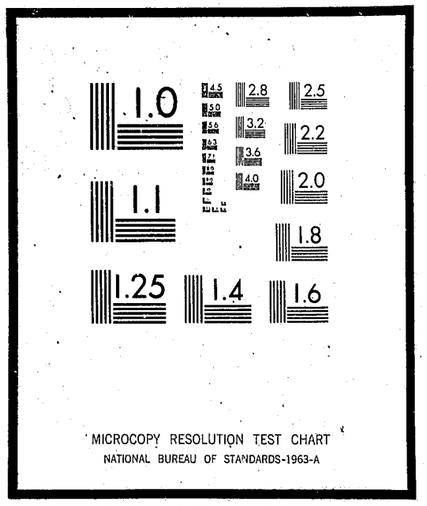

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FINAL EVALUATION REPORT: PHILADELPHIA 4-A PROJECT, AUGUST 1, 1973 - MARCH 1, 1974

ARBITRATION AS AN ALTERNATIVE TO CRIMINAL COURTS

PH-183-73A

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March 15, 1974

Final Evaluation Report:
Philadelphia 4-A Project

Arbitration as an Alternative
to Criminal Courts

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SUMMARY

The National Center for Dispute Settlement's Philadelphia 4-A Project seeks to apply arbitration and mediation techniques long successful in resolving labor difficulties, and more lately disputes between groups or factions in the community, to private criminal complaints. A significant portion of these cases arise from long-standing disputes between neighbors or acquaintances.

The Municipal Court trial commissioner first hearing private criminal complaints determines whether to send them to trial or, with the consent of the parties, arbitration in the 4-A Project. Informal hearings are held by trained arbitrators, usually attorneys, who explore the underlying dispute in depth and probe for areas of agreement between the parties. A consent award or arbitration award is made, frequently directing the parties to avoid each other or awarding money damages. If either party fails to comply, and efforts of the staff and arbitrator to exact compliance fail, the case is remanded to court for trial or contempt proceedings.

The goal of the 4-A Project is to resolve private criminal complaints by a means more economic and swift than court processing, yet which offers a more satisfactory resolution to these disputes.

Data is not available to establish whether arbitration leads to more lasting resolution of private complaints, but several factors indicate that this is the case. Hearings last an hour or more--about three times as long as court proceedings. They probe the underlying problem more deeply than rules of criminal procedure permit. One party is not required to accept full blame, to the exoneration of the other. And unlike the court, the Project is able to use a variety of measures short of re-opening the criminal case to resolve recurrent conflicts between the parties.

The combined capital, administrative and direct costs of processing a 4-A case is $126, $18 less than just the direct costs of a Municipal Court trial. Because more services are offered (phone reminders of appearances, more comprehensive hearings, informal enforcement of decisions, and the like), the Project must be viewed as more cost-effective. While both Project and court require some 60 days for disposition of a case the data suggests that Project processing is slightly speedier.

Thus, the Project appears to be achieving its goals.

The Project is well-run. In the first fifteen weeks of this funding period, it had received fewed cases than projected (221 vs. 250), but the Project has taken steps which successfully solved this problem and it should achieve its goal of 800 cases a year. The percentage of cases withdrawn (12.3%), remanded before hearing (5.1%) or returned to

court for award violation (5.6%) continues to decline. Arbitrators may not reflect adequately the city's poor and ethnic communities, but they are well-trained and conduct fair and comprehensive hearings. Adequate supervision is provided through good on-the-job training and regular review of arbitration awards. The record and management-information systems are superior, providing regular feedback to Project managers. Management is also excellent, as shown by the Project's ability to correct emergent problems before they become serious.

The Project is operating smoothly and has demonstrated a cheaper, more satisfactory resolution of many private criminal complaint cases. It should be continued through LEAA or city funds. Our recommendations include:

-- Efforts to increase appropriate referrals by informed, consenting participants; by placing descriptive brochures in the civilian complaint office, describing the project to parties in a group on the morning of the trial commissioner hearing, articulating guidelines for types of cases to be referred, and making the latter available to the trial commissioner. Steps are being taken in this direction.
-- Addition of the capability to refer parties to agencies for needed social services.
-- A conscientious effort to recruit and train as arbitrators non-professional persons recruited from the ethnic and poor communities of the city.
-- Possible expansion of jurisdiction to include bad check cases, minor arrest or summons misdemeanors, intrafamily disputes and juvenile delinquency matters.

I Project Background

In Philadelphia, as in virtually every urban center in the country, the stresses of the urban environment lead to a large number of conflicts between residents, a significant number of which rise to levels of activity proscribed by the language of penal laws. Not infrequently, police are summoned. However, they may be reluctant to make an arrest, either because the alleged offense appears trivial or because they recognize that both parties may be equally to "blame" and that the criminal process offers no solution to the underlying problem. The aggrieved citizen's recourse, then, is to begin criminal prosecution by means of a private criminal complaint.

But the courts may not be the most appropriate institution for resolution of these matters. Private criminal complaints drain valuable criminal justice resources required for swift and just prosecution of more serious crimes. Further, a determination that one of the parties to the difference is "guilty" and should be subjected to criminal sanction is not calculated to offer any resolution to the conflicts which gave rise to the criminal incident.

In the words of the National Center for Dispute Settlement of the American Arbitration Association:

> Community conflicts find their roots deep in our society and in human nature. Too often we only see the symptoms--the surface evidence--of a more pervasive problem. Much like the visible tip of an iceberg, the private criminal complaint or private warrant frequently deals with relatively minor charges growing out of deeper human conflict, frustration and alienation. In such cases, more often than not, neither the complainant

nor the defendant is entirely blameless; yet the criminal law with its focus on the defendant alone is ill equipped to deal with this basic fact. The judge or prosecutor, faced with an overcrowded court calendar, beyond-a-reasonable-doubt criteria for conviction, conflicting stories, and "minor" offenses, typically dismisses the case and lectures the defendant--threatening possible punishment for future offenses. This is not conflict resolution; it is not problem solving in the community; nor is it intended to be. The tip of the iceberg has been viewed briefly, but the underlying problem remains unseen and potentially as obstructive as ever. Neighborhood tensions have not been reduced. Relationships have not been improved. At best a shaky truce may have been ordered...

If all such cases were prosecuted, the courts would be backlogged everywhere as many now are. Even if the courts could process all such cases, they could not resolve the real problems, i.e., the causes of the technically criminal behavior; the courts are restricted to finding the defendants before them either innocent or guilty of the alleged offense.

So what has been done? First, it was felt by NCDS that the criminal process was not the proper forum for the settlement of these common urban living disputes. This is because the warrant and ensuing criminal prosecution may be used by one of the parties as another weapon in the underlying dispute, rather than as a means of resolving the dispute. Nor was it felt that the dispute would be any better resolved by seeking a solution by way of the civil courts. What was needed was a procedure independent of the court which would be, quite simply, fast, cheap and easy. The 4-A Program does this with the added benefits of greatly reducing court case loads and, most importantly, resolving the underlying cause of the criminal conduct and avoiding criminal conviction and arrest records.[1]

1. National Center for Dispute Settlement, The Four - A Program (Arbitration as an Alternative to the Private Criminal Warrant and Other Criminal Processes), Washington, D.C., NCDS, (Unpublished, revised December, 1972).

This report is an evaluation of the success of this project in achieving its goals. This discussion is directed at two questions. The first is a "process" question--how well is the Project operating? The second is an "impact" question--does the Project offer a viable alternative to criminal justice system processing of private criminal complaints?

Information for the "process" evaluation was gleaned mainly through observations and interviews. The evaluator has spoken to all Project personnel at length, observed some arbitration hearings and spoken to the arbitrators afterwards. In addition, a thorough examination of the Project's office procedures, record system and management information system was made. Observations were made at the Municipal Court trial commissioner hearings (roughly equivalent to arraignments). The President Judge of the Municipal Court and the Lieutenant in charge of the District Attorney detective squad screening civilian complaints were both interviewed. The caseload volume figures given are from Project records. Since the record-keeping system includes periodic "balancing" and resolution of discrepancies, these figures are believed accurate. The case analysis figures were taken from a sample of 50 consecutive Project cases, from August 1st, 1973, to August 23rd. While the sample is not large enough to yield statistically significant results, it is large enough to indicate major trends.

The "impact" evaluation poses more difficult problems. Observations and interviews are necessary but not sufficient to provide any valid comparison of the way cases are handled by the Project and by the court.

Data for the cost of a Project case was derived from the Project budget. Data for the cost of a comparable Municipal Court case is more difficult to obtain. The Center for Government Studies and Systems, a non-profit organization formerly associated with the University of Pennsylvania, had gathered data on Municipal Court case costs, but published no report. The former Project Director, Benjamin H. Renshaw, now Director of the District of Columbia Office of Criminal Justice Plans and Analysis, was interviewed in Washington, D.C. and such information as was available was obtained. Present staffing patterns, salaries and court caseloads can be obtained from the Office of the Court Administration of the Philadelphia Common Pleas and Municipal Courts.

It has thus far proved impossible to construct any valid "control" group of Municipal Court cases comparable to the 4-A Project caseload. Such an effort would require many times the resources allocated to this evaluation. Instead, court figures have been gleaned from the Municipal Court Annual Report, interviews with the President Judge, and observation.

Client-satisfaction data gleaned from attitude questionnaires was presented in the evaluation report prepared last year by the Evaluation Unit of the Governor's Justice Commission. A perusal of questionnaires submitted since that

time indicates that the results of a repeat tabulation would not be significantly different. Accordingly, we propose to avoid duplicative efforts in this area and spend the remaining evaluation resources to attempt closer comparison of court and 4-A case processing.

I Project History

The concept of arbitration as a form of resolution of community disputes was advanced in the report of the National Advisory Commission on Civil Disorders.[2] In response to this recommendation of the Kerner Commission, the National Center for Dispute Settlement ("NCDS") of the American Arbitration Association established the West Philadelphia Center for Community Disputes in 1969 as an experiment in application of labor-management techniques to community disputes. Renamed the Philadelphia Center for Dispute Settlement following its move to a downtown location, this office continues to be involved in arbitrating community disputes. In recent years these have included mediation of a boycott in a suburban school district following prolonged racial strife, mediation of a student-faculty dispute at a local college, development of an election plan following a tenant organization dispute with the Housing Authority, and similar problems.

