

INFORMATION TO USERS

This reproduction was made from a copy of a document sent to us for microfilming. While the most advanced technology has been used to photograph and reproduce this document, the quality of the reproduction is heavily dependent upon the quality of the material submitted.

The following explanation of techniques is provided to help clarify markings or notations which may appear on this reproduction.

1. The sign or "target" for pages apparently lacking from the document photographed is "Missing Page(s)". If it was possible to obtain the missing page(s) or section, they are spliced into the film along with adjacent pages. This may have necessitated cutting through an image and duplicating adjacent pages to assure complete continuity.
2. When an image on the film is obliterated with a round black mark, it is an indication of either blurred copy because of movement during exposure, duplicate copy, or copyrighted materials that should not have been filmed. For blurred pages, a good image of the page can be found in the adjacent frame. If copyrighted materials were deleted, a target note will appear listing the pages in the adjacent frame.
3. When a map, drawing or chart, etc., is part of the material being photographed, a definite method of "sectioning" the material has been followed. It is customary to begin filming at the upper left hand corner of a large sheet and to continue from left to right in equal sections with small overlaps. If necessary, sectioning is continued again beginning below the first row and continuing on until complete.
4. For illustrations that cannot be satisfactorily reproduced by xerographic means, photographic prints can be purchased at additional cost and inserted into your xerographic copy. These prints are available upon request from the Dissertations Customer Services Department.
5. Some pages in any document may have indistinct print. In all cases the best available copy has been filmed.

**University
Microfilms
International**

300 N. Zeeb Road
Ann Arbor, MI 48106

8319770

Hofrichter, Richard

NEIGHBORHOOD JUSTICE AND THE SOCIAL CONTROL PROBLEMS OF
AMERICAN CAPITALISM: A PERSPECTIVE

City University of New York

PH.D. 1983

University
Microfilms
International 300 N Zeeb Road, Ann Arbor, MI 48106

Copyright 1983

by

Hofrichter, Richard

All Rights Reserved

PLEASE NOTE:

In all cases this material has been filmed in the best possible way from the available copy.
Problems encountered with this document have been identified here with a check mark .

1. Glossy photographs or pages _____
2. Colored illustrations, paper or print _____
3. Photographs with dark background _____
4. Illustrations are poor copy _____
5. Pages with black marks, not original copy _____
6. Print shows through as there is text on both sides of page _____
7. Indistinct, broken or small print on several pages
8. Print exceeds margin requirements _____
9. Tightly bound copy with print lost in spine _____
10. Computer printout pages with indistinct print _____
11. Page(s) _____ lacking when material received, and not available from school or author.
12. Page(s) _____ seem to be missing in numbering only as text follows.
13. Two pages numbered _____. Text follows.
14. Curling and wrinkled pages _____
15. Other _____

University
Microfilms
International



NEIGHBORHOOD JUSTICE AND THE SOCIAL
CONTROL PROBLEMS OF AMERICAN CAPITALISM:
A PERSPECTIVE

by
RICHARD HOFRICHTER

A dissertation submitted to the Graduate Faculty
in Political Science in partial fulfillment of
the requirements for the degree of Doctor of
Philosophy, The City University of New York.

1982

© COPYRIGHT BY
RICHARD HOFRICHTER
1983

This manuscript has been read and accepted for the Graduate Faculty in Political Science in satisfaction of the dissertation requirement for the degree of Doctor of Philosophy.

March 3, 1983

date

Robert E. ...

Chairman of Examining Committee

March 16, 1983

date

John ... Deputy E.O. for Prof. Karis

Executive Officer

William Kornblum (Sociology)

Michael Brown (Sociology)

Frances Fox Piven

Martin Fleisher

Supervisory Committee

The City University of New York

Abstract

NEIGHBORHOOD JUSTICE AND THE SOCIAL CONTROL PROBLEMS
OF AMERICAN CAPITALISM: A PERSPECTIVE

by

Richard Hofrichter

Adviser: Professor Mike Brown

This dissertation examines the meaning and derivation of decentralized, informal, government-sponsored neighborhood dispute resolution (NDR) forums in the United States that have been developed over the last decade. These institutions use third-party mediation techniques to handle interpersonal neighborhood conflicts, civil and criminal. The central thesis is that NDR forums are primarily institutions of social control which emerge indirectly from class conflict. In contrast with the liberal legal reformist perspective, which views NDR as a managerial solution to problems with the courts and access to judicial institutions, NDR is here interpreted as paradoxical and only fully understandable when analyzed within a political and economic analysis of American capitalism.

Chapter I describes the phenomena of NDR briefly, indicates trends, paradoxes, and activities, and offers a critique of the dominant perspective for interpreting the derivation and significance of NDR.

Chapter II presents a detailed analytical framework establishing the political-economic context within advanced capitalism through which NDR arises and situates the institution within the judicial apparatus of the capitalist state. Subsequent to describing the basis of class conflict, it considers how certain forms of disruption to the social order in the workplace, urban communities, and the judicial system impede capital accumulation and the reproduction of the labor force. These impediments influence the restructuring of social control. This restructuring is characterized by planning, the expansion and intensification of state power, and new modes of integrative control.

Chapter III examines specific features of NDR as a form of social control connected to the reproduction of American capitalist social order presented in Chapter II. It explores the ways in which NDR forums manage and institutionalize particular disputes and simultaneously provide a basis for challenge to its fundamental practices. The central elements of informal dispute resolution are presented, followed by a discussion of how they parallel the emerging elements of social control analyzed in Chapter II. Within this context, the chapter considers the interests of NDR planners and their promotional appeals to the public. It also explains how informalism regulates the lives of individuals, and the ways in which the mediation experience potentially incorporates citizens into a system of social control by presenting the appearance of disputant control, defining conflict as interpersonal, and resolving disputes by consensus and accommodation.

Dedicated to the memory of
Bernard Kutner

Acknowledgements

I am greatly indebted to my dissertation adviser, Mike Brown and Sponsor Robert Engler for their keen insights, criticisms, and support over the last five years. I would also like to thank the following freinds and colleagues, who read portions of the manuscript, for their comments and counsel: Peter Wengert, Christine Harrington, Deborah Baskin, Richard Abel, Sue Stern, Paul Stern, and Marilyn Richter.

The dissertation could not have been written without the cooperation and generous contribution of time offered by staff members from mediation projects across the country who permitted me to interview them and provided documentation about their programs.

Diane Goldman and Jeanne Richards performed acts of wizardry in producing this document on the word processor.

TABLE OF CONTENTS

I. INTRODUCTION 1

II. CLASS STRUGGLE AND SOCIAL CONTROL 24

 A. Introduction 24

 Capital Expansion and Class Struggle 24

 The Interests of Capital and Labor 26

 Contradictions of Capitalism and Class Struggle 29

 The Meaning of Social Control in Contemporary
 Capitalism 31

 The Role of the Capitalist State 42

 Contemporary Limits to Capital Accumulation 47

 B. Class Struggle and Problems of Social Control
 in the Workplace 50

 Managing the Labor Process 50

 The Problem of Depoliticizing Class Struggle
 in the Workplace 52

 Conventional Forms of Control: The Impasse 54

 C. Class Struggle and Problems of Social Control
 in an Urban Environment 57

 Change and Disruption 57

 Depoliticizing Class Struggle in the Community:
 Problems 61

 Conventional Forms of Control: The Impasse 63

 D. The Legal Crisis of the State 67

 E. Emerging Forms of Control in the Workplace and
 the Community 76

 Planning 76

 Expanding and Intensifying State Power 89

 Integrative Social Control 96

III. NEIGHBORHOOD JUSTICE 109

 A. The Structure of Neighborhood Dispute Resolution:
 Planning 126

B. Expansion and Intensification of State Power	139
C. Integrative Social Control	155
Integration at the Level of Community	157
Integrative Social Control at the Level of the Disputant: The Mediation Process	164
IV. CONCLUSION	199
REFERENCES AND BIBLIOGRAPHY	202

TABLES

III-1	Education of Participants (Dade County CDS).	131
III-2	Family Income of Participants (Dade County CDS).	131
III-3	Background Characteristics of Respondents, by Case Type (Polk County)	132
III-4	Primary Agencies CDS Refers To (Dade County CDS).	141
III-5	Ratings by Parties as to Characteristics of Mediators. . .	162
III-6	Disputant Satisfaction for Mediated Cases for Neighborhood Justice Centers in Atlanta, Ca., Venice, Ca., and Kansas City, Mo.	163

DOCUMENTS AND FIGURES

Doc.	I-1	A Sample Case: A Neighbor's Barking Dog.	3
Fig.	I-1	Citizen Dispute Settlement Process.	5
Fig.	I-2	How Mediation Works	6
Doc.	I-2	A Neighborhood Court Program for East San Jose. . .	7
Doc.	III-1	A Brief Description of Pinellas County's Citizens Dispute Settlement Program.	118
Doc.	III-2	Program Operating Procedures (Dade County CDS). .	120
Doc.	III-3	Mediation Summary (NJC, Venice, California) . . .	122
Doc.	III-4	Brochure: NJC, Venice, California.	124
Doc.	III-5	Ground Rules for Everyone/Process for Mediation (Pima County, Arizona).	125
Doc.	III-6	Notice To Appear (Dade County CDS).	144
Doc.	III-7	Notice To Appear (Uptown-Edgewater CDS)	145
Doc.	III-8	Brochure (NJC, Houston)	160
Doc.	III-9	Brochure (Wilmington, Delaware CDS)	165
Doc.	III-10	Project Synopsis Narrative (CDR, Denver).	166
Doc.	III-11	Brochure (Albany Dispute Mediation Program) . . .	167

Note: Portions of this work have appeared in Richard L. Abel (ed.) The Politics of Informal Justice, Vol. 1: The American Experience, 1982 (Academic Press, New York).

INTRODUCTION

The management of interpersonal social conflict in everyday life within the American judicial system is changing. A particularly noteworthy trend is the reemergence of informal, decentralized alternatives to courts for the resolution of a wide range of citizen disputes and grievances, both civil and criminal (McGillis, 1980a, 1980b; McGillis and Mullen, 1977; Johnson, et al., 1977; Felstiner and Williams, 1978; Tomasic and Feeley, 1982; Alper and Nichols, 1981; Wahrhaftig, 1982). Most of the quasi-judicial and nonjudicial institutions and procedures referred to as alternatives to courts--informal justice, mediation, or, most recently, neighborhood justice centers* have existed for many years. In the United States their roots can be traced to the mid-nineteenth century (Doo, 1973; Harrington, 1982). In 1920 the Jewish Conciliation Board was established in New York City (Fisher, 1975). Current interest in the concept can be traced to Fuller (1971), Danzig (1973), Fisher (1975), and Sander (1976), all of whom wrote widely-read articles advocating alternatives to courts and proposing organizational models. Contemporary models include conciliation, mediation, arbitration,

* The term neighborhood justice center technically refers to three experimental dispute resolution projects established by the Law Enforcement Assistance Administration. In this dissertation I use the term neighborhood dispute resolution, mediation and informal dispute resolution interchangeably to refer to a broad range of nonjudicial, informal, state-funded or organized neighborhood dispute forums, existing or potential, that seek to resolve interpersonal civil or criminal disputes. The term also refers to the types of dispute resolution, such as mediation or arbitration, that occur within these forums.

ombudsmen, and administrative tribunals, to name but a few, and are used for disputes between individuals--such as family members, neighbors, landlords and tenants, merchants and consumers--and between groups or represented aggregates--such as management and labor and community organizations (see Document I-1, a sample case). The procedures used are less formal and less adversarial than litigation. Mediation is also more particularistic, purposive, flexible and less fact oriented. Proponents emphasize the mutually acceptable, voluntary nature of agreements between parties who know one another. They also argue that mediation is more accessible, speedier, and fairer, and less coercive and costly than adjudication (Tomasic, 1982). The structure and administration of programs vary, depending on the resources and objectives of project planners (McGillis and Mullen, 1977).

The development of informal, nonjudicial forums for dispute resolution in the United States is neither linear nor uniform. However, current experiments with informal justice differ from historical antecedents in that the state now plays a greatly expanded role in planning judicial institutions. The scope, intensity, and pace of state activity concerned with alternatives increased dramatically during the mid-1970s (Aaronson et al., 1977; Ray, 1981; McGillis, 1980a). The Law Enforcement Assistance Administration (LEAA) funded numerous diverse "alternative" community justice pilot projects in the early 1970s (Hoff, 1974; McGillis and Mullen, 1977). Nationwide, over 180 programs are operational today, many sponsored by local courts, local government, business, and criminal justice agencies (McGillis, 1980a).¹

A Sample Case: A Neighbor's Barking Dogs

On Friday night, Mr. Merkle was awakened for the third time that night by the sound of barking dogs. A telephone call to his neighbor, Mr. Stearns, only resulted in a heated exchange, and the dogs continued to bark throughout the night. The next morning Merkle confronted Stearns about the dogs and about their phone conversation the night before. Tempers flared but this time Stearns assaulted Merkle. Mr. Merkle stormed off to call the Orange County Sheriff's Department, while Mr. Stearns put the dogs inside his house. When the deputy arrived, he saw no barking dogs. Because Merkle did not want to press assault charges, the deputy referred him to the Citizen Dispute Settlement Program.

Mr. Merkle decided to visit the program office where he explained his problem to the CDS staff. CDS then scheduled a hearing for the following Thursday night and sent Mr. Stearns a notice to come to the hearing. Both parties arrived at the local traffic court (where CDS hearings are held) that Thursday evening to attend the informal hearing. Mr. Trees, a local attorney who had volunteered to serve as their arbitrator, was introduced to them by the project director.

Trees:

Both of you gentlemen will have a chance to speak your piece so don't interrupt each other please. I'll have some questions and we'll try to get a clear view of the issue. Now, this is not a trial and I'm not a judge, we're trying to avoid that. What transpires here is not legally binding on anyone, so it doesn't prevent anyone from pursuing the traditional legal process. But, hopefully, you will take advantage of this opportunity. We'll try to reach some sort of a compromise agreement tonight.

Mr. Merkle started by stating that Mr. Stearns' dogs were keeping him awake at night. His bedroom window faced the yard where the dogs were kept. All he wanted, he said, was some peace and quiet at night.

Now it was Mr. Stearns' turn to tell his side of the story. He explained that he had gotten the dogs for protection because his house had been broken into several times. Mr. Stearns said that he had not heard the dogs barking. This only happened, he explained, when someone or something was in the yard. And, he added, no one is in the yard at night. Then the discussion started:

Merkle:

I hear them very clearly! You must be a heavy sleeper.

Why should I have to listen to your dogs?

Stearns:

I have the right to protect my home!

Trees:

OK, listen. Would you agree that Mr. Merkle has a right to enjoy his home and not be disturbed by dogs at unreasonable hours? And would you, Mr. Merkle, agree that Mr. Stearns has a right to have pets?

(Both nod in agreement)

Good, then let's start working toward a solution where you both can enjoy your rights and live next to each other in relative peace.

Within half an hour both parties agreed that Stearns would keep the dogs in the enclosed porch at night in an effort to reduce the barking. Both parties also agreed to stop threatening and yelling at each other. At the conclusion of the hearing, these agreements were written down and signed by both parties as a sign of good faith, each party received a copy of the agreement. Before they left, Merkle and Stearns separately rated their satisfaction with their hearing, and both stated they were quite satisfied.

About three weeks after the hearing, Merkle and Stearns were called by CDS and asked about the current situation with the dogs. Mr. Merkle replied that he was satisfied and that the dogs were quiet most nights. Mr. Stearns replied that he and Mr. Merkle did not speak much but that he had had no complaints or problems. Both parties were satisfied with the settlement they had reached at their hearing.

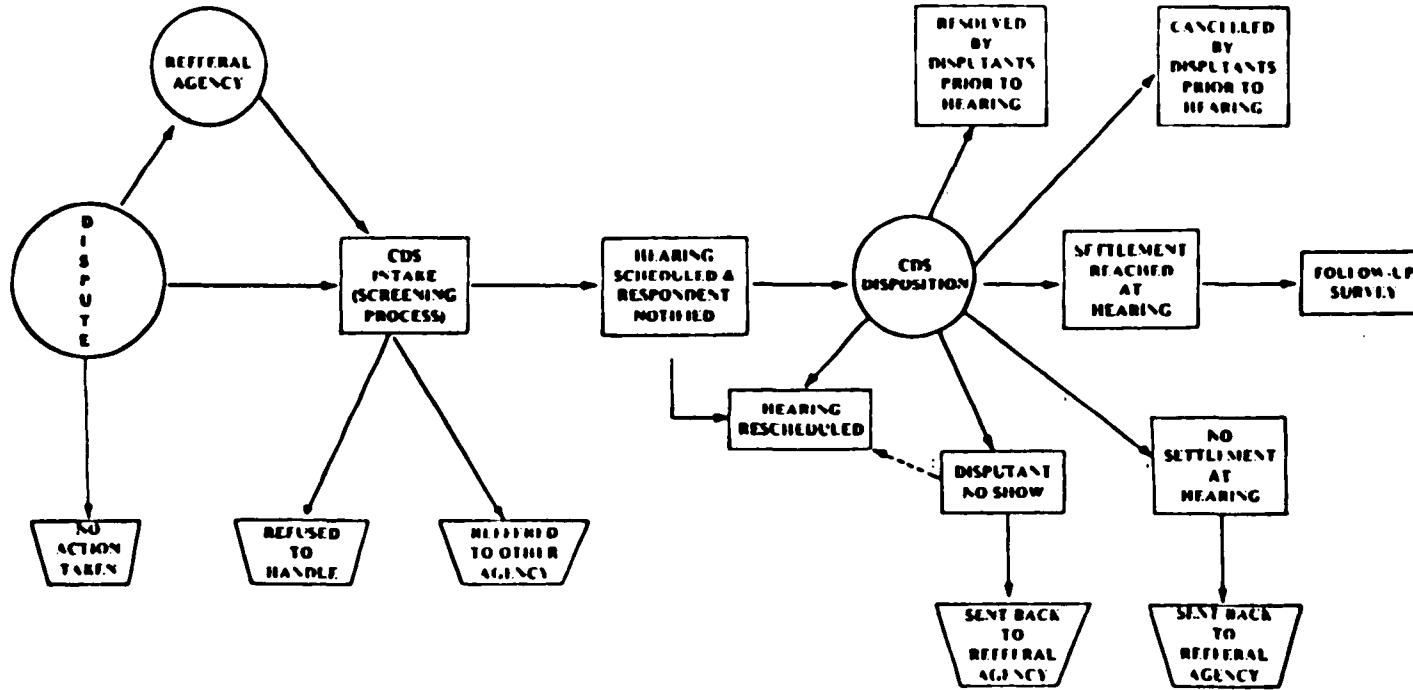
This sample case illustrates the procedures which are routinely used at CDS hearings. Following a hearing, both participants sign a statement listing the terms of the agreement, that is if they were able to reach one. Copies of this statement are given to both the complainant and respondent. The three-week follow-up illustrated in the example is not a standard practice, this occurs for a randomly-selected sample of complainants and respondents for evaluation purposes. But all clients make satisfaction ratings following their hearing, and these ratings constitute a separate part of the evaluation plan. If a respondent fails to appear for a hearing, the hearing is rescheduled. If a complainant fails to appear, the case is dropped.

Source: Ross F. Conner and Ray Surette, The Citizen Dispute Settlement Program: Resolving Disputes Outside the Courts--Orlando Florida. Chicago: American Bar Association, 1977, p. 4.

Although state-organized dispute resolution projects do not conform to a single organizational model, they share some common characteristics. Most operate within the courts or agencies connected with the courts, although some are independent. They normally accept cases referred by police, courts, and prosecutors. A small proportion of cases come from social service agencies or are "walk-ins." These may be more numerous in programs located outside the courts. Cases referred by the criminal justice system usually involve misdemeanors. Many programs also handle noncriminal disputes; some even specialize in consumer or landlord-tenant matters. Once a case has been screened and accepted and the parties have agreed to submit their dispute, an intake counselor or coordinator contacts the parties, prepares them for the mediation session, and collects background data. A hearing is then conducted before trained, volunteer, usually nonlawyer mediators who reside in the community or professional mediators with backgrounds in law, psychology, or counseling. The dispute is usually resolved by some form of third-party mediation or arbitration that produces an agreement signed by each party. The dispositions may involve referral of one or both parties to social services (See Figure I-1, I-2, Document I-2 for a general depiction of the process common to some models.) Noncompliance in criminal cases may result in return of the case to court for the resumption of the prosecution. The communities served by most programs tend to be lower middle class or poor, and disputants generally fall within lower income brackets and lack a college education (McGillis and Mullen, 1977; Snyder, 1978; Sheppard et al., 1979).

FIGURE 1-1

CITIZEN DISPUTE SETTLEMENT PROCESS *



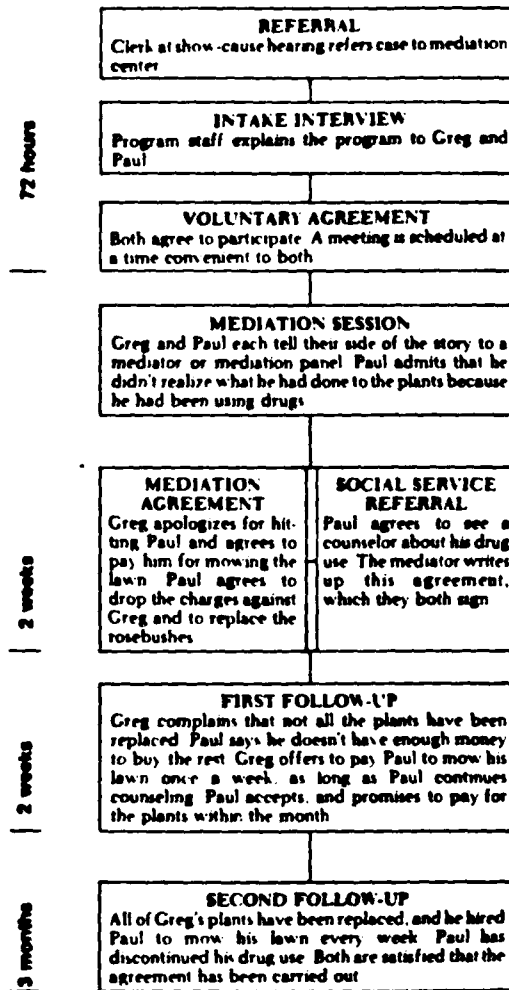
*Florida Supreme Court, Office of the State Courts Administrator, Citizen Dispute Settlement Guideline Manual. Tallahassee, Florida, 1978.

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 18-year-old 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.

FIGURE 1-2



Source: Perspective, volume III, no. 3. Published by the Crime and Justice Foundation, Boston.

DOCUMENT 1-2



A Neighborhood Court Program for East San Jose

• **What is the Neighborhood Court Program?**

This is a nighttime pilot program designed to give the people of East San Jose an opportunity to settle their Small Claims Court problems and disputes within their own neighborhood in an informal manner and before an impartial mediator and/or arbitrator.

• **Where is this program located?**

At the Hillview Community Center, 1694 Adrian Way, San Jose, California

• **What types of problems can this Court help me solve?**

The following are examples, as long as the amount claimed is not more than \$750.

- 1 Rental/cleaning deposits
- 2 Auto accident damages for the amount not insured (up to \$750)
- 3 Money owed you
- 4 Damage to your property, e.g. furniture.
- 5 Value of things borrowed and not returned.
- 6 Consumer problems, e.g., improper repair of your T.V. or your car
- 7 Medical expenses for dog and cat bites.

• **Do you need a lawyer to represent you in Small Claims Court?**

No, neither side is allowed to have a lawyer with them.

• **Who will help me settle my claim?**

Impartial, volunteer lawyers from the local Bar Association will act as mediators/arbitrators in these Court sessions. Settlements or decisions reached in these sessions are legally binding on both sides unless appealed to the Court.

• **What is mediation?**

It is a process of using one of the volunteer lawyers to listen to both parties, and then to help both parties try and reach an agreement.

• **What is arbitration?**

It is a process of using one of the volunteer lawyers to act as a "judge" to decide the case

• **How does the Court process work?**

Both parties will see a mediator at Hillview Community Center. If they work out an agreement between themselves, then the Court matter will end. If they cannot reach a settlement, then they will have a choice of either submitting their case to an arbitrator at the Center or to a judge at the Municipal Court. If they choose arbitration, the arbitrator will hear the case, if possible, on the same day that the parties have seen the mediator. The arbitrator may decide the case at that time, or may send his/her decision by mail to both parties. The arbitrator's decision will be final unless one of the parties formally appeals for a written decision by the judge.

• **Are bilingual interpreters provided to help me make out my claim?**

Yes.

• **How much does it cost to file a claim?**

\$4.00 for filing fee and mailing costs

• **How much money can a person file a claim for?**

Not more than \$750.00

• **On what nights is the Neighborhood Court open?**

Tuesday and Thursday evenings

• **What time is the Neighborhood Court open?**

From 5:00 P.M. to 9:00 P.M.

• **What types of problems does the Court not handle?**

Problems such as

1. Return of stolen property

2. Payment for your time spent in Court on a Small Claims matter

3. Emotional harassment

4. Problems happening outside of the San Jose-Milpitas Court area. Persons must file claims for those problems in the other city's Small Claims Court department.

• **What is so different between the Neighborhood Court and the regular Municipal Court hearings?**

The Neighborhood Court hears cases in the neighborhood and in the evening so that a person does not have to take off from work to file a claim or to get a hearing time for his/her case. A person would have to do these things if he/she went to a regular Municipal Court hearing.

• **What else is so unusual about this program?**

The Neighborhood Court Program is held in a private, informal atmosphere which is quite different from the public formal sessions held at the Municipal Court.

• **How do I file a claim?**

Go to
Neighborhood Court Program
Hillview Community Center
1694 Adrian Way (Off Uxala and Capitol Expressway)
San Jose, California

Telephone Number: 251-2850

From 5:00 to 9:00 P.M.

On Tuesday and Thursday Evenings

Se Habla Español.

Puede obtener este folleto en Español si usted así lo desea. Si usted habla solamente Español, hable al teléfono 251-2850 y nuestra operadora bilingüe le dará la información que usted necesite en Español.

The Neighborhood Court Program is a project of the Santa Clara County Bar Association in cooperation with the San Jose-Milpitas Municipal Court. Financial support of this project is provided by foundation grants, donations and volunteer services of attorney members of the Santa Clara County Bar Association.

The central thesis of this dissertation is that state-organized neighborhood dispute resolution forums that handle interpersonal disputes are primarily institutions of social control that emerge from class conflict between capital and labor as played out in communities. NDR centers derive from the consequence of crises in capital accumulation and the extraction of labor. They are also the result of resistance by citizens to the management of everyday social life by an expanded network of state agencies. I will argue that the movement toward interpersonal, non-formal, decentralized mechanisms for dispute resolution organized through the judicial apparatus can only be understood fully when analyzed within a political and economic analysis of American capitalism. I will demonstrate three points in elaborating on this thesis. The first is to explain the derivation of NDR from class conflict, the social relations of production, and crises in the management of social life by the capitalist state. There is no way to demonstrate a direct connection between capitalist interests, class struggle, and the details of NDR. Its meaning is therefore derived indirectly by examining the common characteristics it shares with other forms of capitalist social control, the conditions under which it arises, and the ways in which its processes correspond to problems of capitalist social control. The second is to show that NDR is a form of social control that has the effect of expanding state power. That is, in essence it penetrates community social life and contains political and social disorder as functions determined by but disguised within its form as an agency of the state. The third is to demonstrate that NDR parallels, in its forms, the characteristics of social control present in the workplace and

urban communities, and is an instance of a new strategy of capital's in response to a new historical situation. Before presenting the aspects of the phenomenon which would suggest such a thesis, significant developments occurring in informal dispute resolution are described as an indication that an analysis is warranted.

In 1976 the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice (the Pound Conference) was conducted in St. Paul, Minnesota and recommended "experimentation, evaluation, and widespread emulation of successful [dispute resolution] programs" (American Bar Association, 1976:11). In 1978 the Office of Testing and Dissemination within LEAA provided funds for three eighteen-month experiments with neighborhood justice centers in Atlanta, Los Angeles, and Kansas City, sponsored by, respectively, a nonprofit agency with links to the courts, the local bar association, and the Community Services Department of the city government, each operated in accordance with guidelines promulgated by LEAA (Lively, 1977). As LEAA terminated its contributions to these projects (which sought funding elsewhere) it continued to fund other projects. In 1980 the adjudication division established projects in Honolulu, Houston, and Washington, D. C. for another eighteen-month period. These programs are all located within the criminal justice system and are now referred to as Metropolitan Mediation Centers because their jurisdictions are citywide. The Office of Community Anti-Crime Programs, in conjunction with another federal agency supported ten additional experiments under the President's Urban Crime Prevention Program, many of which chose dispute settlement as one model of service (U.S. Department of Justice, LEAA/Action, 1980).

The Dispute Resolution Act of 1980 (PL 96-190) sought "to assist the States and other interested parties in providing to all persons convenient access to dispute resolution mechanisms which are effective, fair, inexpensive, and expeditious."² It established a Dispute Resolution Resource Center within the Office for Improvement in the Administration of Justice in the Department of Justice. By surveying and evaluating experimental programs, the resource center, in its first year of activity, would have functioned as a clearinghouse for the exchange of information and provided technical assistance to those who wished to improve or create dispute resolution mechanisms. Its research would have been used to establish national priorities and guidelines. In each of its second through fifth years the Resource Center had an authorization of ten million dollars, out of which it was to make grants to any nonprofit organization, business, bar association, or municipal agency for the purpose of improving or creating dispute resolution mechanisms. In 1981 New York State became the first state to enact a law which appropriated funds (\$1.1 million) for dispute resolution programs. Eleven other states had proposed or pending legislation in 1982 (Dispute Resolution, no. 8, 1982).

Influential professional organizations, such as the American Bar Association, the National Center for State Courts, the Judicial Conference of the United States, the Conference of Chief Justices, and the American Arbitration Association, have advocated and encouraged informal procedures, as have newer organizations such as the National Peace Academy Campaign in Washington, D.C., established to develop support that would "teach, conduct and coordinate research in the

methods of peacemaking, including conflict resolution" (Conner and Mapes , 1979). The Chief Justice of the United States Supreme Court has given strong support to mediation and arbitration (Dispute Resolution, no. 8, 1982).

Major foundations are becoming increasingly involved in the field, including the Edna M. Clark, Rockefeller, Robert Wood Johnson, and Ford Foundations, the Lilly Endowment, and the Carnegie Corporation (Ford Foundation, 1978a). The Ford Foundation has produced a number of reports on the subject and, in 1979, awarded nearly \$500,000 in grants to research or demonstration projects on alternative forms of resolving conflict (Ford Foundation, 1978a; 1978b). More importantly, the Ford Foundation in conjunction with the Hewlett-Packard Foundation launched the National Institute for Dispute Resolution in 1982. With \$1.5 million a year for five years, the Institute plans to initiate some of the functions designated in the Dispute Resolution Act of 1980 which was not implemented.

At the same time as this activity is occurring, community organizations, academics, and practitioners are raising challenges to the advocates of NDR (Abel, 1982; Tomasic, 1982; Harrington, 1980; Singer, 1979; Kidder, 1981, 1980). Auerbach, a legal historian, asks:

Are these forums likely to deflect energy from political organization by groups of people with grievances in common (e.g. tenants in slums or neighborhoods slated for development) or even discourage them from developing a litigation strategy that might offer effective leverage for social and economic change? [1980:400]

But what would suggest that NDR is anything other than it appears to be? These mechanisms for neighborhood dispute resolution (NDR) are puzzling and contradictory. First, they involve a process that

differs from the judicial system and yet they are bound up with the conventional system with respect to organizational ties, sources of referrals, and methods for handling similar problems. They are agencies of the state but without the trappings of the state and structurally independent. Second, the courts historically have been uninterested in and incapable of handling effectively minor neighborhood and family disputes (Sander, 1976; McGillis and Mullen, 1977; Alper and Nichols, 1981) and yet the state now plans informal justice for this purpose--it formalizes informal justice. Third, population characteristics do not demonstrate a need for informal justice; there is no groundswell or demand for it from community residents (Harrington, 1980; Buckle and Buckle, 1981; Merry, 1979). Yet, ironically advocates espouse community values and Jeffersonian democratic rhetoric at a time and place when the community ideal as such is falsified by the reality of everyday life--mobile populations, large urban centers, etc. (Merry, 1982b). Fourth, informalism appears to represent a contraction of state power, (e.g., the absence of formal rules, no authoritative officials, choice not to participate). But in other ways its practices suggest an expansion of state power because of the way it extends itself into areas of social life rarely touched by the state (Santos, 1982; Abel, 1981). Fifth, these institutions seek to make people aware of their conflicts as resolvable, and as problems requiring resolution at the same time as they desire to contain and suppress conflict. Sixth, informalism offers the possibility for people to make new demands, based on conflicts within communities, while simultaneously remaining isolated from politics because disputes are resolved individually and

privately. Seventh, some supporters of mediation speak of a need to create access to justice--to meet unfulfilled demands for justice. Yet informal dispute resolution is clearly not meant to dispense justice but only to settle disputes (Abel, 1982; Auerbach, 1980).

These contradictions raise questions. Why do informal mechanisms for dispute resolution reappear at this time with state support, given the historical possibility of other options (e.g., expansion of conventional courts to process more cases, creation of more specialized courts, expansion of other social service, political, or private agencies to handle dispute settlement functions)? How and why do interpersonal conflicts become a problem for state intervention? Under what conditions? What definition of social order does it offer?

Advocates for state-sponsored alternatives to courts and conventional legal processes share a number of assumptions about the nature of disputes and social conflict, the role of the state, and the definition of legal crisis (Danzig, 1973; Sander, 1976; American Bar Association, 1976; Johnson et al., 1977; Ford Foundation, 1978a; Cook et al., 1980). These assumptions derive from a tradition I call liberal legal reformism that accepts the existing social order of power as a given and seeks limited, short term solutions to practical problems. The overarching assumption is that a rational response to social order is possible at each moment that social problems are posed--that evolution and progress can resolve what, without an assumption of progress, may be a deeper and less tractable problem for capitalist society.

Liberal legal reformism aspires to solve the problem of social order through cooperation, administrative management of political

conflict, and impartial mediation between opposing classes. It views conflict as an evil to be avoided, absorbed, or resolved--all within the prevailing order. Only certain types of conflicts are acknowledged as legitimate in society (e.g., conflict between individuals, or interest groups, that does not challenge the fundamental right of capital to own and control the means of production). For example, a tenant may challenge an individual landlord's eviction or a rent increase. But the tenant cannot argue that the landlord (or landlords in general) cannot dispose of their property as they see fit, based on the needs of tenants or because landlords do no work for their income. To the extent that class issues can be reduced to interpersonal ones, conflicts will be handled in some form. All other conflict must be managed by being translated into technical issues devoid of political content and isolated from more profound struggles or antagonisms that transcend the individual or limited group.

The major objective of conflict resolution, in this perspective, is not primarily justice but order-maintenance and problem solving. Formal legal procedures and authoritative judicial decision making obstruct the capacity to resolve a dispute; they merely impose a solution (Ford Foundation, 1978a; 1978b; Greason, 1980).

Crises within the judicial system are thus typically defined in managerial terms. Particular emphasis is placed on judicial overload and inefficiency. Imperfections and inequalities in the social order are remedied by rules, due process, fairness, and social engineering techniques that ameliorate the consequences of conflict, guarantee equality of opportunity, and reduce the arbitrariness of law.

Reformers, historically, have been concerned with rooting out the arbitrary, corrupt character of the legal system by rules which ensure due process. But they have not sought justice, and seem to move toward informal alternatives to courts when the law "works" for disadvantaged social classes (Lazerson, 1982; Garth, 1982), when it is apparent that legitimacy may be undermined, or when the claims promoted challenge property relations and support new collective or individual rights (Reifner, 1982; Klare, 1982). Public officials, for example, seeking to increase the organizational efficiency of the judicial system, emphasize case overload, understaffing, delay, waste, and cumbersome procedures (McGillis and Mullen, 1977; Cook et al., 1980). They reject a more substantive conception of justice. At the same time, however, they stress the threat to the legitimacy of the judicial system created by unresponsive, costly, and ineffective courts (Downie, 1971; Johnson, 1977).

Undoubtedly many citizens are dissatisfied with the quality of justice (Downie, 1971; Todd, 1978). Few would dispute the value of flexibility, informality, and responsiveness in dispute processing. Yet the instrumental and apolitical approach of the reforming liberal denies the objective interests that generate social conflict by obscuring those struggles that express class interests. Reformist analysis stresses the benefits of mediation to individuals and measures the success of these institutions according to the number of disputants who reached agreements and were satisfied (Florida Supreme Court, 1978; Cook et al., 1980). This interpersonal view of disputes ignores the ways in which individuals may benefit qua individuals but lose as members of a larger social class whose interests cannot be

fully satisfied through law or private case-by-case resolution of personal grievances because the issues involve questions of political power that extend beyond legality. Reformist analysis thus prevents us from understanding neighborhood dispute resolution forums as institutions of social control by refusing to consider how conflict resolution may relate to the underlying values, political structure, and the social order of capitalist domination (Hay et al., 1975; Thompson, 1975; Santos, 1982).

The liberal legal reformist perspective presents NDR as a solution to problems of managing the courts and expanding access to the judicial system. It selects evidence for the success or failure of these programs in a way that justifies its ideology, such as caseload, processing time, and disputant satisfaction (Cook et al., 1980; Alper and Benedict, 1981; Merry, 1982a). Within this framework no true evaluation of the programs can occur because the evaluation excludes a social context that sets boundaries or redefines the nature of the interaction between the parties in the mediation process. The evaluation of such programs depends on the interests that define the problems NDR addresses. If for example, NDR is evaluated according to the managerial conditions which seemingly give rise to it (and the crisis produced by those conditions, e.g., case overload), then evaluation becomes impossible. Either the variables measured are irrelevant except for the managerial problem or the problem is of such generality that no particular instance or type of reform can be evaluated in terms of it (see Merry, 1982a; Kidder, 1981).

Clearly much recent work on dispute resolution by anthropologists and legal sociologists is problematic precisely because the

theoretical categories used to interpret conflict either lack reference to a cultural or political context external to the dispute process itself or overemphasize the individual and the dispute as the central units of analysis. Analysts such as Abel (1982) Harrington (1982) and Santos (1982) have begun to provide alternative interpretations and question major assumptions about social conflict and judicial remedies. Kidder (1981) and perhaps, most importantly, Cain and Kulcsar (1982) have challenged in some detail the "dispute processing paradigms" and their implications.

In capitalist societies disputes outside of marriage lack salience. Conflicts of interest which are salient are conflicts across class lines: between manufacturer, retailer, and consumer; between landlord organization...and tenant. We contend that to insist that all these matters are disputes, and in some sense the same kind of thing as interpersonal quarrels, is analytically confusing if not dangerous.

