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A STATE OF THE ART SURVEY OF DISPUTE
RESOLUTION PROGRAMS INVOLVING JUVENILES

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CHAPTER I

INTRODUCTION

The Groman case concerned a teenager who was caught in a shoplifting attempt by a small neighborhood grocery owner, Ralph Groman.

Five weeks earlier, Mr. Groman had stopped Bobby and another youth in a similar attempt. At that time, the store owner had called the police and Bobby had been sent to juvenile hall. This time, Groman phoned the Community Board Program because he felt traditional actions had not solved the problem and was afraid it would happen again.

The day following the incident, the Community Board Program staff contacted Bobby and his mother, who were both anxious to avoid further police involvement. They agreed to a panel hearing, set for the following Tuesday at 7:30 p.m.

At the meeting, it was revealed that Groman's grocery was the only market near the junior high school Bobby attended. Because of littering by students who patronized the market during their lunch hour--mainly to buy five and ten cent items--Groman had set his market off limits to the youngsters from noon to 1:00 p.m. Since he was in poor health, Groman felt it was worth the small sacrifice in sales not to have to clean up after the students each afternoon. Bobby admitted he and his friend had targeted Gorman's for shoplifting because they were angry at being denied access to his market during their lunch hour.

A resolution was reached in which Mr. Groman agreed to re-open his store to students at lunchtime on a two-week trial basis. During that time, Bobby agreed to spend the last ten minutes of his lunch hour, sweeping trash in front of the store. His work was counted as payment for the shoplifting attempt.

At the end of two weeks, the parties returned to a follow-up meeting and told the panel that the resolution was working out, and that they both wanted to extend it. In fact, it appeared the two were slowly becoming friends.

--A Case History From The San Francisco Community Board Program

* * * * *

Kenneth Morse is an attorney specializing in material and family law, corporation and business law, with trial practice, who has held 18 arbitration hearings.

"I think if there's any one reason why I became involved," reflects Morse, "it's to show that the legal system is not entirely callous. Unfortunately, the system does have a problem in terms of image and efficiency."

In one evening, Morse recently arbitrated two hearings. Both cases involved 15-year-old white, middle-class children who were arrested for retail theft. Both the offenders and their families admitted the child's culpability for the crimes. But any other similarity between the cases stopped there.

In the first case, a young boy, clean-cut and slightly nervous, was accompanied by his mother and father, who seemed concerned and admitted to being "embarrassed" over the incident. The boy, a good student and active on his school's track team, was highly motivated; he cut lawns to earn spending money in the summer months and volunteered for work in a local hospital in preparation for what he hoped to be a medical career. His offense: shoplifting of a cheap pair of sandals from a local discount store. The incident seemed to be a lapse in an otherwise well-adjusted life.

Morse led the boy through a re-creation of the crime. The boy had already been "grounded" by his parents for the previous two months for the offense. Morse was understanding, but placed the burden of responsibility for the crime on the child and his family. They seemed contrite.

In this situation, Morse later said, the stigma of juvenile court might have adversely affected the child's development. The boy was ordered to attend three adult sentencings in circuit court, to advise Morse of his reaction to them and to continue to obey all parental restrictions. A legal disposition, stipulating the assignment--and including the sanction of juvenile court prosecution if it wasn't completed--was given to both the child and his parents. "These people (adult offenders) took a chance and lost big," Morse told the child. "You took a chance and lost little. But you can see what it's like to take any risk when your future's involved."

In the second case which Morse arbitrated, a young girl was accused of stealing two blouses from a large department store. The child was sullen, almost phlegmatic. The mother arrived separately, 15 minutes late, with her live-in boyfriend. She was inebriated, hostile and distraught. The child admitted to having shoplifted before, without getting caught. The girl was a poor student, uninvolved in school activities and unpopular with peers.

"This is a different generation," the child said to Morse in explanation. "We just need to have more things." The mother yelled at her. The child withdrew. This family apparently had reached an

emotional cul-de-sac a long time ago.

"Was your mistake in stealing the shirts, or in getting caught?" asked Morse.

"Both," answered the child. The arresting officer joined in the discussion. Morse questions and answers and finally the girl blurted out: "I can do without the ripping off. But I'm not going to ditch my friends"--whom the mother had described as bad influences.

Both mother and child seemed to be interacting for the first time in quite a while, and Morse used that as leverage. It was agreed that the mother and child would both undergo counseling at a local community agency, Youth Programs, Inc. Rather than setting an arbitrary number of counseling sessions, Morse ordered six months of outpatient counseling, the actual number of sessions to be left up to the discretion of the counselor.

Morse later admitted that counseling wasn't the ultimate solution, but at least the hearing allowed both child and parent to receive help. "That child got far more attention than she would have received in court. We're trying, at least."

--A Case History From The Seminole County, Florida Juvenile Community Arbitration Program

These case histories describe processes which kept the juveniles involved from proceedings in the juvenile court. They are examples of the developing practice of using persons other than court officials to resolve minor disputes outside the courtroom. This report will attempt to explore the use of this practice with juveniles in an effort to avoid traditional court processing.

The past decade has seen the development of a great many minor dispute resolution programs for adults. As a result of their successes, some attempt has been made to develop separate programs for juveniles that use the same techniques. This report will look at two forms of dispute resolution with respect to juveniles: (1) programs which are designed exclusively for juveniles; and (2) programs which are designed primarily to handle a large variety of adult civil and criminal complaints, but which hear some juvenile cases as well. The case histories which begin this report illustrate the two approaches: the Community Board Program of San Francisco, which handles adult and juvenile matters, and the Juvenile Arbitration Program of Seminole County, Florida, which is a separate program for youths only.

Among the stated goals of dispute resolution programs are the following: involving the community in the reduction of community tensions; relieving the courts of the burden of minor cases and allowing more attention to serious cases; improving the process for handling disputes by exploring underlying problems without strict court

rules and time limitations; and increasing access to justice, brought about by prompt hearings, elimination of legal costs, and by the availability of convenient locations and evening and weekend hours.

Programs involving youths in alternatives to court processing which are designed to meet some or all of these goals have been included in this report; therefore, conference committees and peer courts are included along with more typical dispute resolution programs. These programs are distinguished from "traditional" dispute resolution programs because they do not allow for face-to-face contact between the offender and the victim, although the victim may have been contacted prior to the hearing. However, as we shall note, not all the cases heard by traditional mediation and arbitration programs provide that opportunity nor can they if, for example, the case heard (e.g., juvenile drug cases) does not have a victim.

The programs surveyed fall into five categories (See Table I):

- * Neighborhood justice centers which handle both adult and juveniles cases
- * Arbitration programs exclusively for juveniles
- * Community panels using mediation as a technique in juvenile cases
- * Conference committees and community accountability boards
- * Peer Courts

To identify these programs, we used a variety of sources. We reviewed the literature, including directories of individual programs and identified programs which appeared to include juveniles.* We requested materials from approximately forty programs, following up with phone calls to program directors. Some programs which had been identified as "youth programs" were found to include only small percentages of youths. Others were no longer in existence.** We believe that the list of programs exclusively serving juveniles is comprehensive. We made no attempt to contact all of the programs that involve juveniles only incidentally. We did, however, review the research that has been done on the better known mixed programs and telephoned a number of them. We ascertained that most minor dispute centers do not handle juveniles matters.

* We reviewed, among other material, the Dispute Resolution Program Directory compiled by the Special Committee on Resolution of Minor Disputes of the ABA, all issues of The Mooter, a preliminary directory of dispute processing projects (unpublished) prepared by Daniel McGillis at Harvard's Center for Criminal Justice, material and listings from the National Criminal Justice Reference Service and the National Council on Crime and Delinquency, and the list of alternate dispute mechanisms in the appendix of the ABA's Report on the National Conference on Minor Dispute Resolutions.

** For example, the Community Youth Responsibility Program in Palo Alto, California, one of the first to use community panels, no longer operates. The mediation project of the Lynn Youth Resource Bureau, which sounds as if it is a youth program, only involves juveniles in 20-30 percent of cases mediated.

Table I

Prototypes of Juvenile Programs

Neighborhood Justice Centers with a substantial number of juvenile cases* (examples only)

- * San Francisco: Community Board Program (40% juvenile cases)
- * San Jose: Neighborhood Mediation and Conciliation Services Program (75% juvenile cases)
- * Concordville: Community Dispute Settlement Program (40% juvenile cases)
- * Florida: Citizen Dispute Settlement Programs (six county programs handle juvenile matters)
- * Coram: Community Mediation Center (40%)

Community Panels Using Mediating Techniques (100% juveniles)

- * Bronx: Neighborhood Youth Diversion Program
- * Rochester: Juvenile Mediation Program of the Center for Dispute Settlement
- * Cambridge: Children's Hearings Project
- * Cleveland: Community Youth Project
- * Port Washington: Mediation Alternative Project
- * New York: PINS Mediation Project

Arbitration Programs (100% juveniles)

- * Annapolis: Community Arbitration Program
- * Arbutus: Juvenile Arbitration (Arbutus is one of several cities in Baltimore County that have replicated the Annapolis experience)
- * Akron: Juvenile Arbitration as an Alternative (4-A) Program
- * Delaware: Arbitration programs in three counties
- * Florida: three programs serving 11 counties (all programs are implementing legislation authorizing juvenile arbitration)

Conference committees and Accountability Boards (100% juveniles)

- * New Jersey: 400 conference committees in 19 counties
- * King County (WA): 24 conference committees
- * Seattle: 3 Community Accountability Boards
[Conference Committees have been replicated in other counties of Washington, Boise (Idaho), Helena and Billings (Montana), El Paso (Texas), and St. Lawrence County (New York)]

Peer Courts

- * Ithaca N.Y.: Tompkins County Youth Court
- * Horseheads, N.Y.: Youth Court
- * Denver: Student Jury

* No attempt was made to survey all of the 100 or more existing neighborhood justice or minor dispute centers. However, we did look at the juvenile caseloads of the better known centers, including all in Massachusetts, the three programs funded by the U.S. Department of Justice, and the five Florida programs evaluated by the Office of the State Courts Administrator.

In the sections that follow we will discuss: evolution of juvenile dispute programs; development of specific programs; summary of program characteristics; and major issues relating to juvenile dispute resolution programs.

CHAPTER II

EVOLUTION OF JUVENILE DISPUTE RESOLUTION PROGRAMS

The programs covered by this report appear to have been influenced by five phenomena: (1) the Scandinavian child welfare boards; (2) the "diversion" programs developed during the 1960's; (3) the Children's Hearings System which began in Scotland in 1968; (4) the non-judicial minor dispute centers that grew rapidly in the 1970's; and (5) the recent Federal initiative to deinstitutionalize status offenders.

THE SCANDINAVIAN CHILD WELFARE BOARDS

The conference committees of the states of New Jersey and Washington which began in the 1950's bear a resemblance to the Scandinavian child welfare boards. Denmark, Finland, Norway and Sweden do not have juvenile courts. Instead, young offenders are handled by boards generally composed of from five to seven lay persons from the local township. Although members are expected to have an interest in children, there are no professional requirements. Each township's child welfare board makes all decisions concerning the welfare of children in the community. No offender under 15 years of age can be tried in court, and offenders between the ages of 15 and 18 may be referred to the boards or go on to court. Unlike Scandinavian welfare boards, conference committees in this country have been specifically created to receive referrals of minor offenders from the courts.

DEVELOPMENT OF DIVERSION PROGRAMS FOR JUVENILES

Primarily as a result of emphasis placed on juvenile diversion by the President's Crime Commission, a great many programs have been created which spare a youngster from a juvenile court appearance. In the 1967 Task Force Report on Juvenile Delinquency, the Commission took the position that informal preadjudicatory handling was preferable to formal processing and should be used broadly. The Task Force report stated that:

the informal disposition process provides opportunities to engage laymen, as volunteers or paid part-time or full-time staff, to augment the ranks of full-time professional staff in the official agencies.*

While no attempt will be made in this report to catalogue the varieties of juvenile diversion programs that presently exist, we will include descriptions of programs which use mediation and arbitration in lieu of adjudicatory hearings and which we believe more accurately fit into the category of "diversion" rather than "minor dispute resolution." Such programs usually sponsor mediation or arbitration as one of several services, which can include work programs, drug and alcohol referrals, referrals to outside social agencies, counselling, and advocacy on behalf of the youth. The Neighborhood Youth Diversion Program is an example.

* President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency, page 20.

THE SCOTTISH CHILDREN'S HEARINGS SYSTEM

In 1968, by an Act of Parliament, the juvenile justice system in Scotland changed drastically. Instead of appearing before judges in court settings, youthful offenders and their families appear at informal hearings outside the courtroom, where three community volunteers hear cases and help families make decisions on the needs of the youngster involved. Where facts have been disputed or where the events involve public protection, cases (about ten percent) remain in the Sheriff's Court. The Cambridge and Cleveland programs have followed the Scottish model.*

MINOR DISPUTE CENTERS

The past decade has seen the rapid growth of non-judicial dispute processing mechanisms. These programs operate under various names, including dispute resolution programs, neighborhood justice centers, citizen dispute settlement centers, or community mediation centers; they have multiplied to such an extent that a recent directory prepared for the Department of Justice listed more than 130 minor dispute centers in 30 states. Processing a broad variety of minor civil and criminal matters and focussing primarily on disputes occurring among individuals who have an ongoing relationship, these projects receive as many as 150,000 referrals annually and hold as many as 100,000 hearings.**

* Since 1972, juvenile aid panels have been available also in South Australia as an alternative to court processing of juvenile offenses. See R. Sarri and P. W. Bradley, "Juvenile Aid Panels: An Alternative to Juvenile Court Processing in South Australia," Crime and Delinquency, Jan. 1980, pp. 42-62.

** During the 1970's, when Americans increasingly brought their problems to court, criminal justice professionals began to consider mediation a possible solution to some of the complaints. The Columbus Night Prosecutors Program, in Ohio, was one of the first mediation centers to open in the country. In 1971, a Capital University Law School professor and a City Attorney arranged to have interpersonal disputes and bad check cases referred to them for resolution. Their early efforts were successful, prompting the Law Enforcement Assistance Administration and, later, the City of Columbus to support the program.