In 1969, NCDS and the Philadelphia District Attorney

2. National Advisory Commission on Civil Disorders, Report, U.S. Government Printing Office (1968), pp. 151-152.

reached an agreement establishing a pilot program for arbitration of criminal cases begun by private complaints. The "4-A Project", as it became known, started accepting cases at the beginning of 1970. The Project is under the sponsorship of the Municipal Court of Philadelphia, and has the cooperation of the Philadelphia Bar Association.

On July 5, 1972, the Arbitration-As-An-Alternative Project received a grant for $61,605 in LEAA funds from the Philadelphia Regional Planning Board and Governor's Justice Commission. Because Project success led to referral and satisfactory resolution of more and more cases, a supplemental appropriation of $44,860 was approved, effective March 1, 1973, to continue operations to the end of the first project year.

The present grant from the Governor's Justice Commission provided the Project with $93,000 in Federal funds for Project operation from August 1, 1973, to July 1, 1974. It was anticipated that some 800 cases would be submitted.

II, The Project

The Project arbitrates cases of a "petty" variety. Most frequently, the criminal charge is simple assault (28%), harrassment or disorderly conduct (52%), property damage (10%) or larceny (6%). Only occasionally is there injury sufficient to require a doctor's care (26%) or property loss in excess of $25 (8%). Most frequently, the parties are acquainted with each other, as neighbors (70%), man and wife (4%), or within

a family (12%). In only one case out of a sample of 50 were the parties unacquainted. Interestingly, 34% of the cases involved two females, 48% a male and a female, and only 18% two males. (Information from a sample of 50 cases submitted between August 1st and August 22nd, 1973; see Table 3.)

It is the experience of the arbitrators that these criminal charges are infrequently the result of isolated incidents. Rather, the incidents are symptoms of long-smouldering disputes. The case type data presented in Table 3, below, appear to support this evaluator's observations and the arbitrators' opinions on this point. The acts alleged could well be viewed as the type of action one might take in expressing anger and hostility or exacting "revenge".

As will be brought out in more detail in the discussion of the arbitration hearings below, during the arbitration process an attempt is made to penetrate the incident and probe into the underlying problem. The issue in a criminal trial, on the other hand, is whether or not one of the parties is guilty of violating a specific criminal statute. Despite the occasional tendency of a jury to acquit or convict a defendant of a lesser charge when it perceives "equities" on the defendant's side[3/] prior "bad acts" by the victim are not a defense to the criminal charge.

3. See, generally, Kalvin & Zeisel, The Jury, Free Press of Glencoe (1963); Simon, The Jury and the Defense of Insanity, Free Press of Glencoe (1963).

This project can best be put in perspective by first describing the private criminal complaint process. A person seeking to begin criminal proceedings when no arrest has been made must apply to a private criminal complaint office manned by seven detectives attached to the District Attorney's Office. In the first ten months this office interviewed 6,469 people and drafted 6,145 criminal complaints. In some cases, the police had already decided not to make an arrest, but referred the people to this office instead. As with most civilian complaint centers, this office also reports a small cadre of "regulars", dressed bizarrely and making complaints which are even more bizarre. Complaints are issued and the case scheduled to appear before a trial commissioner unless the facts are insufficient to make out a crime or an arrested defendant is seeking a cross-complaint. But if the case appears to involve a long-simmering neighborhood feud, the detective will attempt to call the putative defendant and get the parties to agree to send the case directly to the 4-A Project. Only a handful of cases is sent to the Project this way. The detectives do not note any recommendation regarding arbitration on the complaint sent to the trial commissioner, for the obvious reason that this document is a public record which would then preserve for posterity the detective's judgment of the case's merits.

Citizens thus securing a complaint then file it with the Prothonotary and pay an $11 filing fee. The case is scheduled to appear before a trial commissioner.

The trial commissioner proceeding in a private criminal complaint is the rough equivalent to preliminary arraignment in an arrest case. Cases surviving this stage are given a trial date in Municipal Court and the defendant is advised to retain an attorney or contact the Defender Association of Philadelphia. However, many of the cases are disposed of by means of conditional withdrawal. That is, the complainant withdraws the original complaint on the stipulation that if the respondent strikes or harasses the complainant again within two years he will face the original charge and a contempt-of-court charge. Typically, these cases involve a husband or paramour striking his wife or girlfriend. Not infrequently in cases involving money, restitution is made within a week or two and the complaint withdrawn.

If the complaint cannot be disposed of, the trial commissioner will consider sending the case to arbitration. No specific guidelines are followed, but the major criterion appears to be whether the parties have known each other for awhile. Complaints between adjacent neighbors, for example, are routinely considered. If arbitration appears appropriate, the trial commissioner briefly describes the Project to the parties and asks if they consent. If there is no objection, a 4-A Project staff member in the room takes the parties to a small adjacent room and explains arbitration in more detail. If the parties are agreeable, they both sign an arbitration consent form and the case is sent to the 4-A Project. Consent

is usually forthcoming: rarely does a complainant seek more than monetary restitution or believable assurances that he or she will be left alone.

Although by far the majority of cases reach the 4-A Project in this manner, a few come on direct referral from Municipal Court judges or at the solicitation of defense counsel.

While the Project is not suffering any lack of cases and few inappropriate cases are seen, steps could be taken to strengthen the referral process. This thought stems from concerns that some categories of cases amenable to arbitration techniques may continue to be routed through the criminal justice process. It also arises from concern that people may not fully understand the arbitration process or 4-A Project goals when they consent to this process.

RECOMMENDATIONS:

1. On the recommendation of this evaluator, a number of illustrated, easily readable booklets explaining the arbitration project will be supplied to complainants through the District Attorney's Office detectives screening complaints. Thus, by the time of the trial commissioner hearing more complainants may be able to give an informed consent to arbitration.

2. Not infrequently, detectives are able to spend more time with a case and perceive an underlying dispute amenable to arbitration, failing to divert cases only because they are unable to reach the putative defendant. They should be able to paperclip a note, "This case appears amenable to arbitration" to the complaint to alert the trial commissioner.

3. There are no clearly articulated standards or guidelines as to which cases are most amenable to arbitration. At the recommentation of this evaluator, Project staff are beginning to gather data on this point in the trial commissioner hearing room. This information and suggestions as to which types

of cases the Project has had success with should be made available to the trial commissioner.

4. Not infrequently, parties are unaware of the arbitration process or the 4-A Project, and the trial commissioner cannot be expected to take time out from a heavy calendar to give lengthy explanations before seeking the parties' consent. We recommend that shortly after the morning calendar call a Project staff member give the assembled parties a brief explanation of the Project. Thus, the parties can be considering arbitration before they appear before the commissioner.

Following assignment of a case to the arbitration project, the parties are sent a form letter telling them a hearing will soon be scheduled and advising them to contact the Project if they have retained counsel. In the vast majority of cases (75% in a 50-case sample; see Table 3) the parties are unrepresented. After ten days, a hearing date is set. This is usually within 30 days of receipt of the case. The parties are advised that, if a case is adjourned, a sliding fee of $10 to $40 will be assessed the responsible party, depending on the amount of notice given. (This fee is waived if good cause, such as hospitalization, is shown.) Parties (and counsel, if appropriate) are notified again by phone the day before the hearing. These policies developed by the Project have led to efficiency in case processing. Their standard is to hold a hearing within thirty days and issue an award 10 days hence. The average time to disposition in a sample of 44 closed cases was 43 days. In five of the six open cases, complainant disinterest was involved and the cases could well have been considered

closed within 40 to 50 days of receipt.

The key to the arbitration project is the informality of the arbitration hearing proceedings. The room most frequently used is carpeted, draped and tastefully furnished with two couches. The arbitrator introduces himself to the parties in the reception area, escorts them to the room and urges them to take off their coats and make themselves comfortable. He explains that he has the powers of a judge, and that if the parties fail to reach an agreement his arbitration order is final and enforceable in court. After noting that strict rules of evidence do not apply, he permits each side to tell its story in turn, without interruption. The arbitrator asks questions at the end of each story to firm up details and ambiguities.

But few of the arbitrators dwell at any length on the criminal charge. Rather, they inquire about any underlying relationship which might have been brought to a head by the alleged criminal act and ask the parties about any contact they have had since the complaint was filed.

Witnesses accompany the parties in a minority of cases. Because formal rules of evidence are not followed, they are not needed to establish a chain of evidence or to circumvent hearsay problems. But they do lend background information. Most frequently, the witnesses are family members or friends who have come to give moral and evidentiary support to a disputant.

The informality of the proceedings and the apparent willingness of the arbitrator to allow each side to give a full and fair explanation of his side of the story encourages the participants to give vent to their feelings. Arbitrators vary in the amount of heated discussion they will permit, but none of the ones observed allowed any interruptions or insulting comments.

Not infrequently, this mutual exchange of views, with a little guidance from the arbitrator, is enough for the parties to see some ground of mutual concern. One party, for example, may finally state that all he wants is for his neighbor to leave him alone. This the other party is only too willing to do, provided that he doesn't have to admit that he had been harrassing his neighbor. Nobody is found to be "guilty" of a "crime". The goal of the arbitrator is not to establish that either or both of the parties are at fault, but to fashion a method for the parties to avoid future conflict. Thus, in our sample of 50 cases, 32 of the 34 arbitration or consent awards included provision that the parties keep apart.

The ability of the arbitrators to fashion unqiue remedies enhances their ability to resolve long-standing disputes. In one case, a woman became convinced that her rowhouse neighbor's loud slamming of his front door was a deliberate tactic of harrassment. The man was equally determined that no neighbor should dictate how he would close the door to

his castle. The arbitrator's award required him to line his door with a strip of foam rubber padding.

If the disputants are able to agree to a solution, a consent award is frequently drafted up for them to sign before they leave. It is important to bear in mind that agreement on the facts is not required. In one case two elderly neighbors had been feuding for thirty years, finally resorting to shouting obscenities at each other in Russian and brandishing clubs in each other's face. Some thirty years before, union organizers had mistakenly broken the respondent's window in an apparent attempt to "persuade" the complainant to respect a picket line at work. The neighbors agreed to stay apart, but the complainant denied violating a picket line. His wife insisted that the respondent apologize for shouting to the neighborhood that he was a "scab". The outraged wife was content with a consent award stating, in effect, "the complainant alleged that the respondent had called her husband a 'scab' but the respondent denied doing this."

