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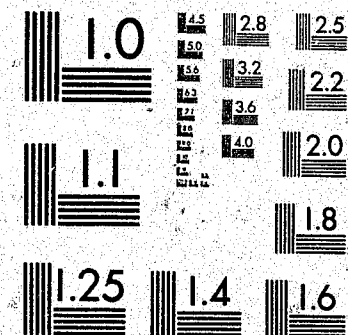
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National Institute of Justice
United States Department of Justice
Washington, D.C. 20531

3/7/86

REPORT

Mediating
Personal
Disputes

Prepared

by the

Dispute
Resolution
Center

of Brooklyn College

February, 1984

Robert Abrams, Director

93821

93821

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George Johnson
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New York University
Law School

The Honorable Leonard Yoswein
New York Supreme Court

Barry Zaretsky
Brooklyn Law School

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September 1, 1982	Establishment of relationship with Clinical Internship Program of Brooklyn Law School
October 1, 1982	Initiation of domestic violence referrals from Brooklyn Family Court
November 1, 1982	Initiation of case referrals from the Summons Part of Criminal Court in cooperation with the Victim Services Agency's Brooklyn Mediation Center
December 1, 1982	Colloquium - "Game Theoretical Models of Mediation" - Professor Steven Brams, New York University, guest lecturer
February 5-6, 1983	Second training session for mediators
April 1, 1983	Refunding by the Unified Court System for third year of operation
June 6, 1983	Third training session for mediators
September 25, 1983	Fourth training session for mediators
January, 1984	Preliminary research report

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ACKNOWLEDGEMENTS

The Dispute Resolution Center at Brooklyn College could not have come into existence without the vision and support of a great many individuals. One of the original sponsors of the bill which created the Dispute Resolution Centers Program was Assemblyman Melvin H. Miller, a long-time friend of Brooklyn College. President Robert L. Hess provided the physical resources for the DRC at Brooklyn College and pledged full college support for the program. Dean of Research Brian Schwartz made funds available to arrange for Larry Susskind of MIT to act as a consultant for the Center. Susskind provided invaluable advice at the early stages of development and introduced us to Dan McGillis and Frank Sander of the Harvard Law School. McGillis and Sander have studied and written about neighborhood justice centers for many years and are among the most eminent specialists in this field. Their advice and support has been greatly appreciated.

Herbert H. Jefferson, a mediator and trainer of long experience in New York City, provided crucial moral support, practical advice and wise counsel. He also provided us with our training model and trained our first class of mediators.

The cooperation of the Court system is essential for a program whose goal is to help divert cases into a more appropriate forum. We have been extremely fortunate to have the assistance and cooperation of several eminent judges. Richard Huttner, formerly head of the Brooklyn Family Court and now head of the Family Courts throughout New York City, was an early and enthusiastic supporter of mediation. With Judge Huttner's cooperation, the DRC began a unique relationship with the Brooklyn Family Court. We must also thank Judges

Joseph Esquirol and Cesar Quinones of the Brooklyn Family Court for their very kind and generous cooperation.

At an early stage in this project, Judges Leonard Yoswein of the New York State Supreme Court and Joseph Levine of the Brooklyn Civil Court kindly took time from their busy schedules to discuss the possibilities and problems of mediation in the court system.

A program which serves a local community must establish relations with that community. We were very fortunate therefore, to have had the splendid cooperation of Brooklyn Borough President Howard Golden. Through his good efforts we were able to communicate with all of the Community Board Chairpersons in Brooklyn. Special thanks are also due Marcy Feigenbaum, Special Assistant to Borough President Golden, for her very kind help.

Assemblywoman Rhoda Jacobs and State Senator Marty Markowitz were especially supportive at an early stage in the development of the DRC. We have been pleased to maintain a liaison with their offices and to provide help for their constituents whenever possible.

Brooklyn Law School, a private law school which is not a part of the City University, provided an invaluable source of mediators through its clinical program. In return, the DRC provided a clinical placement for these law students. Our particular thanks go to Associate Dean George Johnson who was primarily responsible for the initial involvement of Brooklyn Law School with the DRC. More recently, Dean David Trager and Professor Henry Holzer, head of Clinical Programs at Brooklyn Law School, have been strong supporters of the program, and for this we thank them. Special thanks are also due Professors Barry Zaretsky and Gary Schultze whose seminar on negotiations at the

Law School has served as a sounding board for our game theoretical model of the bargaining process. In addition, Professor Schultze has been a sensitive and effective participant in our weekly case conferences involving students from the Law School.

At Brooklyn College, Vice President Larry Mucciolo was responsible for finding the DRC space, a task which sounds simple only to the uninitiated. Professor Morton Berkowitz, Chairman of the Political Science Department, has been especially supportive of the DRC, both in making available staff assistance and in devising curriculum arrangements which allow our students to mediate and receive course credit. We also wish to thank the Department secretaries, Doris Glassman and Lorraine Lange for their help.

There are currently thirty-six mediation centers throughout New York State. The task of coordinating the activity of these programs resides with Tom Christian and his staff in Albany. We are very grateful to Tom and his assistant Mark Collins for their assistance, and for their efforts in maintaining liaison among the programs. Tom's insistence that the programs communicate and cooperate has been important to our development.

Chris Whipple and Mark Smith of the Victim Services Agency's Brooklyn Mediation Center have been extremely cooperative. We are grateful to them for the generous and courteous manner in which they have helped us with referrals from the Summons Part of Criminal Court.

Among my colleagues at Brooklyn College I am especially grateful to Dave Abbott for his invaluable assistance in a variety of tasks at the DRC, as well as for his moral support. Ed Rogowsky has been a constant source of information and inspiration. As always,

Jim Levine has provided a sympathetic shoulder and sage advice. Bernie Seidenberg, Chairman of the Psychology Department, has been a good friend of the DRC and has been especially helpful to us in our training program. We are very grateful to him.

The heart and soul of the DRC, however, is our superb staff and our marvelous mediators. Without this talented, dedicated and vivacious group of people, there would be no DRC to serve the Brooklyn Community. I want to give special thanks to my Assistant Director, Wyletta Barbee, for her extraordinary work in developing a smooth administrative operation. Assisting her are Gina Allimonos and Nancy Martin whose intelligence, maturity, good sense and good humor provide the positive ambiance which pervades the DRC. In addition to their normal staff duties, Wyletta, Gina and Nancy--all undergraduates at Brooklyn College--mediate cases on a regular basis. Their skill is greatly appreciated. Mark Hoffman did yeoman work preparing our data for storage and creating computer programs for our data analysis. Thanks also to Peter Abrams for his research assistance.

The volunteer mediators are too numerous to mention here, though a full list can be found in the report below. I would like to give special thanks, however, to Neil Yuzuk, Jan Starker, Kim Bruce, Jack Segal, Phyllis Haddan, Diana Cook, Helen Lowenstein, and Cynthia Lyman for their special commitment and dedication to the DRC.

Finally, I would like to express our sincere appreciation to Captain Joseph Slattery of the 63rd Police Precinct and Captain Joseph Digilio of the 70th Police Precinct for their superb help and cooperation. Their acceptance of the mediation process and their patient attempts to explain the practical aspects of police work have contributed substantially to our ability to function effectively.

Robert Abrams

INTRODUCTION

A Neighborhood Justice Center

In the 1970s, the mediation movement stressed the "neighborhood justice center" concept. The idea was to decentralize the dispute resolution process, and to involve neighborhood people in the resolution of local problems. This was the antithesis of the centralized, bureaucratic, impersonal court system whose major task had become the "processing" of cases, rather than the solution of problems.

The establishment of a mediation center at Brooklyn College, located in the geographic center of the borough of Brooklyn, represented a step toward the implementation of the neighborhood justice center concept. No longer did Brooklyn residents have to travel from the farthest shores of South Brooklyn to a mediation center located in Brooklyn Heights--far closer to lower Manhattan than most of Brooklyn. Of equal importance, the Criminal Court administration decided to allow local mediation centers to issue Requests to Appear (RTA)-- the summons instrument used by Criminal Court to bring disputants to mediation. This meant that Brooklyn residents would be spared the arduous task of first traveling to 346 Broadway in Manhattan to obtain the RTA, and then having to go almost as far to Brooklyn Heights for the hearing. We believe that the Dispute Resolution Center's exceptionally low no-show rate attests to the fact that a criminal justice system which is convenient to the people will be used more efficiently and effectively. We also believe that the location of a mediation center nearer the residents of Brooklyn is a major step toward reducing the Manhattan bias of so much of the court system whose buildings are located either in or extremely near that most favored of boroughs.

College-based Mediation

The establishment of a mediation center on a college campus is not a new idea. The University of Hawaii, Berkeley, the University of Massachusetts at Amherst, and SUNY Buffalo have all experimented with some form of center devoted to dispute resolution. In terms of the magnitude of its operation and the formality of its relationship with the court system and a law school, however, the Dispute Resolution Center of Brooklyn College is unique.

There are a great many advantages to using a college campus for a community-oriented mediation center. First, the environment is conducive to reasoned discourse. We have found that the disputants who come to the DRC, almost all of whom are extremely angry and frustrated, invariably adapt to the setting. While they vent their rage at the appropriate point in the mediation session itself, they never carry that rage into the waiting room area or the hallway. We have never had an incidence of violence at the Center. This may be simply good luck, but we think that the image of the College as a genuinely neutral place in which individuals are treated with courtesy and respect may be a significant factor.

Second, the college community is composed of a large number of highly skilled, intelligent, mature, and responsible individuals. Many of our best students, for example, have had a great deal of life experience. They are not callow teen-agers. Thus, our entire staff and many of our mediators are honor students who have worked elsewhere and who have families of their own.

There are also a great many individuals in the college community who speak languages other than English. It is not difficult, therefore, to obtain interpreters when necessary for our foreign disputants.

The faculty has contributed in many ways. Primarily, they have been involved in the research, but they have also mediated cases, assisted with administrative tasks, and served as consultants. The consultant role is especially important. Thus, for example, when we find particular difficulties with older disputants, we may talk to a sociologist specializing in gerontology.

Third, college facilities are unequaled for supporting research. We use the College's computers to store and analyze data, and we are beginning to use the word processing capacity of the College's microcomputers for our reports.

Fourth, the status of the College is useful in attracting professionals as mediator volunteers. Thus, a significant number of our mediators are skilled therapists, social workers, divorce mediators, and attorneys who value the college association and trust the competence of a college-based mediation center. We also feel that the college connection has been important in establishing relationships with the Brooklyn Family Court and Brooklyn Law School. The respect accorded Brooklyn College by these two institutions served to enhance the legitimacy of the DRC.

Finally, there is a symbiotic relationship between the mediation center and the college curriculum. Many of the issues which surface in the mediation process - ethnic conflict, racial conflict, the psychology of sex roles, power relations, unresolved anger, rejection, class and status differences, group stereotyping, scapegoating - are the primary subjects in many of our courses. Thus, there is an inherent interest in the dispute resolution process at the College. This means that the mediation center can benefit from the academic interests of faculty and students, and, in return, can provide an unparalleled laboratory for study.

Future Prospects

We have been very excited by our experience at the DRC. We know
now that mediation is a viable and effective form of dispute resolu-
tion. Our disputants come to us in a state of severe agitation and
usually leave with an agreement and a somewhat less pessimistic view
of life's prospects. Their difficulties have been taken seriously,
they have been treated courteously, and they have learned that they
must take responsibility for defining and solving their problems. It
is, in the best sense, a therapeutic learning experience.

Whether the DRC continues to function depends, of course, on
funding. Currently, we are applying for a renewal of our State grant,
and are searching for private financing. Our hope is that a sufficient
number of individuals who hold various purse strings will concur with
us that ours is a project which provides a vital service to the Brook-
lyn community and deserves support.

SOURCES OF REFERRALS

From December 1981 to November 1982, all cases handled by the DRC
were 'walk-ins'--individuals who had somehow heard of the DRC and con-
tacted the Center directly. Referrals were received from the local
police precincts, Brooklyn District Attorney, the Legal Aid Society,
and offices of the local Assembly members and Senators. No summonses
or Requests to Appear (RTAs) were issued during this period since the
DRC did not yet have Court approval to do so.

After discussion with a complainant, the DRC would send a neutral,
non-accusatory letter to the respondent, offering the services of the
DRC. (See Appendix) This letter was relatively effective. The DRC
continues to use this method to bring disputants to the Center for
mediation in cases where the complainant does not wish to have a Request
to Appear issued. The use of a neutral letter has been most effective
in resolving disputes involving the elderly who are often reluctant to
leave their homes to obtain a summons or those who do not wish to serve
a respondent personally, as is required with an RTA.

CRIMINAL COURT

In Spring, 1982, the directors of the mediation centers in New
York City (VSA, IMCR, Staten Island, Brooklyn and Queens) met with
Thomas Christian, Director of the Dispute Resolution Centers Program
of the Unified Court System of the State of New York, and Judge Betty
Ellerin, Chief Administrative Judge of the Criminal Courts in the
City of New York. After several meetings, a document was drafted
outlining the function of the mediation centers. This document pro-
vides the administrative guidelines for the centers. Copies were sent
to all of the judges in New York City.

With court approval in hand, the DRC began discussions with the Victim Services Agency's Brooklyn Mediation Center (BMC), the major mediation center in Brooklyn. BMC provides intake services at 346 Broadway, where all criminal summonses are issued for the entire borough of Brooklyn. It was agreed that all cases from the 63rd and 70th police precincts in Brooklyn would be referred to the DRC. The intake staff at 346 Broadway is supplied with copies of our Request to Appear forms and DRC Brochures. They schedule cases from Criminal Court for the DRC on Tuesdays and Wednesdays at 1 and 4:00 p.m. and on Mondays and Tuesdays at 7:00 p.m.

From November, 1982, when the first case was referred to the DRC from Criminal Court, to January, 1984, 375 cases have been referred.

FAMILY COURT

In October, 1982, the Director of the DRC began discussions with Judge Richard Huttner, Chief Administrative Judge of the Brooklyn Family Court. On a site visit to the DRC, Judge Huttner observed the Center's operation and viewed a training film produced by the DRC depicting a mock mediation. Judge Huttner indicated that the DRC would be a good referral source for the Family Court. After further discussion, the DRC and the Family Court agreed to a referral system under which certain domestic violence cases would be sent to the DRC for mediation. A key element in the agreement is that cases would be referred to the DRC only after an Order of Protection has been issued by a judge of the Family Court. Thus, the DRC would be asked to mediate only the underlying issues in the dispute, e.g., child custody, interpersonal disputes, and not the issue of violence.

