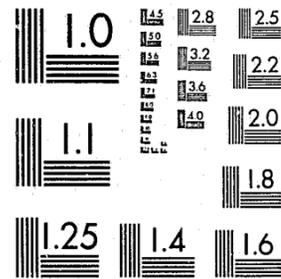


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U.S. Department of Justice  
Community Relations Service

## Evaluation of the Pilot Project on Court-Referred Mediation

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COMMUNITY RELATIONS SERVICE

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EVALUATION OF THE

COURT-REFERRED MEDIATION PROJECT

Department of Justice  
National Institute of Justice

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ABSTRACT

Formal agreements were successfully negotiated in seven cases that federal district court judges had referred to the Community Relations Service for mediation as an alternative to litigation. The cases involved racial disputes over representation on a city council, prison conditions, and the personnel practices of police departments. The mediation process appears to have accelerated the resolution of these disputes, the parties themselves may have developed solutions that differed from what a court might have imposed in some cases. While social benefits were not quantified, the monetary savings merely due to avoidance of protracted litigation were several times larger than the full costs of CRS involvement.

Office of National Liaison  
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Executive Summary

Ever since CRS in 1973 began offering formal mediation service as a means of resolving certain racial disputes, individual judges of U.S. District Courts have selectively referred cases for voluntary resolution through this process. Agreements, when mediated, were often formalized as consent decrees. This experience, although never analyzed formally, appeared to have the following characteristics: 1) The number of referrals was small; there was no process to inform judges of the availability of the service; 2) almost all referrals were successfully mediated in a manner gratifying to the parties and the courts; 3) the social consequences of the settlements (with respect to the alleviation of racial problems) often exceeded the scope of the original issues under litigation; 4) the process appeared to be cost effective.

In 1979 the staff attorney of the Seventh Judicial Circuit, with the encouragement of the Federal Judicial Center and Senior Judge William J. Campbell, named by Chief Justice Burger as Chairman of Seminar Programs of the Federal Judicial Center, came together with CRS to explore the feasibility of mediation as a cost-effective alternative to the litigation of certain civil rights cases.

These discussions presented CRS with the opportunity to find the answers to its own questions as to the feasibility of making the judiciary aware of the CRS service. A pilot program was initiated involving the cooperation of one CRS region and the District Court judges of the Seventh Federal Circuit. The pilot program would permit CRS to determine whether to institutionalize the service and extend it to other regions by answering such critical questions as the following:

1. Would judges see value in the service and use it as an alternative to continued litigation?
2. Would CRS be called upon to mediate cases involving the kinds of racial conflicts that the agency was created to address?
3. How successful would CRS' efforts be?
4. What costs would this program incur; what impact would it have on other CRS services?
5. What net benefits, cost savings, and social impacts would result from this new application of CRS' resources.

An evaluation was initiated to find the answers to these questions.

The pilot program was initiated in May, 1979. An interim evaluation report answers the questions raised. The answers document the value of the service in terms of both dollar cost effectiveness and social benefit.

Knowing of the service, judges will refer more cases than CRS can handle. (See attached letter from Judge William J. Campbell.)

CRS can effectuate a settlement in almost all cases it accepts.

All settlements appear to foster improved racial cooperation between the parties in the future.

CRS can screen referrals so as to minimize non-priority cases without forfeiting a productive relationship with the court.

Moreover, court-referrals often permit CRS involvement in important problems it could not have access to otherwise, and provide teeth to enforce the settlements, which other CRS-mediated agreements do not have.

The enthusiasm of judges for this type of service is reflected in a letter from Judge Hubert Will to the Attorney General which is attached.

The major problem CRS faces is with resources required by the increased number of mediation cases. On the average, a court-referred mediation case takes 440 hours, 550 percent more time than a conciliation case. Thus each court referral undertaken requires the declination of 5 1/2 other cases. In FY 1980 CRS, unrelated to this project, had to refuse or prematurely terminate 110 cases because of lack of resources. In view of increasing demand from all sources, CRS cannot extend its acceptance of court referrals without additional resources.

The evaluation of the court referral pilot project shows that seven cases for which data is available produced savings of \$1,400,000 at a cost to CRS of \$340,000, for a cost/benefit ratio of 4.1 to 1. This was computed conservatively, measuring costs on a full-cost (including overhead) basis and crediting only a portion of the benefits. When measured on an incremental basis--which would be appropriate if additional staff members were being hired to provide the additional services--the cost/benefit ratio increases threefold to about 12 to 1.

Social cost/benefit relationships, which cannot be calculated in quantitative terms, appear to be even more significant. Some of the social benefits achieved are quite tangible, others speculative, and the proportion varies from case to case. For example, in the Cairo, IL. case, statements by the parties attest to a changing climate of opinion and a reduction of antagonism. The special election called for by the agreement and the establishment of councilmanic districts were observable changes as was the election of two Black councilmen, for the first time in more than half a century. The presumptive benefits are those that will flow from: a) the influence on legislation of permanent Black representation on the council; b) the change in Black community attitudes as a result of the visible evidence of their inclusion in the local power structure; c) the change in white community attitudes as they accept the role of Blacks in city leadership positions, etc.

In the prison cases, the tangible values are the restoration of denied rights to the prisoners involved and all who succeed them in the affected institutions. The presumptive benefits are those which flow from a lessening of the spiral of antagonism between prisoners and corrections officers, including the avoidance of possible violence and even riot.

Settlement of suits involving minority police unions by CRS has generally been seen by the local press and other observers as an important contribution to crime fighting as well as a contribution to police morale and racial justice.

A sample of press reactions to CRS mediation cases, identifying social benefits, is included in Appendix B.

## INTRODUCTION

Since 1973, the Community Relations Service (CRS) has mediated school, housing, prison, and other disputes for judges in Missouri, New Mexico, Massachusetts, Illinois, Michigan, Ohio and Louisiana. Although CRS generally resolved these cases successfully, no effort was made to acquaint judges with the availability of the service, nor was any effort made, viewing such cases as a class, to determine the value of allocating resources to such cases as opposed to other conciliation and mediation cases.

In the fall of 1978, CRS began to explore the feasibility of a pilot program in the Midwest region, where the Seventh Judicial Circuit's own Subcommittee on Alternatives to the Present Federal Court System was exploring the potential of mediation. The purpose of the project was to determine whether increased emphasis on CRS mediation in lieu of litigation would be of value to the courts and to CRS, and whether such emphasis was justified on a cost/benefit basis. In May of 1979, the Director of CRS addressed a Judicial Workshop in the Seventh Federal Circuit and invited district judges to refer civil rights cases to the Community Relations Service for attempted settlement through mediation.

During the following half year, six district judges and magistrates referred cases to CRS. Although the number was modest, the cases were sufficiently complex and varied to provide an initial indication of the value of this approach. After the earliest cases were resolved, a progress report was distributed to judges in the circuit. This resulted in a flow of referrals which strained the capacity of the region to respond. Five cases were referred within the next 6 months; a total of 12 cases within the first 12 months, 20 cases within 18 months with no subsequent "promotion."

Numerous comments and reactions by plaintiffs, defendants, and judicial officials provide extensive subjective and anecdotal evidence that CRS is not only providing an important service for the courts, but is bringing about settlements of complex civil rights matters much more quickly through mediation than would be possible through litigation. The parties and their counsel seem to prefer negotiated settlements to orders imposed by judges. In some instances, the mediation agreement included settlement terms that were different from those which the court might have imposed after a trial on the merits. The settlements generally have been viewed as equitable by both sides to the dispute, and it appears that CRS is bringing about substantial savings in time, effort, and money for the courts and for the parties.

Descriptions of some completed cases and a sampling of reaction to CRS involvement are presented in Appendix B.

#### THE PILOT PROJECT

The cases which initially comprised CRS' Region V pilot project included a class action suit filed by black voters against the City of Cairo, Il.; two suits by inmates charging racial discrimination at a Wisconsin state prison; a suit alleging segregated housing at the Cook County, Il. jail; a complaint that the City of Joliet, Il. had illegally blocked the construction of minority and low income housing; and a complaint by a coalition of community organizations that the City of Chicago and the U.S. Department of Commerce had violated Federal regulations by not giving minorities and low income persons an adequate voice in the city's Overall Economic Development Plan.

