage that if one should fail to abide by the terms of the agreement reached, the Center's staff would prepare civil court papers on behalf of the aggrieved party.

Stage 2 focused on the position taken by each party. It began when the mediator turned to the complainant, then to the defendant, and asked for their respective descriptions of the relationship and the events that led up to police intervention. They were each allowed to take as long as they wanted to develop their points of view; the only stipulation was that they could not interrupt each other. Emphasis on the criminal incident itself was kept to a minimum. Stage 2 would end by the mediator asking one party to leave the room, or by asking for a caucus with a co-mediator to discuss strategy.

Stage 3 permitted each party to be heard in private, when each would be asked if there were something he or she wished to share or explain to the mediator(s) in confidence. At the end of each private interview, the mediator(s) would ask whether, as mediators, they might share information of this type with the other party, or whether it must remain confidential. (This stage was sometimes prolonged, when the mediator(s) chose to meet with each party in several private sessions to attempt to verify information or to help a party work through difficult feelings.)

Stage 4 brought the two parties and the mediator(s) together for a conclusion to the session. The mediator(s) would explain what they believed each party would want in the written agreement. The disputants were free to object to provisions suggested in this way by the mediator(s), or to change wordings. After the agreement had been written out, each party was given a copy to take away. Both would be instructed to contact the Center in the event of breach of the agreement.

When the parties failed to reach an agreed settlement, the hearing would be concluded by the mediator(s)' explanation of the arbitration that would follow; the mediator(s) would then decide on a settlement and give or mail it to the disputants. The Center's staff has found arbitration to be necessary in only five percent of cases.

The Mediators' Role

In the cases observed for this evaluation, mediators attempted to get the parties to explore the nature of the relationship and the manifest and underlying causes of their conflict and of the incident that led to the arrest. They attempted to guide the discussion, to keep it focused on matters relevant to the dispute, and to remain neutral without becoming passive referees. The mediators were observed to be active participants in the dispute resolution process; for example, they often would try to help one party get the other to see actions and motives in a new and more sympathetic light.

In one case, a young man of 22 had been arrested for stealing $1500 from his father's pants pocket while his father slept. The son had gone to Florida after taking the money, and had spent it all. But, when he heard the police were looking for him, he had given himself up. The father wanted it stated in the agreement that his son would never again come to his apartment, and that he would never again have to see his son. During Stage 2 of the mediation session, the following interchange took place in the presence of the father:

Mediator: Why did you take his money?
Youth: I was hungry.
Mediator: Then you only wanted to take a little money to get some food?
Youth: That's right.
Mediator: Then what happened?
Youth: Well, he woke up and I was scared.
Mediator: You were scared, so you took the whole roll of money?
Youth: (now weeping quietly) That's right.
Mediator: So you were hungry and scared and you took his money. Did you go get something to eat?

It appeared that, having established for the father that his son might not be so much incorrigible as he was young, scared, and hungry, the mediator made it possible to guide the parties, and particularly the father, toward a resolution that he believed to be in both of their interests. In Stage 3, during a private session between the mediator and the father, the mediator prepared the way as follows:

Mediator: You must be very angry at him now; and I can understand that. But, he used to come to see his mother, and his sisters and brothers. And his mother used to feed him; and it's pretty hard on a twenty-two year old to say he can never see his father again. (Pause)....

Now what we can do for you is to say that he can only come to the house when you're there, and that he needs to get your permission before he comes. He will telephone you up. Now doesn't that seem better than never seeing him again? He said he didn't have friends where he can stay. And the Center's staff will find him a place to sleep, so he won't be sleeping in your house anymore, and we'll get him into counselling, and a job training program.

Mediators were observed attempting to reinforce societal values during the sessions--the value of kinship and other bonds, the importance of reciprocity, the need to avoid violence as a means to resolving disputes, the value of caring for the welfare of children. In any ongoing rela-

tionship, each party holds onto some notion of what the relationship ought to be like. It seemed to be these notions for which the mediator(s) were reaching during the mediation sessions. Even the session format can be seen as an idealization of how disputants ought to treat each other outside the Dispute Resolution Center: listening to one another without interrupting, not focusing on blame, not resorting to violence, leaving the room if anger makes it impossible to hear the other out without interruption or violence. The mediators facilitate this process, and referee the exchanges. By defining boundaries, separating parties, and sometimes helping to work out avoidance relationships, the mediation process simulates an idealized form of good social relations, and provides an example of how to break out of bad social behavior patterns.

Although mediators were observed attempting to communicate societal norms for conduct of interpersonal relationships,they were also attempting to accept disputants' own values without judgment, to empathize, to talk about the relationships in the disputants' vernacular, to preserve the disputants' dignity by viewing their world "through the disputant's lenses." One case observed illustrated this point well. A mediator sensed the embarrassment of two women disputants concerning their love relationship. She then probed their situation to discover money problems, debts, trouble with landlord, with ex-lovers, male and female, and, at a deeper level, jealousy. At times, the parties joked about getting married (one had been married, and had a six-year-old daughter living with them). The third time they joked, the mediator said:

> Mediator: There's nothing in the law that says you two can't get married. If you can get a marriage license and you can find someone to marry you, you can get married; and I would be glad to come to the wedding.

Finally, the mediators--especially when they were of the same ethnicity and/or sex as a disputant--seemed able to act as role models. This was particularly evident in observed cases involving younger, minority women as complainants and mediators: it seemed that these complainants wanted to reflect in their behavior the wisdom and fairness they identified in the mediators.

A Dispute Center mediator was, then, an active participant in mediation sessions, reinterpreting disputants' perceptions, steering the parties towards what the mediators believe to be fair and workable solutions, reinforcing societal norms of how relationships ought to be conducted, and providing emotional support to those who needed it. This complex role seemed a radical departure from the interpersonal dynamics of courtroom workgroups.

Disputants' Use of the Mediation Session

Disputants referred to the Center might be classified as follows:

(1) Disputants who were reconciled prior to the mediation session.

(2) Disputants who were not reconciled, and who simply wanted a way to terminate their relationship.

(3) Disputants with unresolved grievances, who may be subdivided into cases in which:

  (a) Disputants who knew what each other wanted, but found each other's goals unacceptable, or

  (b) Disputants who were unclear about how to proceed because goals had not been articulated.

Disputants in the first two categories could have felt it unnecessary to go through mediation, and the data presented in Appendix B support the notion that many of the disputants who did not go forward with mediation, after their cases were referred to the Center, had either reconciled or had acted to terminate the relationship. For those who did go through with mediation, the process served different functions, depending on the status of the relationship when the parties entered mediation.

In the first two types of disputes, the disputants' pre-mediation decisions and actions were solemnized in the sessions. When the disputants arrived at the Center already reconciled,

the mediators seemed able to bring out and help them recognize the strengths in their relationship, thus "renewing" the social bond between the parties, while helping to keep within their sight the ways they might alleviate remaining conflicts. The following exchanges occurred in one of the observed cases involving common-law spouses:

Mediator to Both: You both like movies. Why can't you go to movies together, instead of one going to bingo and the other drinking?

Mediator to Woman: Why don't you go to the bar and drink with him?

Mediator to Woman: Don't you know you're nagging him, when you keep telling him he isn't safe on the streets when he's drunk? It makes him feel unmanly. You're thinking you're not nagging him but helping, but you're nagging him just as much as he nags you about bingo.

When disputants arrived with no desire to be reconciled, the mediators appeared able to help them accept the sadness, anger, or fear that may accompany termination of a relationship. In the following case, a 17-year-old girl had aborted her 23-year-old lover's child, against his wishes:

Mediator: What do you want to see come out of this process?

Girl: Happiness.

Mediator: If this was a story and I was your fairy princess, I would grant your wish.

Girl: That we could start all over and be different.

Mediator: We can't guarantee that. We can only put things into the agreement which can be enforced...

When the girl's lover continued to resist reconciliation, and made it clear he wanted to end the relationship and to write

avoidance into the agreement, the mediator spoke this way with the girl in a private session:

> Mediator: I wish I could give you happiness, but these things are not in my purview...(pause) I can tell you that time may heal your pain, that sometime in the future a man will probably come and cherish you, a man with whom you marry and have children...I am not gifted with seeing the future. I can only say these things have happened for others; they are possible for you.

But it is in the third type of case, when parties come to the Center without having decided on the future course of their relationship, that mediation appeared to offer the most. In these cases, the sessions seemed to offer a setting in which disputants listened to and began to understand each other's viewpoints. By trying to share and understand each party's view of the grievances, the mediators helped to surface what each could reasonably expect from the other.

By encouraging disputants to "vent their spleen" and to retell past outrages perpetrated against them in the relationship, and by working towards new solutions to old problems, the mediators seemed to use the process to accustom disputants to articulating their conflicts and identifying their internal sources of emotional strength; this appeared to be of value particularly to those whose self-esteem or ability to cope was at a low ebb, as in cases of domestic violence.

In troubled relationships in which one or both parties were also burdened by complex and long-term problems beyond the purview of the mediation session, such as drug abuse or personality disorder, mediators would make referrals to social service programs.

But the most important use disputants made of these sessions seemed to be their taking, from the ritual, a sense that change is possible in relationships and a technique for pursuing it. Mediators' questions such as: "What do you want to see in the written agreement?" or "What do you want to see come out of this session?" suggest to disputants

that they should begin to plan for a future, and that, to some extent, they would be able to control their own lives.

Mediation Agreements

Mediation agreements, drawn up at the conclusion of the sessions, contained as many or as few items as the participants (and the mediators) felt necessary to resolve the problem.

By far the most common element found in the agreements that concluded the cases mediated in the full evaluation sample was that one or both parties would stop harassing the other; a provision of this kind was found in 95 percent of the cases (see Table 5.1). In a substantial number of the cases, the

TABLE 5.1

PROVISIONS FOUND IN MEDIATION AGREEMENT, AND FREQUENCY OF THEIR OCCURRENCE (n=144)

Provision	Percentage of Agreements Containing Such Provision
End Harassment	95%
a) Defendant to end harassment	(15%)
b) Complainant to end harassment	(1%)
c) Both to end harassment	(71%)
d) Complainant/defendant will not harass third party	(8%)
Structured Methods for Handling Future Problems	35%
a) Calm discussion	(26%)
b) Take future problems to appropriate court (e.g., Family Court)	(9%)
Limited Interaction	24%
a) Defendant to stay away from complainant's home or place of work	(15%)
b) Complainant to stay away from defendant's home or place of work	(5%)
c) Conditional contact (contact only at specified times or places)	(4%)
Behavioral Restrictions	36%
a) Restrictions on complainant	(10%)
b) Restrictions on defendant	(22%)
c) Restrictions on child visitation schedules	(4%)
Restitution	20%
a) Defendant to make restitution	(18%)
b) Complainant to make restitution	(2%)
Express Provision that the Relationship be Ended	21%
Express Provision that the Relationship be Continued	13%
Seek Third Party Help (Drug Treatment, Job Counselling, Therapy, Etc.)	9%
Complainant Agrees Defendant is Innocent of the Criminal Charge	3%

sessions ended in agreements to terminate the relationships; twenty-one percent of the agreements provided for the parties to separate or to terminate their relationship altogether.

In most cases, however, disputants who went through mediation decided to continue their relationships and they usually used the agreement to express their intention to modify or clarify certain aspects of it. In six of every ten agreements, one or both parties agreed to limit interaction with the other to agreed-upon times or places, or to restrict their conduct in some fashion to accomodate the other. A mutual commitment to non-violent means of resolving future problems was also found frequently; terms of this kind were expressed in 35 percent of all agreements.

Restitution was an element of twenty percent of the agreements. Usually it was the defendant who agreed to make restitution, but in two percent of the agreements it was the complainant.

In spite of reports, from Dr. Starr's observations and from the IMCR Dispute Center staff, that disputes were often compounded by social, economic and health problems, only nine percent of the agreements provided that one or both parties would seek outside help such as drug or alcohol abuse treatment, psychiatric treatment, or employment services.

And, in view of the highly individualized content of the mediation sessions, there was a surprising sameness to the agreements that emerged. Surprising, because the theory and, to the extent it was observed, the practice of mediation in this context focuses on the etiology of disputes and pierces the generic penal law labels to come to grips with the details of the underlying relationships, each of which appears to have unique elements. The sameness of terms found in the resulting agreements might be simply a reflection of the common origins of the problems disputants brought to mediation, or of the similar needs and desires people have when they live and relate to others in similar environments. But it might also be that disputants viewed the terms of an agreement as less important, or less useful, than the process of listening to and understanding each other in the session. In other words, signing an agreement might have been seen not as having operative importance in determining future conduct in the relationship, but as having symbolic importance, as a part of the mediation session.

VI. EFFECTS OF MEDIATION AND PROSECUTION UPON DISPUTANTS' PERCEPTIONS OF THE PROCESS AND UPON THEIR SUBSEQUENT RELATIONSHIPS

This section begins by examining complainant and defendant reactions to their experiences in mediation sessions or in court, and discusses the differences found. It then turns to an examination of the impact of the two forms of dispute resolution upon the disputants' relationships after their cases were concluded.

It was expected that the substantial procedural and substantive differences between mediation and criminal court would be reflected by observable differences in the perceptions of those who were interviewed about these processes. Mediation is an informal, participatory, and relatively time-consuming process; the court process is more formal, is handled by lawyers who usually exclude the parties from discussion, and -- at least in Brooklyn Criminal Court -- gives each case only brief attention. Mediation aims to resolve disputes through understanding of the etiology of the incident that led to arrest, while the court process addresses the narrower questions of the defendant's legal culpability and deserts.