Under the present system, a member of the DRC staff (most often a Brooklyn Law School student) sits in Family Court, Part B, during the hearing involving both parties. Where appropriate, the judge refers domestic violence cases to the DRC after granting an Order of Protection. The DRC representative meets with the parties in the waiting room, explains the mediation process and sets up an appointment. The referral is not included in the Order of Protection and, therefore, is not mandatory. When DRC mediators are not available and the Family Court judge deems the case appropriate for mediation, the couple is referred directly to the Center.

This system has the advantage of providing the protection of the Court to the complainant (almost always female) and of providing information to the couple before they come to the DRC. It also gives the DRC some idea of the issues involved in the case. The major disadvantage of the system is that it imposes a severe strain on our small staff. This problem has been alleviated somewhat with the arrival of Brooklyn Law School students who are eager to gain courtroom experience.

Domestic violence cases were chosen for two reasons. First, the charge is criminal in nature, and as we understand the Dispute Resolution Centers Act, the purpose of mediation centers is to relieve the caseload in the Criminal Courts. Since these domestic violence cases could have been heard in Criminal Court, they seemed to be appropriate cases for the DRC. Second, these cases involve a broad range of mediable issues--child custody, child support, separation, reconciliation.

Since October, 1982, 77 cases have been referred to the DRC from Family Court and our current success rate is 86%. The average number

of mediation sessions per Family Court case is three, as opposed to a typical Criminal Court case which lasts only one session.

Family Court

(November 1982 - December 1983)

Agreements	36
Conciliation without mediation	9
No Agreement	6
No Show	24
Pending	2
TOTAL	77

SUCCESS RATE - 36/42 = 86%

CASELOAD

Since the first quarter of the 1982-83 fiscal year, the DRC caseload had grown dramatically, as shown in the accompanying graph. Through the first two quarters (April 1 to September 30) the number of cases was quite low. During this period, the DRC was in the process of getting organized and arranging a referral system from the Summons Part of Criminal Court. Work was hampered somewhat by the fact that the first grant payment from New York State did not arrive until late June 1982.

The third quarter of 1982-83 showed a dramatic increase. This reflected the establishment of the referral system from Criminal and Family Courts. There is no clear explanation for the decline in caseload during the first quarter of 1983-84. The continued decline during the second quarter (Summer) seems to parallel the decline of the second quarter, 1982-83. The summer caseloads have been the lightest. The third quarter of 1983-84 showed a significant increase, returning to the levels of the fourth quarter, 1982-83.

NUMBER
OF
CASES

100

80

60

40

20

FIRST
QUARTER

APRIL-
JUNE
1982

SECOND
QUARTER

JULY-
SEPT.
1982

THIRD
QUARTER

OCT.-
DEC.
1982

FOURTH
QUARTER

JAN.-
MAR.
1983

FIRST
QUARTER

APRIL-
JUNE
1983

SECOND
QUARTER

JULY-
SEPT.
1983

THIRD
QUARTER

OCT.-
DEC.
1983
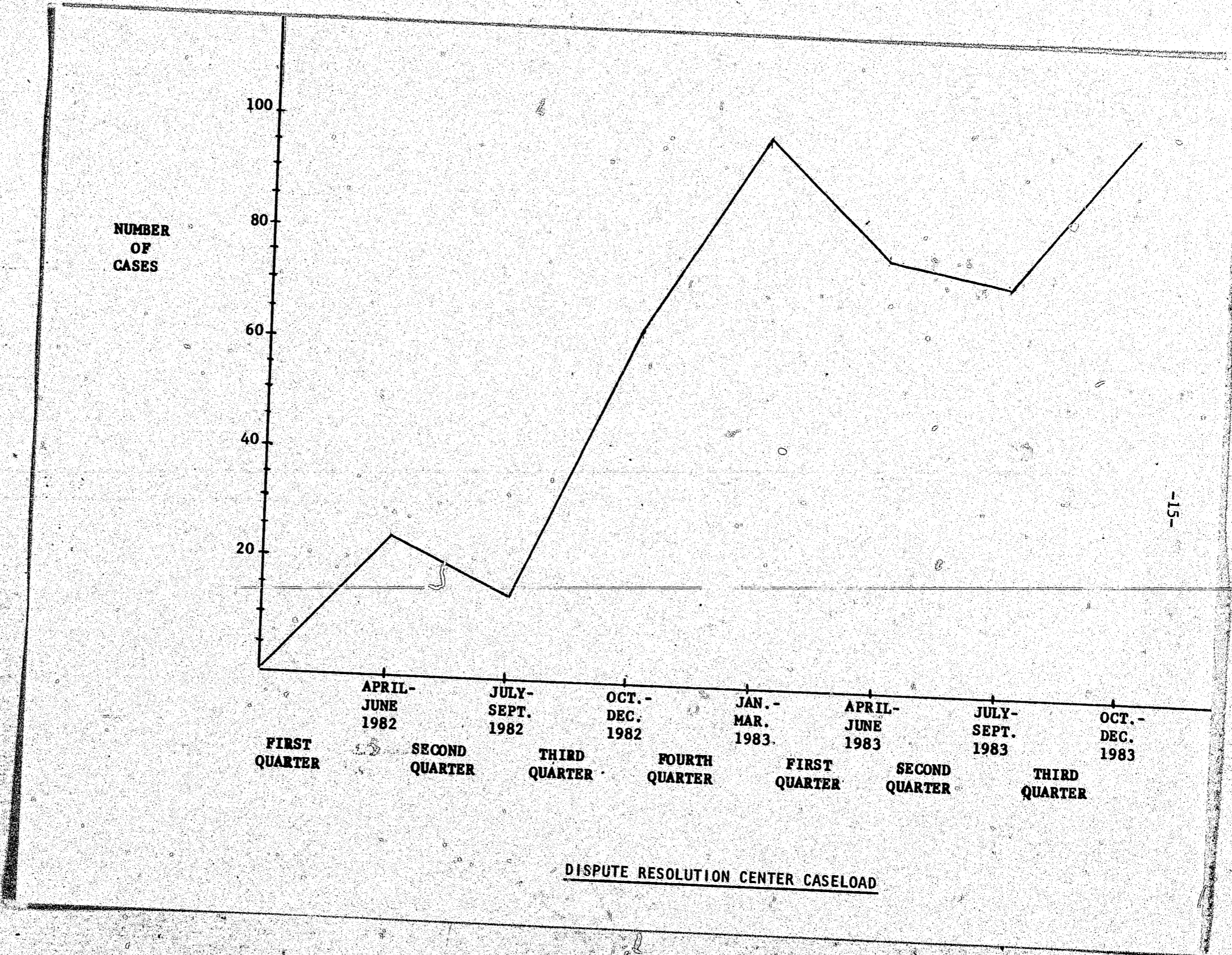
DISPUTE RESOLUTION CENTER CASELOAD

SERVICE AREAS

The map below shows that the great majority of all cases mediated at the Dispute Resolution Center come from areas immediately around the College which is located in zip code area 11210. Each black dot indicates a single case. The cases not in the five zip code areas around the College are those referred from Family Court or some other source. All Summons Part cases are in either the 63rd or 70th police precincts. The Victim Services Agency's Brooklyn Mediation Center is located in zip code area 11201.
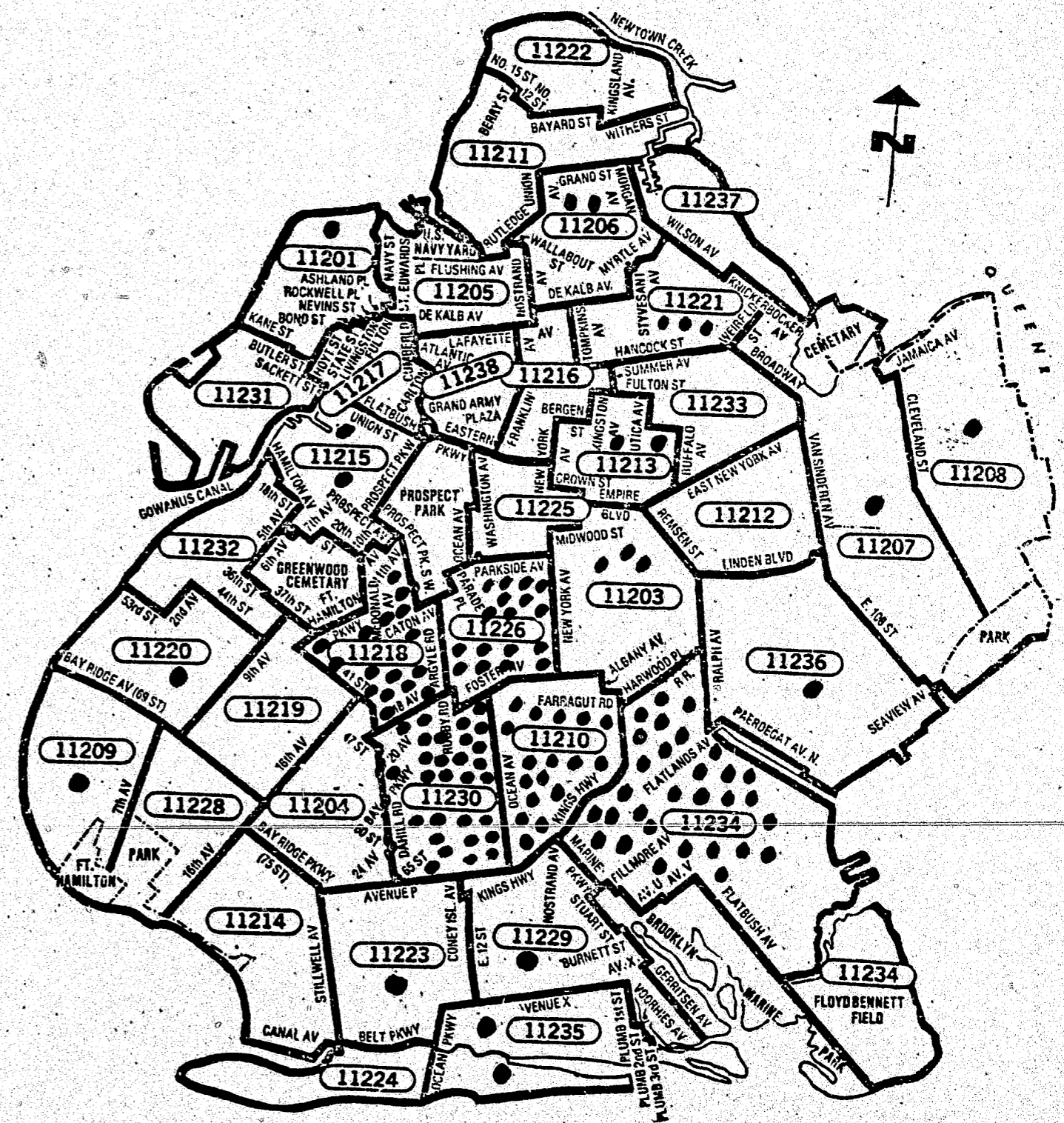
Brooklyn zip code map

STAFF

The staffing pattern of the DRC has evolved in stages within the established budget constraints. The current staff and system of organization is working very effectively and is handling an annual caseload of 400 referrals.

There are several components of the staff. The Director and Research Director are faculty members in the Political Science Department at Brooklyn College. They are given released time from teaching to work at the DRC. Funds for this are provided equally by Brooklyn College and the Unified Court System. The Unified Court System also provides funds for Summer salaries for the Director and Research Director.

The Assistant Director is an adult student at Brooklyn College who spends approximately twelve hours per week at the DRC. The funds for this position come from the Unified Court System. The duties of the Assistant Director include:

   -assisting in mediator training
   -preparation of financial, research and public relations reports
   -supervision of clerical staff and administration of office
   -organization of and attendance at necessary meetings and seminars
   -managing finances
      - processing payroll and quarterly financial reports, paying
        of bills
   -doing case intake
   -conducting mediation
   -responsibility for reception, telephone, and typing

The Director of Training was paid by funds from the Unified Court System to carry out the first training in February, 1982. Since then the trainer has served without fee as a consultant.

The Research Assistant is a student at Brooklyn College. She works approximately 15 hours per week. Her salary is paid through Work Study funds of Brooklyn College. The duties of the Research Assistant include:

   -supervision of collection of research data
   -preparation of case profiles
   -supervision of research/clerical staff
   -supervision of computer input
   -assisting in the preparation of research reports
   -attendance at necessary meetings
   -case intake
   -reception, telephone, typing
   -mediation

The Office Assistant is a student at Brooklyn College. She works approximately 15 hours per week. Her salary is paid through Work Study funds of Brooklyn College. The duties of the Office Assistant include:

   -reception, telephone, typing, filing and general office errands
   -data input into computer
   -case intake
   -aid in preparation of reports
   -attendance at meetings
   -mediation

The entire staff is trained in mediation and participates extensively in the mediation process, both as principal mediators and as trainers for new mediators.

Mediation Staff

The mediators who are not staff members, fall into several categories. The majority are either students at Brooklyn College or students at Brooklyn Law School. All of these students receive course credit for their work at the DRC. Undergraduates are either members of a seminar in Political Science, interns in an Urban Studies program, or are doing independent study.

As part of their Clinical Program, second year Brooklyn Law School students may work at the DRC. They complete the twenty five hour mediation training and spend approximately 12 hours per week at the Center in mediation. The students are also required to attend weekly case conferences led by the DRC Director at the Law School where their cases are discussed in detail and the mediation process

is reviewed. Students receive three credits for the semester's work. Thus far, twenty-one Brooklyn Law School students have participated in the program. Two Cardozo Law School students and one Boston University Law School student have been volunteers.

In addition to the law school volunteers, other volunteer mediators include social workers with training and experience in therapy, attorneys, and community persons from a variety of backgrounds.