If the parties are unable to reach an agreement, the arbitrator mails his award to them within ten days. This does not mean that the parties are necessarily still at loggerheads. Frequently there is underlying agreement on all but one or two minor points. Even where the parties do agree, some arbitrators issue an arbitration award rather

than a consent award, on the feeling that there is more "majesty" to the formal award.

As mentioned before, the arbitrators show ingenuity in devising awards which offer solutions to the participants' underlying problems. But this program strength has only served to point out how limited the Project arbitrators must be in coping with the problems of some of the participants. For example, in some cases there is a clear suggestion of a mental illness, alcohol problem or need for family counseling. Just as diversion has helped criminal defendants to deal with their problems,[4] access to social service resources would enhance the value of this Project to fashion lasting solutions to community disputes.

RECOMMENDATION:

5. Serious consideration should be given to expanding the scope of this Project to include non-compulsory referrals to social service agencies as part of the arbitration process. This would require staff to locate and make arrangements with appropriate service agencies. In addition, for this referral to be successful it might be necessary to have staff to escort clients to the agency and to check back with the agency to insure that the client continues to participate.

4. See National Council on Crime and Delinquency, Prescriptive Package: A Guide to the Handling of Misdemeanant Offenders, National Institute of Law Enforcement and Criminal Justice (due for early 1974 publication); ABA Commission on Correctional Facilities and Services, Pre-Trial Intervention Strategies (1973); National Institute of Mental Health, Diversion from the Criminal Justice System, U. S. Government Printing Office (1972); Nimer, Two Million Unnecessary Arrests, Chicago, American Bar Foundation (1971).

Limited experimentation with community forums in New York and California juvenile cases (described in the section on other programs, infra) indicates that referral potential is a valuable component to such programs.

The arbitration and consent awards generally state that if either party violates the conditions the case will be referred back to court. Much to the project's credit, it has informally developed techniques of enforcing its awards short of court referral. Complaining parties generally phone the staff "tribunal supervisor" and discuss the problem. She counsels the party and agrees to look into the matter. Beyond this, the first response is to phone the violating party to inform him that if he persists, the case could go back to court. Frequently this is sufficient to dissuade him from further non-compliance. If more appears needed, the supervisor may have the arbitrator discuss the matter with the violator. If this appears unsuccessful, a second arbitration hearing is sometimes advisable. Only if these measures appear doomed to failure will the case be remanded to court. The Project has no records of the number of times its intervention is required to preserve an award, but following a recommendation of this evaluator this information is recorded in a chronological log and entered in the individual case files.

This innovative approach to enforcement of its awards has enabled the Project to keep to a minimum the number of cases remanded to court after an award has been made. In

1973 thus far only 26 cases (4.5% of the 1973 caseload) have been remanded. In this funding year (beginning August 1st) the figure is 13 (5.6%).

III Project "Process" Evaluation

1. Caseload. The project's present caseload is presented in Table I, below. The figures reflect activity through the week ending March 1, 1974.

Table I

Project Caseload, 1974

	1973	1974 to 3/1	7/30/73 to 3/1/74 (LEAA Funding Year)	% of 7/30/73 to 3/1/74 Total
Cases Submitted	649	102	512	100.0%
Cases Withdrawn	80	2	63	12.3
Cases Remanded Pre-Award*	34	2	26	5.1
Cases Closed by Arbitration or Consent Award	519	35	371	72.4
Cases Pending at End of Period	16	63	79	15.4

The standard for project performance enunciated in the evaluation plan is set out below, compared with project performance in 1973 and in the first 31 weeks of the present 48-week funding period. The standards were derived from the funding application and data in the last evaluation report on this project.

* Usually for failure of respondent to appear.

Measurement	Standard	Performance	
		1973	1st 31 Weeks of Present Funding
Caseload	800/48 Weeks (517/31 Weeks)	589	512
Pre-Award Remand Rate (% of Cases Submitted During Period)	9.3%	5.4%	5.1%
Withdrawal Rate (% of Cases Submitted During Period)	12.1%	9.5%	12.3%

By these measures, the Project must be considered highly successful. The percentage of "failures" continues to decline in virtually every category.

The percentage of cases remanded after arbitration has been rising, but this was found by Project staff to be due to remand for failure to pay monetary awards. Project staff began writing letters to these violators that if they did not pay the cases would be sent to court, and the remand rate for monetary award non-compliance began to drop in October.

The Project caseload in November was below the caseload projected, but this was a matter beyond the Project's direct control. (See December 15th Interim Report.) They are accepting all cases referred, and note an increase in cases referred directly by the judges. Steps to increase the Project caseload were described at Recommendations 1-4 of our earlier report. These measures seem to have worked: they are currently "up to standard".

Further data on the Project caseload is presented in Tables 2 and 3, below. Please note that the samples are small, and indicate trends rather than statistically significant statements.

Table II

Characteristics of a 16% Random Sample (42 Cases) Out of Total Submitted for Arbitration between September, 1969 and December, 1971

		Percent	Number
I	Sex of Parties		
	Male vs. Male	2%	1
	Male vs. Female	45%	19
	Female vs. Female	52%	22
II	Relationship between the Parties		
	Man & Wife	9%	4
	Indiv. vs. Firm	2%	1
	Mother vs. Son	2%	1
	Two Parties previously unacquainted	38%	16
	Families in neighborhood dispute	48%	40
III	Type of Complaint		
	Assault & Battery	80%	34
	Property Damage	14%	6
	Larceny	5%	2
IV	Types of Award		
	Parties ordered to avoid each other	50%	21
	Parties remanded to court for prosecution	7%	3
	Monetary awards made	10%	4
	Cases returned to court at client's request	5%	2
	Cases withdrawn	14%	6
	Cases resolved by mutual consent	12%	5
	Cases with no award due to lack of evidence	12%	5

Source: Evaluation Management Unit, Governor's Justice Commission, An Evaluation Report on Arbitration as an Alternative to Private Criminal Complaints (December, 1972)

Table III

Characteristics of a "Snapshot Sample"
of 50 Cases Submitted to Arbitration
Between August 1, 1973 and August 22, 1973

		Percent	Number
I	Sex of Parties		
	Male vs. Male	18%	9
	Male vs. Female	48%	24
	Female vs. Female	34%	17
II	Type of Complaint		
	Harrassment (includes assault without injury, threats)	52%	26
	Assault (simple)	28%	14
	Property damage (includes criminal mischief)	10%	5
	Larceny (includes possession of stolen goods)	6%	3
	Criminal Trespass	2%	1
	Public Nuisance (dog)	2%	1
III	Damage or Loss to Property		
	None	82%	41
	$25 or less	10%	5
	$26 - $100	6%	3
	$101 - $250	2%	1
IV	Personal Injury		
	None	66%	33
	Home care required	2%	1
	One visit to doctor or emergency room	26%	13
	Two or more visits to doctor or emergency room	-	0
	Hospital	-	0
	Information not available	6%	3
V	Relationship Between Parties		
	Neighborhood dispute bet. families	70%	35
	Family (includes in-laws, siblings, parent-child, excluding man vs. wife)	12%	6
	Man and wife	4%	2
	Other (drinking friend, ex-wife's suitor, old friends)	6%	3
	Information not available	6%	3
	Unacquainted	2%	1

(Table III, con't.)

VI	Use of Counsel			
	Neither side represented		72%	36
	Respondent represented		18%	9
	Complainant represented		6%	3
	Both represented		2%	1
	Information not available		2%	1
VII	Number of Adjournments			
	By type:			
	Phone, mail or visit prior to appearance being adjour			2
	"No-show"			12
				14
	By type of representation:			
	One side has counsel			2
	Neither side has counsel			12
				14
VIII	Time to Disposition			
	Average 43.0 days	Range: 0-19 days		2
	(44 cases closed)	20-29 "		8
	Mean 41 days	30-39 "		14
	(N=50) (1 case)	40-49 "		9
		50-59 "		4
		60-69 "		2
		70-79 "		2
		80-89 "		0
		90-95 "		3
		(Open 11/27)		6
				50
IX	Disposition of Cases			
	Arbitration award		54%	27
	Consent award		16%	8
	Open case as of Nov. 27		12%	6
	Withdrawn		10%	5
	Remanded		8%	4

(Table III, con't.)

X	Reasons for Open Cases (N=6)		
	Complainant failed to show/ failed to pay adjournment fee	83%	5
	Respondent in military-hearing scheduded	17%	1
XI	Type of Arbitration/Consent Award		32
	Parties to keep apart		10
	Monetary damages		1
	Get a job		1
	Rules for use of adjoining driveways		1
	Withdraw complaint		1
	Place trash in marked containers		1
	Attempt solve problems of retarded sister		1
	Apologize		1
	Family counseling		1
	Marriage counseling		
XII	Post-Award Enforcement		
	A. By Violator	Complainant	0
		Respondent	3
	B. By Enforcement Required	Staff contact	3
		Arbitrator contact	0
		Second hearing	0
		Remand to court	0

2. Staff. The Project is headed by a Project Director who allocates 65% of his time to this program and the rest to other activities of the Philadelphia Center for Dispute Settlement. His assistant is responsible for day-to-day administration of the Project, and devotes considerable time to management and planning tasks. In addition, he arbitrates a number of cases. A tribunal supervisor is in charge of scheduling hearings and managing the record and management-information systems. Three clerk-typists assist, one doubling as a Spanish language interpreter at arbitration hearings. In addition, a referral clerk is stationed in the trial commissioner hearing room each morning. All appear to be working at or near capacity.

3. Arbitrators. Cases are arbitrated by arbitrators selected from a list of some 40, selected and trained by the Project staff. Arbitrators receive a $40 fee for each hearing. At the time of the last evaluation report, the panel's ethnic composition was 48% white and Jewish, 33% Black, and 23% white and non-Jewish. 40% were lawyers, 22% were from community groups, 16% were businessmen, 10% were professors and 8% were clergymen. Some 89% were male. The composition of the panel has not changed significantly since that time. Women and Hispanic arbitrators continue to be woefully under-represented.

Not a few of the arbitrators have had prior arbitration experience in labor negotiations, on American Arbitration

Association panels, or on the three-lawyer tribunals which hear civil cases in Philadelphia involving amounts under $10,000. The arbitrators with prior experience indicate that the techniques involved in arbitrating criminal matters are not dissimilar. Most of the arbitrators the evaluator interviewed joined the panel a year ago last summer, in the Project expansion made possible with LEAA funds. Staff from the National Center for Dispute Settlement assisted the Philadelphia Center in conducting a Saturday all-day training session for this group, involving role-playing, visual aids and discussions. All arbitrators, both this group and arbitrators later joining the panel, observed several arbitration hearings and sat on two-arbitrator hearing panels before "soloing". The arbitrators uniformly characterized their training as interesting, relevant and adequate to prepare them for their assignments.