It was believed that, because mediation afforded disputants greater participation in the process and control over the outcome, disputants whose cases were diverted to the Dispute Resolution Center would evidence greater satisfaction, both with process and with outcome, than would disputants in the control group cases. It was further expected that, because the agreements that dispose of cases in mediation were shaped by the disputants themselves, problems would be less likely to recur in the cases referred to the Center than in cases reaching disposition in the court.

Complainants' Perceptions of the Dispute Settlement Process

Generally, among complainants who were interviewed after conclusion of their cases, those whose cases were referred to mediation tended to hold a more favorable view of the process by which their cases were handled than did those whose cases were sent forward to court for prosecution. Complainants in the mediation cases felt they had received more attention and had greater opportunity to participate. For example, 94 percent of the complainants who were referred to mediation and whose cases were actually mediated felt they had been able to tell their story to the mediator. Among control case complainants who went to court, however, less than two-thirds felt they had had an opportunity to tell their version of the incident either to the judge or to the prosecutor (see Table 6.1).

TABLE 6.1
COMPLAINANT PERCEPTIONS OF THE DISPUTE SETTLEMENT PROCESS*

		Experimental Cases (Mediation) (n = 112)	Control Cases (Court) (n = 55)	x^2
Had an Opportunity to Tell Story?	Yes	94%	65%	22.09 ($p < .01$)
Judge or Mediator Fair?	Yes	88%	76%	3.94 ($p < .05$)

*Includes only complainants who attended the mediation session or a court proceeding.

Eighty-three percent of complainants whose cases were mediated believed that the mediator was concerned with arriving at an outcome acceptable to them (the complainants), and 71 percent believed that they had influenced the agreements reached. But among control cases, only 67 percent of complainants who went to court felt that the prosecutor had attempted to be helpful, and only 31 percent reported that the prosecutor discussed with them how he was going to proceed.

The interviews make it clear that this sense of participation and control was appreciated by complainants. In the words of one veteran complainant, whose present case was mediated but who had had a previous case handled in the court:

> "(In mediation) you get a chance to explain your side of the story. In court, you never know what's going on."

Eighty-eight percent of complainants whose cases were mediated felt the mediator had conducted the case fairly (see Table 6.1 above). This may reflect the attention these complainants felt they had received from the mediator, and their ability to shape the outcome. Fewer control complainants (76 percent) who had been in court believed that the judge had conducted the case fairly. Although the difference in ratings is statistically significant, it is smaller than might have been expected, given the quite different ways in which complainants are brought into or excluded from the process. It may be that control group complainants recognized the limitations of the court process, and, with that understanding, felt that judges had attempted to deal with their cases in an even-handed manner.

Complainants whose cases had been referred to mediation not only rated the process more highly than complainants whose cases went on to court, but also were likely to believe that the outcome was better. Roughly three-quarters of interviewed complainants whose cases had been referred to mediation believed that the outcome was fair, and a similar percentage reported that it satisfied them (see Table 6.2). In contrast, only slightly over half of those whose cases were forwarded to the court for prosecution thought that the disposition was fair, and the same proportion reported that it satisfied them.

TABLE 6.2
COMPLAINANT PERCEPTIONS OF THE OUTCOMES OF THEIR CASES

		Experimental Cases (Mediation) (n = 160)	Control Cases (Court) (n = 119)	x^2
Outcome Fair?	Yes	77%	56%	13.33 ($p < .01$)
Satisfied with Outcome?	Yes	73%	54%	11.16 ($p < .01$)

It may be that complainants in the experimental group were more satisfied with the outcomes of their cases in part because the outcomes conformed more to their interests. For example, restitution was reported as part of the agreement by 18 percent of mediation case complainants who were interviewed, while only four percent of interviewed control case complainants reported that restitution was part of the court disposition. Moreover, 70 percent of control cases were either dismissed outright or adjourned in contemplation of dismissal (see Table 6.3). From the complainant's view, little may have been accomplished in these cases. Only 27 percent of control cases resulted in guilty pleas, and in only five of the more than 200 control cases was the defendant sentenced to jail.

TABLE 6.3
COURT DISPOSITIONS OF CONTROL CASES

Disposition	Relative Frequency
Dismissed	30%
Adjourned in Contemplation of Dismissal (ACD)	40
Pled Guilty	27
Transferred to Grand Jury	1
Bench Warrant Issued	2
	100% (n = 203)
Sentence	
Jail	10%
Time Served	2
Probation	2
Fine	18
Conditional Discharge	70
	100% (n = 51*)

*Excludes four defendants who pled guilty, but who had not been sentenced at the time of data collection.

It also may be that complainants in mediation cases expressed greater satisfaction with the outcomes of their cases because they had more opportunity to participate in the process. When experimental and control cases were compared, differences in complainants' satisfaction with outcome was greatest among complainants who had expressed an interest in participating; 77 percent of complainants who expressed this interest on the evaluation entrance interview were satisfied with the outcome in mediation, versus 48 percent in the court process. Among complainants who had not expressed an interest in participating, the difference in satisfaction with the outcome was far less marked; 78 percent were satisfied with the outcome in mediation, versus 65 percent in court. Thus, for complainants who wanted to take an active part in the resolution of their cases, the lack of participation afforded them by the court process seems to have adversely affected their satisfaction with the court case outcomes.

Complainants in both the experimental and the control groups preferred mediation by a two-to-one majority as a way to handle future incidents of a similar nature. Moreover, among complainants who had had a previous case handled by the court, 12 of 13 whose current cases had been mediated felt their experience in the current case had been better than the last, but only four of the 21 whose current cases had been handled in the court felt that way. The following comments illustrate the frustration of dissatisfied control group complainants who said that they would, in the future, prefer to have a case handled in mediation:

> "They (the court) did not call me. They simply let me go. I had no say in the matter."

> "(My decision) depends on what happens, but mediation sounds fine because I could possibly work out the problem. The court didn't do anything this time around."

However, dissatisfaction was also expressed by some of the complainants whose cases had been mediated. Sometimes, these complainants' dissatisfaction stemmed from their expectation of clearer role delineations between complainant and defendant -- expectations that were not met in mediation sessions:

> "(E)verything was in his (the defendant's) favor. The agreement was not fair. The mediator should have seen the defendant as a defendant, and not me as a defendant."

> "Mediation tries to make everybody happy. They should be harder with the defendant -- more one-sided."

In other cases, complainants were dissatisfied in mediation because they felt that the mediators' authority was too limited:

> "The mediator can't really determine who's telling the truth. I felt the mediator had no power."

> "In mediation, it's all a bunch of talk."

Mediators do not, of course, have the same prestige and authority that judges do, and, as Kawashima (1969) has suggested, that fact may reduce the amount of coercive influence that mediators can exert upon parties to a dispute. This is, of course, by design. Mediators at the Dispute Center hoped not to exert authority, but -- because they shared similar backgrounds and socioeconomic status with the disputants -- to see the problems as the disputants did, and to guide them to awareness of the merits in a reasonable settlement.

Still, it is surprising that more than a quarter of interviewed complainants in mediation cases felt they had not influenced the agreement that concluded the session. It may be that this is just another way of expressing disappointment that the mediation agreement was not more favorable to them, but it might also be a consequence of the active role that the mediators played in steering parties toward what the mediators believed to be workable solutions.

Defendants' Perceptions of the Dispute Settlement Processes

Defendants in the sampled cases were sought for interview only once, four months after the case reached disposition either by mediation or by court process. Defendants were asked questions that paralleled questions asked of complainants in their exit and follow-up interviews. (The reader is reminded that only 29 percent of the defendants were given this follow-up interview (see page 18, above, and Table C.1 in Appendix C, for details and discussion).)

Nine out of ten interviewed defendants in mediation cases believed that the mediator heard their side of the story (see Table 6.4) and 67 percent believed they had had

at least some influence over the mediation agreement. These figures are comparable to the ones presented earlier for complainants. However, among interviewed defendants whose cases had been forwarded to the court for prosecution, only 44 percent believed the judge had heard their side of the story. Nevertheless, most interviewed defendants whose cases had been handled in the court process felt that the judge had been fair; nearly nine of ten interviewed defendants in both the experimental and the control groups, believed their cases had been handled fairly by the mediator or judge. Like complainants in control group cases, the defendants whose cases had been handled in the court may have been sympathetic to the limitations imposed by that process, and by the fast-paced environment, on the judge's ability to consult with them.

TABLE 6.4
DEFENDANT PERCEPTIONS OF THE PROCESS

		Experimental Cases* (Mediation) (n = 62)	Control Cases (Court) (n = 43)	x^2
Story Was Heard by Judge or Mediator?	Yes	90%	44%	26.46 ($p < .01$)
Judge or Mediator Was Fair?	Yes	89%	86%	0.17 (ns)

*Includes only defendants who actually attended the mediation session.

Defendants whose cases had been referred to the Dispute Center were more likely than control group defendants to believe that the outcome of the process had been fair (Table 6.5). A similar trend can also be seen in defendants' reported satisfaction with the outcome, but it was not statistically significant.

TABLE 6.5
DEFENDANT PERCEPTIONS OF THE OUTCOME

		Experimental Cases (Mediation) (n = 84)	Control Cases (Court) (n = 45)	x^2
Believe Outcome Fair?	Yes	79%	59%	5.43 ($p < .05$)
Satisfied With Outcome?	Yes	77%	67%	1.63 (ns)

Over nine of ten defendants in both the experimental and the control groups indicated that, in a similar circumstance, they would rather have their case handled in mediation than in court. This proportion is substantially higher than the comparable figure for complainants. The enthusiastic endorsement of mediation by defendants may in part be because, like the complainants who said they would prefer mediation in the future, the defendants preferred the opportunity, afforded by mediation, to participate in the process and work things through with the other person. This sentiment was evidenced in the following defendant responses:

> "(Y)ou get to find out a lot of things in mediation -- set a lot of things out in the open. It's really good ... it worked for me a lot."

> "You're able to understand what's bothering each other and work things out."

> "Court made me feel nervous and rushed. The court settled 5-6 cases in four minutes. I didn't speak and neither did (the complainant)."

But the defendant's preference for mediation must also stem from the opportunity it provides for avoiding any risk of punishment, and from knowledge that punishment cannot be imposed through a mediation session. This sentiment was evident in the following defendant responses:

> "Court means jail, and three days waiting for arraignment was enough for me."

"(In mediation, there would be) no blot against your name."

The overriding importance to defendants of avoiding penalties may also explain why their opinions of the process and their feelings about case outcome did not differ, between those referred to mediation and those referred to court, as much as such feelings differed between the experimental and the control complainants: as previously noted, the vast majority of defendants whose cases went to court were not punished.

It might have been expected that, because complainants and defendants have different interests, if one was satisfied with the outcome of the process, the other would be dissatisfied. This was not the case. If one disputant was satisfied or felt the outcome was fair, odds were that the other was also satisfied or felt it was fair ($r = .22$ between defendant and complainant satisfaction with outcome; $r = .27$ between defendant and complainant perceptions of fairness of outcome). This suggests that it is not necessary for the criminal justice process to be a zero-sum game in which one party wins all or loses all. In cases of the types dealt with here -- where incarcerating the defendant does not seem indicated -- care and attention to the concerns of both parties, whether in mediation or in court, may produce a mutually satisfactory outcome. It may be that it was by providing just such care and attention that mediation increased the satisfaction of both the complainants and the defendants.

Recurrence of Problems Between Disputants During the Follow-up Period

Fewer complainants in the experimental group than in the control group reported, after conclusion of their cases, being afraid of or angry toward the defendant (see Table 6.6). This effect appeared to be at least partly due to greater satisfaction with the case outcome among complainants in the experimental group; satisfaction with case outcome was strongly associated with changes in the fear and anger that complainants felt toward defendants. There is also some indication that the act of sitting down and talking to the defendant in mediation gave complainants in the experimental group a better understanding than control complainants had of why the defendant committed the act that led to arrest.

TABLE 6.6
EMOTIONAL DISTRESS OF COMPLAINANTS, FOLLOWING CONCLUSION OF THEIR CASES

		Experimental Cases (Mediation) (n = 159)	Control Cases (Court) (n = 120)	x^2
Fear Revenge?	Yes (very much or somewhat)	21%	40%	12.30 ($p < .01$)
Angry at Defendant?	Yes (very much or somewhat)	23%	48%	17.65 ($p < .01$)
Confused about Defendant's Motive?	Yes (very much or somewhat)	38%	50%	3.75 ($p < .01$)

Most disputants, both experimentals and controls, reported less contact during the four-month period following conclusion of the case than during the period before the arrest. About two-thirds of complainants and defendants reported seeing the other disputant less often, and only 60 percent reported having maintained any regular contact. These data suggest that the defendant's arrest may often have occasioned a change -- or even a complete break -- in the course of the relationship. There were no significant differences, between the experimental and control groups, either in amount of contact during the follow-up period reported by the disputants, or in changes in the frequency of their contact (see Table 6.7).