TRAINING

As stated in Chapter 847, Laws of 1981, New York State, mediators must receive a minimum of twenty-five hours of training in conflict resolution techniques. Training at the DRC is divided into four phases, the first of which involves an eight-hour seminar conducted by the Director and the DRC staff at the Center. At the seminar, trainees learn about the mediation process and the role and techniques of the mediator. They are also trained in intake and referral procedures, and in the operation of the Center. Trainees are given a training manual for home study, and view a two-hour video tape of a simulated mediation session. Both learning tools were prepared by members of the DRC staff. The book, Getting to Yes (Boston: Houghton Mifflin, 1981) by Fisher and Ury of the Harvard Negotiation Project is assigned for additional reading. The trainees are also made aware of the research on game theoretical models of bargaining and negotiation being conducted by the Center. Emphasis is placed on trainees' participation in the research process and its importance.

The second phase of training, approximately fifteen to twenty hours, consists of both observation and participation in actual mediations from Criminal and Family Court. Trainees are required to observe at least one session conducted by a trained mediator (three to four hours) and to co-mediate at least two sessions with a trained mediator (four to six hours). At this time, the trainer discusses the trainee's progress in conference with the Director and a decision is made on the competence of the trainee before further training proceeds.

Third, an ongoing part of the training process is a two-hour weekly case conference in which one or more mediators present a case for group

discussion. As many mediators as possible attend these sessions. The purpose of the conference is to analyze cases in detail, to share insights, and to provide guidance.

The fourth and final phase of training consists of observation by a trained mediator of the trainee conducting actual mediation sessions. Thus far, four training sessions have been held at the DRC and a total of seventy mediators have completed the training.

T R A I N E D M E D I A T O R S

Faculty, Brooklyn College

David Abbott, Ph.D. Political Science
Robert Abrams, Ph.D. Political Science
James Adams, Consumer Studies
Bart Meyers, Ph.D. Psychology
Vera Tarr, Ph.D., Graduate Education
Don Weipert, Ph.D. Counselor, Student Services

Students, Brooklyn College, Undergraduate

Independent Research

Wyletta Barbee
Gloria Berg

Urban Internship

Kim Bruce
Veronica Lewis
Nancy Martin
Neil Yuzuk

Political Science Seminar

Florence Brent
Juan Charbonier
Judy Dolinsky
Phyllis Fuksbrumer
Kevin Huttner
Anda Jegers
Ruth Lazar
Robert Lederkramer
Beth Mondschein
Ita Parnass
Peter Rabias
Maria Stamos
Caryl Toron
Steven Wadowski

College Work-Study Program

Gina Allimonos
Rosemarie DiMeo

Students, Brooklyn Law School

Natalie Abrams, Ph.D.
Anette Bonelli
Judy Bruckner
Camille Cooke
Judy Fensterman
Gabe Jeidel, JD

Phillip Katz
Carol LaPunzina
Christine McConnell
Barbara Schaffer
David Schick, JD
Jack Segal
David Sherman JD
Angela Skeete
Andrew Tivoli, JD
Amy Weinstein
David Worth

Students, Cardozo Law School

Fran Mann
Abe Rappaport

Student, Boston Law School

Fran Shraga, JD

Social Service Professionals

Social Workers

Phyllis Haddan, MSW
Rebecca Mutzner
Letty Steinberg, CSW, DM
Rhonda Sternberg

Divorce Mediators

Roger Brach, JD
Suzanne Hess, MSW
Jeff Seibel, MSW
Harriet Wallet, MSW

Psychotherapists

Sharon Carp, MSW
Diana Cook, CSW
Helen Lowenstein, CSW
Cynthia Lyman, ACSW
Elizabeth Ojakian, ACSW

Professional Mediators/Negotiators

Herbert Jefferson
Ellen Raider, MS

Community Persons

Sophie Finkelstein
Marcia Huttner
Richard Lerman, Ph.D.
Keith Mahoney
Harold Maybloom
Iris Munoz
Jan Starker

FUNDING

Financial support for the Dispute Resolution Center has come from the Unified Court System of the State of New York, pursuant to Public Law Chapter 847, Laws of 1981, the Dispute Resolution Centers Program Act.

The Unified Court System's funding includes portions of released time and summer session salaries for the Center Director and Research Director, administrative and clerical assistance, travel and miscellaneous program supplies, fringe benefits and a portion of indirect costs (essentially "overhead").

Brooklyn College pays for a portion of the released time and fringe benefits for selected faculty members and a portion of the indirect costs associated with the operation of the Center. As part of the Brooklyn College contribution, the Center uses 1106 James Hall which was renovated in December 1981. The College also provides telephone and mail service and allows the Center access to its computer system. Security is provided through the Brooklyn College security system. Throughout the history of the DRC program, Brooklyn College and the Unified Court System have shared the funding about equally.

OFFICE SPACE

Office space for the DRC was provided by Brooklyn College. The DRC is located in one of the campus buildings, 1106 James Hall. The office is composed of an open area approximately 18x35 feet. Around this open area are seven very small rooms, approximately 10x6 feet and three larger rooms, two of which are approximately 9x13 feet and one which is 10x13 feet. The small rooms, which are too small for mediation, are used for intake by DRC staff. One of the two medium sized rooms is a storage space for a professor in the Education Department at Brooklyn College, the other is

the DRC Director's office. The large room is the primary mediation
room. Presently the DRC shares this space with the Education Department
which uses the small rooms for counseling and the large waiting area for
classes.

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| J    | I    | G    | F    | E    |    D     | C    | B    |
+------+------+------+------+------+----------+------+------+

+-------------+      OPEN AREA        +-------------+
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|             |                       |             |
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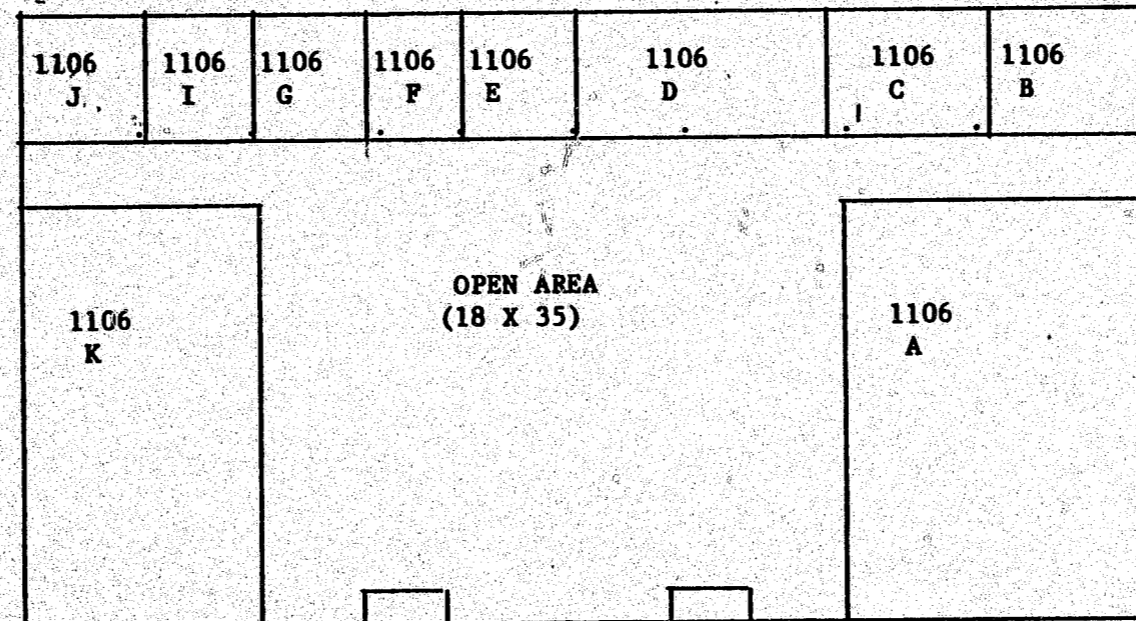
1106 James Hall

DISPUTE RESOLUTION CENTER, BROOKLYN COLLEGE

PRELIMINARY RESEARCH RESULTS

Sample

The sample of cases analyzed in this pilot study was composed of all cases which were mediated to their conclusions (either successfully or unsuccessfully) at the Dispute Resolution Center (DRC) of Brooklyn College from November, 1982, when referrals from the Summons Part of Criminal Court and Brooklyn Family Court began, to November 1983. Since the sample is made up only of DRC cases, no inferences can be made to cases at other mediation centers. Nevertheless, the results from this study provide a starting point for future studies which should be based on random samples drawn from all of the centers.

Intake and Post-Mediation Forms

The data were gathered from two instruments--an intake form and a post-mediation debriefing form (see Appendix). The intake form is completed by the mediator(s) in private, separate interviews with the complainants and respondents prior to the mediation. The intake form is designed to gather socio-economic data, as well as some administrative information. The post-mediation debriefing form is completed by the mediator(s) after the complainant and respondent have left the Center. This form contains a number of questions regarding such issues as the hostility level of the disputants, their apparent costs of non-settlement, and the question of who yielded more in the course of the mediation. These questions clearly require the subjective judgement of the mediator(s), and for that reason, must be analyzed closely and with some caution. Nevertheless, this represents the first attempt to operationalize a particular game theoretical model (see Appendix). It is expected that future research will refine the present procedure,

which is relatively crude, or will replicate the present procedure and compare the results.

Success Rates

Our primary interest is in the notion of "success rate." It is important to note that this is the first study of mediation which deals with success rates. Previous studies have either focused on a particular question (e.g., VSA's study of battered women) or a set of variables not related to success rate (e.g., Claire Francy's study of IMCR). One of the problems in studying success rates has been that many centers use a mediation-arbitration model where disputants are told that if they cannot reach an agreement through the mediation process, the mediator will become an arbitrator and settle the dispute for the parties. Under such conditions, few parties do not settle.

At the DRC, cases are mediated only. There is no arbitration. If mediation fails, the case ends. The disputants either go to court or voluntarily drop the dispute. Thus, the situation at the DRC is truly a mediation, and not a mediation-arbitration. It is for this reason that we have been able to collect data on success rates.

A critical aspect of "success," however, is whether the agreement holds after the disputants leave the mediation center. That part of our study is now in progress and, if funding permits, we will report on that aspect of the success rate by Summer, 1984.

The results reported here represent only a beginning. The data in our sample are rich and complex, allowing for extensive study. We will be pleased to share our data with others, and to work with other academics. We are currently in communication with Professors Dean Pruitt at SUNY Buffalo and Janet Rifkin of the University of Massachusetts at Amherst.

GENERAL SUCCESS RATES

-- The overall success rate is 79% (109/138). That is, of the 138 cases in this sample, an agreement was reached in 109 cases.

NO-SHOW RATE

-- The no-show rate is the proportion of our total number of cases in which one or both of the parties failed to appear. The no-show rate for the DRC is 30%. The proportion of cases in which neither party appeared is 20%.

-- No-show rates are noticeably higher when the dispute involves a black complainant.

-- No-show rates tend to drop to low levels when complainants are in their 40's or older.

RELATIONSHIP

-- 41% of the cases involved neighbors. No other single category accounted for more than 9% of the cases.

-- The closer the relationship between the disputants, the higher the success rate. (See Table 1)

Table 1

Relationship of Disputants and Success Rate

	Successful	Unsuccessful	(N)
Very Close: (boy/girl friend, married, divorced, separated, ex-boy/girl friend, immediate family	37 (90%)	4	41
Less Close: (acquaintance, extended family, friend, neighbors, roommates, employer/employee)	56 (76%)	18	74
Distant: (consumer/merchant, landlord/tenant, strangers)	11 (65%)	6	17
TOTALS:	104	28	132

NOTE: The total number of cases in each table may be less than the sample as a whole since certain information was not obtained from every complainant and respondent.

SEX

62% of the complainants were women; 65% of the respondents were men. When a female is involved in a dispute, either as a complainant, or respondent, the success rate is considerably higher than the situation in which only males are involved. (See Table 2)

Table 2

Sex and Success Rate

Complainant	Respondent	Successful	Unsuccessful	(N)
Male	Male	23 (68%)	11	34
Male	Female	14 (78%)	4	18
Female	Male	46 (84%)	9	55
Female	Female	24 (83%)	5	29
	TOTALS:	107	29	136

SOCIO-ECONOMIC STATUS

Of those who answered the question on income, the median complainant made less than $16,000, while the median respondent made somewhat more than $16,000. In the sample as a whole, 30% refused to answer the question on income. Success rates are higher when complainant and respondent have relatively equal incomes.

Table 3

Income and Success Rate

	Successful	Unsuccessful	(N)
Equal Income	20 (80%)	5	25
Respondent's income greater than complainant's	24 (75%)	8	32
Complainant's income greater than respondent's	20 (74%)	7	27
TOTALS:	64	20	84

Of the complainants, 57% were employed, 43% were not employed. The latter category includes those who are not working because they are disabled (5%), receive public assistance (6%) or social security (12%), are students (2%), or are unemployed (17%). Of the respondents, 58% were employed, 42% were not working. These included the disabled (5%), those on public assistance (3%), or social security (5%), students, (5%), and those simply unemployed (23%).

In regard to unemployment status, the highest success rate occurs when the complainant is employed and the respondent in unemployed. (See Table 4)

Table 4

Employment Status and Success Rate

Complainant	Respondent	Successful	Unsuccessful	(N)
Employed	Employed	33 (72%)	13	46
Employed	Not Employed	25 (93%)	2	27
Not Employed	Employed	22 (79%)	6	28
Not Employed	Not Employed	20 (74%)	7	27
	TOTALS	100	28	128

In regard to education, success rates are highest when the respondent and/or complainant have not gone beyond high school. Success rates are lowest when the respondent has more than a high school education, regardless of the complainant's level of education.

In terms of education, the median complainant had completed high school. 90% had more than a tenth grade education and only 19% had not finished high school. 30% had some college education, while 21% had a college degree. Of the respondents, the median educational level was twelfth grade. 9% had less than ten years of education, 18% had less than a high school diploma, 27% had some college education and 16% had at least a college degree. (See Table 5)

Table 5

Education and Success Rate

Number of Years	Successful	Unsuccessful	(N)
Complainant and Respondent have had 12 years or less of education	35 (83%)	7	42
Complainant and Respondent have had more than 12 years of education	13 (65%)	7	20
Complainant has had less than 12, Respondent has had more than 12 years of education	10 (63%)	6	16
Complainant has had more than 12, Respondent has had less than 12 years of education	28 (93%)	2	30
TOTALS:	86	22	108

RACE AND ETHNICITY

Sixty percent of the disputants were white, 28% black, 7% Hispanic and 4% 'other.' Among the whites, 42% identified ethnically as Jews, 25% as Italian, and 12% as Irish. Among the blacks, 11% described themselves as Jamaican or other British West Indian and 9% as Haitian.