At the same time, the American Arbitration Association (AAA) and the Institute for Mediation and Conflict Resolution (IMCR) were adapting their experience in labor-management dispute resolution to the particular problems of the court. The AAA established a National Center for Dispute Settlement in Washington, D.C., designed to negotiate urban disputes. Their success in mediating a fiery school system debate in Rochester, New York prompted AAA to organize a regional office. The agency achieved its goal in 1973, when the Rochester Community Dispute Services Project began operation. Similarly, in June 1975, IMCR began the New York Institute for Mediation and Conflict Resolution in West Harlem. The Institute began to accept referrals from two police precincts, then quickly expanded services to include additional precincts as well as the Summons and Criminal Courts in Manhattan and the Bronx. Both the New York Institute and the Rochester Project relied on arbitration occasionally, or enforced their mediated settlements as if they were arbitrated agreements. The key facet of these programs, however, was their use of community volunteers to conduct mediation panel

How many minor dispute hearings in programs with mixed caseloads involve children is impossible to estimate, although one can assume that in a large number of neighborhood disputes--particularly those that involve harrassment, vandalism, and minor assault--juveniles will be a party. Yet in surveying the better known minor dispute, or neighborhood justice centers, we found only a few involving

hearings. Excitement over this approach led to the development of other new programs across the country.

The emphasis on community involvement strongly influenced the development of the Urban Court Program in Dorchester, Massachusetts. Also opened in 1975, the Urban Court trained community volunteers to work not only as mediators, but also as sentencing panelists and victim aides. The Dorchester Program was the first formal mediation center established in Massachusetts. The program's success led to its adoption by the local court, and to further development of mediation centers in other parts of the state.

Another major program opened the same year--the Miami Citizen Dispute Settlement Project in Florida. The Miami Project, established by the administrative office of the Dade County Court, engaged representatives from the professional community (e.g., lawyers, professors, social workers) to conduct mediation.

Two years later a mediation center opened in San Francisco, California--the Community Board Program. Unlike the earlier centers, this one did not maintain formal or informal ties with the criminal justice system. It sought to provide an alternative fully independent of the public sector. Also, it sought to develop a model that relied more heavily than other programs on the benefits of interaction among the disputants to solve basic communication problems. With its opening, a spectrum of mediation programs existed and the versatility of the concept became apparent.

The pioneer programs attracted widespread attention. For example, at the 1975 Pound Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, mediation programs were the subject of a Task Force chaired by Judge Griffin Bell. The Task Force recommended the development of "Neighborhood Justice Centers"--programs that would:

- ...make available a variety of methods for processing disputes, including arbitration, mediation, referral to small claims courts as well as referral to courts of general jurisdiction (and would)... stimulate experimentation, evaluation, and widespread emulation of successful programs.

Two years later, then Attorney General Griffin Bell endorsed the concept, and the Department of Justice funded neighborhood justice centers in Atlanta, Georgia; Kansas City, Missouri; and Los Angeles, California. In early February of 1979, Senator Edward Kennedy (D-Ma.) and Senator Wendell Ford (D-Ky.) introduced the Dispute Resolution Act of 1979 to establish a national clearinghouse for dispute resolution programs and provide incentive grants for those seeking to develop innovative approaches to resolving citizens' problems.

substantial numbers of juveniles--the Community Board Program of San Francisco (40 percent), the Neighborhood Mediation and Conciliation Services Program of San Jose (75 percent), the Community Dispute Settlement Program of Concordville (40 percent), and the Community Mediation Center of Coram, New York (40 percent). Even when juveniles are involved in such programs, they are more likely to be respondents rather than initiators. In the San Francisco program, individuals under 20 years of age represent 6.5 percent of the initiators and 33 percent of the respondents.

DEINSTITUTIONALIZATION OF STATUS OFFENDERS

Largely because the Federal Office of Juvenile Justice and Delinquency Prevention has supported removal of status offenders from secure detention facilities, many states have separated their delinquent offenders from runaways, truants and so-called "incorrigibles." Simultaneously, others committed to change in the juvenile justice system have urged that status offenders be removed altogether from the supervision of juvenile courts. Washington and Maine are among the states that have eliminated court jurisdiction over status offenses. Most states, however, retain that jurisdiction and argue that youngsters would be deprived of services without the clout and influence of the juvenile court and its officers. In an effort to ensure that needed services are in fact provided, several mediation programs focus specifically on status offenders--including the Cambridge and New York City programs.

Although beyond the scope of this report, which focuses on alternatives to juvenile justice processing, dispute resolution techniques such as mediation are used in a number of instances that directly or indirectly involve juveniles, such as the following:

- (1) A number of minor dispute centers process cases that involve divorce, child custody and visitation rights.
- (2) Schools and colleges have developed conflict resolution programs using mediation for student grievances, including truancy and school violence problems.
- (3) Institutions for incarcerated youths have developed grievance procedures using mediation between inmates and institutional staff.*
- (4) Some states use mediation as part of the appeals process in special educational matters. Parents whose children have been denied services under state education for the handicapped laws may appeal through an administrative process. One part of that process may include a mediation between the parents and the school officials.

Table II outlines the origins of the juvenile programs which will be described in the following sections. Section III includes a brief description of the development of each of these programs.

* The Center for Community Justice, Washington, D.C., has developed model grievance procedures in several California school districts and in correctional facilities of the California Youth Authority. See C. A. Bethel, N. Brennan, M. K. Lewis, and L. Singer, "Conflict Resolution in High Schools: A Modest Proposal," Bulletin of the National Association of Secondary School Principals, vol. 62, no. 415, Feb. 1978.

Table II
Origins of Juvenile Programs

		PEER COURTS
		NEW JERSEY CONFERENCE COMMITTEES
		KING COUNTY CONFERENCE COMMITTEES
		DELAWARE FAMILY COURT ARBITRATION
		NEIGHBORHOOD YOUTH DIVERSION PROGRAM, BRONX
		COMMUNITY ARBITRATION PROGRAM, ANNAPOLIS
		JUVENILE 4-A PROGRAM, AKRON
		JUVENILE MEDIATION PROGRAM, ROCHESTER
		JUVENILE MEDIATION AND ARBITRATION PROGRAMS, FLORIDA
		MEDIATION ALTERNATIVE PROJECT, PORT WASHINGTON
		PINS MEDIATION PROJECT, NEW YORK
		CHILDREN'S HEARINGS PROJECT, CAMBRIDGE
		COMMUNITY YOUTH PROJECT, CLEVELAND
	SCANDINAVIAN WELFARE BOARDS	D I V E R S I O N
	SCOTTISH HEARINGS SYSTEM	M I N O R D I S P U T E C E N T E R S
	STATUS OFFENDER REMOVAL	

Table III

Characteristics of Six Programs Involving Juveniles*

CHAPTER III

DEVELOPMENT OF THE PROGRAMS

No attempt has been made to describe each program comprehensively since this would be repetitious but not informative. Instead, important features are highlighted. At the end of the section, Table III will present program characteristics in tabular form.

PEER COURTS

Student juries and youth courts that involve teenagers were first tested in 1962 in Ithaca, New York, in the Tompkins County Youth Court. Students receive academic credit for the ten-week training course. However, both because of the competition from other diversion programs and because of financial problems, only one case has been heard in Ithaca in the past two years.

No such problem faces the Youth Court in Horseheads, New York, where an average of 150 cases are heard annually. Young people act as judges, law guardians (public defenders), facts attorneys (prosecutors), and clerks. To become court members, youths must volunteer and attend a 10 week, 20-hour training course followed by a comprehensive exam. Although youths assume all roles, their primary function is sentencing. This is true of most youth courts, including the year old Denver student jury, a component of the district attorney's diversion program. Participants must admit their guilt and the student jury actually functions as a panel of sentencing judges rather than as a traditional jury. Recidivism rates in this type of program tend to be relatively low.* However, the youth courts' jurisdiction encompasses cases "which would never be considered by Family Court," according to one observer.

JUVENILE CONFERENCE COMMITTEES

Among the earliest diversion programs to involve large numbers of community volunteers were the juvenile conference committees. Originating in New Jersey and then duplicated in Seattle, they now exist in Boise, Idaho; Helena and Billings, Montana; El Paso, Texas; St. Lawrence County, New York; and other counties in Washington.

Authorized by the New Jersey Supreme Court in 1953, juvenile conference committees in each locality consist of six to nine persons recruited from the community who review minor delinquency matters referred from the court and make recommendations to the parties involved regarding dispositions. Matters referred are those "which are not harmful enough to require adjudication but which cannot be overlooked by the community." Court rules, rather than a statute, govern the administration of the committees. Since 1979, when court rules also required that each of the Juvenile and Domestic Relations Courts establish juvenile intake units, the number of referrals to the committees has increased rapidly. For example, the Hackensack Juvenile Intake Project (in existence since 1974) reported a 385 percent increase in referrals between 1974 and 1976. Nineteen of New Jersey's 21 counties have committees, since

* "Youth Court - One Way of Dealing with Delinquents," FBI Law Enforcement Bulletin, vol. 49, no. 3 (March 1980), pp. 16-21. See also "Young Offenders Face Their Peers," Corrections Magazine, Dec. 1980, pp. 38-41.

Start-up Date	1977	1978	1974	1978	1959	1976
Name of Program	Community Boards Program	Juvenile Mediation Program	Community Arbitration Program	Juvenile Community Arbitration Program	Conference Committees	Youth Court
Location	San Francisco, California	Rochester, New York	Annapolis, Maryland	Sanford (Seminole County), Fla.	King County Washington	Horseheads, N.Y.
Office Location	Community site	Office building near Family Court	Brick house near Juvenile Services Admin.	County Courthouse	Courthouse	Youth Bureau
Location of Hearings	Churches, library, community organization offices	Project office, schools	Court-like setting in courthouse annex	Courthouse	Offices of civic organizations, banks, libraries, courthouses, mental health centers	Youth Bureau
Sponsoring Agency	Community Board Program (non-profit)	Center for Dispute Settlement (originally AAA)	State Dept. of Juvenile Services	State Attorney's Office	Superior Court	Youth Bureau
Annual Budget	\$250,000	\$40,000	\$85,000	\$26,000	\$200,000	\$26,036
Funding Sources	Foundations	Youth Bureau, foundations	State funds	local gov't (state attorney and circuit court)	county funds (Superior court), local sponsors provide in-kind	State Div. of Criminal Justice (LEAA) and town funds
Hearing Officers	200 Community people (same neighborhood as disputants)	40 Community people	2 Attorneys	55 Lawyer, worker or person "trained in conflict resolution"	450 Lay citizens	Youths 11-19
Technique	Mediation	Mediation	Arbitration	Arbitration	Community Court	Community Court
No. of "officers" at hearing	5	1	1	1	3-4	not relevant

Cases Heard	Neighbor/ friend; domestic assault/ violence, others	School- related; parent/ child; juvenile delinq.	30 misde- meanor and less serious felony charges	First offender misdemeanants; Almost half are petit theft	minor delinq- quencies; no status offenses	Minor; largest proportion are petit larceny, criminal mischief, trespass
Case Referral Sources	75% direc- tly from community; remainder from crim- inal just- ice and other agencies	82% Family Court; schools, police, communi- ty agen- cies	Police	Arresting officers, but screen- ed by State Attorney	Court, but screened by prose- cutor	Police, court
Types of Agreements Reached	Written resolution; community audience hears reso- lution; may include behavior change, referrals to social services, employment	Written and nota- rized agreement, includes behavior modifi- cation, referrals to coun- seling	Arbitrator may close case, refer to court, or adjust informally with com. service, restit., counseling	Over 40 disposi- tions available, including referrals, restitu- tion, community service	Community service, restitu- tion, one hour of coun- seling	Community service, counseling, tours of jails, court visits etc.
Annual Referrals	800	300	2000	500	5600	109

*As will be noted, this table is not comprehensive. It does, however, present information on at least one program in each prototype.

some municipalities have more than one, there are about 400 altogether. The presiding judge of each court appoints committee members, who serve for three years.

Many youths are involved in this state-wide program. From September 1, 1978 to August 31, 1979, as reported in the court's annual report, 13,904 delinquency complaints were diverted to the committees, 18 percent of the total. An additional 594 JINS (status offender) complaints were diverted, six percent of the total. The Conference Committees do not represent all the diversion opportunities for juveniles; about 45 percent of juvenile complaints and 50 percent of the status offenses are diverted from the courts.*

According to the Guide for Conference Committee Members, all participation is voluntary. If a juvenile and his/her parents object to having the complaint heard or in any other way fail to cooperate, the case must be referred back to court through the intake service. Similarly, if the juvenile denies any involvement in the offense charged, the case must be referred back. The committee may only recommend--not order--corrective actions, including assignment of a written essay, a widely used disposition; counseling; or restitution. Restitution may be recommended only; the committee cannot order restitution or fines, nor can it order confinement, probation, or removal of a juvenile from his family.

When the conference committees began, it was up to the discretion of the presiding judge as to whether victims had a right to attend intake conferences and conference committee hearings. Recently, a decision was made that the victim's presence was counterproductive, but the intake officer may contact the victim to discuss restitution.

Based upon the New Jersey conference committee model, King County, Washington began its own conference committees in 1959 as a means of relieving the court of minor misdemeanor cases and "expressing community concerns" about youth. Until recently, the growth of the committees was slow. The new Washington Juvenile Code (HB 371), effective July 1, 1978, altered the role of the committees. The statute mandates diversion for certain minor offenses, and calls on localities to create "diversion units" with jurisdiction over these offenses. Since 1978 the King County Committees have served as "diversion units" and--because of the limitations placed on them by statute--their role has been formalized. Despite this, the number of committees has grown to 24 in King County and referrals have multiplied. Last year the King County committees heard 5,500 cases--more than the number that came before the juvenile court. In Seattle, the largest city in King County, three neighborhoods utilized existing Community Accountability Boards as diversion units.

The Washington statute limits the roles and flexibility formerly enjoyed by the committees. New procedures under the code require screening by the prosecuting attorney's office to establish sufficiency of evidence before cases are heard. The new legislation allows only three types of disposition: restitution, community service (up to 150 hours) and no more than one session of counseling. The practice of assigning written essays or long counseling treatment, among others, has been eliminated.

* Statistical Supplement to the Annual Report of the Administrative Director of the Courts, State of New Jersey, p. 40 ff.

The Accountability Board concept dates from 1973 when the Youth Service Bureaus of the City of Seattle created neighborhood boards to meet with minor offenders and assign restitution or community service. Presently the boards operate in the same manner as the committees, receiving referrals of offenders diverted under the new law. Unlike the committees, however, the boards have available professional staff from the Youth Service Bureaus who work with youths after they receive their restitution or community service assignments.

NEIGHBORHOOD YOUTH DIVERSION PROGRAM

One of the oldest of the juvenile mediation programs, the Bronx Neighborhood Youth Diversion Program (NYDP) was started in 1971 in a high crime, low income area of the Bronx. Initially developed by the Vera Institute of Justice and the Institute for Social Research of Fordham University to divert young people in trouble with the law to a community-based program of assistance and mediation, the program continues to receive its cases from the probation department of the Bronx Family Court. Now fully supported by New York City under contract to the city's Department of Special Services to Children, a division of the city's Human Resources Administration (HRA), the program is located in the HRA office building in the East Tremont area of the Bronx. The mediation component, known as the Forum, meets in this building and is part of a broad diversion effort which also includes social services, recreation, and alternate school and tutoring programs. Because it shares space with other HRA offices, referral sources for social services programs are nearby.