In subsequent months, several additional cases were referred to CRS. Some of these involved: (1) a dispute between a black tenant's association and a white management company, (2) demands by a community organization that the City of Chicago and HUD develop an affirmative action plan to assure that minorities and low income families would not be driven out of their neighborhood by new real estate developments, (3) an allegation of racial discrimination in the hiring of guards at the Cook County Jail, and (4) a suit contending that Chicago police and school officials illegally strip searched students in a classroom where a teacher had reported that cash was missing from her purse. A list of Region V court-referred cases is presented in Appendix A. Three of these cases had been completed when this evaluation was begun, and they were included in the cost/benefit analysis.

During this period, judges in the District Court for the Northern District of Georgia, Fifth Judicial Circuit, referred three disputes (comprising four cases) to CRS' Region IV office. These four cases were included in the cost/benefit analysis of the evaluation. In Atlanta, Georgia and in Louisville, Kentucky, an association of black police officers filed a class action suit against the city government, and an association of white police officers intervened; the issues involved the police departments' hiring and promotion policies, and the cases had already been in the courts for several years. The two cases involving the De Kalb County, Georgia Police Department and Sheriff's Department were filed more recently, but the issues and opposing parties followed the same pattern. These four cases had been completed when the evaluation was in an early stage, and they also have been included in the analysis.

#### EVALUATION

##### Goal of the Evaluation

The goal of this evaluation was to help CRS determine the feasibility of seeking additional resources to develop a nationwide emphasis on mediation of court-referred cases. To the fullest extent possible, the evaluation was to be based upon measured costs and benefits of completed court-referred cases.

##### Objective of the Evaluation

This pilot program is being conducted and evaluated in order to help CRS determine:

- (1) What benefits and what costs to expect from an expanded program;
- (2) Whether the comparison of benefits to costs is sufficiently favorable to justify expanding the program; and
- (3) How to maximize the utility of such a program if it is expanded to all CRS regions across the country.

##### Specific Questions to be Resolved

Some of the questions which the evaluation is intended to address are:

- (1) Will the U.S. District Court judges utilize CRS' conciliation and mediation services as an alternative to continued litigation?
- (2) What kinds of cases (what parties, what issues) would CRS be called upon to mediate?
- (3) In what ways and to what extent is CRS likely to be successful in the different kinds of cases?
- (4) How much does it cost CRS to mediate such cases?
- (5) What net dollar benefits or cost savings result from CRS intervention?
- (6) What other benefits or social impacts result from CRS mediation?

METHODOLOGY

In order to obtain the initial data upon which to base an evaluation, a standard set of questions was developed in conjunction with the Director of CRS Region V. The questions are intended to elicit quantitative, objective information concerning the seriousness of a mediated dispute, the cost of CRS mediation, and the beneficial effect of CRS mediation compared to the alternative of continued litigation. The information for each case is obtained and forwarded by the CRS mediator who is directly concerned with the case. To date, information has been received for three closed cases in Region V and four in Region IV; copies of the mediator's reports are presented in Appendix C. (in some instances, additional or clarifying information was obtained by telephone). This information comprises the data base for this evaluation report.

There are serious conceptual and methodological difficulties in trying to evaluate any social program in terms of quantified, objectively measurable costs and impacts. Past expenses may be undocumented and uncertain; forestalled future costs that will not be incurred (because further protracted litigation has been avoided) must always remain speculative. The number of people affected by a particular settlement will generally be much larger than the number of identified parties directly involved in any given court case, and the impacts upon them may be quite difficult to specify, much less measure. Some of the most significant impacts of differing cases cannot be expressed in a common metric--how can one compare the importance of restructuring a city government to permit minority representation with the value of improved living conditions in a maximum security prison unit or with the benefits of alleviating racial antagonisms within an urban police department? Nevertheless, it is believed that quantitative assessments can provide insights that can be integrated with anecdotal evidence and subjective observations to help CRS to arrive at better-informed policy decisions. This evaluation is an initial effort to provide such additional assessment.

A more detailed discussion of some of the difficulties in evaluation methodology are presented in Appendix D.

RESULTS

At this time, Region V has opened eighteen court referred cases and has successfully mediated three of them. The information sets that were submitted for the three closed cases is presented in Appendix C and pertinent data is listed in Table 1. In addition, information concerning four closed cases in Region IV has been received and is also included in Appendix C and Table 1.

1. Judges' Responses. Well over a dozen different District Judges and Magistrates in the Seventh Judicial Circuit have

Table 1. DATA SUMMARY FOR CLOSED CASES

Place	Cairo, Il.	Cook Cty, Il.	Waupun, Wisc.	Louisville, Ky.
<u>Agency</u>	City Council	Jail	Prison	City
<u>Issues</u>	Government Representation	Jail Segregation	Racial discrimination in facilities and treatment.	Police recruitment, hiring, promotion, black/white conflicts.
<u>Number of People Affected (Plaintiffs)</u>	1400	5000	70-80	Unknown
<u>Class Action?</u>	Yes	Yes	No	Yes
<u>Duration of Dispute</u>				
Initial Action	Suit Filed	Suit Filed	Suit Filed	Suit Filed
Initial Date	1973	11/1/1976	11/10/1979	Mar. 1974
Pre-CRS Duration	6 years	2-1/2 years	1/2 years	5-3/4 years
CRS Case Open Date	10/2/79	5/14/79	7/5/79	12/5/79
CRS Case Close Date	3/17/80	1/28/80	2/25/80	9/29/80
Time to settle	0.5 year	0.7 year	0.7 year	0.8 year
<u>Past Costs Incurred</u>				
Plaintiffs, legal	\$100,000	\$ 4,500		\$100,000
Defendants, legal	60,000			
Court	Unknown	4,000		25,000
Total Legal Costs	\$160,000	\$ 8,500	Unknown	\$125,000
Other				
Total Incurred	\$160,000	\$ 8,500	Unknown	\$125,000
<u>Future Legal Costs Avoided</u>				
Plaintiffs	\$ 40,000	\$35,000		\$300,000
Defendants	150,000			
Court	15,000	15,000		30,000
Other	100,000			
Total Saved	\$305,000*	\$50,000	Unknown	\$330,000
<u>CRS Cost @ \$879 per 8-hr person-day</u>	\$ 19,338	\$19,865	\$ 49,224	\$115,600
<u>Ratio: Total Savings / CRS Cost</u>	15.8	2.5	0	2.9
<u>Net Estimated Savings / CRS Cost/Person Served</u>	\$285,662 / \$13.81	\$30,135 / \$3.97	-\$49,244 / \$656	\$214,400 / Unknown

\*Does not include costs of any appeals.

Table 1. DATA SUMMARY FOR CLOSED CASES (Continued)

Place	Atlanta, Ga.	DeKalb Cty, Ga.	DeKalb Cty, Ga.
<u>Agency</u>	Police Dept.	Sheriff's Dept.	Police Dept.
<u>Issues</u>	Black and white officers' conflict; recruitment, promotion, damages.	Discriminatory recruitment, hiring, training, discipline, promotion.	Discriminatory recruitment, hiring, training, discipline, promotion.
<u>Number of People Affected (Plaintiffs)</u>	15,000	23 named	23 named
<u>Class Action?</u>	Yes	Yes	Yes
<u>Duration of Dispute</u>			
Initial Action	Suit Filed	Suit Filed	Suit Filed
Initial Date	Apr. 1973	Dec. 1979	Dec. 1979
Pre-CRS Duration	7 years	Unknown	Unknown
CRS Case Open Date	9/12/79	12/19/79	12/19/79
CRS Case Close Date	11/15/79	9/15/80	9/15/80
Time to settle	0.16 year	0.75 year	0.75 year
<u>Past Costs Incurred</u>			
Plaintiffs, legal	\$120,000		
Defendants, legal	90,000		
Court	Unknown		
Total Legal Costs	\$210,000		
Other	172,000		
Total Incurred	\$382,000	Unknown	Unknown
<u>Future Legal Costs Avoided</u>			
Plaintiffs	\$200,000		
Defendants	50,000		
Court	Unknown		
Other	296,200		
Total Saved	\$296,200*	\$200,000	\$200,000
<u>CRS Cost @ \$879 per 8-hr person-day</u>	\$109,436	12,086	\$ 12,086
Ratio: $\frac{\text{Total Savings}}{\text{CRS Cost}}$	2.7	16.5	16.5
<u>Net Estimated Savings</u>	\$186,765	\$187,914	\$187,914
<u>CRS Cost/Person Served</u>	\$7.30	\$525	\$525

\* Does not include costs of any appeals

referred pending litigation to CRS for mediation since the start of this pilot program in Region V. While the trend in future referrals will undoubtedly be affected by the the outcome of currently pending cases, the initial indications are that court referrals have the potential for providing a significantly large increment to CRS' traditional casework.