87% of the cases are _intra-racial_. This is consistent with data showing a preponderance of our cases between people who are closely related or neighbors. As an explanatory variable, however, race is not particularly powerful.

At this point, since there are so few _inter-racial_ cases, no clear statements can be made on the effect of racial differences on success rates.

Table 6

Disputants' Race and Success Rate

Complainant	Respondent	Successful	Unsuccessful	(N)
White	White	55 (76%)	17	72
White	Black	4 (100%)	0	4
White	Hispanic	2 (100%)	0	2
Black	Black	27 (84%)	5	32
Black	White	3 (50%)	3	6
Black	Hispanic	1 (50%)	1	2
Hispanic	Hispanic	6 (100%)	0	6
Hispanic	Black	0 (0%)	0	0
Hispanic	White	2 (100%)	0	2
TOTALS:		100	26	126

Table 7

Race of Complainant and Success Rate

	Successful	Unsuccessful	(N)
White	65 (78%)	18	83
Black	33 (77%)	10	43
Hispanic	9 (90%)	1	10
TOTALS:	107	29	136

When the complainant and/or respondent is an ethnic minority (Afro-American, Haitian, Jamaican, Puerto Rican) success rates are higher than for Italians or those who identify themselves ethnically as Jews. Irish disputants have success rates which equal those of minority groups.

Table 8

Ethnicity and Success Rate

	Successful	Unsuccessful	(N)
American	20 (87%)	3	23
Afro-American	19 (79%)	5	24
Haitian	6 (100%)	0	6
Irish	14 (88%)	2	16
Italian	21 (68%)	10	31
Jamaican	7 (88%)	1	8
Jewish	33 (77%)	10	43
Puerto Rican	8 (89%)	1	9
TOTALS:	128	32	160*

*The total number of cases in Table 8 (160) is greater than the total number of cases in the sample since we are including those cases in which an individual from a particular ethnic group was either a complainant or a respondent. Thus, where the complainant and respondent were from different ethnic groups, that case was counted twice.

RELIGION

Of the complainants who stated a religious preference, 47% were Catholic, 32% were Jewish and 21% were Protestant or other. 18% gave no religious preference. Of the respondents who stated a preference, 44% were Catholic, 34% were Jewish, and 22% were Protestant or other. 28% did not state a religious preference. Religious preference of the parties however, seems unrelated to success rates.

Table 9

Religion and Success Rate

Complainant	Respondent	Successful	Unsuccessful	(N)
Catholic	Catholic	19 (73%)	7	26
Catholic	Protestant	1 (100%)	0	1
Catholic	Jewish	8 (80%)	2	10
Protestant	Protestant	5 (83%)	1	6
Protestant	Catholic	3 (100%)	0	3
Protestant	Jewish	0 (0)	1	1
Jewish	Jewish	16 (76%)	5	21
Jewish	Protestant	1 (100%)	0	1
Jewish	Catholic	6 (75%)	2	8
TOTALS:		59 (77%)	18	77

Table 9-A

Success Rate Whether Complainant or Respondent

Catholic — 37/48 = 77%

Protestant — 10/12 = 83%

Jewish — 31/41 = 76%

AGE

The median age of the complainants was 38, while the median age of the respondents was 36. One-third of the complainants were between 29 and 39 years old. The highest success rate among age groups occurs when the complainant is in his or her forties.

Table 10

Age of Complainant and Success Rate

Age	Successful	Unsuccessful	(N)
20 - 29 years	25 (83%)	5	30
30 - 39 years	26 (74%)	9	35
40 - 49 years	22 (88%)	3	25
50 - 59 years	12 (75%)	4	16
60 - 69 years	10 (71%)	4	14
70 years and older	6 (75%)	2	8
TOTALS:	101	27	128

ANGER

When the levels of hostility or anger of complainants and respondents are relatively equal, the success rate is considerably higher than when the level of hostility or anger is unequal.

Table 11

Relative Anger and Success Rate

		Successful	Unsuccessful	(N)
Complainant	= Respondent	36 (90%)	4	40
Complainant	> Respondent	40 (71%)	16	56
Respondent	> Complainant	25 (78%)	8	33
	TOTALS:	101	28	129

COST OF NON-SETTLEMENT

Success rates were somewhat higher when the costs of non-settlement for both complainant and respondent were relatively equal.

Table 12

Relative Costs and Success Rate

		Successful	Unsuccessful	(N)
Complainant	= Respondent	41 (84%)	8	49
Complainant	> Respondent	36 (77%)	11	47
Respondent	> Complainant	27 (77%)	8	35
	TOTALS:	104	27	131

NATURE OF DISPUTE

85% of the cases involved some form of harassment or assault. Based on small numbers of cases, it appears that noise disputes are resistant to settlement but that interpersonal disputes are highly likely to be settled.

Table 13

Nature of Dispute

	Successful	Unsuccessful	(N)
Assault/Aggravated Assault, Menacing	29 (81%)	7	36
Harassment	52 (81%)	12	64
Noise	6 (67%)	3	9
Interpersonal Dispute	9 (100%)	0	9
TOTALS:	96	22	118

CO-MEDIATION

Of the 138 cases in this sample of mediated cases, over half were co-mediated (two mediators). Successful outcomes were equally likely,

regardless of the number of mediators.

Table 14

Co-Mediation and Success Rate

	Successful	Unsuccessful	(N)
Co-Mediation	65 (79%)	17	82
Single Mediator	44 (79%)	12	56
TOTALS:	109	29	138

EXPERIENCE OF MEDIATORS

We separated out the mediators according to the number of cases they had mediated (as sole or primary mediator) within the sample. The results, as shown in Table 15 are confusing and inconclusive. We are currently working on a more effective measure of experience based on the level of experience of a mediator at the time of each particular mediation, which will, we hope, shed more light on the question of experience as a factor in successful mediation.

Table 15

Experience of Mediators and Success Rate

Number of Mediators	Number of Cases	Successful	Unsuccessful	(N)
29	1 - 2	32 (94%)	2	34
8	3 - 6	22 (65%)	12	34
3	7 - 11	16 (89%)	2	18
2	18 - 34	39 (75%)	13	52
TOTALS:		109	29	138

ADDITIONAL FINDINGS AND DATA COLLECTED

REFERRAL SOURCES

-- 76% of the cases in this sample were referred from the Summons Part of Criminal Court, 9% from Brooklyn Family Court, and 5% from the police. Of the rest, 1% came from public agencies, 6% were walk-ins, and 3% were from other sources.

LOCALE OF DISPUTANTS

-- 83% of our mediated cases come from five zip code areas in the immediate vicinity of Brooklyn College.

RELATION TO BROOKLYN COLLEGE

-- 92% of the cases dealt with disputants who have no association with Brooklyn College.

THE MEDIATION PROCESS

-- The median number of clients served per mediation is 2.4. The mean is 2.8.

-- The average length of time per mediation is 2 hours and 15 minutes. The median is 2 hours.

-- 90% of the mediations require no more than a single session.

-- The average time from intake to mediation is 12 days. The median is 9 days.

-- Most of the first plenary sessions (both parties present) and private sessions (only one party present) last from 15 to 30 minutes. The length of the second plenary session, however, varies widely.

-- In cases where agreement is not reached, the complainant is as likely not to agree as the respondent.

-- In cases where one of the parties gives in more than the other, the respondent is more than twice as likely to have yielded. In only 16% of the cases does the complainant give in more than the respondent. In 41% of the cases, both give in about equally.

-- In the typical case where a settlement is reached, agreement begins to gel in the plenary session following the first round of private sessions.

APPENDIX

HOW TO REACH BROOKLYN COLLEGES'S DIS-
PUTE RESOLUTION CENTER:

Subway routes. IRT 7th Avenue or
Lexington Avenue express, Flatbush
train, to Flatbush Avenue station;
Brighton local train(M) to Avenue
H station. Walk east to campus.

Bus routes. 18th Avenue bus(8) to
Foster and Flatbush Avenues; Flat-
bush Avenue bus(41) to Nostrand
Avenue; Avenue J bus(6 or 11) to
Bedford Avenue and Campus Road;
Nostrand Avenue bus(44) to
Flatbush Avenue; Ocean Avenue
bus(49) to Avenue H.

For additional travel information
call Brooklyn College at 780-5485.

DISPUTE RESOLUTION CENTER

780-5037
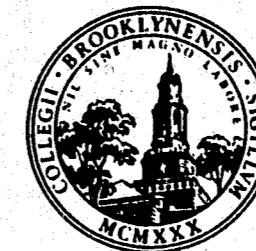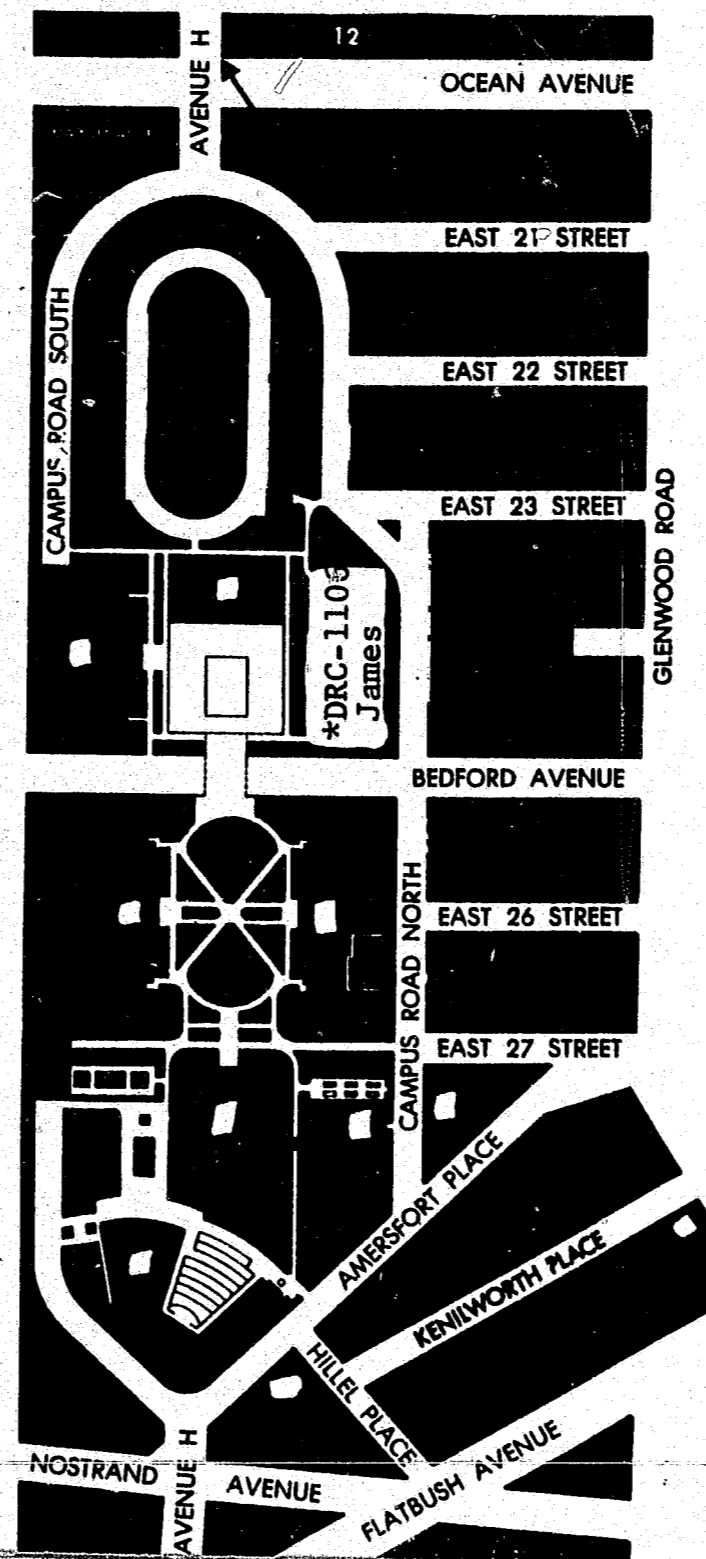
MEDIATE YOUR DISPUTES

-- Avoid delays in court

-- Reach effective settlements

-- Receive personal attention

-- Pay no fees

DISPUTE RESOLUTION CENTER

Brooklyn College
Bedford Avenue and Avenue H
Brooklyn, N.Y. 11210
Room 1106, James Hall

Robert Abrams, Director

212-780-5037

WHAT IS THE DISPUTE RESOLUTION CENTER?

The DRC is a mediation center funded by the New York State Office of Court Administration.

WHAT IS ITS PURPOSE?

The purpose of the DRC is to mediate disputes between individuals who have a continuous relationship - relatives, neighbors, landlords/tenants, consumers/businesses, employer/employee - in order to relieve some of the burden of the court system, prevent the escalation of conflict, and provide just and efficient assistance to the disputants.

WHAT IS MEDIATION?

Mediation is the process by which individuals in conflict try to resolve their disputes through compromise. They are assisted by a neutral third party, the mediator.

IS MEDIATION THE SAME AS ARBITRATION?

No. In arbitration, as in mediation, individuals in conflict come before a neutral third party. In arbitration, however, the arbitrator listens to both sides and then makes a decision to resolve the conflict in a particular way. The individuals have agreed to abide by the decision of the arbitrator.

In mediation, on the other hand, the conflict is resolved only when both individuals agree on a particular resolution. The mediator does not impose a solution. Rather, he or she tries to help the individuals reach an agreement which will be acceptable to both. That agreement is put into writing and signed by the parties.

WHAT HAPPENS IF NO AGREEMENT IS REACHED OR IF AN AGREEMENT IS SUBSEQUENTLY VIOLATED BY ONE OF THE PARTIES?

Either or both of the parties may take legal action in the courts. The mediation process does not interfere with the individual's right to a court hearing.

HOW EFFECTIVE ARE MEDIATED SETTLEMENTS?

Data indicates that agreements worked out by the parties involved prove to be more effective than settlements which are imposed.

HOW LONG DOES MEDIATION TAKE?

It depends on the complexity of the case. Generally, mediation takes from one to three hours. Parties, however, will not be rushed, and more complex problems may require additional time.

IS THE SERVICE AVAILABLE TO EVERYONE?

