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THE WELCOME INTRUDER: AN ANALYSIS OF THE MEDIATOR'S ROLE IN  
CONFLICT RESOLUTION

*City University of New York*

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THE WELCOME INTRUDER: AN ANALYSIS OF THE  
MEDIATOR'S ROLE IN CONFLICT RESOLUTION

by

CLAIRE FRANCY

A dissertation submitted to the Graduate Faculty  
in Psychology in partial fulfillment of the require-  
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This manuscript has been read and accepted for the Graduate Faculty in Psychology in satisfaction of the dissertation requirement for the degree of Doctor of Philosophy.

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Abstract

THE WELCOME INTRUDER: THE ROLE OF THE MEDIATOR  
IN CONFLICT RESOLUTION

by

Claire E. Francy

Advisor: Professor Morton Bard

The study used a naturalistic observation process grounded in symbolic interactionist theory to examine communication in 102 court-referred disputes sent for mediation to a large urban dispute resolution center. Four hypotheses dealing with a) quantity of communication, b) quality and feeling tone of communication, c) demographic similarities between mediator and disputants, and d) the mediator's score on the Mach scale, version IV, were tested against a number of mediation outcome measures, including disputant satisfaction.

The purpose of the study was to see whether findings from the empirical literature on dispute resolution in laboratory settings held up in the field and to provide some tested guidelines for the selection and training of

mediators working in alternative dispute resolution settings. It was found that only quality- and tone-related communication variables, both verbal and non-verbal, showed a consistent relationship to the dependent measures in the direction predicted, that is, the more positive the tone of communications to and between the disputants, the more likely that mediation would be successful from both the institution's and the individuals' perspectives. Contrary to the prediction, larger amounts of communication showed an inverse relationship to successful outcomes. The report also provides data and discussion related to disputant characteristics and behaviors that suggested that respondents in court-referred mediation sessions may need to be treated differently than complainants in order to be treated equally.

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## INTRODUCTION

Something of a revolution is underway today in the management of social conflict in the United States and abroad. Fifteen years ago, the theory and practice of conflict resolution was virtually unknown outside of diplomatic circles and a few small academic enclaves; today, approximately 200 programs<sup>1</sup> devoted to dispute settlement are in operation in the U.S. Many, though not all of them, utilize mediation as an alternative to criminal and civil proceedings to resolve disputes. The impetus for the growth of this field is variously ascribed, depending on one's personal or political interests, to: a) pressing case overloads in the judicial system, b) community-generated need, c) a general trend toward informalism and citizen participation in government since the 1960's, or d) attempts by the state to extend its control over the individual and society by decentralizing legal authority. And while much has been written about Alternative Dispute Resolution (ADR), very little of it is based on empirical investigation. The present study fills that gap to some extent. It is an empirical examination of how mediation, the most popular of the conflict resolution techniques, really works in one large, urban, dispute resolution program.

<sup>1</sup>American Bar Association Committee on Alternative Dispute Resolution, 1983.

To frame the study, four hypotheses were generated relating to how aspects of the process influence the outcome. These hypotheses view dispute resolution from the social-psychological perspective that considers the effects of both personal characteristics and communication styles on the mediation process. The theory that most influences the construction of the hypotheses and the choice of method is symbolic interactionism. (This theory is discussed in Chapter V.)

The purpose of the study is three-fold:

- 1) to provide data that may be useful in mediation training,
- 2) to identify certain conditions and practices that promote successful mediation, and
- 3) to increase our understanding of how mediation works by presenting an analysis of the interaction patterns in over 100 mediation sessions.

First, it may be helpful to define a number of terms which will be found frequently in this paper and which are in common use in the conflict resolution field.

Alternative Dispute Resolution (ADR): referring generally to any or all of the extra-judiciary means of conflict resolution; the abbreviation ADR is commonly used.

Arbitration: a quasi-judicial method of dispute resolution whereby competing claims are laid before a third party neutral whose role it is to make a final and binding determination based upon evidence and arguments. It differs from mediation and conciliation in that the dispute is referred for adjudication (or judgement), not for settlement by compromise. (Association of the Bar of the City of New York, 1970)

Mediation: a method of dispute resolution in which a third party neutral assists parties in reaching a voluntary settlement through informal but focused discussion of the issues relevant to their dispute; in theory at least, mediation is a non-coercive process that does not bind the parties unless they sign an enforceable contract upon its completion.

Caucus: That phase of the mediation process in which the mediator speaks privately and confidentially with each disputant. The caucuses follow fact-finding, and their purpose is to determine whether both parties have fully aired the issues in the case that are important to them.

Negotiations: that phase of the mediation process which involves the attempts by each party to obtain by bargaining the settlement which best serves his/her interests; may involve discussion, argument, rhetoric, threat, and almost always, compromise.

Complainant: the party lodging a formal or informal complaint or charge in a matter referred to a dispute resolution center for settlement; corresponds to the plaintiff in a legal action, but reduces the connotation of legal priority or favor.

Respondent: The party against whom a formal or informal charge is lodged in a matter referred to a dispute resolution center for settlement; corresponds to the defendant in a legal action, but reduces the connotation of potential culpability.

In addition, there are degrees of conflict which are sometimes differentiated, primarily by intervention strategists. These range from dispute (primarily verbal disagreement) through conflict (a serious dispute which may involve violence toward persons or property) to crisis (a conflict which has reached a critical point and intervention is mandatory). In actuality, however, these stages oscillate over time, and may be defined differently according to the idiosyncratic perceptions of both the participants and the intervenors.

Proponents of alternative dispute resolution (ADR) argue, with considerable but not disinterested justification, that without some form of intervention, lesser forms of conflict inevitably escalate to greater ones. However, even a crisis may be diffused through inaction, boredom, or replacement with a new crisis, without any apparent intervention except time. The risks involved in letting this happen are considerable, though.

Conflict is generally perceived as negative. However, it has been pointed out that conflict is a necessary precursor to social change (Coser, 1957), and an element essential to any dynamic social process (Simmel, 1955). But because any conflict inherently contains the potential for violence and destruction, the cost of change may far outweigh any of its benefits. This is true whether at the intrapsychic, interpersonal, group, or global level. It is in part this widespread recognition that has led to the current interest in exploring --and institutionalizing -- more

effective methods of conflict resolution, or conflict management.<sup>2</sup>

<sup>2</sup>Conflict management is the more conservative phrase preferred by social scientists like Robbins (1974), Walton (1969), and Wehr (1979), whose work mostly is in the area of organizational behavior.

CHAPTER I  
HISTORICAL AND CULTURAL PERSPECTIVES

Historical Antecedents in the U.S.

A dispute resolution industry is growing in the United States. Evidence for its existence comes from many quarters. For example: Most large and many smaller cities now support some type of dispute resolution center. Universities and colleges give workshops and courses in conflict resolution applied to many areas. Police personnel across the country have been trained in this field (Bard, 1970, 1973; Zacker and Bard, 1973), and one publisher (Harper and Row) has produced several training films on the subject especially for police personnel. A growing number of consulting firms, both profit and non-profit, offer organizational conflict management seminars to corporations and government agencies. Many corporate management development training programs include modules on managing conflict.

Then there are the legions of psychotherapists, attorneys, and social workers who specialize in divorce mediation (Herrman et al., 1979). This was one of the most popular topics at a conference on "Problem Solving Through Mediation" sponsored by the American Arbitration Association (New York City, December 1-2, 1983). The conference attracted close to 500 people, among them social workers, labor-management personnel, professional arbitrators, attorneys, psychotherapists, research psychologists,

and practicing and would-be mediators of all kinds.

More indications of the interest in ADR can be seen in the law itself: In 1980, then-President Carter signed into law the Dispute Resolution Act (Public Law 96-190) indicating Congressional approval of the community dispute resolution concept (McGillis, 1980).<sup>3</sup> And, it is now mandatory in certain states and cities to refer child custody disputes (e.g. California) and consumer complaints (e.g. Fairfax, VA) to mediation prior to or in lieu of adjudication. Finally, members of the American Bar Association are actively exploring and appropriating the "mini-trial" as an alternative to costly litigation; in urging attorneys to get on the corporate ADR bandwagon, the Bar is acknowledging the impact this movement may have on the futures and finances of members of the legal profession.