* * * *

. . . we simply plead for a conceptualization which starts from a theory of society, and which distinguishes between matters in theoretically relevant terms....(I)nterclass conflicts are not most usefully conceived of as disputes...to do so obscures what may be special and important about the interpersonal events which possibly can be construed as disputes (1982:388, 389).

How can we examine the contextual social process and relate it to neighborhood dispute resolution? How can we begin to create a political economy of judicial transformation characterized by the development of NDR?

What is needed is an analytical framework that can explain contemporary transformations in the regulation of social life from a non-managerial point of view--specifically, the management of social conflict by means of nonjudicial, informal administrative mechanisms. There are other perspectives which could be applied. Theories,

influenced by the work of Durkheim, Weber, and Parsons, emphasizing the role of norms, values, and culture in the social control of economic resources represents one such possibility. Such approaches, although focussed on the importance of the form of law and legal domination, tend to separate economic and political analysis and often fail to interpret the interests associated with a particular conception of social order (Unger, 1975). Social integration or cohesion represents a state of equilibrium (Parsons, 1949). The problem of disorder is related to modernity and the overrationalization of social life. An implicit critique of bureaucracy and advanced technology is apparent but does not adequately address issues of power nor systemic forces inherent in a corporate capitalist economy. No dialectic of resistance counters the universal tendencies within the bureaucratic form.

Another theoretical possibility can be derived from an analysis which stresses a decentralist, community-oriented, or even anarchist position, based on Jeffersonian or Rousseauian ideals, to explain trends toward informal, localized social processes (Schumacher, 1973; Bookchin, 1973; Morris and Hess, 1975; Kotler, 1969; Boyte, 1970; Sale, 1980; Lovins, 1977).

In this perspective, scale is a central issue as well as an explanatory variable in understanding the restructuring of institutions toward smaller geographic or functional units. Decentralization is represented as an antidote to the overrationalization of society, social complexity, and the loss of control over daily life. It rarely connects its categories of thought to issues of power except in a general way and offers no particular

distinctions between citizen-initiated and state-initiated attempts at decentralization of given institutions. Neither of these positions has been fully developed theoretically to provide a full-scale critique and derivation of informal dispute resolution that can be tied to class conflict or the material basis of production in a capitalist economy.

In his preface to A Contribution to the Critique of Political Economy, Marx states:

Neither legal relations nor political forms could be comprehended...by themselves or on the basis of a so-called general development of the human mind...on the contrary they originate in the material conditions of life...In the social production of their existence, men invariably enter into definite relations, which are independent of their will, namely relations of production appropriate to a given stage in the development of their material forces of production (1970b:20).

Thus a framework for interpreting the origin and significance of neighborhood dispute resolution emerges out of a Marxist tradition and offers a more adequate explanation than that provided by liberal legal reformism or other functionalist perspectives. It relates judicial institutions to the foundation of political power in American capitalism--the organization of labor and capital. Transformations in the relations of production, work processes, the social environment, institutions of crisis management, and the world political economy constitute central components in such an analysis. "Rights and the transformation they undergo depend on the mode of production, not on advances in the intellectual or moral spheres" (Lefebvre, 1969:115). In this perspective, class conflict is central. Whereas liberal legal reformism takes conflict between interest groups or even individuals as its basic analytical category, a perspective grounded in Marxist

political economy identifies the struggle between antagonistic classes, specifically capital and labor, as the most basic form of conflict--and one that cannot be resolved within capitalism.

In short, this perspective presents the foundations for a political economy of NDR and the basis for a critique of liberal ideology and the programs themselves. It views the management of the labor process and social life in the community by capital as two sides of the same problem and the resistance of labor to capitalist domination in general as a central theme. Such a political economy reformulates the politics of neighborhood dispute resolution as a mediated expression of class needs--capital constituted against labor. It demonstrates the resemblance of the history of capital-labor relations at the point of production and in urban communities to neighborhood mediation forums. These forums are then understood as creating organizational relationships or forms which defuse political grievances and legitimate the state to the public, disorganize community action, and manage social populations.

My analysis proceeds as follows: The next section (II) outlines contemporary American capitalism, focusing on the interests of capital and labor, the meaning of social control, impediments to capital accumulation in the workplace and the community, the limitations of conventional forms of social control (including the judicial system), and the ways in which new forms of control emerge from crisis and class conflict. The objective of this section is to present a characterization of American capitalism within which NDR is embedded. By demonstrating the nature of social control, impediments to the effectiveness of its traditional manifestations and new forms of

control, the movement toward NDR can be better understood. The succeeding section (III), relying on case studies, case histories, selected program data and documents, discussions with program directors and mediators, and Congressional testimony, considers the ways in which neighborhood dispute resolution forums parallel the emerging institutions of social control that regulate social life and neutralize class conflict generated by developments in capitalist social relations in the workplace and the community. The analysis also discusses the contradictions of these forums and why they are not solutions to problems of social order and class conflict.

NOTES - I

1. Some of the more notable and well-researched dispute resolution forums include the 4-A arbitration projects established by the American Arbitration Association, the Urban Court Program in Boston, and the dispute settlement programs sponsored by the Office of the State Court Administrator in Florida. For a detailed list of programs and projects see: Larry Ray, Dispute Resolution Program Directory (Washington, D.C., 1981).

2. Funds were never appropriated because of the President's budget-cutting priorities for fiscal 1981.

II. CLASS STRUGGLE AND SOCIAL CONTROL

A. Introduction

Neighborhood dispute resolution programs are institutions of crisis management and social control within the capitalist state. In order to demonstrate this proposition and its implications, neighborhood dispute resolution must be placed in a broad context that includes not merely the immediate terrain in which it operates, but the processes of capital accumulation and class conflict that shape the boundaries of such an institution (Cain and Kulcsar, 1982). Thus, before examining the specific features of NDR, we present an analysis of American capitalism and its dynamic of social control in order to determine the conditions under which NDR arises. This requires consideration of the interests of capital and labor, the meaning of social control, the role of the capitalist state, and the nature of class conflict in the workplace, the community, and the judicial system. The impasses or crises that result from class conflict shape emerging forms of social control.

Capital Expansion and Class Struggle. The essence of American capitalism is the unending effort by the social class that owns and controls the apparatus of production to increase the rate of capital accumulation and to maintain control over the surplus produced by labor (Marx, 1967; Edel, 1981). Sustaining capital expansion, extracting the surplus, and realizing its value requires appropriation of labor power and the value produced by labor in an uninterrupted production process, as well as concealment of the class basis underlying the social relations of production.¹ Class struggle is

based on the unresolvable conflict between those who own and control the nation's wealth and the means of production and those who do not. Class antagonism in the capitalist mode of production emerges from the effort to expand the ratio of unpaid labor relative to paid labor. This class struggle, in which the capitalist class defends its control over the surplus produced by labor and labor resists--the most fundamental conflict in capitalist society--is a primary dynamic of social change, particularly the forms of control used to manage different segments of the population. Expansion requires exploitation of labor but labor is also a political force that can never be totally dominated.

The conditions necessary to harness productive labor, reduce investment risk, and neutralize political opposition to capitalist domination must be recreated with changes in the mode of production and of social relations. This process is not automatic and capitalists cannot control it. It requires non-market institutions which capital cannot easily dominate. Although class struggle remains a constant, its form and content fluctuate, leading to a reorganization of those institutions (e.g. schools, mental institutions, law enforcement agencies) that regulate social life, contain class conflict, and mediate class interests by disguising the direct confrontation of classes.

New patterns for regulating and rationalizing social life emerge out of the contradictions of accumulation and class struggle and the forms through which those struggles occur. The judicial system is one important arena for these processes, since it is simultaneously involved in the active regulation of social life, the management of

social conflict and the class struggle. The restructuring of judicial institutions such as the movement toward informal dispute resolution thus reflects changes in the character of class conflict, as well as crises and demands within its own daily operations. The role of judicial institutions in helping to sustain the conditions of capitalist expansion and extraction of surplus value, define order, sanction deviance, and otherwise mediate conflict has been described at length (Neumann, 1957; Thompson, 1975; Horwitz, 1977; Heydebrand, 1978; Fine, 1979b; Klare, 1982). However, these social conditions are by no means assured. Before social control and its relations to class struggle and the state can be understood, we must consider the interests of capital and labor that generate conflict.

The Interests of Capital and Labor. Each class, as a class, has objective interests, whether or not its members consciously act on them (Balbus, 1976). The interests of capital are to ensure an ever-expanding rate of capital accumulation and retain the surplus produced, while defending the right to own the means of production and organize the productive process. Increase in relative surplus value is achieved by increasing worker productivity and reducing the cost of reproducing labor. Without an increase in productivity, capital expansion becomes impossible because labor is the basis of wealth:

Monopoly capital dreams of a particular kind of specialized technician, recognizable by the coexistence in one and the same person of zest for his job and indifference about its purpose, professional and social submission, power and responsibility over questions of economic and social management (Gorz, 1972:489).

Predictability of the social order and uninterrupted production are essential. Capital must be able to organize the means of production without interference, invest freely in new means of

production, create and dispose of property, and obtain access to raw materials. It must be able to move capital and labor quickly: to invest and disinvest at will.

But capital is more than an interest. Capital is also a form of organization, a system of institutions which expresses its interests. Moreover, capital is not monolithic but divided into numerous segments or fractions (Offe, 1975). For example, we can divide capital into its monopoly and competitive sectors (O'Connor, 1973). Or, banking, industrial, and property capital can be separated. This oversimplifies a true characterization; in many ways these capitals are becoming more unified (Hirsch, 1978). But the implication of these divisions is that capital cannot control the social order as a united class. Monopoly sector control is different from competitive sector control in both its object and subject. Aggregate control--the control of populations rather than individuals--is more important for monopoly sector capital. NDR handles both types in different ways.

Before stating labor's interest, it is important to explain what we mean, briefly, by the labor class as a class. Is all wage labor the labor class? Only industrial labor? Only productive labor? These questions are fiercely debated (see Wright, 1979; Hunt, 1977). The questions are important because deciding how broadly labor is defined will determine the interpretation of the scope of the social control problems capital must face--the organizational potential of the working class to relate to a class interest. I define the working class broadly to include all those categories of labor which sell their labor power for a wage, and do not own the means of production (Hunt, 1977). Class position is defined by the level of exploitation, not income or productivity.

Labor's interests and priorities, as a class diametrically opposed to capital, are to maintain control over its own productive labor and limit its reduction to an instrument of production, the surplus value it produces, and the social conditions of its existence, both in the workplace and outside. Labor's concern is for social, collective consumption. Labor has an interest in production for need rather than market exchange and the expansion of the range of commodities and services available for collective consumption--e.g. health care, public mass transportation, social services, utilities, housing, education, and clean air and water. Increased wage rates, reduction in the cost of living, and an increase in the collective living space constitute its central interests. In the workplace, labor seeks to control the work process: work rules; the definition of rates, jobs, and skills; and decision-making. In the community labor wants control over the essentials of daily life and access to basic social services. Labor also has a need for unity, not a unity of spirit but of social consumption--surplus capital used not just for state benefits but for real control of private capital: what gets produced, where capital is invested, organizing the labor process. That is, the focus is not on obtaining state benefits per se but on undermining property. These interests are mediated by a variety of organizations such as trade unions, political parties, and community groups. Thus labor must also be understood as a form of organization constituted against capital. As there are divisions or fractions within capital, so too with labor. These divisions may center on ethnic, sex, craft, or geographic characteristics to name a few.

The greater the extent to which capital can diffuse the collective power of labor, the greater capital's capacity to dominate labor as a class. And class struggle occurs over attempts to reduce labor to an instrument. One manifestation of class struggle as a political configuration is through the interaction of organizations--trade associations for capital, unions, social movements, and welfare rights organizations for labor. These organizations are instituted specifically to serve the interests of capital and labor. They are concrete aspects of class struggle.

Other institutional manifestations are not. Neighborhood dispute resolution centers are not, for example, instituted specifically to serve interests of capital or labor but emerge systemically from class struggles. These centers are arenas within which the clashes between class interests are played out and buffered as they take the form of institutionalized struggles in the community. As we shall indicate in the last chapter, informal justice may potentially divide labor by providing an institutionalized resource or channel for collective grievances that could replace community-based organizations. Because the dispute resolution center may supplement or replace other agencies which draw complaints, pressure on capital, direct or indirect through the state, may be neutralized or diffused.

Contradictions of Capitalism and Class Struggle. Interests between capital and labor clash within a context beset by contradictions: Some contradictions are built into the structure of a capitalist economy; others emerge from class struggle.² These contradictions create crises that place absolute limits on capital expansion and the ability of capital to dominate labor. The resulting

crises create disruptions to the social order which influence the restructuring of institutions that manage social conflict. One contradiction is that the success (accumulation of wealth) of the system leads to periodic breakdowns (recessions), which are disruptive but necessary to restore accumulation.³ During recessions, for example, or poor economic times more generally, family fighting, crime, and neighborhood conflict tend to increase (Institute for Labor Education and Research, 1982).

Capital cannot expand continuously for a variety of reasons. First, overinvestment and overproduction reduce the capacity of markets to absorb the goods and services produced, so that the capitalist cannot realize the surplus value. Second, high levels of well-targeted investment may bring about low levels of unemployment, thereby weakening capital's grip upon workers and the amenability of labor to capitalist discipline. Third, success often increases the rate of inflation. Fourth, resources may be exhausted. These combine to slow growth by means of a recession that, in turn, reduces the rate of accumulation.

Such a recession limits investment. But expansion cannot occur without perpetual investment. Because of uneven economic development, the anarchic, unplanned character of capitalist production, and competition between capitalists for larger shares of profits, capital often fails to match investment with areas of social need to sustain profits. The desire to realize profits is an additional hindrance to maintaining investment at the level necessary for sustained expansion.

A second contradiction is that capitalism depends on constant innovation in the instruments and organization of production

(Hirschhorn, 1978), but such change undermines the established political institutions and ideologies that maintain legitimacy, as well as the control systems in the workplace. Technological innovation thus subverts the social stability necessary for predictable capital accumulation because, in part, the institutions that legitimate capitalist domination develop with a historical momentum of their own. The forces of production are always in contradiction with the social relations of production that sustain them.

A third contradiction is between the increasingly public, social character and consequences of production and the ever more concentrated, centralized private ownership. The social consequences expose the capitalist to unwanted interventions by the state at the insistence of the public. In response to these interventions the capitalist is forced to make expenditures that reduce the available surplus and therefore the rate of capital accumulation. All of these contradictions limit the capacity to manage effectively the social order without expanding class conflict and generate problems of social control in everyday life.

We now turn to an examination of social control. For if neighborhood dispute resolution is, in its essence, a form of social control, then social control and its relation to class interests must be explained.

The Meaning of Social Control In Contemporary American Capitalism. I use the concept of social control to refer to the material and ideological means by which the economic and political order is produced and reproduced in a capitalist society.

"Reproduction is the method by which the total social 'ensemble' including modes of circulation, distribution and consumption is protected and repeated through time" (Dear, 1981:482). This process of reproduction--to perpetuate the working class and its class position and to regulate and disorganize the working class--is not inevitable or automatic. It requires apparatuses or processes of various forms (police, courts, administrative rules, welfare regulations, etc.) which monitor everyday life and contain disruption. Neighborhood dispute resolution is an institution of control concerned with the difficulties in reproducing the labor force. These control systems deflect attention from organizing in the workplace and to social movements and community organization at the level of community. Social control is inherent in class struggle itself though not necessarily consciously imposed because expansion and the extraction of surplus value requires the exploitation of labor (Braverman, 1974; Hirsch, 1978).

Most problems of social control stem from the relations between capital and labor. The crisis of capitalism is class struggle. However, it is not only because labor is a factor of production but because labor is forced to sell itself to capital that the use of labor requires that it submit to capital. Thus, the kinds of control systems and norms that arise in capitalist society as a result of class struggle are not random, inevitable, or an outcome of a logical need for order. Rather, a particular kind of order emerges, geared to the mode of production. The character of order created within NDR centers differs in form from the judicial system which it supplements. But it is not thereby completely distinct or

disconnected from social control arrangements peculiar to a capitalist society. How is capitalist control distinct from control required in any social formation?

David Gartman (1978), David Gordon (1976), and Richard Edwards (1979) all distinguish between the necessity for some type of order, authority, and coordination in any system of production and the control mechanisms under capitalism. Each recognizes that the worker-capitalist relation is not the automatic result of market forces or the natural attribute of human beings. Because labor seeks to limit the extent of its exploitation by capital, capital must use what Gartman calls "surplus control" to compel labor to work under conditions that it would not ordinarily accept if it were organizing the work process. "Surplus control in contrast with basic control increases the rate of surplus value solely because it represses the resistance of an exploited class" (Gartman, 1978:103).

Gordon's distinction between quantitative and qualitative efficiency in a capitalist economy helps to elaborate the notion of surplus and basic control. Quantitative efficiency means that producers in any social system seek to generate the greatest output for the least input (the object of Gartman's "basic control"). But qualitative efficiency (the goal of Gartman's "surplus control") refers to a productive process "that best reproduces the class relations of a mode of production...maximizes the ability of the ruling class to reproduce its domination...and minimizes producers' resistance to such domination" (Gordon, 1976:22).

Edwards also examines the issue from the perspective of labor resistance but reminds us that labor is not a commodity like other

commodities. Capital purchases labor power--the capacity to perform labor. But capital must find special mechanisms to extract labor. "Control is rendered problematic because, unlike other commodities...labor power is always embodied in people, who have their own interests and needs and who retain their power to resist" (Edwards, 1979:12). Hence, the mechanisms of social control are transformed as labor resists and as capitalists attempt to overcome impediments to capital expansion and extract the surplus. Yet control is made difficult by the class struggle.

Social control is itself contradictory and dialectical. This contradiction stems from capital's dual obligation: to sustain property relations--the system of exchange, the free flow of goods and services--while maintaining the circulation and well-being of the labor force. The regulation of any one of these realms involves the other. Capital must maintain the workforce outside the workplace and also individuate or fragment the work force so that it can sell its labor power as free unattached labor. Thus, for every instance of control there is an instance of socialization and therefore resistance to control, even if not an active resistance. That is, control brings people together and provides the experience of social life that constitutes a possible basis for progressive social movements in a way that challenges control but also removes the connection between individual conflicts and public issues. For example, E. P. Thompson (1966) demonstrates how the strict supervision, rigorous discipline, and doctrinaire normative structure of 18th century methodism seemingly

appears as a politically regressive, or "stabilizing influence"...[However], methodism was indirectly responsible for a growth in the self-confidence and

capacity for organization of working people.
[According to Southey] "methodism has familiarized the lower classes to the work of combining in associations, making rules for their own governance." Throughout the early history of methodism we can see a shaping democratic spirit (42).

Why must this contradiction persist? To the extent that social control is capitalist control, labor must be dominated but also protected in order to extract labor from workers. Production requires coordination and cooperation among workers at the same time as capitalists seek control over production. Although capitalists possess a great capacity for exercising control, the long-term outcomes of those controls cannot be prejudged. Moreover, the particular systems of control that emerge are based on struggles between the interests of capital and labor. They cannot be understood as either rationalizations that correspond to an abstracted need for efficiency or the capability to discipline inherent in modern technologies. The analysis of control, then, is not a critique of social control per se, but an interpretation of the class interests that generate its particular content and forms (Fine, 1979a).

The restructuring of control emerges from the dialectic of struggle and changing social conditions. Neighborhood dispute resolution represents a further development in that struggle.

I distinguish two major types of social control, integrative and external (coercive), each of which may exist simultaneously. This dichotomy is not absolute and may be an oversimplification. Social control does not proceed along a continuum and, in any case, what unifies each of the forms is the nature of capitalist power in its struggles with labor. Hunt (1981) has explored the theoretical

limitations of viewing control along a continuum in some detail. However, our elaboration of these two types of control can demonstrate that they can be discussed without falling into all of the analytical traps specified by Hunt. I will demonstrate later how NDR is a form of integrative social control.

Integrative control refers to control as a form of self-management, and reduces social problems to interpersonal problems. It depends for its success on the individual's participation in it. External control, on the other hand, is partly based on coercion, on systems of rewards and punishments, and may involve deception and false messages delivered to dissuade a given interest from collective action. Although integrative control is also coercive it is less overtly so. In contrast to external, imposed control, integrative control requires a degree of involvement by the actors in their own environment and language. Rather than being directly imposed by an institution or an individual through overt coercion, it is directly embedded in ordinary processes of social and political life. That is, it operates as a form of power in a process or activity rather than a visible outcome. For example, in the labor process a supervisor's order to a worker is a form of external control; the division of labor or a change in the organization of the work process is a form of internal control. Power does not need to be consciously perceived to be experienced.

Integrative control is not new, except in the institutional forms it sometimes takes. Integrative control concerns the organization of social life in such a way that the rules or boundaries for acceptable social action are set. But how people act specifically within these

boundaries is not determined, and so there is always a degree of perceived freedom that does not occur with external control. Capital represents itself as integrative, inherent in society. Having explained the sources and types of social control, the following discussion explores the basic problems of control inherent in capitalism and their contradictory aspects. It is these problems that ultimately generate institutions such as neighborhood dispute resolution.

What are the social control problems of American capitalism? We can identify three problems for capital that generate institutions of social control.

The first problem concerns the need to expand, which disintegrates communities, while simultaneously supporting communities. It is a problem related to social reproduction and uneven economic development. Local transactions, everyday social life and relations of reciprocity (the level at which NDR operates) come into contradiction with relations based on exchange and the general expansionary character of capitalist development. Uneven development (e.g., wealth in one region, poverty and unemployment in another) occurs because expansion does not take place within the economy as a whole in any given historical period. When one sector expands, others contract limiting support for investment. Thus the logic of everyday personal life at the local level and the logic of an expanding, intrusive, interpenetrating capitalist development are incompatible. "The original, indigenous process of reproduction and of social cohesion becomes more and more undermined by the anarchy of commodity relationships and thus is itself increasingly characterized by

crisis. At the same time, the capitalist form of productive development leads to...[the] destruction of the natural bases of production and reproduction in general" (Hirsch, 1981:596). For example, the small businessman who wants stability and a guarantee that costs will be stable does not want a wildly fluctuating market. Another example is a tenant whose interest is stability of residence in conflict with a landlord whose expanding rate of profit is part of the logic of expansion--the landlord may want to tear down the building and replace it with another. "Capitalist development has therefore to negotiate a knife edge path between preserving the exchange values of past capital investments in the built environment and destroying the value of these investments in order to open up fresh room for accumulation" (Harvey, 1981:113).

Given these dilemmas, a first problem of control is to limit or make ineffective possible local protests so that they do not interfere with the expansionary tendency of capital, yet, simultaneously to maintain social stability. To state capital's problem another way: how can stable reproductive formations and traditional settlement patterns be maintained which must be continually destabilized by capital expansion?

The expansion process is always expanding against something-- which is stability and consolidation of primary relations or social connections among individuals and domestic community organization. Family life and community life are disrupted by labor mobility and the failure of communities to provide security. Capital must make people tolerate an expansion that is not in their interest as human beings, as residents of a neighborhood or settlement. The success or failure

of their relations as such depends on the stabilization and integration of the local economy. This is also true for the community as a whole. And capital can only expand to the extent that it can draw labor power from the people who live in those communities. The capacity to perform labor is a problem of social reproduction. Labor power is useful only if it can be delivered to a market. And it can only be delivered to a market and exploited if the bearers of labor power have a stable, non-capitalist existence--that is, a stable community, settlement-oriented existence.

But labor cannot be stabilized if capital expansion proceeds competitively as it does. Where capital creates corporate centers and capital intensive development occurs, it reduces industrial jobs and displaces blue-collar workers thereby disrupting community life. Sometimes capital must disorganize social life and disinvest in communities because accumulation partly depends on the capacity to move capital and labor quickly. Capital is not committed to the well being of communities as such or individuals. The recent rash of plant closings across the nation testifies to this, as well as activities by banks such as redlining and refusal to invest in a community. Equally important, in a political sense, austerity may be a goal to weaken the work force and destabilize its organizational power. The need for predictability and order for capital can therefore also mean planned disorder for people and communities. But there are limits. This is a contradiction: the need to expand and thereby vitiate communities and to maintain communities at the same time.

A second problem of control is class conflict. O'Connor specifically argues that capitalist crisis "tendencies are not the

result of 'systematic contradictions' of capitalism, but rather originate in the emancipatory practice of human beings" (1981b:324). Capital needs to decrease its costs of production. One of these costs results from organized challenges to capitalist power through the legal system or the state more generally, e.g., for unemployment compensation, takeovers of abandoned plants, clean air, rent control. People sometimes initiate legal action that might undermine profits--whether tenants against landlords, workers against bosses, or consumers against corporations. From the view of capital, these costs must be minimized and such challenges kept invisible because visibility aggravates other conflict. Institutions must be developed which can depress the level of conflict while simultaneously providing legitimation for the social order (O'Connor, 1973; 1981; Habermas, 1975). Creating such institutions is made difficult when the local economy which provides potential political support is undermined by the expansion process.

A third problem of social control concerns the discontinuity between the relations of production and the forces of production. Similar to the second problem, capital seeks to depress the level of conflict altogether but not simply to maintain control over capital by capitalists or to maintain profit and extract the surplus produced by workers. Rather, the function is to maintain the political power of the capitalist class as a class at its leading edge--the large corporation. Institutions must be developed which can suppress that kind of conflict which will be politically dangerous, lead to political change, to increased volatility in towns, cities, and electoral units, or to any change which would bring working class

elements into power. Moreover, it involves the active management of surplus and working class populations in order to maintain political hegemony.

Disruption to capitalist social order that creates problems in social control occurs in a variety of ways in the different circuits of capital accumulation, e.g., production, circulation, and realization (consumption). Without developing a full scale typology, several forms of disruption or areas of vulnerability, long and short term, can be suggested that relate directly either to the accumulation process or to the reproduction of the labor force and the infrastructural environment. At the level of production, for example, there are physical disruptions to productivity and the physical plant created by the character of the system itself and its management, such as overproduction or underinvestment. The worker creates disruptions directly through strikes, slowdowns, and indirectly through absenteeism and illness. Disruptions can also be political and ideological, e.g., demands for wages and benefits, a better working environment, or control over decision-making. At the level of circulation of goods and services and realization of value produced, disruption occurs in the decay of the infrastructure, and limits on investment. Disruptions can also be considered as individual, e.g., absenteeism, insubordination, illness; or collective, e.g., social movements and strikes. NDR handles some types of disruption to capitalist social order--primarily those types involving the reproduction of the labor force.

Overall then, the capitalist class must secure control and minimize disruption while simultaneously concealing its power. The primary means of organizing social control is the capitalist state.

The Role of the Capitalist State. The role of the capitalist state is important to the discussion because the state represents a primary arena through which the interests of and conflicts between capital and labor are mediated and displayed. There must be institutions which come between capitalist need and the direct management of the social order and also translate (or process) the interests of both classes into structural forms that can execute them (Marx, 1967). Thus, each class extends its control through the creation of critical social formations and institutions. The legal system is one such institution, the educational system another. The state is in many ways an organization of institutions primarily but not exclusively for capital, just as unions and working class associations serve labor. However, the state does not function for capital alone. It is a contradiction in itself.

Modifications of state apparatuses such as informal justice occur because of the state's control over judicial institutions. Neighborhood dispute resolution centers are organizationally situated within the judicial system. They are part of the state apparatus and absorb some of the functions of other state institutions (such as the judiciary and police) as well as perform new functions of social control. At an organizational level, neighborhood dispute resolution is thus an agency of the capitalist state within the judicial system. Because the state insists on preserving its monopoly over judicial

institutions, it necessarily plays a significant role in planning neighborhood dispute resolution centers.

Without presenting a theory of the capitalist state in the United States, it is possible to summarize some of its basic characteristics and the ways in which its institutional forms constrain its capacity to manage labor and surplus populations--the unemployed, the underemployed, and the unemployable (see generally Miliband, 1973; O'Connor, 1973; Poulantzas, 1975; Gold et al, 1975; Offe, 1975; Wolfe, 1977; Wright, 1978; Holloway and Picciotto, 1978; Hirsch, 1978). These constraints, as we shall see, provide clues about the options available to handle given crises that emerge through class struggle and how neighborhood dispute resolution might be one option that reflects changes in the pattern of social control.

According to one theoretical tradition in Marxist analysis, the state seeks to create and guarantee the conditions for capital accumulation by socializing the costs of production, creating effective demand, providing infrastructure, and otherwise supporting a stable social order (Offe, 1975). But the state arises out of class struggle and cannot be fully dominated by capitalist interests. In seeking to direct the economy and sustain production and consumption, the state does not merely respond to crisis; it interacts with capital and labor in contradictory ways and generates its own crises (Ibid.; Wolfe, 1977; Wright, 1978).⁴ It is not a separate institution that intervenes in the economy but is itself part of the production process (Bowles and Gintis, 1982). Its boundaries are fluid and difficult to discern. The state is therefore a set of

processes and social relations that emerge from class struggle and capitalist relations of production.

Under contemporary American capitalism, the state becomes increasingly and permanently involved in civil society not only when it deals with economic dislocation through regulation, a traditional state activity, but also when it organizes and subsidizes production directly through its taxing, spending, and social policies. NDR is an example of expanded state activity.

This increased state activity can enhance capital accumulation by socializing costs that might be borne directly by capital. However, it also sets limits on capital expansion by creating more unproductive social expenses that can decrease accumulation (O'Connor, 1973). Moreover, some social welfare policies generated in response to crises quickly become institutionalized legal rights. It is difficult for the state to eliminate such policies or reduce expenditures without some loss of legitimacy or new dislocations.

The involvement of the state in the accumulation process politicizes that process and repoliticizes relationships formerly disguised by capitalist ideology (Wolfe, 1977; O'Connor, 1978; Wright, 1978). For example, state socialization of production (such as direct subsidies to corporations or tax breaks for the large oil companies) may reveal the class bias of the state weakening its affirmative connections to the working class. As state planning occurs in energy, farm policy, education, and now justice, the possibility of struggle in the public arena over issues that once were said to be relegated to market rationality is enhanced.

Planning is more comprehensive in almost all aspects of production as capital becomes more concentrated and centralized. The expanded role of the state in planning the production process has important implications for the character of judicial institutions of social control. One implication is that this involvement, whether it means distributional changes through social services or expansion of civil rights, essentially constrains the extent to which capital can rely on labor markets to discipline labor. This expanded involvement in production and consumption locates struggle in the political process: an arena less amenable to direct capitalist control. The effectiveness of the state's interventionist capacities is limited not merely by fiscal constraints or even by revealed connections with class interests. Although the state handles numerous forms of dislocation, it cannot solve the central contradictions of a capitalist society in which the structure of capital accumulation is itself the barrier to greater expansion. As Hirsch explains:

When the decline in the rate of profit and the tempo of accumulation becomes manifest, this must lead to an intensified exploitation of labour power mediated through the state apparatus, while at the same time potential state resources for 'superfluous' measures of pacification and reform--'superfluous', that is, for the immediate profit interests of capitals--are drastically restricted. This is the context in which the 'consequences' of economic growth--decay of the cities, chaotic traffic situation, collapse of the ecological equilibrium, etc.--become politically explosive: not because the 'managing capacity' of the state is too small in a technical sense...but because capital comes up against the self-produced barriers of its valorization, which can be broken through only by an intensification of exploitation and class struggle. (1978:105).

As a result when the state cannot succeed at reform, either greater repression ensues or new apparatuses emerge.

Santos (1982) notes that state power and the way it is used (the form of the state) is changing with respect to what were once, as he terms it, peripheral areas of domination. These areas of social life where the state did not need to go and where it had little effect--at the community level--now become more important. To the extent that the state penetrated the community level in the past, it did so at the risk of losing legitimacy, through the use of obvious coercive forms of domination such as the police and the bureaucracy. Now we witness the growth of institutions such as neighborhood dispute resolution forums which seek to penetrate aspects of social life that have previously been of peripheral interest to the state but which cause disruption to capital expansion and the extraction of surplus value or become closely connected to market relations, including production, consumption, and exchange. Examples include alcoholism, truancy, family disputes, and small scale neighborhood conflicts.

As will be indicated later, more and more areas of social life become relevant to processes of capital accumulation and therefore must be transformed into relationships of exchange (commodified) (Spitzer, 1979). This is why the capitalist state must expand to regulate aspects of social life not traditionally considered part of market relations: subject to commodification, the law of value, and the logic of capital. There are many institutional forms (ideological, regulative, repressive) which the state uses to aid in the reproduction of capital--one of them is informal justice, embodied in neighborhood dispute resolution centers.

As a prelude to discussing contemporary conditions that transform the social control problems and the limits of institutions that emerge

to deal with them, it is necessary to describe briefly limits to capital accumulation inherent in the contradictions of capitalism.

Contemporary Limits to Capital Accumulation. Several features of contemporary American capitalism impede the necessary conditions for capital expansion and dramatically transform the character of class struggle by influencing the management of the labor process and everyday life.

First, the centralization and concentration of capital means that crisis in one sector of the economy affects the entire economy-- witness the response to threatened plant shutdowns by large corporations such as Chrysler, Lockheed, International Harvester, and United States Steel. Given the interdependence of the stages of production in the primary (or monopoly) sector, production stoppages become seriously disruptive. This means that the ways in which labor power is appropriated must be reorganized in order to achieve the necessary coordination of the labor process.

Second, the interdependence of the world political economy and the inability of the United States politically to dominate other capitalist and developing nations diminish the access of capitalists to cheap labor, raw materials, and new markets. Our balance of payments problems have devalued American currency. Investments are riskier, and other capitalist nations such as Japan, invade our markets. Competition leads to expansion of technologies which expand again the amount of investment and the level of risk.

Third, increased corporate debt and rising interest costs have increased the rate of inflation and limited expansion. Some corporations, for example, cannot generate enough capital for

investment without excessive borrowing. The economy cannot easily absorb the expanded credit. The extraordinary increase in debt makes corporations vulnerable to even minor shifts in the level of economic growth.

Fourth, capital's ability to move freely, to seize the most profitable investment opportunities, has been restricted. New markets cannot easily be found or generated for all of the surplus produced in the United States. Government efforts to manage the consequences of unchecked expansion through tariffs, regulations, and quotas restrain capitalist power, as does the political system of liberal democracy, which tolerates demands for political participation, civil rights, and control over basic investment decisions (Wolfe, 1977; Gintis, 1980).

Fifth, the expansion of the social wage, the consumption achieved through political struggles within the state is expanding, thereby redistributing wealth from capital to labor. While these shifts sometimes benefit capital indirectly and even though the social wage is being reduced under the Reagan administration, the transformations have been substantial and their effects have reshaped the social relations between capital and labor (Piven and Cloward, 1982). Overall, we are witnessing the expansion of claims against the state, some of which were formerly fought for from employers. This expansion of the social wage broadens the scope of class struggle (Bowles and Gintis, 1982).

Sixth, continued accumulation depends not merely on expansion but, as O'Connor notes, "other forms of capital restructuring such as concentration and centralization of capital, industrial relocation, uneven development, etc." (1981b:312). These restructurings,

including the workforce itself, do not occur automatically. The seemingly economic character of these limits is really a social crisis that unravels the environment and institutional forms required for expansion, as well as generates social movements that challenge the logic of capital expansion or the authority of the state which supports it.

These impediments lead to more direct exploitation of labor by capital because the urgency of the problem, dwindling options in the market, and an expanded and changed role for the state with limited resources require it. The increase in exploitation means increased resistance by labor. Therefore the management of non-commodity social life is always in flux. As we shall see, one change is the emergence of neighborhood dispute resolution forums--a form of social control that handles dislocation or disruption arising from these impediments to expansion.

We now explore the terrain on which class struggle takes place--the workplace and the community. Neighborhood dispute resolution is primarily a form of social control that arises as a result of class struggle. Thus we must identify the types of disruptions and struggles that occur over the extraction of labor and over the realization uses of the surplus produced in everyday life. These forces and the impasse in existing institutions of social control support and shape the shift toward informal conflict resolution processes. Even though the workplace and the community are different arenas for class struggle with differing boundaries, the characteristics of social control are surprisingly similar. This is so because no matter where capital confronts labor, the relations

between the classes are guided by the mode of production and the environment in which it occurs. We begin with the workplace because an analogy can be made between class struggle here, the inadequacies in existing forms of control that sometimes depoliticize class struggle, and NDR as it relates to an analogous set of conditions.

B. Class Struggle and Problems of Social Control in the Workplace

Managing the Labor Process. Changes in the composition of the work force, labor markets, and the social organization of the work process present management in the monopoly sector with new obstacles to capital accumulation and the extraction of surplus value. The work force is less homogeneous than in earlier historical periods. Workers possess more diverse skills than previously. The interdependent character of production and the increased size of the wage and salaried labor class reduce the ability of capital to manage the labor force. Different segments of the labor force require different forms of control, creating a problem in coordination. The expanded labor force produces more individuals with common economic interests and thus a greater potential to oppose capital, even though it is less physically concentrated geographically.

Another obstacle is that increasing proportion of the labor force is employed in the service sector and by the state (Fox, et al., 1981). Many of these workers are either nonproductive or only produce surplus value indirectly. They include workers involved in administration, finance, sales, maintenance, and inspection. Their productivity cannot be evaluated by the same means as that of workers

who are directly involved in production. State workers are organizing more rapidly than those in other sectors, and their unions tend to be especially militant (Johnston, 1981). They have not established fixed bargaining patterns, and the demand for their labor is more a function of political considerations than of market conditions.

Struggles with labor, competition among capitalists, advances in technology, and the drive to expand production require constant innovations in the organization of work (Hirschhorn, 1979). But because of the sophisticated technological base and large scale of the more centralized industries, the retooling required by technological innovation cannot be accomplished quickly. For example, enterprises cannot switch easily between labor-intensive and capital-intensive production. Job training takes longer. "The quality of labor power must necessarily be raised in all capitalist economies to match the increased sophistication of production and its attendant social processes" (Gough, 1972:53).

The continuous transformation of labor poses problems for capital. The integrated, interdependent character of the labor process requires workers in some industries to understand more about the entire process in order to perform their jobs, thus reducing their dependence on the capitalist to control production. The more knowledge workers have, the more capable they become to make decisions about the organization of work, particularly its pace and content. This generates a contradiction. Capitalists want to wrest control of production away from workers and to deskill them in order to manage them more effectively. But capital expansion depends on innovation which in turn depends on increasing the skills of workers.

The necessity of developing human capabilities imposed by modern processes of production is in contradiction with the political necessity of ensuring that this kind of development of human capabilities does not bring in its wake any augmentation of the independence of the individual, provoking him to challenge the present division of social labor and the distribution of power (Gorz, 1972:479).