It is available to all residents of Brooklyn except those who have been indicted or charged with violent felony offenses or drug offenses, or those who, if convicted would be second-felony offenders.

CAN THE PARTIES INVOLVED IN MEDIATION BRING THEIR ATTORNEYS?

Yes, but it is not necessary.

IS THERE ANY COST FOR SERVICES AT THE DRC?

The service is free of charge.

MEDIATION TRAINING

/

Dispute Resolution Center

S C H E D U L E

Introductions / Contracts / Schedules

Administrative/Research Responsibilities of Mediators

    Debriefing forms
    Information on Disputants
    Summary of Dispute
    Scheduling

Description of BC Program

    Structure/Funding
    Referral System

Overview of Mediation and the Mediation Process

    Introduction
        Describe program
        Role of Mediator
        Explanation of Process
        Confidentiality
        Note-taking
        Agreement
        Follow-up

    Mediation Process
        Private Sessions
        Public Sessions

    Agreement

    Follow-up

Techniques of Mediation
    Listening/Hearing
    Use of Silence
    Communications
    Empathy/Neutrality
    Control of Session

DIXON TAPES

wyb
2283

Brooklyn College of The City University of New York, Brooklyn, New York 11210 - 212-780-4148

CRIMINAL COURT OF THE CITY OF NEW YORK

REQUEST TO APPEAR   Summons Part   County of New York

TO_____

Information having been presented by_____

alleging that you have committed the offense of_____

YOU ARE HEREBY REQUESTED TO APPEAR BEFORE THE DISPUTE RESOLUTION CENTER OF BROOKLYN

COLLEGE, BEDFORD AVENUE AND AVENUE H, ROOM 1106 of JAMES HALL, BROOKLYN, NEW YORK,

COUNTY OF KINGS ON_____, 19__ AT_____

at which time an inquiry will be made of the said allegation.

IF YOU FAIL TO APPEAR at the above designated time and place a criminal action against

you may be commenced without your first having an opportunity to be heard.

DATED_____, New York City_____
                                           Clerk

    Present this request to the Clerk when you appear. THERE IS NO FEE FOR THIS REQUEST

Dispute Resolution Center

Date

Dear

    Your neighbor, (complainant's name) has called our Dispute Resolution Center to discuss certain problems which involve the two of your.

    Our Center is funded by the New York State Office of Court Administration. Its purpose is to help settle disputes between neighbors, landlords and tenants, and families. We provide mediation free of charge.

    We do not represent (complainant's name) in any way. The Center is a neutral party offering a community service. If you would like our assistance,and to avoid possible legal action, please call us at 780-5037, Monday through Thrusday between 10 a.m. and 4 p.m.

             Sincerely,

             Robert Abrams
             Director

RA/b
Enclosure - Brochure
cc: Complainant

Dispute Resolution Center

A G R E E M E N T

Party A_____

Party B_____

Date_____

DRC #_____

Party A_____

Party B_____

Witness/Mediator

Witness/Mediator

DISPUTE RESOLUTION CENTER

1106 James Hall
212/780-5037

DRC# _____

COMPLAINANT _____

RESPONDENT _____

FAILURE TO REACH AGREEMENT

This is to affirm that a mediation session was held on _____

_____, 19___ at _____ at the Brooklyn College

Dispute Resolution Center.

The complainant and respondent attempted to resolve the conflict
but were unable to reach an agreement. Since mediation has not
been successful in this case, we are referring the complainant
to the Office of Court Administration, 346 Broadway, Room 205,
New York, New York for the drawing of a formal criminal complaint.

Mediator _____

FL13
122282

DISPUTE RESOLUTION CENTER

1106 James Hall
212/780-5037

DRC# _____

DATE _____

CASE _____

TO WHOM IT MAY CONCERN:

This is to confirm that _____ was

present at the Brooklyn College Dispute Resolution Center on

_____, _____, 19__, from _____

to _____. His/Her case was scheduled to be heard at that time.

_____

DISPUTE RESOLUTION CENTER

1106 James Hall
212/780-5037

DATE _____

DRC# _____

CASE NAME _____

Neither the Complainant nor the Respondent in the above case appeared for scheduled mediation within the ½ hour deadline.

Mediator _____
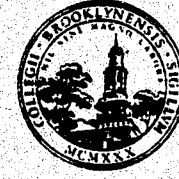
DISPUTE RESOLUTION CENTER

1106 James Hall
212/780-5037

DATE _____

DRC# _____

NAME _____

REFERRAL - CIVIL COURT

_____ has been referred to Brooklyn Civil Court, located at 141 Livingston Street, Brooklyn, New York.

Hours: Monday to Friday, 9:00 a.m. to 5:00 p.m.

Telephone: 212/643-5069

_____

DISPUTE RESOLUTION CENTER

1106 James Hall
212/780-5037

DATE _____

DRC# _____

NAME _____

REFERRAL - FAMILY COURT

_____ has been referred to Brooklyn Family
Court, located at 282 Adams Street, Brooklyn, New York.

Hours: Monday to Friday, 9:00 a.m. to 5:00 p.m.

Telephone: 212/643-2650

_____

REFERRAL - SMALL CLAIMS COURT

_____ has been referred to Small Claims Court,
located at 141 Livingston Street, Brooklyn, New York.

Hours: Monday to Friday, 9:00 a.m. to 4:30 p.m.

Thursday, 9:00 a.m. to 8:00 p.m.

Filing: 6:00 p.m. to 8:00 p.m.

Telephone: 212/643-8180

_____

DISPUTE RESOLUTION CENTER

1106 James Hall
212/780-5037

DRC#_____

COMPLAINANT_____

RESPONDENT_____

FAILURE OF RESPONDENT TO APPEAR

This is to affirm that the respondent did not appear for the mediation session scheduled for_____, 19__, at_____.

Due to the lack of appearance of the respondent within the ½ hour deadline, the case was dismissed without being heard by the Brooklyn College Dispute Resolution Center.

Mediator_____

FL12
122282

DISPUTE RESOLUTION CENTER

1106 James Hall
212/780-5037

DRC#_____

COMPLAINANT_____

RESPONDENT_____

FAILURE OF COMPLAINANT TO APPEAR

This is to affirm that the complainant did not appear for the mediation session scheduled for_____, 19__, at_____.

Due to the lack of appearance of the complainant within the ½ hour deadline, the case was dismissed without being heard by the Brooklyn College Dispute Resolution Center.

Mediator_____

FL15
122282

BC/DRC INTAKE   Case Number $(\overline{1}\ \overline{2}\ \overline{3}\ \overline{4})$

Names: _____ vs. _____
    complainant   respondent

1-4

Address _____   _____

5-6   ZIP: _____   _____ (code C's ZIP) $(\overline{5}\ \overline{6})$

Phone: (h)_____ (w)_____   (h)_____ (w)_____

7-9 Date of Intake _____   (code month w/two digits, yr.w/one) $(\overline{7}\ \overline{8}\ \overline{9})$

Mediator(s) _____   _____

Scheduled dates of mediation: 1. _____
                      2. _____
                      3. _____

R.T.A. Issued? ( ) yes ( ) no   Cross Complaint? ( )yes ( ) no

10-11 Relationship between Parties: _____ $(\overline{10}\ \overline{11})$

01( )(ACQ) acquaintances	09( )(IMF) immediate family	
02( )(BFG) boy/girlfriend	10( )(LLT) landlord/tenant	
03( )(COM) consumer/merchant	11( )(MAR) married	
04( )(DIV) divorced	12( )(NEI) neighbors	
05( )(EME) employer/employee	13( )(RHM) room/housemates	
06( )(XBG) ex-boy/girlfriend	14( )(SEP) separated	
07( )(EXF) extended family	15( )(STR) strangers	
08( )(FRI) friend	16( )(OTH) other_____	

12-13 Nature of Dispute: _____ $(\overline{12}\ \overline{13})$

01( )(AGA) aggravated assault	10( )(IND) interpersonal dispute
02( )(ANC) animal complaint	11( )(MEN) menacing
03( )(ASS) assault	12( )(NOI) noise
04( )(BRC) breach of contract	13( )(PRP) personal/real property
05( )(CRM) criminal mischief	14( )(PEL) petty larceny
06( )(FOR) forgery	15( )(REN) reckless endangerment
07( )(FBC) fraud-bad check	16( )(THS) theft of service
08( )(HAR) harrassment	17( )(VOR) violation city ordinance
09( )(HOD) housing dispute	18( )(OTH) other_____

14 Type of Dispute 1( )(CRI) criminal 2( )(CIV) civil 3( )(JUV) juvenile $(\overline{14})$

15 Who referred this case to the BC?DRC? $(\overline{15})$

1( )(CRT) criminal court	6( )(PRA) private attorney
2( )(CRT) family court	7( )(PUA) public agency
3( )(DAT) district attorney	8( )(SCH) school
4( )(LEA) legal aid	9( )(WIN) walk in
5( )(POL) police	0( )(OTH) other

16 Disposition of Case $(\overline{16})$

1( ) mediated successfully	4( ) case inappropriate for DRC
2( ) mediated unsuccessfully	5( ) case scheduled/no mediation
3( ) conciliated outside DRC	

17 Reason no mediation occurred. (5 above) $(\overline{17})$

1( ) inap.; mediation DID occur	6( ) respondent refuses to mediate
2( ) complainant no show	7( ) both refuse to mediate
3( ) respondent no show	8( ) complainant withdraws complaint
4( ) both parties no show	9( ) conciliated outside DRC
5( ) complainant refuses to mediate	

18   Number of clients served in this mediation. _____ $(\overline{18})$

19-21 Amount of money awarded in this case. $ _____ (to nearest $; if none:000) $(\overline{19}\ \overline{20}\ \overline{21})$

22-24 Total number of minutes of mediation (to nearest 10) _____ $(\overline{22}\ \overline{23}\ \overline{24})$

25   Number of separate sessions (days) ____ $(\overline{25})$

26-27 Days from intake (7-9 above) to mediation session. ____ $(\overline{26}\ \overline{27})$

28-29 Days from intake to final disposition of case. ____ $(\overline{28-29})$

COMPLAINANT INFORMATION

30-31 Complainant's age. _____ $(\overline{30}\ \overline{31})$

32   Complainant's sex.   1( ) male   2( ) female $(\overline{32})$

33   Complainant's employment status. $(\overline{33})$

    1( )(DIS) disability   5( )(SSR) social security/retired
    2( )(EMP) employed   6( )(STU) student
    3( )(FEM) family employed   7( )(UNE) unemployed
    4( )(PAS) public assistance

34   Complainant's Apparent Ethnicity $(\overline{34})$

    1( ) white (C)   3( ) Hispanic(H) 5( ) undetermined (-)
    2( ) black (B)   4( ) Asian (A)   6( ) other (-)_____

35-36 Do you (COMPLAINANT) identify with any particular nationality or $(\overline{35}\ \overline{36})$
    heritage group like Irish, Italian, Jamaican, or not?

    01 ( ) None, just American   08( ) Italian
    02 ( ) Black, Afro-Amer.   09( ) Jamaican/ Brit. W. Indies
    03 ( ) Chinese   10( ) Jewish
    04 ( ) Dominican Repub.   11( ) Korean
    05 ( ) Greek   12( ) Puerto Rican
    06 ( ) Haitian   13( ) Russian
    07 ( ) Irish   14( ) Other

37   What religious tradition does your family come from—Catholic, $(\overline{37})$
    Protestant, Jewish, or what?

    1( ) Catholic   (5) Buddist, other Asian religion
    2( ) Protestant   (6) Greek Orthodox, Eastern Orthodox
    3( ) Jewish   (7) Other
    4( ) Islamic   (8) none
                      (9) refuse

38-39 How many years of formal education have you (COMPLAINANT) completed? $(\overline{38}\ \overline{39})$

    _____ years (01-20) (grade school- 1-8)
                          (high school —9-12)
                          (college——13-16)
                          (post-grad—17-20)

40   What is your (COMPLAINANT'S) annual income? (or family income, if $(\overline{40})$
    more appropriate)
    1( )(01) less than $9,000
    2( )(02) $9,001-16,000
    3( )(03) $16,001-25,000
    4( )(04) $25,001-35,000
    5( )(05) over $35,000
    6( )   refuse/DK

41   Have you ever mediated a dispute here at the DRC before? $(\overline{41})$

    (IF YES) Was that dispute with this same respondent?

        1( ) never came to DRC before
        2( ) yes, but not with this same respondent
        *** yes, with this same respondent ———

                "Is this the same dispute?"
           (IF YES)"Is it to be re-mediated or is it
                a problem of compliance with the
                previous agreement?"

              3( ) same dispute to be re-mediated
              4( ) same dispute; compliance problem
              5( ) new dispute

42   Are either you or the respondent associated with Brooklyn College? $(\overline{42})$
    (IF YES) Which of you? Staff or student?

        1( ) complainant is student   5( ) Complainant stu/Respon. staff
        2( ) complainant is staff   6( ) Complainant staff/Respon. stu
        3( ) respondent is student   7( ) Both students
        4( ) respondent is staff   8( ) Both staff
                          9( ) Neither associated w/college

RESPONDENT INFORMATION

43-44 Respondent's age. _____   (43) (44)

45   Respondent's sex.   1( ) male   2( ) female   (45)

46   Respondent's employment status.   (46)

        1( )(DIS) disability   5( )(SSR) social security/retired
        2( )(EMP) employed   6( )(STU) student
        3( )(FEM) family employed   7( )(UNE) unemployed
        4( )(PAS) public assistance

47   Respondent's Apparent Ethnicity.   (47)
        1( ) white (C)   3( ) Hispanic (H)   5( ) undetermined (-)
        2( ) black (B)   4( ) Asian (A)   6( ) other (-)_____

48-49   Do you (RESPONDENT) identify with any particular nationality or   (48) (49)
        heritage group like Irish, Italian, Jamaican, or not?