What are the roots of the current interest in non-adjudicatory forms of conflict resolution in a society notorious for its love of litigation? Historically, they may be traced to America's origins as a country born of revolt against traditional legal authority, and to her melting-pot society, which required the continuous, relatively peaceful assimilation of large and diverse immigrant populations. In a new history of

<sup>3</sup>However, the \$1.1 million appropriation to fund numerous programs and research projects was never allocated. Currently, funding for program operations and research is obtained through local governments, universities, and/or private foundations.

ADR, Auerbach (1983) demonstrates that, from the Puritans on, "the rule of law was explicitly rejected in favor of alternative means for ordering human relations and for resolving the inevitable disputes that arose between individuals."

The rule of law, however, can be resisted only insofar as the reality of informal, community-based control is effective and genuine. The volume of litigation in American courts has increased in direct proportion to the loss of any sense of community. The result is today's enormously over-burdened legal system and a "plague of lawyers." Direct empirical evidence of the effects of this anomie on the judicial system is offered by Merry (1979). Her study of court usage supported the hypothesis that, as relational distance between individuals increases, so does resort to formal, legal means of dispute resolution.

Prior to this development, however, and continuing to the present, we find numerous examples of extra-legal organizations which distributed their own versions of justice without the benefit of law. This occurred in situations where legal justice was either suspect or inadequately entrenched. The vigilantes of the Old West come to mind as one romanticized instance of this; a more recent, and more disturbing, example is the Ku Klux Klan of today.

Much larger and more respectable were the Knights of Labor, a union of working men formed in 1869. The Knights set up over 8,000 courts for their members under the initial aegis of their leader, Terence Powderly, one of the major figures in the history of the American labor movement. The preamble to the constitution of the Order of the Knights of Labor advocated

"the abrogation of all laws that do not bear equally upon capital and labor, and the removal of unjust technicalities, delays, and discrimination in the administration of justice...without any appeal whatever to advocates, lawyers, judges, or courts of so-called justice."

(from Garlock, 1982, p.29)

—Clearly, the largely immigrant Irish membership of the Knights of Labor felt they had much to lose by resorting to the Anglo-Saxon judicial system, even in its American incarnation.

American businessmen of the last century were not at all in the position of immigrant laborers vis-a-vis the legal system. Yet they too preferred to stay out of court. By the 1880's, private arbitration tribunals to deal with business-related disputes were being established, ostensibly as a response to great congestion even then in the civil courts, and partly because business found that the courts were not adjusting rapidly enough to the legal requirements of the shift from merchant to corporate capitalism (Harrington,1982). Harrington quotes William L. Ransom, who favored arbitration of business matters

in order "to avoid legal procedures, and not legal principles." (p. 41, italics added). Today, the American Arbitration Association continues to provide similar services to business and industry, as does the Federal Mediation and Conciliation Service in the public sector.

The turn of the century witnessed a major court reform movement whose adherents saw rehabilitation, education, and socialization of the deviant as part of the criminal justice system's responsibility. At the same time, calls for more scientific management and centralization of the courts arose. The intent was to improve accountability and lessen the irregularities and discriminatory practices rampant within the locally controlled system of Justices of the Peace. The Chicago Municipal Court, opened in 1906, was an early model of the modern, specialized-but-unified urban court (ibid). It is important to note that, as the legal system restructured itself in the name of improved management, it also greatly expanded its own power by increasing its accessibility -- and access -- to the populace at large, which was viewed as needing ever more interventionist, protectionist, and specialized legal services. Critics of today's ADR movement express concern that it, too, is serving to disguise the extension of judiciary power over the public. (e.g. Abel, 1982; Hofrichter, 1982; Santos de Sousa, 1982).

Immigrants also played a role in the history of ADR in the United States. One way immigrant groups gained acceptance by the surrounding community was by not washing their dirty linen in public. The Chinese, Italian, and orthodox Jewish cultures, to name a few, maintained firm social control over their members through community, familial, and religious enforcement of their mores, and continue to do so to a surprising extent today.

Codes of honor -- and of secrecy and privacy -- continue to exert strong pressure within groups as diverse as the Amish and the Mafia, just as they did among the Knights of Labor, and as they continue to do in modern fraternal and professional organizations today. Professional groups in particular manage to hold themselves aloof from, if not above, the law by resolving internal conflicts without outside intervention. -- It is in fact remarkable the extent to which members of the Bar and the police stand out as groups that are part and parcel of the legal system, yet who, not so paradoxically, avoid using that system to sanction their errant colleagues or to settle internal disputes.

What superficially appears to be a rapid and recent embrace of informal alternatives to our courts, then, is not so sudden after all. Instead, it is a phase of our legal history, which reflects that the tendency to resort to the courts has periodically waxed and waned (McGillis, 1982), and is currently waning in reaction to a long-held perception of the legal system as a needlessly formal, cumbersome bureaucracy.<sup>4</sup>

In larger terms, the present ADR movement represents one part of the dialectic between formalism and informality that characterizes the evolution of any institution. But ironically, though not surprisingly, many of the negatively perceived trappings of the formal legal system are fast accruing to the newly formed dispute resolution centers. The remedy seems to be taking on symptoms of the disease -- a not uncommon problem in the process of curing social ills (see Sieber, 1981, for many interesting examples of same).

#### Cross-Cultural Influences

Unlike most aspects of our judicial system, the ADR movement does not have its roots in Anglo-Saxon legal tradition. Instead, it has been heavily influenced by non-adversarial, non-judicial models of conflict settlement that are more often found in non-Western and less industrialized societies. Detailed descriptions of dispute resolution practices in a variety of cultures, many of which have ritualized and institutionalized the role of the third party neutral, can be found in Abel (1982, v.2), Capelletti (1978-9), Gulliver (1978, 1979), Nader (1969), and Nader and Todd (1978).

These authors fully acknowledge that we have learned a great

<sup>4</sup>This current perception may also be due in part to the legacy of the 1960's, when concepts of social activism, community empowerment, self-help, and anti-professionalism were highly touted by a generation that is now of an age to implement and institutionalize changes corresponding to these views.

deal about ADR from cross-cultural investigations. But, they also stress that there are many factors operating in other societies which preclude the wholesale transplant of their concepts and practices of dispute resolution into post-industrial urban America. These differences can be grouped into three general categories that have to do with 1) political-historical considerations, 2) characteristics of the third party neutral, and 3) social structure. The first is addressed by Abel, who takes the view that

"It is not possible to use pre-capitalist informal legal institutions as a model for constructing informal justice under capitalism. The effort to do so is inevitably stillborn because it attempts to cross-breed distinct species -- formality and informality -- to produce offspring with characteristics that are inherently contradictory."

(Abel, 1982, v.2, p.4)

Merry (1982) concurs, but bases her distinction on anthropological -- industrial vs. non-industrial societies -- rather than on political differences.

The type of third party neutral that exists in less complex societies poses another problem in remaking one culture's traditional dispute resolution system into our alternative one. After examining neutrals in a number of societies, Gulliver (1979) categorized them into three different types: a) elite neutrals, who are socially distinct from the disputants due to their status as professionals, religious figures, or leaders in the community; b) outsider neutrals, who are quite separate from

the parties, relationships, and social categorizations which contextualize a given dispute; and c) specialist neutrals, who are called in to resolve a dispute on the basis of their expertise in issues germane to the dispute. The problem in exporting at least the first two categories of neutral is that the neutral's role is largely defined by, and dependent upon, the existence of a strong community wherein anyone's status and role are apparent to all.

In modern labor disputes, and in corporate environments, neutrals can embody some or all of the roles above since labor and management groups satisfy certain definitive characteristics of a community. But in the case of interpersonal or "community" disputes, where ADR programs are being most widely implemented, the community may be non-existent or amorphous at best.<sup>5</sup> On what basis, then, is the role of the neutral legitimized? And on what grounds does the neutral's power and efficacy rest? As new alternatives to courts and judges are sought, these are crucial questions to consider.