It remains difficult to assert that this Project is "community-based" or "representative of the community" if by this one is referring to the poor or working class white, black or Hispanic communities. It is these communities which disporportionately contain the city's poverty, high population density and urban tension. Yet it appears that the panel consists of professional and business people who live in the suburbs or more affluent sections of the city. It is clear from the experiences reported by the two community youth forum projects discussed below that non-professionals recruited from ghetto

communities could be adequately trained to be arbitrators. Many of the "human skills" involved in successfully training paralegals to interview clients, negotiate and serve as advocates could readily be adapted to training people recruited from the ghetto community to be arbitrators.[5/]

RECOMMENDATION:

6. The project should make a conscientious effort to recruit and train as arbitrators non-professional persons recruited from the ethnic communities of the city. The need for Hispanic arbitrators is especially glaring.

4. Supervision. Supervision, many people fail to realize, is the opposite side of the same coin as training. With adequate training in what is to be accomplished and how it is to be done, there is less need for continued supervision. Indeed, classroom training, on-the-job training and supervision functions are steps on the path of adequate quality-control. Proper on-the-job training is really a form of intense supervision, growing gradually less intense until it is indistinguishable from spot-check supervision.

This Project has benefitted from taking this approach toward insuring high-quality arbitrator hearings. The training

5. On training "New Careers" paralegals in "human skills", see generally, William P. Statsky, Teaching Advocacy: Learner-Focused Training for Paralegals, Washington, D.C., National Paralegal Institute (1973); John Hollister Stein, Bert H. Hoff and Richardson White, Jr., Paralegal Workers in Criminal Justice Agencies: An Exploratory Study, Washington, D.C., Blackstone Associates, (1973), Chapter Three and Appendix II.

aspect of supervision has just been described. Following this, an arbitrator's first few hearings are followed by a discussion with the Project Director or his assistant. Then, the Project monitors performance by reviewing each arbitration award and each client-satisfaction questionnaire which is returned. The client response to the Project appears to remain uniformly favorable,[6/] and the rate of remanded or withdrawn cases continues to decline. Both indicate that supervision of the quality of the hearings continues to be excellent.

5. Records. Since inception, this Project has maintained excellent records. It should be stressed that this experience is not necessarily typical of "small" projects with 10 or fewer full-time staff. Frequently, the attitude is that a small staff can keep track of things without the need for logs, "tickler" systems or counts of the number of cases handled and the type of service rendered each case. The result is that some cases get lost and when the time comes to assess project results nobody is quite clear on what the project has accomplished.

6. This was reported in the client attitude survey results at Page 8 of the December, 1972, evaluation report submitted to the Philadelphia Regional Planning Council. Later questionnaires were not tabulated because it appeared from a perusal of the questionnaires that the results would not be significantly different and the evaluator made the judgment that it would be more informative to concentrate on Project "process" and a comparison with court handling of cases.

By contrast, this Project's record system has grown with the caseload and serves as a quite-adequate management information system. All cases are entered in a log as soon as received. This serves as a "tickler" system as well as an index, for it is regularly reviewed to determine which cases have been pending too long. From this log, the tribunal supervisor prepares a weekly summary indicating the number of cases received, remanded, withdrawn and arbitrated. As each file is closed, a summary sheet is prepared and placed in the file. As a result, the Project Director can tell in an instant whether caseload is dropping off, whether too many cases are being remanded, or whether there is another problem with which he should be concerned. This system provides no "answers" to management problems, but it encourages Project management to ask the right questions.

RECOMMENDATION:

7. This evaluator has recommended a few minor changes in this system. One is a "subsequent enforcement log" which will enable the tribunal supervisor to keep track of phone calls about award non-compliance. Spaces permit her to show what action was taken. Thus, staff can tell at a glance how many enforcement actions were taken and which cases still require action. A revision of the weekly summary sheet was also recommended. This form would now show the number of cases pending, the number of cases open for more than 60 days, and the time-to-disposition of a sample of ten cases. This information will enable management to keep track more easily of the Project's ability to keep up with its work.

   The changes suggested above have been made, and the new forms are being pre-tested. The forms follow.

Case # Cr-___-___-___-_____

NATIONAL CENTER FOUR-A (4-A) CASE STATUS SHEET
(TO BE MAINTAINED IN FILES AT THE DC. OFFICE)

CLAIMANT ________________

ADDRESS ________________

COUNSEL ________________

ADDRESS ________________

RESPONDENT ________________

ADDRESS ________________

COUNSEL ________________

ADDRESS ________________

ARBITRATOR ________________

ADDRESS ________________

DATE CLAIM FILED ________

AAA CASE NUMBER ________

COURT CASE NUMBER ________

DATE ARBITRATOR APPOI[NTED] ________

DATE CASE SCHEDULED FOR HEARING ________

DATE CASE ~~ACTUALLY~~ DISPOSITION OR HEARD ________

DATE OF ARBITRATORS AWARD. (AA only) ________

ARBITRATORS COMPENSATION ________

Disposition

☐ R ☐ W ☐ CD ☐ AA

REMARKS ________________

BRIEFLY SUMMERIZE THE ISSUES INVOLVED IN THIS CASE

____

SUBSEQUENT ENFORCEMENT

VIOLATOR ☐ △ ☐ C/W ACTION ☐ STAFF ☐ ARBI ☐ H ☐ R

Date filed ________

Date award, C/A, R only ________

CASE CONTACT LOG

DATE	TIME	PARTY	PHONED	WAS PHONED	WROTE	WAS WRITTEN	NOTES

CLOSED CASE SUMMARY

Number of phone adjournments ____ Number of C/W "no-show" _____ K

attorney? C/W ☐ △ ☐ Number of △ "no-show" _____

DAYS to disposition ________

POST-HEARING ENFORCEMENT LOG

DATE	CASE #	NON-COMPLYING PARTY	Δ?	C/W?	STAFF PHONE	ARBIT. PHONE	HEAR	REM

PHILADELPHIA 4-A PROJECT

WEEKLY SUMMARY: WEEK ENDING ______

NUMBER OF 1973 CASES SUBMITTED THRU LAST FRIDAY ______

NUMBER NEW CASES THIS WEEK +______

	'73 thru last Fri.	thru this wk.		
NUMBER REMANDED BEFORE HEARING	___ +	___ =	___	
NUMBER WITHDRAWN	___ +	___ =	___	
NUMBER CASES COMPLETED BY ARBITRATION	___ +	___ =	___	
TOTAL NUMBER CLOSED	___ +	___ =	___	-______
NUMBER PENDING - END				=______

Case number of a case 60 days old. ______

Number of cases more than 60 days old. ______

Summary - last 10 cases closed.

Number of complainant phone adjournments ____; "no-show" ______

Number of respondent phone adjournments ____; "no-show" ______

Number of days to disposition ______ ______

______ ______

______ ______

______ ______

______ ______ Total______ Average______

this wk. contact staff arb. hearing rema:

SUBSEQUENT ENFORCEMENT ACTIVITY:

NUMBER COMPLAINANT NON-COMPLIANCES:

NUMBER RESPONDENT NON-COMPLIANCES:

6. Management. The high quality of training, supervision and records, discussed above, all indicate that the Project is well-managed. But the best indicator of good project-management is responsiveness to problems. All too many projects continue to operate from day to day oblivious to minor changes indicating that a problem is looming on the horizon. A typical example is a client-service project which "discovers" halfway through the project year that it has only provided service to a fifth of the clients it was funded to serve. Such failures to detect project trends reduce project directors to "crisis management" rather than project management.

On this score, the 4-A Project's record is impressive. To cite but one example, this evaluator has made a number of recommendations for minor changes. The Project staff were eager to discuss the problems pointed out and to discuss alternative means of dealing with them. In another instance, the Project management-information system revealed to the tribunal supervisor that the rate of post-arbitration court remands was increasing. Perusal of a few files pointed out that the increase involved violation of awards for monetary damages, and that the violators were distraught on discovering that the case had been sent to court. The solution was obvious: the Project now sends "psych letters" informing the violators that if the damages are not paid within 10 days the case will

be remanded. What is remarkable is that the Project staff's constant re-assessment of its operations permitted it to resolve this situation before it had become a problem.

In the same vein, this report earlier pointed out that Project caseload is below the anticipated level for this funding year. Project staff, as described earlier, are undertaking steps to remedy this by informing parties of the Project and developing guidelines for the referral of cases--that is, they are seeking to generate more referrals even though this part of the process is nominally outside of Project control.

IV Project Impact

The goal of this Project is to provide a more lasting resolution of private criminal complaint cases, through means which are less costly and more swift than Municipal Court processing. On each measure this Project must be considered a success.

1. More lasting resolution. Given the limited resources available for this evaluation, it has been impossible to construct a valid "control group" of Municipal Court cases through sample-matching and to compare "recidivism" rates. But there remains good reason to believe that the arbitration process is more satisfactory than Municipal Court adjudication in resolving this category of cases. We will examine "durability of resolution" indirectly, by examining the length of time spent on each case, the issues discussed, and the procedures for subsequent enforcement of the decision in a case. It stands to reason that if a forum spends more time in examining

the issues of a case, examines background and development of a problem, and makes it convenient for aggrieved parties to seek enforcement of the forum's decision, the forum will be far more likely to forge a more lasting resolution of the disputes it entertains.

Observation and interviews with arbitrators and Project staff reveal that 4-A Project hearings last from 20 minutes to over an hour. Drafting the award takes another five to fifteen minutes. This is in marked contrast to the time the Municipal Court judges can spend on a case. The daily calendar in a typical trial court will average 60 cases. Some 60% of them will be disposed of, and the others adjourned. A judge has approximately 4 1/2 hours of active "bench" time.[7] Charges range from minor offenses to serious crimes bearing a penalty of five years. Thus, it is apparent that judges simply do not have the time to conduct lengthy hearings of the type described earlier in this report.