TABLE 6.7
FREQUENCY OF DISPUTANTS' CONTACT
AFTER CONCLUSION OF THEIR CASES

		Experimental Cases (Mediation)	Control Cases (Court)	x^2
Frequency of Contact				
Complainants' Report:	Live Together or See Daily	22%	26%	2.54 (ns)
	See Weekly or Monthly	41	30	
	See Rarely or Never	37	44	
		100% (n = 127)	100% (n = 89)	
Defendants' Report:	Live Together or See Daily	29%	18%	2.29 (ns)
	See Weekly or Monthly	34	33	
	See Rarely or Never	38	49	
		100% (n = 87)	100% (n = 45)	
Changes in Frequency of Contact				
Complainants' Report:	As Frequent or More Frequent	31%	35%	0.38 (ns)
	Less Frequent	69	65	
		100% (n = 125)	100% (n = 88)	
Defendants' Report:	As Frequent or More Frequent	39%	24%	2.81 ($p < .10$)
	Less Frequent	61	76	
		100% (n = 87)	100% (n = 45)	

Four measures were used to compare the effectiveness of mediation and court process in reducing the recurrence of hostilities between disputants. These included (from least to most serious):

(a) Disputants' reports of changes in the other's behavior toward them;

(b) Disputants' reports of continuing interpersonal problems with the other;

(c) Disputants' reports of asking the police to intervene again; and

(d) New arrests of either party on a criminal complaint by the other.

Perhaps the most striking thing about the data collected for this study is that, by all of these measures, continuation of overt hostility between disputants was the exception rather than the rule. Among all interviewed cases in the sample (both experimental and control), only one in five disputants reported having problems with the other after the case had been concluded; only 12 percent (all of them complainants) reported calling the police again; and (based on data from the files of the New York City Criminal Justice Agency and V/WAP), in only four percent of the cases was a disputant arrested during the four month follow-up period for a crime against the other party to the sampled case. Further, among those disputants who maintained contact during the follow-up period, over three in five felt that the other's behavior towards them had improved, and only 15 percent felt it had deteriorated.

However, there were surprisingly few differences, on these measures, between the experimental and the control group cases. The only statistically significant indication of difference in disputants' subsequent behavior was found in complainants' perceptions of defendants' behavior, but this was significant only among disputants who maintained contact; 62 percent of the experimental complainants who maintained contact with the defendant believed the defendant's behavior had changed for the better, while 40 percent of control group complainants who maintained contact felt that the defendant's behavior had changed for the better (see Table 6.8). The other differences between experimental and control group cases were in the expected direction, but did not approach statistical significance; and there was no difference in defendants' perceptions of complainants' behavior.

TABLE 6.8
DISPUTANTS' REPORTS OF PROBLEMS DURING THE FOLLOW-UP PERIOD

		Experimental Cases (Mediation)	Control Cases (Court)	x^2
Complainants' Perceptions of Defendants' Behavior*	Improved	62%	40%	6.71 ($p < .01$)
	Same or worse	38	60	
		100% (n = 85)	100% (n = 55)	
Defendants' Perceptions of Complainants' Behavior*	Improved	63%	61%	0.06 (ns)
	Same or worse	37	39	
		100% (n = 65)	100% (n = 33)	
Complainants' Reporting Problems With Defendant		19% (n = 127)	28% (n = 88)	2.65 (ns)
Defendants' Reporting Problems with Complainants		15% (n = 87)	18% (n = 45)	0.18 (ns)

*Includes only disputants reporting some contact with each other during the follow-up period.

The great majority (81 percent) of the problems reported by disputants whose cases had been mediated were expressed as alleged violations of the mediation agreements; however, only one in four reported informing the Dispute Resolution Center of the breach.

Experimental and control cases were virtually identical in the frequency with which they required intervention by police during the follow-up period (see Table 6.9). Experimental and control cases differed by less than a percentage point in the frequency of calls made to the police (as reported in follow-up interviews) and in the frequency of new arrests of one party for a crime against the other (as shown by official records).

TABLE 6.9
FREQUENCY OF CRIMINAL JUSTICE SYSTEM
INTERVENTION IN DISPUTANTS' RELATIONSHIPS
DURING THE FOLLOW-UP PERIOD

	Experimental Cases (Mediation)	Control Cases (Court)	x^2
Police Called	12% (n = 128)	13% (n = 88)	0.02 (ns)
Either Party Arrested for Crime Against the Other	4% (n = 259)	4% (n = 206)	0.08 (ns)

Identification of Cases Involving a High Risk of Recidivism

The preceding section suggests that for cases of the sort handled by the Dispute Resolution Center, the probability of continued or escalating hostilities is relatively low, at least over a four month period after conclusion of the mediation or the court process. This may be, in part, because the precipitating incident, the arrest, or the process led disputants to assess their ruptured relationships and, often, to follow rational courses of action: most reduced the frequency of their contact with the other party, and many cut off all contact. Appendix B shows that many of the disputants who chose "avoidance" relationships to avoid recurrence of hostilities decided not to use even the informal dispute resolution procedures of the Center. For them, apparently, "dispute resolution" was not viewed as necessary because they knew they did not wish to maintain their relationships. And many of the disputants who did maintain contact apparently made efforts to improve their relationships; indeed, almost 60 percent of all respondents who reported continued contact with the other party reported seeing a positive change in that person's behavior (see Table 6.8).

Nevertheless, not all disputants can adopt or can succeed in following such neat, rational courses of action. Strong interpersonal ties, often based on emotional or financial dependence, may make it more difficult to sever a relationship, even when it is fraught with conflict and pain and endangers personal safety. Studies by Wilt, Bannon and Breedlove (1977), and by others, have shown that cases involving serious domestic violence are often the culmination of long histories of hostilities in which police and the courts may have been called upon to intervene several times in the past.

Two criteria -- strong interpersonal ties (immediate family or lovers) and a previous call to the police to intervene in the relationship -- proved to define a group of cases at high risk of recidivism, from among all cases sampled for this study. Table 6.10[9] shows that, in cases meeting

TABLE 6.10
RISK OF RECIDIVISM,
BY NATURE OF DISPUTANTS' PRIOR RELATIONSHIP*
AND BY WHETHER THE POLICE HAD BEEN CALLED PREVIOUSLY

Percent of Complainants who REPORTED PROBLEMS With the Defendant During the Follow-up Period

	Strong Ties	Moderate or Weak Ties
Police had been Called Previously	44% (n=48)	27% (n=15)
Police had not been Called Previously	15% (n=46)	11% (n=73)

Percent of Cases in which a Disputant CALLED POLICE About the Other Party, During the Follow-up Period

	Strong Ties	Moderate or Weak Ties
Police had been Called Previously	27% (n=48)	0% (n=15)
Police had not been Called Previously	7% (n=46)	4% (n=73)

Percent of Cases in which a Disputant was ARRESTED During Follow-up Period, for Crime Against the Other

	Strong Ties	Moderate or Weak Ties
Police had been Called Previously	12% (n=78)	0% (n=20)
Police had not been Called Previously	1% (n=81)	1% (n=133)

*Because the number of cases is low in the "moderate" and "weak" categories of prior relationship, these cases have been presented together in this table; the results are essentially the same when the data are presented with the three categories of prior relationship presented separately.

these criteria, 44 percent of the complainants experienced subsequent problems with the defendant and 27 percent of the

[9]For the analysis offered in Table 6.10, it was not possible to use the same bases as were used for Table 6.9. The numbers are smaller in the cells of Table 6.10 because information about prior incidents in the disputants' relationship was available only in cases where there had been a complainant intake interview.

complainants experienced subsequent problems with the defendant and 27 percent of the complainants called the police about these problems; in 12 percent of these cases one or both disputants were arrested on a criminal complaint made by the other party to the original case during the four month follow-up period. In contrast, among cases characterized by weaker interpersonal ties and absence of prior calls to the police, only 11 percent of the complainants reported subsequent problems with the defendant and only four percent of the complainants called the police; in only one percent of these cases was a party to the original case arrested on a criminal complaint made by the other party during the four month follow-up period.

These data clearly suggest that cases arising between persons who share strong interpersonal ties and who have summoned the police on previous occasions are the cases evidencing the greatest need for effective intervention. These are also the cases in which the disputants are more likely to seek formal dispute resolution, according to the data in Appendix B. However, the data do not suggest that mediation was more effective than court in reducing recidivism in these "high risk" cases. The overall lack of difference between experimental and control cases in reported problems, subsequent calls to police and subsequent arrests, seen in Tables 6.8 and 6.9, holds true for the subgroups of cases defined in Table 6.10 by type of prior relationship between complainant and defendant and by whether the police had been summoned before.

Conclusion

The evidence suggests that the process of mediation is viewed more positively than the court process, both by complainants and by defendants. In addition, mediation appears to give complainants a greater feeling of satisfaction with the outcome. Differences in defendants' satisfaction were less pronounced perhaps because defendants placed more importance on the outcome itself and less on the process than did complainants; outcomes were not particularly unfavorable to defendants in mediation or in court. Complainants whose cases were referred to mediation tended to have more positive subsequent perceptions of the defendant and to feel less fear, anger, and confusion, than did complainants whose cases were forwarded to the court for prosecution; on these measures of complainants' attitudes, mediation seemed to have a positive effect.

However, there was little difference observed, between cases referred to the Center and cases prosecuted, in disputants' subsequent reports of problems with each other, in the frequency of their calls to the police and in subsequent arrests for crimes against each other.

It was also significant, though, that the lack of a clear impact of mediation on subsequent hostilities may be in part due to the fact that many disputants tend to "solve" their interpersonal problems fairly well, regardless of the type of formal intervention available to them. Many sever the relationship or reduce contact with each other after -- or in some cases without -- either form of intervention; these persons were usually less involved with and dependent upon each other to begin with (see Appendix B). Thus, several months after case settlement, the majority of those who chose to maintain contact were likely to feel an improvement in the relationship, and few reported renewed interpersonal problems, called the police or had the other party arrested. In other words, these data suggest that most parties to prior relationship cases do not return to the criminal justice system again and again and do not usually escalate their conflict into ever more violent incidents. But, because of the relatively short follow-up period (four months), this finding must be viewed as tentative and in need of further confirmation.

The cases involving intimate relationships and a history of calls to the police seem the most likely to return to the criminal justice system, and these relationships seem most likely to flare into more violent conflict; these also appear to be the cases in which the parties are most likely to maintain contact with each other, so the probability of continued friction is high unless there is some adequate resolution of current criminal complaints. Unfortunately, the complex etiology of problems in such close relationships, and habits of irrational response to problems these disputants seem to develop over time, make them the most resistant to effective intervention. It may be that, in order to make a real difference in these kinds of cases, a form of intervention more sustained than that offered by the Brooklyn Dispute Resolution Center would be needed. Mediation may be the right direction; a great many positive indications emerged in this study. But mediation might be more effective if it were made the first step in a sustained series of interventions. Such a program might involve repeated mediation sessions, counselling, and other social services if mediation is to realize its potential as an effective alternative to the prosecution process in cases that most need an alternative.

VII.

COSTS AND BENEFITS TO THE CRIMINAL JUSTICE SYSTEM

There are at least three ways in which the Dispute Resolution Center might be expected to conserve criminal justice resources: (a) reduction in the number of court appearances required for a case to reach disposition, (b) reduction in the number of police tours of duty consumed by requiring arresting officers to leave street patrol and attend at court, and (c) reduction in the number of days defendants are held in pretrial detention. This section of the report offers a brief, and necessarily approximate, assessment of the program's first-year impact in these areas, and a discussion of ways in which the Center might increase such savings. The quality of available cost data is too low to justify assigning specific monetary value either to these savings or to the benefits reported by disputants; therefore no attempt is made to calculate the cost/benefit ratio.[10]

The mean number of court dates required to dispose of the experimental cases was slightly higher than the mean number required for controls (see Table 7.1). This contradicted expectations.

TABLE 7.1

MEAN NUMBER OF COURT DATES REQUIRED TO DISPOSE OF CASES IN THE SAMPLE

	Mean Number of Court Dates (Including Arraignment)
All Experimental Cases	2.54 (n=257)
Cases Mediated	1.83 (n=144)
Cases Not Mediated	3.45 (n=113)
Control Cases	2.41 (n=197)

Significance Tests:
All experimental cases vs. controls: $t=2.55$, $df=461$, $p<.05$
Mediated cases vs. controls: $t=3.66$, $df=347$, $p<.01$
Cases not mediated vs. controls: $t=0.44$, $df=316$, (ns)

10. The need for an accurate reading of the cost/benefit ratio of a program such as this was somewhat reduced in the V/WAP setting, because the total cost of V/WAP's various program elements was more than fully covered by the economic benefits of just one of those program elements -- the notifications unit. See, p. 85.

Of course, experimental cases that were successfully mediated or arbitrated did require fewer court dates to reach disposition than did the control group cases ($\bar{x}$ = 1.83 dates for mediated cases; $\bar{x}$ = 2.41 for control group cases). But the mean number of court dates required for the experimental group of cases as a whole was higher because cases scheduled for mediation, but not successfully mediated, required significantly more court dates to be concluded ($\bar{x}$ = 3.45). This resulted when cases, which might have reached disposition at arraignment or at a second court date shortly after arraignment were at first adjourned pending the Dispute Reslution Center outcome and then returned to the court process where they required several court dates before finally being concluded. The greater number of court dates required for these cases assigned to mediation but not mediated offsets the lesser number of court dates required for cases successfully mediated.

Because fewer court dates were required for mediated cases, and because police officer witnesses were often excused by the court once a case had been referred to the Dispute Resolution Center, there were fewer post-arraignment appearances required of arresting officers in mediated cases than in control cases (0.03 required appearances per officer in mediated cases, versus 0.24 required appearances per officer in control cases). Cases diverted to mediation but not successfully mediated consumed a number of required appearances by the arresting officer (0.20) that was close to the number of appearances required of officers in the control group cases (0.24). Overall, cases in the experimental group required less than half the number of post-arraignment appearances by arresting officers as the control group cases required (see Table 7.2).