The third difference, and one that has major implications in terms of policy and program planning, has to do with social structure. As suggested in the preceding paragraphs, the successful use of informal dispute resolution in other societies

<sup>5</sup>Scull (1982), for example, describes the negative consequences of relying on a mythic concept of community rather than making a more sanguine assessment of its reality in various social control and intervention programs.

rests heavily upon the nature of the community in which it operates. Most groups that have developed informal dispute resolution forums belong to what Felstiner (1974) calls Technologically Simple Poor Societies (TSPS), rather than to Technologically Complex Rich Societies (TCRS). Relative to the former, the latter are characterized by: unstable and unarranged marriage, lack of extended family structure, unshared workplaces, state rather than family care of the elderly, high social mobility, unstable friendships, and loose class barriers. All of these denote an absence of group cohesion and thus mitigate against the use of dispute resolution models that rely on this structural element. Furthermore, in smaller, simpler societies, both disputes and their resolution take on a highly ritualized, public character (Merry, 1982). This public aspect motivates resolution and perhaps belies our description of such mechanisms as "informal". Where great value is placed upon privacy, anonymity, and confidentiality, as is the case in many Western cultures, the impact of both the community and the personal authority of the third party neutral are reduced.

It is not, however, universally agreed that the differences between societies in which non-judicial dispute resolution developed and modern Western societies create insurmountable barriers to viable ADR programs in the latter. The differences may not be as relevant as the similarities are between the legal needs of people in both "advanced" and "less advanced" cultures. The form that the dispensation of justice takes may well vary

considerably from, say, an African tribal moot to a Soviet "peoples' court" to Manhattan's Criminal Court. The attendant rituals in each of these settings certainly vary greatly, but are not absent in any of them. And authority may rest with any of several powers, e.g. religion, the state, peer pressure, etc. But the underlying issues that create conflict, the perceived threat it poses, and the subsequent need to resolve it, remain fairly constant cross-culturally. The only salient differences to address in modifying traditional, informal dispute resolution systems for American culture would seem to be size and cohesiveness of the "community" to be served.

For example, both the pressure and motivation to resolve a dispute might be lower in large, highly mobile, anomic societies. Simple avoidance would be easier than it is in tightly-knit communities. But for most people, the psychological costs of avoidance remain prohibitively high (Danzig and Lowy, 1975), as do the costs of formal litigation. Focusing on disputants' needs and on the process of informal resolution, rather than on social structure, allows useful cross-cultural similarities to emerge. Proponents of mediation in particular, and ADR in general, feel that a hybrid form of ADR can be developed: one which makes use of the valuable contributions from other cultures, yet meets the varying structural requirements of the different kinds of societies in which it must be embedded.

CHAPTER II  
THEORETICAL AND RESEARCH PERSPECTIVES  
ON CONFLICT RESOLUTION

Contributions from Labor Negotiations and Bargaining

The study and practice of ADR also owe much to the field of labor negotiations and bargaining. Under the aegis of people prominent in these fields, such as Robert Coulson of the American Arbitration Association, and George Nicolau (Nicolau, 1975) and Theodore Kheel (Kheel, 1969), both well-known labor mediators, the idea of applying similar techniques to non-labor disputes was born. In addition, a host of scholars in industrial relations, labor-management studies, and organizational behavior have made contributions that inform much of the research now being directed toward the study of ADR. This section of the present paper briefly describes some of the theoretical and empirical work on bargaining and its relevance to ADR, and discusses some of the pitfalls involved in trying to extrapolate from business to non-business settings.

Negotiations, or bargaining, may be considered as a subset of those social relationships concerned with the resolution of conflict (Rubin and Brown, 1975). Most of the theoretical expositions on bargaining, therefore, are from the field of social and social-personality psychology. The theoretical work suggests many parallels to ADR processes, particularly if one

regards both disputants and third party neutrals in ADR in their roles as negotiators. -- It was clear from discussions with the mediators in the present study, and from discussions with other neutrals as well, that mediators do perceive themselves not only as promoters and facilitators of effective negotiating behavior between disputants, but as negotiators themselves. As such, the mediators' vested interest with respect to the disputants is in getting them to reach a voluntary settlement, often in the face of considerable resistance from the parties to do so. This view of mediators as negotiators is expanded upon by Young (1972).

The theories that seem to achieve the best fit with empirical data on labor negotiations are those related to social power and social influence, frequently couched in decision theory terminology. Level-of-Aspiration theory (Lewin et al., 1944), for example, predicts that the higher a person's self-confidence, as measured by one's level of aspiration in a social exchange, the higher that person's obtained rewards, no matter what the currency. In the bargaining context, this prediction has been confirmed in both naturalistic and laboratory studies: Cialdini (1979), for example, found that the tougher the bargainer, the better the deal obtained in negotiating the price of a new car. Karrass (1970), in a laboratory simulation and in a survey of professional negotiators, found that the most successful negotiators were those with the highest goals, regardless of either power or skill (although the interaction of aspiration level coupled with skill produced the highest outcomes). This

work in particular has important implications for mediators, who possess no real power over disputants, yet who nevertheless, by the strength of their own aspirations for a voluntary settlement, and by their negotiating skill, can often wrest accord from even the most recalcitrant disputants.<sup>6</sup>

Regarding the level of interdependence that develops between negotiators in the bargaining relationship, Thibault and Kelley's Comparison Level of Alternatives (CL alt) theory (1959) predicts that the intensity with which one party pursues or maintains a relationship is based on the relative value of that relationship -- its actual and potential rewards -- to each party: whichever party has the higher number or type of alternatives to the relationship sustains the power in it, and in the bargaining process. In Rubin and Brown's (1975) exhaustive social psychology of bargaining, the CL alt theory provides the theoretical framework for the bargaining relationship. In addition, the constructs Interpersonal Orientation (IO) and Motivational Orientation (MO) are developed. These orientations, or tendencies, were found to explain some of the behavioral variations between persons who are respectively relationship-directed or outcome-directed in the bargaining situation.

<sup>6</sup>Dramatic real-life demonstrations of this can be found in the scientific and popular literature on hostage negotiations, where the use of force can have fatal consequences. In such cases, power is quite literally redefined as negotiating expertise.

Continuing in this basic decision-theory vein is Subjective Expected Utility (SEU) theory (Tedeschi et al., 1972). This relates the the degree of power of the influencer, or negotiator, to the sum of his or her behaviors. For each behavior, a measure of the worth of its outcome, and the probability of that outcome, can be derived and experimentally controlled. Whichever party has the higher SEU controls the relationship, and ipso facto the outcome of bargaining. This analysis shows how important prior expectation is to level of aspiration, and also suggests the potentially high subjective expected utility of both real and feigned weakness as a bargaining behavior. Exploiting weakness or the appearance of weakness is explored more fully in Pruitt's (1970, 1971) work on concession patterns in negotiating as a function of each party's perception of the opponent's strength or power.

Theoretical works such as those just described, and others related to game theory, bargaining theory, and uncertainty theory<sup>7</sup> are all more or less logical, if highly abstract, mathematical formulations of the bargaining process in a formal business setting. Bargaining shares many elements with the larger processes of disputing and conflict resolution. Theories derived from the former can in be part generalized to the latter. However, while their heuristic value is unquestionable, their applied value in terms of the policies and practices of

<sup>7</sup>See Intriligator (1982) for brief descriptions of each and their applications to the analysis of international conflict.

alternative modes of interpersonal dispute resolution is problematic.

For one thing, these bargaining behavior theories are based largely upon well-executed but somewhat artificial experimental paradigms involving laboratory simulations. In the typical simulation, subjects are instructed to negotiate for themselves or their constituents the biggest piece of a monetary pie, or, even less realistically, to play Prisoner's Dilemma. Conditions experimentally varied in this type of work have included: degree and kind of communication permitted (Deutsch and Krauss, 1962); aspiration level (Karrass, 1970); concession behavior (Pruitt, 1971); anticipatory set or expectation (Johnson and Tullar, 1972); presence or absence of a third party neutral (Pruitt, 1970, 1971; Ziller et al., 1969); power vs. attitude change strategies (Walton, 1969); intervention style and accountability level of negotiators (Bartunek et al., 1975); time pressure (Brookmire and Sistrunk, 1980); and mediator attributes such as Machiavellianism and locus of control (Daniels, 1967), perceived and actual intelligence (Landsberger, 1960; Wechsler, 1950), values and attitudes (McGrath, 1966), and skill level (Karrass, 1970).