        01( ) None, just American   08( ) Italian
        02( ) Black, Afro-American   09( ) Jamaician/ Brit. W. Indies
        03( ) Chinese   10( ) Jewish
        04( ) Dominican Republic   11( ) Korean
        05( ) Greek   12( ) Puerto Rican
        06( ) Haitian   13( ) Russian
        07( ) Irish   14( ) Other_____

50   What religious tradition does your family come from--Catholic,   (50)
        Protestant, Jewish, or what?

        1( ) Catholic   5( ) Buddist, other Asian religion
        2( ) Protestant   6( ) Greek Orthodox, Eastern Orthodox
        3( ) Jewish   7( ) Other
        4( ) Islamic   8( ) None
                               9( ) Refuse

51-52   How many years of formal education have you (RESPONDENT) completed?   (51) (52)

        _____ years (01-20)   (grade school--1-8)
                                 (high school--9-12)
                                 (college--13-16)
                                 (post-grad--17-20)

53   What is your annual income? (or family income, if more appropriate)   (53)

        1( )(01) less than $9,000
        2( )(02) $9,001-16,000
        3( )(03) $16,001-25,000
        4( )(04) $25,001-35,000
        5( )(05) over $35,000
        6( )   refuse/DK

54   Successful mediated case referred to other agency for additional   (54)
        services?
                1( ) yes (specify agency)(36) _____
                2( ) no
                3( ) Inap.; case not successfully mediated

55   Non-mediated case referred to another agency?   (55)
                1( ) Inap.; case successfully mediated
                2( ) no
                3( ) yes, social services (37)
                4( ) yes, courts (38)
                5( ) yes, district attorney (39)
                6( ) yes, police (40)
                7( ) yes, other (specify agency) (41) _____

POST-MEDIATION

Case Name _____ vs. _____ Case Number _ _ _ _   56)(57)(58)(5

Mediator(s) _____ and _____   60)(61)(62)(6

5-63   number(s) __ __ __ __   __ __ __

54 Did parties reach agreement? 1( ) yes   2( ) no   (64)

55 If not, who refused to agree?   (65)
    1( ) Complainant   2( ) Respondent   3( ) Both
    0( ) Inappropriate, Agreement reached

56 Did either party walk out of mediation?   (66)
    1( ) Yes, Complainant   3( ) Yes, Both
    2( ) Yes, Respondent   4( ) No

57 During which session did walkout occur or failure become obvious?   (67)
    1( ) First plenary
    2( ) First private w/complainant
    3( ) First private w/respondent
    4( ) Second plenary
    5( ) Second private w/complainant
    6( ) Second private w/respondent
    7( ) Third plenary
    8( ) Third private w/complainant
    9( ) Third private w/respondent
    0( ) Did not occur

68 Level of hostility/anger   High 9 8 7 6 5 4 3 2 1 Low   (68)
    of complainant(s)   (circle one)

69 Level of hostility/anger   High 9 8 7 6 5 4 3 2 1 Low   (69)
    of respondent(s)   (circle one)

70 Complainant's apparent   High 9 8 7 6 5 4 3 2 1 Low   (70)
    cost of non-settlement   (circle one)

71 Respondent's apparent   High 9 8 7 6 5 4 3 2 1 Low   (71)
    cost of non-settlement   (circle one)

72 Which party gave in more in the course of the mediation?   (72)
    1( ) Complainant   3( ) Both gave in equally, hard to say
    2( ) Respondent   4( ) Other

73 During which session did the agreement start to gel, did significant   (73)
    movement begin, etc?
    1( ) First plenary
    2( ) First private w/complainant
    3( ) First private w/respondent
    4( ) Second plenary
    5( ) Second private w/complainant
    6( ) Second private w/respondent
    7( ) Third plenary
    8( ) Third private w/complainant
    9( ) Third private w/respondent
    0( ) Did not occur

74 During which session was final verbal agreement reached?
    1 2 3 4 5 6 7 8 9 0 (circle one, same code as 70 above)   (74)

75 Total number of hours spent in mediation process
    1 2 3 4 5 6 7 8 9 0 more than 9 hours   (75)
    (circle one)

76 Did mediation sessions spread over more than one day?
    1 ( ) yes, more than one   2 ( ) no, one day only   (76)

77 Length of first plenary session
    1( ) less than 15 minutes   3( ) 30 to 45 minutes   (77)
    2( ) 15 to 30 minutes   4( ) more than 45 minutes

78 Length of first private w/complainant
    1 2 3 4 (circle one)   same code as 73 above   (78)

79 Length of first private w/respondent   1 2 3 4 (circle one)
                                            (same code as   )   (79)

80 Length of second plenary session   1 2 3 4 (circle one)
                                            (same code   (80)

81 Length of second private w/complainant 1 2 3 4 (circle one)
                                            (same code   (81)

82 Length of second private w/respondent   1 2 3 4 (circle one)
                                            (same code   (82)

83 Length of third plenary session   1 2 3 4 (circle one)
                                            (same code   (83)

84 Length of third private w/complainant   1 2 3 4 (circle one)
                                            (same code   (84)

85 Length of third private w/respondent   1 2 3 4 (circle one)
                                            (same code   (85)

86-87 Ethnicity of Complainant
        01( ) not readily apparant   (86)   (87)
        02( ) American Black
        03( ) Black Caribbean (English)
        04( ) Haitian
        05( ) Hispanic
        06( ) Irish American
        07( ) Italian American
        08( ) Jewish American
        09( ) Russian
        10( ) Chinese
        11( ) Other Asian
        12( ) Other _____

88-89 Ethnicity of Respondent (same as code above)
        01 02 03 04 05 06 07 08 09 10 11 12   88   89
                  (circle one)

NONQUANTIFIED OBSERVATIONS

1. Brief description of the facts and events of the dispute

2. Complainant's original expectations of mediation outcome

3. Respondent's original expectations of mediation outcome

4. Changes in Complainant's attitude or position in the course of mediation

5. Changes in Respondent's attitude or position in the course of mediation

6. Mediator's estimate of likely durability of agreement

        ____very good   ____fairly good   ____not very good

        ____very poor   ____inappropriate, No agreement

FOLLOW-UP

90 Complainant's evaluation of compliance with agreement by other party
        1( )very good   2( ) good   3( )only fair   90

        4( ) poor   5( ) total failure

91 Respondent's evaluation of compliance with agreement by other party
        1(very good)   2( ) good   3( )only fair   91

        4( ) poor   5( ) total failure

Case # _____

TELEPHONE EVALUATION

Evaluator: _____   Date: _____   Comp____ Resp____

"This is the Brooklyn College Dispute Resolution Center. Recently, you partici-
cipated in mediation at our center and we would like to ask you a few questions
about your session."

1. Are the major terms of your agreement being upheld?

    Yes_____   Partially_____   No_____

    Comments:

2. How do you feel about mediation as a way of resolving your problem?

    Very   Fairly   Not Very   Very
    Good_____   Good_____   Fair_____ Good_____   Poor___

    Comments:

3. Do you feel mediation is better than court or other agencies as a way
   to solve problems?

    Definitely_____   Perhaps_____   Seldom_____   Definitely Not_____
    Comments:

4. How would you rate the mediator(s) who worked with you on this dispute?

    Very   Somewhat   Not very   Not Helpful
    Helpful____ Helpful____ Helpful____ Helpful____at at all____

    Comments?

"Thank you for taking the time to answer these questions."

9 SOCIAL JUSTICE AND THE URBAN PREDICAMENT: The New York City Transit Strike of 1980

Robert Abrams

It may seem strange to discuss an issue as earthy and recent as the
New York City transit strike of 1980 in a book on social justice
whose primary emphasis appears to be on rather theoretical issues.
Nevertheless, it is surely in the brawling of everyday life in a city
such as New York that the theoretical issues find their concrete ex-
pression. For that reason, I would like to analyze the strike with a
view to answering—or at least addressing in a thought-provoking way
—several questions. First, we want to know what happened. By this I
do not simply mean we want to know the facts of the case; rather we
want an explanation of what happened. For this I will turn to collec-
tive choice theory. More particularly, I will try to see whether game
theory and spatial modeling theory can tell us anything significant
about the strike. If we can acquire some understanding of what hap-
pened, we will then want to know how this relates to the question
of justice. In particular we will ask not whether some aspect of this
situation was "just," but where the question of justice comes into
a situation such as this.

BACKGROUND OF THE STRIKE

The bare facts of the strike are fairly clear. After months of desultory nonnegotiations between the MTA and the TWU (the New York City Transit Authority, which runs the public transportation system, and the Transit Workers Union), the TWU declared a strike. Prior to this, the TWU had demanded a wage increase of 30 percent over the two-year period of the contract, while the MTA had countered with an offer of 10 percent over the same period and a counterdemand for "productivity" increases from the TWU membership. On April 1 the strike commenced, and on April 11 a settlement was announced. The eleven-day strike was one day shorter than the strike of 1966. The settlement called for wage and cost-of-living increases that totaled approximately 20 percent for the two years and some productivity increases that included reduced time off for breaks, voting, and so on.

In the course of the strike, the TWU and affiliated unions were fined millions of dollars by New York Supreme Court Justice Monteleone, and the workers lost two days pay for every day they were on strike. Both actions were pursuant to the state's Taylor Law provisions. In announcing his fines, Judge Monteleone chastised both sides for allowing the strike to come to pass and suggested that perhaps the Taylor Law should be reconsidered by the legislature.

The politics of the strike were also rather straightforward. On the union side, John Lawe, the head of the TWU, faced increasing resistance to his leadership from the growing black and Hispanic membership that clearly threatened the traditional Irish hold on the TWU. He was therefore under extreme pressure to come up with a "good" settlement. On the MTA side, Chairman Richard Ravitch, an appointee of Governor Carey, was under pressure from Mayor Koch, the people of New York City, the businesspersons of the city, and the creditors of the city and state to hold the line. Any settlement that required a fare increase was bound to be unpopular politically, but there seemed to be no other sources ready and willing to pay for any significant increase.

COLLECTIVE CHOICE THEORY

Given this scenario, how are we to explain these events? Why was there a strike? Why was it settled when it was? Why was the final wage figure 20 percent? A game theoretical answer to these questions makes several assumptions. First, it assumes that all individuals involved are rational. Before you rise up in indignation at this characterization of an event as apparently "irrational" as a city-paralyzing strike, let me clarify this meaning. In collective choice theory in general, individual behavior is said to be determined by the preferences of the individuals involved. This means that in a choice situation an individual must rank his or her preferences, at least ordinally, and must try to obtain an outcome that is higher in his or her preference ranking than one that is lower. This does not mean that we always try to obtain our first choice. In many situations we fear that if we try to obtain our first choice, we will succeed only in ensuring an outcome that is well down on our preference ordering. Under such circumstances it is considered rational in collective choice theory to try to obtain an outcome other than one's first choice. Thus, for example, we may prefer Kennedy to Carter, but we may be afraid that Kennedy could not beat Reagan in the presidential contest. For that reason, we may vote for Carter rather than Kennedy, and this would be "rational" according to collective choice theory.

It is important to note here that rationality does not imply anything about the morality or goodness of one's position. It is not Weber's "value rationality" but rather his "means-end" or instrumental rationality that we are considering. Thus the rationality of an individual's behavior is the relationship between his or her stated preference ordering and the actions chosen to try to obtain the most preferred outcome possible under the circumstances.

Second, game theory assumes that the preferences of individuals may be very similar or very different. Or, as the economists would say, it makes no assumption about the utility functions of individuals. This means that the players involved may have very homogeneous or very heterogeneous preferences. But the important point is

that these preferences express a *subjective valuation* on the part of the players. Thus, while we may say that a particular strategy was not a "good" one, given a particular preference ordering and a particular situation, we do not say that a particular preference ordering is "not good" in some sense. (This is left to the philosophers.) This assumption is essentially Arrow's condition of unlimited domain.

Third, game theory allows for situations of complete information, but it also allows for situations of risk or uncertainty where the probability of the outcomes is either known or unknown. Where the probabilities are known, the expected utility for any outcome must take into account the probability of its occurrence. Where the probabilities are unknown, subjective estimates (in the Bayesian sense) must be made. Given such estimates and the associated preference orderings, individual strategies can be rational or irrational on an objective basis.

One implication of these assumptions is that individual preferences are not strictly determined in the philosophical sense. This does not mean that individuals have complete free will—whatever that may mean—nor that individual preference orderings are random, but rather that they can be expected to vary within constraints.

GAME THEORY

The first question that game theory asks is, What is the game being played? Games are classified in several ways in game theory. First, the number of players is considered. Here game theory distinguishes between two-person and n-person games, the latter involving more than two players. Games are also distinguished by the payoffs to the players associated with particular outcomes. Thus a zero sum game is one in which the sum of the payoffs to the players at each outcome is zero. A zero sum game is also a constant sum game in the sense that the sum of the payoffs associated with any outcome is the same. There are also nonzero sum games that are also constant sum.

The goal of game theory is to examine these various classes of games and to determine whether there are "best" strategies that would lead to outcomes that are Pareto optimal, or in equilibrium. This means, simply, that a particular outcome represents the best

that the players could obtain under the constraints of the game, and that a move to any other outcome would be detrimental to at least one of the players. If it is possible to change an outcome from x to y without harming anyone and, at the same time, benefiting at least one player, then x is not Pareto optimal, nor is it a stable equilibrium outcome.

Pareto optimal outcomes need not be "good" in some moral sense as Sen[1] and others have pointed out. For example, a policy that made the rich richer without making the poor poorer would be Pareto optimal (unless, of course, we considered the issue of relative deprivation).

Nevertheless, game theory does predict that when such an equilibrium exists, it will be an actual outcome when the game is played by rational individuals. One of the great problems in game theory, however, as well as in collective choice theory in general, is that in important classes of situations such equilibria do not exist. Moreover, sometimes even when equilibria do exist, they are not necessarily Pareto optimal. This is the case in the so-called Prisoner's Dilemma, which we will discuss shortly.

In terms of the transit strike, then, the first question is, What kind of game is it? This is not an easy question to answer. Consider first the number of players. In one sense the transit strike is obviously an n-person game in which the number of players is very large indeed, especially if we include all the people of New York City. It is extremely difficult to deal with games involving so many players, since the number of possible strategies and combinations of outcomes is astronomical. On the other hand, if we deal with the strike as a two-person game, our problem is that we may be greatly oversimplifying a complex situation.

I would argue here, however, that we can usefully treat the transit strike as a two-person game in which the players are the MTA, perhaps represented by Richard Ravitch, and the TWU, represented by John Lawe. I do not think that this is as outrageous as it may first seem. I am not suggesting that these two men are operating as autonomous players without being influenced by their constituents. Rather, I am assuming that the strategies that these two players announce as spokesmen for their respective sides represent positions that, in a very definite sense, reflect the feelings and preferences of

those constituencies. In this sense, as I will argue later, this game also resembles an election in which the parties or candidates choose issue positions in order to obtain the highest vote possible. For this reason, spatial modeling analysis also becomes relevant.