TABLE 7.2
MEAN NUMBER OF REQUIRED APPEARANCES
OF ARRESTING OFFICERS, PER CASE

	Mean number of post-arraignment court appearances required of arresting officers, per case
All Experimental Cases	0.10 (n=259)
Mediated Cases	0.03 (n=145)
Cases not Mediated	0.20 (n=114)
All Control Cases	0.24 (n=204)

Significance Tests:
All experimental cases vs. controls: t=2.55, df=461, $p<.05$
Mediated cases vs. controls: t=3.66, df=347, $p<.01$
Cases not mediated vs. controls: t=0.44, df=316, (ns)

In all but one of the cases adjourned for diversion to mediation, the defendants were released on their own recognizance, pending the outcome of mediation, and no pretrial detention costs were incurred. In 27 percent of the control group cases that continued in the court process past arraignment, a bail amount was set by the judge as a condition of the defendant's liberty in the post-arraignment period (see Table 7.3)

TABLE 7.3
DEFENDANTS' BAIL STATUS
IN CASES CONTINUING PAST ARRAIGNMENT

	ROR	Bail Set	Total	Mean No. of Days in Detention*
Experimental Cases	99%	1%	100% (n=173)	0.02
Mediated	100%	0%	100% (n=93)	0.00
Not Mediated	99%	1%	100% (n=80)	0.04
Control Cases	73%	27%	100% (n=93)	0.37

Significance Tests:
All expermiental cases vs. controls: $t=5.03$, $df=461$, $p<.001$
Cases mediated vs. controls: $t=4.06$, $df=406$, $p<.001$
Cases not mediated vs. controls: $t=3.15$, $df=316$, $p<.01$

*Based on all defendants, including those whose cases reached disposition at arraignment.

Some of the defendants from whom bail was required were able to post bail immediately. But information obtained from the New York City Criminal Justice Agency shows that defendants in the control group (including those whose cases reached disposition at arraignment) spent an average of 0.37 days in pretrial detention after arraignment.

Although it had not been expected that diversion of cases to mediation would reduce the need for post-conviction imprisonment, it is interesting to note that five defendants in control group cases were sentenced to jail, and that two of their terms were for more than one month.

Over the course of the first year of the Dispute Resolution Center's operations, 1,234 cases were referred to it for mediation; 711 of them were actually mediated.[11] From the

11. To determine that 711 cases were mediated, it was necessary to look beyond the sample, to the V/WAP records; that number suggests that 1,234 cases were referred, because it appears, from the data in this study's sample, that 56 percent of cases referred were actually mediated.

data discussed in the paragraphs above, about resource costs (i.e., increased court appearances) and savings (i.e., fewer court dates for arresting officers, and lower incidence of pretrial detention), it should be possible to determine the relationship between the annual costs of the program (including $116,000 for the Center's operations) and the annual value of the benefits. However desirable it would be to know this cost/benefit ratio, accurate data is not available from which to fix the marginal costs of a court appearance, the marginal cost of a day's pretrial detention, or the marginal cost of taking a police officer off the street for an appearance at court. It is even more difficult to assign a monetary value to the rather dramatic positive effects mediation had on the perceptions and attitudes of disputants whose cases were diverted from the court process.

But, whatever the true first year cost/benefit ratio of the mediation program, it is clear that it would have been more favorable if the program had not had certain inefficiencies of program intake (noted in Section III, above, and in Appendix B, below). Indeed, the program managers were aware of this, and took advantage of several procedural changes introduced after the close of the period covered by this research. First, all parties concerned with post-arrest processing in Brooklyn agreed to pre-arraign any case in which the complainant is present in the complaint room to consent to diversion of the cause to mediation and for which the complaint room prosecutor deems mediation suitable; as a result, in mediation cases, the police are able to return the arresting officer to patrol (or avoid paying him overtime) rather than keeping him at court for the long wait for the case to reach arraignment. Second, the prosecutor's complaint room and the police central booking facilities were brought together in one location in Brooklyn to operate around the clock, and, as a matter of policy, complainants are routinely brought to the complaint room. Taken together, these changes should:

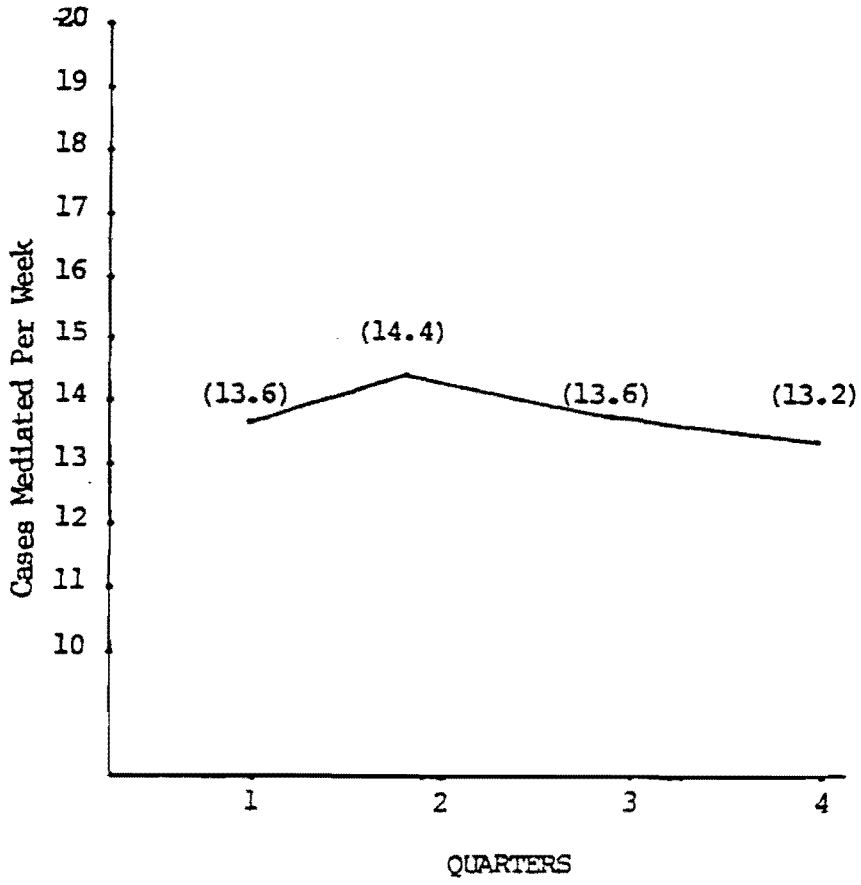
- reduce the number of court appearances required to dispose of cases diverted to mediation, by substantially reducing the proportion of cases referred to mediation in which the complainant's first opportunity to reject mediation and to seek prosecution occurs at the Dispute Resolution Center itself; and

- permit the police to gain substantial benefits from increased street time from its patrol force and reduced overtime payments to it.

There are other ways in which the program's impact could be augmented. During its early months, The Dispute Resolution Center drew to mediation a proportion of felony arrest cases that was surprisingly high. New programs almost always start slow, and the Center's early success in this regard was remarkable. But there was no increase over the first year, quarter by quarter, in the proportion of cases diverted to it. At year end, the Center was not operating at capacity. It had been expected that, as the prosecutor's office and the court came to accept the program, their increased confidence in it would result in more referrals. It had also been expected that termination of the random assignment procedures, which were necessary to create the research control group but which denied mediation referral to between one-third and (later) one-half of the approved cases, would result in an increase in the Center's caseload. However, as Figure 7.1 shows, the Center mediated a constant 13-15 cases per week, over the first four quarters of its operations.

FIGURE 7.1

NUMBER OF CASES MEDIATED OR ARBITRATED PER WEEK DURING THE DISPUTE RESOLUTION CENTER'S FIRST YEAR OF OPERATIONS



There is potential for diverting more cases to mediation by tightening controls at each point in the case screening process in the complaint room. To begin with (referring back to Figure 3.1 and the discussion at pages 21-25) nearly one in three prior relationship cases may never have been considered for mediation because the arresting officer indicated no prior relationship between complainant and defendant (when, in fact, a prior relationship did exist). This loss to the mediation caseload could have been addressed in a number of ways. One would have been to make phone calls to complainants absent from the complaint room, to determine if a prior relationship existed. Another would have been to solicit information on the existence of a relationship -- in cases where it had not been previously verified -- from complainants later coming into contact with V/WAP when V/WAP made notification calls for post-arraignment court dates. Where a relationship was discovered, and the complainant was interested in mediation, V/WAP or Dispute Resolution Center staff could have contacted the prosecutor's office to seek approval for post-arraignment referral of the case to mediation. Some of these changes in procedure have been made unnecessary by changes in the location, hours and procedures of the complaint room, as discussed above. Already, those changes have had the result of reducing dramatically the frequency with which complainants refuse to go forward with mediation when the case arrives at the Dispute Resolution Center (see Appendix B.)

But referrals could also have been increased by enforcing a more liberal screening policy by V/WAP complaint room staff. As discussed in Section III, the formal guidelines adopted by V/WAP excluded relatively few cases. However, subjective screening by V/WAP staff resulted in rejection of many cases that fell within the project's guidelines. Since V/WAP's screening seemed to parallel the screening prosecutor's (see Table 3.1), it may be that the bulk of cases not considered because V/WAP screened them out would have been rejected by the prosecutor in any event. However, the experience of research staff who were in the complaint room during the period of sample intake suggested that V/WAP's screening personnel were sometimes wrong in believing that the prosecutor would reject a case. Even so, the screening prosecutors seem to have been unnecessarily conservative in holding on to cases for prosecution in the courts: 53 percent of the cases they rejected for mediation were later dismissed or adjourned in contemplation of dismissal by the court. In these cases, it may be that neither the complainant's interests nor the goals of the individual prosecutor or the District Attorney's Office were well served by preventing diversion to mediation.

If all cases involving a prior relationship between complainant and defendant had been referred to the Center, more than four times as many cases would have been diverted to mediation. Clearly, there are many cases involving a prior relationship that should not be diverted to mediation, and it is unrealistic to think that weeding out will not occur at each screening point in the complaint room. However, the discrepancy between the actual and the maximum levels of referral suggests room for much greater program impact.

VIII. CONCLUDING OBSERVATIONS

It is gratifying, upon completing an evaluation, to report that the program has measurable impact of the desired kind. Crime victims and (to a lesser degree) defendants found mediation at the Dispute Resolution Center more satisfying than the court prosecution process -- they viewed both the process and the outcome more favorably when the case was referred to the Center. This is impressive, particularly because the target cases came to the criminal justice system as felonies-- not, as is more conventional in today's mediation programs, misdemeanors and violations. And positive effects of mediation can be seen to persist over time; four months after disposition, parties who had been referred to mediation more often reported that the other party's behavior had changed for the better, and the crime victims who had been referred to mediation expresses less anger, fear and confusion than those whose cases were forwarded for prosecution.

However, these positive results should not obscure the disappointing finding that referral to mediation was no more effective than the prosecution process in reducing the actual incidence of subsequent hositilities between the parties --at least, subsequent hositilities serious enough to provoke calls to the police or new arrests.

Some comfort may be found in the relatively low incidence of serious subsequent hositilities in both the experimental group and the control group. But the theoretical advantages of mediation-- getting at the etiology of on-going disputes, giving the parties an opportunity to shape a workable disposition, emphasizing agreement and discussion rather than adversariness and punishment-- ought to be reflected in reduced reliance on the police and courts as well as in the satisfaction of the parties. Is there something that can be done to achieve in practice the full promise of mediation?

It is not too early in the development of non-judicial dispute-settlement programs to ask, and seek answers to, other questions as well. Are mediated or arbitrated agreements actually kept by the parties in cases such as those being diverted in programs around the country? If not, is there any interest (other than the parties' own interests) in enforcing these agreements? If enforcement is desirable, can the kinds of agreements coming out of these mediation programs actually be enforced through civil court process? How expensive would that be? Would it increase or diminish satisfaction with the process? With the outcome? Should community-based mediation programs discourage or encourage non-enforceable terms in mediation agreements when the parties feel those terms provide a basis for an agreed resolution of their dispute? Should programs follow up to find out whether agreements are kept? Is enforcement an issue only in some kinds of disputes? Is it the process or the outcome that matters more, or are they equally important? Whose view of the process and the outcome should be given most weight by policy makers? (the parties'?, the court's?, the criminal justice system's?) Whose view of the process and the outcome matters most (the parties', the program's, the system's)? Are the already-demonstrated advantages of mediation achievable (or worth trying to achieve) only in cases involving prior relationships? Are the strengths of mediation as an alternative to court process increased or undermined by links to that process (e.g., physical location, referral source of incoming disputes, authority for enforcing agreements)? Finally, will the development of mediation programs proceed slowly enough for policy to be shaped by experience and research bearing on such questions?

The research reported in these pages should inspire program development aimed at better capitalizing on mediation's theoretical advantages. Certainly, it would be sad if the publication of this report led either to a view that mediation can never be more effective than prosecution in reducing recidivism in serious interpersonal cases, or to a view that mediation has been shown to be the better answer (despite recidivism in a handful of cases). As with so many research efforts, the findings seem better suited to launching new inquiries than to settling, once and for all, the policy choices. Use of mediation as an alternative to prosecution is in its infancy, and the opportunity presents itself now, while enthusiasm for it is running high nationally, to attempt even more effective adaptations of the basic program idea. Some possible directions have been suggested earlier in this report. Others should be suggested, tried and assessed.