This finding is confirmed by the unpublished data of Government Studies and Systems, Inc., of Philadelphia.[8] This computer print-out, (hereinafter "GSS 1970 run") indicates

7. Estimates made by Municipal Court President Judge Joseph R. Glancy, interviewed in his office on November 16, 1973.
8. "1970 Philadelphia Adult Criminal Justice System" (computer analysis of the 101,522 1970 arrest cases in Philadelphia employing PHILJIM computer simulation model). See Benjamin H. Renshaw, Charles J. Goldman and William M. Braybrook, Application of an Indicator-Based Simulation Modeling to a Criminal Justice Planning Process: A Philadelphia First-Try, Philadelphia, Pa., Government Studies and Systems (paper presented at the 41st National Meeting of the Operations Research Society of America, New Orleans, La., April 27, 1972).

that the Municipal Court judges devote an average of 0.359 hours per case.

The only issue properly before the court in a criminal case is whether the accused is guilty "beyond a reasonable doubt" of committing a specific, proscribed act. Even if judges had the time, they would be restrained from delving deeply into past feuds between the victim and defendant except at sentencing following a finding of guilt. And only if a claim of self-defense is raised can the victim's own "bad acts" be examined. These limitations on the proper scope of inquiry by a judge are in sharp contrast to the arbitration hearing process described above.

Following court disposition of a private criminal complaint, the complainant has only limited resources available to seek further protection from the defendant. If the defendant is convicted and restitution is a part of his sentence, the contempt powers of the court provide relief. But the only recourse available to a victim who continues to be harrassed is to once again file a complaint and endure the entire criminal justice process.[9]

If the complaint has been conditionally withdrawn, a troublesome defendant faces contempt of court as well as trial

9. If avoidance of the victim is a condition of a defendant's probation, the probation officer could provide assistance by threatening the defendant with revocation. But this is believed to be very rare.

on the original and subsequent offenses. But this requires the complainant to physically appear in the trial commissioner's office twice--once to reinstitute proceedings, and once again when the defendant appears before the trial commissioner. This effectively discourages many complainants from re-opening cases for anything short of a violent assault.

The criminal justice process provides no relief for the defendant who feels that his conduct was justified by the complainant's abuse or harrassment. He feels he must forget the matter or take the law into his own hands--perhaps with violent results.

The arbitration and consent awards issued by the 4-A Project are binding on both parties to a dispute. A phone call to the Project staff results in a telephone call or letter warning to the violating party, and this is frequently sufficient to invoke compliance.

2. Cost per case. The 4-A Project has an annual budget of $93,000 in Federal funds. To this must be added the cost of the courtroom referral clerk ($3,744--operating personnel) and the cost of evaluation ($4,005--administrative overhead). The projected Project caseload is 800. Thus, the cost per case is $126, assuming the Project meets its projected caseload.

a. Compared with other "Hearing" Projects

Estimates of the cost of some "hearing" projects in other cities are:

California Youth Responsibility[10]	$328
East Tremont Community Forum[11]	639
U.S. Attorney's Office "Civilian Complaint Center" (D.C.)[12]	13
Columbus "Night Prosecutor"[13]	20

Descriptions of these projects are given in a later section of this report.

These cost estimates must be viewed with a great deal of caution. A direct comparison would simply be inaccurate and misleading. One problem is that the projects vary greatly in the amount of services offered. Some offer only the briefest of hearings and an attempt at mediation, while others issue final, binding awards and refer clients for services. And, of course, the cost of providing basic governmental services varies greatly from locale to locale, depending on such factors as salaries, staffing patterns and size of community.

10. Telephone interview with Project Director, Robert J. Evans, Nov. 19, 1973. In addition to hearings, the project provides services: counselling, employment referral for some 20% of the clients and tutorial assistance for some 16%.
11. New York City Bureau of the Budget, A Model Criminal Justice System for Bedford-Stuyvesant (unpublished, 1972), p. 26. Costs of $42,720 for Forum "overhead" and $20 arbitration fee per case. $44,100 ÷ 69. Total project budget is some $283,000 for a Youth Services Center.
12. Interview with Charles R. Work, former Chief, Superior Court Division, U.S. Attorney's Office for the District of Columbia, and Terry Ruggerio, paralegal, of that office. Estimated cost of staff: $60,000/year. Hearings: 4,500/year.
13. Application to Columbus-Franklin County Criminal Justice Coordinating Council, by the City of Columbus Department of Law, for continued LEAA funding of the "Night Prosecutor Program". Federal funds and cash match: $69,322. 1,741 hearings in 6 months. A small portion of this budget goes toward collecting on bad checks; this is ignored in calculated cost per hearing. $69,322/3,482 = $19.71.

Also, costs vary because of the relationship of a project to the criminal justice system. Thus, the two projects with the lowest costs are "in-house" projects, run as part of a prosecutor's office. Economies of scale keep administrative and capital costs down. The offices probably supply support, such as extra manpower in times of emergency, which are not reflected in the project budget. And the "in-house" nature of these projects lends itself to the development of informal solutions to costly problems. For example, informal channels of communication and case referral most likely develop easily inside the criminal justice community. Letters on a prosecutor's stationery may well exact more prompt compliance than those on "outside project" letterhead. Many factors such as these contribute to a more economical operation.

Thus, the 4-A Project is significantly more expensive than either of the two prosecutor programs. But it is much less expensive than the two other "outside projects". Even when one considers the counseling and referral services of the East Palo Alto project, its low caseload volume (see the discussion of these projects, below) makes it inevitable that its hearings are considerably more expensive.

b. Compared with Municipal Court

In order to compare Project costs with Municipal Court costs for private criminal complaint cases not going to arbitration, the total costs of each form of case-processing

must be broken down into three categories. First, there are capital costs. These could include rent or fair rental value, large equipment and furniture, depreciation, capital bond retirement contribution and the like. Second, there are administrative expenses. These cover costs of personnel and fiscal administration, purchasing expenses, and other similar "overhead". They also include the costs of management, planning, quality-control and central record-keeping. For the Municipal Court, this would include some pro-rata share of the costs of such items as:

-- the Office of the President Judge of the Municipal Court
-- the Office of Court Administration
-- any computer or manual record system involved in Municipal Court cases but not part of the Office of Court Administration budget.

Third, there are the costs directly related to actual case appearances. These costs consist mainly of the salaries of personnel involved in the court or hearing proceedings.

Project expenses have been allocated as follows:

	Total	Per Case	
Capital	$ 8,495	$ 11	Rent, furniture
Administrative	18,355	23	Telephone, Xerox, postage, stationery, office supplies, publications, travel, training, accounting, supervisory, staff development, evaluation
"Direct"	73,899	92	Staff, arbitrators' fees
	$100,749	$126	

This evaluation report will compare these Project costs to Municipal Court "direct" costs, for data on capital and administrative costs fairly attributable to Municipal Court private criminal complaint cases is not easily obtained. Pro-rating such costs between Municipal Court and Common Pleas Court by the size of their relative budgets or caseloads provides only the roughest of comparisons. And these would leave unanswered questions of resource allocation between homicide and criminal trespass cases, or between cases disposed of promptly and those requiring many appearances. (It may well be, for example, that parties in private criminal complaint cases appear less regularly, or are less prone to heed a judge's admonition to restrict their testimony to relevant matters. In either instance, these cases might require more judicial time and a greater expenditure of resources than a "routine" auto theft case.) However, one may expect that because of the large volume of court cases, the capital and administrative costs of each case are probably low for court cases.

Data gathered for the PHILJIM computer simulation model developed by Government Studies and Systems, Inc.[14/] provide "direct" costs attributable to Municipal Court trials of 1970 arrest cases. Because all private complaint cases go through identical stages up to the point where the trial commissioner decides to send the case to court or arbitration, only

14. See Footnote 8, supra.

the Municipal Court trial and sentencing costs should be compared with the Project. And because defendants in private complaint cases are rarely jailed or put on formal probation, sentencing and subsequent costs should be ignored. In 1970, according to the PHILJIM model, 2.5 judges were available for Municipal Court trials. $50,000 in judges' salaries and $330,450 in salaries of non-judicial personnel were required.[15/] Presently, the Municipal Court allocates 10.6 judges to trials. Assuming non-judicial salaries have been raised 5% per year, the 1973 non-judicial salary costs of manning 2.5 courtrooms would be $382,016. For 10.6 courtrooms, the non-judicial personnel cost would be $1,619.748. Thus, total salary costs would be $1,619,748 + 10.6 x $25,000 = $1,884.748. The judicial salary used in these calculations is $25,000 although a number of Common Pleas judges at an annual salary of $40,000 sit in these courts.

In 1972, the Municiapl Court disposed of 41,629 cases.[16/]

15. Each courtroom with one judge was calculated to require 1.2 criers, 1.6 court officers, 1 reporter, 2 clerks, 1 police officer, 1.2 Assistant District Attorneys, 2.6 Public Defenders and 0.80 Defender investigator. "GSS 1970 run."

16. Data in this paragraph from the 1972 Annual Report of the Philadelphia Common Pleas and Municipal Courts, pp. 47-48, unless otherwise footnoted.
Note that the statistical summary on Page 43 of this report shows 57,150 dispositions of criminal cases--15,691 hearings and 26,873 trials. Assuming 6,000 summary proceedings, salary costs per case based on this figure would be $93. However, the totals on Page 48 have been used because one can see how they were derived. (They appear to be a computer print-out based on a breakdown by offense categories.) There is no data in the report to indicate the derivation of the tables on Page 42.

Of these, 8,409 were preliminary hearings resulting in the defendant being held for the Grand Jury; 7,232 were preliminary hearing dismissals; and 5,084 were transferred, presumably before trial. Thus, the remaining 20,904 were disposed of at preliminary arraignment or trial. But in 1970,[17] 6,258 cases resulted in summary proceedings. Assuming this figure remains constant, we conclude that the trial courts in 1972 disposed of 14,646 cases.[18][19] Assuming that progress in reducing the court's backlog continues in the same manner and at the rate of 1,538 cases a year and further assuming that the rate of new cases remains the same, the court should dispose of the same number of cases in 1973. Let us suppose that there is no change in the percentage of cases disposed of at pre-trial stages rather than at trial.