2. Nature of Referred Cases. The cases that have been referred to CRS for mediation exhibit notable variety. Categories of plaintiffs range from ordinary citizens to law enforcement officers to imprisoned felons. The issues contested are as diverse as housing facilities, local economic development, treatment in schools, voting representation, and hiring and promotion practices. The potential scope of cases referred to CRS may be almost as broad as the civil rights jurisdiction of the court system itself.

The seven cases that have been closed in Regions IV and V do seem to be somewhat different than the usual "plaintiff versus defendant" judicial case in that there may be more than one group of plaintiffs with contradictory demands, and resolution of the case requires establishing an acceptable balance among the conflicting rights of all of the parties.

The Atlanta Police Department case is perhaps the clearest example of this; in this case, two organizations, one representing black and the other white police officers, were each protesting the city's hiring and promotion policies (over different periods of time). Other cases may involve disputes that clearly are real, but which may not represent clear violations of the law. In Cairo, Illinois, for example, the plaintiff black citizens could demonstrate discriminatory impact but it is not clear that they could have proved that the then existing system of electing the City Council had been established with discriminatory intent--a requirement that the Supreme Court only announced in 1977. (United States Reports, Vol. 429, pp. 252-273, "Village of Arlington Heights et al. v. Metropolitan Housing Development Corp., et al." at pp. 264-271, 1977). In contrast to the stereotypical adversary case, the court cases referred to CRS for mediation appear to affect greater numbers of people, to involve more identifiable sets of conflicting interests, and to require more complex terms of settlement in order to resolve the underlying dispute.

### 3. The Extent of "Success"

a. Likelihood of a Settlement. The seven closed cases required from two to ten months to reach mediated agreements. The remaining cases have not been in mediation long enough and are too few in number to provide any credible estimate of a "success rate" at this time.

b. The Nature of the Settlement. The terms of some of the agreements indicate that the conflicting parties to a dispute have much greater freedom and flexibility to fashion the conditions of a settlement through mediation than a court has in adjudicating an adversarial trial. The consent decree issued in the Cairo, Ill. voting case, included in Appendix E, illustrates this. The plaintiffs claimed that the City of Cairo violated their civil rights by diluting the effectiveness of their votes. The mediation process allowed the parties to set aside and to go beyond questions of injury and blame in order to mutually develop a solution. The decree specifically notes that issues of fact and law were not adjudicated; the court could not have acted on its own without such adjudication, and the findings of the trial would have had a major role in determining or constraining any resolution the court could have imposed. The decree imposes non-partisan municipal elections, and changes the terms of office, the electorate for each official, and the responsibilities of the Council members. (Council members would no longer be elected to the offices of chief of the police department, chief of the fire department, etc.) Had there been a trial instead of a mediated settlement, it is at least questionable that the court would have or could have intruded so far into legislative prerogatives.

4. CRS' Costs. The dollar costs of CRS mediation efforts were determined by multiplying the number of equivalent mediator days spent on each case by a nominal "full cost" charging rate. The rate was calculated by dividing the total CRS agency budget for FY 1979 by the number of professional staff hours spent in FY 1979 on conciliation and mediation only. The charging rate calculated by this method is \$879 per eight-hour working day; the rationale for this method is presented in Appendix D. On this basis, the estimated dollar costs for CRS ranged from almost \$20,000 to almost \$116,000 per closed case, and from \$7.30 to \$656 per person served directly.

Another aspect of CRS' cost is the trade-off that must be made, by an agency with limited resources and expanding demand for its services, between the number of court-referred cases that can be mediated and the number of other cases that could be conciliated by equal alternative allocations for the same professionals' time. Typically, the court referred cases concern controversies that have been going on for several years before CRS was involved, and they are not concluded quickly. In FY 1980, the average CRS conciliation cases was resolved in about four months. In contrast, a recent tabulation of Region V court-referred cases showed that closed cases required an average of 7-1/4 months to resolve, and a backlog of unresolved cases had been open for over 8 months on the average.

CRS mediators spent from 110 hours to over 1000 hours per case to bring the closed cases in this study to conclusion, an average of 336 hours per case for these seven cases. In FY 1980, it is

estimated that CRS professionals devoted an average of about 400 hours per closed mediation case (from all sources), but only required about 75 to 80 hours per closed conciliation case. Thus, each court referral for mediation that CRS accepts will reduce CRS' conciliation capability by four or five cases.

5. Dollar Benefits. For the seven closed cases, the estimates of net dollar benefits (identified savings from avoiding litigation, minus the CRS cost of mediation) ranged from a net cost of \$49,224 (Waupun prison case) to a net benefit of \$286,000 (Cairo, Ill. case) as shown in table 1. Ratios of total identified savings to CRS cost ranged from zero to 16.5. For the seven together, the total CRS cost was \$337,635 and the total identified savings was \$1,381,200, yielding an aggregated savings-to-cost ratio of 4.1.

The current serious limitations of these cost-benefit ratios must be taken into account in assessing the value of this pilot program to date. In several cases, no information was obtained concerning the costs incurred by the judicial system itself (salaries of judges, marshals, court reporters, building expenses, etc.) for each day of litigation; because of this lack, the benefits credited to these cases are systematically underestimated. (Where days at trial were estimated, court costs were assumed to be \$1,000 per day.) Benefit estimates are also very sensitive to the amount and cost of legal assistance which the parties acquire before the case enters mediation; for example, the Waupun prisoners undertook their suits without paid legal counsel, and thus the case was not credited with any savings for avoiding litigation.

6. Social Benefits. The social benefits, which cannot be calculated in dollar terms, are nevertheless significant. CRS was created by Congress to help resolve and to forestall community racial conflict. Therefore, the evaluation focussed not only on cost/benefit relationships but also on how well the pilot project cases fit within the mandate. All cases studied fit well within the CRS mandate. Each case met CRS case entry criteria, and the community conflicts would have invited CRS response had they not been in court but referred to CRS from some other source.

Some of the social benefits achieved are quite tangible, others speculative, and the proportion varies from case to case. For example, in the Cairo, IL case, the special election called for by the agreement and the establishment of councilmanic districts are observable changes. As a result two Blacks were elected to the City Council for the first time in more than half a century. The presumptive benefits are those that will flow from: a) the influence on legislation of permanent Black representation on the council; b) the change in Black community

attitudes as a result of the visible evidence of their inclusion in the local power structure; c) the change in white community attitudes as they accept the role of Blacks in city leadership positions, etc.

In the prison cases, the tangible values are the restoration of denied rights to the prisoners involved and all who succeed them in the affected institutions. The presumptive benefits are those which flow from a lessening of the spiral of antagonism between prisoners and corrections officers, including the avoidance of possible violence and even riot.

CRS' settlement suits by minority police unions has generally been seen by the local press, the business community, and other observers as an important contribution to crime fighting as well as a contribution to police morale and racial justice.

#### Case 05-1005-80 - Cairo, IL

While Blacks make up 1/3 of Cairo's population, there had not been a Black member of the City Council since before 1900 because of at-large elections.

Lack of elected representation was one of several issues which made Cairo one of the nation's most racially polarized communities for more than a decade. Boycotts of white merchants, slow-down of some Federal funding, and shooting incidents contributed to a high level of tension.

Black voters perceived themselves to be disenfranchised; it was widely assumed by Blacks and Whites that the existing form of government precluded the election of a Black. The situation exacerbated racial polarization.

The settlement afforded the following advantages, among others:

- ...As a voluntarily negotiated settlement, there was a basis for future cooperation on other matters.
- ...Change to single member districts guaranteed Blacks proportionate representation on the Council.
- ...A bitter controversy was not allowed to fester in the community. If the case had gone to trial the Judge anticipated it would take three years before final adjudication.
- ...Both sides saw it as a breakthrough for racial progress. Counsel for the Black plaintiffs said: "I think the defendants and the named plaintiffs have reached a settlement which is geared toward establishing racial harmony in a town that has been torn by racial strife..."