Many other variables that have been manipulated in similar studies are described in Rubin and Brown (1975) and categorized by them as they relate to the following aspects of negotiations:

- 1) the structural context of bargaining, e.g. communication

rules, reward structure, number of issues, audience influence, amount and type of communication; 2) the attributes and behavioral predispositions of bargainers, e.g. demographics, similarity to opposing party, cognitive styles, social status, tolerance for ambiguity, risk-taking behavior, authoritarianism, etc.; 3) the level and type of bargainers' interdependence, in particular studies of cooperative vs. competitive strategies; and 4) the use of social influence strategies, e.g. persuasion, threat, promises, coercion, appeal, manipulation, and power tactics.<sup>8</sup>

All of these variables undoubtedly play a role in any conflict resolution process. But problems develop in attempting to generalize from these kinds of studies to ADR research. The theoretical bases of these works, and their methodology, are not easily transferrable to the ADR setting. Predicting the outcome of simulated bargaining sessions, which can be replicated consistently, and in which variables such as those just described can be carefully controlled and manipulated, is much easier than in real situations.

In real-life disputes, goals are rarely clearly defined. In addition, the interrelationship between the parties involved is close, complex, and often unavoidable. Reasonable, rational

<sup>8</sup>Some of the most inventive studies using experimental bargaining paradigms to assess strategy were developed by Morton Deutsch and his colleagues (see Deutsch, 1973; Deutsch et al., 1971; Deutsch and Krauss, 1962).

behavior by the disputants is the exception rather than the rule. Articulation of issues is frequently very difficult for the parties, and information is incomplete. These conditions contrast markedly with those that obtain in a lab-simulated bargaining session. The difference, for example, in the motivational intensity and goal clarity between college sophomore subjects playing an experimental game and, say, a mother and her teenager locked in a long-term, conflict-ridden relationship involving dozens of inchoate issues, make decision-theory-based experimental models inadequate and inapplicable. Similar criticisms have been levelled at these models as explications of organizational decision-making as well (see March, 1974). Game theory in particular epitomizes assumptions of rationality in bargaining behavior, whereas, unfortunately, "...relatively few conflicts of interest can be conceptualized as games with optimal strategies." (Bartos, 1967, p.481)

Regarding methodological problems, Klimoski (1978) justifies laboratory simulations of bargaining as the lesser of two evils compared to field experiments. In the latter, an artificial conflict is experimentally introduced into a real situation. Due to the attendant ethical problems and lack of control over variables and conditions, this route is not likely to be either fruitful or popular in ADR research.

In view of these kinds of considerations, neither a laboratory simulation nor a field experiment was chosen as the model for the present study. Instead, the procedure involved a non-experimental observation of a large number of real mediation sessions augmented by post-session interviews with all the participants. This choice of method to some extent sacrificed experimental control in order to maximize both data quality and the applied value of the findings for ADR practitioners and policy-makers.

Other research methods and conceptual models have been employed to study the bargaining process in organizations. Alternatives to the predominant decision-theory models include: Negotiated Order Theory (Strauss, 1978; see Benson, 1977, for critique), which focuses on negotiations as the expression of the continuously fluid, emergent character of organizational arrangements; motivation-oriented perspectives such as Nierenberg's (1968), which emphasize bargaining strategies based on a hierarchical need-assessment of the opponent; and optimal-conflict-level proponents (e.g. Robbins, 1974; Walton, 1969), who consider the positive stimulus value of moderate, well-managed conflict in organizations.

These approaches strongly emphasize the interactive qualities of the process and the effects of negotiators' and neutrals' skills, and therefore may be more useful in studying real negotiations and conflicts in organizational settings. The

descriptive and practical value of this work is high, its predictive value low -- but no lower than many of the precise mathematical formulations provided by decision theory models. However, the terms moderate and well-managed rarely apply to interpersonal conflicts that reach ADR centers, and therefore the same generalizability problems persist with these approaches as well.

In addition to simulation methodologies to study bargaining, efforts have been made to identify the salient characteristics of successful negotiators and neutrals, primarily through personality surveys and interviews with professionals in these occupations. A small pool (only 13 subjects) of labor mediators thought that their integrity and negotiating skill were the most important personal factors in their work (Kressel, 1971). A larger group of negotiators indicated that the following traits were crucial to their success: planning skill, the ability to think clearly under stress, general practical intelligence (not education), verbal ability, product knowledge, personal integrity, and the ability to perceive and exploit power (Karrass, 1970). Another group of neutrals polled felt that the complex of characteristics that make a good mediator is indefinable and varies widely among individuals. When disputing parties were asked to describe those same mediators, they came up with vague, paradoxical dimensions like "friendly yet distant", "dominant yet submissive", etc. (Veglahn, 1977) -- in other words, possessing attributes that defy operational definition.

There have also been attempts to study personality and behavior traits of negotiators and neutrals from an interactionist perspective. One study used Bales' (1950) Interaction Process Analysis applied to 12 real negotiation sessions (Landsberger, 1960); another, in an effort to lessen the general bias toward structural rather than personality variables in much bargaining and conflict resolution research, outlined a personality-situation interaction model (Terhune, 1970). Efforts like these influenced the conception and design of the present study, whereas the choice of some of the variables examined are influenced by the more strictly experimental work discussed earlier in this section.

#### The Influence of Conflict and Conflict Resolution Theories

Partly due to the difficulties involved in applying bargaining-related theories to ADR (discussed in the previous section), numerous attempts to develop other conflict resolution theories not based on the bargaining format have been made. These focus less on the clearly-defined outcome measures available in bargaining paradigms, and more on the social and psychological complexities of conflict itself. In so doing, they tend to be less explicit as well. They offer fewer recipes for successful conflict resolution, but provide more probing analyses and raise more subtle questions regarding real conflict. Some of the formulations discussed in this section are expansions of those developed in reference to formal bargaining and

negotiations, but will be re-considered here as they apply to ADR; others have their roots in diplomatic negotiations, interpersonal and community conflict, and/or social relations in general.

At the outset, it must be acknowledged that, despite widespread interest in the subject, there is still no general theory of conflict resolution (Burton, 1981; Cain and Kulcsar, 1981; Gulliver, 1979; Zartman, 1976). Instead, one finds either a) attempts to identify and codify the numerous elements of a good theory of conflict resolution, or b) efforts to theorize on particular aspects of it. The organizing schema provide guides to further theorizing and research, and show considerable overlap, which indicates little disagreement as to what should be accounted for in a comprehensive theory of conflict resolution. Zartman (1976), for example, suggests that negotiations can be conceptualized to emphasize the influence of any of eight non-mutually-exclusive elements of conflict: history, context, structure, strategy, personality, behavior, process, and experimental evidence. McGrath's (1966) diagrammatic analysis includes all except the last of those, but expressed as they relate to the forces operating on the negotiator or neutral (i.e. partisan and cooperation pressures), the influence of the mediator overall, and the task/situational factors such as topics, rules, and relations between parties. Gulliver's (1977) framework considers many of the same factors, but makes more explicit those relevant to mediation particularly, e.g. the

parties' willingness to accept mediation, the differences between dyadic and triadic negotiating, mediators' manifest and latent interests relative to the topics and parties in dispute, and the influence of available alternatives to mediation. Finally, Intriligator (1982) delineates eight mathematical conflict models (differential equations, decision/control, game, bargaining, uncertainty, stability, action-reaction, and organization theories) as they differ in their analyses of international conflict primarily.

It is notable that none of these approaches to the construction of a theory of conflict resolution distinguishes between conflicts on the basis of their scope or size. In other words, the same theoretical position should hold regardless of whether two people or many nations are "at war". The number of parties is treated as one structural variable rather than a conceptual differentiator in the analysis of conflict.<sup>9</sup> The same can be said of the subject matter of a dispute as a content variable, or of the number of issues.