Capital attempts to replace workers with technology, but only labor can produce value (Marx, 1967). A point is reached then, when substituting machines for labor restricts productivity, and therefore the rate of production of surplus value. In addition, labor-saving devices require large capital investments and entail additional operating costs for energy and maintenance.

Another problem for capital is the interdependence of industries. For example, in the automotive industry each stage of production requires continuous product flow. Each firm is highly dependent on the firms that supply it, as well as on those industries that service it. The communities in which plants are located depend on them for revenue. Small disruptions have enormous consequences that sharply affect the rate of accumulation.

By bringing under one corporate roof what were formerly small independent groups linked through the market, the corporation more than proportionately raised the degree of coordination needed.... In a large integrated manufacturing operation, such as auto production, a small group of disciplined unionists could cripple an entire system by shutting down part of the line (Edwards, 1979:19, 128).

But as labor struggles to control the work process on the shop floor, capital seeks to undermine the capacity of workers to mobilize collectively, with new forms of control.

The Problem of Depoliticizing Class Struggle in the Workplace.

There are several potential challenges to capitalist domination.

First, workers resist controls over the pace of production, work rules, job classifications, and layoffs; they seek open corporate ledgers; they assert their rights on the shop floor and challenge management's investment decisions and prerogative to introduce new technology (Noble, 1979; Shaiken, 1979). They also demand greater job security and protective benefits as the economy becomes more unstable and inflation and unemployment rise simultaneously. Recently, workers have begun to consider ways of controlling the investment of their pension funds and of taking over plants that capital wishes to shut down (Carnoy and Shearer, 1980; Zwerdling, 1980). Second, workers demand better health and safety conditions, especially as more and more disease is traced to the workplace. Third, labor actively resists capitalist control through strikes, slowdowns, and sabotage. Absenteeism, turnover, and working to rule may also be considered forms of resistance at the individual level. All of these forms of resistance apply to white collar as well as to manual labor (Johnston, 1981; Cummings and Greenbaum, 1978).

Finally, in the evolving world political economy, labor recognizes the need to become more involved in decisions affecting the nation as a whole--decisions that concern not only wages and benefits but also issues that are far more fundamental to the capitalist class than wages and benefits, such as the distribution of national income and the allocation of capital (Hymer, 1978). Thus, labor organizes collectively around issues such as foreign trade, tax reform, full employment, and energy policy, thereby expanding the scope of debate and escalating the scale of conflict.

Conventional Forms of Control: The Impasse. Because capital's interests and objectives are interminably opposed to labor, contradictions in the institutions of control always remain. As explained earlier, so will the need for surplus control. Gorz reminds us that "capitalist technology and the capitalist division of labor thus developed not because of their productive efficiency in itself but because of their efficiency in the context of alienated and forced labor: work subjugated to an alien goal" (1978:56).

Impasses in social control develop as people's relation to their jobs change together with changes in the mode of production. Control is always unstable. A given type of control becomes a fetter on the new modes of production (Block and Hirschhorn, 1979; Friedman, 1977). The centralization and concentration of capital make organizing production more difficult and increases "the costs of disruptions and control failures" (Edwards, 1979:51). Analysts such as Edwards (1979), Friedman (1977) and Burawoy (1979), among others, have examined the limits of different forms of workplace social control in some detail. For our purposes, we can identify briefly three types of control and their limits at the point of production.

First direct (coercive) controls--close supervision, hierarchical authority, punitive disciplinary action, speed-up--are limited because workers often resist overt repression directly by means of sabotage and absenteeism, early retirement or turnover. Production requires coordination and cooperation as well as control. More importantly, directly coercive control reduces the workers' connection to the work process such that they do not use knowledge learned to develop new productive forces necessary for expansion (Block and Hirschhorn,

1979). Although in the short run the division of labor and certain reorganizations and nationalizations of the labor process deskill the worker and may weaken the political power of the labor class, the skills and communication capacities necessary for expanded productivity reaches its limits. The negative, visible nature of direct controls heightens resistance to exploitation and alienates workers.

Second, systems of scientific management designed to operate in conjunction with or replace direct controls and rationalize the work process typically emphasized rewards and incentives and sanctions, embodied in tangible acts such as bonuses and fines, and intangible ones such as recognition. These techniques have generally failed on a variety of levels. The model of control assumes a "rational man" who calculates self-interest. People "may sell their labour power but they cannot alienate their minds or their will" (Friedman, 1977:94). As Burawoy (1979) has demonstrated there is a limit to which workers will seek special rewards and alienate their fellow workers. The offer of rewards on a collective basis may generate aspirations for more than are available. Finally, incentive systems cannot deal with the need to manage specific, detailed tasks in the workplace. Fulfillment of these tasks depends on workplace rules, cultural characteristics of workers, and other aspects of the organization of production (Burawoy, 1979).

Another type of control derives from what is commonly referred to as "the human potential" or human relations movement (Maslow, 1970). Workers are offered opportunities for greater psychological gratification and job satisfaction through job enrichment and job

training programs, and job counseling. Also included under this rubric are programs to reduce stress, improve productivity, improve attitudes about work, and generally offer individual solutions for ills and grievances originating in the workplace. They represent corrective rather than punitive methods for handling disruption and a means to generate worker commitment.

Workers often resist these actions because they recognize the element of cooptation; that the employer's interest is not theirs. Even if workers do not explicitly recognize manipulation, the objective of the human potential perspective is not freedom, as Sennett notes, but psychological gratification. "It is a system based not on mutual respect but on pseudo-mutuality...." Over time workers may "concentrate on details of craftsmanship of little economic value. This is not what productivity planners had in mind" (1975:46, 44). Moreover, the opportunity to deal with problems in the workplace may further socialize workers, enabling them to identify their common concerns, generating protest, demands for autonomy, creativity, authority over working conditions and, most importantly, renegotiation of the wage bargain. The human potential perspective is limited from the start because the design of particular practices or programs cannot violate economic rationality or management prerogative. In Nichols' terms, "men may come to question not only the meaning but the purpose of work; may look beyond the level of the job to that of class relations; and these policies may boomerang against capital.... Management may set in motion forces in opposition to itself" (1980:298, 299).

The next section explores disruptions outside the workplace and similar impasses in social control. NDR demonstrates similar dialectical qualities as a form of social control.

C. Class Struggle and Problems of Social Control in an Urban Environment

Change and Disruption. Most neighborhood dispute resolution centers, particularly those funded or sponsored by the state, are established in urban environments. They handle cases which arise from the stresses of urban life (Felstiner and Williams, 1978). Despite some production shifts to suburban and rural areas, urban environments still remain central production sites, markets, investment sites, and administrative control centers for capital (Castells, 1976; Harvey, 1976; Hill, 1976; Gordon, 1977; Mollenkopf, 1977). These urban centers--and their labor power, roads, schools, services, communications, etc.--must be organized so as to create the preconditions for production, exchange, and investment. But under almost any conditions, capital finds difficulty in regulating non-commodity production, that is, the infrastructural environment in urban areas. It confronts limits within existing institutional apparatuses such as courts, police, political parties, schools, and local government itself.

Since the 1960s the role of the urban environment as a "support center" for capital has changed dramatically. Although production in the monopoly sector has in many locales moved out of the central city to areas where taxes are lower, land is cheaper, and workers are less organized, smaller, competitive industries are left behind that lack the resources to move and depend on the local client population for

revenue. The sporadic labor needs of the latter lead to an increase in the numbers of unemployed, underemployed, and poorly paid (Hill, 1976; Gordon, 1977).

Urban decay, congestion, and unemployment threaten overall capital accumulation. Growing, volatile, surplus populations produce social unrest and create the potential for collective action that disrupts production and challenges capitalist control (Brady, 1981). These populations have always posed a political threat, but the recent economic dislocations and the tensions produced change the magnitude and nature of that threat: Surplus populations become larger and more permanent. The main threat to order does not come particularly from the tenured labor force and civil service, although, to be sure, they play a role--especially as they are highly mobile and not community oriented. Rather it comes from those groups who move in and out of the reserve army and regular work force. A problem of order arises not only because of a legal crisis but because of the characteristics and conditions of a peculiar kind of wage labor. As part of a reserve army, they represent a volatile group, in part because they are less attached to community institutions. The "normal" agencies of control such as families, schools, unions and churches do not necessarily function adequately. They are themselves terrains of conflict. Perhaps equally important are the nonemployed--students, mental patients and others under long term care such as prisoners and those who permanently drop out of the labor market. The population of this group is expanding rapidly as funds for social services decline. They will be forced back into a competitive labor market and the reserve army (Ehrenreich, 1981). The fiscal and political crisis of the state

precludes substantial increases in social services, which have usually expanded in response to previous economic crises (O'Connor, 1973; Piven and Cloward, 1971). These limits in the capacities of the state to sustain accumulation influence the restructuring of institutions of control. This occurs not merely because the character of the social control problem changes but because the subject matter, the details of everyday life connected to the expansion of capital and the extraction of the surplus also expand.

Interpersonal conflicts, in many instances, can be understood as forms of disruption--they disrupt the reproduction of labor power. Although these conflicts are not caused by capitalism per se many of them cause problems relative to an economic definition of labor. Since individuals are sources or bearers of labor power, interpersonal conflicts can potentially impair it, interfere with the reproduction of the labor force (maintaining it as a labor market) and pose difficulties for capitalist control. For example, domestic disputes might reduce a worker's productivity. Landlord-tenant disputes could potentially lead to challenges about the overall quality of housing or the ability of capital to invest in any geographic area. From the perspective of reproducing labor, which requires mobility and the regularity of movement in and out of the labor force, landlord-tenant problems, such as evictions, could create a volatile population not readily available or able to deal with changes in the employment structure.

Such conflicts (the subject matter of NDR) reflect the tensions of life as lived in capitalist society. For example, a conflict between two neighbors in an apartment building about too much noise

made by one may really reflect the poor quality of housing and the density of living conditions more generally. On the other hand, certain interpersonal conflicts also respond to specific dislocations and scarcities as conditions of community life under capitalism. The need for a highly mobile labor force makes family life problematic. Mobility produces shifts in individuals' lives which destabilize social relations, lead to anomie, and create pressure on family and municipal budgets. This dislocation creates competition: the capital accumulation process finds its expression in property relations--over housing, commodities, etc. that generate conflicts over local budgets, civil rights, land use, and other local policies. These conflicts could potentially lead to collective action for social change or forms of social disorganization that can destabilize the infrastructural system within which production, exchange, and consumption occur.

Seemingly minor disruptions in the community (like those in the workplace) can have effects on capital expansion, the extraction of surplus value, and the realization of capital. "As profits under capitalism have come to depend less on price competition and costs of production and more on maintaining monopolistic control over markets and elevating levels of demand, the cultivation of consumer habits, the creation of 'consumption communities,' and the shaping of consciousness itself have become the sine qua non of capitalist growth" (Spitzer, 1979:199). Mental and physical illness, family fights, alcoholism, drug addiction, neighborhood conflicts, and other "social problems" of urban society cannot be ignored by capitalists precisely because the social environment where disruption occurs has itself become a form of capital as new modes of production emerge

(Hirschhorn, 1978). These problems can result in absenteeism and tension at work, thereby reducing productivity. The quality of so-called human capital declines. They also require increased social expenditures which can diminish the surplus available for capital.

The "tightly woven political and market ecologies" of contemporary democracy intensify the demand for public order (Silver, 1974). That is, the democratic political system within which capital accumulation functions provides opportunities and obstacles for capital. Many laws and regulations concerning labor, licensing, zoning, and pollution cannot be changed without referenda or bureaucratic action. Thus, disruption itself constitutes a crisis. NDR handles the effects of some of these disruptions in new ways--particularly distinct from more traditional primary and secondary institutions of social control such as the family or the church.

Depoliticizing Class Struggle in the Community: Problems. Class struggle in the community takes two principal forms. First, in place of individuals merely seeking to consume more goods and services, we find collectivities demanding improvements in the environment, the quality of housing, mass transportation, etc. Second, groups seek to expand control over a wide variety of subjects--energy, schools, city planning, community services, bank policies, land use, food distribution, urban renewal, plant closings--thereby breaking down the artificial distinction between public and private interests. Within these realms they also reject the distinction between workplace and community. The worker and the citizen are the same person (Katznelson, 1981). These challenges clarify the opposition between

the interests of capital and labor and can heighten worker consciousness of collective needs.

The neighborhood, consumer, welfare rights, and environmental movements that arose in the 1970s generate new confrontations with capital, contributing to a "class-defined polarization" that parallels labor organizing and "seeks to form broader alliances of the powerless across lines of division like income and racial differences" (Boyte, 1979:10). These forms of opposition by the working class and surplus populations are a response to the decay of the urban infrastructure contained in "threats to living standards, urban services...housing and other essentials of daily life" (Ibid.). They are a response to the unrelenting pursuit of economic growth that leads to intensification of land use for commercial purposes, highrises, and urban renewal, thereby disorganizing neighborhoods. Perhaps most important is that many responses were not merely reactive or focused on claims against the state but involved attempts to produce services in those areas where capital was failing--health care, food, energy, etc.--thus drawing into question the inevitability of the capitalist mode of production (Boyte, 1979; Morris, 1982).

Many of these efforts failed. But they created a basis for community organizing and offered alternative models for both production and distribution (Morris and Hess, 1975). Many community organizations "have started to address themselves to the relationship between urban neighborhood deterioration and the flow of capital between urban centers and regions" (Drier, 1979:12). As Katznelson has noted, "School, welfare, police, and housing issues were treated together, as aspects of a total condition. As a result, authorities

had to manage conflict that was much more intense and less susceptible to piecemeal solutions..." (1981:121). Citizens reacted with hostility to public authority, particularly as local government acted with corporate capital to create unrestricted growth embodied in urban renewal and projects such as Westway in New York, convention centers, and other activities leading to massive displacement. Opposition was directed not just at the state but at capital directly--landlords, banks, polluting businesses, etc.

Organized protests involve the use of hearings, referenda, administrative review, lawsuits, etc., and express the collective needs of communities at many bureaucratic levels. The fragmentation of local government sometimes restricts the capacity of capital to dominate the city because capital cannot identify a single decision maker from which it can extract the policies it needs at a macrolevel. The neighborhood dispute resolution center may serve to disorganize community challenges by demobilizing and absorbing demands at the individual level.

Conventional Forms of Social Control: The Impasse. Traditional state institutions that mediate class conflict, preventing its emergence or escalation and otherwise channeling and absorbing discontent, have become obsolete and ineffective for capital. These institutions, some of which are still oppressive and powerful, may not adequately reproduce a politically docile, adaptable, finely honed, productive labor force for a variety of reasons. They represent blunt instruments which exclude, immobilize and ostracize people but do not prepare, manage or direct them in relation to the specific conditions demanded by labor markets and production processes.

Increasingly, they have had to accept more tasks as private institutions such as church and family have failed. Until the emergence of the monopoly phase of capitalist development, the dominant forms of control were notably impersonal, technological and oriented toward objectifying social relations (Spitzer, 1979). Such objectification created problems of legitimation because control presented itself as an alien force, separate from the community. Overall, these institutions, mostly of external control, remain insufficient for handling disruption and conflict that either cannot always be defined as deviant behavior or treated with a solution tailored to the precise character of local conditions during periods of rapid change. Moreover, they remain unresponsive to the differences among numerous segments of marginal social populations. We can explore briefly four types of state institutions of external social control: police, criminal case processing, mental institutions and prisons, and political machines.

Police forces were established in the United States in the mid-nineteenth century in response to class conflict: Capital needed a mechanism to "control strikes, working class organizations...working class communities...and [to] control and resocializ[e] migrants imported to serve the demands of industry" (Harring and McMullin, 1975). In the twentieth century, as the proportion of the population engaged in industrial production declined, production was decentralized, individual capitalists could no longer pay for policing, and the police became a professional class organized by the state, severed from direct political ties to business interests (Spitzer and Scull, 1979). Regulating community life is now an

important aspect of the police function. Peacekeeping and order maintenance typically emphasize so-called deviant public behavior, such as vagrancy, disorderly conduct, public drunkenness, etc.

Today, capital is threatened by private as well as public disorder: Family fights disrupt the worker qua worker and the community peace. Many police departments have intensified their concern for the private lives of individuals through specialized units, programs, and practices, e.g., family crisis intervention and dispute settlement. But the capacity of the police to respond to disruption with precise and intensive regulation (and thus their effectiveness for capital) is limited by legal procedure, police organization, and police distaste for order maintenance functions. In heterogeneous communities, the police are no longer capable of developing personal ties with residents. The police may handle the most visible and violent moments of conflict, but they cannot resolve conflict, prevent it, or regulate the social environment in accordance with the requirements of capitalist control.

Few people believe that American criminal processes are fair or equitable, or capable of rehabilitating offenders or helping individuals resolve disputes (Allen, 1964; Lipton et al., 1979). Justice system officials hesitate to become involved in neighborhood disputes, family fights, or controversies between parties engaged in an ongoing relationship (Vera Institute of Justice, 1977). The emphasis on adversarial conflict and the constraints imposed by law, combined with limited sanctioning options, further limit the possibilities for effective dispositions. Although judicial authority and judicial roles appear to offer numerous options, the form and

content of regulation is too narrow to meet the needs of capital. It cannot penetrate to the underlying tensions between disputants or the deeper motivations of defendants. It cannot effectively control behavior unconnected to violations of law.

Mental institutions and prisons warehouse people. As such, they neither develop a reserve army of unemployed that can help to depress wages nor invest in the valuable human capital now demanded by the labor market. The control exercised within those institutions is intensive and brutal but without clear direction, expensive for the state and wasteful for capital (Scull, 1977). Moreover, mental patients and prisoners are now seeking new rights--to quality treatment and more autonomy in the mental institution and proper services and facilities in the prison. The former can no longer incarcerate surplus populations without satisfying due process requirements.

Political machines once provided social services, defined the boundaries of acceptable politics, gave the community a voice, and contained protest, incorporating racial and ethnic groups into the political system. By carefully cultivating ties with constituents, imposing a high level of organizational discipline, and trading services for votes, they were able to temper political demands and handle community conflicts. Today, these machines have all but disappeared. No comparable institution has arisen to absorb and channel discontent, or to identify community problems that could lead to disruption. Machines have been supplanted by fragmented and impersonal social service bureaucracies that political leaders cannot control and that publicly dramatize the failure of the social system

when they cannot manage client demands. These bureaucracies do not create ties with constituents, they create antagonisms. More importantly, political machines have been supplanted by nationally based social movement organizations without ties to the local political system, which challenge traditional political agendas.

A problem with all forms of external, coercive control is that people often resist, not only because it is imposed but because it is not theirs. As these traditional institutions penetrate more deeply into social life with new practices, e.g., police family crisis intervention units, the resistance becomes stronger. These institutions of control--state and non-state--fail because they cannot meet the conditions for rationality (organizing the production process and its infrastructure) and for legitimation. They cannot resolve the core problems of social control exacerbated by new forms of competition, the politicization of issues, the restructuring of labor markets, and other forms of dislocation. The state itself is under increasing attack and pressure and develops forms that conceal its authority. All of these failures influence the generation of integrative institutions such as NDR.

D. The Legal Crisis of the State

Neighborhood dispute resolution forums are not only agencies of the state. They are organizationally situated within the judicial system. Therefore a brief examination of juridical relations in capitalist society and the impasse they pose in social control is a

preliminary step in explaining how informal mediation occurs as an option to the impasse.

Legal relations are embedded in reproducing the social order of capitalism and cannot be understood fully apart from this element. Law embodies and articulates class relations (Marx, 1967; Pashukanis, 1978; Jessop, 1980; Cain and Hunt, 1979). It operates as an ideological form of class domination and an expression of state power that organizes property relations, production, and exchange and often conceals the way in which the social relations of production and exchange determine entitlements. Law usually regulates social and economic relations in the interests of capital. This assertion of class power is accomplished, in part, by influence over what is adjudicated and by differentiation between individual, civil or citizen rights and collective human rights associated with need (Fraser, 1978).

Law transforms economic power into a legal relation and class conflict into legal conflict, similar to the way in which social relations become commodity relations under capitalism. "So far as the commodity structure penetrates society in all its aspects and remoulds it in its own image so the juridical relation obtaining between separate and abstract, right and duty bearing subjects, expresses that economic relation in all its aspects either through legal institutions such as property and contract, or through what may be termed positive morality" (Kinsey, 1980:217). Both capital and labor pursue their interests through law, but capital possesses a distinct advantage. Domination is not total; law must be partially autonomous from ruling class interests and the state apparatus in order that it appear to

operate equally for all. As a result there is struggle over it. Law and judicial processes assure formal equality, thereby placing some limits on economic domination and on the productive relations between labor and capital. Law imposes a common code or language that defines rights of ownership and control.

To the extent that this code of legal principles is undermined or separated from universal ideals of justice, the legitimacy of legal principles, and the property entitlements they support, is placed in question. Yet capital itself is now forced to undermine formal legality and act in conjunction with purposive ends of the state. Although it requires predictability achievable through formal procedures, it must also be able to disorganize and reorganize economic relations in order to meet the demands for innovation in the social relations of production necessary for capital expansion (Hirsch, 1978; Hirschhorn, 1979). Such innovation is often impeded by fixed legal rules and procedures which stress the generality of law. For example, efforts to manage inflation and recession, shift from nuclear energy to coal, prevent strikes, or conclude mergers are impeded by health and safety regulations, antipollution laws, antitrust laws, or the requirements of due process. Thus, the strains that develop in judicial institutions parallel the inadequacies in other mediating institutions, described earlier in the chapter. In more general terms, formal judicial forms constrain the capacity to coordinate accumulation. As Grau explains, summarizing Fraser:

in the contemporary state concepts drawn from contract, property, and tort law become irrelevant--the small scale commodity productions upon which they are based have disappeared. The advent of overt economic planning in the neocapitalist economy . . . requires increased cooperation and coordination, giving rise to

legal forms defined by status rather than contract
(1981:198).

But capital is not alone in using the courts to pursue substantive ends. Workers do so too. They demand rights to a safe and healthy work environment, full employment, and control over their pension funds. Their efforts undermine the foundations of judicial authority and generate movement toward administrative forms of justice (cf. Unger, 1975).

The assertion by labor of legal rights to employment or to a safe and healthy workplace threaten capital's rights of property and contract (Gintis, 1980). Capital can no longer invest and move freely; it cannot construct or locate productive facilities (e.g., nuclear power plants or factories producing dangerous chemicals), advertise certain products (e.g., children's breakfast cereals), or produce given products (e.g., large, dangerous, or polluting automobiles). Legal demands for the satisfaction of human needs--nutrition, health care, housing, clean air, and energy--may also reduce the control of capital over labor and its share of the surplus value produced by labor. Conflict centers upon material resources, public policy, market relations, and control of everyday life rather than mere formal equality. The danger for capital is not that property rights will necessarily be undermined--such a fundamental reordering of power cannot occur through legal change alone. It is rather that extending the rights of the laboring class obstructs capital expansion and hinders control over property solely through appeal to legal principle. As Bowles and Gintis explain:

Capitalism structures practices through rights in property, to be exercised by owners or their representatives, while liberal democracy vests rights

in persons. . . . These principles are in potential conflict. The principle of free association of the workers is in direct opposition to the principle of free individual contract (1982:52).

Increasingly, more rights are being defined as person rights. In the 1960s and 1970s expanded challenges to law occurred over legal rights: constitutional rights, lawsuits challenging police authority, demands for jury trials, etc.

Legal rationality obstructs the ability of courts to manage new forms of class conflict and economic dislocation arising from the irrationalities of capitalist production. The problems posed by nuclear waste or genetic engineering cannot be resolved within the narrow framework of technical legal rulings. These types of highly volatile conflicts, particularly as they occur in community contexts, have not (and possibly cannot) be satisfactorily institutionalized within a judicial framework.

Donald B. Strauss, former president of the American Arbitration Association, is unwittingly revealing on this point.

With social disputes, there's usually no contractual relationship between the parties. . . . In business you know who the parties in the dispute are and what the basic issues are. Often that's unclear in community conflicts. . . . Perhaps the hardest problem is that you're not dealing with a battery of high-powered lawyers and negotiators; you're dealing with activists who are not coldly logical (Ford Foundation, 1978b:5).

The frustration with the unpredictability and disorder of political action is an impetus for consensus mechanisms generally and mediation particularly. Limiting what is justiciable proves difficult, not only because courts must respond to grievances (e.g., affirmative action) but also because capital requires innovative judicial policies that

regulate more aspects of the social environment--both personal and political.

As capital concentrates and centralizes its power, other interests also organize, attempting to achieve some of their goals through judicial action. However limited such collective action may be, this type of challenge can reveal the class interests behind the law. These struggles reshape the form and content of legal conflict--usually in ways that highlight the political content of issues.

Labor and marginal populations also demand state benefits, which may come to be viewed as rights. State expansion into more areas of private social life sparks new battles over the distribution of public resources. At the same time, the formal procedures necessary to legitimate state action contain the potential to justify the further expansion of those rights.

Dislocation, actual or threatened (plant shutdowns, dangerous products, unemployment), also stimulates demands for better protection from the unplanned character and irrationality of the capitalist economy through complex regulations of products and liability for damages to those who suffer capitalist "mistakes," as in the recall of automobiles, the shutting of Kepone factories and nuclear plants, and restitution for overcharges. The number and scope of such demands have been growing. They threaten capitalist interests because they challenge the prerogatives of capitalists to produce and invest as they please. The result is new forms of control that share many of the characteristics found in neighborhood dispute resolution forums.

Apart from direct challenges, the rule of law within the judicial system poses other constraints on the capacities of courts to handle effectively matters that come before them (Davis et al., 1980; Heydebrand and Seron, 1981). The judicial system is organized to handle certain types of disputes deemed appropriate. But the definition of appropriate keeps changing. For example, so-called small scale or minor disputes have either been rejected by courts as nonjusticiable or relegated to small claims courts, shifted to arbitration procedures, or placed in a lesser priority on the docket. Such disputes are often described by judicial officials as "junk cases." Increasingly these types of neighborhood disputes at the level of everyday life--in contrast to those that involve loss of money or which occur among people who can handle them on their own--are becoming more disruptive to the social order. They disrupt the infrastructural stability necessary for capital accumulation. As Heydebrand explains

a decreased capacity for formal conflict resolution may actually increase the level of substantive conflict in the larger society. Thus, by dismissing cases or inducing settlements, courts may temporarily terminate conflicts but not ultimately resolve them. Instead, disputes are forced back into an indeterminate situation, that is, into the arena of conflicting socio-economic forces which had generated the dispute in the first place (1979:47).

As the economy sinks into deeper crisis, and as citizens use the courts to secure their rights under public programs (Gintis, 1980), the disputes of working class people with the state and among themselves may proliferate. More is at stake for them. But these people are not socialized to the ways of the courts. Judicial procedures are designed for the middle and upper classes and their

problems. Formal procedures and the rule of law cannot handle the particularisms brought into court by people who cannot deal with formalism. Because the court is limited by formal procedural rules, it cannot confront the roots of conflict and thereby manage with precision those problems of social order which need to be examined more deeply at this historical juncture because of the relations between capital expansion and social disruption which have been described. Political intervention is required.

The courts are increasingly politicized. They are geared to the protection of government policy against numerous claimants (Social Security, Medicaid, affirmative action, etc.). Under those conditions they become surrogates of the state and therefore less visibly autonomous. Sometimes they must protect the working class in a time of rising entitlements and at other times they become more of a foe as the state reduces entitlements. However, this relation of claimants with the state creates a crisis of legitimacy. When courts are perceived as not resolving disputes but as protecting the state and sometimes capital (e.g., anti-trust, oil leasing decisions) dissatisfaction occurs. People do not use courts to be treated as a social problem but in order to receive a hearing. Disorder can thus mean too many people using the courts and making claims against the state. Too much litigation from the point of view of capital is thereby a form of disorder.

The rules of the judicial system in many ways are part of the infrastructure of daily life and in that sense represent integrative social control. For example, people take the courts and its rules for granted, as an orderly part of their communities (Danet, 1981). But

increasingly, the kinds of conflicts arising in communities are more disruptive than previously. As judicial institutions become more isolated, bureaucratic, divorced from everyday life, and separated from the communities they serve, law loses legitimacy. The distinction between its reified abstractions and the culture become visible, experienced.

The unending effort to increase the rate of accumulation has given impetus to judicial reforms that have freed capital investment from normal legal restrictions. At the same time, given resistance from labor, it changes the way capital defends its control over the surplus through direct political intervention. Neighborhood dispute resolution forums emerge from the contradictions and struggles in the judicial system that we have been describing. Ironically, when the courts implement alternative procedures within an existing judicial framework to handle new problems a contradiction emerges between its revised interventionist, problem solving mission and conceptions about its proper role in achieving justice. Heydebrand comments

By cooperating in plea-bargaining and other forms of "justice by consent," courts help to delegitimize the judicial process. . . . a decision short of adjudication may generate new contradictions between the court's claim to legitimacy and its capacity to fulfill that claim (1979:48).

Before detailing how NDR relates to the impasses in these institutions, it is necessary to elaborate on, in general terms, the forms of control that now arise in the workplace and the community. Parallels with these forms can be demonstrated in neighborhood mediation forums.

E. Emerging Forms of Social Control in the Workplace and the Community

Contemporary social control is characterized by three central features: planning, the expansion and intensification of state power, and integration. What all of these features have in common is that they transform political and economic issues into social problems, seek to nationalize the social order, and respond to the so-called difficulties of system overload. They represent the decline of politics and the rise of the corporate state. They also parallel the form of social control embodied in NDR.

Planning. Planning within a capitalist framework is the rationalization of social life in the interest of capital accumulation and the reproduction of the labor force. It is a form of institutionalized collective action and occurs at the level of capitalist society as a whole, whereby capital becomes more cosmopolitan, less accountable, and less connected to the local level (see Sklar, 1979). More areas of social life become coordinated objects of public policy (e.g. energy, education, transportation, interest rates). In essence, planning is a form of social management and decision making that centralizes power and decentralizes function, replacing democratic institutions, public involvement, and public debate with administrative institutions. These institutions structure and channel economic and social activity that potentially produce disorder for capital (Habermas, 1975). Thus, planning means control, both in a technical and political (class) sense. Control is partially administered by the capitalist class itself, so that the state becomes

an administrative servant--not an executive committee--of the capitalist class. Planning represents a response to economic instability, the failure of political processes, limits on the ability of individual capitals to generate needed investment, regulate business cycles, and subsidize social costs of production, and certain problems in the crisis of the state: the need for responsiveness to a single center, to make sources of control clearer and more routine, to reduce "wasteful" competition, to create macro-organizational coordination, and to deal with the political constraints set by liberal democracy.⁵

Conscious efforts to plan, which began in the Progressive era, have been a major element of capitalist social control since the New Deal, launched in response to the centralization and concentration of capital and the failure of markets to marshal and allocate resources. Planning arises because neither markets (price, profit, competition) nor politics, nor formal decision structures (law, local government) can guarantee the conditions for accumulation and the reproduction of the labor force (Hirsch, 1978). Capital cannot provide the preconditions for its own existence because of the increasing socialization of production. That is, the control of noncapitalist, noncommodity existence requires decision making that conflicts with ordinary commodity logic and market criteria. Planning seeks to deal with the anarchy of the situation, not only through centralized management but with the application of scientific criteria and organizational logic. Now, as then, planning aims to reduce uncertainty about the supply of labor, resources, and financing; to create investment opportunities; to control prices, costs, and demand;

and otherwise to limit impediments to accumulation and manage the extraction and realization of surplus value. Planning is thus capital's method for organizing its environments. It is "a historically-specific and socially necessary response to the self-disorganizing tendencies of privatized capitalist social and property relations as these appear in urban space" (Dear and Scott, 1981:13).

Contemporary planning is distinguished by two features: first, it supports the interests of capital as a whole, rather than individual industries or some fraction of capital; second, it increases the centralization of decision-making authority and deprives workers and democratically elected officials of control over basic aspects of economic and social life. It therefore represents a major change in the organization and scope of control. Planning also occurs in relation to insurgency and instability in city politics. It concerns all three problems of social control described earlier. The idea of the corporate state embodies the central theme of planning--above political institutions, insulated from democratic political control. Planning, above all, replaces democratic politics by establishing institutions that manage the social order and by reducing the focus of challenge through local politics. The opportunity then arises for tighter control over the work force.

A key element of planning is administrative-technocratic rationality (Habermas, 1975; Heydebrand, 1979; Wolfe, 1977). This is a form of social interaction that mediates class conflict by transforming the organization and language of political challenge so as to conceal class interests and fragment the collective power of

labor. Public policy is translated into questions of science. This depoliticization of conflict is partly realized by replacing explicitly political and democratic decision-making structures with administrative institutions and procedures dominated by experts unaccountable to the public. The collective power of labor is disorganized, artificially separating public and private interests (citizens versus persons), regulating people by relegating them to limited roles (workers, patients, clients, disputants, etc.), and, more generally, transforming class relations into relations between and among individuals, groups, or abstract entities.

During the 1970s, corporate executives and former public officials created the Trilateral Commission, the Business Roundtable, and the National Industrial Conference Board, along with other political action committees, trade associations, and planning agencies to generate capital and extend capitalist control by garnering state subsidies, reorienting educational institutions toward specific policy goals, increasing the power of the executive branch of government, and reducing popular challenges to established authority by limiting the growth of democratic institutions and any expansion in the entitlements of the working class (Sklar, 1979).

The call for economic planning has expanded as the economy has begun to deteriorate sharply in the 1980s. Corporate liberals, corporate leaders, economists, and even some conservatives advocate the creation of national industrial policy to moderate the so-called imperfections of markets and establish priorities in allocating resources, although they differ on how to do it and which industries to support (see Reich, 1982; Heilbroner, 1978; Thurow, 1980). Felix

Rohatyn, the investment banker, supports a Reconstruction Finance Corporation (RFC) that would coordinate investment on a national basis by providing capital in return for some degree of control over management and concessions from labor.

The RFC should provide the kind of capital our older industries sorely lack: equity capital. . . . Only an RFC that is publicly accountable but is run outside of politics [emphasis added] . . . could provide such capital as well as negotiate the often stringent concessions that have to come with it (1981:19).

Ira Magaziner and Robert Reich (1982) also support the idea of public investment banks and targeting specific industries that promise economic growth. Harvard economist Wassily Leontief contends that our economy operates without a long-run perspective. He has argued for

systematic coordination of investment based on long-range foresight. That is planning. . . . The U.S. is the only advanced, industrialized country that still does not possess an effective central statistical office responsible for systematically obtaining information about population, natural resources, technology and other aspects of the national economy and society (1982:32, 33).

What many recent planning schemes share is a means by which the state will subsidize certain investments (education, housing) and reduce taxes, while still appropriating profits privately. The objectives are "not to [aid] the poor or [protect] the natural environment, but to [subsidize] the private expansionary process" (Connelly, 1981:12).

More specifically, we can examine manifestations of planning in the workplace, the community, and the judicial system.

In the workplace, planning takes the form of comprehensive research into and coordination of long-range production needs. Control is centralized to enhance managerial authority and remove decision-making authority from workers (Braverman, 1974). Limiting

the autonomy of workers to plan and execute work is necessary for innovation. Control can also be separated from the geographic location of work. The corporation can thus separate itself from a local base or constituency and mobilize a labor force to suit specific production needs, while simultaneously dispersing the concentration of working populations that may produce disruption. Moreover, technocratic authority in the form of rules replaces individual discretion in the supervision of work, concealing employer control. Workers thus struggle over compliance with rules but not over their content or source.

Work activities become defined and directed by a set of work criteria...rules, procedures, and expectations ... [and] formalized job descriptions... [rather] than by specific orders, directions, and whims of the supervisor.... From these criteria derive the "customary law" notions of "equity" or "just cause" in firing, promotion, and assignment.... Top echelon management...set the criteria, establish the structure, and enforce compliance.... Power thus becomes institutionalized by vesting it in official positions or roles and permitting its exercise only according to prescribed rules, procedures, and expectations (Edwards, 1978: 119, 120).

By structuring every detail of the work process through the classification of each job title, task, or procedure and establishing incentives for meeting specifically defined criteria, management encourages workers to

pursue their self-interest in a narrow way as individuals, and [stifle their] impulse to struggle collectively for those same self-interests.... The ability to establish rules provided the capitalists with the power...to set the basic conditions around which the struggle was to be fought.... As workers were isolated from each other, and as the system was made distinct from the bosses who supervise it, the basic capitalist-worker relation tended to shrink from sight (Edwards, 1979:143).

Administrative criteria also transform the worker and the workers' needs into abstract categories measured according to scientific methods and cost-benefit theory. The capitalist desires to

translate the emotional language of life and limb into the more dispassionate and measurable idiom of cost accounting.... What exactly is health "worth"? How does one reasonably trade off profit against safety? Even the most sophisticated methods produce logical absurdities that violate commonsense ideas of justice and equity (Green and Waitzman, 1980:42).

Workers lose control over grievances on the shop floor when professional experts such as third-party mediators or arbitrators clarify norms in advance and decide the outcomes. Workers rely on the union, management, and even government to translate conflicts into acceptable terms (Aronowitz, 1973; Stone, 1981; Klare, 1982). Agreements rarely deal with daily grievances or the changing conditions in the workplace that accompany the constant reorganization of the work process. Workers usually lack a grievance mechanism that is free of management control.

In handling specific grievances on and off the shop floor, as well as major eruptions such as strikes, conflict resolution procedures are usually established in advance by the capitalist. The process adheres to fixed criteria in a regular, complex and codified system with limited appeals. Many labor contracts, for example, specify arbitration as the primary tool of dispute resolution in order to guarantee labor peace and reduce labor costs. But arbitration accepts the basic discrepancy in power between capital and labor and reduces struggle to routine administrative formulas. Although negotiation and arbitration are not new, they have now been applied more thoroughly to all realms of industrial conflict, including shop floor grievances. At

a broader level of policy, capital plans the relocation of plants, not merely to seek the greatest return on capital per se but to disrupt worker unity and choose regions where union activity is weak (Bluestone and Harrison, 1980).

The application of planning criteria to the organization of work parallels developments in community politics and in struggles over the distribution of resources, investment, and public policy. Urban planning, a form of state social control, reinforces rationalizing tendencies to manage consumption, labor, markets, land use, etc., as well as a means for the capitalist class to legitimate itself. More specifically, urban planning rationalizes or commodifies the uses of urban space, the consequences of uneven development, and responds to underinvestment, waste, and the ungovernability of the city in capital's interests (Mollenkopf, 1977). City life is chaotic and anarchic and cannot be governed by market criteria and individual initiative (Cox, 1981).

When the dislocations, irrationalities, and conflicts of the urban system began to subvert prevailing social relationships, urban planning makes its appearance as a means of collectively readjusting the spatial and temporal developments of urban land use (Dear and Scott, 1981:13).