Without detracting from the far-reaching importance of the settlement, it should be noted that Cairo's racial antagonisms will not vanish overnight.

Since the election, the victory of the successful Black candidates has been challenged in court by unsuccessful Black candidates affiliated with the group whose original protest had led to the mediation. The victors allegedly had white support.

#### Case 05-1128-79 - Cook County, IL

A law suit involving racially segregated housing in the Cook County jail was entered on behalf of 5,000 Black inmates in 1976, by the Civil Rights Division, U.S. Department of Justice.

Judge Hubert L. Will, in a letter to the Attorney General lauding CRS' role in the mediation, said, "The agency's demonstrated ability to mediate complex civil rights cases could result in substantial savings of time and money to both the court and the parties and result in earlier settlements which both the parties and the court view as equitable."

#### Case 05-1154-79 - Waupun State Prison, WI

Inmates alleged that Black prisoners had been denied opportunities and privileges because of discriminatory housing and job assignments. Also, they complained of visiting, exercise, food service and program restrictions which were "cruel and unusual punishment" and therefore, a deprivation of constitutional rights.

The issues raised in this case and in similar complaints had been in existence for many months and had created frustrations among prisoners. Also, the prison population in the Adjustment Center had been steadily on the increase, which heightened tensions between guards and prisoners; time for visits and exercise had been reduced and inadequate facilities for exercise and visitation created problems. A crisis intervention worker had been terminated and never replaced which eliminated an internal safety valve for prisoner grievances. Such conditions created an environment which was vulnerable to violence and confrontation.

The parties agreed to settlement of all issues including non-discrimination in housing and job assignments, exercise equipment and space, visitation policy, food services, procedures regarding use of mace and employment of a crisis intervention worker.

#### Case 04-0124-79 - Atlanta, GA

Long-standing complaints of discrimination by Black officers, compounded by counter-charges of reverse discrimination by White officers, had spawned several inter-related suits over the better part of a decade. The inter-racial bitterness

engendered within both the police department and the community was cited by many as a contributing cause of Atlanta's rising crime rate.

This controversy was long and costly, both in monetary value and in terms of unrest in the Bureau of Police Services and the community at large. The case had been in court in some form since 1973 and several decisions involving certain aspects of the case had been handed down by Judge Moye. The most damaging of such decisions was the freeze on hirings and promotions that existed for several years.

A number of people and agencies of good will had tried in vain to resolve the conflict. Such groups included the Atlanta Chamber of Commerce, the Atlanta Community Relations Commission, the Atlanta City Council and a blue ribbon committee appointed by the Mayor.

The major issues agreed upon included a recruitment plan, and remedial relief for certain Black officers and White officers, including promotions and back pay. Resolution enabled the hiring freeze to be lifted.

#### Case 04-0019-80 - Louisville, KY

In this controversy the Louisville Black Police Officers Organization was pitted against the city and the Fraternal Order of Police, charging racial discrimination.

Plaintiffs alleged and defendants denied that the Louisville Police Department had historically discriminated against Blacks in recruitment, hiring, testing, selection, assignment, promotion, discipline and other practices. A class action suit was filed in 1974 but, until CRS intervention in late 1979, no real progress had been made even though the parties had been trying to resolve the issue among themselves for the previous six months.

The dissension between Black and White police officers was having a spill-over effect in the community. Local leadership stated that the hostility could be felt in many ways and the friction between Blacks and Whites was mounting over this issue. Within the department it was White against Black and the city, beleaguered with many other problems, was not able to address the issues as was necessary. The situation would have likely remained the same or worsened had CRS not intervened. The court case would have highlighted the issues and lines of battle would have been clearly and emphatically drawn. The potential for conflict would likely have been very high and the level of police services degraded. CRS was able to keep the mediation process quiet and thus arrive at a solution without stirring up an already sensitive situation.

#### Cases 04-0023-80 and 04-0091-80--De Kalb County, GA.

The Association of Law Enforcement Officers of De Kalb, representing Black personnel of both the De Kalb County Sheriff's Office and the Police Department, brought suit in Federal Court against both agencies charging discrimination in hiring, promotions and racial harassment.

CRS achieved separate out-of-court settlements involving timetables for achieving minority parity with whites with respect to recruitment and promotions, adequate grievance procedures and other matters.

Dissension on the police force, which would have grown worse over time, was resolved equitably and quickly. The long-drawn-out controversy of a similar nature in neighboring Atlanta, with its disruptive consequences in race relations and crime control, spurred the parties in De Kalb to seek a quick resolution through CRS.

The County Commission Chairman said, "That suit tied (Atlanta) up for more than six years. We got through this in less than a year. That's a big difference." The head of the Fraternal Order of Police, which intervened in the case to protect the interest of the white officers, said, "We don't want to see anyone treated unfairly, and the way things have been set up, everyone will be treated fairly."

#### CONCLUSIONS

1. Mediation by CRS has been a successful alternative to litigation in several different kinds of court-referred cases.
2. A court-referred mediation case is about five to six times as expensive to CRS as the average conciliation case.
3. In most cases to date, the identified dollar benefits of avoiding litigation were many times larger than the CRS cost of mediation.
4. To date, the benefits achieved by this program have been consistently understated because the social benefits have not been quantified and incorporated in the benefit/cost calculation.
5. Despite the consistent understatement of the benefits achieved, the identified dollar benefits of substituting mediation for litigation were many times larger than the CRS costs for providing mediation services in most cases to date.

APPENDIX A  
Summaries of Region V  
Court-Referred Mediation Cases

APPENDIX A. Summary of Region V Court-Referred Mediation Cases

CRS CASE NO. PLACE	JUDGE, COURT CASE NO.	DATE ASSIGNED, STAFF	DESCRIPTION	STATUS
05-1128-79 Chicago, IL	Will No. Dist. IL 79-C-4768	5-10-79 Taylor	CRD alleges segregated housing at Cook County Jail.	Case successfully mediated. Decree entered January 4, 1980.
05-1130-79 Joliet, IL	Bua/Cooley No Dist, IL 75-C-4002	6-26-79 Taylor	Contractor alleges city illegally denied building permit for low income and elderly housing.	Mediation in progress.
05-1154-79 Waupun, WI	Gordon Ea Dist, WI 79-C-19	7-9-79 Petterson Glen	Inmates allege discrimination in Adjustment Center of Wisconsin State Prison at Waupun.	Stipulation signed Feb. 18-19; Case dismissed March 10, 1980.
Same as above	Doyle West Dist, WI 78-C-291 78-C-328 78-C-358 78-C-311	7-13-79 Petterson	Same issues as in case 79-C-19 Eastern Dist. Wisconsin were pending in Western Dist. WI. Same plaintiffs.	Same stipulation as above. All but one issueresolved.

CRS CASE NO. PLACE	JUDGE, COURT CASE NO.	DATE ASSIGNED, STAFF	DESCRIPTION	STATUS
05-1179-79 Chicago, IL	Bua/Balog No Dist, WI 77-C-2274	9-27-79 Taylor	Community coalition alleges city and EDA fail- ed to give low income and minorities adequate voice in Chicago Overall Econo- mic Development Plan.	Case successfully mediated. Consent decree to be entered July 1980.
05-1183-79 Waupun, WI	Gordon Ea Dist, WI 79-C-746	9-25-79 Petterson	Issues similar to CRS Case 05-1154-79 and Ea Dist. Case 79-C-19 filed by different inmates.	Case dismissed at request of plaintiff in light of agreement reached in 79-C-19.
05-1005-80 Cario, IL	Foreman So Dist, IL	10-11-79 Salem Gaynett	Beach Waters sought to replace at-large elected city commission with ward- elected Council so Blacks could be elected to council.	Case successfully mediated. Decree entered March 11, 1980.
05-1075-80 Chicago, IL	Roszkowski No Dist, IL 80-C-32	1-31-80 Taylor	Uptown residents want continued funding of neighborhood health clinic. Cook County Board of Commissioner plans to end funding.	Mediation interrupted while court rules on validity of contract.