During its ten years of operation, the program has changed its orientation. For example, the community mediators were originally called "judges." This appellation has been dropped and greater emphasis is now placed on the "advocate," a counselor assigned to each youngster referred. The advocate has among his/her goals helping parents to unravel problems relating to their children and social service agencies, including assisting the youth and parents in meeting special education needs. When the advocate feels the family would benefit from mediation, he/she asks for a Forum meeting. The goal of such a meeting is to have the participants agree to changes or behavior modification.

Initially focusing on community disputes, the program switched its focus to intra-family conflicts, including school problems. The strict mediation model was replaced by a "family service" orientation and all Forum meetings--whether PINS (Persons in Need of Supervision) or delinquency charges--must have family members present. The advocate actively participates in these sessions and it is he/she who requests that the Forum meet after assessment that family problems are the root cause of the youngsters' problems.*

COMMUNITY ARBITRATION PROGRAM OF ANNE ARUNDEL COUNTY, MARYLAND

The Community Arbitration program (CAP) was developed in 1973 to respond more quickly to complaints regarding young offenders. Instead of the traditional arrest procedure

* For more information on this program, see W. P. Statsky, "Community Courts: Decentralizing Juvenile Jurisprudence," Capital University Law Review, vol. 3, no. 1 (1974), pp. 1-31; and Appendix 5 of "Community Dispute Settlement Centers for Juvenile Technical Assistance Manual," Office of Planning and Research, Supreme Court of Wisconsin.

for minor offenses, a police officer issues a "juvenile citation" similar to a traffic ticket to the youth alleged to have committed one of the approximately 30 offenses eligible for juvenile arbitration. The citation directs the child, the parents and the complainant to an arbitration hearing within seven days. Hearings take place in a formal courtroom-like setting, where both the youngster and the complainant are permitted to tell their versions of what happened. Following arbitration, the arbitrator, an attorney who is paid for his services, may close the case, may forward it for prosecution, may continue it for further information, or may plan an "informal adjustment." Informal adjustment can include restitution, community work, or referral to appropriate community resources. Assignments are to be completed within 90 days and include informal supervision by a field worker. Charges will be dropped if the assignment is completed within the 90-day period.

Designated an Exemplary Project by the Law Enforcement Assistance Administration, CAP has reduced the burden on the courts. According to an evaluation done by ABT Associates for the Department of Justice, of the 1,137 youths assigned to community service or another alternative in the project's first two years of operation, 85 percent successfully completed their assignments within the prescribed 90 day period. Of most importance, CAP clients demonstrated significantly lower rates of repeat offenses than comparable youth who were processed traditionally. According to a comparison study of these two groups, county youths processed by CAO in 1975 had a 4.5 percent lower recidivism rate and 37 percent fewer rearrests per client within one year after intake/arbitration. Moreover, only eight percent of arbitrated cases were turned over for prosecution, freeing the state attorney's office from concentrating on minor juvenile offenses, as well as saving the police much time and paper-work involved in charging an offender and testifying in court.*

Although less well known, several Juvenile Arbitration programs exist in Baltimore County, including one in Arbutus, Maryland (near Baltimore). Modeled after the Annapolis program, all misdemeanors are referred by the police to the program, presently housed in the old Maryland Children's Center, a former residential program for juveniles. In operation for more than five years, the Arbutus program is now completely funded by the state and will move to a new district court building when it is completed. Like the Anne Arundel County program, arbitrators are attorneys who are paid on an hourly basis.

* Much has been written about the Annapolis program. See also Abt Associates, "Community Arbitration Project - Anne Arundel County, Maryland," 1979, available from the Superintendent of Documents, Washington, D.C.; "Community Arbitration--An Experience in Social Restitution," prepared by Juvenile Services Administration, State of Maryland Department of Health and Hygiene, Aug. 1976; and G. R. Wheeler, "Creative Punishment: A Quick Justice System for Juvenile Offenders," Probation and Parole, no. 9 (Fall 1977), pp. 7-17. Also see Appendix 3 of "Community Dispute Settlement Centers for Juveniles: Technical Assistance Manual," op. cit.

JUVENILE PROGRAMS UNDER THE SPONSORSHIP OF THE AMERICAN ARBITRATION ASSOCIATION

The American Arbitration Association, experienced in the use of mediation and arbitration techniques in labor-management negotiations, early in the 1970's developed projects to provide services to a broader group of disputants. "Arbitration as an Alternative" (4-A) projects developed in Rochester, New York; Cleveland, Elyria, and Akron, Ohio; Philadelphia, Pennsylvania; and San Francisco, California. They dealt with a wide range of civil and criminal disputes, including personal conflicts, city regulations, tenant grievances, and bad checks. Both the Rochester and Akron 4-A programs developed juvenile components.

Akron began its juvenile program in May 1976. The juvenile mediation program in Rochester began in July 1978. As funding became tighter, the Akron 4-A office was forced to close but the juvenile component is now handled from the Cleveland office. Partly because it was criticized for not developing community ties, the Rochester program incorporated independently and is no longer sponsored by the AAA.

Begun as a joint project of the Summit County Juvenile Court and the Junior League of Akron, the Akron Juvenile 4-A program is one component of the AAA's Ohio operation based in Cleveland. Because Cleveland is only about a half hour's drive from Akron, the program is able to operate with modest funding from the court in Akron--\$10,000 each year.

All cases are referred by the Intake Department of the Juvenile Court and almost all have been diverted at intake. However, if the case has proceeded into the justice system and a determination is made that it could be better handled through the mediation-arbitration process of 4-A, a referral will be made later.

Hearings are held in the community, at a health center. Referrals are mailed by the court to the Cleveland office, where the AAA staff follows up by contacting the disputants. In 1980 the bulk of cases heard were in three categories: harassment, destruction of property, and assault and battery.

Early in 1978 the administrative Family Court judge in Monroe County, New York, approached the Community Dispute Services of the AAA in Rochester for help with the backlog in Family Court, in particular 500 truancy cases the City School District of Rochester had ready for petitioning the Court.

The Juvenile Mediation Program received its first case in July 1978. Of the 340 cases processed between July 1978 and November 1979, 45 percent were school-related PINS (Persons in Need of Supervision) cases which otherwise may have been processed by the courts. Mediation sessions that are school-related are held in the school building so resource people (deans, teachers, guidance counselors and social workers) may participate. Other sessions are held in the project offices. The Rochester program severed its ties with the AAA in October 1979, and renamed the program The Center for Dispute Settlement. More than 80 percent of referrals originate from the Family Court, although the program considers itself community-based rather than an adjunct of the court. Family Court hearings rarely involve victims, but when there are victims, the program contacts them by telephone or mail to determine their willingness to participate in a mediation conference. Each successful mediation concludes with a "consent agreement"--a document that is notarized and signed by the

parties, a copy of which is mailed to the court. The court will usually "Adjourn the Case in Contemplation of Dismissal" (a process unique to New York's Family Courts) to allow for monitoring of the agreement. The results of monitoring are recorded and mailed to Family Court. However, the project will not seek to activate non-compliance cases in court. Rather it will inform the court of their status and allow for either party to re-activate the original petition based on a violation of the consent agreement.*

STATEWIDE PROGRAMS FOR ARBITRATION AND MEDIATION

Two states--Florida and Delaware--have instituted arbitration programs for juveniles.

No state has committed itself more to dispute resolution than Florida. Citizen dispute resolution projects now operate or are being developed in seventeen Florida cities. And although proposed legislation which would encourage non-judicial dispute processing projects has not yet been approved by the state legislature, a statute that specifically encourages counties to develop community arbitration programs for juveniles did pass in 1977 (See Appendix A for Florida legislation.) This is the only state statute specifically referring to juvenile mediation or arbitration.

Prior to the enactment of this legislation, six Florida counties had begun to deal with juvenile matters through their existing citizen dispute settlement (CDS) programs. After the juvenile arbitration statute became law, four new programs were implemented. One of these covers eight rural counties. The Department of Health and Rehabilitative Services is committed to statewide implementation of juvenile arbitration programs but has not yet achieved full funding from the legislature.

In general, the Florida juvenile programs that existed prior to the new statute appear to have more flexibility. Because they had been associated with adult programs using mediation techniques only, some juvenile programs have been unwilling to switch to the arbitration approach outlined in the new statute since it would limit referrals to first offender misdemeanants. The formal requirements of the law also eliminate walk-in referrals.

The Duval County Youth Mediator Program, a spinoff from that county's CDS program, has broad referral sources, including schools, and mediators may hear truancy and ungovernability cases in addition to minor delinquency matters. An additional component for juveniles in Duval County is the Youth Work Program where community work sanctions are imposed on juveniles who admit guilt to a minor criminal offense. The program describes itself as "arbitration" for victimless crimes or where the victim cannot be identified or does not appear.

Mediation is one of many diversion options for youngsters in Orange County. Once the parties agree to mediation, they are referred to the CDS of the Orange County Bar Association, where all the mediators are volunteer lawyers. The Orange County CDS reports that of its annual caseload of 780 scheduled hearings, 14.6 percent were

* The Rochester program is also described in "Community Dispute Settlement Centers for Juveniles: Technical Assistance Manual."

referrals from the "juvenile justice system." The program seeks self-referrals and has made no attempt to adjust to the new arbitration statute.

The Florida office of the State Courts Administrator conducted a study of three juvenile programs utilizing mediation or arbitration and noted:

There appears to be an inherent problem within such programs in terms of the appropriateness of the use of the descriptive terms mediation and arbitration... Both terms presuppose that a dispute exists between two or more parties... However, the Juvenile Study Report reveals that a significant percentage of the juvenile cases handled did not involve an actual dispute... For example, quite frequently a juvenile was arrested for 'possession of alcohol by a minor' and was referred to the alternative juvenile program in lieu of court. To attach the term mediation or arbitration... seems inappropriate because no dispute exists.*

The Florida study recommends refinement of the existing statute, including clarification of terms and uniform programmatic guidelines. The recommendations also include: allowing the arbitrators to hear more serious offenses, and permitting private citizens to refer complaints directing to arbitration programs. (See Appendix B for excerpts from Florida study.)

In June 1977, each of the three Family Courts in the three counties of Delaware instituted arbitration programs for first offender juvenile misdemeanants under the authority of legislation outlining the responsibilities of the Family Court (Title 10 of the Delaware code).

Upon the filing of a complaint, a representative of the Attorney General decides whether the case requires court prosecution or is suitable for arbitration. Notices are sent to both parties. If the defendant agrees to arbitration procedures, a two-tier process is initiated: first, the arbitration interviewer (a counselor with social work degree) meets with the parties and makes a recommendation which can include community service or restitution. The second stage is conducted before a hearing officer (lawyer, law school graduate or law student) who reviews the recommendation and may abide by, modify or reject it. A written agreement is then signed which is binding. The arbitrators cannot assign fines or order incarceration. The time span for fulfilling agreements is normally 90 days. If the conditions are met, the criminal complaint is retired.

FOUR MEDIATION PROGRAMS IN THE PLANNING STAGE

Four programs have developed in the past year that promise to provide important insights on the use of community-based mediation in juvenile cases. Two--in Cambridge, Massachusetts and Cleveland, Ohio--are modeled after the Scottish Children's Hearings System. A new program in New York City will mediate PINS (Persons in Need of Supervision) cases only. In Port Washington, cases will come from a variety of sources.

* M. L. Bridenback, P. L. Imhof, and J. B. Planchard, "The Use of Mediation/Arbitration in the Juvenile Justice Process: A Study of Three Programs," Tallahassee, Office of the State Courts Administrator, Sept. 1980.

The programs attempting to test the Scottish approach have important differences which will be described below. Both will follow the Scottish concept but will couple it with dispute resolution techniques, specifically mediation, that have been developed in this country. Mediators will be volunteers from the community.

Sponsored by the Massachusetts Advocacy Center, a child advocacy organization which supports removal of status offenders from court jurisdiction, the Children's Hearings Project of Cambridge, Massachusetts, was initially developed as an alternative to court for such cases. As the concept was developed and after site visits to the Hearings System in Scotland, it became clear that the Scottish approach also worked well for cases involving abused and neglected children. The Cambridge project will thus concentrate on children's cases involving status offenses (truancy, runaways, and "stubborn children") and care and protection cases (abuse and neglect). Cases will be diverted to the project from the court, but also from the Department of Social Services, the police and local schools. To our knowledge no other mediation program deals with children's cases involving abuse and neglect.

Located on the Near West Side of Cleveland, Ohio, a neighborhood with the city's highest juvenile crime rate and greatest racial mix, The Community Youth Project will mediate disputes referred by the police and the court. However, staff anticipate that half of the referrals will come from more than 70 block clubs presently existing in the neighborhood. The planning team, a group of community leaders, visited Scotland and other dispute resolution programs in this country.

Key to the program are youth advocates, four of whom will be included on project staff. All youths referred will be assigned to an advocate. In many respects the advocate's job is similar to that of the advocate in the Neighborhood Youth Diversion Project. According to the Cleveland project proposal, the advocate

- is responsible for (1) helping the panel assess a youth's needs,
- (2) designing a plan with the family to help meet those needs,
- (3) linking the youth to services he/she needs, and (4) following up to see that programs deliver the help they promise.

Advocates will meet separately with disputants before the community panel is called on to hear a case. This is similar to the conciliation approach taken by the San Francisco Community Board program. The program has a broad neighborhood base. Its board of directors includes neighborhood residents, police representatives, juvenile court representatives, a youth coalition, and at-large members.

As an outgrowth of a Community Crime Prevention Project, the Mediation Alternative Project in Port Washington, New York, expects to involve youths and families before they are referred to the Family Court. The project is sponsored by the criminal justice division of the Education Assistance Center, which also administers alternative education and developmental learning programs. The mediation project is consistent with the agency's efforts to seek community-based alternatives to the criminal justice system. The project will experiment with youths as panel members.

A project sponsored by the Children's Aid Society in New York City to mediate status offender cases from the Manhattan and Bronx Family Courts followed a study commissioned by the Society in 1977. The study concluded that more than four out

of five PINS cases are initiated by parents; that about 40 percent of cases are diverted at intake and handled informally by probation staff or by referral to social agencies; and that juveniles in most of the cases that continue through the court process have already been declared "uncooperative with a social agency." This sub-group of PINS cases, "the most troubled, needy and difficult" (according to the project's proposal), constitutes the target population of the proposed PINS Mediation Project.