The total salary cost per case in 1973, then, should be $1,884,748 ÷ 14,646 = $126. Non-salary "direct" costs were estimated in the PHILJIM data as $6.49 in police overtime (omitted here because of the paucity of police witnesses in private com-

17. From PHILJIM: see Footnote 8, supra.
18. This assumes no dismissals or final dispositions at preliminary arraignment other than transfers. Thus, these calculations are conservative, and overestimate the number of cases disposed of by trial courts.
19. This amounts to some 1,380 dispositions per courtroom per year. Assuming 240 court sessions per year, the number of dispositions per session would be 5.75. This appears to be an extraordinarily low number of dispositions. But even if the court were to eliminate entirely its backlog of 4,869 criminal trial cases pending at the beginning of 1973 and dispose of 24,905 new cases (the same number of new cases as was received in 1972), the daily disposition rate of the 10.6 courts would only be 13.2 (240-session year) in 1973.

plaint cases) and $15.37 in witness fees. The total "direct" cost of a case going to Municipal Court rather than arbitration, then, is $144 per case--$52 more than the "direct" cost and total cost of a 4-A Project case.

No proper cost/benefit comparison is possible because no data are available to assure that cases processed by each method are in relevant respects comparable. Relevant criteria would include:

-- rates of repeated filing of criminal charges stemming from the same problem, with an estimate of the cost of the subsequent proceedings;

-- rates of vindictive criminal action resulting in serious harm to victims or in police arrest, with an estimate of the cost of formal prosecution and costs to the victim.

However, it is possible to compare the services rendered by the Project and the court. Such a comparison favors the Project.

-- The Project uses letters, phone calls and a liberal policy of scheduling hearings at the participants' earliest convenience to insure appearance. The court's tools are subpoena and bench warrant to insure attendance on a date selected by the court. The court offers no mechanism for re-scheduling cases by phone when a subsequent conflict arises.

-- Project hearings last about an hour, as opposed to 0.35 hour per case for all trial court proceedings, including appearances for continuance of the case. It appears from this evaluator's observations and interviews that the Project hearings probe more deeply into the problems giving rise to the criminal proceedings.

-- The project offers several means, short of formal re-opening of the criminal case, for enforcement of its hearing decisions. This service is not available in the courts. The cost of these services is included in the project cost of $126 per case.

Thus, it appears that the Project can offer more services per dollar than the Municipal Court in the resolution of private criminal complaints.

While these cost figures provide a means of comparison between the Project and court, it is impossible to state that the Project has saved the court system ($144 - $126 =) $18 per case. With small variations in caseload, the total processing costs remain constant, and the per-case costs fluctuate. With larger variations, staff reallocations are possible, or conversely, new court facilities as well as staff are required. It is impossible to say with any certainty where the "cut-off" point is. We can speculate, however, that this project has decreased the need for further courtrooms. As shown above, trial court volume is 14,646 or some 1,380 cases per trial court. Thus, Project volume is not insignificant--it amounts to well over a half the volume of a trial court. Thus, the Project's existence may have allowed court officials to avoid devoting one more judge to Municipal Court trials. The annual personnel cost of a courtroom, from our earlier calculations, is some ($1,884,748 ÷ 10.6 =) $177,806.

3. Swiftness of Disposition. As mentioned earlier, out of our 50-case sample of Project cases, the 44 closed cases took

an average of 43.0 days from receipt to disposition. Two cases have just been heard, and arbitration awards should be issued by the end of November. A review of the files of open cases gives this evaluator confidence that the remaining open cases will be disposed of by mid-December, by hearing, remand or termination. On these assumptions, average time-to-disposition for these 50 cases would be 51.8 days.

Elapsed time per case can also be estimated from the number of pending cases and the case-disposition rate. On November 9th the Project had 119 cases pending. It disposed of 212 in the 15 week period ending November 9th, or an average of 14.13 a week. Thus, it would take 8.4 weeks, or 58.8 days, to dispose of the present caseload at the present disposition rate. Assuming no significant growth of backlog, and assuming a "FIFO" disposition procedure,[20] a case received on November 9th would be reached in 58.8 days.[21] (Assuming a backlog growth

20. "First In, First Out". That is, cases are disposed of in the order in which they are received. This assumption is permissible in computing an average, although it is far from true in disposition of actual cases.
21. As a check on accuracy of our 50-case sample: On August 3rd there were 94 cases pending and the average disposition rate for the next 7 weeks was 14.86. Thus, we would predict that cases filed then should have taken 7.9 weeks for disposition--or 55.3 days. This is not far different from our sample results of 51.8 days.

of 1.27 cases per week,[22] or 10.7 cases in 8.4 weeks, the time-to-disposition would be [119 - 10.7 = 108.3] ÷ 14.13 = 7.7 weeks or 53.9 days.)

Thus, on the basis of the sample data and predictive measures, it appears fair to estimate case "life" at 51 to 60 days.

It appeared from observations and conversations that cases sent to trial by the trial commissioner rather than to arbitration are scheduled for appearance at the first available trial court date, seven or eight weeks later. Thus, if all cases were disposed of at their first appearance in trial court, the average time to disposition would be some 49 to 56 days later. But the court disposes of some 60% of its daily calendar. Assuming that a judge is more willing to dismiss a private criminal complaint for complainant non-appearance than he is an arrest case, we may speculate that only 20% of these cases are continued, and that all of these are disposed of at their second appearance. Thus, time-to-disposition would be (52.5 + 1/5 x 52.5 =) 63 days.

Because of the somewhat speculative nature of some of our assumptions, it cannot be said that the difference in case processing time just calculated is statistically significant. But at least it appears that Project cases do not

22. The backlog of cases actually grew at the rate of 1.27 cases per week, or 10.7 cases in 8.4 weeks, during this period.

take longer to reach disposition than court cases, and the data suggests that the period is shorter.

V Similar Projects in Other Jurisdictions

As a result of the success of the Philadelphia prototype, the NCDS has begun 4-A projects in East Cleveland and Akron, Ohio, and Rochester, New York. Thus, it has been established that the 4-A Project is a replicable effort. Interest in the Project has been expressed in three of the country's largest cities. However, in one medium-sized town a 4-A project began but was unable to maintain funding after a short period of operation.

The East Cleveland project is the oldest of the three other operating projects, having arbitrated 127 cases in a year. Originally, as in Philadelphia, cases were referred from the court. But it was felt that this still required too large an expenditure of court resources, and referral is now from the complaint screening section of the Law Director's (prosecutor's) Office. If a respondent fails to appear or comply with an award, the case is referred back to the prosecutor for possible prosecution. One problem with this referral route, contrasted with Philadelphia, is that both parties are not present to sign the arbitration submission form. The project staff must spend considerable effort getting putative defendants to come in and consider signing the submission.

The project had to send 10 of its 127 cases back to the prosecutor, mainly for failure of the respondent to appear. This rate, 7.9%, is comparable to Philadelphia's. The process in East Cleveland is much swifter--hearing within 7 days of the original complaint--probably because of the smaller caseload volume.

The project has a significant number of "bad check" cases, arbitrated with the consent of store merchants.

The Akron project has been in operation for some three months. It is very similar to the East Cleveland project. This project has had an occasional case where the police have referred a complainant directly to arbitration. This procedure may be explored further once the project has been in operation a little longer. This is obviously the route requiring the lowest expenditure of criminal justice resources. However, the absence of prosecutorial or court screening means that there is more chance that the precipitating criminal charge is invalid. Respondents in such cases agreeing to arbitration solely on threat of criminal prosecution, yet unaware that the charge would not survive screening, would in a sense be tricked or coerced.

The Rochester, New York, 4-A Project began September 1st, and in its first three months has received 103 cases. It, too, receives its cases from the civilian complaint room. In Rochester this office is manned by court clerks rather

than prosecutor personnel.[23] When a complaint is filed, a warrant is issued and the defendant brought to court for arraignment. If arbitration appears appropriate, the complaint clerk gets the approval of an Assistant District Attorney, then directs the complainant to the 4-A Project. A Project staffer explains arbitration and secures the complainant's signature on an arbitration submission form if the complainant is willing. This form is sent to the respondent for signature with a letter from the District Attorney asking for its return within 10 days. In 31 of the first 103 cases the defendant did not return the form or did not agree to arbitration. The complainants were referred to court, but no follow-up has been possible to determine whether charges were filed.

In a number of project cases a dispute between the parties existed but the complaint clerk determined that there was no basis for a criminal complaint. Another 10 to 12 cases were referred to the project by judges, following preliminary hearing or arraignment. In these cases, unlike cases in the other 4-A projects, a police arrest had been made. The Rochester project will consider expanding use of this referral route once the project has been operating for a while and project

23. Prosecutorial screening is generally to be preferred. See National Center for Prosecution Management, The Prosecutor Screening Function: Case Evaluation and Control. Chicago, NDAA, 1973 (82 pp.); W. J. Merrill, Marie M. Milks and Mark Sendrow, Prescriptive Package: Case Screening and Selected Case Processing in Prosecutors' Offices, Washington, D.C., Government Printing Office, 1973 (47 pp.) (National Institute of Law Enforcement and Criminal Justice.)

effectiveness has been established.

In its first three months of operations there have been only two complaints of an award being violated. In both cases the matter was settled by a phone call by project staff.

Other organizations have taken an approach similar to that of the NCDS for resolution of criminal matters. In two communities, "community forums" conduct hearings in cases referred by police, social service agencies, parents and neighbors. Both use project staff to investigate a case and present it to a panel of hearing officers recruited from the community and trained by the project. Both offer counseling and referral for social services, and hearing decisions incorporate these resources. When youth do not agree to submit to the hearing or fail to comply with the hearing decision, the cases are sent to juvenile court.

The East Palo Alto Community Youth Responsibility Program[24/] was the brain-child of concerned citizens in an unincorporated, geographically isolated, predominantly black community in San Mateo, California. It has been operating for over two years. The project Board of Directors consists of 7 adults and 5 youths under 20. The staff, during LEAA funding, consisted of a Program Director, a Youth Probation Officer Guidance Counselor assisted by two "New Careerist" probation aides, a

24. Urban and Rural Systems Associates, Evaluation of the Community Youth Responsibilities Program, East Palo Alto, California, Second Program Year. San Francisco, URSA, 1973.

Panel Reporter, two clerk-typists and some Work-Study students. In two years the project handled 224 cases. Cases are referred from law enforcement officers (106), probation officers (63), schools (31), parents (10) and social service agencies (14). The project does not accept drug addicts or cases requiring extensive services such as residential treatment or foster care. But their clients are charged with crimes. In a 25% sample, two-thirds of the clients were charged with theft, and only 4% were accused of "incorrigible" acts which would not be a crime if done by an adult. The trend is to take serious cases; 30% of the clients were accused of felonies and 32% of serious misdemeanors.

The project offers tutoring by a Teacher Corps teacher, vocational counseling, job-locating, and counseling.