CRS CASE NO. PLACE	JUDGE, COURT CASE NO.	DATE ASSIGNED, STAFF	DESCRIPTION	STATUS
10-1082-80 Green Bay, WI	Gordon Ea Dist, WI	1-30-80 Petterson	Inmates complained about their treatment in segregation unit at State Prison.	Inmates transferred; advised CRS they wanted to drop complaint. Matter to be dismissed by Court.
05-1088-80 Chicago, IL	Roszkowski No Dist, IL 79-C-989	3-3-80 Taylor	Tenants in 99% Black subsidized project allege deterioration of services since 1975 when project was 94% white. Case partially resolved in court. CRS asked to mediate: (1) verification of persons entitled to damages; and (2) damages.	Mediation interrupted while court rules on motion to dismiss.
05-1093-80 Chicago, IL	Crowley No Dist, IL 75-C-3379	3-14-80 Taylor	An organization representing minorities and low income residents in the Uptown Community on Chicago's North side is seeking to force the city of Chicago & HUD to adopt an Affirmative Action program to prevent present residents from being driven out of their community by new real estate developments.	Mediation in progress.

CRS CASE NO. PLACE	JUDGE, COURT CASE NO.	DATE ASSIGNED, STAFF	DESCRIPTION	STATUS
05-1094-80 Chicago, IL	Marvoitz No Dist, IL 80-C-246	3-19-80 Petterson	Parent's strip search of students by school officials and police.	City attorney declined mediation prior to further discovery. Case returned to court.
05-1095-80 Chicago, IL	Roszkowski No Dist, IL 78-C-1572	3-20-80 Petterson	Job applicant at Cook County Jail alleges racial bias in use of lie detector for hiring.	Mediation.
05-1111-80 Fox Lake, WI	Gordon No Dist, WI	4-21-80 Petterson	Inmate charges racial bias in job pay at state correctional facility.	Pre-mediation meeting.
05-1115-80 Springfield, IL	Ackerman Cent Dist, IL	4-28-80 Petterson	Plaintiffs in school desegregation case charges employment discrimination in schools.	Pre-mediation meeting.
05-1126-80 Glenwood, IL	Bua/Jurko No Dist. IL 79-C-4091	5-6-80 Petterson	Community charges real estate firm with racial steering.	Pre-mediation meeting.

CRS CASE NO. PLACE	JUDGE, COURT CASE NO.	DATE ASSIGNED, STAFF	DESCRIPTION	STATUS
05-1135-80 DuPage, IL	Will No Dist, IL	5-16-80 Taylor	Housing group charges elected officials with blocking public housing in DuPage County.	Pre-mediation meeting.
05-1 -80 Chicago, IL	McMillen No Dist, IL 79-C-4256	5-28-80 McKinney	White former faculty member charges Chicago State Univ. with reverse discrimination.	Pre-mediation meeting.
	McMillen	McKinney	Individual charges dis- crimination in firing from job.	Pre-mediation meeting.

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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA, )  
Plaintiff, )  
vs ) 75 C 4768  
ELROD, et al., )  
Defendants. )

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable  
HUBERT L. WILL, one of the Judges of said Court, in his  
courtroom in the United States District Courthouse, Chicago  
Illinois, on January 4, 1980, at the hour of 10:00  
o'clock, a.m.

Present:

MR. JAMES WHITE, Assistant United States  
Attorney,  
on behalf of plaintiff,  
MR. HENRY A. HAUSER, Assistant Attorney General  
on behalf of defendants.

1 THE CLERK: 78 C 4768, United States versus Elrod, sta:

2 MR. HAUSER: Henry Hauser for the defendants.

3 MR. WHITE: James White on behalf of the plaintiff.

4 Judge, this is Mr. Grueneberg's case in the offi  
5 but he informs me that this consent decree --

6 THE COURT: Have you got one that has been signed by  
7 everybody?

8 MR. WHITE: Signed by everybody.

9 MR. HAUSER: I am looking at it right now. It is all sig  
10 sealed and delivered, awaiting your signature.

11 We have agreed through Washington with the U. S.  
12 Attorney on it.

13 THE COURT: That pleases me no end. That has got to be  
14 one of the more notable achievements of this year so far.

15 MR. HAUSER: I think it is. Considering our resources  
16 litigate it, I think it is a credit also to the Community  
17 Relations Service.

18 THE COURT: It is really a tribute to the effectiveness  
19 of the Community Relations Service, an outfit I knew nothing  
20 about a year ago, and which has resolved this lawsuit which  
21 thought was going to take me a great deal of time and effort  
22 to get resolved.

23 Do I have to fill in any blanks here?

24 MR. HAUSER: On the second last page, there is a place  
25 for the date and your signing it.

1 THE COURT: I see it. You have got provisions for  
2 integrating the housing units, male and female.

3 MR. HAUSER: What is going to happen, your Honor, "Is t  
4 NIC will develop a plan. If that plan meets the requirements  
5 of the decree, then we will implement it. The decree also  
6 allows the court to retain jurisdiction for the purposes of  
7 enforcing the decree.

8 I think both sides are pretty clear on what is  
9 to happen on this.

10 THE COURT: You are going to end up with an integrated  
11 Cook County Jail. That will be interesting to see how the  
12 operates.

13 I am going to change the date from 1979 to 1980  
14 I assume that is all right.

15 MR. HAUSER: That is fine.

16 THE COURT: I am sorry Mr. Taylor isn't here.

17 MR. HAUSER: He is, your Honor.

18 THE COURT: Oh, there he is. Mr. Taylor, my final  
19 congratulations. You produced the ultimate result, an agree  
20 consent decree.

21 MR. TAYLOR: Thank you, your Honor.

UNITED STATES DISTRICT COURT  
CHICAGO 60604

CHAMBERS OF  
HUBERT L. WILL  
SENIOR JUDGE

January 14, 1980

RECEIVED  
FEDERAL JUDICIAL UNIT  
JAN 17 2 21 PM '80

Honorable Benjamin R. Civiletti  
Attorney General  
United States Department of Justice  
Washington, D.C. 20530

Dear Mr. Attorney General:

I want to express my appreciation for the invaluable assistance provided by the Community Relations Service (CRS) in resolving United States v. Elrod, in which the Civil Rights Division alleged that inmates at the Cook County Jail received discriminatory housing assignments on the basis of race. Through the substantial efforts of CRS Mediator Jesse Taylor, the case has been settled and a consent decree entered without going to trial, something we did not believe was possible when the complaint was initially filed.

Ironically, I was unfamiliar with CRS until just one day before I referred this case to it for mediation. On that day, May 9, 1979, CRS Director Gilbert Pompa, at a workshop for Judges of the Seventh Circuit, invited District Judges to refer cases to his Midwest Regional Office which was starting a pilot project on the use of mediation as an alternative to litigation in civil rights cases. The Cook County Jail case was on my calendar for a status report the following morning. When counsel reported that they had been unsuccessful in their efforts to reach a settlement, I told them I was going to give them some help and called in CRS.

Mediator Taylor should be commended for both his resourcefulness and persistence in bringing the parties to agreement on a consent decree. I also appreciate the high priority given to this case by CRS Regional Director Richard A. Salem.

RECEIVED  
ATTORNEY GENERAL  
JAN 15 1980

Honorable Benjamin R. Civiletti

Page 2

I understand that CRS is a very small Agency, but I believe its resources are well spent on referrals from the judiciary. The Agency's demonstrated ability to mediate complex civil rights cases could result in substantial savings of time and money to both the court and the parties and result in earlier settlements which both the parties and the court view as equitable. As I stated in Court when the consent decree was entered on January 4, CRS is one of the least recognized and most useful Agencies in government.

Thank you again for making this assistance available.

Sincerely,

*H. L. Will*  
Hubert L. Will



Office of the Attorney General  
Washington, D.C.

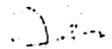
January 28, 1980

Mr. Gilbert Pompa  
Director  
Community Relations Service  
550 11th Street, N.W.  
Room 640  
Washington, D.C.

Dear Gil:

I have just received a very warm letter of thanks from Judge Hubert L. Will of the United States District Court for the Northern District of Illinois concerning what he considered to be the critical efforts of the Community Relations Service in bringing about a settlement in a discrimination case involving the county jail. As you know, it is one of the primary policies of the Department to promote the settlement of disputes without resort to litigation, particularly in the civil rights area. I am extremely pleased with the work that the CRS has done in this regard, and I encourage you to continue working closely with the Civil Rights Division in this way in the future.