Planning is designed to deal with the management of space and the production of the infrastructure (transportation, housing, employment policy, and public facilities, etc.) necessary for continued accumulation and the reproduction of labor (Harvey, 1981:103).

Urban planning essentially replaces both traditional political institutions of local government and politics itself by establishing corporate administrative forms that can act decisively and quickly. These forms replace advocacy and challenge and support capital's

capacity to control local politics at the same time as they seek freedom from political control by local government.

Metropolitan planning arrangements will help to obviate local controversy by screening local decisions from public scrutiny.... [T]he obscurity is deepened by the technical and scientific procedures which are a natural corollary to the emphasis on planning.... (Piven and Cloward, 1972:248).

Thus, planning in this realm is also a form of political organization and decision-making that occurs partially above the political system, designed to create the ensemble of material conditions that will secure a social order compatible with accumulation. From the viewpoint of planners, planning also deals with system "overload" (as they define it), not only in relation to political demands but also with respect to the intensification of land use and congestion.

The roots of urban planning can be traced to Progressive era reforms, such as city manager government and nonpartisan, at-large elections, which were designed to limit the threat that democratic rule posed to the authority of capital (Hofstadter, 1955; Weinstein, 1968). Prime examples of contemporary planning are the creation of regional planning bodies, run by expert administrators, who design urban renewal, transportation, and sewer projects and whole cities in conjunction with real estate interests and banks (Piven, 1972). Perhaps the most extraordinary instance of planning in recent years occurred in 1975, when New York City created the Emergency Financial Control Board, which effectively undermined the authority of elected city officials by giving finance capital the power "to review revenue and expenditure estimates and to monitor the budget, and...overrule municipal union contracts freely negotiated" (Newfield and Dubrul, 1977:179). Metropolitan governments encompassing parts of several

states are another response to problems posed by fragmented local governments that restrict the capacity of capital to dominate a city because no single authority can develop a comprehensive policy to encourage capital investment and restrict the claims of labor and surplus populations.

Another example of urban planning with a direct relation to informal mediation is the Negotiated Investment Strategy (Committee for Economic Development, 1980). This is a technique devised by the Kettering Foundation, the Committee on Economic Development, and urban planners to direct municipal investment policy. It seeks to demonstrate that "labor-style negotiation can overcome the competition and poor coordination among government agencies that have long confounded urban planning" (Herbers, 1979:1).

At the level of the individual, centralized planning means that the objects of control are increasingly responsive to a more coordinated form of control. Instead of John Doe the worker, the consumer, the student, with different institutions responding to different institutional roles, all three may be regulated together at the level of everyday life (Esland, 1982). Family life, for example, is increasingly regulated by public agencies that interact with one another (Donzelot, 1979). Officials make decisions--about services and budgets--according to administrative criteria and managerial efficiency, in processes insulated from politics.

Two aspects of planning differentiate the last two decades. The first is quantitative in character: the application of planning to more areas of social life and public policy. Democratic decision-making is further removed from the community, first by

limiting public participation to perfunctory attendance at hearings or memberships on boards or commissions with minimal authority. The second is qualitative: the creation of permanent planning agencies and the integration of funding agencies.

However, there are limits to planning. Spitzer identifies a number of counter-effects:

the enormous costs and political problems created by the corrosive effects of capitalist development on traditional social institutions and modalities of informal control (the family, the church, community, etc.)...and other impediments to the leveling and atomization of subject populations for both economic and political purposes; the growing problems associated with the management of superfluous population...the creation of new "pockets of resistance" to the rationalization process; special interest groups; ...and [cutbacks] in "human services" [necessary to develop capitalism's productive forces] (1979:201).

In sum, what Spitzer suggests is that capitalist technocratic rationality confronts the rationality of everyday life and social struggles that resist such planning. Equally important, although community planning bodies such as neighborhood councils, established as a means to coopt community organization, cannot control major government decisions, they can challenge or otherwise delay decisions.

Although planning would seem a logical outgrowth of capital expansion in the realms described so far--the economy, urban environments--it is particularly striking to discover its forms within the judicial arena. On the surface, the application of principles of justice might seem to contradict the delivery of justice according to management principles.

For about the last eighty years (and most dramatically the last decade), the judicial system has been a subject for planning (as a

means for coordination) with a variety of themes, all associated with what Heydebrand would refer to as technocratic forms of administration (1979). The same problems of coordination, flexibility, efficiency, fiscal crisis, demands for access and services, and rationalizations that give rise to planning in other realms apply with equal force to the judicial system, although the effects are not uniform or unidirectional. Technocratic strategies can be seen to "[emerge] from the structural control needs of a system that seems largely out of control" (Heydebrand, 1979:52). Similar principles of planning, derived initially from scientific management and administrative controls applied in the workplace and municipal government were applied to the organization of courts (Pound, 1940; Friesen et al., 1971; Harrington, 1982:42, 45). Planning was a response to problems in coordination and management--the growing complexity, specialization of issues, inefficiencies, and lack of supervision, as well as problems of social control (Heydebrand and Seron, 1980; Harrington, 1982).

Extensive and permanent managerial planning of judicial institutions begins in 1938 at the federal level with the "formation of the Administrative Office (of the Courts) and the Federal Judicial Center with responsibilities for monitoring, planning, and guiding the modernization of the courts" (Heydebrand and Seron, 1981:39). Over the years, similar institutions at the state and local level have arisen with objectives directed toward the management of courts--for example the National Advisory Commission on Criminal Justice Standards and Goals, and the American Judicature Society.

During the last decade, advocates for planning and systemic reform of the courts abounded (Rosenberg, 1972; Friesen et al., 1971; Early,

1972; Burger, 1976; National Center for State Courts, 1978). The National Judicial Planning Association was formed in 1978 for the purpose of improving "the administration of justice through planning" (Criminal Justice Newsletter, 1978). In 1979, the United States Department of Justice funded a major study "designed to meet some of the major needs which civil justice system planners will face in the 1980s" (Trubek, 1979:1). The introduction of technical innovations such as data processing and forecasting are only the most recent efforts at rationalization in the judicial arena.

Federal planning of criminal justice began in earnest with the Omnibus Crime Control and Safe Streets Act of 1968 which created the Law Enforcement Assistance Administration (LEAA). By means of standards and goals, rules, programs, technologies, and exemplary projects, LEAA had, in its 13 years of operation, significantly influenced the shape of criminal justice throughout the nation. It has monitored, evaluated, and coordinated numerous dispute resolution programs. During the early 1970s, LEAA expanded its rationalization of control with planned systems of alternatives to conventional adjudication across the entire judicial system (Aaronson et al., 1977).

The dialectical movement between centralization (of control) and decentralization (of function) has been a basic and continuing characteristic of planning since the Progressive era. One basic movement toward centralization can be identified in various proposals for court unification (Pound, 1940; Berkson and Carbon, 1978). Court unification refers to the consolidation of state appellate and trial courts into one system, thereby centralizing management through a chief judge who would organize caseloads and supervise personnel. Court

unification at the local level was embodied in municipal court movements, its objective being to gain greater managerial supervision.

Informal dispute resolution, planned at the top but decentralized in function, represents an aspect of judicial planning in its historical association with many other of its elements, including the streamlining of procedures, the realization of order maintenance, the creation of specialized courts and judges, the use of experts, and flexibility. The tensions and constraints that generate planning of informal, decentralized processes can also be traced to the Progressive era (Harrington, 1982). Planning in this instance involved similar rationalizations and emphasized nonlegal aspects of social life in the particular institutions established, such as juvenile courts, domestic relations courts, and small claims courts. Much as planning bodies operate external to formal political processes, informal procedures (sometimes operating within conventional courts) were designed to handle conflict through a (social) process that was essentially nonlegal. These processes, however, were formally linked and that is what ties them to planning. They did not arise randomly. As we shall see, the central features of planning are found in the NDR centers. And their planning is related to problems in managing social life and social environments more deeply, as well as to constraints within the judicial system.

Expanding and Intensifying State Power. Another central characteristic of contemporary capitalist social control is its scope and depth. All of society's physical structures, instruments of production, services, and labor are viewed as resources that must be actively organized to foster capital expansion and manage accumulation

on a national basis (Harvey, 1976; Hirschhorn, 1978; Spitzer, 1979; O'Connor, 1981a).

Thus the logic of subsumption, in which capital presses all social institutions into its service either as ideological or economic apparatuses, forms the core of what may be termed managed capitalism, which extends from the labor process to society as a whole (Aronowitz, 1978:139).

Fraser elaborates this point in relation to the legal order:

More and more "private" aspects of the individual's identity and experience become legally relevant.... Since all standards of rationality and value within the corporate state stem from the universalizing power of capital, the legal process, if it is to be effective, must ensure that any parochial particularities that cannot be dissolved and reconstituted as an element within the global hegemony of capitalist social relations are not permitted to impede the free flow of the rational forces of technology, capital, and labor, upon which social progress depends (1978:172-173).

People become targets for intervention not because they engage in legally or morally culpable behavior but because of the relationship of their behavior and attitudes to the labor process, and the order of the social infrastructure through which production and consumption occur.

"The distinctions between work and learning and work and non-work break down" (Block and Hirschhorn, 1979). The private lives of individuals become of interest to capital. Intervention must be organized on a permanent and ubiquitous basis because almost everyone and everything represents social capital and the potential for creating disruption in an accumulation process that requires increasing coordination.

Cockburn notes how "reproducing capitalist relations is more and more a cultural affair. It means school, social work, electoral politics..." (1977:57). The goal of regulation is to direct and prescribe human labor power rather than exclude and confine it (Spitzer, 1982).

"Education, welfare, family life, transport, culture, etc. are all

implicated in capitalist accumulation. It is less and less true that everyday life at home in the streets, etc. stands outside of the process of accumulation" (Spitzer, 1981:122). What we need to consider is why the detailed management of populations takes the form of informal control and decentralized function.

In the workplace, the needs of monopoly capital to expand productivity and minimize the disruption of production--both direct disruption of the work process as well as worker autonomy that limit capitalist prerogatives and the smooth administration of accumulation--make everyone "the subject of management interference" (Braverman, 1974:309). That disruption concerns both conscious actions by workers to achieve autonomy and benefits (e.g. strikes), as well as the unpredictability associated with managing the labor process (Burawoy, 1979). Innovations in technology (see Noble, 1978) extend management authority over the work process by giving managers "the capability to time study production and skilled workers 24 hours a day.... Every minute of the worker's time can be accounted for.... The foreman no longer decides to discipline the workers. He merely carries out "the automatic decisions of the system" (Shaiken, 1979:13). Monitoring is characterized not merely by detailed observation but also by extensive probing and evaluation. Employers seek simultaneously to limit the discretion of workers, expand productivity, and limit challenges to capitalist prerogatives. To achieve these objectives, capitalists intrude on the privacy of workers by identifying those traits and attitudes that render workers amenable to control, regardless of their ability to perform the job function adequately (Edwards, 1979). An increasing number of jobs require applicants to

submit to psychological tests (e.g., the Minnesota Multi-Phasic Personality Inventory). Workers in some industries have been genetically screened to determine their susceptibility to certain diseases known to be associated with the tasks performed. Rather than reform the workplace, the capitalist transforms and invests in the worker, using a variety of social engineering techniques: training, job enrichment, and worker satisfaction programs designed to involve workers in their own regulation.

Intervention at the community level is also characterized by extensive scrutiny of private lives by means of informal, decentralized mechanisms, located outside institutional settings, and heavy reliance on professionals in psychology and education (Szasz, 1965; Kittrie, 1971; Hylton, 1981; Brady, 1981). Methods of punishment, deviance management, social service delivery, and intervention in family life generally appear to be more closely related to labor market and labor force conditions than to conceptions of morality or law (Platt, 1969; Rothman, 1971; Jankovic, 1977; Foucault, 1977; Scull, 1977; Donzelot, 1979).

Four contemporary techniques of state intervention can be identified: decriminalization, diversion of juvenile defendants, deinstitutionalization of the mentally handicapped, and public welfare. They are all more humane and less authoritarian than the forms of control they supplement or replace. But they also extend and intensify control in new ways that correspond to forms of disruption to the local infrastructure associated with changes in labor market conditions. Juvenile diversion programs, for example, represent a response to vulnerabilities associated with redundant youth who may

remain dependent for long periods of time, especially in geographic areas with high unemployment, and likely to engage in criminal activity (Schwendiger and Schwendiger, 1976). Many of these forms described below, which tend to maintain, include, disperse, and essentially stabilize various social groupings rather than exclude, punish, concentrate, or ignore them, represent a form of tightly managed investment in people as human capital (Spitzer, 1979). Their otherwise unemployed, volatile, unproductive, unconsuming position constitutes disruption to the extent that they fail to produce or consume and concentrate themselves in given settings--whether the prison, mental institution or skid row.

A majority of states have decriminalized public drunkenness, in order to "treat" the inebriate as a health problem rather than as a criminal. Inebriates are swept off the streets (often by the police) but not arrested and therefore not protected by the principles of due process. They are taken to detoxification centers (in protective custody) and often must submit to extensive supervision by medical professionals and demonstrate their fitness to be returned to the community before they will be released.

Alternatives to conventional adjudication in the criminal justice system, such as expanded use of probation and diversion from prosecution and incarceration, allow judicial authorities to monitor offenders in a community setting. Participation in alternative programs requires cooperation with officials for periods longer than the sentences offenders would have received had they been prosecuted. Many jurisdictions use indeterminate sentences for juveniles; defendants must meet certain criteria for successful completion of the

disposition. Control involves structured, detailed diagnosis, screening, supervision, reporting, and classification (Scull, 1977; Cohen, 1979; Feeley, 1980).

A crucial aspect of monitoring is that officials emphasize attitudes and habit more than facts or behavior in an attempt to prevent future deviance or conflict. "Juvenile court does not really pronounce judgment on crime; it examines individuals" (Donzelot, 1979:110). The goal is to identify

potential pre-delinquents or high risk populations, [but] there is a deliberate attempt to evade the question of whether a rule has actually been broken.... [In the future] it will be impossible to determine who exactly is enmeshed in the social control system--and hence subject to its jurisdiction and surveillance.... The major results of the new movements towards community diversion have been to increase rather than decrease the amount of intervention directed at many groups of deviants in the system and, probably, to increase rather than decrease the total number who get into the system in the first place (Cohen, 1979:346, 347).

Large segments of the mentally handicapped population are being deinstitutionalized, ostensibly in order to enhance their autonomy and enable them to lead natural lives (Scull, 1977). Many are actively supervised (if not adequately served otherwise) by professionals who monitor their adjustment to community norms rather than minister to their medical or psychological needs (Chu and Trotter, 1974). Portions of these populations are subsidized by the state to generate cheap labor for the competitive sector of the economy at a cost lower than their upkeep in an institutional setting (Scull, 1977).

Perhaps the most common form of monitoring is directed toward the poor and other surplus populations who receive monetary and service benefits from the state in return for allowing officials to scrutinize

them (Donzelot, 1979). Recipients must expose the details of their daily lives for examination by social workers, psychologists, and bureaucrats and endure harassment, e.g., house inspections and family interviews by public officials seeking to uncover moral or psychological defects. Many of the requirements and judgments that form the rationale for monitoring derive from concern over the alleged erosion of the work ethic and of labor markets. "Relief practices are always determined by the conditions of work among the lower classes.... [Relief recipients will not be treated] well as long as there are workers who are so poorly paid that they must be coerced into staying at their jobs by the spectacle of degraded paupers" (Piven and Cloward, 1971:345-46). The welfare system, however,

is no longer just a system of social control tied to immediate labor market conditions. Rather, the displacement and integration of people in the work system...is increasingly controlled by the welfare system.... Welfare services...regulate the growth, structure, and development of the displaced population (Hirschhorn, 1978:72).

How do informality and decentralization extend control?

Informality facilitates early intervention and prevention of social disruption. Control need not be contingent on legal violations. The "helping professional" can engage in detailed inquiry into and surveillance over private lives under the guise of assistance. Discretion is expanded. By blurring formal distinctions about what constitutes deviance, the state expands its authority to regulate (Cohen, 1979).

Community-based institutions disperse social control (Cohen, 1979; Spitzer, 1982). What this means is that deviance management and other control functions can be integrated into patterns of everyday social

life, using not only social service agencies but also neighborhood groups, family members, and peers. Control operates within the plant, the office, and the community, whereas planning and decision making are centralized in the state. Problem populations need not be segregated in institutions since the whole social environment can be organized for regulation. State authority thus widens its orbit of control while disguising the explicit coercion that might generate resistance.

Neighborhood dispute resolution forums target populations for intervention in a way that bears strong resemblance to the phenomena described above.

Integrative Social Control. Every society or social formation requires systems of integrative social control. But under capitalism, such control, also embedded in ordinary processes and rhythms of social life, seeks to connect the populace to exploitive institutions while simultaneously concealing its authority. Integrative processes, normally thought of as governed by community norms to protect social order, are connected specifically to capitalist interests and the peculiar requirements for order that are exploitive at their base.

The form of relations among people or groups is reorganized in such a way that control is inherent in the form of the activity itself rather than external to it or embedded in norms. It differs from external control, hierarchical controls, planning, compliance, and overt cooptation mechanisms in that it is a form of socialization. Integrative control is obscured and operates in pre-determined, accepted organizational forms and processes such as political parties and labor unions. It emerges from resistance to existing forms of control and supplements rather than replaces them in most instances.

Integrative control further arises from the need to anchor people to the total social system of capitalist relations. It occurs in response to the state's efforts to create bonds with labor and the failures of welfare state programs. As Hirsch explains, "The capitalist state consists of numerous apparatuses that are not merely management oriented. [The state] must maintain links with the proletariat and with other classes and strata not to be counted as part of the bourgeoisie" (1978:100). These integrative modes, some of which are noted below, develop not only because of the impasses previously described in traditional institutions of overt social control, but because capital must create alliances with fractions of labor if it is to succeed. Open class warfare is costly and creates resistance to accumulation and the realization of value that depend on acquiescence and affirmative support. To sustain growth and present its costs as a public interest is a requirement of integrative control (Cox, 1981). Agnew explains how "following Marx, several writers have argued for the importance...of a practice of 'practical incorporation': the expansion of commitment to the prevalent social order by the development of personal stakes in its survival..." (1981:457). Integrative control is made difficult because it must also deal with the consequences of overrationalization and commodification that result from planning.

Capital expansion cannot proceed by rationalized efficiency techniques of its steering capacities alone (Habermas, 1975). It must be able to realize and not just produce its potential (Burawoy, 1979). At the same time, the conditions for innovation must be constantly recreated. These objectives cannot be fully achieved by force or obvious manipulations.

What integrative social control accomplishes when it works is an expansion in the capacity to neutralize and disorganize collective action and political expression by defusing, confining, displacing, and disarming discontent, fostering dependency on capital, and incorporating the working class and segments of surplus population. This must occur in such a way that accumulation is not challenged or disrupted while simultaneously reproducing class relations and maintaining the prerogatives of capitalist power. The objective is not overt repression or the elimination of conflict. Rather, it is to structure, channel, institutionalize, trivialize, and absorb it. The idea is both to create acceptance of authority that does not appear as authority (negative antagonism) and to create a basis for regulation, without the appearance of regulation.

The key to understanding integrative control lies in how it is instituted or embodied in institutions of everyday life in relation to a particular kind of order conducive to capital expansion. Such control is not new and is essential to any society. But under capitalism integrative social control makes sense based on understanding the character of everyday life and the ways capitalist institutions and the capitalist mode of production permeate everyday life or are embodied in it. New forms of control emerge in different historical periods. Earlier forms were connected to ideologies and language (Thompson, 1966; Spitzer, 1982). Contemporary forms are not connected so much to language as to managing activities of daily life, based on the detailed penetration of private life through the state, already discussed. New forms (neighborhood councils, neighborhood planning bodies) are now applied to areas where external or

bureaucratic control normally dominates. At issue, then, is how integrative control is achieved in dividing the working class. These new forms, moreover, parallel those elements central to neighborhood dispute resolution.

What are the basic elements of integrative control? First, its method is to involve people in a process or activity that provides a sense of control, self-management, self-help, in a positive way. Active, voluntary, positive participation is contrasted with compulsion or cooptation that occurs when hierarchical institutions within the state seek support from the populace. People interpret their participation as an opportunity. The rules for participation come from above but are not understood as such. This form of involvement is in sharp contrast with other forms of involvement exemplified by social protest, boycotts, lobbying, civil disobedience, and lawsuits. The artificial forms of involvement created by the state are "based on a substitution of...commitment and courage for position and authority" (Perlman, 1976:76). The potential effect harnesses people to the state in a dependent relationship and redirects attention and participation from civil, nonstate forms of social action.

An important aspect of involvement is internalization, a process whereby domination is accepted as natural.

People often accept what exists as necessarily legitimate--not consciously as the result of moral reflection but unthinkingly as a result of continuous involvement in everyday life (Agnew, 1981:459).

The internalization of categories and values of capitalist society is not new. However, the growing discontinuity between material experience during times of severe dislocations and received ideology influences the creation of processes designed to sustain images that do

not conform to reality. Such processes must occur through the ordinary practice of everyday life and not an obvious, alien form of authority or rules which clearly derive from such authority. In short, control cannot appear as control in order to be effective.

As a second element, interactions are conducted on a private, informal, friendly, face-to-face basis in non-technical language so that all relations appear interpersonal rather than collective, contractual, professional, or authoritative. This individualization of interaction conceals the exploitive character of interaction defined by the capitalist mode of production.

Third, consensus, mutual interest, cooperation, understanding and partnership are emphasized rather than antagonism or adversarial relations that arise out of power differentials. The identification of common (class) interests is encouraged in an atmosphere of compromise and conciliation. Integrative control is therefore a means of inclusion rather than exclusion (Spitzer, 1982). These elements are not mutually exclusive, nor do they necessarily operate in any fixed manner. How is this phenomenon manifested in the workplace and the community at the level of structure?

In the workplace, integrative control is embedded in the work process itself at the point of production in the division of labor, as organized by the capitalists (see Braverman, 1974; Friedman, 1977; Pignon and Querzola, 1978; Burawoy, 1979). It is also a form of control exercised at the more general level of labor-management relations (Aronowitz, 1979; Klare, 1982).

Perhaps Burawoy best characterizes the way in which consent in the workplace is dependent on participation in a process, irrespective of conscious interpretations.

Unlike legitimacy, which is a subjective state of mind...consent is expressed through, and is the result of, the organization of activities. It is to be distinguished from the specific consciousness or subjective attributes of the individual who engages in those activities. Within the labor process the basis of consent lies in the organization of activities as though they presented the worker with real choices, however narrowly confined those choices might be. It is participation in choosing that generates consent (1979:27).

At the point of production, integrative control is found in the organization of the work process through the division of labor. Such control is not new but takes new forms. A good example, quoted at length, is provided by Pignon and Querzola in their discussion about the reorganization of work at the American Telephone and Telegraph Company.

Let us take the example of the punch-card operators and checkers. The job of the employee is to mark on a punched card the customer's statement of account; the account number...is written in pencil in the middle of the card...in New York alone 200,000 cards of this type are handled every day. Before the reforms the job was organized in the following way: the women employees were divided into two groups of card-punchers and checkers...a supervisor divided the work out each day.... After some discussion...a modification was decided on. Instead of being divided up at random between the operators, the account cards were grouped according to their place of origin. Each employee was thus given a particular geographical sector to deal with, which also meant a particular group of customers, for whom she now became personally responsible. After trials, the checker working opposite each card-puncher was eliminated...the percentage of errors had shrunk from 4 percent to less than one percent. A modification of the forms of constraint had in fact had the effect of an increase in productivity. The constraint no longer appears as the product of a hierarchical authority that imposes work rhythms from

above, but as determined by the market, and thus acquires a new semblance of objectivity.

The reorganization therefore does not modify the technical content of the work. Instead it modifies its social form.... The employees are no longer confronted with the boss as the person they are responsible to but rather with their customers and with the market.

This labor reorganization can be formally analyzed as a 'democratization' that leaves the domination of capital over labour to be exercised through the mediation of the capitalist commodity market. This tendency to open a firm up to the market and to consider each department as a firm on its own subject to criteria of profitability is quite generalized throughout contemporary capitalism (1978:75, 76).

Thus we see how control not only operates in a process but is internalized or becomes automatic. This is a type of control designed to manage the work process in contrast with policy and wage demands made by labor.

Another aspect of integrative control at the point of production is change in the style of management that appears to offer the worker more control over the work process through "worker committees" or other participation schemes that give workers a sense of influence over the labor process (Henry, 1982). Richard Sennett notes how many of these techniques are designed to elicit cooperation and "try to create a feeling of mutual interest and good will between those who will, in the end, give the orders and those who must obey them" (1979:44).

At a more general level, capital uses numerous appeals to convey the idea that the interests of capital and labor are similar--that everyone desires increased growth, more goods and services, less regulation (see Institute for Labor Education and Research, 1982). In recent times, as the economic crisis has deepened, capital makes stronger appeals to a unity of interest in requesting that labor not

only reduce its demands and refrain from strikes but concede wages provided in earlier contracts in order to protect jobs (Raskin, 1982).

At the level of community, an important question is how the state, as it coordinates and plans the infrastructure of communities through new, undemocratic administrative institutions, expects to manage community life without jeopardizing its legitimacy. How can the state translate power and class issues into questions about ethnicity, pathology, service delivery, and interpersonal problems? People ordinarily oppose centralized, bureaucratic authority and assaults on community through programs like urban renewal. Moreover, as noted earlier, the social movements that arose in the 1960s and 1970s--women's rights, anti-nuclear, civil rights, environmental--organized nationally and focussed attention on the relation between local experience and broad issues such as employment, housing, health care, sexism, and racism.

In some urban areas, one response to the limits of external control has been to burrow from the inside, through an agency of the state or an agency with some relation to the state that appears to emerge from the community. What does this look like at the level of the structure of institutions?

One set of institutions that can be defined as integrative--penetrating communities and community subcultures--are to be found in those agencies at the local level such as little city halls, neighborhood task forces, community planning boards, and neighborhood advisory councils. Mollenkopf explains how

the last decade has transformed confrontation oriented advocacy organizations into neighborhood-based social service agencies; as such, neighborhood organizations

have been integrated into the fabric of local politics (1979:18).

These types of organizations represented a response to the militancy of the 1960s: challenges to economic growth; union militancy; organized protest around employment; housing and race (Piven and Cloward, 1979; Gendrot, 1982). Their objective has been, symbolically and practically, to monitor activity in the community, provide outlets for and redirect activist energies, improve community cohesion, and serve as a conduit to indigenous neighborhood organizations (Katznelson, 1981). They sometimes accomplish these ends by involving participants and making them dependent on the local state. Katznelson explains the Urban Task force in New York City in this regard:

The aim [of the Urban Task Force] was to tap street-level activists . . . and to enmesh them in a series of relationships with the [local] administration. . . . Their principal purpose was not the solution of substantive problems, but the maintenance of social order. . . .

* * * *

At issue was the attempt to take the radical impulse away from the politics of race by the creation of mechanisms of participation at the community level that had the capability to limit conflicts to a community orientation, to separate issues from each other, and to stress a politics of distribution.

* * * *

Once enmeshed in the new institutions, leaders were forced to fight for the rewards and resources these new organizations could distribute and to fight for them on the terms these organizations made possible (1981:138,177,188).

These structures, as alternatives to community organizing, mobilization, political demands, community control, and other potential protest action, translate politics into a form of service delivery and the resolution of social problems (Morgan, 1981; Cockburn, 1977). This is precisely the potential effect of NDR.

Neighborhood interests are typically expressed in programmatic terms--more funding for the service delivery organization--rather than in universal, political terms like "community control." . . . The result has been to [reduce] the basis for unity across organizations by decomposing collective issues into much more specific ones. . . . Local government incorporated and utilized the neighborhood political thrust while attempting to avoid a significant redistribution of actual power (Mollenkopf, 1979:31,34).

Citizens' interests are thus incorporated and institutionalized.

Community mobilization is replaced by a rhetoric from the state that emphasizes neighborhood needs, the idea of community, decentralization, and other issues in a language designed to conceal the state presence. Cockburn describes how incorporation occurs through involving citizens in forums such as neighborhood councils which permit officials to anticipate objections, reduce confrontation, and, generally, "bring people into a friendlier acceptance of local authority" (1977:109).

Another example of integrative control which translates problems in the environment of capitalist social relations into individual pathology is also associated with community mental health. New forms of behavioral therapy now operate in schools, prisons, and hospitals which do not merely seek, conventionally, to help patients adjust to social life generally, but apply a specific model of capitalism that promotes the incorporation of people back into society.

Across the country experiments have been underway that entail transforming back ward life into an operational model of contemporary capitalism. In these experiments chronics who had hitherto been left largely unbothered (or simply neglected) have been placed in "token economy" programs . . . [whereby] patients earn or lose tokens (a form of money) on the basis of the behaviors they display before the institutional staff. . . . This represents a calculated attempt to replicate the prevailing economic order and to simulate its demands. . . . [T]he token economy program can be seen as an

effective means of social control over potentially disruptive and noncooperative groups of troubled people. . . . Successful participation in economic affairs thus became tantamount to evidence of mental health (Neubeck, 1977:43,44).

Community mental health, more generally, presents itself as a helping agency offering services, usually in highly disorganized deteriorating environments. They use lay people and operate in informal settings, although funds come from the federal or state government. They redirect attention from social conditions to the effects and symptoms as experienced by citizens, redefining those conditions as stresses to be dealt with by changing individual behavior. Community leaders become involved as paraprofessionals. This may make the community dependent in that it provides a link to the state through the community. People are thereby incorporated, integrated into social systems which monitor them, coopt their power, and otherwise expropriate that power (Gamson, 1969; Brown, 1979; Donzelot, 1980).

Integrative social control, similar to other forms, contains contradictions; it is a phase not a final solution. One contradiction is that incorporating citizens into a particular form of social order based on involvement and participation can lead to an expectation of greater self-government. In Burawoy's words, "If the self-organization of workers is necessary for the survival of capitalism, it also questions the foundations of capitalism" (1979:73). Worker participation schemes may lead to more direct challenges to capitalist prerogatives, although this issue is hotly debated (see Zwerdling, 1980; Compa, 1982). Another is that integrative control weakens the capacity to impose more directly hierarchical, authoritative controls in the future, which may be

necessary when welfare state programs fail and further exploitation of labor is the only recourse for capital (Hirsch, 1978).

The dynamics of capitalism as a social system generate certain institutions of social control in interpersonal daily life which simultaneously support and erode capitalist social relations. The mode of production and the attendant infrastructural arrangements that support it influence the specific forms that control takes. The primary propellant for change within these institutions of control is class struggle. Thus, this process always generates resistance and is always in flux. They remain outside of direct capitalist control and never fully resolve the problem of order. In times of severe economic decline, disorder expands and resistance to conventional control intensifies. Given these constraints, we can now begin to explore the derivation of neighborhood dispute resolution as a form of social control associated with the reproductive problems of capitalism.

NOTES - II

1. The social relations of production under capitalism are those relations that arise within the productive process between the working class, which produces surplus value, and the capitalist class, which appropriates it. They include both the formal relationship of ownership and control over the organization of the labor process.
2. Claus Offe defines contradiction as the tendency inherent to a specific mode of production to destroy those very preconditions on which its survival depends. Contradictions become manifest . . . where a collision occurs between the preconditions and the results of a specific mode of production or where the necessary becomes impossible and the impossible necessary (1975:246).
3. Overproduction during successful periods expands the power of labor, thereby endangering the portion of surplus value received by capital.
4. The state expresses class struggle and must be understood primarily as a relation rather than as an entity, even though one can speak of the state as embodied in particular institutional forms.
5. Planning does not necessarily require particular formal agencies within the state. It is embodied in forms of coordination and centralization both in private and public policy.

III. NEIGHBORHOOD DISPUTE RESOLUTION

Neighborhood dispute resolution provides an opportunity to understand the restructuring of social control. NDR procedures are not new but their reemergence in neighborhood forums suggests elements not present in earlier modes. These elements share many features of social control common in other realms, such as the workplace and local government apart from the judicial system, although NDR differs in organizational structure and ideology. I have demonstrated an impasse in the existing institutional arrangements for social control, especially in the judicial system, and explored developing outcomes. Given the possibilities (e.g., more overt coercion, no action at all, court reform, special courts, etc.), why does this particular form, with its peculiar characteristics, emerge as one outcome of (even if not a final solution to) the impasse in the systems of social control? NDR represents one option within a range of options and suggests the range itself--most notably in its decentralized, informal qualities.

My contention is that these neighborhood mediation forums can best be understood in relation to the reproduction of capitalist social order, as one way in which social relations in the community are restructured and class relations translated organizationally into relations between individuals. As institutions of the state, they display at the level of community the reproductive problems of capital and its developing systems of legitimation. They are not self-determinate, independent of the social relations of capitalism. NDR makes sense only when interpreted as a political and ideological

institution of the state. My objective, then, is to explain neighborhood mediation from the analysis of capitalist social control in general. A central question is how it parallels the forms of control detailed in Chapter II--how NDR forums establish themselves as systems of control in their structure and process. In order to explain what NDR means, its derivation, characterization, and possible consequences, we must return to its paradoxes, problems, anomalies, and most distinctive features.

A first paradox or oddity is that while NDR appears to be free of the traditional trappings of the state and, specifically, the judicial system, it is not. Its structure confuses its characterization: it is an agency of the state from which it remains formally segregated. It is technically nonlegal and service oriented yet reflects qualities of bourgeois law. For example, it employs a system of rules embodied in mediator training manuals, even if they are not explicitly legal rules. Moreover, disputants engage in contract-like agreements which they sign. Similar to the traditional judicial system, mediation excludes community participation or attendance. It is a private process.

A second is that NDR presents itself as a contraction of state power--a less intrusive, passive voluntary institution--when it actually expands and intensifies state power in new realms of social life not amenable to formal state control. Being voluntary and without authority it apparently possesses no power for users to challenge political injustice. Yet the state expands its power over disputants by connecting itself to them through managing their actions in the NDR forum.

Another paradox is inherent in its most distinctive feature: it unites top-level centralized planning and coordination with a form of integrative control at its base in the community. It coopts people in their most pressing social relationships. It seeks, simultaneously, for some types of disputes, to make community or interpersonal relations of what were once legal relations and, for other types of disputes, such as domestic disputes, to make people think of their personal relations as legal or requiring state intervention.

Fourth, open ended outcomes and voluntary participation are deemed distinguishing virtues yet NDR's specific methods promote a total orientation to order, although it is not immediately apparent that its processes automatically suppress working class interests.

Overall, NDR must strike a delicate balance between (a) providing a responsive justice that does not generate a demand for democratic control; and (b) managing a complex variety of social populations while retaining their support. This characteristic makes it vulnerable to challenge and to disintegration.

Given these paradoxes and others, I want to demonstrate that its characteristics make sense not as an institution designed to achieve justice or even to resolve disputes per se, but as an organization of crisis management that arises from the same problems that generate other changes in social control in the workplace and outside. I want to show that NDR is not a system of community justice or popular justice and that these institutions do not respond to citizens' conflicts as they are experienced. On the contrary, they generally do not help people as members of a social class; rather they manage, shape, and direct social conflict in a particular way such that the

collective and political basis of conflict is defused. They institutionalize conflict within a particular conception of social order. However, NDR is a paradoxical institution precisely because, as in all other institutions of capitalist control, it possesses elements of liberation from capitalist control. Some qualities of NDR mobilize people by bringing them together face-to-face in a negotiating position, encouraging cooperation. Other elements individuate and disorganize them. Unraveling its controlling qualities is made difficult because it is not the product of direct class confrontation but only prompted by class contradictions.

Thus we must distinguish between appearance and reality: between how the neighborhood program and its agenda is presented to the community and disputants, and its meaning as an institution of control within capitalist society. We want to understand how it constructs and imposes a view of social reality. While this task cannot be accomplished conclusively, we can demonstrate how the neighborhood dispute resolution center is structured and how its processes begin to establish themselves in the lives of individuals and communities, given boundary conditions and structural constraints inherent in the institution, and the ways in which values and practices of the disputants enter the process.

What I want to demonstrate is (1) the way in which informal justice in a neighborhood setting can serve the interests of capital without necessarily solving its problems, through a local, seemingly representative process; (2) how power is exercised and experienced in a variety of ways through a process and not necessarily through content or outcomes; (3) that informal dispute resolution, which means

less reliance on the rule of law and more reliance on ad hoc direct state intervention, permits the management of populations formerly constrained by the rule of law and that such necessary intervention is facilitated by neighborhood mediation; (4) how the language of conflict in mediation and its structured processes inform us about the nature of social order; and (5) the way in which informal dispute resolution is a means of penetrating and disorganizing the community in which it operates--how the state uses community culture against itself, similar to other organizational forms that disorganize the working class.

I want to consider, as I demonstrate these features, how neighborhood dispute resolution forums parallel emerging forms of control, how they establish themselves as systems of control--both from the top down in the structure and from the bottom up in their processes, how they represent an expression of class struggle, and why, given their contradictions, they are not a solution to the problems of order and class conflict.

Before presenting the analysis of NDR, we need to do two things: briefly describe the central structural features of mediation important to the analysis and characterize (as an ideal type) a typical mediation process. In all cases, mediation will refer to informal dispute resolution programs as organized by the state or institutions connected with the state, in contrast to community-based justice. The descriptions below, moreover, suggest only the most general, visible components common to mediation.

The central features of mediation. Although mediation programs vary widely on almost every feature, including objectives--some aim to

reduce court caseloads, others emphasize access to the judicial system, problem solving, and reduction or prevention of conflict--they share basic features important to the analysis (see Singer, 1979; McGillis and Mullen, 1977; Sander, 1976).

Types of cases. Most cases involve disputes between individuals, in contrast with those where organizations may be a party. Thus, neighbors, family members, landlords and tenants, consumers and sellers, etc., constitute the disputants. The majority of programs stress the importance of handling disputes where there is an on-going relationship between the parties (family members, neighbors). Depending on the program, the cases may be characterized as criminal, quasi-criminal, or civil (usually misdemeanors or small claims), although some programs specify or predominate with one type or the other. They can include such categories as problems with neighbors, money, minor property damage, domestic quarrels, harassment, trespass, consumer matters, assault, and landlord-tenant, among others.

Approach to resolving disputes. The most prominent approach to resolving disputes is mediation (as opposed to arbitration or conciliation), a method requiring an independent third party (mediator) who facilitates or guides the interaction between disputants in order for them to reach a mutually acceptable settlement. The mediator seeks to generate discussion between the parties, interpret statements, and suggest options.

The most important feature that distinguishes neighborhood mediation from both ordinary adversarial procedures and labor negotiations is that the parties themselves engage in mediation, not their representatives. It is a "face-to-face" process.