The Children's Aid Society, one of the oldest of child-serving agencies in New York City, offers a variety of services--mental health and family counseling, tutoring, vocational guidance and recreational services--and the project will have readily available social services, as well as sites for mediation hearings through Neighborhood Centers of the Society.

Because of the opposition from the Legal Aid Society, whose attorneys represent PINS youngsters in court, the initial procedures for diverting PINS cases proposed by the project have been changed. (See Section on due process to follow.) The court will not be informed that the family has voluntarily agreed to mediation, so that failure to reach an agreement through mediation will not be used punitively toward the child if the case returns to court.

CHAPTER IV

SUMMARY OF PROGRAM CHARACTERISTICS

This section will summarize the similarities and differences among the programs in five areas: sponsorship and referral source, dispute resolution techniques, hearing officer characteristics and training, types of cases referred, and types of agreements reached.

SPONSORSHIP AND REFERRAL SOURCE

Although the juvenile programs surveyed are divided between public and private sponsorship, all rely heavily on public agencies--in particular, courts and police--for referrals. For example, the Rochester program, although entirely separate from the court in location and site of mediation sessions, originated at the suggestion of a Family Court judge. In 1979, 82 percent of referrals came from the Family Court. As has been discussed earlier, states such as Florida, Delaware, Washington and New Jersey have either a legislative mandate or court authorization to create the programs described.

As an outgrowth of a Community Crime Prevention Project, the Port Washington mediation program emphasizes its potential to assist communities in resolving youth-related problems without resorting to court and anticipates that most referrals will come from the police and the schools. The new Cleveland program anticipates the bulk of its cases will come from block associations in the neighborhoods. The San Francisco Community Boards solicit walk-in referrals as part of its effort to establish community control over major decisions.

Sponsorship has an important impact on issues relating to long-term funding and "coercion versus voluntariness," as will be discussed below. The failure of the juvenile programs described in this report to generate self-referrals is of some concern. The director of the CDS in Orlando (Orange County), Florida, told us that--although the program received a substantial number of juvenile referrals from both the courts and a Youth Diversion Project--they had simply been unable to persuade the community to refer juvenile matters directly for mediation. In an effort to increase the self-referrals, a community education program has been started, including films and lectures.

In a review of juvenile diversion, McDermott and Rutherford are pessimistic about programs' ability to remain outside the ambit of justice system authority and control and sum up the dilemma relating to sponsorship and referrals:

If such programs alienate referral sources (police/probation) they may find themselves without clients. If they attempt to be too cooperative they may become 'para-legal' in nature. If programs are funded by the juvenile justice system agencies, their policies may be controlled by those agencies under threat of loss of funds if they do not comply to demands. The very fact that clients maintain legal status as 'offenders' may make it difficult if not impossible for such programs to remain non-legal in nature.*

* R. McDermott and A. Rutherford, "National Evaluation Program, Phase I Assessment: Juvenile Diversion; Vol I, Final Report," Washington, U.S. Dept. of Justice, 1975, p. 32.

DISPUTE RESOLUTION TECHNIQUES

A number of terms have been used in describing the techniques used in dispute resolution programs, but the most frequently used techniques in juvenile programs are mediation and arbitration. Both involve third-party participation. Arbitration and mediation ordinarily suggest that two sides to a dispute will appear at a hearing. This does not always occur. The conference committees in both New Jersey and Washington receive information from the victim of an alleged juvenile crime but do not permit the victim to be present.

Mediation is a less formal process than arbitration. The third party, or mediator, promotes discussion between the disputants. Mediators are facilitators who ask questions of the disputants and assist them in reaching their own mutual resolution. Programs may utilize a single mediator or there may be as many as five (e.g., San Francisco Community Board). Where the mediators have been trained by the American Arbitration Association or the Institute for Mediation and Conflict Resolution, two of the private agencies responsible for sponsoring several of the early dispute resolution programs, the technique of caucusing is frequently used. A caucus takes place when the mediators meet separately with individual disputants to learn their separate positions regarding settlement. (Since mediation is the technique most often associated with dispute resolution programs, a typical mediation is outlined in Table IV.)

During arbitration, the third party's role is to decide or judge the issues in dispute and arrive at a solution. The process is called "binding" arbitration if there are sanctions for failure to accept or abide by the decision. Many dispute resolution programs begin with mediation and go to arbitration when mediation fails. This is particularly true of AAA-sponsored programs where the technique used has become known as "med/arb." The difference between mediation and arbitration sometimes becomes blurred, as we have noted above, and is especially so if the failure to arrive at or stick to a mediated agreement means an appearance in the court which may have referred the dispute initially.

HEARING OFFICER CHARACTERISTICS AND TRAINING

Most dispute resolution centers use volunteer mediators, many of whom are paid a small stipend (usually \$10 to \$15) each session to cover travel or child care costs. Some volunteers receive no stipend at all. The lawyers who serve as arbitrators in the Annapolis program are paid a substantial per diem fee varying from \$75 to \$90. In Delaware the arbitrators are full-time paid staff. Programs may rely more heavily on the use of professionals when there is a strong interest in fast and effective handling of minor disputes in order to free up court time.

Programs that give priority to community involvement attempt to recruit a cross-section of lay citizens as mediators. Most of the volunteer participants in the programs we reviewed fit that description. However, even when a conscious attempt has been made to have hearings officers represent the community as a whole, this effort is not entirely successful. For example, in the Dorchester Urban Court Program, one of the first community-based mediation programs, the mediators tend to be housewives, students, and social and community workers (62 percent).*

* W.L.F. Felstiner and L.A. Williams, "Community Mediation in Dorchester, Massachusetts," Washington, U.S. Dept. of Justice, Aug. 1980, page 8.

Table IV

How Mediation Works*

What steps are involved from the time a dispute is referred to a mediation program to the point when the situation is resolved? Below is an example:

Greg hired his young neighbor Paul, to mow the lawn and trim the hedges. When Greg returned to his house later that day, all the rosebushes had been cut in half. Furious that his plants had been ruined, he refused to pay Paul. When Paul demanded money for mowing the lawn, Greg hit him and warned him not to step on his property again. Paul went to court and applied for a complaint against Greg, charging him with Assault and Battery.

72 hours	REFERRAL	
	Court clerk refers case to mediation center.	
	INTAKE INTERVIEW	
2 weeks	Program staff explains the program to Greg and Paul.	
	VOLUNTARY AGREEMENT	
	Both agree to participate. A meeting is scheduled at a time convenient to both.	
2 weeks	MEDIATION SESSION	
	Greg and Paul each tell their side of the story to a mediator or mediation panel. Paul admits that he didn't realize what he had done to the plants because he had been using drugs.	
	MEDIATION AGREEMENT	SOCIAL SERVICE REFERRAL
2 weeks	Greg apologizes for hitting Paul and agrees to pay him for mowing the lawn. Paul agrees to drop the charges against Greg and to replace the rosebushes.	Paul agrees to see a counselor about his drug use. The mediator writes up this agreement, which they both sign.
	FIRST FOLLOW-UP	
3 months	Greg complains that not all the plants have been replaced. Paul says he doesn't have enough money to buy the rest. Greg offers to pay Paul to mow his lawn once a week, as long as Paul continues counseling, Paul accepts, and promises to pay for the plants within the month.	
	SECOND FOLLOW-UP	
All of Greg's plants have been replaced, and he hired Paul to mow his lawn every week. Paul has discontinued his drug use. Both are satisfied that the agreement has been carried out.		

*from Perspective, a publication of the Crime and Justice Foundation, Boston, Massachusetts (Fall/Winter, 1979, p. 7).

The Florida juvenile arbitration statute requires arbitrators to be "graduates of an accredited law school or an accredited school with a degree in behavioral social work or trained in conflict resolution techniques." The Fort Lauderdale (Florida) juvenile arbitration program has recruited hearings officers from the local retired attorney association and retired senior volunteer program. For a short time, the CDS in Orlando used as its panel members three mediators, one an attorney and the other two juveniles. This attempt at peer mediation was unsuccessful and the program is now entirely staffed by volunteers from the Orange County Bar Association. The Cambridge Children's Hearings Project, currently recruiting its first panel members, will also attempt peer mediation by involving youths as panel members.

Training for the hearings officers varies from location to location but is an important feature of mediation programs. The conference committee members receive very little training, and there appears to be a notion that if lawyers are used as arbitrators (or mediators) they require no initial training period beyond a session on administrative procedures. However, in the Florida programs, lawyers who have been recruited attend sessions conducted by experienced lawyers to observe how such sessions operate. Similarly, new mediators usually serve on community panels with experienced mediators presiding.

Sponsors of the early mediation programs such as the American Arbitration Association (AAA) and the Institute for Mediation and Conflict Resolution (IMCR) continue to run training programs for new personnel in developing projects. Personnel from the Rochester and Dorchester programs (where initial training was by the AAA and IMCR respectively) now are available for a fee to train personnel in new projects. The Community Board Program also provides training to other programs. Generally, programs require 40 to 55 hours of training for staff and hearing officers. The total cost of training programs ranges from \$3,000 to \$7,500. Usually program staff who have participated in the initial training program conduct subsequent trainings themselves.

Training that has been designed for adult mediation programs needs to be modified for hearing officers in juvenile programs. Such training, for example, might include legal and social service information specifically addressing the needs and rights of juveniles, strategies for balancing power relations between the disputants (see discussion of inequality between the parties, below), and instruction in techniques for overcoming generational barriers.

TYPES OF CASES REFERRED

In general juvenile programs process offenses which would be considered minor crimes if committed by adults. If committed by adults, the majority of cases would be misdemeanors, although some would be considered minor felonies. Programs such as the Cambridge Children's Hearings Project and the new PINS Mediation Project in New York City will process status offender cases, and the Cambridge program anticipates referrals of child protection cases as well. Of the PINS cases referred to the Rochester program, 50 percent have been truancy complaints. The Cambridge and New York projects anticipate a larger percentage of "incurability" cases since research in these cities reveals that most status offender cases originate as complaints from parents, not from the schools.

As mentioned earlier, the Florida juvenile arbitration statute mandates that in general only first offender misdemeanors shall be referred to arbitration. However, Florida programs which have not operated under the new statutory authority described earlier accept a broader range of cases. A review of three Florida programs--those of Broward, Duval, and Orange counties--shows a wide variety of juvenile cases. Overall, criminal mischief (vandalism), battery, possession of marijuana, trespass, theft and shoplifting were the most common types of cases handled. However, there was considerable difference among the programs as to the types of cases handled. For example, the most common case in the Duval program sample was shoplifting, but neither the Broward nor the Orange programs handled any shoplifting cases. In addition, the Orange program did not handle any drug or alcohol possession, truancy, or disorderly conduct cases.

It is generally conceded that mediation works best between parties that know each other. This has certainly been found to be true by the evaluators of programs that involve adults. Parties in juvenile cases do not appear to have the same characteristics, although most juvenile programs remain unevaluated. However, statistics in the three Florida programs that were studied show that "law enforcement" was the most frequent complainant. Law enforcement (25.7%), business (17.4%), friends (16.9%), neighbors (16.2%) and schools (12.5%) were the most frequent complaining parties. Interestingly, when the complaining party was either a friend or neighbor, 80 percent of these cases involved an assault or a battery. When a law enforcement agency was the complainant, the most common types of cases were possession of marijuana or alcohol, disorderly conduct, or trespass.*

TYPES OF AGREEMENTS REACHED

All of the programs surveyed conclude negotiations with written agreements. In the case of arbitration, the agreement is a sanction for which further action (e.g., referral back to court) will be taken if the terms of the agreement are not adhered to or completed. Violation of a mediation agreement is usually handled by an attempt to persuade the parties to schedule another mediation hearing. But even here, one of the parties might be advised to take action by filing a complaint in court.

Agreements in juvenile cases encompass a very wide range of options. By far, the most common are restitution and community service. However, counseling, essay writing, agreements to change behavior or to apologize are common. In Seattle, for example, where conference committees had been able to conclude a hearing with a variety of dispositions, the new juvenile code specifies restitution or community service and only one counseling session.

* Bridenback, Imhof, and Planchard, *op. cit.*

CHAPTER V

MAJOR ISSUES

COSTS OF PROGRAMS AND SOURCES OF FINANCIAL SUPPORT

Costs of the juvenile programs surveyed range from \$10,000 annually for the Akron project to \$400,000 for the Neighborhood Youth Diversion Project in the Bronx. But comparative budget information is meaningless without an analysis of the other factors affecting costs. In general, when a program is located within another agency--either public or private--where there are fixed costs for space, telephones, and other services, costs will be less. Additionally, the salaries of existing staff who screen cases and makes referrals (e.g., a member of the state attorney's staff or staff of an existing adult mediation center) are often not included in the costs of a program. Therefore, one must be cautious about program costs.

The Akron program's low budget of \$10,000 is covered by the Summit County Juvenile Court and paid to the American Arbitration Association in Cleveland. All referrals are mailed to Cleveland by the juvenile staff in the Akron court. The program is administered from Cleveland, but mediation sessions take place in a neighborhood health center in Akron.

Programs which consider themselves "community-based" inevitably have the highest costs. They deliberately choose space away from the courts and maintain separate facilities and separate staff. These programs, because they want to attract "neighborhood" people as mediators, often offer stipends which add to the costs. Programs which involve juveniles quite often have a social services component, which also may involve separate costs. This is true of the Bronx program. On the other hand, those costs can sometimes be absorbed by a sponsoring agency. In New York City, the PINS Mediation Project relies on its sponsor, the Children's Aid Society, for such services. Funding for programs has come from a variety of sources, including state and local government, LEAA (through block and discretionary grants), and from local and national foundations. Some of the earlier programs funded experimentally have been absorbed into ongoing court budgets. As was suggested earlier, the likelihood of permanent funding is stronger when a public agency has been actively involved in planning a project and as a major source of referral. The Bronx project is now fully funded by the City of New York.

An interesting funding scheme involves the Juvenile Mediation Program in Orange County, Florida, a component of the Community Dispute Settlement Center in Orlando. Funding for the entire program, including the juvenile part, for fiscal year 1979-80 was \$40,000, provided jointly by the Bar Association and the Court Administrator's Office. To help defray the costs of the program, the Orange County Commission passed an ordinance raising court filing fees by one dollar. The extra dollars collected are used by the CDS to help defray costs.

Future funding for programs is in doubt. Although Congress passed the Dispute Resolution Act in 1979, which provided, among other things, for experimentation with innovative dispute processing mechanisms, and though it was signed into law by President Carter on February 12, 1980, presently, no funds are available to implement the legislation. The Urban Crime Prevention Program of LEAA and ACTION provide funds for experimental crime prevention projects, including justice centers. Their guidelines indicate an interest in funding community-based projects serving portions of large urban areas which have substantial ties to the local justice system for

case referrals.