Rather than adopt any of the schematic approaches described thus far, a simple classification based on theoretical focus can

<sup>9</sup>Regarding conflict size, Deutsch et al. (1971), confirmed experimentally that, as the number of potential points of conflict or items requiring negotiation increases, so does competitive rather than cooperative bargaining behavior. Consequently he, along with many other theoreticians, researchers, and practitioners, sees "fractionating", or the divide-and-conquer strategy, as vital to the resolution of large, complex conflicts.

suffice here to organize a brief discussion of conflict-related theories. Most theories fall loosely into any one of three basic orientations: individualistic, interactionist, or functionalist perspectives; very few, however, disregard or concentrate exclusively on only one of these areas.

#### Individualistic Approaches

The individual-oriented theories can include those in which the motives, needs, perceptions, and influence of any of the parties to a dispute are highlighted. These include the recently-developed applications of attribution theory to the analysis of conflict (Coates and Penrod, 1981; Felstiner et al., 1981), which deal mainly with the attributions made by the parties in conflict, not with those made by neutrals. Coates and Penrod concluded from their research that ADR, and mediation in particular, fosters some pernicious attributional effects in the disputants, e.g. self-blame, powerlessness, and destabilization of the complainant-victim's attribution of responsibility by getting him/her to accept part of the blame. Felstiner et al. regard disputing as a process involving three attributional phases -- naming, blaming, and claiming -- and suggest longitudinal, participant-observational research tactics to explore transformations within and between each of those phases.

Another individualistic approach, discussed in the previous section, is the motivation-based Level of Aspiration theory (Lewin et al., 1944) applied to bargaining (Cialdini, 1979; Karrass, 1970). Closely related is Comparison Level of Alternatives theory (Thibault and Kelley, 1959) and Burton's (1981) articulation of his control theory applied to conflict. All of these, and Subjective Expected Utility theory (Tedeschi et al., 1972) take as a basic tenet the principle that individuals act to maximize their need attainment, that is, that their behavior is rationally designed to get them as much of what they want as possible. But, as Burton pointed out, clarifying wants and needs (some of which he grants universal, innate status, such as the need for valued attachments) in terms of empirical behaviors is not easy: the same behavior may express a variety of needs, and the same need may be expressed by a host of different behaviors, depending on context and other interacting variables in a conflict. Thus, the lack of identity between need (motive) and behavior limits the predictive value of these kinds of models. They suggest a plausible explanation, though, for part of a good mediator's or negotiator's skill, which depends on astute, strategically valuable readings of the behavioral expression of motives in others.

It is premature, however, to subscribe to any one of these theories focusing on the individual since clear empirical validation of them is lacking. Furthermore, they consider only the individual's role in conflict and its resolution, both of

which are in essence participatory, interactive ventures.

### Interactionist Theories

The second broad theoretical focus emphasizes the interactive element. Much of this work stems from Symbolic Interaction Theory (Blumer, 1969), which holds that all social interaction, including conflict, "...is a process that forms human conduct instead of being merely...a setting for [it]" (p.8), and, in addition, that meaning is the basis of and arises out of the interactions we have with others. Bales (1950) and subsequently Bales and Cohen (1979) developed an empirical analysis of group processes which relies heavily, though not exclusively, on the symbolic interactionist tradition, which neither emphasizes nor excludes conflict as one common kind of social interaction.<sup>10</sup>

These authors consider how four major sources of variation -- personality, social structure, culture, and topic -- are reflected in the communications pattern of a group. SYMLOG (Systematic Multiple Level Observation of Groups, Bales and Cohen, 1979) in particular, provides a flexible, highly reliable set of protocols to use in charting group communication. High among its many merits is that it can be used in the field to collect data on any type of conflict. It therefore has the

<sup>10</sup>Klein(1966) used the Bales Interaction Process Analysis format in her work on attitude change and decision-making in groups. Her description of the mechanics of those processes can work very well as a brief guide to effective mediation also.

potential to provide large-sample, comparable measures of the efficacy of different kinds of dispute resolution tactics. However, SYMLOG is difficult to learn to use well. The Observational Form (Appendix B) used in the present study relies heavily on the spirit, though not the letter, of the SYMLOG system, modified specifically to record details of the mediation process.

Other attempts at conflict resolution theories which focus on the interaction between parties include Fisher's third party consultation model (1972), which seeks to identify the (non-coercive) strategies used by third party neutrals to change competitive interactions into collaborative, problem-solving interactions. Another deals with identifying the bases of social power (French and Raven, 1959); although not specifically applied to conflict resolution, this examination of various types of power -- referent, expert, reward, coercive, and legitimate -- has useful implications for mediation and negotiation strategy planning. Frost and Wilmot's (1975) work concerns itself with the level of perceived interdependence between conflicting parties. In Pruitt (1971), this is carefully operationalized in terms of the direct and indirect communication of each party's perception of the other's power in the bargaining relationship.

These theories tend to disregard personality effects in conflict resolution. They do not, however, neglect individual behavior, but instead, embed it in the communication process,

employing the same unit of analysis as in the present study, that unit being the interaction rather than the individual(s).

#### Functionalist Approaches

The third broad theoretical category includes the many theories which look at conflict as an inevitable and necessary part of social life, and at its resolution as one phase of it. Simmel (1955) is the intellectual fountainhead of the functional analysis of conflict. Among his heirs are three of the major conflict theorists, Boulding (1970,1978), Coser (1957) and Deutsch (1969, 1973), who collectively stress the evolutionary, potentially integrative functions of conflict. Negotiated Order theory (Strauss, 1978) is a well-articulated refinement of this in the symbolic interactionist tradition. Strauss views the fluidity of a continuously negotiated order in organizations and in society in general as more of a blessing than a curse.

Such approaches assign a positive functional value to conflict as the precursor to progress and the bane of stagnation -- as long as it is managed properly. This conception is at once realistic, optimistic, and very risky: one destructive, unpredictable action or person in the tendentious nuclear community could have literally earth-shattering consequences, for example. Regardless of the theoretical content, the value of the functionalist view cannot be overestimated. Without it, constructive approaches to conflict management might never have been pursued by social scientists.

## Summary

A number of approaches that have been adopted to structure the study of conflict resolution have been reviewed. It would be counterproductive at this point, however, to impose a rigid conceptual framework on the study of ADR. The present work subscribes to the position taken by Gulliver (1979, pp.60-64), who strongly argues the need for real-life data in this field first -- data which, although "messy, incomplete, unvalidated, and not easily controlled", can generate hypotheses, theory, and sound conceptualization. The clean, complete, validated research on bargaining and negotiations, and the theories fertilized by it, are valuable, but not easily applied outside the laboratory or business setting.

To explore the world of real disputes, one must knowingly walk on less than firm theoretical ground in the hope that the knowledge so gained will contribute to more pragmatic conflict resolution theories. In the present study, the majority of the hypotheses and the methodology are most compatible with a symbolic interactionist perspective. This framework for the study of ADR mediation, when employed effectively, allows parties in dispute to redefine themselves and the other party as something other than victims and/or antagonists. Furthermore, we hypothesized that this redefinition takes place through the offices of the mediator, particularly with respect to his/her ability to manipulate communication. The mediator both

symbolizes and structures communication patterns that, unlike the prior communications between the parties, are conducive to the resolution or reduction of conflict.

### CHAPTER III

#### PROGRAM RESEARCH ON ALTERNATIVE DISPUTE RESOLUTION

Except for program evaluations, very little empirical research has been done on conflict resolution in ADR settings. Although the interest in more applied and more heuristic research exists, economic and logistical factors have limited both so far. The National Institute for Dispute Resolution (NIDR, Washington, D.C.) has recently made a dent in the economic problem by funding a small number of research projects in ADR settings. There are also indications that the gap between the scholars and the practitioners in this field may be narrowing, making program-relevant research more likely. This chapter describes and discusses some of the evaluative and experimental research already done in ADR, contrasting its aims with those of the present work.