Sincerely,

  
Benjamin R. Civiletti  
Attorney General

APPENDIX C

Mediators' Case Reports

APR 17 1980

SEVENTH CIRCUIT COURT REFERRAL INFORMATION

A. BACKGROUND

1. Case No. 05-1005-80 (Court Case No. 73-19-C)
2. Referred By: Chief Judge James L. Foreman, South Dist., IL.
3. Parties: Plaintiffs are representatives of voting age blacks in Cairo, IL. Defendants are Mayor, City Clerk and all City Council Members of Cairo, IL.
4. Class Action Status: Certified as a class action in 1979 on behalf of 1,400 voting age blacks.
5. Issues Mediated: Plaintiffs sought to invalidate at-large elected City Commission that had both Legislative and Executive powers and replace it with City Council with Aldermen elected from single-member districts and no powers of the Executive (responsibility for running city departments).
6. Nature of Settlement: Parties agreed to Aldermanic City Council system with five Councilmembers elected from single-member wards and one Councilmember and Mayor elected at large. Two blacks are expected to be elected in November, 1980.
7. History of Controversy: No blacks have been elected to city government since before 1900. Present form of government has been in effect since 1913. About one-third of Cairo's population is black. Lack of elected representation is one of many issues which have made Cairo one of the nation's most racially polarized communities for more than a decade. Boycotts of white merchants, slow-down of some Federal funding and shooting incidents have contributed to high level of racial tensions. Cairo's population is about 6,800 (1970 census) or less.
8. Time involved in Court: Case originally filed in 1973. It was thrown out by another judge and reinstated on appeal to the Seventh Circuit.

9. Length of Conflict: See 7 above.

B. DOLLAR COSTS

10. Costs Prior to CRS Intervention: City legal fees and costs are known to be at least \$46,025 and probably are at least \$50,000 plus a \$10,000 retainer that was committed to a new law firm that undertook the case for the city just prior to CRS entry. Costs and fees for the plaintiffs are being negotiated. Including lead counsel, Land of Lincoln law firm in Southern Illinois and work done by a Chicago law firm in conjunction with the Lawyers Committee for Civil Rights Under Law, plaintiffs' counsel have compiled data indicating that they are entitled to a minimum of approximately \$140,000 in fees and costs. This includes preparation for trial. If an award is made by the court, a multiplier ranging from 1.25 to 2 is used. Plaintiffs' counsel will be seeking a multiplier of 2, which means the award could be as high as \$280,000. It might also be less; \$200,000 is a reasonable estimate. However, as part of mediation, plaintiffs' counsel agreed verbally to negotiate the fee (the City of Cairo will have to pay the final figure) and to be less demanding than if there was no consent decree. Those negotiations haven't begun, but \$100,000 is probably a good estimate for the top figure (I think it may be closer to \$50,000) and the savings due to mediation on this portion would be about \$100,000. These are CRS estimates after conversation with counsel.
11. Anticipated Costs if No CRS Intervention: It was established by judge and counsel, in court that if the case hadn't been settled, (Counsel for the Defendants said in court that CRS' contribution was "monumental" and

3.

the case couldn't have been settled without CRS) a trial of about three weeks would have been necessary with inevitable appeals, up to three years would be required to conclude action on the case. Counsel advised CRS that this would add at least "several hundred thousand dollars" to the costs and fees. Plaintiffs' counsel said a three-week (15-day) trial would cost about \$20,000 and post-trial appellate activities would cost at least as much. This minimum estimate of \$40,000 in new expenses would also be subject to a multiplier. Costs would be greater for the defendants, according to knowledgeable persons who are familiar with counsel and practice in this part of the country. A \$150,000 estimate seems conservative for the defendants. In summary on costs, as a result of CRS intervention, we probably saved a 15-day trial plus \$200,000 to \$250,000 in related legal costs and fees. In addition, because a consent decree was reached, costs already incurred but not claimed for plaintiff's counsel will probably be \$100,000 less than had the case gone to trial. It is anticipated that if the case had gone to trial, CRD would have entered as amicus curie and would have devoted considerable hours to preparing for the trial and participating in the three week trial (from Paul Hancock at CRD).

C. SOCIAL COSTS

12. Cost Prior to CRS Intervention: Black voters perceived themselves to be disenfranchised. It was widely assumed by blacks and whites that the present system precluded the election of a black to office. The situation exacerbated racial polarization and may have had real impact on the decision making process in the city government.

4.

13. Cost if No CRS Intervention: The situation would have remained unchanged until 1983 or later. Hopefully, the mediated agreement will set the stage for future negotiated settlements; with the consent decree this stage wouldn't have been set. It's too early to tell the impact of the decree on how other disputes are settled.
14. Cost to CRS: Salem 82 hrs; Gaynett 69 hrs. 151 hrs = 22 days X \$879 = \$19,338.

APR 17 1980  
6/18/80

A. BACKGROUND

1. Case Number: 05-1128-79
2. Referred by: Judge Herbert L. Will, Senior Judge of the Northern Illinois District
3. Parties: Cook County Jail, Cook County Sherriff, Cook County Board of Commissioners and the Civil Rights Division of the Department of Justice
4. If Class Action, Size of Class: Five thousand (5,000) Black inmates
5. Issues Mediated: Racially segregated housing of inmates
6. Nature of Settlement: Specific desegregated housing goals were stipulated in the consent decree and the National Institute of Correction will develop a new classification system to expedite goals
7. History of the Controversy: The case was filed initially, November 1, 1976 as a complaint alleging discrimination in housing as well as other areas: recreation, brutality, health care, etc. All changes except housing segregation are on appeal to the Seventh Circuit Court of Appeals.
8. Number of months/years involved in Court: three years
9. Number of months/years issues in conflict in community: three years

B. DOLLAR COST

10. Cost Prior to CRS Intervention: Four days in court (\$4,000); attorney costs of \$3,600 based on 36 hours (estimate by case lawyers) and \$900 travel costs (three trips at \$300 each by CRD).
11. Anticipated costs if no CRS Intervention: 15 days in court (\$15,000) plus \$30,000 for 30 days in lawyers' fees and \$5,000 in travel costs (estimate by counsel).

C. SOCIAL COSTS

12. N/A
13. N/A
14. Cost to CRS: 22.6 days = \$19,865.

Prepared by Jesse Taylor

A. BACKGROUND

1. Case Number: 05-1154-79 (Court case: 79-C-19)
2. Referred by: U.S. Judge Myron Gordon and U.S. Judge James Doyle
3. Parties: Plaintiffs: three Black inmates in Waupun State Prison, pro-se case and Defendants: State of Wisconsin: Heads of Division of Health and Public Services, Corrections, Waupun Warden. Wisconsin Attorney General is legal counsel.
4. Not class action.
5. Issues mediated: racial discrimination in housing and job assignments, exercise, visitation, diet/food services, educational programs, use of mace and force. These issues pertained to segregation unit.
6. Nature of Settlement: Parties agreed to a settlement on all issues: non-discrimination policy and directive in housing and job assignments, exercise equipment and space, visitation policy and space expanded, food services changed, crisis intervention worker to deliver services, procedures in use of mace revised.
7. History of Controversy: This case (79-C-19) was filed January 10, 1979; on July 9, 1979, CRS was introduced into case by U.S. Judge Gordon and on July 13, 1979, U.S. Judge Doyle introduced CRS into four cases: the agreement settled one case and limited issues on two others referred by Judge Doyle.
8. Number of months/years involved in court: These cases were never heard.
9. Number of months/years issues in conflict in community: The settled cases involved issues that had been raised over many years and had only been partially resolved through previous litigation.

B. DOLLAR COST

10. Costs prior to CRS intervention: These five cases were never brought to court; therefore, costs prior to CRS intervention were minimal. Defendants were representing themselves and plaintiffs were being represented by Wisconsin Attorney General's Office which had made preliminary response to complaint. Costs will be provided by Assistant Attorney General Joseph Sensenbrenner.
11. Anticipated costs if no CRS intervention: Mr. Joseph Sensenbrenner, Assistant State Attorney General, Wisconsin Attorney General Office will provide CRS with the anticipated costs. Such costs were not readily available because corrections litigation has been in abeyance for some time in Wisconsin.