Foundations continue to be a source of funding for experimental projects. Both programs using the Scottish model, in Cleveland and Cambridge, are totally funded by foundations, as is the San Francisco program. Other programs rely on foundations for funding evaluations of their work.

COERCION VS. VOLUNTARINESS

Is there an element of coercion in the way cases are referred to dispute resolution programs? And if it exists, is it official or merely implied? These questions have been hotly debated by supporters and critics of these programs. It seems to us that most juvenile programs are at least implicitly coercive.

A look at some of the forms used by juvenile programs "inviting" youngsters and their families to participate appears to confirm this judgment (Appendix C). For example, if a program suggests that failure to appear will mean a court appearance, or that a failure to reach an agreement will require a court appearance, no voluntary consent forms will mitigate the coercion implied. The referring court officer for the Akron program told us that if that program notifies him of a non-appearance, he will get on the telephone to the family and warn them of the consequences of non-appearance.

On the other hand, many programs that consider themselves community-based have tried to avoid even the appearance of coercion (See form from Community Board Program, Appendix D.) These programs attempt to talk to all parties on the telephone or in person and carefully explain the process before seeking their consent to participate in an informal resolution.

It is significant that an evaluation of five Florida programs reported that "disputants referred to programs by criminal justice personnel were the most likely to appear for scheduled hearings, reach agreements, and be satisfied with the process."* Further, the interim evaluation of the LEAA-funded Neighborhood Justice Centers states that:

The concerns about coercion are certainly justifiable...It does appear, however, that subtle forms of coercive pressure are very important elements in the building of sizeable caseloads. Unless a dispute center wishes to exclude the established criminal justice system and concentrate on small numbers of community self-referrals, it will probably have to engage in some coercion.**

Programs which use the technique of arbitration have a special problem with regard to juveniles, a problem pointed out by Joseph Stulberg, former vice-president of the American Arbitration Association. Stulberg notes that juveniles cannot sign binding contracts; therefore, if the process used is "binding arbitration," the imposed

* Florida Supreme Court, Office of the State Courts Administrator, "The Citizen Dispute Settlement Process in Florida: A Study of Five Programs," pp. 36, 48.

** Sheppard, Roehle, and Cook, "An Interim Evaluation of the Neighborhood Justice Centers Field Test," Wash., Gov't Printing Office, 1979, p. 47-48.

agreement probably cannot be enforced.* However, sanctions imposed as part of a court-sponsored program, such as a community panel process--e.g., in the Conference Committees in Washington--are clearly enforceable. A recent conversation with the director of that program indicated that certain juveniles who do not perform their community service may spend a weekend in a locked juvenile facility.

The Assistant State's Attorney in charge of determining eligibility for juvenile arbitration in Seminole County, Florida, describes arbitration as a "form of prosecution." Further, he has stated that,

we are taking legal and official note of the juveniles' behavior and threatening them with our sanctions if they don't comply. There is usually some kind of punitive restriction set against the child. The sanction is often more strict than that given in court.**

Where the goal of a program is to help disputants develop open communication and mutual understanding, as indicated in the case histories which begin this report, there may be a tradeoff. Subtle forms of coercion may be justified if they serve to bring people together in an informal atmosphere, where youngsters in particular have a real opportunity to present their side of a dispute and disputants appear satisfied with the process.

Programs involving juveniles ought to be especially sensitive about coercion. Intake procedures should emphasize the voluntariness of participation, and mediators should be sensitive to the extent to which a youth does or does not become involved in the session. The method of "caucusing," meeting separately with the disputants, seems particularly appropriate to juvenile cases, affording the youngsters a chance to tell the moderators their views privately.

DUE PROCESS CONCERNS

Relating to issues of coercion are concerns about due process. Paul Rice, a former prosecutor who is currently professor of law at American University, has written:

There are rudiments of procedural due process that have long been recognized. They include (1) an opportunity to be heard, (2) notice to make that opportunity meaningful, and (3) an impartial decision maker. These basic rights will not create problems in the 'mediation' programs.***

* Interview with Joseph Stulberg, January 1981.

** B. Belleville, "Keeping Minors from Majoring in Crime," Barrister, vol. 7, no. 1 (Winter 1980), p. 6.

*** P. Rice, "Due Process," The Mooter, vol. 2, no. 4 (Summer 1979), p. 45.

Most programs deal with the issue of denial of due process by explaining to participants that participation is voluntary and, in most cases, requesting the parties to sign a statement to that effect. In juvenile programs, it is important to explain to the disputants the groundrules for the mediation session and how it differs from the adversarial process used in courts. In certain states, the fact that the youth has a right to a jury trial or to counsel also needs an explanation, and an opportunity should be provided for the youth to withdraw from the alternative procedure. A program such as the Neighborhood Youth Diversion Project, where each youth has a lay advocate who accompanies him/her to the mediation session, provides extra protection for the youngster.

Perhaps the most worrisome aspect is the effect on a youngster who has participated in a dispute resolution program when there has been no resolution--or the agreement has not held up. Will that youngster be penalized at a subsequent court hearing? The procedure used by the PINS Mediation Project is relevant. Because Legal Aid attorneys who represent PINS youngsters were worried about this issue (and because the Legal Aid Society supports the notion that status offender cases do not belong in Family Court), a procedure has been agreed to by the project staff as follows: The Legal Aid attorney will present the mediation program. If the family agrees, the court will be asked to Adjourn the Case in Contemplation of Dismissal (a New York Family Court procedure) without being told that the family has agreed to mediation. If no resolution is achieved through mediation, it will be up to the parents who initiated the petition to return to court if they so wish.

On the other hand, in Washington, all youths seen by a Conference Committee acquire a "criminal history." The criminal history record can be used only in court and only if the youth is charged and convicted of another crime. Under certain conditions, the law allows the sealing and destroying of these records.

To the extent that these proceedings are in fact coercive, one should be concerned about whether there has been a voluntary waiver of the right to a more formal hearing and whether discouraging the presence of counsel is prejudicial to the juvenile's interests.

CONFIDENTIALITY

Closely allied to the issues of coercion and due process is the role of confidentiality in dispute centers. One specialist has written:

Among traditional mediators, the general rule is that anything said in a mediation session is confidential; however, the fact of submission to mediation and the results of mediation are not.*

The dispute center with the strongest neighborhood orientation, the San Francisco Community Boards, ignores the issue of confidentiality. All mediation sessions are public, including the 40 percent that involve youths, and neighborhood people are encouraged to attend. The contents of the agreements that result from the mediation are available to all.

* L. Singer, "Nonjudicial Dispute Resolution Mechanisms: The Effects on Justice for the Poor," Clearinghouse Review, Dec. 1979, p. 577.

The San Francisco approach is the exception. Most programs, particularly those receiving referrals from criminal justice officials, have attempted to protect disputants by assuring confidentiality. In Dorchester all notes used during a mediation session are destroyed. Some projects have executed a written agreement with the local district attorney assuring immunity from prosecution on the basis of any information revealed in a proceeding (see Appendix E for a copy of agreement). This is similar to the provision in the Florida juvenile arbitration statute which states that:

Any statement or admission made by the child appearing before the community arbitrator or the community arbitration panel...is privileged and may not be used as evidence against him either in a subsequent juvenile proceeding or in any subsequent civil or criminal action.*

Some states absolutely forbid the disclosure of contents of juvenile court records without an order from juvenile court. If juvenile courts utilize mediation programs, it is possible that the statutory privileges that have been given to their records will also cover the juvenile's participation in such programs. The three states that have bills pending encouraging non-judicial dispute processing projects, California, Florida, and New York, (only the California bill has passed but no funds have been appropriated) provide confidentiality safeguards. In general, the statutes state that memoranda, files, written agreements, and other communications are privileged and not subject to disclosure in any judicial or administrative proceedings. In Massachusetts the Supreme Judicial Court is contemplating rules to cover confidentiality issues with respect to mediation hearings and records.

A Florida county court judge recently held that statements made by participants in the St. Petersburg Citizen's Dispute Settlement Program were privileged and not admissible as evidence, and further that documents signed by participants were privileged.** In a brief filed by the general counsel of the Federal Mediation and Conciliation Service, the argument is made that public policy requires that mediators be privileged from testifying regarding information received in the performance of their duties.***

MONITORING

The purpose of monitoring agreements reached during the dispute resolution process varies, and seems to relate closely to the issue of coercion that was discussed earlier. Within the continuum of types of programs, those programs with a neighborhood base are more likely to monitor in order to learn about satisfaction and success, or the need for further negotiation. The programs with close ties to the criminal justice system monitor to see if agreements have held up. This often occurs prior to a

* Florida statute appears in Appendix A.

** Francis v. Allen, Pinellas County Ct., Div. No. 78-0008-46 (Fla., Mar. 10, 1978).

*** Brief of Federal Mediation and Conciliation Service in N.L.R.B. v. Joseph Macaluso, No. 77-3748, April 11, 1978.

decision about whether to refer a case to court.

To date, most centers report that the failure to abide by agreements, at least in interpersonal disputes, is not a serious problem.* But as has been noted earlier, failure to perform restitution or community service may mean further serious sanctions for some juveniles.

"WIDENING THE NET"

Some authorities have suggested that a large number of cases processed through dispute centers would not have received substantial--if any--criminal justice system attention. On the other hand, centers with a neighborhood orientation--for example, both the San Francisco and Cleveland youth programs--assert that this is not an issue. They see the process as avoidance of future criminal justice processing or, as one authority has said, "a constructive outlet for suppressed anger or frustration," thereby avoiding future violence.**

None of the available project evaluations has estimated how many cases processed through a dispute center might have entered or continued in the criminal justice system. Those that are referred to programs directly by the courts--for example, the Akron program--seem to stand a better chance of doing so. The director of the Conference Committee program in King County told us that, although the committees last year processed more cases than the number that came before the juvenile court judge, in her opinion about 80 percent of those cases would not have had further court involvement.

If juvenile cases that would have been dropped by the court continue to be involved in dispute settlement programs, one might become concerned about widening of the net. But perhaps in some instances, the net should be wider. Many times minor disputes are dropped by the court because of lack of time, facilities and personnel. If a youngster is required to perform a community service or provide restitution for a minor offense (as is the case in many juvenile dispute resolution programs), certainly the victim is more satisfied with the process. The impact of this process on further juvenile misbehavior has not yet been tested.

INEQUALITY OF THE PARTIES

We have noted earlier that disputes involving ongoing personal relationships make up the bulk of cases heard in neighborhood dispute centers. Where parties have unequal relationships, e.g., between proprietors and consumers, the results have been mixed. Since several of the programs described in this report do not even permit the juvenile to meet face-to-face with the victim, the picture is quite different. It is further complicated by the fact that even with individual-to-individual conflicts, it is likely that there will be perceived inequality in juvenile cases. A juvenile facing the school attendance officer, a parent, or an older victim may have a hard time thinking that he/she has an equal opportunity to be heard. This is confirmed by early reports from the San Francisco Community Boards, where data suggest that the program is used by older residents as a

* Singer, op. cit., p. 579.

** F. Sander, "Varieties of Dispute Processing," 70 Federal Rules Decisions 111 (1976), p. 124.

mechanism for dealing with their problems with youth. but youths have not come to view the program as a resource for them to deal with conflicts they encounter.

However, once involved with the program, the youth may find that it provides him with a rare opportunity to voice his grievances. Further, programs attempting to involve youths as members of community panels, e.g., the Cambridge program, may give youngsters more of a feeling that they have an equal opportunity in the process. The technique of private sessions with the disputants, which affords a youngster an opportunity to speak out confidentially to the panel members, may provide further satisfaction in the process.

EVALUATIONS AND CONCLUSION

The question of whether community dispute settlement programs for juveniles provide an effective alternative to formal adjudication has not been satisfactorily answered. The major evaluations of dispute centers* have analyzed programs involving few, if any, juveniles. A report on Volunteers and the Juvenile Court completed in 1978 gives a thorough description of the two conference committee models (Washington and New Jersey) and makes recommendations concerning their potential for replication.** Much has been written about the earlier juvenile mediation/arbitration programs (Neighborhood Youth Diversion, Bronx; Community Arbitration, Annapolis; and, to a lesser extent, Rochester Juvenile Mediation), but little has been said related to the goals of decreased court time, lower costs, and increased satisfaction of the participants. The Office of the State Courts Administrator in Florida issued an unpublished analysis of three mediation/arbitration programs which included important recommendations for amending the Florida juvenile arbitration statute. Among the statistical data included is the satisfaction of the participants with agreements. Although only a limited amount of information was available, the

* Major evaluations have been completed of the Dorchester Urban Court, five Florida citizen dispute settlement centers, the first three neighborhood justice centers funded by the U.S. Department of Justice, and the Brooklyn Dispute Resolution Center (see bibliography). The Brooklyn evaluation employed an experimental design with randomly assigned disputants to either non-judicial or court processing. This program, mediation of felony offenses, received referrals from Brooklyn Criminal Court and did not involve juveniles. "An Evaluation Report on the Suffolk County (N.Y.) Community Mediation Center" (Evaluation Group, Inc., Glendale, N.Y., 1980) looked at a control group of cases that went to court. Data showed that 78 percent of those cases were dismissed and only 10 percent went to trial. Thus there was a greater likelihood that center users would end up with a decision rather than a dismissal.

** Arthur D. Little, Inc. and National Center for State Courts, "Volunteers and the Juvenile Court," Washington, Nov. 1978.

data indicated a very high rate of participant satisfaction. Complainants were satisfied in 89.7 percent of the cases sampled and juveniles were satisfied in 93.8 percent of the cases. In 86.4 percent of the cases, the terms of the agreement were successfully completed.*

In a prepared statement for Congressional hearings on the Dispute Resolution Act in June of 1979, Daniel McGillis of the Harvard Center for Criminal Justice said:

At present the complex trade-offs between project goals have not been carefully thought out (e.g., high quantity vs. high quality case processing, time consuming but high impact group dispute resolution vs. more rapid individual dispute resolution, justice system assistance vs. community assistance, etc.) In the absence of such a conceptualization, many projects and funding sources appear to have resorted to caseload size as the prime index of project achievement. Such a criterion for success can lead to competition among different agencies in a community for cases and an unwillingness to refer cases to other perhaps more appropriate forums.

Evaluations have tended to focus on process data and history of implementation rather than project impacts and long-term outcomes.** However, several among the newer projects, specifically the PINS Mediation Project, the Children's Hearings Project, and the Community Youth Project in Cleveland, plan long-term evaluations, separately funded, to look at these issues.