Evaluative studies include those related to the training of mediators (CARASS, 1979; Felstiner and Williams, 1982), evaluations of the first Neighborhood Justice Centers pilot projects funded through the U.S. Department of Justice in Kansas City, Los Angeles and Atlanta (Roehl and Cook, 1982), and evaluations of established ADR programs (Salas and Schneider, 1979; Thomas-Buckle and Buckle, 1982; Merry, 1982).

The training evaluations mentioned both deal with training done by the Institute for Mediation and Conflict Resolution (IMCR). The CARASS study polled New York City Police Department Community Affairs Officers (CAO's) who received mediation training of a week's duration<sup>11</sup> Although the overall response of the CAO trainees was favorable, less than half the respondents felt that mediation training should be implemented as a permanent part of their studies; if this is a typical response to conflict resolution training, the reasons for it need to be analyzed.

The Felstiner and Williams study (1982) criticized mediation training more from the researchers' own perspective rather than from the trainees', but raised some worthwhile issues nevertheless. For example, they expressed interest in the psychodynamic motivations of mediators, the issue of manipulation, and the limitations placed on direct communication between disputing parties by mediators. It may be neither feasible nor appropriate to explore such issues during mediation training. But through research, their influence can be assessed to some extent for the benefit of trainers in this field. This effort was made to some extent in the present study, where Machiavellianism, or the ability and/or tendency to manipulate, was measured with respect to mediators.

<sup>11</sup>The fifty-hour training by IMCR is modified to suit the needs of each type of group trained, but in general involves lectures, video demonstrations, and role-playing with trainer and video feedback; it exceeds in both depth and duration the 22 hours now mandated in New York State for mediator certification.

Evaluation research has yielded the bulk of the empirical data on ADR programs. However, generalizing from this information is risky for a number of reasons (McGillis, 1982). One of the most problematic is the dearth of studies in which the effectiveness of alternative dispute processing is compared with traditional judicial processes. Davis' (1982) carefully-controlled comparison of 259 mediation cases with 206 court-processed cases, all minor felonies arising from interpersonal disputes, is one of the very few exceptions. The most striking difference between the two groups in that study lay in the complainant-victims' rate of satisfaction with the process: while 73% of those in the mediation group expressed overall satisfaction with the handling of their cases, only 54% of those in the adjudication group did.

A high rate of client satisfaction -- clustering around 80-95% (McGillis, 1980; Felstiner and Williams, 1982; Roehl and Cook, 1982) -- is the hallmark finding in ADR evaluation research, and is corroborated by the present study. Why people find this alternative satisfying is less clear. This discussion of ADR research considers some of the less obvious reasons for the high satisfaction rates.

It has been frequently suggested, mainly by ADR proponents, that factors inherent in the process (e.g. the opportunity to ventilate, having someone who listens respectfully, a feeling of participation, fairness, etc.) are responsible for clients'

satisfaction with mediation in particular (McGillis, 1980; Nicolau, 1975; Roehl and Cook, 1982; Starr, 1978). But before accepting conclusions which may be biased by how they are elicited or interpreted, other explanations for client satisfaction should be considered.

For example, ADR programs, in comparison to the courts, offer closure to clients quickly and cheaply. Davis (1982) and Abel (1982) note that a very high percentage of criminal and civil cases processed in court result in dismissals, repeated adjournments, and other bureaucratic limbo states (in the eyes of the plaintiff, at least). If the courts provided even a simple but definitive conclusion promptly and without exorbitant cost, the client satisfaction discrepancy might disappear, regardless of the procedures used.

It is also unclear what role the clients' input into the formulation of a settlement plays in their satisfaction. In a cross-cultural comparison of disputant-controlled (adversarial) vs. adjudicator-controlled (inquisitorial) dispute resolution procedures, a clear preference for the adversarial model was demonstrated (Lind et al., 1978). But a laboratory simulation (LaTour, 1976) pitting two parties against each other to negotiate for the largest possible share of a sum of money showed that they preferred arbitration to mediation; that is, when presented with two non-adversarial alternatives, negotiating subjects chose the one which limited their direct involvement in

a settlement. This belies both conventional mediation wisdom and much ADR policy, which favors mediation over arbitration as a less coercive, more client-controlled process.

It would be difficult to replicate Lind's interesting study in an ADR setting, since very few dispute resolution centers utilize arbitration. Even those which do tend to avoid it in favor of mediation. But, it must be allowed that what passes for mediation in busy ADR centers may be more akin to arbitration in disguise. A busy mediator may want or be required to dispose of cases more rapidly than genuine mediation allows. Or, parties may explicitly or implicitly convey that they prefer the mediator to formulate their "agreement." In the present study, for example, the findings related to the respondent's role in particular could be partially interpreted to suggest that a certain willingness to relinquish responsibility to the mediator may have operated. Thus, even a carefully-controlled examination of mediation vs. arbitration client satisfaction rates in a dispute resolution center would require design subtleties rarely feasible in evaluation research.

Merry's (1979) exploration of who uses court vs. alternative mechanisms suggests another reason for the satisfaction differential which has little to do with the differing procedures, and more with what comes before. She surmised that the people who bring their disputes to court are not necessarily interested in resolution, but in retribution.

Persons who feels wronged hope that their attorney will be an avenging angel who wields the litigation process as a weapon. But the courts rarely provide the kind of clearcut, unilateral victory sought by the plaintiff. Furthermore, they fail to do so at exorbitant cost, in time and/or money, to both parties. Given this state of affairs, the litigation process is inherently less likely to produce satisfaction, no matter what the outcome superficially. Thus, ADR approaches like mediation, for which clients usually are selected partly based on their need or desire to continue a prior relationship, and on their resultant willingness to negotiate, may have an edge in the satisfaction department that has nothing to do with the resolution techniques used.

It has also been suggested that demographic similarity between mediators and ADR clients may be an important influence on client satisfaction, mediator effectiveness, and/or successful resolution (Chalmers and Cormick, 1970; Felstiner and Williams, 1978; Roehl and Cook, 1982; Rubin and Brown, 1975). There is no clear empirical support for this intuitively appealing and theoretically plausible proposition, however. Even though demographic similarity is a powerful predictor of liking, it has not been shown to exert any independent influence on interpersonal dispute resolution by a third-party neutral.

In cases where race and sex are contextually relevant, such as in a racial conflict or a marital dispute, it is common practice to use co-mediators representative of the races or sexes involved. This practice buttresses the mediators' impartial role symbolically. And playing the essentially likeable role of a mediator well, i.e. being calm, warm, interested, and objective, may well mask if not override the effects of similarity on client satisfaction. Those same role characteristics would also favor the mediator over the judge in ratings of satisfaction, since attitudes of involvement and warmth are not fostered in either judges or attorneys to the extent that they are in mediators and ADR personnel in general.

Overall, ADR research in the natural setting has been largely confined to evaluation studies. Their aim is to justify the continuation (read funding or re-funding) of ADR programs by treating issues related to volume, efficiency, cost, and speed in contrast with court processing. Simple measures of client satisfaction, if used at all, are the only qualitative measures found. Therefore, many other issues that bear upon the genuine effectiveness and successful evolution of this alternative remain so far unexamined; some of these are discussed in the final chapter of this paper. The present study attempted a closer look at a very few of the process and attitude variables that operate in real ADR mediation, to see if there are patterns in these, and if so, to see what influence they have on outcome measures.

CHAPTER IV  
DESCRIPTION OF RESEARCH SETTING AND  
MEDIATION PROCESS

ADR programs in general share a common purpose: the more effective management of interpersonal conflict than is provided by adversarial proceedings. However, they differ considerably in structure, setting, clientele, staff, size, relationship with the judicial system, funding sources, interim goals and methods, etc. (McGillis, 1982; Roehl and Cook, 1982). This chapter is presented in order to place the research project in context, to give the interested reader a vivid picture of the day-to-day workings of one type of ADR center, and to illustrate some of its problems.

#### History

The Institute for Mediation and Conflict Resolution (IMCR) was founded in 1969 as a private non-profit organization by a small group of labor negotiators and lawyers interested in the potential applications of negotiations techniques to the resolution of community disputes. It was funded initially by grants from the Law Enforcement Assistance Administration (LEAA) and the Ford Foundation with the mandate to mediate community disputes and to train people in mediation.