The mediators. Mediators are typically lay people who receive special training in mediation techniques. These people may be law students or professionals in related fields such as psychology, social work, or law. A few programs employ full-time professional mediators, but this seems rare. Some are paid small stipends, others perform the service on a purely voluntary basis. A great number of mediators are trained by professional organizations such as the American Arbitration Association and the Institute for Mediation and Conflict Resolution, although many programs create their own training apparatus.

Sponsors. Sponsors may be agencies within the judicial system (criminal justice planning agency, court, prosecutor), agencies of local government (mayor's office, department of human relations), or private organizations (bar associations, American Arbitration Association) with connections to the official court system. (We refer to all these types as state-organized or official programs and they are the focus of this analysis.)

Agreements. Agreements are ordinarily put in written form with specific details, signed by the parties, and witnessed by the mediator. They may require restitution, promises to end harassment or contact, to refrain from making noise, or other behavioral options. The mediator actually writes the agreement document, checking with the parties about its language and reading it to them. Agreements may involve restitution or a promise to change or desist from certain behavior. They are usually nonbinding but a breach may lead to the initiation or continuation of a court action.

Hearing procedures. Hearings are typically conducted in an informal setting for no more than two or three hours at most. Usually

they occur within a week of the time a complaint is filed. No fixed rules of evidence apply. Witnesses and attorneys are discouraged, although not always formally excluded.

The mediation process. The process begins with a referral from another agency which first learns of the conflict or a direct request for service by one or both of the parties. Next, an intake officer interviews each of the parties about the problem. If one party initiates a complaint, the program staff seek contact with the other party, requesting her/his participation, usually by mail. In the mediation session, the mediator begins with an explanation of the process, the mediator's role, and expectations from the parties. Then, each party has an opportunity to report her/his version of events, without interruption. Mediators discuss the issues with the parties, try to determine the problem and elicit what each party wants as a remedy in order to reach a settlement. Sometimes the mediator might caucus separately with each party. If agreement occurs, each party signs the agreement.

In order to provide a more immediate sense of the operational details within some of these programs, five documents are presented below from a variety of programs: (1) "A Brief Description of the Pinellas (Florida) County's Citizen Dispute Settlement Program;" (2) "Program Operating Procedures" from the Dade County Citizens Dispute Center; (3) "Mediation Summary"--a sample case description from the Neighborhood Justice Center of Venice, California; (4) brochure from the Neighborhood Justice Center of Venice, California; and (5) "Mediation Groundrules/Mediation Process"--description from the Pima County Arizona Mediation Program.

Throughout this chapter I refer to and quote from or summarize transcripts from mediation sessions in three programs in Maine, Florida, and California. Very few programs permit researchers to attend mediation sessions and almost none allow the use of tape recorders, except under special circumstances. Therefore, vital data on the process must necessarily be limited. In the course of this research, over a period of five years, I visited six mediation programs (in Florida, California, New York, and Boston), sat-in on three mediation sessions, and interviewed project directors, mediators, and intake counselors in each. I also interviewed these same categories of mediation staff members by telephone in another eight programs. Their cooperation was in most cases contingent on anonymity, and therefore their names have not been listed in an appendix. Each quotation from staff members, with two exceptions, is from a different person. Most of the interviews were conducted for research purposes other than this dissertation. The quotations cited from these interviews illustrate particular points and suggest the general character of mediation rather than serve as evidence per se. (This is also the case for all of the tables in this chapter.)

The mediation sessions which I attended were all of a similar nature in format. A mediator sat behind a desk in a barely furnished small room with four or five chairs. The disputants would enter the room and sit a few feet apart facing the mediator or at the opposite ends of a table with the mediator in the center. The sessions typically lasted from one to two hours without a break. The mediators introduced themselves and offered very brief explanations of the process--the objectives, the mediator role, how they would proceed,

DOCUMENT III-1

A BRIEF DESCRIPTION OF PINELLAS COUNTY'S CITIZENS DISPUTE SETTLEMENT PROGRAM

The Pinellas County Citizen Dispute Settlement Program began in October 1977 after receiving a grant from LEAA and matching funds from the State of Florida and Pinellas County. The Program was developed by Judge David F. Patterson to resolve interpersonal disputes through mediation rather than litigation or prosecution. In its first year of operation, the C.D.S. Program has received over 1,700 referrals from law enforcement and community agencies; and, in over 1,100 of these cases, the parties involved have reached a lasting agreement.

In Pinellas County, as in other C.D.S. Programs throughout the country, resolving interpersonal disputes by mediation benefits the people involved as well as the criminal justice system. Using C.D.S. relieves the person complained against from the stigma of an arrest or court conviction; permits the parties to resolve the problem quickly by setting hearings within ten days; often enables the victim to obtain restitution; and, since C.D.S. conducts daytime and evening hearings, spares both parties the social and economic effects from missing work to go to court. By handling county and municipal ordinance violations and certain misdemeanors and small claims, the Citizen Dispute Settlement Program aids in reducing the caseload of the County Court, freeing Judges, state's attorneys, and other court personnel for more serious criminal matters. Moreover, C.D.S. hearings are conducted at a substantially lower cost than court proceedings since the Program's operation is simple and police time in serving warrants, appearing as witnesses, and handling bonding procedures is eliminated.

Participation is available to any person who has a complaint against another person that could, but not necessarily would, result in a criminal charge. The parties might be relatives, neighbors, co-employees, landlord and tenant, or buyer and seller. The types of charges that generally arise from such disputes are: assault, threats, vandalism, complaints about dogs and other animals, improper telephone calls, petit larceny, noise, boundary complaints, and rental agreement violations. The fundamental purpose of the Citizen Dispute Settlement Hearing is to assist the parties involved in a dispute in reaching a mutually satisfactory written resolution such as restitution, a promise to discontinue the problem behavior, an agreement to communicate directly with each other rather than through law enforcement agencies, a contract to seek counseling, or some other similar conclusion.

The Citizen Dispute Settlement Hearing, therefore, gives the parties an opportunity to settle their differences before a formal criminal charge is made. This opportunity not only helps to isolate and expose the real problems, but also facilitates communication between the parties enabling them to reach a more lasting settlement.

The Citizen Dispute Settlement Program also works with the County's community social service agencies, and refers specific problems that may require more attention than a mediation hearing can afford to an appropriate agency.

In the Spring of 1978, the Pinellas County C.D.S. Program began working with the County School Administration, local police agencies, and the State Attorney on such offenses as truancy, simple battery, trespass, vandalism, shoplifting, and drinking under age. A survey of the Pinellas County Delinquent Youth conducted by the Juvenile Welfare Board in cooperation with the Clearwater Junior League and the St. Petersburg League of Women Voters showed that delinquency for most youths is a short-term affair during early adolescence, and most youths grow out of this phase. This study also demonstrated that youth from families with one or more natural parent absent and/or youth associated with adverse health and social conditions commit more crime.

The major objective of diverting these young people from the court system to C.D.S. is to reduce juvenile crime in this County. The youth, parents or guardians, and the victim or school official appear together at C.D.S. to work out an appropriate disposition within two weeks after the offense is committed. The objectives of the C.D.S. Hearings are to increase the youth and youth's parents' awareness of the relationship between the crime committed and people injured by the juvenile's action, to determine work restitution, and social experiences for the youth which hold him accountable for his delinquent behavior, to refer the youth's family to county and state social, economic, and health services when needed, and to provide needed restitution or apology to the victim.

DOCUMENT III-2

PROGRAM OPERATING PROCEDURES

(DADE COUNTY CITIZEN DISPUTE SETTLEMENT CENTER)

The following is taken directly from the program's final report covering the 1975 grant period:

Once at the Center, the Citizen Dispute Settlement's four intake counselors, based on an initial interview with the complainant, determines whether the Center's mediation services and other procedures could resolve the dispute more effectively than prosecution in the criminal courts. In the event that the dispute is not suitable for mediation, the center acts as a referral unit, which upon ascertaining the exact nature of the particular problem, will refer the party to the proper agency or court, i.e. Legal Services, Consumer Protection Agency, Welfare, Small Claims Court, etc. When appropriate for mediation, participants in the Center obtain a hearing within one week or less from the day the complainant is registered with the Center. The respondent is immediately advised via a Citizen Dispute Settlement Center Notice to Appear and the explanatory letter that a complaint has been placed against him and a mediation hearing set for the following week.

At the conclusion of the hearing the parties may or may not have come to a mutual written agreement regarding those issues, needs and concerns that brought them to the Center. A review of the results is made the following day by the original intake officer and one of five courses of action may be followed:

--In the event of a written resolution, the matter is closed and the original charge dismissed.

--The complainant may have failed to appear, resulting in an automatic dismissal of the charge placed against the respondent.

--The respondent may have failed to appear. This results in a review of the correct address of the respondent and of the charges against him. The case, at the request of the complainant, may be either reset or reviewed for recommendation to the State Attorney's Office if the charge is of a criminal nature.

--The parties may have failed to arrive at a satisfactory resolution. Based on a review of the charge, and the complainants desire to proceed, the case may be recommended for prosecution if the charge is criminal in nature.

--Regardless of the outcome of the mediation hearing, the parties, at their request, may be referred to counseling or other services.

Source: Citizen Dispute Settlement Center, Miami, Florida

**NEIGHBORHOOD JUSTICE CENTER
of Venice / Mar Vista**

1527 Venice Boulevard - Venice, California 90291

MEDIATION SUMMARY

Case No:
Mediation Coordinator:
Mediator:
Observer:

Initial Contact Date: 4/27/78
Mediation Date: 4/27/78
Approximate Length
of Mediation: 3 hours

Intake:

Marcela S. and her 19-year old son, Bob S. live together in the same house. Mrs. S. discovered \$20.00 missing from her hiding place in her home on March 23, 1978. She found \$40.00 more missing on April 25, 1978. Mrs. S. asked her son about the missing money on April 25, 1978. He denied taking the money. Bob has been paying his mother \$100.00 rent since he moved in with her in January, 1978. Bob had an agreement with her to pay \$130.00 starting March 19, 1978. He became employed two months ago and has refused to pay the extra \$30.00. His rent was again due on April 19, 1978 and he did not pay it. Mrs. S. wants him to pay the \$130.00 rent on time each month or she wants him to move out. She also is convinced that her son took her money and wants him to admit to it.

Mediation:

Information obtained during mediation-Bob S. denied taking his mother's money and stated that she must have misplaced the money, that she's misplaced money before. He also stated that he would not pay the increase in rent unless he would get something in exchange for the increase in rent. He seemed to have a lot of resentment from the past toward his mother. Bob offered his own solution to the rent problem. He would pay the rent increase, plus \$5.00 if he could trade rooms with the French Exchange student renting the front bedroom from Mrs. S.

Agreement:

Mrs. S. agreed to give the front bedroom to her son, Bob S. Bob S. agreed to move into the front bedroom by May 7 or before and pay \$135.00 per month thereafter. He also agreed to prepay the back rent due from April 19, 1978, at the rate of \$3.70 per day until he is moved into the new bedroom, changing the



Mediation Summary

Page two

rent due date to that day. Mrs. S. agreed to call the Mediation Coordinator regarding referral for family counseling. Bob S. and Mrs. agreed to see a family counselor to work on their relationship.

Follow-Up:

Mrs. S. spoke to the Mediation Coordinator on May 2, 1978 and asked for a referral to a family counseling agency. The Mediation Coordinator referred her to Family Services of Santa Monica. Mrs. S. stated how pleased she was with the agreement that was reached between her son and herself that she wanted to give the Neighborhood Justice Center a token of appreciation. She stated she has contacted a friend of hers who is a sculptor and he will donate his time and materials to sculpt a piece of work for NJC. Mrs. S. also did an interview for Public Service Radio describing the mediation process and her reaction to it.

The Alternative

The existing justice system, including the police and courts, are sometimes called on to deal with situations which should be handled by other people or agencies.

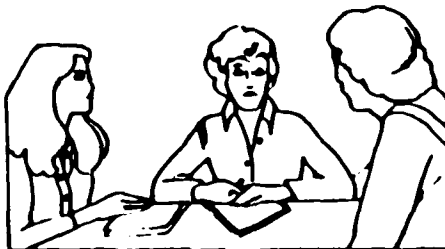
Examples of some of these situations are disputes between members of a family, tenants and landlords, (security deposits, repairs, damages) consumers and merchants (faulty merchandise, deposits, refunds, exchanges) neighbors, (noise, pets, nuisances) and small claims over money and personal property, or juvenile problems with fights and vandalism, as well as other personal disputes involving a continuing relationship.

The Neighborhood Justice Center (NJC) is a new, non-profit public service to help you settle a dispute through voluntary mediation at no cost to you. The NJC is an alternative to the existing formal justice system.

The Mediation

The NJC Mediator is a neutral third party whose role is to clarify issues and facilitate a settlement. After an interview with an NJC Mediation Coordinator, the other party is contacted and a session scheduled; both parties agreeing, a mediation session will be scheduled within 7 days.

Mediation is a voluntary process in which a specially trained community mediator helps disputing people find a way to solve the problems they are having with each other. The resolutions usually result in written agreements. Once an agreement is reached, both parties are expected and required to carry out their mutual promises.



Source: Neighborhood Justice Center of Venice/Mar Vista, California

The Staff

Each case receives the personal attention of the NJC staff. The Project Director, Deputy Director, Associate Director, Mediation Coordinators, Mediators, Secretary, and Research Analyst, work together to provide a mediation service to settle your dispute.

The NJC is staffed by expert residents of Venice/Mar Vista who have diverse training and experience in the fields of law, social science and community resources, and who have knowledge of interpersonal relationships and who are sensitive to human concerns.

After a mediated agreement is reached, the NJC staff will follow-up to insure compliance with the agreement and to make any appropriate referrals to social service agencies. All NJC services, including the follow-up, are performed confidentially.

The basic purpose of the NJC is to be a neutral resource to which community residents will voluntarily bring their disputes for resolution.

DOCUMENT III-5

GROUND RULES FOR EVERYONE

1. NO PHYSICAL VIOLENCE
2. NO SCREAMING
3. NO ONE PUTS DOWN ANOTHER PERSON (NO NAME CALLING)
4. ONE PERSON SPEAKS AT A TIME (NO INTERRUPTIONS)
5. TALK IN PRESENT TENSE (WHAT IS HAPPENING NOW)
6. EVERYONE STAYS IN ROOM UNTIL MEETING ENDS
7. NO BURDEN OF PROOF (NOT AN INVESTIGATION)
8. MEDIATORS ARE NOT JUDGES (NOT A COURT HEARING)
9. MEDIATOR WILL BE NEUTRAL (NOT TAKE SIDES)
10. MEDIATORS DIRECT FLOW OF MEETING

PROCESS FOR MEDIATION

1. COMMITMENT OF SOLVING DISPUTE
2. BRIEFLY PRESENT PROBLEM
3. ASK FOR CLARIFICATION OR ADDITIONAL INFORMATION
4. WHAT DO YOU WANT TO END CONFLICT
5. WHAT ARE YOU WILLING TO DO (GIVE) TO END CONFLICT
6. FORMULATE SPECIFIC CONDITIONS TO ASSURE [sic] SOLUTION
7. COMMITMENT TO COMPLY WITH CONDITIONS (FOLLOW-THROUGH)

Source: Pima County Arizona Mediation Program

and possible outcomes. Throughout the sessions disputants violated the procedures numerous times, e.g., speaking out of turn, seeking to prove they were right and therefore entitled to a "victory" rather than settlement. All of the mediation staffs I interviewed were friendly and cooperative. In general, they supported mediation and viewed it as a helpful alternative to courts and to the disputants.

A. The Structure of Neighborhood Dispute Resolution: Planning

One of the extraordinary features of many neighborhood dispute resolution programs is the way in which they are planned at the level of the state and centralized, nationally based institutions, while appearing to emerge from the community as decentralized entities. They offer a collective, social form of legitimation for a noncollective, nonparticipatory process and reinforce the paradox of a planned activity administered on an ad hoc basis. In this sense, they parallel other community-like institutions described earlier and demonstrate historical ties to more generalized planning within the judicial system. But what does it mean to say that neighborhood dispute resolution forums are planned?

The impetus for and design of these forums, as well as determinations of who can make what claims, begin with government administrators and judicial authorities, acting in cooperation with large foundations, criminal justice planning agencies, and professional organizations such as the American Bar Association, American Arbitration Association, and associations of state and local governments (Wahrhaftig, 1982; Garofalo and Connelly, 1980a;

Tomasic, 1982). Some projects are sponsored publicly by agencies of the court system. Examples are the Columbus Night Prosecutor, the Boston Urban Court Program, and the Miami Citizen Dispute Settlement Center. Policy decisions in many of these programs are made through the sponsoring agency, usually with an advisory board consisting mostly of public officials, bankers, business representatives, foundation vice-presidents, and representatives of community organizations. Many projects have no advisory boards; there is not even the pretense of community influence. This is true of projects in Miami and Columbus, Ohio (McGillis and Mullen, 1977; Klein et al., 1978; Alper and Nichols, 1981). Some programs (Brooklyn Mediation Project; Citizen Dispute Settlement, Toledo; Family Dispute Services, Minneapolis) are sponsored privately through organizations such as the Institute for Mediation and Conflict Resolution, or local bar associations. These private projects have advisory boards with community representation, but they lack formal policy-making authority. Many develop close links with judicial agencies in order to receive a sufficient supply of cases. Planners are aware that, without strong connections with agencies that can provide referrals, few cases will enter the program. But more importantly, without such ties, programs would lack control over the cases themselves (Klein et al., 1978). These programs sometimes appear to be connected to community organizations, but control remains in the hands of professionals with strong ties to the judicial system and other agents of the state (Wahrhaftig, 1982). Community members are represented on the boards of directors of many dispute resolution centers, but overall authority for planning and policy remains in the hands of

traditionally powerful organizations and public officials. The Atlanta Neighborhood Justice Center, for example, "operated under the guidance of a Board of Directors composed of court officials, attorneys, and a few representatives from the police and community agencies" (Cook et al., 1980:12). Moreover, those developers of these forums and court officials maintain close supervision over them; they do not relinquish control to community organizations, although such organizations could begin to challenge the management of NDR.

Neighborhood dispute resolution forums do not develop from community-based movements or from the deliberations and demands of indigenous populations. As in other state-organized agencies and planning bodies, local participation in creating the dispute resolution programs is an institutionalized process. The role of the public generally and users specifically is mechanical, formal, and perfunctory--not democratic (Wahrhaftig, 1982). Support is normally sought only among key public officials (Tomasic, 1982). And as Garth suggests, describing LEAA's Neighborhood Justice Centers, "substantial participation by disadvantaged groups may be even less likely once the justice centers pass the experimental stage and are subjected to political pressures by local powers" (1982:197). The absence of user participation may limit support in the future if the institution falters from lack of funding. Describing the early LEAA sponsored programs, Alper and Nichols (1981) report that, for each, the board (of directors)

seeks endorsement for the aims of the center[s] from local merchants and landlords and from other business and community groups, as well as from local government officials, including the judiciary. It strives to reach agreement with local merchants and landlords for securing their participation in mediation for specific

types of complaints, such as shoplifting and landlord-tenant disputes (209).

If neighborhood dispute resolution forums were truly popular and responsive to community need, there ought to be some evidence of popular demand or some data on community conflict that would justify their formation and structure. Yet a community rationale does not exist--population characteristics do not require it and no key indicators, e.g., the disintegration of the community, user demand, demonstrate a need (Harrington, 1980; Tomasic, 1982). Citizens demand better quality justice, effective enforcement of rights, and speedy justice. But they do not necessarily demand informal justice, as it is devised, as the vehicle to accomplish their goals. Once mediation programs begin, they usually must engage in extensive public relations activities to attract a sizable caseload, unless they resort to court referrals (Dispute Resolution, no. 6, 1980). Recent research suggests that people would rather go to court than mediate or choose to resolve their dispute in some other way (Davis et al., 1980; Harrington, 1980; Buckle and Buckle, 1982; Merry, 1979). These institutions can be established through social formations outside the state, apart from capital. Disputants could (and sometimes do) organize mediation projects or other methods to solve disputes themselves; it is not a scientific or complex process (Community Board Program, 1981; Shonholtz, 1979; Wahrhaftig, 1982).

Instead we find bureaucratic planners, sometimes drawn from the federal government, imposing principles of conflict management and mediator training, and providing detailed blueprints for dispute resolution systems. No evidence exists that these centers represent rational solutions to people's real problems or a rational solution to

social order. Popular justice operates from very different premises (Buckle and Buckle, 1982; Issacman and Issacman, 1982; Brady, 1981; Santos, 1979).

The poor, unemployed, women, and minorities constitute a large proportion of disputants in some programs (Cook et al., 1980; Felstiner and Williams, 1978; Singer, 1979; Davis et al., 1980; Snyder, 1978). (See Tables III-1 and III-2.) Ironically, although advocates claim that NDR provides a source of access to justice for those ordinarily excluded (Alper and Nichols, 1981), these populations can more accurately be considered targets of planned interventions (Snyder, 1978). Community residents may participate in state-organized dispute resolution forums, but they are not designed with their interests in mind (Kidder, 1980). Rather, the interests involved are those of corporate planners and public officials, "concerned to ease community and interpersonal tensions" (Alper and Nichols, 1981:134). As one program director in Florida commented, "We're a safety net for the criminal justice system" (Interview, 1979). The language of a Ford Foundation report reveals these concerns:

Our capacity as a people to resolve conflicts is under severe strain. . . . There is strong evidence that the number and complexity of disputes will continue to increase. . . . What is needed is a systematic approach that expands our understanding of the larger issues in conflict resolution . . . and helps to de-escalate conflicts. . . . The changing nature of legal rights and entitlements might also be examined--how these changes affect the adversary system (1978a:64).

Numerous programs, in their planning documents, speak to the need to ease community tensions (Moriarity et al., 1977; Neighborhood Justice Center, Venice, California, 1978). Reducing social conflict was an

TABLE III-1
Education of Participants

(DADE COUNTY CITIZEN DISPUTE SETTLEMENT CENTER)

Highest Grade Completed	Number	Percentage of Total
3 to 6	6	3.2 %
7 to 9	34	18.3
10 to 12	96	51.6
13 to 14	24	12.9
15 to 16	22	11.3
17 to 19	4	2.1
TOTAL	<u>186</u>	<u>99.4%</u>

Missing Observations 11

Family income of participants was not reflective of educational level. Median income was \$6,499 (\bar{X} = \$6,811, S.D. 1.719) Distribution was as follows:

TABLE III-2
(DADE COUNTY CITIZEN DISPUTE SETTLEMENT CENTER)
Family Income of Participants

Income Ranges	Number	Percentage of Total
\$1 to \$4,999	51	31.9 %
\$5,000 to \$6,999	21	13.1
\$7,000 to \$9,999	32	20.0
\$10,000 to \$14,999	21	13.1
\$15,000 to \$17,999	18	11.2
\$18,000 or more	17	10.6
Missing	37	Missing
TOTAL	<u>197</u>	<u>99.9</u>

Source: Moriarity, et al., 1977.

TABLE III-3
 BACKGROUND CHARACTERISTICS OF RESPONDENTS, BY CASE TYPE
 (POLK COUNTY IOWA MEDIATION PROJECT)

CHARACTERISTIC	CASE TYPE			
	MEDIATION	COURT	NONCOMP. MEDIATION	TOTAL
<u>Job Status</u>				
Employed.....	43 (56.6%)	42 (66.7%)	2 (22.2%)	87 (58.8%)
Unemployed.....	33 (43.4%)	20 (31.7%)	7 (77.8%)	60 (40.5%)
Retired.....	0 (0.0%)	1 (1.6%)	0 (0.0%)	1 (0.7%)
Total.....	76 (100%)	63 (100%)	9 (100%)	148 (100%)
<u>Education</u>				
Junior High.....	6 (8.1%)	2 (3.2%)	1 (11.1%)	9 (6.2%)
Some High.....	22 (29.7%)	16 (25.4%)	2 (22.2%)	40 (27.4%)
High Sch Grad.....	29 (39.2%)	33 (52.4%)	3 (33.3%)	65 (44.5%)
Some College.....	7 (9.5%)	8 (12.7%)	3 (33.3%)	18 (12.3%)
College Grad.....	3 (4.1%)	1 (1.6%)	0 (0.0%)	4 (2.7%)
Tech or Trade.....	7 (9.5%)	3 (4.8%)	0 (0.0%)	10 (6.8%)
Total.....	74 (100.1%)	63 (100.1%)	9 (99.9%)	146 (99.9%)
<u>Income</u>				
Below \$5,000.....	25 (35.2%)	21 (36.8%)	4 (44.4%)	50 (36.5%)
\$5,000 - 9,999....	17 (23.9%)	16 (28.1%)	3 (33.3%)	36 (26.3%)
\$10,000 - 14,999..	16 (22.5%)	18 (31.6%)	2 (22.2%)	36 (26.3%)
\$15,000 - 19,999..	10 (14.1%)	2 (3.5%)	0 (0.0%)	12 (8.8%)
\$20,000 or more...	3 (4.2%)	0 (0.0%)	0 (0.0%)	3 (2.2%)
Total.....	71 (99.9%)	57 (100%)	9 (99.9%)	137 (100.1%)

Source: Cree, 1979, pp.18,20.

objective in the early LEAA NJCs as well as other programs that followed (Cook et al., 1980; Singer, 1979; Snyder, 1978). In Cleveland, a project was established in an area "once known for its cohesiveness but now experiencing increasing fragmentation and disorderliness (Dispute Resolution, no. 7). A draft planning document for the newly created National Institute for Dispute Resolution (NIDR) also expresses such concerns.

The period since World War II has seen an enormous growth in the number and intensity of disputes in the United States. The growth of population, its concentration in cities, and the complexity of society give rise to conflict and divisiveness. Many institutions that have traditionally mediated conflict have become weak and ineffective. . . . Courts are overloaded and administrative agencies overwhelmed.

* * * *

Divisiveness has visibly marked the past two decades. . . . In the United States we have witnessed riots by minority populations, tensions between different groups, and a steady rise in the demands of a wide variety of organized interests--women, environmentalists, consumers, farmers, prison inmates, and many others--for equal rights, redress of grievances, and a larger voice in national decision-making (NIDR, 1981:1).

The uniform nature of many forums and the desire to institutionalize them suggests, too, that the interests of program planners are cosmopolitan not local. The United States Department of Justice specifically sought to establish a program plan that could be replicated anywhere (Alper and Nichols, 1981). The objective of the federal government has been "to formulate a coherent national policy on the resolution of minor disputes" (Ibid.:207). And the National Institute for Dispute Resolution contends

A national focus is needed for experimentation, evaluation, coordination, and dissemination. [Many of the activities in dispute resolution] are being conducted largely in isolation. They lack the conceptual and operational focus essential for maximum effectiveness and systematic reform (1981:6).

Such planned coordination denies the historical, local qualities that differentiate communities. It also demonstrates the emphasis on the homogenization of conflict that characterizes planning. Justice is sold to the public as a commodity. Whether institutions planned in this manner but employing a community-oriented rhetoric can be sustained is an open question.

Public officials concerned with maintaining order, avoiding time consuming public debate, and assuring the uninterrupted management of growth have suggested that neighborhood dispute resolution forums may have something to offer. "One selling point is that a properly developed center could be a buffer for elected officials in such diverse areas as housing, welfare, code and zoning violations, and animal control" (Dispute Resolution, no. 4, 1979:2). The performance goals of the Mountain View Rental Housing Mediation Program in San Francisco included reducing pressure "on small claims courts, police, and other complaint agency intakes" (Dispute Resolution, no. 4, 1979:8). Another project emphasized the savings to taxpayers and noted that mediation would "consume less wage-earner time" (Pinellas County Citizen Dispute Settlement Project, 1978). The objectives set by planners are also evident in the criteria used for evaluations--the number of cases entering the system, the capacity to keep cases out of court and reduce delay, disputant satisfaction, and the number of cases resolved (Cook et al., 1980). The major stated rationales are presented in the language of cost-benefit analysis: savings for courts, less time wasted for professionals, smaller caseloads, etc. Anthropologist Sally Merry, for example, comments on the evaluation of

the three Neighborhood Justice Centers sponsored by the United States Department of Justice:

There is no clear evidence in the whole NJC study about the impact on the community. The goal of community development was not seen as a priority. . . . They could have considered a greater sense of control and sense of resources available to community residents . . . or collective action on community-wide problems and people beginning to perceive their problems as community-wide and not individual . . . or translation of individual grievances to social action (1982a:56).

Many of those who testified in the Congressional Hearings on Minor Dispute Resolution in 1978 and 1979 can hardly be identified with the interests of disputants--e.g., the United States Chamber of Commerce, the National Association of Counties, the National Center for State Courts, the Motor Vehicle Manufacturers Association, the National Housing Federation, Sears Roebuck and Company, and the Better Business Bureau (U.S. House, 1978; 1979). As Kidder notes (1981)

where programs are initiated from outside the community, they express the interests and generalized perspectives of various parties seeking to influence centralized governmental policy. These parties include economic institutions, politicians, government bureaucrats, and professionals acting as advisers (428).

These influences that Kidder describes explain how, for example, informalism can be understood as a response to the growth of consumer and tenant rights (Lazerson, 1982).

Planners of dispute resolution, then, are not community residents and users of the forums. Planners generally stress the prevention of conflict, reducing the overload on the judicial system, reducing claims against the state, reducing delay, the difficulties of making rational judgments, the complexity of disputes, and the need for consensus (Ford Foundation, 1978a; Sander, 1976). Their actions and agendas are not ones which suggest attention to disputants' needs, but

rather a concern to eliminate or minimize certain conflicts or challenges as inappropriate, dangerous, or threatening to an undefined conception of social order. As stated in an early planning document for the National Institute for Dispute Resolution:

The Institute will have made a difference if it helps convert what is presently a fragmented ad hoc series of initiatives into a coherent, unified approach--an approach that will build a structured capacity for negotiation and consent into American society (National Institute for Dispute Resolution, 1981:13).

The focus is on managing the tensions in communities that may lead to either the destabilization of social life or organized protest that can expand the boundaries of political action. All of these concerns indicate striking parallels with corporate planning more generally--especially the emphasis on system overload and the need for coordination.

Similar to urban planning, the organization of dispute resolution from centralized agencies is a means for coordinating the disruptions within the local political system and urban environments which partially result from economic dislocation and the advancement of substantive legal rights. It represents a restructuring of social control. And the notion of a threat to order and what constitutes disruption cannot be divorced from protecting the urban infrastructure for capital.

What planning accomplishes overall, to move beyond the impasse, is the rationalization, institutionalization, and homogenization of conflict. What were once historically separate areas of control now come together through the state, employing fairly uniform models of dispute resolution. These models are geared toward treating all conflict in the same way, regardless of content. The rationale is

thus order maintenance (Harrington, 1980). It deals with one element of the first social control problem of capital described in chapter II: to sustain working-class populations in their non-capitalist existence and inhibit destabilizing reactions to dislocations resulting from market forces and other planned restructuring of the social environment by capital.

But, as in other realms of planning, planning NDR creates contradictions. The first such contradiction concerns the politicization of justice. To the extent that the scope, procedures, and personnel of community justice can be the object of struggle, then people might reappropriate justice from federal planners and professional organizations. For example, the NDR concept may suggest to citizens that institutions other than courts, with less authority, can handle some of their problems. Since NDR lacks a history and ritualized norms embedded in the formal legal culture, the organization of NDR would appear more open and flexible as organized by ordinary citizens.

Second, because NDR forums are novel institutions, the process of planning them may offer a public forum for questioning the foundations of the legal system and debating the interests behind and consequences of selecting a particular procedure or policy. In practical terms, NDR's vulnerability occurs in the balance that must be struck between (1) providing a forum that does not lead users to demand more from this institution on their own terms while (2) offering a particular sense of order about handling conflict in communities by involving the participants in the procedures. But even apart from collective demands, NDR is open to ideological challenge because it does not rely

solely on symbols but on an open-ended process open to public debate. Moreover, the newness of the institution, its flexible procedures, and citizens' perceptions that derive mostly from the traditional judicial system generate expectations that cannot always be met. According to a mediator in Miami, "they [disputants] feel they're going to get justice. They don't understand mediation" (Interview, 1979). It is therefore highly vulnerable to transformation from below that may lead to expansion of extralegal methods of protest and organization of the community around collective interests.

At the same time, community residents can learn skills in negotiation, mediation, and advocacy that enhance their legal and political competence. NDR forums embody, in principle, the characteristics that would define them as community-oriented, e.g., community solidarity, responsiveness, self-management of disputes. This potential for popular justice is a contradiction, an aspect of its dialectical quality. NDR handles conflicts that disrupt labor power: sustaining its circulation and reproduction without tensions that interfere with it in everyday life. Similar to other forms of control described earlier, it involves people in a process disassociated from their governing that process while simultaneously suggesting, in the process itself, that citizens control it. Thus the potential for undermining NDR as planned by the state is inherent in its central features.

B. Expanding and Intensifying State Power

Chapter II explained how and why state power expands into civil society to regulate almost all aspects of social life. Such intervention occurs through a variety of "helping" agencies situated in the community. The state expropriates power and authority from civil society by creating bases for legitimation with a "human face," undermining failing institutions, and concealing state authority (Wolfe, 1977). What is relatively new about the expansion of state power is its timing, scope, methods, and penetration into what were formerly peripheral areas of interest in everyday life (Santos, 1982; Spitzer, 1979).

But how do informal dispute resolution procedures potentially expand state control by restructuring and managing conflict as it does and the ways disputants' lives are penetrated? How is expansion not only a response to disruption but a means to create a basis for social control--to make citizens more accessible to the state?

One important structural feature of informalism in NDR forums that expands the range of social control is the coordination of what were once formerly discrete sources of control directed at different social populations. That is, what are usually treated as separate problems by separate agencies, e.g., health, education, family problems, can now be interrelated in common tasks in maintaining social order (Morgan, 1981; Donzelot, 1979). These agencies, through the judicial apparatus, are now brought to bear under a central auspice to regulate conflict in more coordinated fashion (Johnson, 1978:17). For example, a few dispute resolution centers now rely

heavily on social service agencies and police for referrals and as places to refer disputants (Dispute Resolution, no. 3-4, 1979; Delappa, 1977). The resolution sought by a mediator may require one or both disputants to contact a network of social service agencies (see Table III-4) that diagnose and monitor them over an extended time (Snyder, 1978). A mediator in Florida explained the process in her program this way: "If I think there is an emergency I will refer someone right away. If they need personal counseling, I wait to see the outcome of the hearing. Usually I contact the referral [protective services, family counseling] agency and make the contact for the party (we have a list of agencies). The party must call but I give the agency the name to let them know they're coming" (Interview, February, 1979). These referrals are typically understood by some mediators as cures for or assistance with other problems that relate to the dispute (Interview, 1979). In some forums that accept quasi-criminal or even non-criminal disputes, the parties sign a legally binding document in which they agree to work with social service professionals in employment, counseling, and educational settings (Pima County Mediation Project, 1979). With the creation of more informal systems of control, such as the neighborhood dispute resolution center, people who were once ignored by institutions of control because they violated no law or could not be effectively regulated are potentially engaged by them. Their problems are socially disruptive for capital as we have indicated, but not in a way that previously could be readily managed. Informal dispute resolution processes develop a connection between individuals and an official state process that otherwise would not have existed. A description of

TABLE III-4
 (DADE COUNTY CITIZEN DISPUTE SETTLEMENT CENTER)
Primary Agencies CDS Refers to

Weighted Score	Staff Prioritization		Mediator Prioritization		Weighted Score
	Times Listed	Agency	Agency	Times Listed	
51	6	1. Safe Streets Units-Police	1. Marital/Family Counseling	9	62
46	6	2. Legal Aid/Services	2. Alcohol Program	5	30
28	5	3. Marital/Family Counseling	3. Legal Services	5	27
28	4	4. Domestic Relations Unit	4. Mental Health Program	4	26
28	3	5. State Attorney's Office	5. County Welfare	4	25
23	3	6. Dade Bar Association	6. Drug Programs	2	10
23	3	7. Landlord/Tenants Assoc.	7. Courts	2	10
22	4	8. Bettered Women's Shelter	8. Youth Services	1	6
16	3	9. Minimum Housing Board	9. Consumer Advocate	1	6
16	2	10. Small Claims Court	10. Food Stamps	1	3
14	2	11. Consumer Protection Agency	State Attorney's Office	1	3
11	2	12. Animal Control	11. Police	1	2
8	3	13. Victims Advocates Program	12. Police	1	1
6	1	14. Mental Health Probate	13. Traveler' Aid		
6	1	15. Building and zoning Dept.			
5	1	16. Alcohol Program			

Source: Moriarity, et al, 1977.

the Urban Court Program in Massachusetts notes

In cases where outside assistance can benefit the parties, the terms [of the agreement] may call for participation in alcohol, drug, marital or individual counselling. Clients are also directed to housing placement, employment training, health or other human service agencies (Crime and Justice Foundation, 1979:3).

An evaluation of the Brooklyn Dispute Mediation Center also argues for coordinated interventions.

Mediation might be more effective if it were made the first step in a sustained series of interventions. Such a program might involve repeated mediation sessions, counselling, and other social services if mediation is to realize its potential as an effective alternative to the prosecution process in cases that most need an alternative (Davis et al., 1980:65).

Another feature of informalism that expands state power concerns the inclusion of a broad range of social interactions in the subject matter deemed actionable. In many programs, case criteria for eligibility are broadly defined (McGillis and Mullen, 1977). These programs, like juvenile diversion programs, handle cases concerned not only with violations of law but also with behavior identified as a social problem or a threat to community stability. The range of subject matter handled is extensive (Florida Supreme Court, 1978; Garofalo and Connelly, 1980a; McGillis, 1982). One analyst suggests that a substantial proportion of cases represent new disputes rather than merely the diversion of controversies already in the courts, although data remain insufficient (Singer, 1979). But clearly most cases in many NDR forums would never have passed the charge stage (Pinellas County Citizen Dispute Settlement Project, 1978; Alper and Nichols, 1981:138). Informal procedures thus permit a wide variety of non-criminal but disapproved conduct to be subjected to scrutiny and even to sanctions. In some court-based programs

there appear to be no formal limitations on the discretion of court clerks, prosecutors, judges, and others in determining which cases are suitable for referral to mediation, no formal limitations on whatever discretion the mediation staff has in accepting referrals, and no formal limitations on the discretion of community mediators in conducting their sessions (Snyder, 1978:788).