In the second year, 74% of the project's clients entered the service program following a project hearing. Following the hearing, a youth can be directed to participate in a community service agency or organization program. Some 25% of the youths were directed to do community service work; by assisting a community agency, doing community maintenance, or the like.

The project has been cut back in scope at the expiration of its second year of LEAA funding, and is currently surviving on foundation and private funding.

The Neighborhood Youth Diversion Program[25] in East Bronx, New York, also includes a community forum, which began hearing cases in April, 1971. In its first two years of LEAA funding, fifty-six Forum judges have been trained. Forty, including a significant number of Spanish-speaking judges and former program clients, were active at the time of the second-year evaluation.

Most of the cases involve Persons-in-Need-of-Supervision (PINS) rather than juvenile delinquency allegations,[26] many referred by parents or relatives threatening to take the child to court. While beginning with a pure mediation mode, the Forum now also seeks to "buy time" with the parents anxious to file "PINS" petitions, while the program works with the youth. Forum decisions frequently require the youth to participate in the project's programs and those of other agencies. Sixty-nine clients have had hearings before the Forum during the first 18 months, some appearing three or four times while the program is providing social services to the youth.

These two community forum projects have a much more clear community focus then the Philadelphia 4-A Project, in terms of physical location and background of the hearing officers. Their social service counseling and referral components enable these projects to offer more assistance to disputants.

25. Second Year Evaluation: Neighborhood Youth Diversion Program, New York, Mayor's Criminal Justice Coordinating Council, 1973.
26. The former include truancy, ungovernability, and the like. The latter are acts which would be crimes if done by an adult.

Thus, these projects can adjudicate a broader range of serious and difficult problems than those resolved by the 4-A Project.

On the other hand, neither of the community forums can be considered to be beyond the "experimental" or "pilot" phase. Both handle relatively small numbers of cases, at a rather high cost-per-case.

Prosecutors' offices have experimented with mediation hearings for the resolution of criminal cases. The Civilian Complaint Center of the United States Attorney's Office for the District of Columbia,[27] for example, entertains 17,000 private criminal complaints and holds 4,500 hearings a year. Some 90% of the complainants have been referred there by the police. The allegations usually involve assault, threats, petty larceny and destruction of property. Obviously, inappropriate cases are referred to Small Claims Court, the Legal Aid Society, and the like.

Cases involving minor intrafamily assaults are sent to a social worker from the Superior Court Social Services Division or to a Corporation Counsel attorney for Family Court prosecution. Both representatives are stationed in the Civilian Complaint Center.

27. John Hollister Stein, Bert H. Hoff and Richardson White, Jr., Paralegal Workers in Criminal Justice Agencies: An Exploratory Study, Washington, D.C., Blackstone Associates, Inc., 1973. Appendix IV, pp. 484-488.
    The Los Angeles County District Attorney is reported to have 7 ADA's conduct some 18,000 informal hearings per year in family and neighborhood cases. Raymond Pornas, "Prosecutorial and Judicial Handling of Family Violence", 9 Crim. L. Bull. 733 (1973), Footnote 1.

When a hearing is to be held, the putative defendant is sent a letter advising him to come in or face a possible criminal complaint. A hearing is scheduled for ten days later, in part to let tempers cool. The hearings are conducted by the staff--an attorney, a police community liaison officer, or a paralegal. An attempt at mediation is made after both parties are allowed to vent their feelings. If the facts warrant, the putative defendant is advised to conform his conduct or face later prosecution. Only in rare cases are the facts serious enough to result in formal prosecution. If the facts, on the other hand, do not support the complainant, this is tactfully explained and the matter dropped.

This office also uses a similar hearing procedure in bad check cases, provided no pattern of fraud is apparent. The usual resolution is restitution, on threat of prosecution. Merchants find this process speedier and more satisfactory than prosecution.

The Department of Law (prosecutor's office) of Columbus, Ohio, uses law students to mediate cases in its Night Prosecutor Program.[28/] The program was originally intended to handle private criminal complaints, but by Municipal Court directive the program now hears minor misdemeanor arrest cases as well.

28. Application for LEAA block grant refunding, Night Prosecutor Program (Undated, June, 1973), Control No. 3702-Columbus-Franklin County Criminal Justice Coordinating Committee.

These include assault, threats, improper language, trespass, conversion by trust, malicious property destruction, bad checks, building code violations and failure to pay income tax.

The Program's operation is similar to the U.S.A.O. Civilian Complaint Center just described. Most hearings are held at night for the convenience of working people. To prevent frivolous cases, the complainant pays a $10 deposit, returnable when he shows up for the hearing.

In the six months from October, 1972 to March, 1973, 1,741 hearings were scheduled and 1,291 held. 1,255 cases were settled. More than 80% of the cases heard were resolved, and only 36 private complaints were filed. In addition, collection was made on 500 bad checks. In 48% of the minor arrest cases the matter was settled and the plaintiff withdrew the complaint.

VI The Future of the Concept

The experience of the Philadelphia 4-A Project and other arbitration/mediation projects just described clearly demonstrates that this process is viable, and offers an inexpensive and superior resolution to a wide variety of criminal matters. These include:

- Private criminal complaints
- Interfamily disputes and assaults
- Cases involving bad checks
- Minor misdemeanor arrest cases (including police summons cases)
- Juvenile delinquency cases

-- "PINS" or "CINS" cases where a juvenile stands accused of status crimes such as ungovernability, truancy, or curfew violation.

RECOMMENDATIONS:

8. This project should consider expanding its jurisdiction to include minor misdemeanor cases on referral from the police, preliminary arraignment judge or trial judge; bad check cases on referral from the prosecutor or court; and intrafamily disputes. These could include custody and support cases, although there is no precedent for this.

9. If this project develops a closer community focus by using youth and non-professionals from the ethnic communities (necessary for credibility with participants), this project should also consider hearing juvenile delinquency and status offense ("CINS") cases.

However, several legal issues should be examined. Since the criminal process has already begun with the filing of the complaint, these issues should be examined from the perspective of criminal as well as civil law.

It is clear that the legal standard against which these inquiries should be tested is the civil, not the criminal, justice process. The test of whether the safeguards of criminal law and criminal procedure attach to a proceeding is whether a person faces a substantial deprivation of his freedom. The risk a putative defendant faces, should he not consent to arbitration or violate an arbitration award, is the risk of formal criminal prosecution or contempt proceedings. The Project can send nobody to jail, and awards do not involve probation in the custodial sense. Thus, as long as Project participation is voluntary, arbitrators would not appear bound to the "reasonable

doubt" standard in fact-finding and exclusionary rules of criminal evidence would not apply to the hearings.

But it is clear that a defendant consenting to arbitration foregoes rights. He loses the right to challenge the sufficiency of the criminal allegation, the right to a speedy trial, the right to a jury trial if the charge permits a jail sentence, the right to counsel, the presumption of innocence and the right to exclude unconstitutionally-obtained information. These rights are easily restored, but only if an award violation results in re-opening of the criminal case. In order for a defendant's consent to arbitration to be truly voluntary, he should understand his option to challenge the underlying criminal charge in court. The harm from uninformed consent is de minimus in most cases, but a party submitting to a process resulting in an award arguably enforceable in court should enter voluntarily.

Arbitrators obtain good compliance with awards in part because they tell the parties to the hearing that the award is court-enforceable. This course is rarely, if ever, taken. Most award violations are committed by respondents, and the case is sent back to the Municipal Court for prosecution of the original criminal charge if staff efforts to exact compliance fail. But the legality of court enforcement of the award itself should be examined.

The enabling legislation for arbitration is the Pennsylvania Arbitration Act of 1836 (1836, June 16, P.L. 715, §§ 1-7).

Section 3 permits the parties to any suit to agree to abritration instead, and 1 permits "all persons" seeking arbitration of "any controversy, suit or quarrel" [italics added] to agree in writing that their submission "shall be made a rule of ...court." Arbitration awards in suits are enforceable as a special verdict of court (§3) or jury verdict (§7) once the award is filed with the court (§7). But it is clear that the criminal action itself is not being submitted to arbitration. The Commonwealth of Pennsylvania, not the complainant, is party to the criminal charge. Further, arbitration of the criminal case, with an arbitration award substituting for a jury verdict, would stand on constitutionally infirm ground. And in the absence of legislation explicitly granting an arbitrator or organization jurisdiction, there would appear no authority for an award to constitute a criminal verdict.

Thus, parties to 4-A Project arbitration stand as persons seeking arbitration of a controversy or quarrel not yet in litigation. Awards are enforceable as civil judgments if

filed in court (6).[29]

Thus, this Project is better viewed as a form of diversion from the criminal justice system, rather than an alternative criminal forum. The legality and propriety of 4-A Project referral is the same as that of other diversion projects--apparently well within the discretion of the court and prosecutor even in the absence of enabling legislation and to be lauded as a step forward in criminal justice reform.[30] Compared with other diversionary programs, this Project has demonstrated the viability of a process diverting a large number of cases at a relatively low cost.

29. Presumably, the award is enforceable as a judgment only if the court has jurisdiction to enter such a judgment. We offer no opinion on whether specific performance judgments ("stay away from each other" or "line your doorjamb with felt padding") are within this category.

    Note that problems arise should the project add a social service referral component. Treatment as a part of a binding, non-consentual arbitration award, enforceable by contempt proceedings as if it were a civil judgment, has the air of "compulsory treatment" and residential treatment could constitute a significant deprivation of freedom. (See Jones v. Cunningham, 371 U.S. 236 [1963].)

    An award mandating treatment would presumably be unenforceable by court. The court has no jurisdiction to enter such orders on its own (except by Mental Health and Mental Retardation Act commitment proceedings). It is not clear whether an aggrieved party could seek specific performance of the award as a contract even if the party now avoiding treatment had signed a consent award.

    However, if the Project limits treatment or social service referral to cases where the party specifically consents to this, and limits enforcement remedies to remand to Municipal Court for prosecution of the underlying criminal charge, the referral would be no more coercive or violative of due process than the ARD, TASC or other diversion programs.

30. Literature praising diversion as a rehabilitation tool and a measure to reduce court delay is in no short supply. See, for example, National Advisory Commission on Criminal Justice Standards and Goals,"A National Strategy to Reduce Crime", Washington, D.C., Government Printing Office (1973) _____, Courts (1973); _____, Corrections (1973); and sources cited in Footnote 4, supra.