IMCR was instrumental in developing what has become virtually a prototype for mediator training, which involves approximately 50 hours of didactic and experiential exposure to a variety of negotiating skills. The Institute's training staff is responsible for having disseminated IMCR's methods throughout the country under training contracts from numerous criminal justice and governmental organizations. IMCR was one of the first to formalize and implement mediation as a tool for dispute resolution outside of the labor setting, largely under the aegis of George Nicolau, its first director, and his staff.

During its first decade, the Institute intervened in a number of highly-publicized community disputes. Among them: a long-standing and volatile antipathy between the Hasidim and the black residents of Williamsburg and Crown Heights in Brooklyn, a series of disputes between minority construction work seekers and the building trades unions in New York, and conflicts between the city's Housing Authority administration and various tenant factions.

In 1975 IMCR opened the Manhattan Dispute Resolution Center in Harlem to handle interpersonal disputes referred for mediation by the city's courts and police. Its first funding sources were also LEAA and the Ford Foundation. The success of this operation led to the opening of three other satellite centers to serve the boroughs of Queens, Brooklyn, and the Bronx. But funding problems, which are endemic in ADR programs, led to the closing

of the Queens and Brooklyn offices in 1980. In the meantime, the caseloads of the Bronx and Manhattan centers expanded dramatically, largely due to an agreement made with the Criminal Justice Coordinating Council (CJCC) and the Summons Part of New York City's Criminal Court, whereby IMCR contracted to provide mediation and arbitration in lieu of prosecution for the bulk of the city's violation and misdemeanor cases, as well as for some low-level felonies. Under this agreement, funding for the IMCR Dispute Resolution Centers was provided by tax-levy funds from the New York City Board of Estimates, making these centers among the first in the country to obtain local governmental support. The Centers now receive approximately three-fourths of their budget from New York City tax-levy funds, and one-fourth from New York State under the auspices of the Unified Court System's Community Dispute Resolution Centers Program.

#### Physical Site

Two of the Dispute Resolution Centers are located in municipal courthouses; the third occupies one floor of a former hospital in Harlem. All three, at the time this project was done, were in rather poor condition, with problems including lack of space, non-existent janitorial services, plumbing problems, and cockroaches. Such conditions, though deplorable, characterize not only the Dispute Resolution Centers, but many of New York City's courts as well; they surely contribute significantly to the lack of esteem in which the city's legal

system as a whole is held.

The original IMCR Dispute Resolution Center, located in Harlem, has the least appearance of being court-affiliated. It is in an area which symbolizes crime, poverty, and ghetto-ization to many people.<sup>12</sup> Security is a chronic problem. The rooms used for mediation in each of the Centers are coldly functional at best, devoid of any suggestion of warmth or comfort. It is hard not to acknowledge that the conditions just described contribute to the image of ADR as "justice for the poor" (Singer, 1979). The use of urban ADR Centers might be more evenly distributed across the socioeconomic spectrum if these ills were corrected. But this would require an infusion of funds which does not seem to be forthcoming from the public or the private sector.

#### Staff

During the study, a complement of 16 full-time paid staff were responsible for the day-to-day operations of the three IMCR Dispute Resolution Centers located in the Bronx Criminal Court, in Harlem, and in the New York City Summons Court in Manhattan's court district. Under the Director, the staff is responsible for screening all referred cases to determine amenability to

<sup>12</sup>As if to challenge such stereotypes, and much to the surprise of non-local clients, the Dispute Resolution Center itself is located in the lovely and well-maintained historical district of Harlem known as Sugar Hill.

mediation, scheduling, interviewing disputants, and maintaining detailed files on each case. The work flow is divided into four components: Intake, Clerical, Research/Statistics, and Compliance, the last being the one which manages those cases in which breaches have occurred after mediation or arbitration. Due to the large caseload and the small staff size, most of the employees assume responsibility as necessary in departments other than their own. Although the Director functions autonomously in overseeing the operations of the three Dispute Resolution Centers, he is ultimately responsible to the Chief Executive Officer of IMCR, who at the time of the study maintained a three-person staff and a corps of trainer-consultants. The CEO's responsibilities include fiscal management of the Dispute Resolution Centers and contracting for conflict management training seminars to various non-profit organizations.

#### Mediators

The mediators who work at the Dispute Resolution Centers are people who have been trained to do so by IMCR. They are not part of the staff, but serve as volunteers who are paid a per-case stipend of fifteen dollars (at the time of the study). The 30 to 40 mediators active at any one time may mediate up to 40 cases per month each; the average is actually 9-12 (IMCR Quarterly Reports, 1982-83). Although they are volunteers, they are expected to adhere to their mediation time commitments to the Institute.

There are no formal educational or skill requirements for mediators, except that they successfully complete the training course provided by IMCR. Their mediation skills are periodically re-evaluated by the Director or his designees, and mediators are required to attend monthly meetings devoted to in-service training.

The mediators' backgrounds vary widely in terms of prior and current occupations. Most have had at least two years of college. They range in age from their mid-twenties to late fifties and are evenly represented by sex, although not by race: blacks are currently over-represented, partly due to IMCR's commitment to advancing minority group members professionally, and partly, perhaps, in consideration of a view held by some influential scholars (e.g. Felstiner, 1974; Chalmers and Cormick, 1970) and questioned by others (e.g. Tomasic, 1982) that mediators should share the demographic characteristics of their clients.

The pool of active mediators has remained surprisingly stable over time. Despite the fact that IMCR has trained literally hundreds of New York City residents as mediators, the majority of them presumably use the mediation skills they acquired in their own occupations. They volunteer little or no time to mediating at the centers. Those who do become part of the "team" of active IMCR mediators; they do not, in general, currently have full-time jobs, and a few, in effect, work at the

Dispute Resolution Centers on a full-time-job basis.

Incidentally, nearly all of the staff at the centers have been trained as mediators as well, and do hear cases as their regular work permits.

Caseload<sup>13</sup>

#### Referral Sources

The IMCR centers have grown to the point that they collectively receive over 20,000 referrals per year, of which approximately 18,000 are scheduled as appropriate for mediation on the first screening; approximately 5,000 of these are eventually successfully mediated or arbitrated on an annual basis. The scheduled cases are referred from the following sources: Manhattan Summons Court, 41%; Bronx Summons Court, 41%; police non-arrest referrals, 3.3%;<sup>14</sup> police arrest referrals screened through the District Attorneys' offices, 3.8%; Manhattan and Bronx Criminal Court arrest cases, also screened by

<sup>13</sup>The figures quoted in this section were derived from IMCR quarterly reports in effect during the latter part of the data collection phase (Oct 1982-Mar 1983).

<sup>14</sup>The police are actually responsible for many more referrals than this figure indicates. Over the years, IMCR's Police Liaison, who is a retired member of the force, has cemented an excellent, formalized (see Police Operations Order 115, 11 October 1983) working relationship with a number of precincts. However, unless complainants produce a referral slip from the police, they are counted as walk-in referrals. Since police officers do not receive the equivalent of "collar credit" (i.e. arrest credit) for making referrals to IMCR, they apparently find it easier and equally effective for their purposes to simply make a verbal rather than written referral.

the D.A.'s office, 2.1%, and walk-in or self-referrals, 9.2%.

### Disputant Relationships

As the breakdown above reveals, IMCR maintains a very close working relationship with the criminal justice system's various branches. This relationship is generally cooperative, symbiotic, and, by now, highly formalized. It has been forged over time by intensive efforts on all sides to provide more economical, efficient, and appropriate services to those who seek or require legal intervention in conflict situations. This need is perceived as arising in criminal or civil actions involving, with few exceptions, parties who have some sort of ongoing relationship out of which a dispute has developed, and in which adjudication is an inappropriate, expensive, and potentially exacerbating action. Specifically, the types of relationships between disputing parties include family, marital, neighbor, friend, roommate, or various business relations, e.g. landlord-tenant, customer-vendor, and partnerships.