Without the protections of due process--e.g., open hearings and rules of evidence--disputants may enter the system when they would never be processed by the courts, or even by the police (Harrington, 1980:ii). Once in the system, mediation cases are almost never dismissed. A study by the Vera Institute of Justice evaluating a program that handles mostly criminal cases (Davis et al., 1980) indicates that "most cases referred to mediation would have been dismissed if they had instead been forwarded to court for prosecution." In this study, "only 28 percent of the control cases resulted in misdemeanor guilty pleas or in transfer of the complaint to the grand jury for felony indictment. . . ." Those that may hesitate to participate, especially in quasi-criminal cases, are pressured to participate (Davis, 1982). In some programs, respondents sometimes receive letters (see Documents III-6 and III-7) on official stationery from the prosecutor's office (Morriarity et al., 1977). A program director in Florida commented that "an official document is a necessity, even though the program is voluntary. Otherwise they won't show" (Interview, 1979).

Unlike formal legal processes which usually occur after a serious breach of order and usually long after the precipitating event, informal processes emphasize immediacy of intervention and the prevention of future conflict (Blum, 1980; Felstiner and Williams, 1978; Snyder, 1978:751; McGillis and Mullen, 1977:196). Many

DOCUMENT 111-6
NOTICE TO APPEAR

ELEVENTH JUDICIAL CIRCUIT OF FLORIDA
METROPOLITAN DADE COUNTY
CITIZEN DISPUTE SETTLEMENT CENTER
METROPOLITAN JUSTICE BUILDING
1351 N.W. 12th STREET - ROOM 522
MIAMI, FLORIDA 33125

DATE _____ / _____ / 19
Mo. Day
QUESTIONS CONCERNING THIS
NOTICE CALL 547-7062.

Mr / Ms _____

Re

PLEASE BE ADVISED THAT A HEARING ON YOUR COMPLAINT OF _____
_____ AGAINST _____

WILL BE HELD BY THE CITIZEN DISPUTE SETTLEMENT CENTER OF THE ELEVENTH JUDICIAL CIRCUIT
OF FLORIDA YOU ARE HEREBY NOTIFIED TO APPEAR AT THE METROPOLITAN JUSTICE BUILDING,
1351 N.W. 12 STREET, MIAMI, FLORIDA, AT _____ : _____ PM, IN THE EVENING, ON _____ DAY,
_____ Mo. , _____ Day , 19 _____ , FOR A HEARING ON YOUR COMPLAINT. PLEASE REPORT TO
THE FIFTH FLOOR, ROOM 522, FOR YOUR HEARING ROOM ASSIGNMENT. PLEASE PRESENT YOUR-
SELF PROMPTLY. NO EXCUSE OF APPEARANCE WILL BE PERMITTED WITHOUT 48 HOURS ADVANCE
NOTICE.

Intake Officer
Eleventh Judicial Circuit
Citizen Dispute Settlement Center



DOCUMENT III-7

Uptown-Edgewater
Neighborhood Justice Center
4753 North Broadway Suite 1122
Chicago, Illinois 60640
Phone 561-4721

NOTICE TO APPEAR

(Sent to Respondent)

To:

A HEARING ON THE COMPLAINT MADE AGAINST YOU ON _____ BY _____
_____ HAS BEEN SCHEDULED/RESCHEDULED BY THE UPTOWN-EDGEWATER
NEIGHBORHOOD JUSTICE CENTER AS FOLLOWS:

DATE: _____

TIME: _____

PLACE: Uptown-Edgewater Neighborhood
Justice Center
4753 N. Broadway
Suite 1122
Chicago, IL 60640

NATURE OF COMPLAINT:

PLEASE ARRIVE AT THE CENTER 15 MINUTES BEFORE THE SCHEDULED TIME. BRING ALL PAPERS RELATED TO THE DISPUTE. THE CENTER REQUIRES 48 HOURS ADVANCE NOTICE TO CHANGE THE TIME OF A SCHEDULED MEDIATION OR ARBITRATION SESSION. IF YOU HAVE ANY QUESTIONS PLEASE CALL THE CENTER MONDAY THROUGH FRIDAY 8:30 a.m. to 5:30 p.m. REFER TO CASE #_____. IF YOU DO NOT APPEAR FOR THIS SESSION THE INITIATOR OF THE COMPLAINT HAS THE OPTION OF PROSECUTING THIS MATTER THROUGH THE COURT SYSTEM.

John W. Payton
Executive Director
Neighborhood Justice
of Chicago

-145-

NJC-6

Neighborhood Justice of Chicago is a project of The Chicago Bar Association

programs, for example, intervene before any agent or the parties file a formal complaint. Initiation of a complaint is easy and eligibility criteria are broad, unlike the criteria necessary for judicial action. Effective resolution is the objective, tempered by the "realization that legal rules constrain the capacity to handle the parties" (Educational and Psychological Development Corporation, 1978:2). The earlier the intervention "the more likely it is to have significant impact on the behavior of the persons involved in the crisis" (Ibid.:8). Such behavioral specificity is less likely in a judicial proceeding, governed by fixed procedural rules. Informal institutions are thus affirmative rather than reactive. They can expand the capacity of the courts to manage social life. As Snyder indicates, describing the comments of a judge in the Dorchester district which had a mediation project, without mediation cases would "have merely been continued without a finding or would have ended with the defendant on probation. [No] resource coordinator would be on hand to monitor such cases and help steer the parties into honoring their commitments to one another" (1978:775).

What elements of informality expand control? Informality reduces the appearance of state control and simultaneously expands the discretionary authority of its agents thereby expanding state power. Discretion is inherent in the administrative form.

[The administrative form of legalization] denies all class antagonism, appeals to general standards of harmony and public welfare, and pretends to focus on equity by emphasizing the unique circumstances of every case. . . . Defining some general goals about public and individual welfare, it legitimates virtually any administrative action or inaction. . . . It represents a return to unrestricted political power. . . . It delegitimizes social relations by liberating direct power which law tries to formalize (Reifner, 1982:84).

Informality is more flexible than judicial proceedings because it rejects principles that apply to all in order to realize some abstract public good. Supplementing law with informality can expand social control.

The development of state-regulated, monopoly capitalism has also witnessed the erosion of the rule of law and the emergence of less formalistic, more instrumentalist and technocratic modes of social and political control. The law as universal political equivalent gradually gives way to a series of relatively ad hoc techniques which, by their very nature, recognize specific interests and specific social origins. . . . Technocratic modes of social control imply a certain re-emergence of the content and quality from which the legal form abstracts (Balbus, 1977:586).

Informalism thus expands state power by blurring the distinction between public and private through an open-ended process that emphasizes, in its objectives, problem-solving rather than interpreting a legal rule. In this sense, it is policy oriented, purposive, and geared toward direct, substantive intervention.

In most neighborhood mediation programs there is no public record, no open hearings, no recognized rights, and no formal rules of evidence (Snyder, 1979). No one records the experience for future reference or appeal as in a trial court. Only the parties may be present although some programs do allow friends or witnesses. Legal rights embodied in judicial precedent or constitutional law do not apply. No subject is specifically excluded or included. All comments are generally welcome because the mediator does not judge but facilitates the movement toward a solution. The symbols of the state and direct coerciveness disappear: the location is an informal setting, the new symbolic language emphasizes civil, every day terms rather than legal terms (e.g., respondent not defendant, mediator not

judge, problem not deviance). Whereas in the courtroom the judge imposes decisions and manages cases through agreed upon rules, mediators use the discretion that comes with informality to invade and manipulate the psyches of disputants in order to achieve a solution. For example, here is a written instruction to disputants about how to behave in order for mediation to work.

BE CALM. Do not attempt to speak with the other party until you are calm enough to carry on a conversation without shouting, crying, or getting angry. Don't let the other party provoke you into an argument. If the other party starts yelling or behaving in an unreasonable manner, continue to be calm. You may have to leave and arrange to meet at another time, but if you allow the conversation to breakdown into a shouting match, you will probably lose your chance to work out the dispute between the two of you (Martinson, 1981).

The mediator can uncover information without concern for rules of evidence or facts. By probing parties about their feelings and attitudes, and encouraging them to express their feelings, mediation operates as a subtle form of policing that transcends traditional state activity in managing illegal behavior or even bureaucratic rule violations. The state can thereby provide specialized detailed interventions or treatment to deal with almost any form of social disruption. The state thus intensifies its penetration of civil society.

In contrast to the courts, mediation...is concerned with uncovering the dynamic of the interpersonal problems from which the incident arose. While the initial focus of a mediation session may be the incident, the mediator guides the disputing parties toward an agreement which is intended to minimize future conflict rather than apportion guilt and sanctions. Based on the assumption that there is an underlying problem, a mediator attempts to understand and to solve the dispute from which the incident arose. Thus, both the complainant and the defendant are encouraged to present their sides of the story and

to propose solutions acceptable from their respective viewpoints (Davis, et al., 1980:40).

Few limits are imposed on the issues investigated if discussion helps disputants reach agreement. Intake counselors usually solicit much diagnostic information from participants before the hearing. Within the mediation session, many programs encourage disputants to "tell their stories," ventilate their feelings, and otherwise reveal details about their personal lives. According to Greason, a psychologist and mediator in a small claims court in Maine, "the mediator can let people speak emotionally and irrelevantly, even shout obscenities if necessary. This at least clears the air and convinces people that they are being heard--that what is important to them is being listened to" (1980:578). The purpose is not to punish or reprimand but rather to understand the roots of the conflict. In doing so, mediation deals with the totality of the individual (e.g., character, behavior, feelings, history) and not merely the situation. Courts may do this too. But in mediation the emphasis on the social rather than the legal aspect of conflict is a central characteristic (Merry and Silbey, 1983). Such therapeutic openness magnifies the extent to which the state penetrates the lives of disputants: Their deepest emotions and most personal problems become part of the process of conflict resolution. This intervention itself is regulation, a form of policing, regardless of its effect on the outcome (Feeley, 1980). Why? It is a self-deceptive catharsis induced and organized by the mediator as a means to contain "anti-productive" emotions and manage the parties. Such management is not the rationale a friend or even a psychotherapist would use in having someone reveal themselves. The nature of the interactions or bond with the mediator is not one of

mutual caring or trust. This reminder to mediators gives some indication of the distinction:

LET THEM VENT: A lot of the time, the problem is simply that no one will listen to their frustrations with their tenant/landlord. Once they get it "off their chests" they are better able to get down to business. (Martinson, 1981).

These programs can also be understood to penetrate disputants' lives in the requirements stipulated in the agreements. The content of many agreements often contains detailed references to changes in behavior or attitude that would ordinarily appear beyond the purview of the state. The following summary of cases from a program in St. Petersburg, Florida offers an indication.

Twelve year old Mike and 11 year old Bob live next door to 80 year old Mrs. Croff. Mike and Bob's mother is divorced and works every day and Mike and Bob are alone after school. The boys play in their back yard, and whenever their ball or frisbee comes into Mrs. Croff's yard she runs out and takes the toy and keeps it. The boys try to jump over the fence to get the toy and when Mrs. Croff sees the boys do this, she calls the police. The boys' mother and Mrs. Croff have had arguments and the boys' mother told Mrs. Croff to "_____ off". Mrs. Croff thinks this woman should be put in jail for such awful language.

RESOLUTION:

A hearing was held and Mrs. Croff agreed that she would not keep the kids' toys; rather will throw them back over the fence. She agreed not to call the police about the boys unless she talked first with the mother. The mother agreed she would not swear at Mrs. Croff and would talk in a normal tone of voice. So far, no more trouble.

Mr. Bowser keeps two German Shepherds in his yard. He has a 60' lot as do his elderly neighbors. Mr. Bowser works the three to eleven shift and the two dogs bark continuously. The neighbors have called the police on several occasions but the dogs aren't barking when the officer arrives. The elderly neighbors have called the mayor and lots of other people before a

police officer sends them to C.D.S. A hearing is set before a mediator at C.D.S.

RESOLUTION:

Mr. Bowser makes arrangements to send one of the dogs to live with his former wife for protection. He agrees to keep the other dog in his garage while he is at work. So far, no more trouble.

Georgia Smith is beaten every Friday by her husband Fred because he spends a good portion of his weekly paycheck on booze. The police are called to the house almost every Friday. Mrs. Smith wants to prosecute each time, but never appears for a State Attorney investigation. Finally, an officer refers her to C.D.S.

RESOLUTION:

The couple comes to a hearing and talks to a psychologist. Mr. Smith agrees to come home after work each Friday and Mrs. Smith stops by and picks up the paycheck weekly. They agree to go to family counseling. Mr. Smith agrees to attend AA. So far, no more trouble.

Mr. Swinger and Mrs. Straight have been neighbors for about a year. Mr. Swinger keeps late hours, plays his stereo rather loudly until 1:00 A.M. and has an assortment of women friends who sometimes visit Mr. Swinger and sun in his back yard on weekends. Mrs. Straight has to get up at 6:00 A.M. to go to work and needs her rest, and she is used to living in a "nice, respectable neighborhood." After answering three noise nuisance calls in two weeks, the police referred both parties to C.D.S.

RESOLUTION:

At the hearing, Mr. Swinger agreed to turn his music down promptly at 10:30 P.M., so Mrs. Straight can go to sleep. Mr. Swinger further agreed to ask his friends not to make excessive noise outside. Mrs. Straight agreed to call Mr. Swinger instead of the police if there is any further problem. So far, no problems.

Equally important, the mediator, in seeking a successful outcome, may subtly pressure disputants by hinting at the possible negative consequences of failure--the threat of return to court or channeling

them toward an agreement (Snyder, 1978; Garofalo and Connelly, 1980b). Violation of the agreement can result in the initiation or renewal of prosecution (Davis et al., 1980).

Just as workers are monitored in the workplace (Edwards, 1979), offenders supervised by probation officers (Cohen, 1979), and welfare recipients investigated by social workers (Piven and Cloward, 1971), so parties in the neighborhood dispute resolution forum may find their lives exposed to continuing scrutiny. The form of regulation may be less overt and obtrusive than in other institutions, but it still reflects a restructuring of control from a focus on limited action that violates specific norms to a concern with behaviors, habits and attitudes, and the defiance of bureaucratic authority.

Perhaps the most critical feature of NDR structure that expands the capacity to penetrate civil society is the centralization of authority and decentralization of function. This feature parallels the logic of corporate planning, as well as the form of the phenomena described earlier such as decriminalization, decarceration, and deinstitutionalization.

Nancy DiTomaso, in a study of the department of labor, explains how the combination of decentralization of function and centralized authority obscures the basis of power.

Precisely because hierarchy concentrates power, it also makes it more "visible." In hierarchical organizational structures, the locus of power is more easily identified than in dispersed organizational structures. When the locus of power is more visible, then the "point of change" is also more easily identified. Therefore, under conditions of resistance from subordinate classes, a diffusion of power of decentralization may be the "best" means to maintain the existing relationships of domination--all other things being equal--because decentralization scatters the point of change (1978:84).

This analysis may be applied to neighborhood mediation. The activities of such dispersed organizational structures have much less visibility than courts. Their locus of power is not as easily identified, even though most state-funded dispute resolution programs either are directly regulated by judicial authorities or are dependent on them for cases. The state thus retains its monopoly over justice and expands its capacity to regulate diverse populations.

More important, the decentralization of function, apart from obscuring the basis of power, also secures control more effectively in practice. It accomplishes this by expanding technical capacities and reducing political resistance. For example, it is no longer necessary to house people in large institutions in order to watch them closely (Jankovic, 1977). Modern technology available to an NDR program and to social service professionals (computers, information systems, surveillance equipment) permits monitoring by community based facilities. The state is relieved of the burden of a recalcitrant, intransigent group of patients or inmates who might organize and demand legal rights.

Moreover, more effective control is possible than within total institutions such as prisons or mental hospitals or through the authoritative but limited interventions of the police (Cohen, 1979). The NDR is organized to manage social environments (See Spitzer, 1982; Hirschhorn, 1978). Its orientation seeks the modification of behavior and the internalization of values to suit immediate social conditions and labor market demands. The law restricts judicial options in processing cases and makes it difficult to tailor responses to

community circumstances. Informality allows dispositions to be adapted to a specific social purpose.

The range of control of the dispute resolution centers, like that of other modern mediating institutions, is limited by the effects of the growing fiscal crisis of the state (O'Connor, 1973). In O'Connor's view, the state experiences difficulty in its capacity to manage the social crisis caused by uneven development and increasing social demands. But these forums do not require large expenditures or extensive planning. They may be established fairly quickly and inexpensively because their implementation does not depend on a legislative act or a judicial rule, which are needed to restructure the courts or create new social programs.

The flexibility achieved through decentralization of function and the expansion of discretion in the NDR program thus permits the state to penetrate certain private aspects of civil society that become problematic for capital. Informalism not only conceals the exercise of state power but presents the appearance of a contraction of state power when such power merely takes another form (Santos, 1982). In this way, NDR represents a response to the impasse resulting from the boundedness of the judicial system as a tool for social interventions. However, although the opportunity for precision and flexibility increases, there are contradictions.

First, by bringing new cases into the judicial system that would not have entered it (as opposed to diverting old cases), the state expands its managerial requirements yet still may not have the capacity to manage what enters its purview.

Second, discretion is political. By expanding discretion the potential for resistance increases since, without fixed rules, procedures may come to be questioned, ignored, or undermined.

Third, in the long run, the extension of state power, no matter what its institutional form, is likely to reveal itself as an apparatus of the state. This is so because of the inherent tension between the requirement of managerial efficiency within the state and the pretension to community-owned justice--similar to the problems identified by Heydebrand (1979) in the judicial system, more generally, between the system's administrative requirements and the judge's role as a provider of justice. Abel expresses the dilemma for informal mediation more directly

[C]entral control undermines the autonomy of local institutions. . . . [T]he state, in the name of informality, destroys indigenous, traditional informal justice and substitutes institutions that serve to extend central control, implement national programs, enhance the legitimacy of the official legal system by appearing to improve access, and undermine local community (1982b:5).

C. Integrative Social Control

The direct imposition of social control by the state through planning and the expansion of state power represents one structural element of control. Imposed control entails coordination and rationality that defines the structure of the mediation process from sources external to the parties. We have indicated the ways in which the structure of mediation at this level is linked to the control interests of state and capital.

Informal justice is also a form of integrative control--incorporating citizens into the social order through a decentralized

state institution embedded in the ordinary processes of social life. Chapter II referred to the way in which the state penetrates peripheral areas of social life with greater intensity and new applications of integrative control. Informal dispute resolution is another mechanism by which the state seeks to establish itself in the community to deal with disorder and to create a basis for social control. It is a disguised, quasi-bureaucratic police force that places itself between social classes to stabilize as well as to penetrate community life. Such a mechanism resolves risking the use of infiltrators and becomes, like federally-funded community action programs in the 1960s, a means of developing an indigenous monitoring agency. But unlike new forms of incorporation which seek to integrate citizens into conventional politics, the neighborhood dispute resolution forum creates an alternative to any kind of political action. And, also unlike some other state-organized community institutions, these forums employ a new type of procedure in an arena normally understood as externally imposed--the law. Thus, integrative forms of control are not new, but they are new as applied to informal justice because the rule of law as exercised within the judicial system is traditionally an imposed form of control. In NDR social control is not merely linked with integrative institutions such as social welfare agencies; it is itself applying integrative forms. Moreover, the integrative form represents a reassertion of more traditional forms of community-based social control but without any organic connection to the social environment. My proposition is that NDR falsely affirms the neighborhood as the basis of justice through a language that reifies community--it presents an idea of community and

collective self-help that is contrived, uses community culture against itself as a form of regulation, and, by its presence, distracts attention from broader community issues. A forum is created that offers an alternative to the neighborhood, community organization, or union meetings in which collective action might occur.

Integrative control is explored at two levels, first as it operates as a force on the community as a whole, as directed by state planners. Second, it is explored as practiced on individual disputants within the mediation process--the informal features planned at the top but legitimated at the bottom which incorporate disputants into the social order without the overlay of coercion, threats, formal rules, or propaganda.

Integration at the level of community. Control at the level of community at first appears to be an oddity because the community, traditionally a force against capitalism, now is a form of self-control. Citizens, as we shall indicate, enter neighborhood mediation at the level of the state's logic not their own participation or authority. The neighborhood mediation program appears as a representation of the collective, of the community rather than as an obvious form of alien authority which citizens normally resist and recognize as administrative control. It is managed by agents of the state but administered by lay people trained in its techniques.

But how is NDR able to establish itself in the community, as being of the community? How is it accomplished at the level of planning mediation and presenting it to the public--prior to the process? How do people suddenly become aware that they have

conflicts, that an agency exists for solving them, and that the agency is really themselves working with a mediator? A central question is how the state establishes itself in the community uninvited, and how, in Abel's words, it "renders the disadvantaged more accessible to the state" (1982a:258). This can prove especially difficult given that these dispute resolution institutions are not organically connected to neighborhoods, and support interests and agendas not especially related to the body politic as a whole. On the other hand, it may be enticing to people who ordinarily fear involvement with the judicial system, as a result of high costs, time, and a lack of knowledge. A staff member in the Ft. Lauderdale program noted that mediation "is fast, free, personal, and without guilt or penalties (Interview, February, 1979).

Three aspects of control at the level of community are identified: involvement, the rhetoric of community empowerment, and the rhetoric of popular justice or the helping agent. Each of these contains both ideological and practical elements. The purpose in all cases is to capture people's attention, to draw them into the institution of their own volition in a manner distinct from formal, legal, bureaucratic agencies (see Documents III-8, III-9, III-10, and III-11).

Involvement or participation, a first element, refers to those actions or appeals that seek to include people--providing them with a sense of access, opportunity, and efficacy.

Sometimes the planners of dispute resolution programs openly express the way in which community participation is necessary as a means, not only of securing community support, but to enhance the

likelihood that potential disputants will use the program and achieve resolutions.

The broad involvement of community agencies is vital. . . . Probably the most important role for the community is in the promotion of the Center and the concept of mediation/arbitration for resolving minor disputes. Since the participation of both disputants is voluntary as is compliance with the resolution reached, community pressure is one means for achieving both of these goals. Thus, community support for the Center must be obtained (Klein et al., 1978:42-43).

In specific appeals to potential parties, strong emphasis is given to the sense of opportunity available to solve a problem through disputant-controlled decision making. Appeals to participate are found in newspaper accounts, planning documents, and program brochures such as the following from Houston, Texas (Document III-8). An example of the appeal to access as opportunity is revealed in the following statement from Sam Williams, then president of the Los Angeles County Bar Association.

People really have no place to go. . . . There is a void. They had no means in the community until now. Now a lot of the responsibility for resolving disputes will be shifted from the courts to the community center where it really belongs . . . (July, 1978).

Emphasizing the use of lay persons as mediators is another method of involving citizens. It could of course suggest that the programs are seeking to represent the community. A staff member in St. Petersburg told me that "disputants have a sense that they can play the game too--not by lawyers' rules" (Interview, 1980). However, the planners often comment about the rationale for lay mediators:

The majority of the centers have employed lay persons. In each case, the goal of educating citizens to the judicial process prompted the decision to use this model. Of equal importance was the feeling that citizen involvement was germane to the concept of the neighborhood justice center. This rationale outweighed

DOCUMENT 111-8

Maybe you are having a dispute that you can't seem to work out. Perhaps it is relatively minor, or perhaps you are considering going to court or calling the police to file a complaint. Or, perhaps a complaint has been filed against you. You can now choose to settle the matter quickly and without cost through the Neighborhood Justice Center.

The Center offers parties in a dispute a chance to explain their side to an impartial mediator. Mediators are trained to help people reach a lasting settlement. They do not force a solution. Instead they help people reach their own agreement. If the parties cannot agree, they may still pursue the matter in court.

A mediation session is scheduled only if all parties voluntarily agree to participate. The sessions are generally held at night, but they can be scheduled during other times of the day or on weekends. If you would like more information about Neighborhood Justice Center, please call (713) 222-8274.

A project of the Houston Bar Association.

Source: Neighborhood Justice Center, Brochure, Houston, Texas.

the time and cost incurred to recruit lay persons and train them in the mediation process (Klein et al., 1978:95).

The mediators are presented and present themselves as friendly, neutral, concerned, patient, respectful, understanding, and thoughtful (Cook et al., 1980). Yet mediators are typically strangers, in many cases trained professionals who are not of the same social class as disputants (Felstiner and Williams, 1978; Merry, 1979; Starr, 1981). A mediator in the Ft. Lauderdale program explained bluntly that, in mediation, "middle-class values dominate in contrast to working-class values. Sometimes both parties are treated like defendants because of their social status" (Interview, 1979). Project evaluations are careful to ask disputants about satisfaction with the process and particularly how they felt about the personal qualities of the mediator (Cook et al., 1980; Davis et al., 1980; Felstiner and Williams, 1979). The majority of disputants typically say they found the mediator helpful. The Cook study of the three LEAA Neighborhood Justice Centers found 88 percent to be satisfied with the mediator as well as the overall experience (see Table III-6). Asking disputants questions about their feelings may be interpreted as a process of legitimation (see Table III-5). The project location itself suggests the absence of the state. "A neutral setting conveys an image of impartiality and accessibility . . . an official setting may reflect the coerciveness of the program" (Trzyna and Knab, 1978).

A final aspect of control at this level is the presentation of the NDR as a form of popular justice and a helping institution--to be differentiated from legal, professional, or bureaucratic institutions--and one that offers justice more simply and

TABLE III-5
 (DADE COUNTY CITIZEN DISPUTE SETTLEMENT CENTER)
Ratings by Parties as to Characteristics
of Mediators

<u>Scales</u>	<u>Variable</u>				
	<u>Well Prepared</u>	<u>Understanding of Problem</u>	<u>Attentive</u>	<u>Pleasant Personality</u>	<u>Pushy</u>
Strongly Disagree	7.7	5.6	4.4	1.6	3.4
Disagree	6.6	10.7	6.7	5.4	7.3
Agree	48.1	51.1	51.7	52.2	47.5
Agree Very Strongly	35.9	30.9	35.6	39.2	39.5
Unclear	1.7	1.5	1.7	1.6	2.3
Missing (Raw Number)	$\frac{(16)}{100}$	$\frac{(19)}{100}$	$\frac{(17)}{100}$	$\frac{(11)}{100}$	$\frac{(20)}{100}$
$\bar{X} = 3.221$	$\bar{X}=3.221$	$\bar{X}=3.174$	$\bar{X}=3.283$	$\bar{X}=3.387$	$\bar{X}=3.350$
	SD= 1.052	SD=1.018	SD=.970	SD=.877	SD=.966
	Med. = 3.241	Med. = 3.159	Med.=3.253	Med. 3.325	Med.=3.327

Source: Moriarity, et al., 1977.

TABLE III-6
DISPUTANT SATISFACTION FOR MEDIATED CASES FOR NEIGHBORHOOD
JUSTICE CENTERS IN ATLANTA, GA., VENICE, CA., AND KANSAS CITY, MO.

<i>Index/Response</i>		<i>Disputant</i>		
		<i>Complainant (percent)</i>	<i>Respondent (percent)</i>	<i>Total</i>
<i>Satisfied with overall experience at NJC?</i>	<i>Yes</i>	428 (88)	347 (88)	775
	<i>No</i>	43 (9)	30 (8)	73
	<i>Somewhat</i>	18 (4)	17 (4)	35
<i>Satisfied with mediation process?</i>	<i>Yes</i>	414 (84)	335 (80)	749
	<i>No</i>	61 (12)	41 (10)	102
	<i>Somewhat</i>	15 (3)	21 (5)	36
<i>Satisfied with mediator?</i>	<i>Yes</i>	432 (88)	348 (88)	780
	<i>No</i>	39 (8)	28 (7)	65
	<i>Somewhat</i>	19 (4)	21 (5)	40
<i>Satisfied with terms of agreement?</i>	<i>Yes</i>	335 (80)	296 (83)	631
	<i>No</i>	65 (15)	45 (13)	110
	<i>Somewhat</i>	20 (5)	17 (5)	37

Source: Roehl and Cook, 1982.

inexpensively. Projects in Delaware, Colorado, and New York provide examples from their brochures (Documents III-9; III-10; III-11). Although many of the appeals emphasize self-reliant communities, community empowerment, the general affirmation of the neighborhood as the basis for justice, and an alternative to impersonal forms of law and government, no evidence exists that any state-sponsored program has been established to accomplish these ends or that has in fact achieved them (Garofalo and Connelly, 1980b:606). What all of the orientations share is the notion that conflicts involve problems in human relations not law (Greason, 1980), and certainly not class.

To the extent that citizens use NDR, they are potentially diverted from expressing discontent through other political and community organizations--whether complaining to a local consumer protection agency or engaging in a rent strike. And, as Tomasic argues, "the neighborhood justice movement clearly can be seen as serving a legitimizing function and consequently deflecting or diverting criticism of the formal legal system with its significant inequalities" (1982:246).

Integrative social control at the level of the disputant: the mediation process. Integrative control in a process such as mediation is very different from that secured by technocratic-administrative control which people increasingly reject (Katznelson, 1981). It differs too from direct cooptation because, rather than integrating citizens into a conventional political process, it eliminates politics altogether. Disputants internalize the values embedded in the process. And what they internalize is a conception of order-maintenance and self-help that disorganizes and contains the

**WHAT IS THE CITIZEN DISPUTE
SETTLEMENT CENTER?**

The Citizen Dispute Settlement Center is sponsored by the Wilmington City Law Department as a new alternative to the traditional criminal prosecution of neighborhood and domestic disputes. Most people really do not want to take friends, relatives, or neighbors to court. They rarely wish to lose time from work, have someone pay a fine or perhaps even go to jail.

Now you can bring your problems to the Citizen Dispute Settlement Center where both parties to the disagreement discuss ways to solve their problems with a hearing officer rather than dealing with criminal charges.

**HOW THE CITIZEN DISPUTE SETTLEMENT
CENTER CAN HELP YOU:**

The settlement session is not a formal court hearing, nor is it designed to place blame. Its purpose is to find meaningful solutions to the problems of people in the Wilmington Community.

Source: Brochure, 1979.

DOCUMENT III-10
(CENTER FOR DISPUTE RESOLUTION, DENVER, COLORADO)
PROJECT SYNOPSIS NARRATIVE

NEEDS AND PROBLEMS: The money and emotional costs of litigation often exceed the benefits to be obtained. Many interpersonal disputes are not well suited to litigation. Often litigants must spend more money to seek "justice" than is at issue. The courts are overloaded and are increasingly subjected to non-justiciable disputes by an increasingly litigious society. The great time-delays between the initiation of the dispute and a final determination leave many disputants with unresolved anger that can and does flare into angry and often criminal behavior. Increasing segments of society from the poor to the middle class cannot afford the time and money to seek court resolution, and desire only an equitable settlement to which both sides can agree. Such concerns and problems have prompted the U.S. Department of Justice to sponsor several centers for dispute resolution throughout the United States.

Source: Center for Dispute Resolution, Denver, Colorado, Newsletter(April,1980).

Albany Dispute Mediation Program

DOCUMENT III-11

Mediation helps solve problems.

Mediation is a process which helps to solve "people" problems, such as:

- husband-wife disagreements
- parent-adolescent child conflicts
- school related problems
- property disputes
- problems with neighbors
- harassment; vandalism

Instead of staying angry, involving the police, feeling helpless or going to court, you can call the Albany Dispute Mediation Program at 436-4958.

Mediation works like this:

At an agreed upon time and place, the people involved sit down with two trained mediators. Each side explains, without interruption, how they see the problem. Discussion follows. The parties themselves propose, discuss and agree to a satisfactory resolution. This is written down and copies made.

The mediators are neutral "go-betweens" who help clarify and maintain focus on the problem at hand and on its resolution, without getting distracted by side issues. They are not judges and don't take sides.

Mediation has these advantages:

It's useful anytime both parties agree to use it.

It's free. There's no charge whatsoever.

It's convenient because mediations are done in neighborhood church or community rooms - evenings, days or weekends.

It's confidential. Each party's privacy is respected.

It's satisfying because the people involved settle the conflict and create a workable, mutually agreed upon solution.



-167-

727 Madison Avenue
Albany, New York 12208
436-4958

potential for collective action by manipulating and diverting attention. The process in mediation is different than popular justice--what people do for themselves without the state (Santos, 1982; Buckle and Buckle, 1982; Spence, 1982).

Integrative control applied to socio-legal relations is a recent phenomenon and transcends anything that the judicial system and legal rationality were ever established to handle. Regardless of its legitimating functions, the formal judicial system is primarily a form of external-imposed control when applied to interpersonal conflicts. The basic element in the transformation to integrative control concerns the shift noted earlier from actions imposed by an outside agent such as a judge to manipulation through a process. Instead of people confronting the law as an external agency, which creates problems of legitimation, they confront each other through an institution in the community analogous to social service agencies. But it is more than this. It is a form of self-regulation, the community controlling itself.

Integrative control is a form of power inherent in the process of mediation and not merely the outcome (Mather and Yngvesson, 1981). The law is not an instrument of control; rather legal relations themselves constitute a form of control. Control is embedded in the process as the division of labor constitutes, in its elaborated form, control over the labor process and therefore control over the labor class independent of state control and other forms of external control. Through informal mediation, the state burrows from the inside within an agency free of traditional trappings of the state. For example, similar to the way in which a company union controls

workers or the way in which a prison warden uses inmate culture as a device for inmate control, informal community dispute resolution represents the state controlling the disputant, but without the conventional trappings of the state.

Instead, as we shall indicate, neighborhood mediation programs use a system of collective social legitimation for what is in reality a process primarily designed by public officials that maintains hegemony. This is the essence of integrative control as it operates in neighborhood dispute resolution centers. The mediation process disguises its administrative, order-maintenance rationality and manipulates the social process of everyday life by the way it presents conflict--as interpersonal and particularistic. The politics of integrative control can be understood in its class context by exploring the interests at the level of the mediation process and its components, and how that process and its forms or stages meets or fails to meet those interests. The central questions are: what makes informal dispute resolution a form of control? How does it, in its process, establish itself as a form of control, and how does this control relate to class interests?

There are at least three characteristic components that define the process as control similar to those described in II: (1) the appearance of disputant control through involvement and participation of the parties; (2) the definition of conflict as interpersonal; and (3) the resolution of disputes by consensus and accommodation. For each of these components we want to demonstrate that they are elements of mediation, what makes them social control, how that control is established, and the implications. The case material derives from

program documents, mediator training manuals, and transcripts from mediation sessions.

Within the discussion of each element is also an analysis of how legitimation is constructed for mediation through the mediation process. Once the legitimation of the process occurs, control can then occur. For our purposes, legitimation is constructed when the disputing parties (a) interact in the process and its outcomes without question--that is, the parties agree tacitly (by participating) not to challenge the process regarding how disputes will be resolved and (b) resolve a dispute through a binding resolution that ends the dispute: both parties accept the result. Informal mediation must accomplish these two objectives in order to be successful. Within the structural conditions, there is great variability. However, the interactions during a mediation session can only be understood in so far as they confirm the structural boundary conditions of the process and do not violate them--for example by interrogating disputants or imposing a solution. It is necessary to negotiate not only the result of a dispute but also the terms of its resolution. The legitimacy of a dispute develops through a rule arrived at in the process and by which the parties can conduct themselves. That rule is not a legal rule. It develops in the situation in response to the features of the situation that could not be predicted in advance since no one knows what the parties will be like or exactly how they will interact. (See Sudnow, 1965 for an analysis of how organizational perspectives in the criminal justice process, rather than predetermined logic, influence the rules of the system.) These features, when we find them, guarantee that informal mediation meets and confirms its boundary

conditions--those conditions that define the phenomenon as mediation and not a formal legal procedure. If over time, for example, mediation programs began to define rights, rule of evidence, etc., it would violate the characteristics that define the process as mediation. The patterns of interaction, without recourse to external forces or other structures, now guarantee the legitimacy of the process. This is part of what it means to say that legitimacy is internal to the process. Legitimation cannot be assumed in advance from the official rules for mediation or anything we know about capitalism, social control, or prevailing legitimation mechanisms. Integrative control, as part of its definition, requires relatively autonomous institutional forms which cannot be predicted in advance. If the source of control is recognized, it limits the potential for integrative control. The mediation process is not necessarily a rational response to the specific conflicts that come to the attention of NDRs, although the nature of the exchange within them is in part organizationally required by the rules of mediation, implicit and explicit.

The illusion of disputant control: managing disputes and involving the participants. Advocates of mediation contend that mediation is a disputant-controlled process, in contrast with the courts, whereby the parties actively devise agreements on their own terms (Delappa, 1977; Sander, 1976; Nicolau, 1975:1-4,5). This construction is inaccurate (Felstiner and Williams, 1978). Mediation is a highly structured, nondemocratic if informal process, dominated by its rules and the capacities of mediators to manage disputes. The rule of law is replaced with another set of rules, less explicit. As

Abel notes, in these informal institutions

. . . conflict is confined by clearly demarcated, relatively rigid boundaries. These are temporal (conflict has a definite beginning and end), spatial (conflict may only be waged within certain arenas) . . . , institutional (jurisdictional rules ensure that only one institution will have competence), strategic (violence is prohibited, rhetoric may be restricted), even linguistic (certain forms must be used, others must be) (1981:253-254).

Moreover, the precise way in which disputants are engaged in the activity, as will be indicated, is a form of integrative control. At a surface level, if mediation is to be accepted as a legitimate process, disputants must believe they influence it, that it belongs to them. Integrative control depends on a process that provides a strong sense of participation and involvement. That involvement, typified by the idea of "mutually acceptable agreements" constitutes control. Why? Because, as we shall indicate, disputant control and a "free exchange" between the parties is an illusion. The perpetuation of that illusion enables the state to manage conflict and secure control without conventional resistance. Participation generates consent to the rules of mediation similar to the way in which some applications of participation operate in the labor process (Burawoy, 1979) and in community service agencies (Katznelson, 1981).

We want to demonstrate, first, that disputants do not control mediation--that it is not, in its practice, a free, voluntary exchange. Second, we want to consider how its dynamics as a process falsely present the appearance of disputant control when involvement is passive not affirmative.

In order to demonstrate the first point we need to show that there are structured rules that guide mediation and that the mediator

is not a passive referee but an active participant, instructed to keep matters focussed and to define boundaries for interaction (Davis et al., 1980). In the words of a study by the Vera Institute of Justice, the mediator was "an active participant . . . reinterpreting disputants' perceptions, steering the parties towards what the mediators believe to be fair and effective solutions, reinforcing social norms of how relationships ought to be conducted and providing emotional support to those who needed it" (Davis et al., 1980:44). Each instance of mediator discretion provides an opportunity for conflict and resistance by the parties. Mediator decisions are therefore political decisions, which can be indicated by examining guidelines and practices.

In the supposedly disputant-controlled mediation session, a common partial set of instructions to mediators about how the process operates (presented below) suggests how mediation is managed. It is drawn from a manual for mediators in landlord-tenant cases.

I INTRODUCTIONS

- A. Introduce yourself and the disputants.
- B. Briefly explain the L/TM project and the purpose of the mediation session.
- C. Give them the mediation agreement and ask them to read it over and sign it.
- D. Give a one sentence summary of the agenda for the mediation. . . .