Despite large numbers of referrals, very few programs have been able to point to decreased caseloads of misdemeanors in the referring courts. Cost effectiveness has been measured in some evaluations.*** Based upon yearly budgets, the costs of each case referred and each case resolved have been calculated and compared with court cost data. This approach requires caution, however. Accurate court comparison data for minor disputes are very difficult to obtain. Courts do not record operating costs on a per case basis and rarely consider capital costs at all.

Comparing project costs with court costs requires that the project determine the likelihood that project cases would proceed through the various stages of the criminal justice system. With the few exceptions noted, this has not been nor could it be easily done. As we have discussed earlier, juvenile cases may reflect the "widening the net" phenomenon, making comparative cost figures even more problematic.

* See note, p. 20.

** For a good discussion of the important evaluations, see J. Garafolo and K. J. Connelly, "Dispute Resolution Centers Part II: Outcomes, Issues, and Future Directions," Criminal Justice Abstracts, Dec. 1980.

*** See, for example, W. Felstiner and L. A. Williams, "Community Mediation in Dorchester," and D. McGillis and J. Mullen, "Neighborhood Justice Centers: An Analysis of Potential Models."

It can be argued that reducing court expenses and court congestion may not be the most valid reasons for a non-judicial alternative to court processing of juvenile cases, in particular for status offender matters. In thinking about these programs and their future, other objectives should be considered including the following: increase of time available to hear disputes; opportunity to address root causes as opposed to recent symptoms of ongoing conflicts; early intervention to prevent escalation of a minor conflict into a major one; hearings held at locations and hours convenient to the parties; an increased sense of responsibility for youth and parents; decriminalization of disputes among individuals maintaining ongoing relationships so as to be less harmful to those relationships; better use of available social services, and the development of natural support systems.



CHAPTER VI

SUMMARY AND CONCLUSION

Although there is evidence of widespread use of third-party, non-judicial settlement in minor juvenile disputes, much of it existed before the "dispute resolution movement" of the 1970's. Juvenile mediation and arbitration in the current sense has not really been tested and, in many programs involving both adults and juveniles, it has even been avoided. Even some basic tenets of mediation programs -- e.g., face-to-face contact between the parties to a dispute -- are not present in juvenile "mediation" programs. Additionally, juvenile mediation and arbitration has had little systemic impact. Only one state -- Florida -- has a statute which authorizes juvenile arbitration.

However, juvenile mediation and arbitration programs show promise in two major areas: they succeed in diverting juveniles from court and provide victims of juvenile crimes with greater satisfaction, especially where restitution and community service result from mediation and arbitration agreements. Yet "widening the net", a now recognized phenomenon in many diversion programs, is troublesome. It can occur in programs which have not established or chosen to follow strict intake criteria. Since most juvenile mediation or arbitration cases involve minor criminal matters which would not have proceeded very far in court, if at all, juveniles are required to submit to these procedures when, without them, their cases might have been ignored.

If the mediation or arbitration process produces long-lasting behavior changes involving both parties to a dispute, the significance of "widening the net" need not be negative. Further research on long-lasting effects of such programs is needed.

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- 1) Paul Wahrhaftig, former director of Grassroots Citizen Dispute Resolution Clearinghouse
7514 Kensington Street
Pittsburgh, PA. 15221
 - 2) Information Center
National Council on Crime and Delinquency
411 Hackensack Avenue
Hackensack, N.J. 07601
 - 3) Community Board Program
149 Ninth Street
San Francisco, CA. 94103
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Project Directory*

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149 Ninth Street
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(415) 552-1250
Raymond Schonholtz, Director

Neighborhood Mediation and Conciliation
Services Program
70 West Hedding Street
San Jose, California 95110
(408) 299-3953
Jim McEnte, Coordinator

Community Dispute Settlement Program
Box 462
Concordville, Pennsylvania 19331
(215) 459-4770
Eileen Stief, Director

Community Mediation Center
356 Middle County Road
Coram, New York 11727
(516) 736-2626
Ernie Odom, Director

Neighborhood Youth Diversion Program
1910 Arthur Avenue
Bronx, New York 10457
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Cynthia Carrasquillo, Forum Coordinator

Juvenile Mediation Program
Center for Dispute Settlement
36 W. Main Street
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(716) 546-5110
Lori Michlin, Director

Children's Hearings Project
497 Cambridge Street
Cambridge, Massachusetts 02141
(617) 661-4700
Sandra Wixted, Director

*All projects with juvenile cases referred to in this report are listed here. They follow the order of Table I.

Community Youth Project
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Cleveland, Ohio 44113
(216) 566-1944
Mary Ellen Hamilton, Director

Mediation Alternative Project
Education Assistance Center
382 Main Street
Port Washington, New York 11550
(516) 883-3006
Rebecca Bell, Director

PIN Mediation Project
Children's Aid Society
105 East 22nd Street
New York, New York 10010
(212) 949-4800
Margaret Shaw, Director

Community Arbitration of Anne Arundel County
102 Cathedral Street
Annapolis, Maryland 21401
(301) 263-0707
Bruce Mermelstein, Project Director

Community Arbitration Program
5200 Westland Boulevard
Arbutus, Maryland 21227
(301) 247-8666
Gregory Gaeng, Coordinator

Juvenile 4-A Program (Akron)
c/o American Arbitration Association
215 Euclid Avenue
Cleveland, Ohio 44114
(216) 241-4741
Earle C. Brown, Regional Director

Family Court of Delaware (Arbitration Program)
600 Market Street
Wilmington, Delaware 19801
(302) 571-2200
William Davis, State Director of Court Operations

Florida Programs:

Voluntary Juvenile Arbitration Program
Hillsborough County Courthouse
Tampa, Florida 33602
(813) 272-6094
Nancy Hanratty Lopez, Director

Seminole County Juvenile Community
Arbitration Program
Office of the State Attorney
Seminole County Courthouse
Sanford, Florida 32771
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Gayle Hair, Program Manager

Youth Mediator Program
State Attorney's Office
Duval County Courthouse
Jacksonville, Florida 32201
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William J. Schneider, Director of Special Projects

Citizen Dispute Settlement Program
14 E. Washington Street
Orlando, Florida 32801
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Thomas A. Barron, Director

Administrative Office of the Courts
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Chief, Juvenile and Domestic Relations Court Services

Conference Committee Program
Juvenile Court Department
Superior Court of the State of Washington for the
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1211 East Alder Street
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Carmen Ray-Bettineski, Director

Community Accountability Program
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(206) 625-4370
Ronald Sims, Director

Tompkins County Youth Court
1701 N. Cayuga Street
Ithaca, New York 14850
(607) 273-8364
Cindy Dresser, Director

Youth Court
408 S. Main Street
Horseheads, New York 14845
(607) 739-0797
Madeline Tillotson, Youth Forum Coordinator

Student Jury
c/o District Attorney's Office
924 W. Colfax Street
Denver, Colorado 80204
(303) 575-2828
Zorlee Steinberg, Diversion Counselor

JUVENILES—COMMUNITY ARBITRATION PROGRAMS

CHAPTER 77-435

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 849

An Act relating to juveniles; creating ss. 39.51-39.57, Florida Statutes; authorizing counties to establish community arbitration programs for the handling of cases involving the commission of certain offenses by children; providing for the determination of the offenses which may be included within the program; providing for the selection of community juvenile arbitrators or community juvenile arbitration panel members and providing qualifications therefor; providing a procedure for the initiation of the arbitration process; providing for arbitration hearings; providing that certain statements or admissions by a child at a hearing are privileged; providing alternative dispositions for cases; providing for periodic reports concerning children referred to persons or agencies; providing for the forwarding of cases back to the intake officer under certain circumstances; providing for review of such dispositions to the intake officer; providing for funding; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Sections [39.51] 39.33, [39.52] 39.331, [39.53] 39.332, [39.54] 39.333, [39.55] 39.334, [39.56] 39.335, and [39.57] 39.336, [39.58] 39.337, Florida Statutes, are created to read:

39.33 Purpose

The purpose of this act is to provide a system by which children who commit certain minor offenses may be dealt with in a speedy and informal manner at the community or neighborhood level, in an attempt to reduce the ever increasing instances of juvenile crime and permit the judicial system to effectively deal with cases which are more serious in nature.

39.331 Community arbitration program

(1) Any county may establish a community arbitration program designed to compliment the juvenile intake process provided in this chapter. The program shall provide one or more community juvenile arbitrators or community juvenile arbitration panels to informally hear cases involving alleged commissions of certain offenses by children.

(2) Cases which may be heard by a community juvenile arbitrator or arbitration panel shall be limited to those involving misdemeanors and violations of local ordinances which have been agreed upon, in writing, as being subject to community arbitration by the state attorney, senior circuit court judge

assigned to juvenile cases in the circuit, and the Department of Health and Rehabilitative Services.

39.332 Community juvenile arbitrators

(1) Each community juvenile arbitrator or member of a community arbitrator panel shall be selected by the chief judge of the circuit, the senior circuit court judge assigned to juvenile cases in the circuit, and the state attorney.

(2) A community juvenile arbitrator or member of a community arbitration panel may be a person specially trained or experienced in juvenile causes and the problems of persons likely to appear before him, but shall be:

(a) Either a graduate of an accredited law school or of an accredited school with a degree in behavioral social work, or trained in conflict resolution techniques; and

(b) A person of the temperament necessary to properly deal with the cases and persons likely to appear before him.

39.333 Procedure for initiating cases for arbitration

(1) Any law enforcement officer or other person authorized under the program may issue a complaint along with a recommendation for arbitration against any child who such officer or person has reason to believe has committed any offense that is eligible for arbitration. The complaint shall specify the offense and the reasons why the law enforcement officer or authorized person feels that the offense should be handled by arbitration. A copy of the complaint shall be forwarded to the appropriate intake officer and the parent or legal guardian of the child. In addition to the complaint, the child's parent or legal guardian shall be informed of the objectives of the arbitration process, the conditions and procedures under which it will be conducted, and the fact that it is not obligatory. The intake officer shall contact the child's parent or legal guardian within 3 days after the date on which the complaint was forwarded. At this time, the child's parent or legal guardian shall inform the intake officer of the decision to approve or reject the handling of the complaint through arbitration.

(2) If the child's parent or legal guardian rejects the handling of the complaint through arbitration, the intake officer shall consult with the state attorney or assistant state attorney for the possible filing of formal juvenile proceedings.

(3) If the child's parent or legal guardian accepts the handling of the complaint through arbitration, the intake officer shall provide copies of the complaint to the arbitrator or panel within 24 hours.

(4) The arbitrator or panel shall, upon receipt of the complaint, set a time and date for a hearing within 7 days and shall inform the child's parent or legal guardian, the complaining witness, and any victims of the time, date, and place of the hearing.

39.334 Arbitration hearings

(1) The law enforcement officer or authorized person who issued the complaint need not appear at the scheduled hearing. However, prior to the hearing, he shall file with the community arbitrator or the community arbitration panel a comprehensive report setting forth the facts and circumstances surrounding the allegation.

(2) Records and reports submitted by interested agencies and parties, including, but not limited to, complaining witnesses and victims, may be received in evidence before the community arbitrator or the community arbitration panel without the necessity of formal proof.

(3) The testimony of the complaining witness and any alleged victim may be received when available, and these individuals may be present during the entire course of the proceedings.

(4) Any statement or admission made by the child appearing before the community arbitrator or the community arbitration panel relating to the offense for which he was cited is privileged and may not be used as evidence

against him either in a subsequent juvenile proceeding or in any subsequent civil or criminal action.

(5) If a child fails to appear on the original hearing date, the matter shall be referred back to the intake officer who shall consult with the state attorney or an assistant state attorney regarding possible filing of formal juvenile proceedings.

39.335 Disposition of cases

(1) Subsequent to any hearing held as provided in s. 39.55, the community arbitrator or community arbitration panel may:

- (a) Dismiss the case;
- (b) Dismiss the case with a warning to the child;
- (c) Refer the child for placement in a community-based program;
- (d) Refer the child to community counseling;
- (e) Refer the child to a safety and education program related to juvenile offenders;
- (f) Refer the child to a work program related to juvenile offenders;
- (g) Refer the child to a nonprofit organization for volunteer work in the community;
- (h) Order restitution in case of property damage;
- (i) Continue the case for further investigation; or
- (j) Impose any other restrictions or sanctions that are designed to encourage noncriminal behavior and are agreed upon by the participants of the arbitration proceedings.

(2) Any person or agency to whom a child is referred pursuant to this section shall periodically report the progress of the child to the referring arbitrator or panel in the manner prescribed by such arbitrator or panel.

(3) If a child consents to an informal adjustment and, with his parent or legal guardian and the community arbitrator or community arbitration panel, agrees to comply with any disposition suggested or ordered by the arbitrator or panel and subsequently fails to abide by the terms of such agreement, the arbitrator or panel may, after a careful review of the circumstances, forward the case back to the intake officer who shall consult with the state attorney or the assistant state attorney regarding the possible filing of formal juvenile proceedings.

39.336 Review

Any interested agency or party, including, but not limited to, the complaining witness and victim, who is dissatisfied with the disposition provided by the community arbitrator or the community arbitration panel may request a review of the disposition to the appropriate intake officer within 15 days of the community arbitration hearing. Upon receipt of the request for review, the intake officer shall consult with the state attorney or assistant state attorney who shall consider the request for review and may file formal juvenile proceedings or take such other action as may be warranted.

39.337 Funding

Funding for the provisions of this act shall be provided through federal grant or through any appropriations as authorized by the county participating in the community arbitration program.

Section 31. This act shall take effect July 1, 1977.

The enrolled bill did not contain a section 2.

Approved by the Governor June 30, 1977.

Filed in Office Secretary of State June 30, 1977.

JUVENILE MEDIATION/ARBITRATION PROCESS

After documenting the differences between mediation and arbitration and the applicability of the existing statute to the process, an analysis of three programs located in Broward, Duval and Orange counties was conducted. These counties were selected on the basis of volume of cases, types of cases handled, method of dispute resolution used, organizational structure and geographical location. (A more detailed description of each program's features is provided below.)

1. Description of the Three Programs

• Jacksonville (4th Circuit)

1) Organization

The Jacksonville program is called a Youth Mediator Program (YMP), and it is established as a separate program through the Citizen Dispute Settlement (CDS) office. The Youth Mediator Program is supervised through the Fourth Circuit State Attorney's Office. The YMP utilizes the same staff as the CDS program which includes one director, one research assistant, one investigator and two secretaries. In addition to the CDS and YMP responsibilities, the office also administers the Youth Work Program which is also considered a separate program.

The CDS program has been in existence for five years since 1975; the Youth Mediator Program was established in June of 1977 (approximately 3 years).