APPENDIX A: THE VERA INSTITUTE'S VICTIM/WITNESS ASSISTANCE PROJECT: AN ACTION-RESEARCH PROGRAM

Many of the assumptions that guide today's efforts at reforming the criminal justice system--however time-honored and common-sensical they are--may be too simple, or simply false. Certainly, various programs built on these assumptions do not work as expected. Because the Victim/Witness Assistance Project proceeded from some of these assumptions and, through research and experience, shifted its objectives and methods to what appears to be a more solid base, this record of interplay between action and research in the evolution of the program may be of some interest to a wider audience.

Background: The Discovery of Witness Disaffection and the Rise of the "Victim Movement"

The rapid increase in urban crime this country experienced during the 1960s and early 1970s, and the alarm it engendered, brought immediate and persisting criticism upon the criminal justice system for failing to control crime. More slowly, it was realized that police, prosecutors and judges rely heavily on the cooperation of the public--they are not able to perform their functions in a vacuum. Evidence of the extent to which the public was not cooperating emerged from the series of victimization studies begun in the late 1960s;[1] not only did the surveys show actual

crime, reported in the surveys, to be three to five times higher than crime reported to the police, but they also surfaced widespread lack of confidence in the law enforcement and criminal justice systems. Among the most frequent reasons for not reporting crime, according to the surveys, was the belief that criminal justice officials either could not, or would not, do anything about it. This evidence sparked renewed intellectual and programmatic interest in the plight of the victim.

At the same time, an awareness began to grow that even when victims do report crimes and police do make arrests, the victims frequently fail to cooperate in prosecuting the defendants. As a result, it was believed, many cases were eventually dismissed that might have resulted in conviction if the victims had played their role. As early as 1967, the President's Commission on Law Enforcement and Criminal Justice noted that:

> "In recent years there has been growing concern that the average citizen identifies himself less and less with the criminal process and its officials. In particular, citizens have manifested reluctance to come forward with information, to participate as witnesses in judicial proceedings, and to serve as jurors. The cause of these negative attitudes are many and complex, but some aspects of the problem may be traced directly to the treatment afforded witnesses and jurors."[2]

The reluctance of witnesses to attend court, and the consequences of their failure to do so, were soon highlighted in other studies. While noting the paucity of data on the subject, the Courts Task Force of the National Advisory Commission on Criminal Justice Goals and Standards (1967) reported that the failure of witnesses to attend court proceedings was "throughout the country, the most prevalent reason for dismissal of cases for want of prosecution and a significant contributor to overall dismissal rates."[3] The Task Force found that, in New York City's Criminal Court, for example, witness non-attendance was responsible for up to 60 percent of all dismissals.

In 1972, the Center for Prosecution Management conducted a survey of prosecutors and their perceptions of the reasons for

court delay. The study found that all survey respondents thought witness non-cooperation to be a problem and to contribute significantly to court delay.[4] At about the same time, a study in Washington, D.C. revealed that nearly half of felony arrests were being rejected for prosecution at the prosecutors' initial screening, because witnesses were uncooperative (Hamilton and Work, 1973).[5]

Once the problem had been identified and publicized, expert observers and researchers began the search for causes. In most studies, the factor identified as responsible for the failure of witnesses to cooperate was their disaffection with the criminal justice system. Witnesses, it was argued, fail to cooperate because the costs and inconveniences of attending court are substantial and because, when they do attend, they are likely to be neglected or even treated discourteously by court officials (see Knudten, 1976, for a full discussion of the costs incurred by witnesses as a result of their experiences in the court system). Witnesses, the argument continued, become "turned off" and withhold their cooperation from the criminal justice system. Reasons advanced for this apparent witness disaffection included: repeated, often needless, court appearances (Banfield and Anderson, 1968; Chicago Crime Commission, 1974; Fitzpatrick, 1975); long waits in the courthouse for cases to be called (Ash, 1972); neglect by court officials, and resulting confusion about court proceedings (New York State Supreme Court, 1973; Zeignehazen, 1974); poor physical facilities (Sacramento Police Department, 1974); and loss of income and inadequate compensation (Fitzpatrick, 1975).

However, some authors argued that the disaffection of complaining witnesses results from the extremely circumscribed role assigned to the victim in modern criminal law (Ash, 1972); that is, the victim is a source of evidence which may or may not be needed by the prosecution. MacDonald (1976), reporting on a survey of district attorneys, argued that criminal justice officials manipulate witnesses to serve personal or organizational interests. Prosecutors, he suggested, are responsive to the needs, desires and expectations of victims only when, as a strategy, it is seen as likely to advance the prosecutor's organizational or individual goals.

Another theme that emerged from studies of witness non-cooperation was that complainants (or other witnesses) who

have existing ties of kinship, friendship, or other relationship to the defendant are less likely to cooperate with the prosecution than those who are strangers to the accused. A study by the Vera Institute of Justice (1977) revealed that, in roughly half of all felony arrests in New York City (excluding crimes without identifiable victims, such as possession of narcotics or gambling), the complainant and defendant had a prior relationship. Surprisingly, this included property crimes as well as crimes against the person. Furthermore, these cases, in each crime category, were dismissed at a very high rate and the dismissals were largely attributable to witness non-cooperation. Other studies (e.g., Williams, 1976; Cincinnatti Police Division, 1975; Chicago Crime Commission, 1974) reported that a witness who knew the defendant was more likely than other witnesses not to attend required court dates. Based on her findings, Williams concluded:

> "It would appear that when the victim and defendant have a close social relationship, dispute resolution may be occurring outside the courtroom. At best, one can say that such family cases, and perhaps cases between close friends, are best settled out of the criminal setting. At worst, a pattern of violence between a husband and wife may continue with the beaten spouse unable or unwilling to leave the family setting, and hence, unwilling to continue to testify in a criminal case."

Still other studies focused on poor communication between court officials and witnesses as a major cause of witness non-cooperation. Fitzpatrick (1975) reported many of the witnesses he surveyed stated that they failed to attend court dates because they had never been notified to appear. In the most extensive research effort on witness cooperation, Cannavale and Falcon (1976) found many of their survey respondents reported being willing to cooperate but had nonetheless been labelled "uncooperative" by prosecutors. A major reason for this misperception seemed to be poor communication among the police, the prosecutors, and these witnesses; many respondents who had been labelled "uncooperative witnesses" reported that they did not recall being a victim of or witness to the crime, or that they had never been asked to serve as a witness for the prosecution. Other witnesses seemed to have been labelled uncooperative because prosecutors anticipated an uncooperative attitude on the basis of their past experience with witnesses having similar characteristics. Ironically, the Cannavale and Falcon study's most important

finding -- that many "uncooperative" witnesses may not deserve the label -- made it difficult to pursue the study's original purpose of determining what factors differentiate cooperative from uncooperative witnesses.

By 1974, enough evidence was available on the extent of victim and witness non-cooperation, its consequences, and its apparent causes, for the Law Enforcement Assistance Administration to intervene. In that year, LEAA launched the Citizens' Initiative Program in the belief that:

> "it is only through the integration of citizens into the criminal justice process in a significant and positive way that crime prevention can occur. Conversely, the criminal justice system has a key role to play in requiring the citizen to abandon his apathy and to assume his obligations."

Although the first federally funded victim/witness project had begun earlier, the launching of the Citizens' Initiative Program with its objective of funding 19 victim/witness projects during its first year marked the formal beginning of what Stein (1977) has referred to as the "victim movement".

By mid-1979, more than 90 of these victim-witness projects had been funded by LEAA. Many were located within, or worked closely with, prosecutors' offices. Many programs, working with victims in their role as prosecution witnesses, had the explicit goal of reducing witness non-cooperation, and designed their program efforts with the then-current research findings on causes of witness non-cooperation in mind.[6] The largest of these projects, and the one that gave birth to the research reported in this document was the Victim/Witness Assistance Project begun in Brooklyn, in July, 1975, in conjunction with The Brooklyn District Attorney, the New York City Police Department, the courts, the New York State Division of Criminal Justice Services, and the Mayor's Criminal Justice Coordinating Council. V/WAP was administered by Vera until December, 1978, when it was absorbed by a new, independent city-wide agency, the Victim Services Agency.

Description of the Project

The Institute's effort to ameliorate prosecution witnesses' problems with the criminal court really began years earlier, in 1970, when, in cooperation with the New York City Police Department, it launched the Appearance Control Project.

Appearance Control arranged for selected witnesses (both police and civilian) to remain at work or at home on the date of their scheduled court appearances until it was determined they were needed in court. Then they were summoned by telephone. (If a police officer witness was assigned to street patrol on the day of the scheduled court hearing, the precinct was notified by telephone, and he was dispatched to court, by radio, only if his presence was actually required.)

A controlled study showed that the alert procedures neither delayed court proceedings nor led to more dismissals. The research also suggested that a city-wide program could be expected to save police time worth about $4 million annually, and Appearance Control was institutionalized within the Police Department in all New York City boroughs except Staten Island.

Although Appearance Control helped reduce the imposition of unnecessary burdens on some civilian witnesses and on the Police Department, it was not a comprehensive attack on the problems thought to cause witness disaffection with the prosecution process; although it helped keep witnesses out of court when they were not needed, it did little to encourage their presence when it was necessary. V/WAP was designed to do so.

V/WAP started with three tasks. First, in order to reduce witness confusion and unnecessary appearances, and to encourage appearances when they were necessary, the project undertook to notify all prosecution witnesses of the dates they were expected in court. Second, the project provided each courtroom Assistant District Attorney with a daily roster of witnesses (civilian and police) for every case assigned to him, indicating whether the witnesses were "expected to appear", "not expected to appear", "on standby or telephone alert", or had not been reached. And third, the project provided services that included a reception center for victims and witnesses, a children's play center, transportation to court, a crime victim hotline, a burglary repair unit, and a service counselor.

The program elements continue to increase in number and complexity under the direction of the Victim Services Agency; the description offered below reflects program operations at the beginning of 1977, when the current round of research was getting underway.

Notifications

Project operations start in the Criminal Court complaint room, the point of entry for virtually all criminal cases, where civilian witnesses are interviewed by project staff (police witnesses simply fill out a form). The resulting information is fed into an on-line computer, which creates case files that form the basis for future notifications about court appearances. Arraignment information is also fed into the computer -- docket number, witness presence or absence at arraignment, court outcome, and the date and court part for any adjourned proceeding.

As the first step in the notification process, the computer generates daily lists of "long dates" (cases adjourned for six or more days) and "short dates" (those adjourned for five or fewer days). In long-date cases, the computer prints a letter that notifies the witness of his court date and asks him to phone the project to confirm receipt of the letter. The caller may be placed on alert -- if he can get to court within an hour from his home or job and can be contacted by phone -- or he may be told to appear. (Witnesses excused from the outset receive no letter.) Whether the witness is required at court or put on alert, the notifier tries to encourage him to appear by offering sympathetic support and information about the project's services. For the short-date cases, project staff starts telephone or in-person notification efforts immediately after arraignment.

To facilitate notifications, the computer also generates three other daily lists of the short-date cases and long-date cases in which the witness has not yet responded to the letter. The first list--the one to which the staff devotes most of its energy -- shows all witnesses scheduled for appearances the next day; the second, all those who have appearances in two days; and the third, those who have appearances in five days.

The staff members try to reach persons on these three lists by telephone. If they succeed, they follow the procedure they would use if the witness had responded to the notification letter by calling the project. For serious cases, a V/WAP community representative attempts to locate in person those witnesses who cannot be reached by phone.

Every evening, the computer prints a set of information sheets on project cases scheduled for the next day in each court part. Each Court Part Information Sheet (CPIS) lists witnesses by case, as well as each witness's appearance status

(must appear, on alert, or excused), how he has been reached (telephone, letter, visit), and whether he is expected to appear in court on that day. These sheets are then forwarded to Assistant District Attorneys (ADAs) in the post-arraignment court parts to help them make informed decisions on how to proceed with their cases.

At the end of each day, the ADAs note the outcome of the proceedings (disposition, adjourned date, court part, and so on), which witnesses are not needed next time, and any additional witnesses who will be required for the next court proceeding. The information provided by the ADA is entered into the computer, and the notification cycle begins again.

The method for notifying police witnesses is similar to that for civilians, except that they are contacted at their precincts (by teletype or telephone) rather than at their homes, and officers' eligibility for alert status is determined by different, more objective standards.

Services

The project's services are designed to respond to the victim's immediate and longer-term needs. Direct services include a reception center, a crime victim hotline, and an emergency repair service. A key ingredient of these services is a network of community resources and groups to which the project can refer victims of crime for help with special and long-term problems. Increasingly, the project's service components have been staffed by volunteers recruited primarily from high schools, universities, and senior citizen groups. By the end of 1976, 500 volunteer hours were being contributed each week.

The Victim/Witness Reception Center. Victims and witnesses who come to court often wait several hours in crowded courtrooms or noisy hallways, at times encountering harassment from defendants or friends and relatives of defendants. In an effort to make that wait more comfortable, the project created a reception center on the eighth floor of the court building. It provides a safe, pleasant setting in which witnesses can wait until their cases are called. The court parts communicate with the reception center by intercom. Coffee, magazines, television, and telephones are available. (By the end of 1979, over 1000 persons were using the reception center each month.)

Most people who use the center are victims referred by ADAs. The center is also available for ADAs to interview their witnesses. Reception center staff members help victims to fill out claims to the New York State Crime Victim Compensation Board (when they have suffered injury resulting in loss of earnings, medical expenses, funeral expenses, or a need for emergency financial assistance) and refer them to the project's service counselor when appropriate. A project representative, with access to a computer print-out of cases scheduled for the day, directs persons to the appropriate parts of the building and answers questions about court proceedings.