C. SOCIAL COSTS

12. Social Cost prior to CRS Intervention: Inmates alleged that Black prisoners had been denied opportunities and privileges because of housing and job assignments. Also, they complained of visiting, exercise, food service and program restrictions which were "cruel and unusual punishment" and therefore, a deprivation of constitutional rights.

13. Cost if no CRS Intervention: The issues raised in this case and in similar complaints have been in abeyance for many months and had created frustrations among prisoners. Also, prison population in the Adjustment Center had been steadily on the increase which heightened tensions between guards and prisoners; time for visits and exercise had been reduced and inadequate facilities for exercise and visitation created problems. A crisis intervention worker had been terminated and never replaced which eliminated an internal safety valve for prisoner grievances. Such conditions created an environment which was vulnerable to violence and confrontation.

14. Cost to CRS: Petterson 353 hrs; Glenn 94 hrs; total 447 hrs = 56 days = \$49,224

Prepared by W. E. Petterson

C O P YA. BACKGROUND

1. Case Number: 04-0019-80 (Court Case # C74-106L(A))
2. Referred by: Chief Judge Charles M. Allen, U.S. District Court, Western District of Kentucky.
3. Parties: Louisville Black Police Officers Organization, Inc., et al - plaintiffs; City of Louisville, et al - defendants; Fraternal Order of Police, Louisville Lodge #6 intervenors as defendants.
4. Class Action Status: Certified as a class action on June 27, 1975 on behalf of black persons who are or would have been police officers employed by the City of Louisville.
5. Issues mediated: The major issues which were mediated are as follows:
  1. recruitment, 2. hiring, 3. recruit training, 4. assignments, 5. promotions, 6. discipline, 7. individual relief-hiring 8. individual relief-promotion, 9. individual relief-discipline, 10. notice, 11. attorney fees, 12. lay-offs, 13. record keeping and reporting requirements.
6. Nature of settlement: Parties agreed to a large number of issues in each major category listed above. A consent decree was entered into and it was submitted to the Court for approval on May 5, 1980.
7. History of Controversy: Plaintiffs alleged and defendants denied that the Louisville Police Department had historically discriminated against blacks in recruitment, hiring, testing, selection, assignment, promotion, discipline and other practices. A class action was filed in 1974 and until CRS intervention in late 1979 no real progress had been made even though the parties had been trying to resolve the issue among themselves for six months.
8. Time involved in court: The class action was filed on March 14, 1974. The issue was before the court for 5 years and 9 months when CRS began mediation.
9. Length of conflict: Same as 8.

B. DOLLAR COSTS

10. Costs prior to CRS intervention: Days in court (at \$1,000 for costs to court) 25 days x \$1,000 = \$25,000; Attorney fees and other costs = \$100,000; totalling \$125,000. These figures provided by the Director of Law, City of Louisville. The 25 days include 10 days of trial and 15 days for motions, etc. The \$100,000 figure is based on trial costs and contracted attorney services for the case.

11. Anticipated costs if no CRS intervention: Days in court estimated at 15 - 20 days; if appealed, which would be likely either way; approximately 10 more days could be added. Computed at \$1,000 per day for the court 20 days at \$1,000 = \$20,000 (appeal 10 days x \$1,000 = \$10,000). Estimated attorney fees and related costs for trial and appeals = \$300,000. Total \$330,000. Again data provided by City of Louisville Director of Law.

C. Social Costs

12. Cost prior to CRS Intervention: The dissention between black and white police officers was having a spill over effect in the community. Local leadership stated that the hostility could be felt in many ways and the friction between blacks and whites was mounting over this issue. Within the department it was white against black and the city, beleaguered with many other problems, was not able to address the issues as was necessary.
13. Cost if no CRS Intervention: The situation would have likely remained the same or worsened had CRS not intervened. The court case would have highlighted the issues and lines of battle would have been clearly and emphatically drawn. The potential for conflict would likely have been very high and the level of police services effected negatively. CRS was able to keep the mediation process quite and thus arrive at a solution without stirring up an already touchy situation.
14. Cost to CRS: Two computations are provided. The first using your figures and the second showing actual Region IV costs. Additionally, a computation is provided showing actual number of days regardless of the number of hours worked in any particular day (with the exception that any day of 4 hours or less is counted only as a 1/2 day).

E. Jones	523 hours
L. Turner	292 hours
F. Crawford	221 hours
O. Sutton	16 hours

Total hours = 1052 = 131.5 days x \$879 = \$115,588.50

Actual cost:	Conciliator/Mediator hours = 1036 =	15,716
	RD Hours 16 =	400
	Travel, etc.	4,902
		<u>21,018</u>

Total days = 96 x 879 = \$84,384.00

ATLANTA CASE

A. Background:

1. Atlanta case # 04-0124-79
2. Referred by Chief Judge Charles A. Moyer, U. S. District Court, Northern District of Georgia.
3. Parties: Afro-American Patrolmen's League, et.al., plaintiffs; City of Atlanta, defendant; Fraternal Order of Police, Lodge # 8, intervenors.
4. Class action: Certification pursuant to rule 23 of the Fed. R. Civ. P. on behalf of all black persons employed as sworn personnel of the Atlanta Bureau of Police Services, April 1971 to present, and all black persons who applied for employment as sworn personnel between April 1971 and December 1974.

All white personnel employed in the Bureau from January 1974 to the present and all white persons whose applications were on file in December 1975 and January 1976.

The case represents several consolidation of individual cases. It represents consolidated actions filed April 19, 1973, and April 25, 1973.

5. Issues mediated: Major issues of the case agreed upon included a recruitment plan, remedial relief for black officers including damages, and relief for white officers during a designated period of time, promotional relief for black officers, establishment of a back pay fund and attorneys fees.
6. Same as 5.
7. This controversy was long and costly, both in monetary value and in terms of unrest in the Bureau of Police Services and the community at large. The case had been in court in some form since 1973 and several decisions involving certain aspects of the case had been handed down by Judge Moyer. The most damaging of such decisions was the freeze on hirings and promotions that existed for several years.

A number of people and agencies of good will had tried in vain to resolve the conflict. Some such groups included the Atlanta Chamber of Commerce, the Atlanta Community Relations Commission,

the Atlanta City Council and a blue ribbon committee appointed by Major Jackson.

- 8. The class action was filed in 1973. It was a 7-year-old case.
- 9. Reference # 8.

B. Dollar cost:

1. Attorneys fees were awarded thusly:

Plaintiff AAPL	\$ 23,100
Plaintiff Reeves	58,300
Intervenor FOP	28,600
Total	<u>\$110,000</u>
City (estimated)	90,000
Total legal	<u>\$200,000</u>

2. Remedial relief:

Backpay for black officers	\$ 85,000
AAPL	10,000
AAPL and Reeves	12,000
Backpay for white officers	55,000
FOP	10,000
Attorneys in related cases	10,000
Total	<u>\$182,000</u>

3. Settlement of case \$382,000

4. Estimated additional cost had the case run the gamut of litigation:

Attorneys fees for plaintiff 1200 hours X \$100 per hour	\$120,000
Attorneys fees for Intervenor 800 hours at \$100 per hour	80,000
Expert witnesses-- 26 at an average of 3 days each at \$400 per day	31,200
Plus expenses and travel	15,000
City legal staff	50,000

This is only an estimated cost for trial in the District Court. It does not consider the likelihood of an appeal beyond the decision of the District Judge.

5. Cost to CRS:

Crawford	420 hours
Howden	420 hours
Schroeder	40 hours
Burruss	16 hours
Sutton	100 hours

DEKALB COUNTY CASES\*

A. Background:

1. DeKalb County - case # 04-0091-80 (Sheriff's Department)  
DeKalb County - case # 04-0023-80 (Police Department)
2. Referred by Judge Newell Edenfield, U. S. District Court, Northern District of Georgia.
3. Parties: Association of Law Enforcement Officers of DeKalb County, et.al., plaintiffs; DeKalb County, et.al., defendants; Fraternal Order of Police, intervenors.
4. Class action: Certified as class on behalf of black persons who would have been, are and will be police officers.
5. Issues mediated: The major issues were recruitment, hiring, training, assignment, individual relief for past discrimination, promotion, discipline, etc.
6. Nature of settlement: The major portion of settlement included a number of things I will itemize but essentially it calls for the DeKalb County Police Department to reach parity with respect to race in numbers at all levels of the Department. More specifically, the settlement provides for increased recruitment of blacks, a timetable of promotions to various levels, an adequate grievance procedure, a provision for compensation for those with legitimate and provable claims and assurance of no reprisals against those bringing the charges.
7. History of controversy: Plaintiff alleged discrimination in a class action brought in December 1979. The charge included hiring, testing, assignment, promotion, discipline and general personnel practices.
8. Time involved in court. The class action was filed in December 1979.
9. Reference # 8.