2) Process

The program utilizes what the director terms a "mediation" technique for handling juvenile cases. The mediation involved, however, concerns the resolution between the amount of damages to the complaining party and the amount, type and schedule of restitution by the juvenile. The program requires the juvenile to admit guilt at the outset of the proceedings, so there is no question of mediating or arbitrating the juvenile's guilt or innocence. If a juvenile does not admit guilt, his case is usually sent back to the State Attorney's Office. This type of process is seen by the Youth Mediation Program Office as a type of plea-bargaining arrangement since the juvenile usually has admitted guilt.

The majority of case referrals to the program come from the State Attorney's Office, but the program also receives referrals from schools and police officers. Once a referral is received, a letter is sent to the juvenile and his parents explaining the program and setting a hearing date, usually within two weeks of the referral. The hearing is held between the victim

(complainant), the mediator, and the juvenile and his parents. The program utilizes lay citizens on a voluntary basis from Jacksonville's professional and business community. The mediators are usually still actively engaged in a vocation and are not retired.

Once a hearing is held and a decision reached, the case is closed. If restitution or a work program is agreed upon, a follow-up sheet is sent out to determine if the provisions of the agreement have been completed. The YMP must rely on the party or parties to whom the juvenile is assigned to complete the follow-up sheet and return it to the office due to its small staff. If the juvenile does not comply with the agreement, the case is returned to the State Attorney's Office for further consideration. The program requires the juveniles to sign a waiver of speedy trial only when restitution or a work program agreement is reached.

3) Authorization and Funding

The program was established in June, 1977 prior to the effective date of Chapter 77-435, Laws of Florida, which created a community arbitration program to "complement the juvenile intake process." The Jacksonville program was created and operates through the local State Attorney's Office and does not follow the procedures established by §39.33 et. seq., Florida Statutes (1979).

The budget for fiscal year 1979-80 was \$46,000 for the Youth Mediator Program. Funding is provided through the Juvenile Justice Delinquency Prevention Act which is administered through the consolidated government. Funds are channeled through the State Attorney's Office to the Youth Mediator Program.

The Youth Mediator Program received 2,008 cases and conducted 1,998 hearings during the 1979 calendar year. The program also collected \$5,875.58 in restitution.

• Ft. Lauderdale (17th Circuit)

1) Organization

The juvenile program in Ft. Lauderdale is also established and administered by the CDS program. It is supervised by the Court Administrator and it was created by Broward County pursuant to Section 39.33 et. seq., Florida Statutes (1979). The Community Arbitration Program (hereinafter called Juvenile Program) has one position separately funded by the county for the program. However, many times the regular CDS staff is also utilized in some capacity. The CDS program has a staff of two counselors, one regular secretary, one CETA funded secretary and one director. In addition to the Juvenile Program, the office also handles a full caseload of CDS problems. The same hearing officers sit both as CDS mediators and juvenile arbitrators. The CDS program has been

in operation since October 1976. The Juvenile Program was authorized in March 1978, but did not start receiving cases until October 1978.

2) Process

The program predominately utilizes an arbitration type resolution technique with some mediation in certain circumstances.

The majority of the referrals to the program (estimated at 92%) come from the Department of Health and Rehabilitative Services (HRS), but the program also receives referrals from sources outside of HRS. The HRS intake officer makes a decision whether or not to refer a juvenile case to the arbitration program. Once the intake officer makes the referral to the juvenile program, the program sends out a letter to the parents explaining the program and scheduling a hearing date within ten working days. The program has been preparing and sending the letter explaining the program because HRS has never been able to contact the parents within the 3 days required by that Section 39.333, Florida Statutes (1979).

Prior to the conduct of the hearing, the juvenile is required to sign a waiver of speedy trial in every case to prevent problems arising if the hearings are, for some reason, postponed.

Any statement made by the juvenile during the hearing is privileged and may not be used as evidence against him in any subsequent proceedings. (See Section 39.334, Florida Statutes (1979).) The hearing is held by an arbitrator who is usually a retired professional or businessman. The arbitrators are all volunteers and have been recruited from the local retired attorney association and Retired Senior Volunteer Program (R.S.V.P.). Some arbitrators are practicing attorneys, law students and sociologists. The arbitrators are presently trained on an individual basis by the program director because the program is constantly recruiting new arbitrators as the old ones drop out, move away, etc.

Once a decision is made, the arbitrator may make a disposition pursuant to Section 39.335, Florida Statutes (1979). These are essentially the same type of dispositions made through the other two programs: dismissal, referral to work program, restitution, etc. The arbitrator also can refer a juvenile to outside agencies for specialized treatment, such as a drug or alcohol abuse program.

3) Authorization and Budget

This program is funded by Broward County and administered through the Court Administrator's Office pursuant to Section 39.33 et seq., Florida Statutes (1979).

The budget for the program, including CDS, for fiscal year 1979-80 was \$80,447. The juvenile program's budget has one funded position plus such support as need from existing CDS personnel. The program has handled 1400 cases since its inception in 1978.

• Orlando (9th Circuit)

1) Organization

The program (entitled Juvenile Mediation Program) established in this circuit is supervised by the Orange County Bar Association. The program is staffed by one director, one administrative assistant and one intern. The CDS program and the Juvenile Mediation Program are the two responsibilities handled by the office in Orlando. Both the Juvenile and CDS programs were established in late 1975. This is prior to the enactment of Chapter 77-345, Laws of Florida, creating the Community Arbitration Program.

2) Process

Mediation is the technique which is utilized in dealing with juvenile cases in the Orlando program. Cases are processed and referred from the State Attorney's Office to the local Human Services Planning Council (an umbrella social service agency) to the Juvenile Mediation Program (JMP).

The JMP handles first time juvenile misdemeanor and some minor felony cases. Once such a case is referred to the program, the victim is contacted to get his approval. After referral, the juvenile and his parents are counselled by a person from the Human Services Planning Council; forms provided by the State Attorney's Office are completed, including a waiver of speedy trial, and a hearing is scheduled. The hearing is attended by the juvenile, his parents, the victim and the program mediator. When an agreement is reached, all parties are required to be signatories and it is forwarded to the State Attorney's Office. A follow-up is done on each case at the end of three months from the date of the hearing. The JMP does not refer the juvenile to any other counselling programs. The Human Services Planning Council counselor would make those types of referrals instead of referring the juvenile to the mediation program.

Since the program is a project of the Orange County Bar Association, the Association supplies volunteers attorneys to hear these mediation cases.

3) Authorization and Budget

The program was established by the Orange County Bar Association with the cooperation of the Ninth Circuit's State Attorney's Office, Human Services Planning Council and the Court Administrator's Office.

Funding for fiscal year 1979-80 was \$40,000, provided jointly by the Bar Association and the Court Administrator's Office. To help defray the costs of the program, the Orange County Commission passed an ordinance raising the court filing fees by \$1. These funds are administered by the Court Clerk and forwarded to the Orange County Bar Association for use by the Juvenile Mediation Program. Moreover, the program receives \$70 per case if referred from the Youth Diversion Project (administered by the Human Services Planning Council), YMCA, Boys Club, the Door (a drug rehabilitation agency) or other contractors.

The caseload which was handled between October 1978 and October 1979 was 96 cases. This is increasing, as the program has already heard 70 cases through April 14, 1980.

2. Study Methodology

The Study consisted of reviewing a sampling of 1979 case files in each program. A total of 265 cases were reviewed. The number of cases reviewed in each program is broken down as follows:

- Broward - 102
- Duval - 99
- Orange - 64

The types of information obtained from the case files included:

- Referral Source
- Case Type
- Complainant Type
- Disposition Type
- Nature of Agreements
- Success/Status of Agreements
- Demographic Characteristics of Juvenile(s)

Prior to the process of collecting the above information, a data collection instrument was developed to facilitate the collection process.

3. Summary of Findings

• Descriptive Characteristics of Juvenile Mediation/Arbitration Process

This section reflects upon the basic descriptive characteristics found in the three juvenile programs. The intent of this section is to present a summary of the data collected in the study and document some of the distinguishing features found in the programs.

1) Types of Cases Handled

Table 1
Case Type

Area Variable	Broward (100)	Duval (98)	Orange (64)	Total
Criminal Mischief	28.0% (28)	10.2% (10)	18.8% (12)	19.1% (50)
Battery	10.0 (10)	5.1 (5)	29.7 (19)	13.0 (34)
Possession of Marijuana	16.0 (16)	13.3 (13)	0.0	11.1 (29)
Trespass	17.0 (17)	4.1 (4)	9.4 (6)	10.3 (27)
Theft	7.0 (7)	6.1 (6)	20.3 (13)	9.9 (26)
Shoplifting	0.0	21.4 (21)	0.0	8.0 (21)
Assault	2.0 (2)	9.2 (9)	6.3 (4)	5.7 (15)
Burglary	1.0 (1)	7.1 (7)	10.9 (7)	5.7 (15)
Possession of Alcohol	7.0 (7)	3.1 (3)	0.0	3.8 (10)
Truancy	0.0	8.2 (8)	0.0	3.1 (8)
Disorderly Conduct	4.0 (4)	4.1 (4)	0.0	3.0 (8)
Other	8.0 (8)	8.2 (8)	4.7 (3)	7.2 (19)

As indicated in Table 1, the three juvenile programs handle a wide variety of disputes. Overall, criminal mischief (vandalism), battery, possession of marijuana, trespass, theft and shoplifting were the most common types of cases handled. However, there was considerable difference between the programs as to the types of cases they handle. For example, the most common type of case in the Duval program sample was shoplifting, but neither the Broward nor the Orange programs handled any shoplifting cases. In addition to not handling shoplifting cases, the Orange program did not handle any drug or alcohol possession, truancy or disorderly conduct cases. The most common case type handled in the Orange program was battery (29.7%).

It should be noted in analyzing the types of cases handled that a significant percentage of cases were school related. In reviewing the case files, it was apparent that many of the criminal mischief, battery, assault and obviously truancy cases were related to school involvement. Also apparent from reviewing the case files, was that a considerable percentage of the cases handled involved offenses which could have been classified as criminal felonies. This was particularly true with respect to several criminal mischief and theft cases.

2) Types of Referral Sources

Table 2
Referral Sources

Area Variable	Broward (102)	Duval (99)	Orange (64)	Total (265)
HRS	92.2% (94)	82.8% (82)	0.0%	66.4% (176)
Local Youth Diversion Project	0.0	0.0	98.4 (63)	23.8 (63)
School	3.9 (4)	9.1 (9)	0.0	4.9 (13)
Law Enforcement	3.9 (4)	5.1 (5)	0.0	3.4 (9)
Other	0.0	3.0 (3)	1.6 (1)	1.5 (4)

Cases are referred to the juvenile programs from only a few main sources. Clearly, the Department of Health and Rehabilitative Services (HRS), due to their role in the juvenile justice system, is the primary referral source. The only other major source of referrals came from a special "Youth Diversion project" operating in Orange County. Schools and law enforcement agencies referred a small number of cases to the juvenile programs, 4.9 percent and 3.4 percent respectively.

The typical sequence of events which led cases to the juvenile programs was as follows. A law enforcement agency would respond to a complaint against a juvenile or would in fact be the complaining party itself (see Table 3). The law enforcement agency would then turn the case over to HRS officials for screening. The HRS intake officer then refers all appropriate cases to the juvenile arbitration program after consultation with the state attorney's office (the only variation to this typical sequence of events was found in Orange County where the HRS office would refer all their juvenile cases to the special "youth diversion project",

via the state attorneys' office who in turn would make the appropriate referrals).

3) Types of Complainants

Table 3
Complainant Type

Area Variable	Broward (102)	Duval (99)	Orange (64)	Total (265)
Law Enforcement	41.2% (42)	26.3% (26)	0.0%	25.7% (68)
Business	7.8 (8)	31.3 (31)	10.9 (7)	17.4 (46)
Friend	12.7 (13)	6.0 (6)	40.6 (26)	16.9 (45)
Neighbor	8.8 (9)	15.2 (15)	29.7 (19)	16.2 (43)
School	13.7 (14)	14.1 (14)	7.8 (5)	12.5 (33)
No Relationship	9.8 (10)	2.0 (2)	4.7 (3)	5.7 (15)
Other	5.8 (6)	5.0 (5)	6.2 (4)	5.6 (15)

Table 3 shows the distribution of the type of complainants. There is a fairly even distribution of complainant types overall. Law enforcement (25.7%), business (17.4%), friends (16.9%), neighbors (16.2%) and schools (12.5%) were the most common types of complaining parties. However, there was some variation in complainant types between the three programs. Law enforcement dominated as complainants in Broward (41.2%), while businesses were the most common in Duval (31.3%) and friends were the most frequent complainants in Orange (40.6%).

There were some interesting findings when comparing the types cases associated with the various types of complainants. For instance, when the complaining party was either a friend or neighbor, eighty percent of the cases involved either an assault or a battery. When a law enforcement agency was the complainant, the most common types of cases were possession of marijuana or alcohol, disorderly conduct or trespass.

4) Speed of Case Processing

Table 4
Speed of Case Processing if Disposed of by Hearing

Area Variable	Broward (52)	Duval (77)	Orange (55)	Total (184)
<u>Days</u>				
0-7	7.7% (4)	11.6% (9)	12.7% (7)	11.0% (20)
8-14	73.0 (38)	57.1 (44)	42.8 (33)	62.0 (115)
15-21	15.3 (8)	19.4 (15)	9.0 (5)	15.0 (28)
22-28	1.9 (1)	7.7 (6)	10.9 (6)	8.0 (13)
More than 28	1.9 (1)	3.8 (3)	7.2 (4)	4.0 (8)
Average # of Days	12.1	13.6	15.2	13.7

Once a case is referred to the juvenile program, a hearing is scheduled and the case is generally disposed of in a relatively short period of time. As indicated in Table 4, the overall mean time for processing cases which are disposed of as a result of a hearing was 13.7 days. Seventy-three percent of all cases in the sample were disposed of in 14 days or less. The Broward program had the lowest mean number of days (12.1) and Orange had the highest mean number of only 15.2 days.

It should be noted that when cases were disposed of without a hearing taking place, the mean number of days was 12.6. These cases were most commonly cases in which one or both parties stated they would not attend the hearing or failed to show up at hearing for whatever reason.