Service Counselor. The project's service counselor is available full-time in the reception center to work with victims and witnesses who have special service needs, who have been seriously traumatized as a result of the crimes committed against them, or who are intimidated and confused by the criminal court process. Besides providing support and encouragement, the service counselor and his staff of graduate students explain court procedures and the role of the victim and other witnesses in the process. If a witness reports an incident of harassment by a defendant, the counselor notifies the Detective Investigators Unit in the District Attorney's Office.

Often the crime that has brought the victim to court is not the sole source of his difficulty. For example, for a woman who filed a complaint because her husband had abused her and threatened her with a gun, the service counselor not only described the court process, accompanied her to the arraignment, and explained her case to the ADA, but also referred her to an organization for battered wives and, because she was without a source of income, expedited her application for welfare. The counselor often acts as an advocate -- writing letters or making phone calls to insure prompt action on referrals. An attempt is made to follow up each referral to determine whether the client used it, and to what end.

Children's Play Center. Many parents -- whether victims or defendants -- are unable to leave their children with relatives or cannot afford babysitters when they must go to court. For this reason the project constructed a children's play center on the fifth floor of the court building. The play center has helped ease this problem for parents and has reduced the number of small children sitting for many hours in crowded courtrooms.

The center is headed by a trained preschool teacher and accepts children up to 12 years of age; on average, over 200 come every month. Besides providing recreation and a learning environment for the children, the center offers services to parents: identification of gross health and developmental problems in their children; information on day care services and preschool facilities in their communities; material on health, nutrition, and child development and care; and referrals of those in need of social services to the Victim/Witness service counselor.

Crime Victim Hotline. The project's hotline operates 24 hours a day, seven days a week, and is staffed by full-time counselors and trained volunteers. Its purpose is to offer a listening ear and practical advice (in Spanish or English) to crime victims. The bilingual staff provides information on police and court procedures, crime victim compensation, project services, and help available in the communities. The staff is also trained to give short-term counseling in crisis situations.

The number of hotline calls averages about 130 a week, and nearly two-thirds are from crime victims. (Others include police and social service personnel who want information about the hotline.)

Emergency and Preventive Repair. The project's emergency repair service, operating six days a week, assists those who have been burglarized at hours when private repair services are not available. This service grew out of Vera's belief that, in a system that affords little comfort to victims of predatory crime and in a city where the chances are less than one in five that a burglary will lead to an arrest -- and even slimmer that an arrest will lead to restitution for the victim -- it is necessary to do more than dust for fingerprints.

The service responds to calls, from anywhere in Brooklyn, made between 7:00 and 11:00 p.m. Two repairmen, whose tour of duty sometimes ends as late as 3:00 in the morning, fix broken locks, board up windows, and rebuild doors so that private and commercial premises are secured against further break-ins. Police officers responding to crime calls tell victims about the service; the officer or victim then telephones the Victim Service hotline for help. Hotline staff members communicate with the emergency repair van through two-way radio, and the crew reports to the local precinct both before and after undertaking a repair. (In December, 1978, when V/WAP had become a part of the new city-wide VSA, the program began offering free lock installation

to elderly citizens who felt unsafe in their own homes and apartments. The Crime Prevention Unit of the Police Department conducts home security surveys for these citizens and, when recommended, VSA installs new locks. Almost 8,000 homes were secured by this method in 1979.)

In addition to delivering emergency repair services to about a thousand victims of crime since the project began, the emergency repair unit has saved many hours of patrol officers' time, which would otherwise have been spent guarding vulnerable commercial premises until the next morning when repairs could be made.

Transportation. The project provides taxi vouchers for free transportation for witnesses unable to get to and from court on their own. Witnesses eligible for the service include elderly and disabled persons who cannot afford the cost of public transportation and parents who must take very young children to court.

How Well Did the Project Work? The First Found of Research

V/WAP's effort to save witnesses unnecessary trips to and wasted hours waiting at the courthouse was a stunning success. For example, in 1979 the notification staff handled 74,145 scheduled appearances of civilian witnesses and 59,450 scheduled appearances of police witnesses -- on about half of these hearing dates, the witness was spared the necessity of appearing. Civilian witnesses were able to avoid the expense, inconvenience and irritations of 35,288 court appearances. Most dramatic, however, was the project's impact on police resources. Police officers were excused outright from attending 20,185 scheduled court appearances and officers on alert were brought in to court on only 899 occasions (6.7 percent of the 13,368 police witness alerts). The project's procedures had the effect of increasing the patrol force in Brooklyn by 15 percent, a law enforcement benefit that would have cost the Department several million dollars to achieve by increasing the size of the force. (In this way, by diverting police resources from wasted hours in courtroom corridors to productive tours of patrol on the streets, V/WAP's notification effort alone returned a benefit carrying economic value far in excess of the cost of all V/WAP's program elements combined.)

The positive impact of V/WAP's notification and alert procedures were evident early in the project's history (Vera Institute of Justice, 1975 and 1976b). But doubts were raised, early in the V/WAP experience, about the program's ability to reduce the rate at which civilian witnesses fail to cooperate in prosecutions. (Vera Institute of Justice, 1975.) The data indicated that introduction of the program's services and notification procedures improved witness attendance rates at first post-arraignment hearings; but prosecutors were still faced with an appearance rate of only 55 percent among civilian witnesses at the first post-arraignment hearings. (The 45 percent failure-to-appear rate seemed incomprehensible when compared with the 7 percent failure-to-appear rate among defendants who had been released on their own recognizance.)

By the end of 1976 it was clear that most of the improvement noticed in 1975 had been illusory-- the appearance rate of civilian witnesses who were not excused, measured across all post-arraignment hearings, had increased only marginally, from 43 to 46 percent, since the project began.* (Vera Institute of Justice, 1976b.)

Because the research also showed that V/WAP services were appreciated by the victim-witnesses, who used them in large numbers, the Institute had to begin questioning the assumptions on which that part of the program was based: If alleviating or removing the presumed causes of victim disaffection did not increase the rate of their cooperation with the prosecutors, then perhaps disaffection was not the cause of the high failure-to-appear rates. This was powerfully suggested by the reactions

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* There is an important caveat to this finding that the project produced no statistically significant improvement in the appearance rate of prosecution witnesses. Because those witnesses who are likely to appear if called were placed on alert, they were thereby removed almost entirely from the pool of witnesses whose appearance behavior is reflected in the appearance rate. (Note: 95 percent of those who were placed on alert and then summoned to court appeared when required.) Thus, as the performance of the notification side of the project improved, and the "good risks" were increasingly removed from the population required to appear, it became harder and harder to affect the behavior of the rest of the witnesses through offers of service.

of victims and other witnesses to the reception center, children's center, transportation, and counseling services. A comprehensive study demonstrated that these services were rated highly by those who used them but it also made it clear that these favorable reactions were having no significant influence on their attitudes towards the court or on their likelihood of returning to court for subsequent proceedings. (Vera Institute of Justice, 1976a.)

Research and Program Initiatives Stimulated by V/WAP's Early Experience

After absorbing evaluation results suggesting that witness non-cooperation could not be eliminated and might not even be amenable to substantial reduction, V/WAP was at a cross-roads. The enormous efficiencies realized from the notification procedures and the clear human value of the direct services weighed heavily for continuing the basic program -- despite the lack of impact on appearance rates. Thus, these activities were carried forward. But additional work was launched.

First, it was felt that the problem of victim non-cooperation should be reconceptualized. Others had pointed out (Ash(1973), McDonald(1976), Ziegenhagen(1974), and Hall(1975)) that the victim -- the complaining witness in a prosecution -- has a severly circumscribed role to play in the process. But, in addition to being asked to play the testimonial role, complaining witnesses are persons who bring needs and expectations to their interaction with prosecutors and others in the process. Probing the subject in this direction requires a focus of research attention not only on the costs to a complainant who cooperates (e.g., time lost from work, inconvenience, unpleasant court surroundings), but also on the benefits that complainants might be seeking from the court process (e.g., help in resolving interpersonal problems, protection from the defendant in the future, restitution). In this broader context, non-cooperation might be understood as resulting from an absence of hope for any potential benefit from the process. Such an understanding would, of course, permit programs such as V/WAP to attack complainant non-cooperation in a variety of new ways. But it would require learning much more about the goals, sentiments and expectations of the complainants, and it would require analysis of such data in conjunction with what is known about the goals of the various criminal justice officials -- particularly the prosecutors.

V/WAP staff therefore undertook a series of related activities. First, the research staff undertook an extensive survey of the desires, expectations, and attitudes of complaining witnesses as they entered the Brooklyn Criminal Court process and after they had experienced it. Second, they conducted a

series of controlled experiments focused on how various kinds of information about the availability and attitudes of witnesses affected the decisions made by prosecutors. Third, because the complainant survey (and other research) suggested that many complainants in prior relationship cases might perceive a greater chance of benefit from a mediation/arbitration process than from a prosecution process, the program joined IMCR in establishing the Dispute Resolution Center for incoming felony cases of this type, and the research staff subjected this effort to controlled research. Fourth, the program staff added other services that were not so much intended to reduce disaffection as to meet complainants' case-related needs directly (e.g., administering restitution payments, helping to secure Orders of Protection from harassment or intimidation by defendants, providing staff advocates to help the complainants gain some involvement in prosecutorial decision-making about their cases).

The results of the complainant survey, although they influenced the other V/WAP developments, have not yet been distilled for wider distribution. The results of the second research effort are reported in Providing Information About Prosecution Witnesses: the Effects on Case-Processing Decisions in Criminal Court (November, 1979). The results of the mediation/arbitration experiment are reported in Mediation and Arbitration as Alternatives to Prosecution in Felony Arrest Cases (April 1980), and reports on the other program developments should be available late in 1980. It is hoped that this series of reports will be of some use to others laboring in this field.

FOOTNOTES TO APPENDIX A

1. During the late 1960s, the President's Commission on Law Enforcement and Criminal Justice launched a series of victimization surveys aimed at finding out more than existing records could tell about the extent and consequences of crime; these early surveys were conducted by the Bureau of Social Science Research (Biderman, et al., 1967), the University of Michigan's Survey Research Center's Institute for Social Research (Reiss, 1967), and the University of Chicago's National Opinion Research Center (Ennis, 1967). These surveys showed actual crime rates to be at least double the rates derived from the FBI Uniform Crime Reports. A second major group of victimization surveys, got underway in 1970 by the Law Enforcement Assistance Administration and the Bureau of the Census, showed actual crime to be three to five times the rate of reported crime. (M.J. Hindelang, Criminal Victimization in Eight States (Cambridge: Ballinger, 1976); Carol B. Kalish, Crimes and Victims (Washington, D.C.: LEAA, 1974). Other surveys helped fill out the emerging portrait of a public dissaffected from the law enforcement and criminal justice systems. (Small Business Administration Crimes Against Small Business (Washington, D.C.: U.S. Government Printing Office, 1968); Institute for Local Self-Government Criminal Victimization in Maricopa County (Berkeley: Institute for Local State Government, 1969); Richard Richardson, et al. Public Attitudes toward the Criminal Justice System and Criminal Victimization in North Carolina (Chapel Hill: Institute for Research in Social Science, 1972); Phil Reynolds Victimization in Metropolitan Region (Minneapolis: Center for Sociological Research, 1973); Office of Crime Analysis A Study of Citizens' Reaction to Crime in the District of Columbia and Adjacent Suburbs (Washington, D.C.: Office of Crime Analysis, 1972); Joint Center for Urban Studies How the People See Their City (Cambridge: M.I.T. and Harvard, 1970); Paula Kleinman Protection in a Ghetto Community (New York: Columbia University Press, 1972); Donald Mulvihill, et al. Crimes of Violence, Volume II: A Staff Report Submitted to the National Commission on the Causes and Prevention of Violence (Washington, D.C.: U.S. Government Printing Office, 1969); National Commission on Marijuana and Drug Abuse, Marijuana: A Signal of Misunderstanding (Washington D.C.: U.S. Government Printing Office, 1972); President's Commission on Obscenity and Pornography Technical Report (Washington, D.C.: U.S. Government Printing Office, 1971); Louis Harris Study 2043 (New York: Louis Harris & Associates, 1970); American Institute of Public Opinion Study No. 861 (Princeton: Author, 1972); Gilbert Geis, "Victims of Crimes of Violence and the Criminal Justice System," in Chappell, Monahan (eds.) Violence and Criminal Justice (Lexington: D.C. Heath, 1975); and Lyn Curtis Criminal Violence: National Patterns and Behavior (Lexington: D.C. Heath, 1974).

2. President's Commission on Law Enforcement and the Administration of Justice Task Force Report: The Courts (Washington, D. C.: U. S. Government Printing Office, 1967), p. 90.

3. Reported in James L. Lacy, National Standards Concerning the Prosecution Witness (consultation paper submitted to the Courts Task Force of the National Advisory Commission on Criminal Justice Standards and Goals, 1972) p.27.

4. Cited without reference in Michael Ash, "On Witnesses: A Radical Critique of Criminal Court Procedures" 1972 Notre Dame Lawyer 392.

5. Subsequently, the computerized information systems installed in prosecutors' offices in more and more jurisdictions with the aid of the Institute of Law and Social Research (INSLAW), provided increasing confirmation that witness noncooperation is a major contributor to high rates of dismissals nationally.