B. Dollar cost:

1. Attorneys and legal authorities estimate that mediation rather than litigation saved the county at least \$100,000 or more. Add to this an equal amount of attorneys fees, placing cost at approximately \$200,000.
2. Same as # 1.
3. In terms of social upheaval and hostility the cost could not be measured. Suffice it to say that a protracted dispute of this nature would have taken its toll.

\*Same information for both cases.

4. There is no question but that the situation would have deteriorated if CRS had not intervened.

5. Cost to CRS:

Jones	40 hours
Crawford	30 hours
Sutton	40 hours

Total hours = 110 = 13.75 days.

APPENDIX D  
PROBLEMS IN EVALUATION  
METHODOLOGY

#### APPENDIX D. Problems in Evaluation Methodology

Impact and cost-benefit evaluation studies of social programs have been conducted for decades. Nevertheless, some of the most critical issues of conceptualization, measurement, and interpretation of results remain unsettled. The way such issues are resolved in a particular evaluation study, such as this one, has a most profound effect on the calculated results. An explicit discussion of some of these issues is therefore essential to provide the reader with a factual basis for assessing the validity of this study's conclusions.

##### A. Cost of CRS Mediation

Economic studies of costs generally follow one of three approaches:

- (1) assessment of average or "full" costs;
- (2) assessment of incremental or marginal costs; and
- (3) assessment of the foregone benefits that could have been obtained by alternate employment of the same resources.

1. Average cost. Average or "full" costing ascribes to the new activity a proportionate share of all direct and indirect costs of the organization. This approach is usually followed by profit-seeking organizations which must recoup all of their direct labor and overhead expenses by charging customers for their services, and where the new activity would be a relatively small proportion of the total organization's effort. The full cost model was adopted for this study because, consistent with business practice, it includes an allocation for support services, management, fringe benefits, and other overhead, in addition to direct activity costs, and thereby provides a conservative base for net benefit and benefit/cost calculations.

To obtain a nominal "daily charging rate" for CRS' mediators, the total CRS budget (for all purposes) in FY 1979 was divided by the total of reported conciliation and mediation hours spent in FY 1979. The effect of this approach was to treat all other CRS functions, including travel, provision of office space, secretarial services, etc., as allocated supporting overhead that was factored into the cost of a mediator's time in this program; the calculated amount was \$879 per mediator-day.

This cost approach is very conservative in that it yields a cost figure that is 4 to 7 times larger than the daily pay of a mediator. In this study, it is much more conservative (higher cost) than the incremental approach would be. It is not known

how it would compare with the "foregone benefits" approach to costing.

2. Incremental Cost. The incremental cost approach examines the additional cost increment that a going organization must incur in order to produce a new product or to undertake a new activity. If CRS adopts a sizeable court referral program and is granted additional resources for this activity alone, the incremental cost approach would be an appropriate means for assessing costs. Ratios of benefits to costs calculated on this basis would have been at least three times larger than the ratios reported in this study. At this time, the pilot program is being conducted with existing resources, therefore the incremental cost approach was not followed.

3. Foregone Benefits. This pilot program clearly requires CRS to divert some of its scarce personnel and financial resources from its traditional programs, and the foregone benefit approach to cost measurement would have been appropriate. However, there is no apparent way, at this time, to place an objective dollar value on the disputes that CRS did not mediate because mediators were diverted to the court-referral program. Although future policy decisions may require that the benefits of this program be compared with those obtained by alternate uses of CRS resources, such a comparison was not made in this study.

##### B. Dollar Saving by Avoiding Litigation

It is quite clear that a mediated settlement which avoids the the continuance of protracted litigation saves significant amounts of money that would otherwise be spent on legal costs. What is not clear is the actual amount saved in a given case. One uncertainty is how much litigation has been avoided. How long would a trial have taken? How much legal preparation would have been necessary? How much spent in jury fees, in witness fees, in transcripts? Would either or both sides appeal a decision, and to what levels?

What would be the costs of prosecuting the plaintiff's case? One plaintiff may have a battery of expensive lawyers, another may be represented by Legal Aid or a foundation-supported legal staff, a third may be acting on his own behalf. In some kinds of cases, a winning plaintiff may be awarded reasonable attorney's fees and some statutes allow judges to apply a multiplier to the legal fees to enable attorneys to represent additional indigent clients, not all of whom will win their cases. Furthermore, legal fees may bear little relationship to the social importance of the dispute; at best, they provide a very indirect measure of benefit in terms of CRS' legislative mandate to promote the civil rights of racial minorities.

Defendants in these cases are virtually always some agency of state or local government, and representation is provided by salaried lawyers who must be diverted from other legal work. The most appropriate basis for this cost would be the foregone value of the other legal work that is delayed or not done at all, but there is no readily available means of determining this value. Costs could also be calculated from the attorneys' hourly rates of pay, provided that an adequate allocation of governmental overhead, office support, etc. were added. A losing defendant may have to bear some, all, or some multiple of the plaintiff's costs; estimating this part of the defendant's costs requires predicting the outcome of the case and then predicting the judge's discretionary award.

When litigation is avoided, the court system itself does not have fewer total expenses, it merely tries additional cases sooner; the true value gained is the value of the reduced court delay. A surrogate for this measure would be the average court costs for a day of trial multiplied by the number of trial days eliminated.

In this study, estimates of plaintiff's and defendant's past costs and avoided future costs were made by the parties and submitted by the mediator; the information was not provided for the Wisconsin prisoners acting in their own behalf. No information was provided concerning the cost of a trial day to the court system, the data underlying the estimates of avoided litigation costs is therefore clearly incomplete. (When estimates were made of the numbers of trial days that were avoided by mediation, each day was assumed to save the court system \$1,000.) There is no way to verify whether the estimates of the nature and duration of the avoided litigation (and the corresponding costs) were either high or low; they appear to be reasonable in the light of the previously incurred expenses. In short, this measure only provides a rough indication of some of the real benefits to be obtained from CRS mediation.

#### C. Value of Social Impact Achieved

There is no generally accepted methodology for converting the value to an individual of the social changes achieved through mediation into a common dollar equivalent, in order that substantively different impacts may be compared on a common basis. For this reason, the issues and impacts in this program were identified, but no further conversion was attempted.

The value of the impact of any given program depends not only upon the average value to one individual, but also upon the number of individuals receiving the benefit. In this evaluation, estimates of the number of affected individuals were derived from such sources as data presented in class action legal documents and from institu-

tional capacities. Arriving at reasonable estimates of the numbers of people benefited by this program appears to be feasible, but such estimates can only provide a partial indication of the benefits produced.

Another complicating question is whether CRS mediation produced a unique outcome or merely shortened the time required to achieve an outcome that is identical to what litigation would have produced. In view of recent Supreme Court decisions concerning inadequate minority representation on local governing bodies, it is at least questionable whether the court in the Cairo case could have imposed the kind of restructuring to which the parties voluntarily agreed.

The evaluation has not adequately dealt with the duration of the CRS mediation benefit. To illustrate, if we hypothesize that CRS intervention merely shortened the time required to reach the Cairo voting representation agreement by three years without affecting the outcome while the Waupun prison agreement would not have been achieved even after litigation, then the duration for the Cairo benefit would be three years and the Waupun benefit indefinitely long, depending on how long the institution maintains the new conditions. Associated with the time factor is the total number of people who will eventually benefit--the group of potential black voters in Cairo will change relatively slowly over time, whereas the population of a maximum security prison unit may change completely two or three times a year. Data for such calculations has not yet been obtained, nor has the methodology for weighting this factor been developed.

#### D. Success in Performing the CRS Mission

Under Title X of the Civil Rights Act of 1964, CRS has the responsibility "...to provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, color, or national origin..." At the current state of the evaluation art, quantitative measures of effectiveness can only illuminate selected aspects of agency costs and impacts. However, the definitive assessment of the extent to which this project furthers the agency mission still remains a matter of judgment by the responsible policy making officials.

**END**