5) Nature of Dispositions

Table 5
Nature of Dispositions

Area Variable	Broward (102)	Duval (99)	Orange (63)	Total (264)
Hearing and Agreement Both Parties	24.5% (25)	52.5% (52)	81.0% (51)	48.5% (128)
Hearing and Agreement Without Complainant Present	57.8 (59)	27.3 (27)	3.2 (2)	33.3 (88)
No Hearing - One or Both Parties No Show	12.7 (13)	13.3 (13)	11.1 (9)	12.5 (33)
No Settlement at Hearing	3.0 (3)	4.0 (4)	4.8 (3)	3.8 (10)
Other	2.0 (2)	3.0 (3)	0.0	1.9 (5)

Of all the cases in the sample, 85.6 percent resulted in a hearing. As evidenced in Table 5, the majority of cases in which a hearing was held had both parties present (48.5%). However, 33.3 percent of the cases involved a hearing and agreement without a complainant present. These cases generally involved law enforcement complainants. Only 3.8 percent of all of the cases sampled resulted in no settlement at the hearing.

There was some variation between programs as to the frequency of different dispositions. For example, the Orange program had the highest percentage (81.8%) of cases which resulted in a hearing and agreement with both parties present. The Broward juvenile program had the highest rate of hearing and agreements without the complainant being present (57.8%).

There was some interesting findings when the nature of disposition was compared to certain other variables. For instance, 95 percent of all shoplifting cases resulted in hearings and agreements. This was the highest rate of agreement for all types of cases. Additionally, cases in which the complainant was a neighbor of the juvenile resulted in the highest rate of no show/n

hearings (33.3%) and no settlement at hearings (40.0%). Lastly, juveniles who lived with only their mother had the highest rate of no shows (19.4%) which resulted in no hearing.

If the juvenile failed to appear for a hearing, the most common actions taken by the juvenile programs were to refer the case back to the state attorney (52.3%) or to HRS/youth diversion project (20.4%) or do nothing at all (11.4%).

6) Nature of Agreements

Agreements reached as a result of the juvenile programs' hearings involved substantive obligations on the part of the juveniles in 97.7 percent of the cases in the sample. Complainants also agreed to some stipulation in 99.1 percent of the cases. This figure, however, is somewhat misleading because 86.8 percent of complainant agreements simply involved an agreement not to pursue prosecution or civil action if the juvenile upheld his end of the agreement. Substantive complainant agreements such as an apology, establishment of cooperative relationship with juvenile or discontinuance of contact with juvenile were found in only 12.2 percent of the agreements.

Of the total number of agreements sampled, juveniles most frequently agreed to one of the following: participation in a work program (29.4%); never to commit criminal or juvenile act again (22.9%); make restitution to victim (13.1%); or participate in counseling program (8.9%). This generally held true between all programs as evidenced by Table 6. The Duval program utilized work programs more often than the Broward or Orange programs, 46.2 percent to 26.5 and 9.4 percent respectively. The Orange program had the highest percentage of agreements which involved juvenile restitution to victims (30.2%).

Some patterns became apparent when comparing types of agreements to other variables. For example, female juveniles agreed to counseling and no future contact with complainant much more frequently than male juveniles. Contrastly, male juveniles were much more likely to agree to provide restitution to their victims than were females. Other interesting patterns which emerged include:

- over 50 percent of all alcohol or marijuana cases resulted in an agreement to participate in counseling program
- 73 percent of all restitution agreements were associated with either criminal mischief, theft or burglary cases
- the average amount of restitution agreed to by juveniles in the sample was \$124.81

Table 6
Nature of Agreement/Juvenile

Area Variable	Broward (83)	Duval (78)	Orange (53)	Total (214)
Participate in Work Program	26.5% (22)	46.2% (36)	9.4% (5)	29.4% (63)
Never Commit Crim/Del Act Again	27.7 (23)	15.4 (12)	26.4 (14)	22.9 (49)
Make Restitution to Victim	6.0 (5)	9.0 (7)	30.2 (16)	13.1 (28)
Participate in Counseling Program	18.1 (15)	3.8 (3)	1.9 (1)	8.9 (19)
Discontinue all Contacts with C	1.2 (1)	5.1 (4)	13.2 (7)	5.6 (12)
Discontinue Use of Alcohol/Drugs	7.2 (6)	5.1 (4)	0.0	4.7 (10)
Verbal/Written Apology to Victim	2.4 (2)	3.8 (3)	9.4 (5)	4.7 (10)
Establish Cooperative Relations with Complainant	0.0	2.6 (2)	5.7 (3)	2.3 (5)
No Obligation	2.4 (2)	1.3 (1)	3.8 (2)	2.3 (5)
Attend School Regularly	0.0	5.1 (4)	0.0	1.9 (4)
Other	8.4 (7)	2.6 (2)	0.0	4.2 (9)

- 80 percent of all shoplifting cases resulted in an agreement to attend work programs
- older juveniles (between 15-17 years old) were much more likely to agree to counseling than were younger juveniles
- younger juveniles (under 13 years old) were more likely to agree to simply apologize or promise to avoid future trouble than older juveniles

7) Status of and Satisfaction with Agreements

There was only a limited amount of information in the case files of the three programs concerning the status of the agreements and/or the satisfaction of the complainants and juveniles with the agreement. However, the data that was available indicated a very high rate of successfully completed agreements and a high rate of participant satisfaction. Complainants were satisfied with the agreements in 89.7 percent of the cases sampled and the juveniles were 93.8 percent satisfied. In 86.4 percent of the cases, the terms of the agreement were successfully completed.

• Demographic Characteristics of Juveniles

To provide further insight to this alternative process of handling juvenile problems, the demographic characteristics of the juveniles involved in the cases reviewed, including age, sex, education, ethnic background and living arrangement, were documented. Each of these characteristics are described on the following pages.

1) Age

Table 7
AGE OF JUVENILE

Area Variable	Broward (101)	Duval (93)	Orange (64)	Total (258)
10 and under	4.0 (4)	5.4 (5)	1.6 (1)	3.9 (10)
11-12	10.9 (11)	15.1 (14)	6.3 (4)	10.8 (28)
13-14	17.8 (18)	32.3 (30)	39.1 (25)	28.3 (73)
15-16	35.7 (36)	30.1 (28)	46.9 (30)	36.5 (104)
17	32.7 (33)	17.2 (16)	6.3 (4)	20.5 (53)
Average	15.0 yrs.	14.1 yrs.	14.6 yrs.	14.6 yrs.
Range	8-17 yrs.	7-17 yrs.	10-17 yrs.	7-17 yrs.

Table 7 reveals that the average age of a juvenile who participated in the three programs reviewed was 14.6 years. There is, however, some variations between each program. For example, the 15-16 year age group was the single most frequent group for Broward and Orange counties while the 13-14 year age group represented the largest number of juveniles in Duval County. From the table, it does appear that the Broward County program deals more often with juveniles at the older end of the range (16,17 year olds). Whereas, more than half of the juveniles handled in Duval County were less than 15 years old. Almost 90 percent of the juveniles in Orange County were between the ages of 13 to 16.

2) Sex

Table 8
Sex

Area \ Variable	Broward (102)	Duval (95)	Orange (64)	Total (261)
Male	84.3% (85)	70.5% (67)	70.3% (45)	75.9% (198)
Female	15.7 (16)	29.5 (28)	29.7 (19)	24.1 (63)

As expected, Table 8 indicates that the vast majority of the juveniles handled through this process are male. Interestingly, Broward County had a significantly higher percentage of males than the other two counties.

3) Ethnic Background

Table 9
Ethnicity

Area \ Variable	Broward (102)	Duval (94)	Orange (64)	Total (260)
White	80.4% (82)	78.7% (79)	78.1% (50)	79.2 (206)
Black	15.8 (16)	21.3 (20)	18.8 (12)	18.5 (48)
Hispanic	4.0 (4)	0.0	3.1 (2)	2.3 (6)

There is little variation among the programs regarding the race of the juveniles participating in this process. Overall, almost 80 percent were white. Not surprisingly, blacks were the second highest racial group with hispanics accounting for only 2.3 percent of the total.

4) Living Arrangements

Table 10
Living Arrangements

Area \ Variable	Broward (102)	Duval (93)	Orange (52)	Total (247)
Both Parents	57.8% (59)	69.9% (65)	69.2% (36)	64.8% (160)
Mother	30.4 (31)	23.7 (22)	17.3 (9)	25.1 (62)
Father	6.9 (7)	1.1 (1)	9.6 (5)	5.3 (13)
Other	4.9 (5)	5.4 (5)	3.8 (2)	4.9 (12)

Table 10 reveals that, overall, approximately two-thirds of the juveniles live with both of their parents. In comparing the three programs, Broward County had the highest percentage of juveniles (30.4) living with their mother only and Orange County had the highest percentage of juveniles living with their father. In Duval, only one of the 93 juveniles involved in the cases reviewed lived with his father.

In summary, the demographic profile of a juvenile who is involved in a case which is referred to a juvenile mediation/arbitration program will most likely be a white male, 16 years old who lives with both parents.

Appendix C - Forms notifying participants
of mediation or arbitration hearings
NOTICE OF HEARING

JUVENILE ARBITRATION PROGRAM
18th JUDICIAL CIRCUIT, SEMINOLE COUNTY, FLORIDA

Case No.: _____

TO THE PARTIES NAMED BELOW:

YOU ARE HEREBY NOTIFIED THAT AN ARBITRATION HEARING WILL BE HELD ON THE COMPLAINT
FILED AGAINST THE CHILD NAMED AT _____ IN THE EVENING ON, _____
_____, 19____, AT _____

The child and parent or custodian must both attend. Attendance by all other parties is encouraged.
Failure of child and parent or custodian to attend will result in this case being referred back to the Office
of the State Attorney for prosecution.

CHILD _____

COMPLAINANT _____

PARENT/CUSTODIAN _____

COMPLAINANT'S AGENT OR ADDRESS _____

STREET ADDRESS _____

CITY, STATE AND ZIP _____

CITY, STATE AND ZIP _____

VICTIM _____

WITNESS _____

STREET ADDRESS _____

STREET ADDRESS _____

CITY, STATE AND ZIP _____

CITY, STATE AND ZIP _____

WITNESS _____

STREET ADDRESS _____

CITY, STATE AND ZIP _____

Program Coordinator
Seminole County Courthouse
Sanford, Florida 32771
Telephone 322-7534

YOUTH MEDIATION PROGRAM
FOURTH JUDICIAL CIRCUIT, FLORIDA
DUVAL COUNTY COURTHOUSE
JACKSONVILLE, FLORIDA 32202

DATE _____
QUESTIONS CONCERNING THIS
HEARING: PLEASE CALL 633-6643
REFER TO YMP # _____

W. J. SCHNEIDER, DIRECTOR OF SPECIAL PROJECTS

TO: _____, RESPONDENT, AND YOUR CHILD:

AND

TO: _____, COMPLAINANT

PLEASE BE ADVISED THAT A POLICE REPORT HAS BEEN SUBMITTED CHARGING

_____ AGAINST _____
BY _____. A HEARING CONCERNING THE CIRCUMSTANCES OF
THE OFFENSE WILL BE HELD BY THE YOUTH MEDIATION PROGRAM OF THE FOURTH JUDICIAL
CIRCUIT OF FLORIDA, AT _____ IN THE EVENING, ON _____
_____ AT THE DUVAL COUNTY COURTHOUSE, FIFTH FLOOR,
ROOM 501.

IT IS NECESSARY THAT YOU PRESENT YOURSELF PROMPTLY AT THE HEARING.

FAILURE TO APPEAR BY THE RESPONDENT AND THE CHILD MAY RESULT IN THE FILING
OF CRIMINAL CHARGES.

ED AUSTIN
STATE ATTORNEY

BY William J. Schneider
WILLIAM J. SCHNEIDER

Community Mediation Center

356 Middle Country Road
Coram, New York 11727

Director:
Robert Saperstein, Esq.
Training Coordinator:
Eric Odom

Telephone: (516) 736-2626

NOTIFICATION

TO:

A criminal complaint was made against you on _____
by _____.

A review of this case indicates you are qualified to submit
this matter to mediation in lieu of criminal court.

Therefore, you are advised to appear at the Community Mediation
Center - 356 Middle Country Road, Third Floor, Coram, New York,
for a private hearing on _____ at _____.

It is your responsibility to call the Intake Coordinator
before _____ to confirm your appointment.

IF YOU FAIL TO APPEAR AT THE DISPUTE CENTER, YOUR CASE WILL
BE HEARD IN CRIMINAL COURT, Veterans Memorial Highway, Hauppauge, N.Y.

Robert M. Saperstein, Esq.
Project Director
COMMUNITY MEDIATION CENTER

APPENDIX D - Notification of Community Board Program

INVITATION FOR INVITEES/PARENTS

A. The _____ Community Board has learned that
you were involved in an incident with _____
on _____ (Date) _____. We would like to invite you to attend
a Community Board Meeting at _____ (Location & Time) _____
to attempt to resolve the dispute within our own
community, without the need for police or courts.

B. The Community Board has learned that your child was
involved with _____ on _____ (Date) _____.
We would like him/her to attend a Community Board Meeting,
to attempt to resolve the problem within our own community,
without the need for police or the Juvenile Court.

Appendix E

Memorandum of Agreement
Between the Suffolk County District Attorney's
Office and the Community Mediation Center

It is hereby understood and agreed:

That the Suffolk County District Attorney, acting in the interest of justice, and in the sound exercise of prosecutorial discretion, for the benefit of the citizens of Suffolk County, understands that many interpersonal disputes can best be resolved by third party neutrals outside of the traditional criminal justice agencies.

That the Community Mediation Center offers a valuable service to the District Attorney's Office, the Police, the Courts, and the citizens of Suffolk County.

That the District Attorney's Office will refer cases to the Community Mediation Center, and the Community Mediation Center agrees to accept appropriate cases.

That it is understood that confidentiality is relied upon by clients, mediators and staff of the Community Mediation Center.

That it is the expectation of confidentiality that allows parties to talk freely and thereby enable the dispute resolution process to succeed.

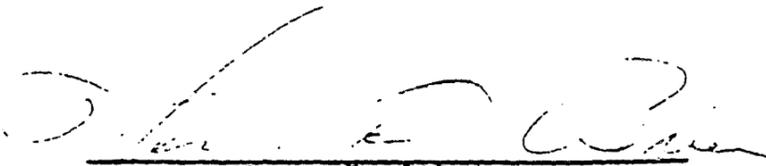
That the District Attorney agrees to respect the confidentiality of all discussions, between and among, clients, mediators, witnesses, and staff of the Community Mediation Center.

That it is agreed that all conversations occurring at, and records of, the Community Mediation Center shall be considered privileged and confidential and will not be utilized for any purpose by the District Attorney's Office.

This agreement may be terminated by either party 30 days after service by certified mail of a written notice to discontinue this agreement.

Dated: 2/25/77

Riverhead, N.Y.


Henry F. O'Brien
District Attorney, Suffolk County


Robert Saperstein
Director, Community Mediation Center

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END