6. National policy and program initiatives appear not to have shifted much over the years. In 1979, the LEAA National Victim/Witness Strategy for grant funding read, in part:

> "The objective of this program is to develop, expand, and improve the services to crime victims and witnesses... It is expected that these newly generated efforts will result in: 1 An improvement in the quality of justice by satisfying the emotional and social needs of crime victims and witnesses; 2 greater willingness of the victim and witness to cooperate in the apprehension and prosecution of the offender..."

44 Federal Register 40444, 40444-45 (July 10, 1979).

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APPENDIX B

REASONS WHY CASES WERE NOT MEDIATED

Forty-four percent of the sampled cases that were scheduled for mediation were not mediated. These cases fell into two distinct classes -- cases in which the complainant came to the Dispute Center, in response to the letter notifying him of the time and place of the scheduled mediation session, but refused mediation there, and cases in which one or both parties failed to appear for the scheduled mediation session (see Table B.1). Complainants who refused to have their cases mediated (12 percent of cases referred to the Center) often had not been present in the complaint room and, therefore, had not been consulted about their interest in prosecution prior to the decision to send their cases to mediation. More rarely, complainants who refused mediation at the Center had been present in the complaint room and had initially agreed to mediation, but changed their minds.

TABLE B.1
OUTCOMES OF CASES SCHEDULED FOR MEDIATION

Complainant refused mediation		12%
Disputants failed to appear at Center		32%
(a) Complainant absent	(19%)	
(b) Defendant absent	(3%)	
(c) Both absent	(9%)	
Case mediated		56%
TOTAL		100% (n = 259)

Thirty-two percent of cases scheduled for mediation could not be mediated because of disputants' failure to appear. It was most often the complainant alone (19 percent of cases referred to mediation) or both parties (9 percent) who failed to appear; only three percent of the cases scheduled for mediation failed to be mediated because the defendant alone did not show. The finding that complainants were far more likely than defendants to fail to appear at mediation sessions directly contradicts

results reported in several other evaluations studies (Anno and Hoff, 1975; Conner and Surette, 1977; Moriarty and Norris, 1977). The unusually low rate of defendant no-shows observed in the present study may be explained by the fact that the procedure for referral of cases to the Center left defendants with cases still pending against them in court on the dates when they were scheduled to appear for mediation sessions: charges had been filed against them, they had been arraigned, and their cases had been adjourned pending the outcome of mediation. They may have felt that there was a threat of heavy sentences if they did not attend the mediation session.

The subsequent analysis examines differences among cases mediated, cases in which complainants refused mediation, and cases in which disputants failed to appear[1]; an attempt was made to isolate factors associated with these reasons for cases not being mediated. Generally, the data suggest that complainants in cases not mediated had less need or desire to be reconciled with the defendants and had more often resolved the conflict by deciding to end the relationship. However, the motivation for this decision, and for these complainants' subsequent actions, seemed to differ between complainants who failed to appear at the session and those who refused mediation when they showed up.

Complainants in no-show cases tended to have weaker ties to the defendant than did complainants whose cases were mediated, they less often reported a history of feuding with the defendant, and were less likely to have called upon the police to intervene in the past. (See Table B.2)

Perhaps because their prior relationships and disputes were less involved and complex, complainants who failed to appear seem to have felt that their disputes were not -- or were no longer -- worth the trouble of attending formal mediation sessions. When asked directly why they did not attend their mediation sessions, over two-thirds of these no-show complainants reported that it was too much trouble, too inconvenient, or unnecessary to do so. They appeared to want

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[1] It should be noted that the success rate in obtaining interviews with complainants who failed to appear at mediation was substantially lower than for other complainants in the sample (see Appendix C). These complainants were usually absent from the complaint room, which meant that the only information available to the evaluation staff for follow-up contact was that collected by the arresting officer at the scene of the crime. This information often proved to be inadequate.

little from the criminal justice system in the first place -- a larger proportion of no-shows had simply wanted charges against the defendant dropped. And complainants who failed

TABLE B.2
CASE CHARACTERISTICS REPORTED BY COMPLAINANT AT INTAKE, BY WHETHER THE CASE WAS ULTIMATELY MEDIATED

		Case Mediated	Parties Failed to Appear	Complainant Refused Mediation	x^2
Prior Relationship with Defendant:	Strong Ties	59%	31%	46%	9.58 ($p < .05$)
	Moderate Ties	21	42	29	
	Weak Ties	20	28	25	
		(n = 118)	(n = 36)	(n = 24)	
Prior History of Disputes		60% (n = 118)	36% (n = 36)	54% (n = 24)	6.44 ($p < .05$)
Police Had Been Called Before by Complainant		38% (n = 118)	11% (n = 36)	21% (n = 24)	10.70 ($p < .01$)
Complainant Desires:	Punish Defendant	17%	16%	29%	14.20 ($p < .05$)
	End Harrassment	54	39	33	
	Restitution	17	23	24	
	Drop Charges	13	23	14	
		(n = 102)	(n = 31)	(n = 20)	

to appear at mediation were unlikely to go to court either (the Brooklyn Dispute Resolution Center referred back to the prosecutor's office for appropriate action cases in which disputants failed to appear for mediation). Only 32 percent of complainants who failed to appear at the Center and who subsequently had scheduled court dates attended at court: as a result, only four percent of the cases in which complainants failed to appear at the Center resulted in guilty pleas, and 86 percent were dismissed or adjourned in contemplation of dismissal (in the remaining 10 percent, warrants were issued for the defendants who did not appear in court). See Table B.3.

TABLE B.3
COURT DISPOSITIONS OF CASES REFERRED TO MEDIATION, BY WHETHER CASE WAS MEDIATED OR NOT

	Mediated (n = 145)	Complainant Refused (n = 31)	Complainant Failed to Appear (n = 49)	Both failed to Appear (n = 24)	Defendant Alone Failed to Appear (n = 8)
Dismissed	19%	39%	49%	42%	38%
ACD	80	55	47	25	25
Pled Guilty	1*	3**	2**	8**	13
Bench Warrant	--	3	2	25	25
	100%	100%	100%	100%	100%

*Defendant pled guilty to an unrelated charge that was carried under the same docket number as the charge that was dismissed after successful mediation.

**Defendants pled guilty after prosecutor's office, notified of Center's inability to mediate, restored the cases to the court calendar.

Further, complainants who failed to appear at mediation were no more likely to report having discussed the case with the defendant or having reached an agreement on their own than complainants whose cases were mediated; 21 percent of the complainants who failed to appear reported informal discussion of the case with the defendant, compared to 26 percent of complainants whose cases were mediated. In short, complainants who failed to appear at the Center took little action to resolve the disputes, either through formal or informal means.

Complainants who did appear at the Center when their mediation sessions were scheduled but refused to go forward with mediation at that time appear to have had a very different set of motives. Their prior relationships with the defendants were less involved and their disputes less complex than those of the complainants whose cases were mediated, but more involved and complex than those of complainants who did not take the trouble to appear. But the most distinguishing characteristic of the complainants who expressly refused mediation was that they were more likely to want the defendant punished. (See Table B.2, above.)

Subsequently, complainants who refused mediation at the Center were much more likely to attend court proceedings than were the complainants who failed to appear at the Center -- 78 percent of the complainants who refused mediation subsequently attended court at least once. Complainants who refused mediation, in other words, often seemed to have turned it down because they wanted to pursue the more formal and adversarial process for handling the dispute. Yet, in spite of their greater cooperation with the prosecutor's office, cases with complainants who refused mediation were no more likely to result in substantial court action against the defendant -- only three percent of the defendants in this group of cases pled guilty and none had their cases transferred to the grand jury. Even in this group of cases, with evidently more prosecution-oriented complainants, 94 percent of the cases were dismissed or adjourned in contemplation of dismissal (the remaining 3 percent resulted in issuance of warrants following non-appearance by the defendant).

As Table B.4 shows, complainants who failed to appear at mediation and those who refused to go forward often had little contact with the defendant during the four month follow-up period, and consequently tended to experience new conflict with the defendant no more (or even less) frequently than complainants whose cases were mediated.

In spite of the high rate of dismissal in their cases, complainants who failed to appear at mediation were nearly as satisfied with the case outcomes as were complainants whose cases were mediated. This may be because, for them, the real outcome -- the one they seem to have sought -- was avoidance of the defendant. During the follow-up period, complainants who failed to appear at the Center reported less contact with the defendant than complainants whose cases were mediated. Indeed, only four percent reported daily contact with the defendant and nearly one-half reported seeing the defendant rarely or never. Because of the limited subsequent contact these disputants had, there was relatively little opportunity for new hostilities. Only four percent of complainants in this group reported experiencing problems with the defendant or calling the police to intervene in the relationship during the follow-up period; in two percent a new arrest occurred.

TABLE B.4
PERCEPTIONS AND BEHAVIOR OF COMPLAINANTS, DURING THE FOUR-MONTH FOLLOW-UP PERIOD, BY WHETHER CASE WAS MEDIATED

		Mediated	Parties Failed to Appear	Complainant Refused Mediation	x^2
Discussed Case with Defendant Informally		26% (n = 113)	21% (n = 28)	21% (n = 19)	0.35 (ns)
Satisfied with Outcome		77% (n = 113)	71% (n = 28)	53% (n = 19)	4.96 ($p<.10$)
Sees Defendant:	Daily	27%	4%	23%	8.24 ($p<.10$)
	Weekly/Monthly	40	52	23	
	Rarely/Never	33	44	54	
		100% (n = 89)	100% (n = 25)	100% (n = 13)	
Had Problems with Defendant		24% (n = 90)	4% (n = 24)	15% (n = 13)	7.50 ($p<.05$)
Called Police		14% (n = 90)	4% (n = 25)	8% (n = 13)	2.29 (ns)
New Arrest for One Disputant for Crime Against Other		3% (n = 145)	2% (n = 82)	6% (n = 78)	1.24 (ns)

Complainants who refused mediation, on the other hand, had a relatively low level of satisfaction with the case outcomes, apparantly because the criminal justice system did not give them the retribution they often sought.

Like those who failed to appear, complainants who refused mediation at the Center reported less contact with the defendant during the follow-up period than did the complainants whose cases were mediated -- over half reported rarely or never encountering the defendant after conclusion of the court case. But, although they were less often in subsequent contact with the defendants than were the complainants whose cases were mediated, the complainants who refused mediation almost as often reported having subsequent problems with the defendants and making calls to the police -- new arrests for crime between the parties were actually more frequent in the cases with complainants who refused mediation.

To recapitulate, both groups of complainants -- those who did not appear for mediation sessions and those who refused to go forward with mediation -- tended to have weaker interpersonal ties with the defendant than complainants whose cases were actually mediated. That ties between disputants who did not participate were relatively weak may have made it easier for them to reduce or terminate their relationship, and their relative lack of interdependence (emotional or financial) may have made the prosecution process and the possibility of penal sanctions against the defendant more attractive. In any event, they had less interest in engaging in negotiations to maintain or restore the relationship.

Complainants who did not show at mediation often chose to limit or completely break the relationship, as their solution to the problem. Because of their weaker ties to the defendants, and the less complicated histories behind their disputes, avoidance seemed to be a workable solution for them; they were by and large satisfied with the outcome of their involvement with the criminal justice system and few experienced a recurrence of interpersonal hostilities.

Complainants who refused mediation also frequently reduced contact with the defendant subsequently. But, perhaps because these complainants were involved in more intimate relationships and more complicated disputes than those who failed to appear, avoidance alone may have seemed an impossible or an inadequate resolution. Like complainants who did go to mediation, complainants who refused felt the need to take some kind of decisive action. Yet mediation, with its emphasis on compromise and conciliation, may have seemed inappropriate to them; they were as a group very upset by the crime but had weaker ties to the defendant than complainants whose cases were mediated. Several authors (e.g., Black, 1973; Gluckman, 1955; Sarat, 1976) have suggested that as "relational distance" increases -- and as disputants, therefore, presumably have a lesser stake in maintaining their relationship -- the tendency to use adversarial, all-or-nothing methods of handling disputes also increases. This is exactly what was done by complainants in the present study who, after refusing the offer of mediation, often sought to have their cases prosecuted in the court instead. But, in opting to take their case to court rather than mediation, these complainants may have expected more than they could reasonably have hoped to attain through prosecution; very few won convictions against defendants in these cases. Ironically, complainants might have come away more satisfied had they agreed to have their cases mediated.

The findings reported here should not be interpreted as suggesting that formal dispute resolution techniques (whether mediation or court) are of no benefit in reducing recidivism in prior relationship cases. Those cases in which disputants did take advantage of mediation or the court process were the sort that involved a relatively high risk of recidivism; it may well be that recidivism in these cases would have been higher had formal dispute resolution forums not been available. Rather, the data suggest the importance of giving disputants a set of options -- ranging from an adversarial process (court) to structured negotiation (mediation), to informal solutions -- from which they (in conjunction with criminal justice officials) may choose the alternative that makes most sense given their particular circumstances.

APPENDIX C: METHODOLOGY

The evaluation employed an experimental design, in which cases were randomly assigned to an experimental treatment (mediation) or a control treatment (court). The sampling procedure varied depending on whether or not the complainant was present in the complaint room.

When the complainant was present in the complaint room, a research staff member conducted an interview immediately after V/WAP had determined that the case was eligible for mediation according to its standards (see Appendix D). Once the research intake interview had been completed, a V/WAP staff member described mediation to the complainant and asked whether the complainant would prefer to have the case handled in court or at the Dispute Resolution Center. If the complainant chose mediation, the case was presented to the screening prosecutor for approval. If the prosecutor did not approve, the reasons were recorded. Once the prosecutor accepted a case for mediation, the case was assigned to either the experimental or control group, using a list of random numbers. During the day shift, a research staff member in the complaint room learned whether a case was to be assigned to the experimental or the control group through a phone call to the research department's secretary, who then recorded the case number next to the random number which had been assigned from her list. This procedure guarded against even a possibility of bias by the research staff member in the complaint room. During the night shift, however, the research staff member in the complaint room was given the random number list from which to make sequential assignment of eligible cases.