If we can accept the argument that this can be considered a two-person game, the next question concerns the payoffs of the possible outcomes and the possible strategies designed to bring about those outcomes. In other words, we are asking what kind of game this is in regard to the structure of the payoffs.

Consider first whether this is a zero sum game. In such a game, the winner wins what the loser loses. The archetype of such a situation is the card game poker, where the money I win is, literally, the money you lose. Many political situations are loosely described as zero sum these days (a great many game theoretical terms have crept into the journalistic lexicon), when they are not really so at all.

At issue in this, or almost any strike, is the question of money. Labor wants to get more, management wants to give less. And, surely, if labor reduces its demand, management gains by that much, and if management concedes, labor gains by just that much. Nevertheless, I think that the appearance of a zero sum game is misleading. To show this, consider the starting point of the game and the outcome that occurs if the parties fail to settle—that is, a strike. The starting point is the status quo. Labor is receiving a certain level of money from management. When labor demands more, there is an implied, and sometimes expressed, threat. If that demand is not satisfied, labor will strike. Presumably management is supposed to feel that a strike will be costly and thus will prefer a settlement.

It is important to note here, however, that while many labor demands are expressed as ultimatums, in the lexicon of game theory they are generally referred to as "bargaining games" rather than as "ultimatum games."[2] An ultimatum game is one in which the individual who makes the demand accompanied by the ultimatum puts himself or herself in such a position that the threat becomes self-executing if the demand is not met. In other words, the player who gives the ultimatum takes the control of the consequences of non-compliance out of his or her hands. For example, suppose a terrorist organization has one of its members plant an explosive device in a hospital. The terrorist sets the device in such a way that it can be

disarmed by a number of methods, but the method varies regularly. In order to disarm it, the terrorist must actually go to the device to determine which method must be used at that time. Further, no other member of the organization knows the proper methods. If the terrorist who set the device were captured while on the mission, the organization would be in a position to demand the release of its comrade and to base that demand on the fact that the consequences would be irrevocable if the terrorist were not released.

Clearly most labor-management confrontations are not like this, although those familiar with the bloody history of the labor movement in this country may feel that ultimatum games were quite prevalent in the past. Nevertheless, union demands are rarely if ever ultimatums in the technical sense of game theory that we have described, since the threat that accompanies those demands is not irrevocable.

This distinction is important; if we cannot properly identify the game that is being played, the theoretical results applicable to those games will not be relevant, and we will be unlikely to educe appropriate explanations.

Faced with a labor demand and the threat of a strike then, management has three alternatives: submit immediately, make a counteroffer, or hold fast to the status quo. Similarly, labor has several possible responses to any management response: they can accept or reject a counteroffer; they can make a counteroffer of their own to management's counteroffer; or they can hold fast to their original demands. This can be shown in matrix form as in figure 9.1.

| | | Union | |
		Counteroffer	Maintain Demand
Management	Counteroffer	Negotiate	Negotiate
	Reject Demand	Negotiate	Strike

Figure 9.1. Game Matrix of Union-Management Negotiation.

Here we have left out management's "submit" strategy, since there would be no problem if management submitted, just as there would be no problem if the union dropped its demand. Where management's counteroffer is met by a union counteroffer, there is a bargaining process. Where management's rejection of the union demand is met by a union refusal to change its position, the outcome is a strike. If the union makes a lower demand after management has rejected its initial demand, or if the union maintains its initial demand after management makes a counteroffer, there is initially negotiation, although at some point management would have either to submit to the union's demand or to reject it, and either a settlement or a strike would ensue.

In any case, this does not appear to be a zero sum matrix. When both sides are negotiating, there is some positive benefit to both sides, and when there is a strike, both sides suffer consequences. While it is true that the extent of benefits and costs will not ordinarily be equal for both sides, there are nevertheless costs and benefits at the same time for each. Recall that in a zero sum game, the benefit for one side is exactly the cost to the other side.

In order to refine this analysis, let us consider some of the specifics of the New York City situation. Although there has been some debate in the press on this point, it appears that the TWU originally demanded a 30 percent increase over the two-year contract period and the MTA countered with a 10 percent offer and a demand for "productivity" increases that the TWU interpreted as income loss. From the events that occurred, we can draw certain conclusions about the preferences of both the TWU and the MTA. In particular, we know that the MTA preferred a strike to a 30 percent settlement and that the TWU preferred a strike to a 10 percent settlement. What we do not know is the relationship between a strike and any settlement figure between 10 percent and 30 percent. What we can say is that both the TWU and MTA preferred a 20 percent settlement after a strike to a 20 percent settlement without a strike. This, of course, sounds rather odd. For surely the cost of a strike must be subtracted from the benefits of the 20 percent to labor and added to the 20 percent costs of management. The problem, of course, is that both sides apparently felt that any settlement other than that which they

demanded originally was either not possible without a strike or not desirable. Let us consider each of these possibilities.

Given the politics surrounding this negotiation, it certainly must have appeared that the constituents of both sides strongly supported the initial demand of the two sides. In spatial modeling theory this is referred to as a bimodal preference density function. This simply means that the two constituent groups are clustered at the extremes in terms of their preferences. Graphically this would be represented as in figure 9.2. With a bimodal preference density function, candidates are not expected to converge to a central point or a single dimension.

If we view Richard Ravitch and John Lawe as candidates seeking the political support of their constituents, and if, in fact, the two leaders viewed the relative position of the two groups of constituents as comprising a bimodal preference density function (of course, we would not expect either to express the political point in those terms), then it is clear why the two leaders had to maintain their initial demands even if the situation led to a strike. For political leaders Ravitch and Lawe, a strike was less costly *for them* at that time than a settlement other than their initial demand. By this analysis, then, Judge Monteleone was quite wrong when he suggested that the strike could have been avoided by more responsible bargaining at an earlier stage; the absence of such bargaining was directly attributable to the preferences of their constituents as perceived by the two leaders and most observers of the politics of this situation.
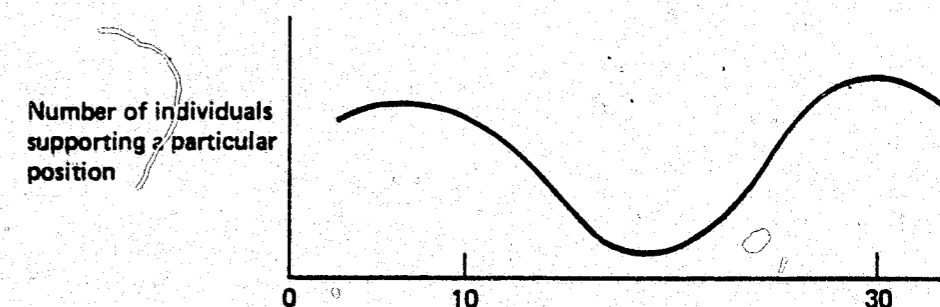

Figure 9.2. A Bimodal Preference Density Function.

Presumably the strike was settled at 20 percent only when this preference density function became unimodal, as shown in figure 9.3. In the spatial modeling literature, candidates do converge to a central point on a single dimension when preferences are distributed unimodally.

Here the preferences of the vast majority of the constituents of both sides are clustered around the 20 percent mark. It is important to note, however, that such a change does not imply that individuals changed their preferences as the strike progressed; rather, they altered their estimate of the probability that they could obtain their initial demands. In this sense, the unimodal preference density function here can be interpreted as the expression of so-called sophisticated voting, in which, as we described earlier, an individual votes for, or tries to obtain, an outcome other than his or her most desired alternative in order to try to prevent the occurrence of an outcome that is even more undesirable.

This explanation of the function of the strike is somewhat different from an analysis that would stress the cost of the strike to the individuals involved. That is, we can assume from the behavior of everyone involved that on April 1, a strike was preferable to a settlement other than the initial demand. As time progressed, the cost of the strike rose relative to the costs of the possible points of settlement other than the initial demand. The final settlement came when the strike had a lower value to the participants than a 20 percent settlement. Figure 9.4 shows this relationship in graph form.

In figure 9.4, we assume that the utility of a strike $U(S)$ on April
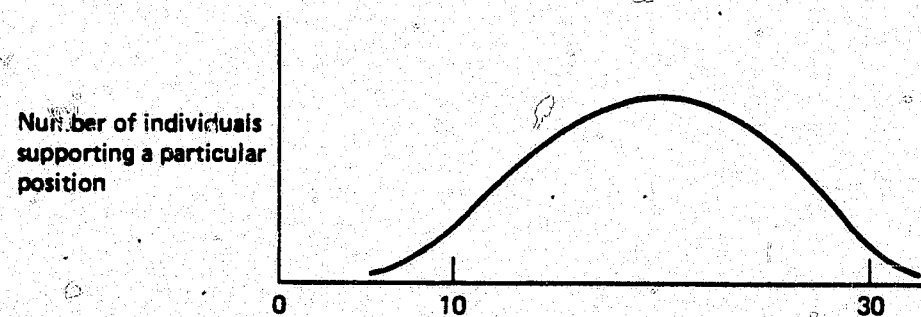

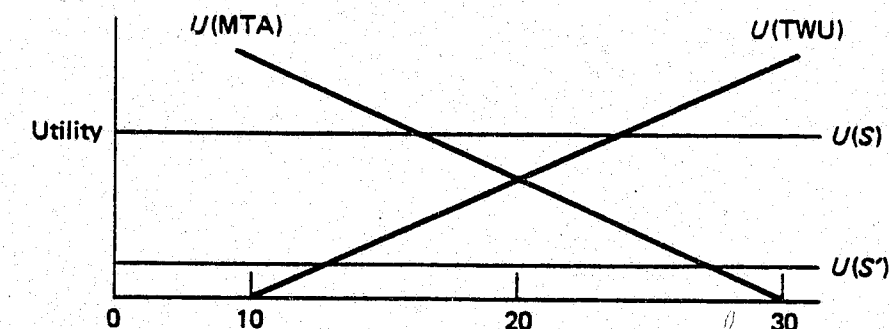Figure 9.3. A Unimodal Preference Density Function.

Figure 9.4. Utility of Various Levels of Settlement for MTA and TWU before and during Strike.

1 is the same for both sides and is constant over every possible level of settlement. This may not be realistic, but as long as the $U(S)$ is lower than $U(I)$ — the utility of the initial demand — and higher than any other level of settlement at the initial stage, the actual shape of the $U(S)$ does not matter. In figure 9.4, $U(S')$ is the utility of the strike to both sides after eleven days of the strike. Another way of looking at this is to say that the two sides settled when the costs of the strike were higher than the costs of a settlement at a point other than the initial demand.

With the spatial model analysis and the cost-benefit analysis in mind, then, we can return to our original question about the nature of the game being played. The cost-benefit analysis would give us the matrix in figure 9.5.

In figure 9.5, if both sides had made concessions prior to April 1, we can assume that they would have moved gradually toward the 20 percent settlement. Hence the outcome for mutual concessions is the 20 percent settlement. If either party held fast to its demand while the other made a series of concessions, of course, the side that held firm would obtain its initial demand. Finally, if both sides refused to make concessions, as they did, then a strike was inevitable. The important point about this matrix is that if we assume a strike was less costly to both sides initially than a settlement at a level other than the initial demand, then the dominant strategy for both sides was to make no concessions.

Our cost-benefit analysis then assumed that after eleven days the

		Concession	No Concession
	Concession	20 Percent Settlement (CC)	30 Percent Settlement (CN)
MTA	No Concession	10 Percent Settlement (NC)	Strike (NN)

Figure 9.5 Game Matrix of MTA-TWU Negotiation.

20 percent settlement was less costly to both sides than the strike. In our game matrix, this means that the outcome from mutual concessions was preferred at that point to the outcome associated with mutual intransigence. The problem here, however, is that the change in relative costs of NN and CC does not seem to alter the dominant strategy of each player. To see this, consider the MTA's choices. If the TWU makes concessions, the MTA should not make concessions, according to figure 9.5 since NC is preferred to CC. Similarly, if the TWU makes no concessions, the MTA also should not make concessions, since NN is preferred to CN. The situation is exactly the same from the TWU perspective. Note, however, that now, while the dominant individual strategies are "no concession," the outcome associated with those strategies is NN (strike), which is Pareto-dominated by CC (20 percent settlement). This is the classic Prisoner's Dilemma situation to which I referred before. In other words, the assumptions of our cost-benefit analysis have led us to conclude that the game changed from one in which there was a stable undominated equilibrium to one in which there was a stable dominated equilibrium. That would not necessarily be unusual, except that at the stage of the Prisoner's Dilemma, which predicts a conflict outcome (NN), the strike was in fact settled! We must conclude that such a description cannot be accurate.

Another way of viewing this situation is to say that the initial situation depicted in figure 9.5 was a Prisoner's Dilemma. This would mean that *initially* a 20 percent settlement was preferred to a strike, but that the dominant strategy for each side was not to make concessions. This, then, would be the Prisoner's Dilemma situation, and we

would have to reject our earlier assumption that the strike was preferred to the 20 percent settlement. It would also allow us to explain the end of the strike, since Prisoner's Dilemma analyses do allow for the emergence of the cooperative outcome.[3]

The absence of cooperation in the Prisoner's Dilemma is explained by the dominance of the noncooperative strategies for both players. The problem is that what is individually rational is collectively irrational. The players lose out by not cooperating. If there was some way of making a binding agreement, the problem would be solved. Both players would agree that it was preferable to obtain an outcome that they both preferred to one that they did not prefer. In politics, however, binding agreements are difficult to come by. For that reason, noncooperation prevails in many situations.

The function of a binding agreement is to ensure that the mutually cooperative outcome will prevail and that the "sucker" outcome—in which one player gains all while the other player loses all (for example, NC or CN in figure 9.5)—will be precluded with a probability of one. Thus the players should choose the cooperative strategy only if they can be virtually assured that by doing so they will not wind up the sucker. In my view, that is precisely the function of a strike. As time passes, and as the ravages of the strike become clear, the probability that both sides will make concessions increases. In the New York City case, the probability of such concessions was related to the increased likelihood of the sophisticated voting to which I referred earlier. As the people of New York and the union members saw the strike continuing, they saw their chances for an outright victory (NC or CN) falling dramatically. This led to the change in the preference density function of our spatial model and allowed the MTA and TWU leadership to assume that the probability of a cooperative outcome was increasing proportionately. With that assumption, it became increasingly safe to make concessions in the bargaining process.