VII A "Snapshot" Analysis of Municipal Court Trial Court Dispositions of Private Criminal Complaints

Since the writing of the prior sections of this report, it has been possible to obtain further data on Municipal Court disposition of private criminal cases not going to arbitration. This data confirms our earlier impression that arbitration is having a significant impact on the Municipal Court private complaint caseload, and supports our estimate that cases sent to Municipal Court trial require some 60 days from trial commissioner referral to disposition.

Statistics from the office of the Municipal Court Trial Commissioner reveal the following disposition of private criminal complaints:

	Filed	Conditional Withdrawal	Arbitration	Mun. Ct. Trial	Other[31]
1972	8,636	1,073 (12.4%)	860 (10.0%)	1,314 (15.2%)	5,389 (62.4%
1973-to Dec. 10	8,222	1,270 (15.4%)	639 (7.8%)	1,521 (18.5%)	4,792 (58.3%

Thus, the 4-A Project assumes responsibility for disposition of a large portion of private complaints not disposed of at the trial commissioner hearing:

31. This includes open and closed cases. Closed cases include the following dispositions: withdrawn, failure of either party to appear, lack of prosecution, continued until further notice. Further breakdown among these dispositions is not available.

	Municipal Court #	Municipal Court %	4-A Project #	4-A Project %	Total #	Total %
1972	1,314	60.4	860	39.6	2,174	100
1973--to Dec. 10	1,521	70.4	639	29.6	2,160	100

But the significant drop in the percentage of private complaints being referred to the 4-A Project gives cause for concern. As described earlier, the Project has taken steps to obtain more cases by this referral route despite the fact that this decision is not nominally within the control of the Project. This data suggests further that barring any significant increase in trial commissioner referrals, Project resources would be available to arbitrate the types of matters listed in Recommendations 8 and 9, at Page 56, supra.

In order to obtain a better comparison between arbitration and Municipal Court trial, a "snapshot" sample of cases sent to Municipal Court trial by the trial commissioner during the first two weeks of October was selected. Follow up was conducted by searching the court records. The results are shown in Table IV.

Table IV

Characteristics of a "Snapshot Sample" of 69 Private Criminal Complaint Cases Sent to Municipal Court Trial between Oct. 1st and Oct. 12, 1973

		#	%
I	Disposition		
	Discharge	24	34.8
	Nolle Prosequi	6	8.7
	Waiver-Demurrer Sustained	1	1.4
	Waiver of Verdict--Defendant not Guilty	11	15.9
	Accelerated Rehabilitative Disposition (Ard Diversion)	2	2.9
		44	63.7

(Table IV, con't.)

		#	%
	Guilty Plea	1	1.4
	Guilty--Waiver	2	2.9
	Found in Contempt, Sentence Deferred 30 Days (to Pay Monetary Award) (Open Case)	1	1.4
		4	5.7
	Open	21	30.4
II	Sentences Imposed (Imprisonment)		
	2 to 3 Yrs. Minimum, 5 Yrs. Maximum	1	
	2 to 4 Yrs. Minimum, 6 Yrs. Maximum	1	
	1 to 2 Yrs. Minimum, 8 Yrs. Maximum	1	
III	Number of Court Appearances--Open and Closed Cases[32/]		
	One	45	65.2
	Two	17	24.6
	Three	7	10.1
		69	100.0

IV Length of Time to Disposition[32/]

	Closed	Open	Cum.
0-29 Days	2		2
30-39 Days	2		2
40-49 Days	32		32
50-59 Days	10		10
60-69 Days	1	2	3
70-79 Days		3	3
80-89 Days		9	9
90-99 Days		1	1
100-109 Days		4	4
110-119 Days		1	1
120-129 Days		2	2
	47	22	69
Average	45.7 Days	91.2 Days	60.2 Days

32. If we assume that each case will be disposed of at its next court appearance, these tables represent the number of appearances and length of time required for case disposition. Thus, to the extent that any open case requires more than one further appearance, these figures are underestimates.

These cases were not necessarily comparable to the "snapshot" sample of 50 Project cases reported on at Table III, at pp. 20-21, supra. Arguably, the Municipal Court cases were more serious (n.b.: three defendants in private criminal complaint cases received substantial prison sentences) or were not amenable to arbitration because of significant demographic factors not part of the court record.

But the cases were generally not serious. Forty-three of the 47 closed cases were dismissed outright, one defendant was diverted to the ARD program, and only four defendants were convicted. Yet they constituted a significant drain on court resources. Only 45 of the 69 cases, or 65.2%, were disposed of at their first trial court appearance, and the 69 cases have required a total of at least 100 court appearances--1.45 appearances per case.[33/]

This data does tend to confirm our earlier calculations that a private complaint would be disposed of some 60 days after referral from the trial commissioner. See Part IV of Table IV, supra.

33. See Footnote 32, supra.

EVALUATION MANAGEMENT UNIT
PROJECT EVALUATION SUMMARY

EVALUATION INITIATED BY: EVALUATION AND MONITORING UNIT

PROJECT: ARBITRATION AS AN ALTERNATIVE TO CRIMINAL COMPLAINT

SUBGRANTEE: PHILADELPHIA COURT OF COMMON PLEAS

EVALUATION CONDUCTED BY:

NAME: BLACKSTONE ASSOCIATES

ADDRESS: 2300 CALVERT STREET

WASHINGTON, D.C. 20080

DURATION OF PROJECT: AUGUST 1, 1973

DURATION OF EVALUATION: AUGUST 1, 1973

DATE OF FINAL REPORT: MARCH 1, 1974

CONTINUATION
NO.: PH-244-74A

AMOUNT: $67,840 (TOTAL FUNDS)

PAST PROJECTS:

NO.: PH-183-73A (9 MONTHS)

AMOUNT: $92,755 (FEDERAL FUNDS)

NO.: PH-121-72A (6 MONTHS)

AMOUNT: $44,860 (FEDERAL FUNDS)

PH-077-72A (6 MONTHS)

$61,605 (FEDERAL FUNDS)

TO: JUNE 30, 1974

TO: JUNE 30, 1974

REGIONAL STAFF COMMENTS AND RECOMMENDATIONS:

REGIONAL PLANNING COUNCIL ACTION:

After the evaluator presented a favorable synopsis of his evaluation report, the Council voted to approve the project for refunding. The evaluator also supported this year's application which will have the project run by the court rather than the National Center for Dispute Settlement of the American Arbitration Association as institutionalizing and legitimating the project as part of the court system.

GOVERNOR'S JUSTICE COMMISSION EXECUTIVE STAFF COMMENTS & RECOMMENDATIONS:

GOVERNOR'S JUSTICE COMMISSION ACTION:

EVALUATION SUMMARY

The National Center for Dispute Settlement's Philadelphia 4-A Project seeks to apply arbitration and mediation techniques long successful in resolving labor difficulties, and more lately disputes between groups or factions in the community, to private criminal complaints. A significant portion of these cases arise from long-standing disputes between neighbors or acquaintances.

The Municipal Court trial commissioner first hearing private criminal complaints determines whether to send them to trial or, with the consent of the parties, arbitration in the 4-A Project. Informal hearings are held by trained arbitrators, usually attorneys, who explore the underlying dispute in depth and probe for areas of agreement between the parties. A consent award or arbitration award is made, frequently directing the parties to avoid each other or awarding money damages. If either party fails to comply, and efforts of the staff and arbitrator to exact compliance fail, the case is remanded to court for trial or contempt proceedings.

The goal of the 4-A Project is to resolve private criminal complaints by a means more economic and swift than court processing, yet which offers a more satisfactory resolution to these disputes.

Evaluation Activities

Extensive information sources were used in making this evaluation study. The evaluator spoke to all project personnel at length, observed some arbitration hearings and spoke afterwards to the arbitrators. In addition, a thorough examination of the project's office procedures, record system and management information system was made. Observations were made at the Municipal Court trial commissioner hearings (equivalent to arraignments). The President Judge of the Municipal Court and the Lieutenant in charge of the D.A. detective squad screening civilian complaints were both interviewed. The caseload volume figures given are from project records. Finally, client-satisfaction data came from attitude questionnaires and cost data was obtained from various sources.

Findings

Data is not available to establish whether arbitration leads to more lasting resolution of private complaints, but several factors indicate that this is the case. Hearings last an hour or more--about three times as long as court proceedings. They probe the underlying problem more deeply than rules of criminal procedure permit. One party is not required to accept full blame, to the exoneration of the other. And unlike the court, the Project is able to use a variety of measures short of re-opening the criminal case to resolve recurrent conflicts between the parties.

The combined capital, administrative and direct costs of processing a 4-A case is $126; $18 less than just the direct costs of a Municipal Court Trial. Because more services are offered (phone reminders of appearances, more comprehensive hearings, informal enforcement of decisions, and the like), the Project must be viwed as more cost-effective. While both Project and court require some 60 days for disposition of a case, the data suggests that Project processing is slightly speedier.

Thus, the Project appears to be achieving its goals.

The Project is well-run. In the first fifteen weeks of this funding period, it had received fewer cases than projected (221 vs 250), but the Project has taken steps which successfully solved this problem and it should achieve its goals of 800 cases a year. The percentage of cases withdrawn (12.3%), remanded before hearing (5.1%) or returned to court for award violation (5.6%) continues to decline. Arbitrators may not reflect adequately the city's poor ethnic communities, but they are well-trained and conduct fair and comprehensive hearings. Adequate supervision is provided through good on-the-job training and regular review of arbitration awards. The record and management-information systems are superior, providing regular feedback to Project managers. Management is also excellent, as shown by the Project's ability to correct emergent problems before they become serious.

Conclusion and Recommendations

The Project is operating smoothly and has demonstrated a cheaper, more satisfactory resolution of many private criminal complaint cases. It should be continued through LEAA or city funds. Our recommendations include:

-- Efforts to increase appropriate referrals by informed, consenting participants; by placing descriptive brochures in the civilian complaint office, describing the project to parties in a group on the morning of the trial commissioner hearing, articulating guidelines for types of cases to be referred, and making the latter available to the trial commissioner. Steps are being taken in this direction.

-- Addition of capability to refer parties to agencies for needed social services.

-- A conscientious effort to recruit and train as arbitrators non-professional persons recruited from the ethnic and poor communities of the city.

-- Possible expansion of jurisdiction to include bad check cases, minor arrest or summons misdemeanors, intrafamily disputes and juvenile delinquency matters.

END