II SET GROUND RULES

- A. Time limits.
- B. Rules of common courtesy.
- C. Logistics: you may want to speak with each disputant privately.
- D. Interaction rules: i.e., please direct your conversation to me rather than to each other.

III PARTIES PERCEPTION OF THE PROBLEM

- A. Let each disputant tell his/her side of the story. . . .
- B. Re-state the problem in simple, concise language and be sure that each disputant agrees with your perception of the problem. . . .

IV DEFINE THE BARGAINING RANGE

- A. Ask the disputants the following two questions before beginning any negotiation efforts;
 - 1. What are your goals for this mediation . . . how would you like to see this matter resolved?
 - 2. What/how much would you be willing to give to see this matter settled this afternoon?

V NEGOTIATION

- A. If the parties bargaining ranges do not meet, begin working on issues--generally going for the easiest ones most likely to succeed.
- B. If parties are not communicating effectively towards a resolution, separate (caucus) and speak individually with each party.

VI RESOLUTION

- A. When you have reached a common ground, bring the parties back together for the settlement.
- B. State the settlement verbally, ask if that is what they both agree to.
- C. Write up the settlement in very specific terms, include dates, amounts, method of delivery and penalties, if appropriate.
- D. Have each disputant read the contract before signing it.
. . .

VII CONCLUSIONS

- A. Thank the parties for trying mediation.
- B. Encourage them to contact the program if future disputes arise.
- C. If the settlement is to be carried out in the future . . . ask the parties to contact you on that date to confirm that the agreement was met.
- D. Leave.

THE ROLE OF THE MEDIATOR

1. Provide Structure to the Conflict
2. Control Form of Conflict
3. Active Listening
4. Help Them Communicate
5. Balance the Power
6. Control of Tension Level and Readiness to Bargain
7. Reward for Good Faith Concessions
8. Impartial but Empathetic
9. Keep Ultimate Responsibility for Solution in Their Hands

[Martinson, 1981].

Below is another statement of guidelines from a program in Ft. Lauderdale, Florida.

GUIDELINES FOR CONDUCTING A SUCCESSFUL HEARING

1. When disputants enter the hearing room, make an initial statement that each party will have an opportunity to be fully heard without interruption. This will ease some of the tension and should help the respondent feel less defensive.
2. Attempt to secure an agreement from each party that they will remain silent while the other person is telling their side of the story.
3. Conduct the hearing respectfully by using Mr. and Mrs., etc.
4. Assess the emotional state of each party. Consider apparent willingness and ability to proceed. By ability to proceed, evaluate whether either party is intoxicated or has a pronounced mental incapacity. In this type of situation, you may want to immediately reschedule the hearing or refer one or both parties to another agency.
5. Start with Complainant and hear both versions uninterrupted by the other party.
6. You are not acting in the capacity of a judge, fact finder or an attorney. You are a catalyst to get the parties to arrive at a mutually agreeable resolution. Minimize guilt or innocence and maximize communication.
7. Keep the parties together if possible. Separate them only if they are so disruptive and antagonistic that the hearing cannot proceed without separation.
8. Try and keep disputants calm. If one or both is getting extremely upset, try and calm them down by asking that they lower their voice, or sit back in their chair or slow down their rate of speech. Identify the action that they are manifesting that indicated they are upset. Do not just say, "Calm down."
9. Listen carefully to each party. Often a seemingly irrelevant remark may indicate the real underlying problem between the parties. Some rules for listening that may be helpful include:
 - A. Attention responses such as "Uh huh", "OK", "I understand." Do not approve or disapprove, but acknowledge person's remarks.

B. Echo responses where you may repeat key words or phrases. This will facilitate word flow in the proper direction and limit rambling.

C. Occasionally restate the party's position to check your accuracy in understanding it.

D. Summarize what the party has said periodically to help you keep track of the story. When summarizing get acknowledgement from party that your summary is accurate.

10. Ask questions, however, use open ended questions rather than questions that can be answered "yes" or "no". Do not ask questions that are too broad. Try and focus questions on the main problem.

11. After everyone has a basic understanding of the problems, it is time for the mediation stage of the hearing.

A. Try to encourage and guide parties toward suggesting their own solution.

B. Do not prescribe a solution or try to impose your values on them.

C. Help parties focus on one problem at a time.

D. Ask what each would be willing to do to solve the problem.

E. Raise questions about a specific problem or part of a problem to initiate responses.

F. If all else fails, make a specific suggestion that does not favor either party if possible.

12. At the conclusion, it is often appropriate to make a statement regarding the legal options or consequences that are available if the agreement is not adhered to by either or both parties.

[Citizen Dispute Settlement Program, 1979]

Notice, in the Ft. Lauderdale guidelines, the number of references to managing the emotional state of the parties: "attempt to reach an agreement...that they will remain silent"; "minimize guilt or innocence"; "try to keep disputants calm"; etc. These are not instructions which immediately appear necessary or relevant to

handling conflict. Maybe the parties need to express emotions that the mediator guidelines attempt to suppress. There are many similar guideline manuals in other programs that elaborate approaches to mediation (Criminal Justice Foundation, 1980).

What appears as a spontaneous process is thus a precisely rationalized procedure, with many details structured in advance and a response prepared for almost every contingency.

The directive role of the mediator in channeling the dispute, as well as organizing its character, is illustrated by this description of a program in Miami, Florida:

At the mediation session the complainant airs his view of the dispute first, followed by the respondent. The mediator listens without trying to narrow the issues right away but rather listens for what appears to be the underlying roots of the conflict. At the same time, the mediator gives assurance to both sides, encouraging them both to open up. The emphasis is not on therapeutic counseling but rather on getting the parties to talk through their dispute, and to grasp the reality of the other side's position. After a full airing of view the mediator encourages the disputants to identify possible solutions to their problem (Klein et al, 1978:86).

A mediator in Miami indicated some of the subtleties of directing the process in response to a question about the inequality of bargaining power that sometimes arises.

I will oversee the interests of the weaker party. If someone is taking advantage, I will bring this out to the weaker party.... The idea is to balance the relationship and not just be neutral (Interview, February, 1979).

The mediator's manual prepared by the Criminal Justice Foundation in Boston demonstrates, in its introduction describing the material covered, the extent of mediator control:

The trainers will present the various techniques used by mediators to determine facts, remain objective, establish trust,...search for the best offer, narrow

issues, funnel discussion, encourage the disputing parties, act as an agent of reality, create the desire to settle, suggest hypothetical terms, maintain order, and word a mediation agreement.

* * * * *

Strategies should be developed for the rest of the hearing--such as pursuing information gaps, preparing questions for each party, establishing a sequence for private meetings with each party and rehearsing the things to say when a disputant enters the room again (1980:2, 13).

At one point, in a section on settlement techniques, the manual asserts: "mediators will sometimes wrongly allow themselves to be steered away from key issues by the disputants" (1980:43). How can mediators be wrongly steered away from key issues if the process is disputant controlled? Felstiner and Williams contend that many mediation sessions' outcomes are not "formulated by the disputants, as the ideology alleges, but [occur] because a mediator was alert to a feasible adjustment in a destructive cycle of interaction" (1982:228). In their study of the Urban Court program in Dorchester, Massachusetts they also found that

the training is ambivalent about manipulation and coercion. On the one hand the trainers stress that free choice is a value--agreements last because they originate with the disputants. Yet, the trainers also indicate that disputants are to be maneuvered into an agreement by the use of ambiguities, by suppressing conflict in later stages of a session, and by the coercion of the alternative to an agreement, whatever that might be (1982:117).

The mediator training material in Ft. Lauderdale's Citizen Dispute Settlement Center included the following description which indicates the manipulation involved, however benign its intention:

Aside from the understanding of the mechanical process of Citizen Dispute Settlement, it is to the advantage of mediators also to understand the psychological process as well. Citizen Dispute Settlement provides an opportunity for both parties in a conflict to be heard in the presence of an "authority figure" (the

mediator). This ability to explain their side of the story fulfills their psychological needs to have their view "acknowledged".

Once both parties feel satisfied that they have been able to voice their view, then about 90% will be willing to mediate.

It is important that all communication go through the mediator. This insures that the level of emotions is under the control of the mediator (Approx. 1979).

The opportunity for mediator management is enhanced because most parties do not have experience or understand the culture of mediation as they do legal culture. Concepts about judges, due process, rules of evidence, winning and losing, etc., are embedded in the culture. They do not have to be explained. The newness of current NDR centers limits the capacity of parties to know they are being managed, how they might challenge the process, or organize it differently. Resistance to mediation emerges, in part, because it is unfamiliar and challenges ordinary assumptions about conflict resolution. A mediator in St. Petersburg, Florida commented

I let them agree to things easily at first and then probe. I set the tone for what's to follow and show them how to do it, how to agree, step by step (Interview, 1979).

Another in Ft. Lauderdale remarked

If we aren't getting anywhere I'm going to direct them, to get a solution to it. I'll say: "Won't this be good?" (Interview, 1979).

A mediator in Miami noted

Sometimes, the parties get confused. They say: "Why don't you decide?" They say: "Why can't you make them [the other party] do this?" Some think I'm a judge, even though I tell them I'm not (Interview, 1979).

What elements of mediation give the appearance of disputant control--that disputants create the norms and guide the process in a

free exchange? How are disputants involved and control established in such a way that they willingly participate while simultaneously disarmed, their power diminished? How is control constituted in the roles, rules, rhetoric, and individuation of the process?

The blurring of role distinctions is a primary element. Mediators present themselves as passive, neutral parties without much authority when in fact most mediators are trained professionals coordinating the entire procedure, concealing their exercise of authority. Some sense of how mediators establish their role that conveys an impression of equality with the parties--the friendliness, informality, and neutrality--may be gleaned from the introductions given to disputants in the following excerpts from case transcripts.

My name is E.S. I am a mediator. I have no authority to make a decision. I'm not a lawyer or a judge. I'll make suggestions about what I think is fair.
(Transcript no. 1, Portland, Maine, 1980).

* * * *

My name is E.S. I am a mediator. I'm not a lawyer or a judge. I'm here to bring you two together and talk and see if we can solve this. . . . So that we will know what it's all about, will you be willing to tell us what your claim is? (Transcript no. 2, Portland, Maine, 1980).

* * * *

What we do here is we bring together people who have a problem and we talk about it. I act as a facilitator. I bring the parties together and to an agreement that is acceptable to both parties. I'm not a judge, I don't try people. I'm not here to find out if anybody is innocent or guilty. All I'm here to do is resolve a problem. OK. The rule that we follow is that the party that brings the claim speaks first and the other just listens. And then the other party has a full opportunity to respond. (Transcript no. 3, Portland, Maine, 1980).

The mediators, in stating their name and role are beginning to establish informality in a way that involves the disputants. In stating "I'm here to bring you two together," the level of the dispute

is immediately shifted from an adversary procedure to a joint, participatory action. This is important in establishing legitimacy: that the case will be solved and that settlement is the objective. The disputants, later on, are introduced personally, not by their roles or legal definitions such as claimant or defendant.

The staging rules, setting, and language of mediation present an appearance of everyday life, suggesting an absence of power. The state presents itself as non-state, face-to-face. Mediation sessions are sometimes conducted in storefronts, and even in people's homes in special circumstances (Interview, Los Angeles, January 1980). Formal ceremony is absent. The language is non-legal and commonsensical. The form of discourse relies on understandings of ordinary morality (Graeson, 1980; McGillis and Mullen, 1977). Mediators establish themselves not as state representatives but as helping agents. As part of the introduction to the process, the mediator or intake officer prepares the parties with statements that soften their resistance to participation. This aspect is fairly routine. One intake officer in Florida commented:

I tell them (the parties) its voluntary, not legally binding, that there is no judge, that it's informal, that no one will be found guilty, that we cannot impose solutions but only suggest options. But they must understand that they must explore the problem.

The Criminal Justice Foundation (CJF) in Massachusetts stresses the pleasantries of the introductory remarks and the nature of mediator manipulation.

Opening remarks must be presented in a cordial manner that encourages the disputants to relax and let down their defenses.

* * * *

. . . the mediator attempts to prompt each party to view his/her position in a flexible manner, as well as

to see the desirability of a settlement. Since both language and mannerisms contribute toward making the disputants feel at ease and creating a congenial, informal atmosphere, the mediators must greet their guests warmly and shake hands all around (1980:36, 12).

Prior to the mediation session, mediators and other program officials sometimes explain to the parties that their reason for being there is by choice: to preserve the relationship between the parties, to avoid court, and to behave rationally. Thus, the staging rules, symbols, and context disarm disputants and trivialize the authority of the mediator in their eyes. The institution is simultaneously made powerless for the disputant--no due process, no rights, no audience--while the state is made powerful in dealing with the disputant by making the exercise of power invisible. The mediator's guidelines are not routinely indicated or made available to the parties.

In the process, disputants are made to feel that they have a stake in it, that it belongs to them, and that it is fair. For example, the mediator at one point in a typical case says: "OK. What's your side." The parties accept this practice of full airing; first one side then the other. The mediator has further established informality and begins to establish fairness. The parties do not question the process, either by leaving or seeking to specify their own ground rules. In another exchange, one of the parties says: "I'd like to make one more point." The mediator replies: "Sure." He does not say: I'll allow that, nor does he interrupt. This also conceals control and helps to establish legitimacy. Mediators are instructed never to interrogate or appear to interrogate the parties. For example, in a mediation session in Los Angeles in January 1980, two

roommates are disputing. One (F) charges that the other (P) locked her out of the apartment. The mediator then says to P: "Do you want to respond to F's charge?" The mediator does not say: "Did you do this?" which would suggest interrogation. The CJF mediator manual warns mediators specifically: "Phrasing questions in an accusatory manner may be very destructive to the mediation process. Questions of this type include--"Didn't you do that? Who did that? Why did you say that? What were you doing that night?" (1980:33).

Mediators make an effort to support each speaker through interpretation and verification stating what has already been said to establish fairness, but more importantly to give focus and direction to the situation. For example the mediator states in one case: "I guess what this whole thing revolves around is . . . ," or: "So you (P) were really violating company policy. . . ." All of these procedural gestures are not necessarily in the interests of the parties because they are a portrayal, a false construction of reality. The CJF mediator manual explicitly demonstrates this point.

Reassurance is a technique, which if exercised skillfully, contributes significantly toward the momentum to settle. The mediator should complement each disputant's sincerity, reasonableness, and patience. . . . Every disputant should be stroked. . . . Timing and subtlety are very important (1980:41).

Such manipulation challenges the idea of a free exchange, controlled by disputants.

Thus, mediation functions within a context of cultural values and a system of rules which establishes an irrational power relationship. The rules are social control because they restrict and direct the organization of the experience in the situation, while giving the appearance of something else. Mediation is not therefore truly a

free, voluntary, self-managed, informal interaction, although it appears to be so--merely a mediator and two disputants having an exchange. A contract process is in effect. This contractual relationship is established at the outset: a bargaining among equals or volunteers, unlike legal processes. There is thus an objective and subjective dimension of the tie of neighborhood dispute resolution to the state and the state to the disputant through the mediator. The objective dimension is that the state can coordinate control at the top through planning, in order to control detailed aspects of life, by bringing a certain form of scrutiny to everyday life. The subjective aspect of control is, from the standpoint of the parties, that individuals begin the process as equals and as volunteers in relation to each other and the process. And the dispute resolution center affirms in its practice that contract is the fundamental relationship, but not in the sense of commerce. It is the idea of contract or relationship that Karl Marx (1967) noted is affirmed in the workplace when a so-called free laborer negotiates a free contract with the capitalist. It has the look of a contract when it is not. Why not? The individuals involved are being regulated by rules designed within the state apparatus, even though it appears as a free-exchange. Ironically, although mediation is presented to the public as an alternative to the abstract "legal subject" which is itself a fetish or commodification of social relationships, so too is mediation. It simply takes another form. And these contextual features of informalism cannot be suspended, even if the mediator tries to do so. They are intrinsic to the process (see Sudnow, 1965). The management of disputes means specifying what details will be considered,

pre-determining what can be bargained for, making every activity accountable, and establishing a certain order of discussion that is not reflexive, although it appears reflexive. The authority of the mediator as manager is absolute. And the absence of reflexivity makes it absolute.

This penetration of disputants as a means of disarming and thereby integrating them also occurs in the measures for success used in the program evaluations. For example, many of the post-mediation questionnaires ask: Did disputants feel they had an opportunity to participate? Did they have an opportunity to tell their story? Was the mediator fair? Did the mediator pay attention? Table III-6 reported some of the findings from the LEAA Neighborhood Justice Centers. However, high ratings on this question are found in many programs. In the Brooklyn Dispute Resolution Center 77 percent of defendants and 73 percent of complainants were satisfied (Davis et al., 1980). In the Dade County Citizen Dispute Settlement Center, 62 percent of complainants and 69 percent of respondents were satisfied to very satisfied (Moriarity et al., 1977). The Dorchester Urban Court Program found that almost 80 percent of disputants trusted the mediators (Snyder, 1978). Garofalo and Connelly (1980b:591), examining the results of numerous programs across the country, conclude "that dispute resolution centers are creating favorable impressions among the parties who go through the mediation process." Client satisfaction is vital not merely in a general way to achieve legitimation, but as a means to ensure continued use of the institution and continued willingness to follow-up on the agreement

and referrals (Educational and Psychological Development Corporation, 1977:3).

Defining conflict as interpersonal. A fundamental characteristic of bourgeois law, embedded in legal principle, is its emphasis on possessive individualism, on individual responsibility. Ordinarily, the principle of individual responsibility is undermined in the movement toward bureaucratic authority, service delivery, and therapeutic treatment. That is, state intervention, in dealing with various social populations en masse and approaching so-called social problems on a broad scale, obliterates individual distinctions or reliance on formal principle (Unger, 1975). For example, unemployment is understood and sometimes treated as a structural problem of the economy, beyond the capacities of any given unemployed person to affect.

However, in state-sponsored neighborhood mediation, the social basis of conflict is ignored, even though responsibility and blame are explicitly excluded as the rationale for outcomes or decisions. Although one individual disputant is not culpable or guilty, each disputant is the problem--the cause of a disruption to the social order not the conditions under which they live. Ironically, whereas traditional notions of popular justice normally incorporate the community context and social conditions in seeking a just outcome (Santos, 1982; Spence, 1982), mediation normally excludes such considerations (see Reifner, 1982). Disputants can technically raise any question or issue. But the content of conflict is divorced from collective interests, segregated from similar cases, and limited to

the immediate relations between the disputants. For example, a dispute between a landlord who owns a large apartment complex and a tenant is treated as a conflict between two individuals. Hypothetically, such a conflict might be dealt with by discovering how many other tenants experienced similar problems with the landlord, what the effect of such disputes was in the neighborhood, and whether either side violated rights of the other. Without such connections, potential collective issues are decomposed. Neighbors who might advocate for change and discover common concerns never interact with one another.

Whatever the issue, the disputants are directed down a path which emphasizes the unique, interpersonal conditions of their case. Solutions involve compensation, redress, and behavior change. Mediators rarely attempt to connect cases to recurrent experiences that others have had as members of a social class, precedents for decision-making, or to aggregate events. And as Abel remarks, "most significant interaction in contemporary society occurs outside the residential neighborhood. The latter rarely contains the antagonistic dyads of capitalist and worker, producer and consumer, polluter and pollutee.... Just as the forces of oppression...extend across neighborhood boundaries, so must the organizations of resistance that are fighting for distributive justice and social change" (Abel, 1982a:289). The social relation between the parties and the transformation that must occur for a successful outcome is the transformation of the disputants rather than any social conditions or institutions in which they live.

This individualization of conflict is a form of integrative control precisely because it conceals the context, narrows the framework of conflict, and limits options for interpretation by the parties. Legal principle is translated into psychological and personal terms. Control is integrative because conflict becomes private, excluded from public scrutiny and made irrelevant to a public interest or, more directly, to a class interest. The mobilization of public law is inhibited. But nothing inherent in informalism necessitates an individualistic perspective.

Defining conflicts as interpersonal is facilitated by the way in which mediators encourage dependency on the mediation process, even when mediation is not necessarily in the parties' interests, or when they reject mediation. Mediators rarely support responses other than settlement. They typically will not advise the parties about the advantages of a lawsuit or filing a complaint with an agency of government. For example, the mediation manual for the Commission on Community Relations Landlord-Tenant Mediation Project provides these instructions;

DON'T GET INVOLVED WITH THE LAW: Talking about the law can be counter-productive. If one of the disputants insists on bringing up the law, just say, "We are not here to try to 2nd guess the court. We are here to come up with a settlement that you both can find satisfactory. (Martinson, 1981:14).

As in the case of the workplace, the organization of the mediation process itself structures conflict; the parties take responsibility for conflict--it is theirs alone. The mediator often asks each party: "How would you like this case to be resolved?" rather than discuss legal-like remedies applicable to the situation. Program evaluations

stress benefits for individuals rather than impact on communities (Garofalo and Connelly, 1980b).

What are the implications of redefining conflict as interpersonal? There are certain similarities between the individualized, fragmented character of handling neighborhood disputes through an informal process and the nature of control in the work process. Braverman (1974) describes the rationalization of work and its reduction to abstract labor. The division of labor is comparable to the dissection of social conflict into interpersonal disputes, torn from the holistic nature of social life and divorced from the discontent generated by poverty or work conditions. Consider consumer disputes. Consumers may "win" cases as individuals by getting their money back or obtaining the repair of a product, but they lose as members of a wider social class interested in preventing a recurrence of the incident or effecting a change of policy.

For example, a dispute about the safety of a product purchased in a supermarket would be transformed into an issue between a dissatisfied customer and a local merchant rather than be interpreted as a more fundamental conflict of interest between producers and consumers, with implications that may affect the whole community. This restructuring of conflict parallels administrative solutions to conflict in the workplace, where the refusal of a corporation to install necessary safety equipment is translated from a question of safety or owner responsibility into an issue of compliance with work rules, a dispute between a worker and a plant manager, or a claim for compensation (Edwards, 1979). Personalization of conflict can fragment common concerns and the capacities for collective action. Reifner, describing

the transformation of legal advice in pre-fascist Germany, remarks how "atomized and integrated into a strange procedure, clients became the objects of a process aimed not at advancing their interests but at avoiding conflicts" (1982:110). We could speculate then that some complaints might lead to coordinated activity for social change or other political action that would change conditions. Hassles with noise, for example, might lead to demands that landlords or city planners use insulation or revise building codes. Overall, then, interpreting conflicts as disputes between individuals "implies that a particular remedy for each case is all that is required" (Cain and Kulcsar, 1982:393).

Consensus and accommodation: narrowing the locus of conflict.

The method of resolving disputes in mediation is, almost by definition, through accommodation in order to achieve consensus between the parties rather than by a judgment of right or wrong in an adversarial setting, with winners and losers. Parties settle their controversies but do not justify their actions according to legal, ethical, or moral norms. Mediation emphasizes compromise, peace, the futility of struggle, order, and the illogic of confrontation (Abel, 1982; Snyder, 1978; Cook et al., 1980). As one mediator in St. Petersburg, Florida indicated, "mediation is a process for reasonable people.... When they start moralizing it's hard to get an agreement" (Interview, February 1979). A major objective is mutually satisfying, lasting outcomes and the prevention of future conflict. This contrasts with advocacy and representation--traditional objectives sought by those demanding access to the courts and the satisfactory resolution of claims.

How is seeking consensus a form of securing and obscuring control? How does a consensus model change the meaning of the conflict? Consensus operates as control by directing disputants toward solutions and away from rights, issues, values, collective problems, or what might be in the best interests of the parties. Consensus is constructed by the mediator through the language of mediation. To the extent that the parties are involved and do not question the rules of mediation, consent is achieved. Consent fails when the parties refuse mediation or withdraw. Below is an excerpt from a mediation session in Portland, Maine in 1980. It concerns a problem about the repair of a truck. The parties failed to reach agreement. However, this excerpt suggests the way in which the mediator directs the parties away from the issue of right and wrong and toward a consensus, even though the owner of the truck (P) clearly contends that the evidence or facts support his position. The mediator does not consider the interests of the parties as they see it, but instead stresses that mediation is the only sensible way to handle the situation.

Mediator: You are saying that it (the problem) wasn't caused by tightening the manifold bolts improperly?

R: We could argue that for a long time.

Mediator: So this has cost you (P) \$642. to get your truck working again, right?

P: Yes.

Mediator: There's no way I can say what's right here; I don't know. I don't know if anyone on this earth knows.

P: I'd like to point out a fact that hasn't been discussed yet. I have here a sworn statement by the mechanic who repaired the truck that the problem was caused by the manifold bolts not being properly torqued.

Mediator: But you know that that is just an opinion, like any other opinion. But I'm sure he's an informed and knowledgeable person. The only way mediation can work is by both sides recognizing that the other guy isn't

completely wrong. Maybe then we can start to reach agreement, maybe we can have nobody get hurt too much. If the judge decides either owes \$492., one or the other gets hurt a lot. Is there give in any part of this thing?....

[Source: Court Mediation Service, Portland, Maine]

Clearly this is a moment of political resistance and indicates a conflict between conceptions of justice. The suppression of principle facilitates the movement toward consent. Another illustration of how legal norms and rights are replaced by consensus that does not necessarily flow from the desires or interests of the parties is indicated in the following exchange. The disputants are former roommates arguing about bills.

Mediator: So you're taking \$5.00 out?
R: Right, the rest of it I will pay.
P: Am I be'ng unreasonable?
Mediator: I don't know now, you both have a good point here. Neither one of you is completely right, but certainly neither one of you is completely wrong. Ah, why don't we trade-off one of these (bills) for the other? If you'd be willing to back down on the ticket, maybe she'd be willing to back down on the painting. You know, in that case I don't think either one of you is both completely wrong.
[Source: Court Mediation Service, Portland, Maine]

It is the development of a non-redefinable problem by sequencing the activities of the participants in a certain way--narrowing, shifting attention from the problem to solutions and narrowing the range of solution in such a way that disputants cannot review the problem itself in relation to the solutions generated--that makes consensus as a form of control possible and differentiates mediation from psychotherapy or education. It restricts rather than expands options. The process establishes an irreversible sequence of action so

that disputants have no other recourse. Once they move from one point to the next, they normally do not reflect on or review where they have come from. The mediator's objective is to reach an agreement and adopt a solution--not to analyze the problem, examine the past, or define the issues. The content of solutions is not as important as that there be a solution arrived at in this process. From the point of view of some mediators, disputants' resistance to the principles of mediation is interpreted as being rigid or overly moralistic (Interview with mediator, Miami, Florida, February, 1979).

At the same time, no party is to consider what might be "just" as a possible solution to the original problem (see above example). It might only occur as coincidence. Thus, there is no rational agreement that a given problem required the particular solution reached. The agreement requires that the solution, whatever its content, be accepted, regardless of the original problem. The CJF manual observes that the mediator "should absolutely not voice an opinion to either party as to whose version of the facts s/he believes" (1980:44). The mediator manual for the Commission On Community Relations, Landlord-Tenant Mediation Project in Denver provided these instructions to the parties which reveals how conflict is restructured and ordered toward consensus.

Choose your topics carefully and then stick to the issues. Spend very little time discussing the dispute. Stress the points that you agree upon. Instead of rehashing the original disagreement, use your energies on how the problem can be resolved. Think what you want to say before you start talking. Focus on neutral rather than negative wording, i.e.: "situation" rather than "problem", "misunderstanding" rather than "argument". (1981).

Mediators are not seeking to clarify issues but to clarify options. As one mediator in Miami, Florida commented: "You can't spend too much time on truth--otherwise you won't get anywhere. The idea is to get a solution and not focus on details" (Interview, February, 1979).

In ordinary interaction when priorities are set, alternatives are listed and kept in reserve for possible reflection and later change. This is not the case here. Mediation is a thoroughly non-dialectical process moving the parties away from the chance to rethink the situation. The skills and authority of the mediators, themselves evaluated according to cases resolved, play a role here. A project director of a program in California suggested that: "The problem is one of verbal influence. The mediators are very skilled at getting parties to agree--too skilled. This is what they're trained to do, but the agreement may not be the one the parties want" (Interview, January 1980). Yet, ironically, the process appears unbounded, open and without rules, that can lead to any number of outcomes. The court has limited alternatives too. But in mediation those limits are concealed in a surrogate official process that is irreversible in its definition of the problem and movement toward solutions. Through this informal process, the issue shifts from justice to dispute resolution. People are thereby encouraged to bring their problems to a highly institutionalized forum that restricts alternatives. Consensus as a mode of resolution is thus partly established by presenting alternatives to compromise itself as impossible, unworkable, and, most importantly, uncivilized and irrational. One mediator commented, "Some people are more difficult. They resist mediation. I can't communicate with them." (Interview, February, 1979).

And this process of accommodation or narrowing the range of solutions, and the focus on a linear path toward solution is the way in which the parties are driven toward treating all kinds of conflicts in the same way, as no different than any other. Thus we get a homogenization of conflict (Garofalo and Connelly, 1980b). As a study by the Vera Institute of Justice indicated:

...in a view of the highly individualized content of the mediation sessions, there was a surprising sameness to the agreements that emerged (Davis et al., 1980:48).

Accommodation also supports order-maintenance, as mediators--by training and in their mostly middleclass backgrounds--express social values that support the perspective of state power. The study by the Vera Institute also noted how mediators (in one particular exchange) attempted

to reinforce societal values during the session--the value of kinship and other bonds, the importance of reciprocity, the need to avoid violence as a means to resolving disputes.... The mediation process stimulates an idealized form of good social relations, and provides an example of how to break out of bad social behavior patterns (Davis, et al, 1980:42, 43).

What are the implications of this process? The agreement to bargain from the outset is already a capitulation, a redefinition of the problem brought by disputants and a way of rationalizing conflict. The regulation of conflict by means of accommodation assumes consensus about the values underlying the social order, and this regulation diverts attention from substantive issues and principles in the larger social context. It is not just that facts are eliminated but that they are reconstructed. As Baldwin comments, discussing environmental disputes

Dispute settlement should not become an end in itself, particularly when important environmental values are at

stake. Not peace at any price, but sound environmental decisions must be the goal.... Conflict avoidance, or premature settlement may obscure the important issues, while protracted and difficult disputes may result in the most creative and lasting accomplishments (1978:9).

Neutrality is not equivalent to refraining from explicitly taking sides, and values may be manifested in ways other than direct advocacy. Mediators bring with them their social class, ethnic heritage, and professional and political ideologies (Starr, 1981). Informality does not dispense with norms; they are only articulated less clearly. The unstated assumptions of a professionally trained cadre of middle-class mediators about what constitutes a reasonable claim, the proper use of force, or the content of justice may have a significant bearing on the outcome, particularly when the parties are predominantly poor, inner-city residents. Moreover, the rush to consensus obscures the positive need for conflict as the only effective means for resisting "political repression, racism, and sexism" (Abel, 1981:249). The pretention to impartiality conceals the authority of the state and the presence of a bureaucratic authority. Just as workers become more dependent on capitalist organization of the work process, so informalism deprives community members of political competence by transferring power to nondemocratic agencies of the state.

As rights expand into opaque and technical areas such as the disclosure of finance charges in the consumer credit system and statutory prerequisites to a rent increase when rent control is in effect, the individual has a strong interest in enforcing the letter of the law. In an informal setting, such "technical" rules, which are designed with a larger regulatory purpose in mind, would probably be overlooked as irrelevant to the substance of a particular dispute (Rubinstein, 1976:81).

There is no conception or examination of justice, rights, or norms, but only a soft bureaucratic procedure for redressing grievances or compensating injuries.

Such settlement through bargaining restricts the scope of inquiry and thereby reproduces the inequalities of power that enable a local business, for example, to engage in overcharging or otherwise to defraud the consumer without risking a sanction more serious than repayment. It can also produce results without raising challenges to established power. Lazerson (1982) demonstrated, for example, that when Legal Services attorneys achieved some degree of success in obtaining delays and challenging law in landlord-tenant court in the Bronx, landlords sought to settle the cases in the halls, informally. When formal legality became effective for those normally without power, accommodation meant a quick result without challenge to landlord legal rights. In cases where consumers initiate action, accommodation can serve as a buffer against serious claims. The director of a program in Florida explained, in response to a question about the willingness of merchants to use mediation, "One reason that they (merchants) come here is so that it won't go any further" (Interview, February, 1979).

Settlement through consensus, moreover, is not likely to result in the articulation of general criteria applicable to injurious conduct in the future. The ideology of consensus conceals patterns of activity that extend beyond the immediate case. It eliminates the language of politics and obscures the clash of real interests.

This consensus process, however, is fraught with difficulties. Many disputants simply want to win and view their position as correct. "Compromise," according to one Florida-based mediator, "is conceived as

a stalling tactic by some." Achieving consensus is a subtle and delicate affair. Except for Harrington (1980), few researchers have systematically explored those who reject mediation outright as a possibility or the detailed problems experienced by those who failed to reach or sustain agreements.

IV. CONCLUSION

The reemergence of state-organized neighborhood dispute resolution forums, characterized by informal, decentralized administrative processes for handling interpersonal conflicts, represents a phase in an ongoing restructuring of social control in American capitalist society. Because the phenomenon is embedded in the capitalist mode of production and its specific conception of social order, the conditions for its existence have little to do with the fiscal crisis of the state, the whims of judicial officials, or the needs of affected populations. Whether the approximately 180 formal programs continue, the emphasis on integrative social processes remains, integrated into the everyday operations of courts, schools, hospitals, and prisons. The processes are applied in the absence of programs, which represent only one manifestation of the phenomenon.

The movement between direct and indirect coercive forms of control is dialectical; they interpenetrate one another. However, the prospects for NDR depend, in part, on resistance to it. Because it is an alien institution of the state which presents itself as belonging to the community, resistance can be expected. It is by no means a rational solution to the social order, nor does it bear any relation to traditional notions about justice. NDR applies an idea of Jeffersonian democracy within a system designed to enhance the corporate state. Whether such rhetoric can be sustained with the increasing size of governing units, the absence of any community in urban areas, and the absorption of real power by the state, is questionable. Moreover, these dispute resolution institutions,

because of their informality and heavy reliance on trained personnel, are even less accountable to the public than the courts. The kind of rationalization demanded from them by the state--for routinization, for permanent records, etc., limits accountability. It is an institution of control without controls, and therefore may not provide the kind of managerial predictability and order required by a corporatist economy. It remains in the realm of noncommodity production. As class conflict expands under conditions of a declining domestic economy and an interdependent world economy, the institutionalization of conflict through compromise and consent may prove especially difficult.

NDR raises important questions for further theoretical and empirical study. Given that the seeds of contradiction are built into the institution, more work may be required that explores where such resistance might come from and where it could lead. To what extent, for example, can this institution accommodate challenge without losing its character? Will it be ignored or captured by users?

Apart from resistance, the institutionalization of NDR and the standardization or rationalization of its procedures may reduce potential benefits for capital. Ossification may result from the capture of some forums by professionals (mediators) who may direct it toward unpredictable paths. Moreover, to the extent that citizen users demand protections such as rights of appeal, the presence of attorneys, and other rights associated with the formal system, particularly if the process is expanded and institutionalized, NDR may lose the special qualities and appeal that define it and reinforce its effectiveness as a method of integrative control. Attention will

be necessary to those conditions which suggest a collapse or restructuring of NDR.

The outcome of class conflict is unpredictable. The contradictions of NDR demonstrate its instability and susceptibility to challenge. The recapture of justice from the state will require a transformation of the social relations of production and a democratization of economic and social life. But struggle against capitalist power occurs wherever its forms emerge. Neighborhood justice forums represent one important arena.

REFERENCES AND BIBLIOGRAPHY

- Aaronson, David E., Bert H. Hoff, Peter Jaszi, Nicholas N. Kittrie, and David Saari (1977) The New Justice: Alternatives to Conventional Criminal Adjudication. Washington, D.C.: National Institute of Law Enforcement and Criminal Justice.
- Abel, Richard L. (1982) "The Contradictions of Informal Justice," in Richard L. Abel (ed.) The Politics of Informal Justice, Volume 1: The American Experience. New York: Academic Press.
- Abel, Richard L. (1981) "Conservative Conflict and the Reproduction of Capitalism: The Role of Informal Justice," 9 International Journal of the Sociology of Law 245.
- Agnew, J.A. (1981) "Home Ownership and the Capitalist Social Order," in Michael Dear and Allen J. Scott (eds.) Urbanization and Urban Planning in Capitalist Society. London: Methuen.
- Alcaly, Roger (1975) "The Relevance of Marxian Crisis Theory," in David Mermelstein (ed.) The Economic Crisis Reader. New York: Vintage.
- Allen, Francis A. (1964) The Borderland of Criminal Justice. Chicago, Ill.: University of Chicago Press.
- Alper, Benedict S., and Lawrence T. Nichols (1981) Beyond the Courtroom: Programs in Community Justice and Conflict Resolution. Lexington, Mass.: Lexington Books.
- American Bar Association (1976) Report of Pound Conference Follow-Up Task Force. Chicago, Ill.: American Bar Association.
- Aronowitz, Stanley (1971) "Law, The Breakdown of Order and Revolution," in Robert Lefcourt (ed.) Law Against the People. New York: Vintage.
- Aronowitz, Stanley (1973) False Promises. New York: McGraw Hill.
- Aronowitz, Stanley (1978) "Marx, Braverman, and the Logic of Capital," 8 The Insurgent Sociologist 126.
- Auerbach, Jerold S. (1980) "The Two-Track Justice System," The Nation (April 5).
- Balbus, Issac (1976) "The Concept of Interest in Pluralist and Marxian Analysis," in Ira Katznelson, et al. (eds.) The Politics and Society Reader. New York: David McKay.

- Balbus, Issac (1977) "Commodity Form and Legal Form: An Essay on the 'Relative Autonomy' of the Law," 11 Law and Society Review 571.
- Baldus, B. (1977) "Social Control in Capitalist Societies: An Examination of the 'Problem of Order,'" 2(3) Canadian Journal of Sociology 247-262.
- Baldwin, P. (ed.) (1978) Environmental Mediation: An Effective Alternative? A report of a conference conducted in Reston, Virginia, January 11-13. Palo Alto, Calif.: RESOLVE.
- Berkson, Larry, and Susan Carbon (1978) Court Unification: History, Politics, and Implementation. Washington, D.C.: National Institute of Law Enforcement and Criminal Justice.
- Bierne, Piers (1979) "Empiricism and the Critique of Marxism on Law and Crime," 26(4) Social Problems 373.
- Binns, P. (1980) "Law and Marxism," 10 Capital and Class 100.
- Block, Fred, and Larry Hirschhorn (1979) "New Productive Forces and the Contradictions of Contemporary Capitalism: A Post-Industrial Perspective," 7 Theory and Society 363.
- Bluestone, Barry, and Bennett Harrison (1980) Capital and Communities. Washington, D.C.: The Progressive Alliance.
- Blum, Martin S. (1980) Citizen Dispute Settlement Project, The Municipal Court of Seattle: Quarterly Progress Report. Seattle, Wash.: Municipal Court of Seattle (April).
- Bookchin, Murray (1973) The Limits of the City. New York: Harper and Row.
- Bowles, Samuel, and Herbert Gintis (1976) Schooling in Capitalist America. New York: Basic Books.
- Bowles, Samuel, and Herbert Gintis (1982) "The Crisis of Liberal Democratic Capitalism: The Case of the United States," 11(1) Politics and Society 51.
- Boyte, Harry (1979) "A Democratic Awakening," 10 Social Policy 8.
- Boyte, Harry (1980) The Backyard Revolution: Understanding the New Citizen Movement. Philadelphia, Pa.: Temple University Press.
- Brady, James (1981) "Towards A Popular Justice in the United States: The Dialectics of Community Action," 5 Contemporary Crises 155.
- Braverman, Harry (1974) Labor and Monopoly Capital. New York: Monthly Review Press.