When a complainant in an eligible case was not present at the complaint room stage of the process, V/WAP presented the case to the screening prosecutor without the complainant's prior approval. Random assignment to experimental or control treatments was made after the prosecutor's approval was given. Once an assignment had been made, research staff began attempts to interview the complainant by phone.

Complainants who had agreed to mediation, but whose cases were assigned to the control group, were told that there was not room in the program to take their cases (a possibility about which they had been warned earlier). This statement was true; the Dispute Resolution Center in its early days of operation could not have handled all the cases it would have received without the existence of the evaluation control group; by the time the Center's capacity exceeded demand, the random assignment procedure had been phased out and the sampling was complete. Random assignment actually proved to be an equitable way to determine which cases the Center would handle, during the time when the Center could not handle all.

In this manner an evaluation sample of 465 cases was identified during the evaluation intake period, from September 1 through December 23, 1977. There were 206 cases in the control group and 259 in the experimental group. Disproportionate assignment to the experimental group was intended to insure that there would be an adequate number of cases actually mediated, allowing for complainant refusals and no-shows at the Dispute Resolution Center. Originally, therefore, the ratio of experimental to control group cases was two to one; however, half-way through the intake period this was changed to one-to-one, at the request of V/WAP and the Dispute Resolution Center.

Data Collected on Cases in the Sample

Entrance Interviews with Complainants

For all complainants in the sample, attempts were made to obtain an entrance interview. If the complainant was present in the complaint room, the interview was conducted immediately after V/WAP determined that the case was eligible for mediation. If the complainant was not present at that stage of the process, a phone interview was attempted in those cases approved by V/WAP and the screening prosecutor and assigned to the control or experimental group. As a guideline, a maximum of five calls was made over a two-day

period, in an effort to obtain the interview. For complainants who did not have phones, attempts were made to leave messages with neighbors, asking the complainants to call back. No attempt was made to interview complainants who lived in buildings for which there were no phone listings available.

Entrance interviews were obtained for 314 complainants, or 68 percent of the sample (see Table C.1); 91 of these were conducted in the complaint room. The data from these interviews are biased against complainants who were absent from the complaint room, particularly those without phones. With few exceptions, complainants who came to the complaint room or who had a phone were interviewed. Those without phones, one-third of the sample, proved very difficult to interview; 50 percent of the complainants who did not have phones and who did not come to the complaint room were not interviewed.

TABLE C.1
INTERVIEWS COMPLETED

	Experimental Cases	Control Cases	Total
I. Total Cases	259 (100%)	206 (100%)	465 (100%
II. Complainant Entrance Interview Completed	178 (69%)	136 (66%)	314 (68%)
III. Complainant Exit Interview Completed	163 (63%)	121 (59%)	284 (61%)
IV. Complainant Follow-up Interview Completed	127 (49%)	88 (43%)	215 (46%)
V. Defendant Interview* Completed	88 (34%)	46 (22%)	134 (29%)

*Defendant interviews were only attempted in cases where a complainant follow-up interview had been obtained; based on this standard, the interview rate was 69% for defendants in the experimental group and 52% for defendants in the control group. The interview rate was somewhat higher for defendants in the experimental group because contact information was available both from the Dispute Resolution Center and from the New York City Criminal Justice Agency; for defendants in the control group, however, CJA's records were the sole source of contact information.

The entrance interview obtained information about the case, including (a) the complainant's description of the incident, (b) what the complainant wanted from the system once the defendant's arrest had been effected, (c) what the complainant expected the system to do, (d) whether the complainant expected to have an opportunity to tell his side of the story to officials, (e) whether the complainant wanted to take part in decision-making, (f) the complainant's reactions to being victimized, and (g) demographic data.

Exit and Follow-up Interviews with Complainants

As soon as each case reached its conclusion--in the court or mediation process--a letter was sent to the complainant to set up an interview. Cases were considered concluded if they had been mediated (or arbitrated) or had reached disposition in court by a plea, dismissal, or adjournment in contemplation of dismissal. Two exceptions were made: for cases in which a bench warrant had been issued, two months were allowed for the defendant to return to court and, if he did not return, the warrant became the "disposition" and a letter was sent to arrange the exit interview; and for cases sent to the Grand Jury, an indictment was considered a "disposition" (as, of course, was a dismissal), but if the case was returned from the Grand Jury to Criminal Court, interview attempts did not begin until the case was concluded there.

Attempts were made to obtain interviews with all complainants in the sample. The process was the same as for entrance interviews, with one major addition. If the complainant could not be reached by phone, a staff member went to the residence; if the complainant was not at home, a letter was left asking that the complainant call to arrange an interview. At most, two home visits were made on each such case. Altogether, 284 complainant exit interviews were conducted, accounting for 61 percent of the sample (see Table C.1).

Exit interviews were designed to elicit measures of complainants' satisfaction with the case outcome and the mediation or court process, and to determine which process they would prefer in the event that they found themselves complainants again.

Four months after case disposition, attempts to obtain a follow-up interview with the complainant were begun. Attempts to secure these interviews were similar to those for exit interviews. However, the follow-up interview attempts were made only for complainants for whom an exit interview had been obtained. Altogether, 215 follow-up interviews were completed, accounting for 46 percent of the sample (see Table C.1)

The follow-up interviews gathered information about the frequency of the complainant's contact with the defendant and whether the mediation agreement had been violated.

Defendant Interviews

Defendants were interviewed once, four months after case disposition. Attempts to obtain the interviews were identical to those for complainant exit interviews. Interviews were attempted only for defendants in cases for which a complainant exit interview had been obtained. Interviews were completed with 134 defendants, accounting for 29 percent of the sample (see Table C.1).

The content of the defendant interviews was, for the most part, a combination of questions found in the complainant exit and follow-up interviews. These included questions about (a) satisfaction with the process and the case outcome, (b) current amount of contact with the complainant, (c) whether there had been problems with the complainant after conclusion of the case, (d) whether the mediation agreement had been violated (if applicable), and (e) whether, in the future, he would prefer court or mediation.

Case Follow-up

Once a case was sampled and attempts to obtain an entrance interview completed, additional data collection began.

For cases in the experimental group, some information was collected from the Dispute Resolution Center's records, including: (a) outcome of mediation efforts, (b) number of times the case was scheduled for mediation and reasons for

scheduling, (c) contents of the mediation agreement, (d) reported violations of the agreement, and (e) any action taken by the Dispute Center upon reported violations.

For both experimental and control cases, data were collected from V/WAP and court records, including: (a) number of scheduled court dates, (b) number of court appearances by the complainant and by the arresting officer, and (d) case outcome and sentence (if any). In addition, four months after the case ended, a check of V/WAP's records and records of the New York City Criminal Justice Agency (CJA) was made to determine whether either the complainant or the defendant had been arrested during the period after the defendant's arraignment on the original charge. If either party had been arrested, information was collected to determine (a) whether the other party to the original dispute was the complainant in the new case, and (b) what charge was made at arraignment of the new case.

Experimental and control cases were compared to determine if there were any differences between them before entering the experimental or control group. The comparison, shown in Table C.2, shows that the groups did not differ significantly, by any of the initial characteristics examined including: charge severity and type; nature of the relationship; complainant's demographics, previous experiences with court, desired outcome, and degree of emotional distress; and defendant's prior record.

TABLE C.2

COMPARISON OF PRE-TREATMENT CHARACTERISTICS OF EXPERIMENTAL AND CONTROL CASES

I. Case Characteristics

	Experimental Cases	Control Cases	x^2
Charge Severity			
B,C Felony	16%	19%	0.69
D,E Felony	84	81	
	100% (n=256)	100% (n=201)	
Charge Type			
Violent	61%	58%	0.60
Nonviolent	39	42	
	100% (n=259)	100% (n=204)	
Complainant/Defendant Relationship			
Intimate	51%	50%	0.02
Other	49	50	
	100% (n=178)	100% (n=135)	
Ongoing Dispute			
Yes	54%	60%	0.81
No	46	40	
	100% (n=178)	100% (n=136)	
Previous Call to Police			
Yes	30%	33%	0.27
No	70	67	
	100% (n=178)	100% (n=136)	
Defendant's Prior Record			
No Convictions or Open Cases	76%	70%	2.23
One or more convictions or Open Cases	24	30	
	100% (n=259)	100% (n=206)	

II. Complainant Demographics

	Experimental Cases	Control Cases	x^2
Sex			
Male	38%	35%	0.22
Female	62	65	
	100% (n=178)	100% (n=134)	
Education			
H.S. graduate	49%	44%	0.84
Didn't graduate	51	56	
	100% (n=174)	100% (n=127)	
Currently Employed			
Yes	44%	43%	0.03
No	56	57	
	100% (n=177)	100% (n=130)	
Previous Court Case			
Yes	35%	42%	1.45
No	65	58	
	100% (n=178)	100% (n=133)	

III. Complainants' Perceptions of Case

	Experimental Cases	Control Cases	x^2
Desired Outcome			
Punish Defendant	18%	24%	1.63
Restitution	18	14	
End harrassment	49	48	
Drop Charges	15	14	
	100% (n=154)	100% (n=126)	
Angry at Defendant?			
Yes	54%	55%	0.03
No	46	45	
	100% (n=176)	100% (n=131)	
Fear Revenge?			
Yes	54%	58%	0.42
No	46	42	
	100% (n=175)	100% (n=131)	

* P >.10 in all cases for x values obtained.

Secondary Samples

Four other samples were taken to supplement the evaluation sample. These included:

1. A sample of all felony arrests during the intake period

   For all felony arrests during the sampling period (over 8,000), information was recorded on a case summary sheet. These data included: (a) arrest charge, (b) whether there was a civilian complainant involved, (c) the complainant's relationship with the defendant, (d) the complainant's age, (e) the extent of complainant's injuries, (f) the prosecutor's case priority rating, and (g) whether V/WAP and the prosecutor decided that the case was eligible for mediation.

2. Cases rejected for mediation by the screening prosecutor

   For the 478 cases identified as eligible for mediation by V/WAP but rejected by the screening prosecutor, data were recorded on: (a) reason for rejection, (b) charges, (c) the prosecutor's case priority rating, (d) disposition and sentence, and (e) number of court dates to disposition. (No interviews were conducted with disputants in these cases.)

3. Observations of a sample of mediation sessions

   IMCR agreed to allow observations of several mediation sessions, for purposes of this evaluation. The observations were conducted by Dr. June Starr, Associate Professor of Anthropology, State University of New York at Stony Brook. She observed a total of six mediation sessions on October 16, 23, and 30, 1978. Her observations were made approximately one year later than collection of the other evaluation data. However, there was no known change in IMCR's practices or policies likely to affect the way sessions were conducted.

APPENDIX D: V/WAP SCREENING CRITERIA

Relationship

The following relationships or persons are to be excluded from Mediation:

pros/pimp:	where prostitutes and/or pimps are the parties.
parent/child:	reject cases where child is under 18 and living with the parent who is the other party in the case.
incompetent parties:	where the complainant or defendant is retarded or incompetent, as indicated in the complainant's or police officer's statement.
drug addict:	where either party is addicted to and using drugs, or is heavily alcoholic. If a drug addict is living at a residential drug facility, and is defendant or complainant, refer the case to Mediation.
cross-complaints:	all cases where both parties are defendants.

Crime Categories

The following factors about the offense or the type of offense would exclude case from Mediation:

First Degree Assault or higher:

All cases carrying charges of First Degree Assault, Attempted Murder, or higher, are to be excluded. Second Degree Assault may be referred to Mediation.

Hospitalized Minor:

If a minor is involved and has been admitted to a hospital for anything other than observation, reject the case.

Critically Injured Adult:

If complainant is or was admitted to a hospital and is/was in critical condition, reject the case. If the police officer is not sure, and was not with complainant at the hospital, then call the hospital or the complainant at home to clarify.

A facial injury does not mean a case is to be automatically excluded from Mediation.

Gun Recovered:

If a gun was recovered by the police officer and is on his recovered property voucher, reject the case. Just because a gun was used does not mean the case is rejected. It must be recovered.

Gun Wound:

If a person was shot by the defendant, reject the case. If complainant was struck by a gun, used as a bludgeon, do not reject the case.

Forcible Rape:

Reject all First and Second Degree Rape cases. (These constitute forcible rape; statutory rape is Third Degree Rape and may be referred to Mediation.)

The only exceptions to exclusion of forcible rape cases are those where an interviewer can speak with the complainant and determines:

(1) That she had a close relationship with the defendant.
(2) That she willingly accepts Mediation as an alternative.

Arson/Attempted Arson:
Exclude all such offenses.

Miscellaneous

Miscellaneous reasons for rejection:

Misdemeanors:
Exclude all misdemeanor cases.

Prior Mediation Case:
Reject all cases where the same two parties were in Mediation before the present offense was committed. Find this out by checking log book or by calling the Dispute Center, or by checking the computer.

Assault on a Police Officer:
If there is any indication of this, reject the case.

Too busy:
If the Complaint Room cannot do intake for a potential Mediation case because it is too busy there, reject case and use category to indicate why.

Other: Any other charges or situations resulting in the rejection of a case and not covered by the above categories should be labeled "Other" and explained.

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