Another possible way to view this situation is as a Chicken game. In Chicken, the mutually noncooperative outcome is the least desirable of all the outcomes. In our present situation, this would mean that as time went on, the mutually noncooperative outcome (NN—that is, the strike) became more costly to each side than an outright victory by the other. In other words, the TWU would have had to view

an MTA victory (NC) as preferable to a strike, while the MTA would have had to view a TWU victory (CN) as preferable to a strike. While such assumptions would lead to the actual outcome (CC, the 20 percent settlement), they scarcely seem realistic.

The more usual way of viewing labor-management negotiations in general is as a cooperative game. Here the term *cooperative* means only that the players can communicate and make binding agreements. It does not imply a particular outcome of the game. On the other hand, cooperative bargaining games do presuppose a so-called negotiation set—a set of possible outcomes that both players prefer to any other outcome not in that set. In the transit negotiations, the negotiation set is the set of possible settlements between 30 percent and 10 percent, since the MTA was not insisting on a settlement below 10 percent and the TWU was not demanding a settlement above 30 percent.

In a cooperative bargaining game, if the players cannot agree on a point in the negotiation set, the outcome is a point not in the negotiation set. Put another way, both players have the option of either agreeing on a settlement point or implementing their so-called threat strategies. A threat strategy is the strategy that a player will use if there is no agreement. In the transit case, the threat strategy of the TWU was to strike, while the threat strategy of the MTA was to let the TWU strike! In cooperative bargaining games the use of threat strategies results in an outcome that is more costly to the players than a settlement would have been. Again, note that this is not a zero sum game, since both players suffer losses when threat strategies are implemented.

In the bargaining game, one player makes a proposal while the other player either accepts that proposal or rejects it. If the proposal is rejected, the other player either makes a counterproposal or insists upon any previous demand he or she has made. This, of course, is the bargaining process with which we are all familiar. The important question is, How will the bargaining progress? Will it continue until a settlement is reached, or will threat strategies be implemented? And if it progresses to a settlement, what will that point be?

In terms of our analysis of figure 9.5, the fact of the strike indicated that both players had implemented their threat strategies. As time passed, the cost of the strike drove them toward the settlement

box; but the question remains, why did they settle on the 20 percent figure, and why did they settle when they did?

Harsanyi, in his recent work on cooperative bargaining games, *Rational Behavior and Bargaining Equilibrium in Games and Social Situations,* makes several assumptions about the bargaining process that are relevant to the present discussion. First, he assumes that bargaining will take place only if the cost of the conflict situation (a strike in our case) is greater than the cost of capitulating completely to one's opponent. In symbols:

$$U_i(C) < U_i(A_j) < U_i(A_i) \tag{9.1}$$

where $U_i(C)$ is the utility for individual i of a strike (or conflict situation; that is, no settlement). $U_i(A_j)$ is player i's utility when player j gets his or her way, and $U_i(A_i)$ is the utility for player i when he or she gets her way.

Second, he assumes that the decision to make a concession or to refuse to make a concession is related only to these values and to the subjective probabilities that one's opponent either will or will not accede to one's demand. Note that Harsanyi does not consider the cost or benefits to one's opponent in making this judgment. That is, in some negotiations we hear an estimate made about whether the other side is "hurting." Presumably this information influences the judgment about whether to hold fast or to make concessions. In the Harsanyi formulation, however, the decision of player i to make concessions or not is based solely on his or her own utility function. Now, of course, if I receive utility from the suffering of my opponent—that is, if I enjoy watching him or her suffer—then this information could be relevant, but only as it enters my utility function.

To these assumptions Harsanyi adds the Nash result that every two-person cooperative bargaining game has an equilibrium point. This point is a point in the negotiation set, it is unique, and it is determined by the cost to the players of not being able to agree on a point in the negotiation set. Put simply, a player who has more to lose by a failure to reach an agreement should not do as well as the player who has less to lose. Thus the Nash equilibrium is a "middle-of-the-road" compromise only when both players would lose equally in a conflict situation. Given this result, then, the fact that the transit strike was settled for a figure that was midway between each party's

initial position implies that the strike was equally costly to both the MTA and the TWU.

The Nash equilibrium, then, is the point toward which the bargainers are moving; but we must still indicate the conditions under which either party will make a concession in the movement toward that point since, obviously, the player who makes fewer (or smaller) concessions during the negotiation process will be better off at the end. Harsanyi suggests that once the two players have their initial positions on the table, a player should refuse to make a concession only if the following holds:

$$(1 - p_{ji}) \cdot U_i(A_i) + P_{ji} \cdot U_i(C) \geq U_i(A_j). \qquad (9.2)$$

Here, the terms $(1 - p_{ji})$ and p_{ji} refer to the subjectively determined probabilities that player j will or will not (respectively) accede to player i's demand. Thus, $(1 - p_{ji}) \cdot U_i(A_i)$ is the expected utility for player i of getting his or her way if he or she refuses to make a concession. The term $p_{ji} \cdot U_i(C)$ is player i's expected utility in a situation in which both players refuse to make concessions and a conflict results.

This equation says that a player should refuse to make a concession only if the sum of the values of his or her expected utility for getting his or her way and the conflict situation either equals or is greater than the utility associated with letting an opponent have his or her way.

Another way of putting this is to say that player i should refuse to concede only if the probability that i's opponent will refuse to accede to i's demand is less than or equal to a *risk limit* defined as follows:

$$r_i = \frac{U_i(A_i) - U_i(A_j)}{U_i(A_i) - U_i(C)}. \qquad (9.3)$$

The risk limit is essentially the ratio of the difference between player i's demand being satisfied and player j's demand being satisfied to the difference between player i's demand being satisfied and the utility of the conflict to i. Since Harsanyi assumes that $U_i(A_j) > U_i(C)$, r_i must vary between zero and one. Thus player i should refuse to make a concession only if

$$p_{ji} \leq r_i. \qquad (9.4)$$

Simple mathematics will show that equation (9.2) holds only if $U_i(A_j) > U_i(C)$, that is, if the utility for player i of giving in completely is greater than the utility of a conflict. This, of course, is the assumption to which we alluded earlier. In terms of our transit strike case, this implies that *the parties began to negotiate only when each would rather have had the other receive his initial demand than have the strike continue.* This result also suggests another interesting point. Recall figure 9.5. At one point we said that the game was unlikely to be a Chicken game since that would imply that the MTA preferred CN (TWU wins) to NN (strike), and that the TWU preferred NC (MTA wins) to NN (strike). By the Harsanyi equation, however, *the game must be Chicken in order for negotiations to begin.* To see this more clearly, it is important to understand that Harsanyi's players bargain only when they expect a settlement. That is, if equation (9.2) holds for player i, he or she will refuse to make a concession but will *not* expect player j to refuse also! That is, player i will refuse to concede with the rational expectation that player j will concede. The mutual expectations, then, are for a gradual settlement and not a conflict. But this is based on the assumption that the game is Chicken.

Our analysis suggests that there were two possible ways out of the strike: first, through the emergence of cooperation in a Prisoner's Dilemma game; and, second, in the emergence of a settlement in a Chicken game. An important point is that while the Prisoner's Dilemma explanation shows why the strike began and how negotiations began after the strike had begun, it does not show how the bargainers reached the settlement point. The Chicken game, on the other hand, when viewed as a cooperative bargaining game, shows how the settlement point was reached but not why the strike began. If, however, we put the two approaches together, we can get a generally satisfactory explanation. That is, the situation began as a Prisoner's Dilemma. By the eleventh day of the strike, both the MTA and the TWU had decided that they would rather give in completely to the demands of the other than to have the strike continue. This, of course, was a direct result of the strike itself. Once that point had been reached, serious bargaining could begin.

With this explanation in mind, we can also correct our analysis of figure 9.4. There we considered whether a change in the relationship between NN (strike) and CC (negotiated settlement) would

alter the outcome—that is, produce negotiation rather than a strike. We suggested that it should not, that we would simply move from a stable undominated equilibrium to a stable dominated equilibrium. We rejected that argument as unsatisfactory, however, since the strike was settled just at the point when that explanation predicted a stalemate. Our final explanation sees the critical relationship as that between the utility of the strike (*NN*) and the utility of total capitulation.

SOCIAL JUSTICE AND THE STRIKE

In my introduction I promised to consider the question of social justice as it relates to the strike. I will now try to make good on that promise.

Clearly the strike raises a distributive justice question: What is a "fair" settlement? What is a fair distribution of resources? From certain perspectives such a question is not answerable within the constraints of the current situation. Thus if I am a Marxist (in the Leninist, not Bernsteinian, version of Marxism), no settlement of a labor-management dispute can be "just" so long as it takes place within a capitalist economic structure. The early Marxist revisionists were chastised by Lenin and others for their "trade union consciousness," which ignored the fact that until the proletarian revolution created a classless society, bargaining between labor and management was more akin to bargaining with a thief for the return of a portion of your money that he had stolen. Of course, in the New York transit case, management was the state—or at least a creature of the state—but as long as that state was a bourgeois state—and therefore an instrument of the so-called ruling class—the TWU would still be in the position of bargaining with the owners of capital.

Were we to assume this position, all discussion of social justice would stop at this point. Therefore, in the interest of further discussion, let us adopt a liberal stance, which views the bargaining process as meaningful in the sense that it provides at least an opportunity for labor to press for and obtain its just demands. From this perspective the question becomes, Was the final settlement in this situation fair? Should the TWU have received its 20 percent increase? This question

presupposes certain factual knowledge and requires us to make certain assumptions. The factual knowledge, of course, refers to the circumstances and past history of not only the workers but also those not in the union who must pay for any increase. Concerning the workers, we must ask whether they have been treated fairly. Have they all been treated equally, or have some received undeserved advantages that their fellow workers did not? Are their wages, working conditions, and so on, comparable to those of other transit workers in other cities? Is their situation comparable to that of other kinds of workers in New York?

If the union members are to receive an increase, who will pay for it? The subway and bus riders? All taxpayers in New York City? All taypayers in New York State? All taxpayers in the United States? If we could determine who was paying, could we determine their relative welfare level? Could we establish some fair distribution of the costs? This is, of course, a well-known problem in the field of public finance.

In terms of assumptions, should we assume that the workers and the taxpayers themselves should determine the fair settlement, or should there be some outside, neutral party that could make a more just decision? Are the "needs" of the parties to be considered or only their "wants"; and can we make a meaningful distinction between these notions? A related question is whether individuals themselves can determine their own needs or whether their expression of preference in choice situations must be viewed simply as an expression of "wants."

Simply listing these questions indicates the complexity of the problem of trying to apply theories of social justice to real problems. For the sake of simplicity, then, and with our time constraints in mind, let us make certain assumptions. First, we will treat all union members and all taxpayers as being in equal positions in terms of welfare, and we will assume that any increase for the union is shared equally by all taxpayers. We will also assume that the union members want to receive as much of a wage increment as possible, and that the taxpayers want to pay as little as possible. At the same time, both the union demands and the MTA offer clearly delimit the range of a final settlement and give an indication that a Schelling point—a point that both sides perceive as the logical settlement in the circumstances—is available.

If we then treat the MTA-TWU talks as an arbitration problem, it would be necessary first to determine the demands of both sides. To some extent, the initial demands in the bargaining situation are probably good approximations of the participants' view of the range of a fair settlement. One of the obvious problems in any bargaining or arbitration problem is to determine the true preferences of both sides. For if the final settlement depends to some extent on the initial positions, there is obviously an incentive to misrepresent one's preferences. In the bargaining situation, this tendency is restrained by the fact that if my demands are obviously outrageous, I force my opponent to make an outrageous counterdemand.

If we can take the initial demands of the bargaining situation as defining the high and low points of a settlement, the arbitration problem is reduced to picking a fair point along that range. An obvious first candidate for that honor is the midpoint. But what would be the principle behind that choice? Suppose the two sides were very unequal in strength, so that the initial demands reflected simply the strength of one party and the weakness of the other. At an early stage in the history of the labor movement, this was obviously the case—management was far stronger than labor. The midpoint, then, can be a fair settlement only if both sides are relatively equal in power.

Another possible point is the Nash equilibrium. The Nash equilibrium, as we indicated above, is the maximum product of the difference between the utility of the settlement point and the utility of the conflict point for both players; the Nash equilibrium gives less to the player who has more to lose if an agreement fails and a conflict ensues. The problem with the Nash equilibrium is that it too requires an honest estimate of the utility function of each player, and it requires interpersonal comparisons of utility, with all the difficulties attendant on that problem. Moreover, it is not clear that a player *ought* to receive less simply because he or she has more to lose if a conflict arises. While it is relatively clear that players would probably behave this way in bargaining situations, it is not clear that this is necessarily a fair outcome.

Despite these difficulties, it is my intuition that the transit settlement was a good one in both a political and moral sense. The initial demands were clearly pegged to the national inflation rate—the

union demand just above it, the MTA offer well below it. Since no large groups nationwide have been receiving wage increases at the inflation rate, the final settlement had to be below the 13–15 percent per year level. The initial MTA offer, however, was below even the presidential guidelines of 7.5 percent. All indications were that 9–10 percent was the appropriate rate, though for the political reasons described above, the strike was essential before that point could be reached.

It would also appear that the members of the TWU, as well as the MTA board, the governor, and the people of New York, all shared that view. The transit workers raced back to work on Friday, April 11, before a membership vote and despite the tie vote on the TWU executive board. Aside from the mayor, most of the principals on the MTA side also felt that they had done satisfactorily under the circumstances, and the people of New York simply returned to the usual mass transit grind. Despite court action by union dissidents and howls of rage from Ed Koch, the great mass of New Yorkers voted with their feet for this settlement. Could we ask for a better estimate of "fairness?"

NOTES

1. Amartya Sen, *Collective Choice and Social Welfare* (San Francisco: Holden-Day, 1970).

2. John Harsanyi, *Rational Behavior and Bargaining in Games in Social Situations* (Cambridge: Cambridge University Press, 1977).

3. See Robert Axelrod, "The Evolution of Cooperation in the Prisoner's Dilemma," Institute of Public Policy Studies, University of Michigan, November 1979; and Michael Taylor, *Anarchy and Cooperation* (New York: Wiley, 1976).

END