- Brown, E. Richard (1979) Rockefeller Medicine Men: Medicine and Capitalism in America. Berkeley, Calif.: University of California Press.
- Buckle, Leonard G., and Suzann R. Thomas-Buckle (1981) "Self-Help Justice: Dispute Processing in Urban American Neighborhoods." Paper presented to the Law & Society Association annual meeting, Amherst, Massachusetts, June 1980.
- Buckle, Leonard G., and Suzann R. Thomas-Buckle (1982) "Doing Unto Others: Dispute and Dispute Processing in an Urban American Neighborhood," in Roman Tomasic and Malcolm Feeley (eds.) Neighborhood Justice: Assessment of an Emerging Idea. New York: Longman.
- Budnitz, Mark (1977) "Consumer Dispute Resolution Forums," 13(12) Trial 45(December).
- Burawoy, Michael (1979) Manufacturing Consent: Changes in the Labor Process Under Monopoly Capitalism. Chicago, Ill.: University of Chicago Press.
- Burawoy, Michael (1981) "Terrains of Contest: Factory and State Under Capitalism and Socialism," 11(58) Socialist Review 83(July-August).
- Burger, Warren E. (1976) "Agenda for 2000 A.D.--A Need for Systematic Anticipation," 70 Federal Rules Decisions 83.
- Cain, Maureen, and Alan Hunt (1977) Marx and Engels on Law. New York: Academic Press.
- Cain, Maureen, and Kalman Kulcsar (1982) "Thinking Disputes: An Essay on the Origins of the Dispute Industry," 16(3) Law & Society Review 375.
- Castells, Manuel (1976) "The Wild City," 4/5 Kapitalistate 2.
- Chu, Franklin, and Sharland Trotter (1974) The Madness Establishment. New York: Grossman.
- Clarke, Dean H. (1978) "Marxism, Justice, and the Justice Model," 2 Contemporary Crises 27.
- Cockburn, Cynthia (1978) The Local State: Management of Cities and People. London: Pluto Press.
- Cohen, Stanley (1979) "The Punitive City: Notes on the Dispersal of Social Control," 3(4) Contemporary Crises 339.
- Committee for Economic Development (1980) The Negotiated Investment Strategy: A Review of the Concept and Its Implications for Revitalizing Cities. A report of the Subcommittee on Revitalizing America's Cities of the Committee for Economic Development. New York: Charles F. Kettering Foundation.

- Community Board Program (1981) The Community Board Center for Policy and Training: A Funding Proposal to Implement a Center to Support and Sustain Neighborhood Conflict Resolution Forums. San Francisco, Calif.: The Community Board Program.
- Compa, Lance (1982) "The Dangers of Worker Control," 235(10) The Nation 300 (October 2).
- Connelly, William (1981) "The Politics of Reindustrialization," 1(3) Democracy 9.
- Conner, John T., and Milton Mapes, Jr. (1979) "Campaign Underway for National Peace Academy," Newscope 31.
- Conner, Ross F., and Ray Surette (1977) The Citizen Dispute Settlement Program: Resolving Disputes Outside the Courts--Orlando, Florida. Chicago, Ill.: American Bar Association.
- Cox, Keven R. (1981) "Capitalism and Conflict Around the Communal Living Space," in Michael Dear and Allen J. Scott (eds.) Urbanization and Urban Planning in Capitalist Society. London: Methuen.
- Cree, Thomas (1979) Polk County Neighborhood Mediation Project, Polk County Attorney's Office: First Year Evaluation. Des Moines, Iowa: Bureau of Governmental Research, Drake University.
- Crime and Justice Foundation (1979) "A Look at Mediation in Massachusetts," 3(3) Perspective 3.
- Crime and Justice Foundation (1980) Mediation Training Manual. Boston, Mass.: Crime and Justice Foundation.
- Criminal Justice Newsletter (1978) "A New National Judicial Planning Association." Hackensack, N.J.: National Council on Crime and Delinquency (May 22).
- Cummings, Laird, and Joan Greenbaum (1978) "The Struggle Over Productivity: Workers, Management, and Technology," in Economics Education Project, Union for Radical Political Economics (ed.) U.S. Capitalism in Crisis. New York: Union for Radical Political Economics.
- Danzig, Richard (1973) "Toward the Creation of a Complementary Decentralized System of Justice," 26 Stanford Law Review 1.
- Danzig, Richard, and Michael Lowy (1975) "Everyday Disputes and Mediation in the United States: A Reply to Professor Felstiner," 10 Law & Society Review 675.
- Davis, Robert C. (1982) "Mediation: The Brooklyn Experiment," in Roman Tomasic and Malcolm Feeley (eds.) Neighborhood Justice: Assessment of an Emerging Idea. New York: Longman.

- Davis, Robert C., Martha Tichane, and Deborah Grayson (1980) Mediation and Arbitration as Alternatives to Prosecution in Felony Arrest Cases: An Evaluation of the Brooklyn Dispute Resolution Center. New York: Vera Institute of Justice.
- Dear, Michael (1981) "Social and Spatial Reproduction of the Mentally Ill," in Michael Dear and Allen J. Scott (eds.) Urbanization and Urban Planning in Capitalist Society. London: Methuen.
- Delappa, Fred (1977) "Citizen Dispute Dettlement: A New Look at An Old Method," 51(8) Florida Bar Journal 516.
- D'Errico, Peter (1978) "A Critique of 'Critical Social Thought About Law' and Some Comments on Decoding Capitalist Culture." Paper presented to the Second Conference on Critical Legal Studies, Madison, Wisconsin, November 10-12, 1978.
- Diamond, Stanley (1974) "The Rule of Law vs. the Order of Custom," in Richard Quinney (ed.) Criminal Justice in America: A Critical Understanding. Boston, Mass.: Little Brown.
- Dispute Resolution (1979-1982) Washington, D.C.: American Bar Association Special Committee on Resolution of Minor Disputes. (quarterly)
- DiTomaso, Nancy (1978) "The Expropriation of the Means of Administration: Class Struggle Over the U.S. Department of Labor," 7 Kapitalistate 81.
- Donzelot, Jacques (1980) The Policing of Families New York: Pantheon.
- Doo, Leigh-Woo (1973) "Dispute Settlement in Chinese-American Communities," 21 American Journal of Comparative Law 627.
- Downie, Leonard (1971) Justice Denied: The Case for Reform of the Courts. New York: Praeger.
- Drier, Peter (1979) "The Case for Transitional Reform," 9(4) Social Policy 5.
- Durkheim, Emile (1964) The Division of Labor in Society. New York: Free Press.
- Early, Bert H. (1972) "National Institute of Justice--a Proposal," 74 West Virginia Law Review 226.
- Eaton, John (1966) Political Economy. New York: International Publishers.
- Edel, Matthew (1981) "Prolegomena to a Theory of Urbanization and Urban Planning," in Michael Dear and Allen J. Scott (eds.) Urbanization and Urban Planning in Capitalist Society. London: Methuen.

- Educational and Psychological Research Corporation (1978) "Citizens Dispute Settlement Project, Office of the City Attorney, Minneapolis, Minnesota; First Year Evaluation, September 1976-September 1977." Columbus, Ohio: Educational and Psychological Research Corporation.
- Edwards, Richard (1978) "Social Relations of Production at the Point of Production," 8 The Insurgent Sociologist 109.
- Edwards, Richard (1979) Contested Terrain: The Transformation of the Workplace in the Twentieth Century. New York: Basic Books.
- Ehrenreich, John (1981) "Adding Up the Unemployed," 233 The Nation 1 (July 25-August 1).
- Esland, Geoff (1981) "Diagnosis and Therapy," in Geoff Esland and Graeme Salaman (eds.) The Politics of Work and Occupations. Toronto: University of Toronto Press.
- Feeley, Malcolm (1980) The Process is the Punishment. New York: Russell Sage Foundation.
- Felstiner, William, and Lynne Williams (1978) "Mediation as an Alternative to Criminal Prosecution," 2(3) Law and Human Behavior 223.
- Fine, Bob (1979a) "Struggles Against Discipline: The Theory and Politics of Michael Foucault," 9 Capital and Class 75.
- Fine, Bob (ed.) (1979b) Capitalism and the Rule of Law. London: Hutchison.
- Fischer, E.A. (1975) "Community Courts--an Alternative to Conventional Criminal Adjudication," 24 American University Law Review 1253.
- Florida Supreme Court, Office of the State Courts Administrator (1978) Citizen Dispute Settlement Guideline Manual. Tallahassee, Fla.: Office of the State Courts Administrator.
- Ford Foundation (1978a) New Approaches to Conflict Resolution. New York: Ford Foundation.
- Ford Foundation (1978b) Mediating Social Conflict. New York: Ford Foundation.
- Foucault, Michael (1977) Discipline and Punish: The Birth of the Prison. New York: Pantheon.
- Fox, Ken, Mary Jo Hetzel, Tom Riddell, Nancy Rose, and Jerry Sazama (1981) "Introduction: The Nature of the Public Sector," in Economics Education Project, Union for Radical Political Economics Crisis in the Public Sector. New York: Monthly Review Press/Union for Radical Political Economics.

- Fraser, Andrew (1978) "The Legal Theory We Need Now," 8 Socialist Review 147.
- Friedman, Andrew L. (1977) Industry and Labour: Class Struggle at Work and Monopoly Capitalism. London: Macmillan Press Ltd.
- Friesen, Ernest C., Jr., Edward C. Gallas, and Nesta M. Gallas (1971) Managing the Courts. Indianapolis, Ind.: Bobbs-Merrill.
- Fuller, Lon (1971) "Mediation--Its Forms and Functions," 44 Southern California Law Review 305.
- Galanter, Marc (1974) "Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change," 9 Law & Society Review 95.
- Galanter, Marc (1979) Justice in Many Rooms. A working paper prepared for the Disputes Processing Research Program. Madison, Wisc.: University of Wisconsin Law School.
- Gamson, William (1968) Power and Discontent. Homewood, Ill.: The Dorsey Press.
- Ganassi Agger, Simona (1979) Urban Self-Management: Planning for a New Society. White Plains, N.Y.: M.E. Sharpe.
- Garofalo, James, and Kevin Connelly (1980a) "Dispute Resolution Centers, Part I: Major Features and Processes," Criminal Justice Abstracts 416 (November).
- Garofalo, James, and Kevin Connelly (1980b) "Dispute Resolution Centers, Part II: Issues and Future Directions," Criminal Justice Abstracts 576 (December).
- Garth, Bryant (1982) "The Movement Toward Procedural Informalism in North America and Western Europe: A Critical Survey," in Richard L. Abel (ed.) The Politics of Informal Justice, Volume 2: Comparative Studies. New York: Academic Press.
- Gartman, David (1978) "Marx and the Labor Process: An Interpretation," 8 The Insurgent Sociologist 97.
- Gendrot, Sophie N. (1982) "Governmental Responses to Popular Movements: France and the United States," in Norman I. Fainstein and Susan S. Fainstein (eds.) Urban Policy under Capitalism. Beverly Hills, Calif.: Sage Publications.
- Gintis, Herbert (1980) "Communication and Politics: Marxism and the 'Problem' of Liberal Democracy," 50-51 Socialist Review 189.
- Goffman, Erving (1961) Asylums. New York: Doubleday.
- Gold, David A., Clarence Y.H. Lo, and Erik Olin Wright (1975) "Recent Developments in Marxist Theories of the Capitalist State," 5, 6 Monthly Review 29/36.

- Gordon, David (1976) "Capitalist Efficiency and Socialist Efficiency," 28 Monthly Review 19.
- Gordon, David (1977) "Capitalism and the Roots of Urban Crisis," in Roger E. Alcaly and David Mermelstein (eds.) The Fiscal Crisis of American Cities. New York: Vintage.
- Gorz, Andre (1967) Strategy for Labor. Boston, Mass.: Beacon Press.
- Gorz, Andre (1972) "Domestic Contradictions of Advanced Capitalism," in Richard Edwards, et al. (eds.) The Capitalist System. Englewood-Cliffs, N.J.: Prentice-Hall.
- Gough, Ian (1972) "Marx's Theory of Productive and Unproductive Labor," 76 New Left Review 51.
- Grau, Charles W. (1982) "Whatever Happened to Politics? A Critique of Structuralist Marxist Accounts of State and Law," in Piers Bierne and Richard Quinney (eds.) Marxism and Law. New York: John Wiley and Sons.
- Grau, Charles W., and Jane Kahn (1980) "Working the Damned, the Dumb, and the Destitute: The Politics of Community Service Restitution," in James J. Alfini (ed.) Misdemeanor Courts: Policy Concerns and Research Perspectives. Chicago, Ill.: American Judicature Society.
- Greason, A.L. (1980) "Humanists as Mediators: An Experiment in the Courts of Maine," 66 ABA Journal 576.
- Green, Mark, and Norman Waitzman (1980) "Cost, Benefit, and Class," 7 Working Papers for a New Society 39.
- Greenberg, David (1975) "Problems in Community Corrections," 10(1) Issues in Criminology (Spring).
- Habermas, Jurgen (1975) Legitimation Crisis. Boston, Mass.: Beacon Press.
- Harring, Sidney, and Lorraine M. McMullin (1975) "The Buffalo Police 1872-1900: Labor Unrest, Political Power, and the Creation of the Police Institution," 4 Crime and Social Justice 5.
- Harrington, Christine (1980) "Voluntariness, Consent and Coercion in Adjudicating Minor Disputes: The Neighborhood Justice Center," in John Brigham and Don Brown (eds.) Policy Implementation: Choosing Between Penalties and Incentives. Beverly Hills, Calif.: Sage Publications.
- Harrington, Christine (1982) "Delegalization Reform Movements: A Historical Analysis," in Richard L. Abel (ed.) The Politics of Informal Justice, Volume 1: The American Experience. New York: Academic Press.

- Harvey, David (1976) "Labor, Capital, and Class Struggle Around the Built Environment in Advanced Capitalist Societies," 6 Politics and Society 265.
- Harvey, David (1981) "The Urban Process Under Capitalism," in Michael Dear and Allen J. Scott (eds.) Urbanization and Urban Planning in Capitalist Society. London: Methuen.
- Hay, Douglas, Peter Linebaugh, John G. Rule, E.P. Thompson, and Cal Winslow (1975) Albion's Fatal Tree: Crime and Society in Eighteenth-Century England. New York: Pantheon.
- Heilbroner, Robert (1976) "The American Plan," The New York Times Magazine 9 (January 25).
- Heilbroner, Robert (1978) Beyond Boom and Crash. New York: W.W. Norton.
- Henry, Stuart (1982) "Factory Law: The Changing Disciplinary Technology of Industrial Social Control," 10(4) International Journal of the Sociology of Law 365.
- Herbers, John (1979) "Labor-Style Negotiations Tested to Coordinate City Plans in U.S.," New York Times 1 (November 25).
- Heydebrand, Wolf (1977) "Organizational Contradictions in Public Bureaucracies: Toward a Marxian Theory of Organizations," 18 Sociological Quarterly 83.
- Heydebrand, Wolf (1978) "The Context of Public Bureaucracies: An Organizational Analysis of Federal District Courts," 11 Law & Society Review 759.
- Heydebrand, Wolf (1979) "The Technocratic Administration of Justice," in Steven Spitzer (ed.) Research in Law and Sociology, Volume 2. Greenwich, Conn.: JAI Press.
- Heydebrand, Wolf, and Carol Seron (1981) "The Double Bind of the Capitalist Judicial System," 9 International Journal of the Sociology of Law 407.
- Hill, Richard Child (1976) "Fiscal Crisis and Political Struggle in the Decaying Central City," 4/5 Kapitalistate 31.
- Hirsch, Joachim (1978) "The State Apparatus and Social Reproduction: Elements of a Theory of the Bourgeois State," in John Holloway and Sol Picciotto (eds.) State and Capital: A Marxist Debate. Austin, Texas: University of Texas Press.
- Hirsch, Joachim (1981) "The Apparatus of the State, the Reproduction of Capital," in Michael Dear and Allen J. Scott (eds.) Urbanization and Urban Planning in Capitalist Society. London: Methuen.

- Hirschhorn, Larry (1978) "The Political Economy of Social Service Rationalization: A Developmental View," 2 Contemporary Crises 63.
- Hoff, Bert H. (1974) Final Evaluation Report: Philadelphia's Arbitration as an Alternative Project. Washington, D.C.: Blackstone Associates.
- Hofstadter, Richard (1955) The Age of Reform. New York: Vintage.
- Holloway, John, and Sol Picciotto (1978) "Introduction: Towards a Materialist Theory of the State," in John Holloway and Sol Picciotto (eds.) State and Capital: A Marxist Debate. Austin, Texas: University of Texas Press.
- Horwitz, Morton (1977) The Transformation of American Law: 1780-1860. Cambridge, Mass.: Harvard University Press.
- Hunt, Alan (1977) "Theory and Politics in the Identification of the Working Class," in Alan Hunt (ed.) Class and Class Structure. London: Lawrence and Wishart.
- Hunt, Alan (1981) "Dichotomy and Contradiction in the Sociology of Law," in Piers Bierne and Richard Quinney (eds.) Marxism and Law. New York: John Wiley.
- Hylton, John (1981) "The Growth of Punishment: Imprisonment and Community Corrections in Canada," 15 Crime and Social Justice 18.
- Hyman, Richard (1980) "Trade Unions, Control, and Resistance," in Geoff Esland and Graeme Salaman (eds.) The Politics of Work and Occupations. Toronto: University of Toronto Press.
- Hymer, Stephen (1978) "International Politics/International Economics," 29 Monthly Review 15.
- Ignatieff, Michael (1978) A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850. New York: Pantheon.
- Institute for Labor Education and Research (1982) What's Wrong with the U.S. Economy? Boston, Mass.: South End Press.
- Jankovic, Ivan (1977) "Labor Market and Imprisonment," 8 Crime and Social Justice 17.
- Jessop, Bob (1980) "On Recent Marxist Theories of Law, the State, and Juridico-Political Ideology," 8 International Journal of the Sociology of Law 339.
- Johnson, Earl (1978) "Courts and the Community," in State Courts: A Blueprint for the Future. Denver, Colo.: National Center for State Courts.

- Johnson, Earl, Valerie Kantor, and Elizabeth Schwartz (1977) Outside the Courts: A Survey of Diversion Alternatives in Civil Cases. Denver, Colo.: National Center for State Courts.
- Johnston, Paul (1981) "Public Sector Unionism," in Economics Education Project, Union for Radical Political Economics (eds.) Crisis in the Public Sector. New York: Monthly Review Press/Union for Radical Political Economics.
- Katz, M.B. (1978) "Origins of the Institutional State," 1(4) Marxist Perspectives 6-22 (Winter).
- Katznelson, Ira (1981) City Trenches: Urban Politics and the Patterning of Class in the United States. New York: Pantheon.
- Kidder, Robert L. (1980) "Down to Earth Justice: Pitfalls on the Road to Legal Decentralization," in Melvin J. Lerner and Sally C. Lerner (eds.) The Justice Motive in Social Behavior. New York: Plenum Press.
- Kidder, Robert L. (1981) "The End of the Road? Problems in the Analysis of Disputes," 15(34) Law & Society Review 717.
- Kinsey, Richard (1978) "Marxism and the Law," 5(2) British Journal of Sociology 202.
- Kittrie, Nicholas (1971) The Right to be Different. Baltimore, Md.: Penguin.
- Klare, Karl (1982) "Labor Law and the Liberal Political Imagination," 62 Socialist Review 45 (March-April).
- Klein, James H., Jane Ratcliffe, Joseph Griesta, and Clement Risk (1978) Neighborhood Justice in Chicago: A City of Neighborhoods. A report of the Neighborhood Justice Task Force prepared for the Chicago Bar Association. Chicago, Ill.: Chicago Bar Association.
- Kotler, Milton (1969) Neighborhood Government: The Local Foundations of Political Life. Indianapolis, Ind.: The Bobbs-Merrill Co.
- Lasch, Christopher (1977) "The Siege of the Family," The New York Review of Books 15 (November 24).
- Lasch, Christopher (1981) "The Crisis of Confidence," 1(1) Democracy 25.
- Leontief, Wassily (1982) "What Hope for the Economy," New York Review of Books 31 (April 12).
- Lerner, Max (1957) "The Supreme Court and Industrial Society," in Robert G. McCloskey (ed.) The Supreme Court and Industrial Society. New York: Vintage.

- Lipton, Douglas, et al. (1974) The Effectiveness of Correctional Treatment: A Survey of Treatment Evaluation Studies. New York: Praeger.
- Lively, Martin (1977) Memorandum to Proposed Neighborhood Justice Center Grantees, Grant Application Guidelines and Procedures. Washington, D.C.: Training and Testing Division, Office of Technology Transfer, Law Enforcement Assistance Administration.
- Lovins, Amory B. (1977) Soft-Energy Paths. San Francisco, Calif.: Friends of the Earth International.
- Magaziner, Ira, and Robert Reich (1982) Minding America's Business: The Decline and Rise of the American Economy. New York: Harcourt Brace Jovanovich.
- Markham, Wayne (1979) "Close Encounters of the Condo Kind," Miami Herald (October 21).
- Martinson, Pati L. (1981) The Manual: A "How To" Guide for the Management and Development of Mediation Projects Designed for Non-Profit and Government Agencies. Denver, Colo.: Denver Commission on Human Relations.
- Marx, Karl (1967) Capital, Volume 1. New York: International Publishers.
- Marx, Karl (1970a) The German Ideology. New York: International Publishers.
- Marx, Karl (1970b) A Contribution to the Critique of Political Economy. New York: International Publishers.
- Maslow, Abraham (1970) Motivation and Personality. New York: Harper and Row.
- Mather, Lynn, and Barbara Yngvesson (1981) "Language, Audience, and the Transformation of Disputes," 15 Law & Society Review 775.
- Mathiesen, Tom (1980) "The Future of Control Systems--The Case of Norway," 8 International Journal of Sociology of Law 149.
- McGillis, Daniel (1980a) Dispute Processing Projects: A Preliminary Directory. Cambridge, Mass.: Harvard Center for Criminal Justice.
- McGillis, Daniel (1980b) "Recent Developments in Minor Dispute Processing," 5 Dispute Resolution 12 (Washington, D.C.: ABA Special Committee on Resolution of Minor Disputes).
- McGillis, Daniel (1982) "Minor Dispute Processing: A Review of Recent Developments," in Roman Tomasic and Malcolm Feeley (eds.) Neighborhood Justice: Assessment of an Emerging Idea. New York: Longman.

- McGillis, Daniel, and Joan Mullen (1977) Neighborhood Justice Centers: An Analysis of Potential Models. Washington, D.C.: U.S. Government Printing Office.
- McLauchlan, Gregory (1975) "LEAA: A Case Study in the Development of the Social Industrial Complex," 4 Crime and Social Justice 15.
- Melossi, Dario (1979) "Institutions of Social Control and Capitalist Organization of Work," in Bob Fine (ed.) Capitalism and the Rule of Law. London: Hutchison.
- Merry, Sally E. (1979) "Going to Court: Strategies of Dispute Management in an American Urban Neighborhood," 13 Law & Society Review 891.
- Merry, Sally E. (1982a) "Defining Success in the Neighborhood Justice Movement," in Roman Tomasic and Malcolm Feeley (eds.) Neighborhood Justice: Assessment of an Emerging Idea. New York: Longman.
- Merry, Sally E. (1982b) "The Social Organization of Mediation in Non-Industrial Societies: Implications for Informal Community Justice in America," in Richard L Abel (ed.) The Politics of Informal Justice, Volume 2: Comparative Studies. New York: Academic Press.
- Merry, Sally, and Susan Silbey (1983) "The Problems Shape the Process: Managing Disputes in Mediation and Court." (forthcoming)
- Miliband, Ralph (1973) The State in Capitalist Society. London: Quarter Books.
- Milovanovic, Dragan (1981) "The Commodity Exchange Theory of Law: In Search of a Perspective," 16 Crime and Social Justice 41.
- Moberg, David (1980) "Work and American Culture: The Ideal of Self-Determination and the Prospects for Socialism," 50-51 Socialist Review 19.
- Mollenkopf, John (1977) "The Crisis of the Public Sector in America's Cities," in Roger E. Alcala and David Mermelstein (eds.) The Fiscal Crisis of American Cities. New York: Vintage.
- Mollenkopf, John (1981) "Neighborhood Political Development and the Politics of Urban Growth: Boston and San Francisco 1958-78," 5(1) International Journal of Urban and Regional Research 15.
- Morgan, Patricia (1981) "From Battered Wife to Program Client: The State's Shaping of Social Problems," 9 Kapitalistate 17.
- Moriarity, William F., Jr., Thomas L. Norris, and Luis Salus (1977) Dade County Citizen Dispute Settlement Program: Evaluation. Miami, Fla.: Dade County Criminal Justice Planning Unit.

- Morris, David (1982) Self-Reliant Cities: Energy and the Transformation of Urban America. San Francisco, Calif.: Sierra Club Books.
- Morris, David, and Karl Hess (1975) Neighborhood Power: Returning Political and Economic Power to Community Life. Boston, Mass.: Beacon Press.
- Nader, Laura (ed.) (1980) No Access to Law: Alternatives to the American Judicial System. New York: Academic Press.
- Nader, Laura, and Linda Singer (1976) "Law in the Future: What are the Choices?" 51 California State Bar Journal 281.
- National Center for State Courts (1978) Planning in State Courts: Trends and Developments, 1976-78. Williamsburg, Va.: National Center for State Courts.
- Neubeck, Kenneth J. (1977) "Capitalism as Therapy?" 8(1) Social Policy 41.
- Neumann, Franz (1957) "The Change in the Function of Law in Modern Society," in F. Neumann, The Democratic and the Authoritarian State. New York: Free Press.
- Newfield, Jack, and Paul Dubrul (1977) The Abuse of Power. New York: Penguin Books.
- Nichols, Theodore (1980) "Management, Ideology, and Practice," in Geoff Esland and Graeme Salaman (eds.) The Politics of Work and Occupations. Toronto: University of Toronto Press.
- Nicolau, George (1975) Community Mediator Training Manual. New York: Institute for Mediation and Conflict Resolution.
- Noble, David F. (1978) "Social Choice in Machine Design: The Case of Automatically Controlled Machine Tools, and a Challenge for Labor," 8 Politics and Society 313.
- O'Connor, James (1973) The Fiscal Crisis of the State. New York: St. Martin's Press.
- O'Connor, James (1978) "The Democratic Movement in the United States," 7 Kapitalistate 15.
- O'Connor, James (1981a) "Accumulation Crisis: The Problem and Its Setting," 5 Contemporary Crises 109.
- O'Connor, James (1981b) "The Meaning of Crisis," International Journal of Urban and Regional Research 301.

- Offe, Claus (1975) "The Theory of the Capitalist State and the Problem of Policy Formation," in Leon Lindberg et al. (eds.) Stress and Contradiction in Modern Capitalism. Lexington, Mass.: D.C. Heath and Co.
- Parsons, Talcot (1949) The Structure of Social Action. New York: Free Press.
- Pashukanis, Evgeny B. (1978) Law and Marxism: A General Theory. (Ed. by Chris Arthur). London: Ink Links.
- Pignon, Dominique, and Jean Querzola (1978) "Dictatorship and Democracy in Production," in Andre Gorz (ed.) The Division of Labour: The Labour Process and Class Struggle in Modern Capitalism. Sussex, England: The Harvester Press.
- Pinellas County Citizen Dispute Settlement Project (1978) Final Report. St. Petersburg, Fla..
- Piven, Frances Fox (1972) "The New Urban Programs: The Strategy of Federal Intervention," in Richard A. Cloward and Frances Fox Piven (eds.) The Politics of Turmoil: Poverty, Race, and the Urban Crisis. New York: Vintage.
- Piven, Frances Fox, and Richard Cloward (1971) Regulating the Poor. New York: Vintage.
- Piven, Frances Fox, and Richard Cloward (1979) Poor People's Movements. New York: Vintage.
- Piven, Frances Fox, and Richard A. Cloward (1982) The New Class War: Reagan's Attack on the Welfare State and Its Consequences. New York: Pantheon Books.
- Platt, Anthony (1969) The Child Savers: The Invention of Delinquency. Chicago, Ill.: University of Chicago Press.
- Polanyi, Karl (1944) The Great Transformation. Boston, Mass.: Beacon Press.
- Poulantzas, Nicos (1968) Political Power and Social Classes. London: Verso.
- Pound, Roscoe (1940) Organization of Courts. Boston, Mass.: Little Brown.
- Quinney, Richard (1977) Class State and Crime. New York: David McKay.
- Raskin, A.H. (1982) "The Cooperative Economy," The New York Times, Section 3, p. 1 (February 14).
- Ray, Larry (ed.) (1981) Dispute Resolution Program Directory. Washington, D.C.: American Bar Association.

- Reich, Robert (1982) "Industrial Policy," The New Republic 28 (March 31).
- Reifner, Udo (1982) "Individualistic and Collective Legalization: Theory and Practice of Legal Advice for Workers in Prefascist Germany," in Richard L. Abel (ed.) The Politics of Informal Justice, Volume 2: Comparative Studies. New York: Academic Press.
- Resnick, Bill (1981) "The Right's Prospects: Can It Reconstruct America," 56 Socialist Review 9.
- Rheinstein, Max (ed.) (1954) Max Weber on Law in Economy and Society. Cambridge, Mass.: Harvard University Press.
- Rodberg, Leonard, and Gelvin Stevenson (1977) "The Health Care Industry in Advanced Capitalism," 9 The Review of Radical Political Economics 104.
- Roehl, Janice, and Royer F. Cook (1982) "The Neighborhood Justice Centers Field Test," in Roman Tomasic and Malcolm Feeley (eds.) Neighborhood Justice: Assessment of an Emerging Idea. New York: Longman.
- Rohatyn, Felix (1981) "Reconstructing America," New York Review of Books 16 (March 5).
- Rosenberg, Morris (1972) "Let's Everybody Litigate," 50 Texas Law Review 1349.
- Rothman, David J. (1971) The Discovery of the Asylum: Social Order and Disorder in the New Republic. Boston, Mass.: Little Brown.
- Rubinstein, Leonard (1976) "Procedural Due Process and the Limits of the Adversary System," 11 Harvard Civil Liberties--Civil Rights Law Review 48.
- Sale, Kirkpatrick (1980) Human Scale. New York: Coward, McCann and Geohagen.
- Sander, Frank (1976) "Varieties of Dispute Processing," 70 Federal Rules Decisions 79.
- Sander, Frank (1977) Report on the National Conference on Minor Dispute Resolution. Chicago, Ill.: American Bar Association.
- Santos, Boaventura de Sousa (1977) "The Law of the Oppressed: The Construction and Reproduction of Legality in Pasargada," 12 Law & Society Review 3.
- Santos, Boaventura de Sousa (1982) "Law and Community: The Changing Nature of State Power in Late Capitalism," in Richard L. Abel (ed.) The Politics of Informal Justice, Volume 1: The American Experience. New York: Academic Press.

- Sarat, Austin, and Joel Grossman (1975) "Courts and Conflict Resolution," 60 American Political Science Review 1200.
- Schumacher, E.F. (1973) Small is Beautiful. New York: Harper and Row.
- Schwendiger, Herman, and Julia R. Schwendiger (1976) "Delinquency and the Collective Varieties of Youth," 5 Crime and Social Justice 7.
- Scull, Andrew T. (1977) Decarceration: Community Treatment and the Deviant--A Radical View. Englewood-Cliffs, N.J.: Prentice-Hall.
- Sennett, Richard (1979) "The Boss's New Clothes," The New York Review of Books 42 (February 22).
- Shaiken, Harley (1979) "The Brave New World of Work in Auto," In These Times 12 (September 19).
- Shank, Gregory (1978) "J. Thorsten Sellin: Pioneering in Penology and Slavery and the Penal System," 10 Crime and Social Justice 36.
- Sheppard, David I., et al. (1979) Neighborhood Justice Centers Field Test: An Interim Report. Washington, D.C.: National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration.
- Shonholtz, Raymond (1977) Review of Alternative Dispute Mechanisms and a Government Proposal for Neighborhood Justice Centers. San Francisco, Calif.: San Francisco Community Board Program.
- Silver, Allan (1974) "The Demand for Order in Civil Society: A Review of Some Themes in the History of Urban Crime, Police, and Riot," in Richard Quinney (ed.) Criminal Justice in America: A Critical Understanding. Boston, Mass.: Little Brown.
- Singer, Linda (1979) "Nonjudicial Dispute Resolution Mechanisms: The Effects on Justice for the Poor," Clearinghouse Review 569.
- Sklar, Holly (1980) Trilateralism. Boston, Mass.: South End Press.
- Snyder, Frederick E. (1978) "Crime and Community Mediation--The Boston Experience: A Preliminary Report on the Dorchester Urban Court Program," Wisconsin Law Review 737.
- Snyder, Frederick E. (1979) "Legal Implications of Mediation," 3(3) Perspective 15.
- Special Task Force to the Secretary of Health, Education, and Welfare (1972) Work in America. Washington, D.C.: U.S. Government Printing Office.
- Spitzer, Steven (1979a) "Toward a Marxian Theory of Deviance," 22 Social Problems 638.

- Spitzer, Steven (1979b) "The Rationalization of Crime Control in Capitalist Society," 3 Contemporary Crises 187.
- Spitzer, Steven (1981) "The Political Economy of Policing," in David F. Greenberg (ed.) Crime and Capitalism. Palo Alto, Calif.: Mayfield.
- Spitzer, Steven (1982) "The Dialectics of Formal and Informal Control," in Richard L. Abel (ed.) The Politics of Informal Justice, Volume 1: The American Experience. New York: Academic Press.
- Spitzer, Steven, and Andrew Scull (1977) "Privatization and Capitalist Development: The Case of the Private Police," 25(1) Social Problems 18.
- Starr, June (1981) "Mediation: Anthropological Perspectives," American Legal Studies Association Forum.
- Stone, Katherine Van Wezel (1981) "The Post-War Paradigm in American Labor Law," 90(7) Yale Law Journal 1509.
- Sudnow, David (1965) "Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office," 13 Social Problems 255.
- Szasz, Thomas (1965) Psychiatric Justice. New York: Macmillan.
- Thompson, E.P. (1966) The Making of the English Working Class. New York: Vintage.
- Thompson, E.P. (1975) Whigs and Hunters. New York: Pantheon Books.
- Thurow, Lester C. (1980) The Zero-Sum Society. New York: Penguin Books.
- Tigar, Michael, and Madeleine Levy (1977) Law and the Rise of Capitalism. New York: Monthly Review Press.
- Todd, Harry (1978) "Neighborhood Injustices: Aging in a Changing Urban Environment." Prepared for a conference on community housing choices for older Americans, Philadelphia Geriatric Center, Philadelphia, Pennsylvania, April 4-6.
- Tomasic, Roman (1982) "Mediation as an Alternative to Adjudication: Rhetoric and Reality in the Neighborhood Justice Movement," in Roman Tomasic and Malcolm Feeley (eds.) Neighborhood Justice: Assessment of an Emerging Idea. New York: Longman.
- Trubek, David (1979) Understanding Courts in Context: A Preliminary Report on the Expected Contribution of the Civil Litigation Research Project to Civil Justice Research and Planning. Submitted to the Office for Improvements in the Administration of Justice. Washington, D.C.: U.S. Department of Justice.

- Trubek, David M., and Marc Galanter (1974) "Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States," Wisconsin Law Review 1062.
- Trzyna, Peter, and Karen Knab (1978) Alternatives to Litigation and Adjudication: Program Designers' Guide. Madison, Wisc.: Office of Planning and Research, Wisconsin Supreme Court.
- Turkel, Gerald (1981) "Rational Law and Boundary Maintenance: Legitimizing the 1971 Lockheed Labor Guarantee," 15(1) Law & Society Review 41.
- Unger, Roberto (1975) Law in Modern Society. New York: Free Press.
- United States Department of Justice, Law Enforcement Assistance Administration/ACTION (1980) Urban Crime Prevention Program: Guideline Manual. Washington, D.C.: United States Department of Justice.
- United States House of Representatives (1978) Committee on the Judiciary. Subcommittee on Courts, Civil Liberties, and the Administration of Justice. "Dispute Resolution Act." Hearings. 95th Congress, 2nd Session, July 27 and August 2. Washington, D.C.: U.S. Government Printing Office.
- United States House of Representatives (1979) Committee on the Judiciary. Subcommittee on Courts, Civil Liberties, and the Administration of Justice and Committee on Interstate and Foreign Commerce. Subcommittee on Consumer Protection and Finance. "Resolution of Minor Disputes." Joint Hearings. 96th Congress, 1st Session, June 6, 7, 14 and 18. Washington, D.C.: U.S. Government Printing Office.
- Vera Institute of Justice (1977) Felony Arrests: Their Prosecution and Disposition in New York City's Courts. New York: The Vera Institute of Justice.
- Wahrhaftig, Paul (1978) "Citizen Dispute Resolution: Whose Property?" in Citizen Dispute Resolution Organizer's Handbook. Pittsburgh, Pa.: American Friends Service Committee.
- Wahrhaftig, Paul (1982) "An Overview of Community-Oriented Citizen Dispute Resolution Programs in the United States," in Richard L. Abel (ed.) The Politics of Informal Justice, Volume 1: The American Experience. New York: Academic Press.
- Weinstein, James (1968) The Corporate Ideal in the Liberal State. Boston, Mass.: Beacon Press.
- Wolfe, Alan (1977) The Limits of Legitimacy: Political Contradictions of American Capitalism. New York: Free Press.
- Wright, Erik Olin (1975) "Alternative Perspectives in the Marxist Theory of Accumulation and Crisis," 6 Insurgent Sociologist 5.

Wright, Erik Olin (1978) Class, Crisis, and the State. New York:
Schocken Books.

Zwerdling, Daniel (1980) Workplace Democracy. New York: Harper
Colophon Books.