### Nature of Disputes

The nature of the disputes seen at IMCR varies widely, but, in order to complement and interface with the traditional legal system, the same charge categories are used by each; that is, every case referred to the Dispute Resolution Centers has a criminal or civil charge assigned to it. The most common is that of harassment (48%), followed by assault in the third degree

(17.5%), and aggravated harassment and menacing (13%); the remaining 22% of the charge categories include the gamut of violations and misdemeanors, e.g. criminal mischief, petty larceny, trespassing, misapplication of property, possession of a weapon, sexual abuse, etc. The respondent is not charged with these crimes upon the statement of the complainant; instead, only an allegation is made that the stated crime was committed, and the charge is dropped by the complainant as a prerequisite to mediation. Both of these technicalities, however, tend to be missed or misunderstood by the disputants.

There is not a particularly close connection between the substance of a dispute and the charge assigned to it, despite the fact that the NY State Penal Code is followed quite closely to determine the charge appropriate to the complaint. For example, in cases involving an alleged assault, unless the complainant can provide clear evidence of injury and/or medical treatment for assault, the other party may not be charged with an alleged assault in any degree, and hence a lesser charge, such as harassment, is assigned. In most cases, the charge tells the mediator almost nothing about the true nature of the dispute.

#### Clientele

Demographically, the client population of IMCR is very similar to the sample for this research project (see Table 6, p. 125). Age varies widely, from minors to very senior citizens. Blacks are in the majority, and women use the Dispute Resolution

Centers considerably more than men, especially as complainants. And although there are certainly exceptions, clients tend to come from the lower end of the socioeconomic spectrum, as measured by education and occupation.<sup>15</sup>

#### Representation by Counsel

All clients who come to IMCR's Dispute Resolution Centers are permitted to bring attorneys with them, and are advised of this when the case is referred. Only a very few actually do so, however. In subtle and not-so-subtle ways, clients are discouraged from having their attorney present during mediation, e.g. "You can bring an attorney with you, but it's not necessary." And in practice, while there are some enlightened exceptions, attorneys schooled in the adversarial mode are generally a hindrance rather than a help in mediation. They tend to stifle direct dialogue with their client, whether by the mediator or the other party.

#### Case Processing Method

It may be helpful to the reader to have a brief description of the mechanics of processing a case at this research site. The following explanation refers to the most typical type of referral, which comes from the Summons Part of Criminal Court;

<sup>15</sup>This raises a sticky issue: are minorities, women, and the poor diverted to ADR in lieu of adjudication more so than others, and thereby denied access to due process, as alleged by Singer (1979) and others? See the final chapter for discussion of this issue.

there are minor variations in the process for each of the other referral sources.

The complainant initiates the process by going to any one of the IMCR centers and lodging a complaint with an IMCR intake worker. If, in the judgement of the intake worker, the matter is amenable to mediation on the basis of 1)the stated nature of the relationship to the alleged offending party and 2)the nature of the complaint, then the case is scheduled for mediation. The complainant receives an appointment slip for a mediation session one week to 10 days hence; s/he also receives a "Request-to-Appear" (RTA), which is similar to a summons, but lacking in criminal sanctions. The RTA notifies the other party or parties that the complainant alleges the commission of whatever charge is assigned, and directs the respondent to appear at the center to resolve the matter through mediation. This notice is served upon the respondent in keeping with the same procedures that govern the service of a summons, i. e. the complainant performs the service personally in the presence of an adult witness, or a deputy from the sheriff's office in the respondent's county serves the summons for a fee.

If both parties appear at the scheduled time, or within an hour thereof, they are interviewed individually, then sign consent forms, and the case goes into a mediation session with the first available mediator. The parties and their mediator then meet privately for as long as it takes to reach a mutually

satisfactory settlement in written form, or until some other determination is made, i.e. to arbitrate, dismiss, or refer the matter to a more appropriate forum such as a social service agency or another court or grievance process. The mediation session, if successful, usually follows this pattern: introduction, fact-finding, private caucuses with each party, negotiations, and agreement. Most cases take between one and a half to two hours to resolve, although a significant proportion take much longer.

If the complainant fails to appear, the case is dismissed. In theory, and usually in practice, the complainant may not revive the same matter in another court; the same is true if neither party appears. If, however, the respondent alone fails to appear, the complainant must serve a second RTA. Upon two successive failures to appear by the respondent, the complainant is referred back to the Summons Part of Criminal Court, where s/he is entitled to make a full criminal complaint, and to have a hearing before a judge. Unfortunately, as was pointed out in one of a series of articles on the NYC court system (New York Times, 30 June 1983), nearly three-quarters of the half a million criminal summonses issued yearly for "minor" (but often very serious) offenses are ignored with impunity; a long-standing backlog of of 3.75 million unanswered summonses existed at that time.

The disposition rates for all cases scheduled by the Dispute Resolution Centers is as follows:<sup>16</sup> mediated (28%); arbitrated (2%); conciliated (5.4%); dismissed due to complainant non-appearance (3%), non-appearance by both parties (35%), or non-amenability (1%). In addition, 7% are returned to the court of original jurisdiction as non-amenable and necessitating other legal actions, and 20% have further actions pending either prior to or after mediation at the Dispute Resolution Center (or "Dispute Center", as it is commonly known by staff and clients alike -- a probably unintentional but appropriate reference to what people actually do there).

Once a case has been mediated or arbitrated, the Center's involvement in the matter is terminated in the great majority of the cases. However, in approximately 10-12% of them, the enforceability of the agreement or arbitration award becomes an issue; at least one party complains that the award has been violated. To deal with this problem, the Compliance Department was created. In both mediated and arbitrated cases, the resultant document has the legal status of an arbitration award, which is enforceable in the Civil Term of the State Supreme Court. Should one party allege in writing that a breach of the

<sup>16</sup> Again, these figures are derived from IMCR quarterly reports compiled during the study (Oct-Dec 1982). And it should be noted that scheduled cases are only those accepted by IMCR for mediation. They do not include cases that are referred but not accepted. And due to the large percentage of cases that are scheduled but not seen, the mediation rates for cases that actually go into session are, of course, much higher.

award has occurred, the Compliance unit investigates the matter, speaks to the parties involved, and, if necessary, assists the aggrieved party to file a petition for injunctive relief in the Civil Term. IMCR's role in this process theoretically remains that of a neutral whose advocacy is confined to assisting in the process of legal redress for its clients. It does not represent or act as advocate for the aggrieved.

As the preceding explanation of the case processing method makes clear, IMCR works very closely with the criminal justice system while providing an alternative to it. This highly symbiotic relationship works well in general: both the courts, the police, and the Dispute Resolution Centers reap benefits from their association, as do the great majority of clients whose cases are resolved through mediation, since they are saved both time and money<sup>17</sup> by mediation as opposed to adjudication. For the small percentage of cases in which mediation is unsuccessful or ineffective, referral to mediation adds yet another layer to the legal bureaucracy, since they eventually end up back in court if the matter is pursued. This is an unavoidable side-effect of ADR programs which, by necessity or choice, must work in close conjunction with the courts.

<sup>17</sup>Mediation sessions can usually be scheduled within 10 days of the complaint being made, and cost the parties nothing out-of-pocket since IMCR is tax-levy funded, and since attorneys are not required.

CHAPTER V  
HYPOTHESES

The hypotheses tested in this study were derived inductively. Taken together, they serve as a map which allows for a focused exploration of mediation, the most popular ADR process for dealing with interpersonal disputes. Sources which contributed directly to the derivation of the hypotheses include the researcher's and others' mediation experiences, issues raised in the experimental literature on bargaining and negotiations just reviewed, and questions related to developing of sound ADR policies related to research, training, and program administration. The rationale for this inductive approach is two-fold: first, the study is an exploratory rather than a definitive investigation; second, it gives precedence to looking at mediation itself rather than to the theoretical issues surrounding it.

As discussed in Chapter II, it is generally agreed that no comprehensive conflict resolution theory that fits ADR settings exists yet. However, symbolic interactionism, which can best be described as a methodological stance and a meta-theoretical position rather than a classical theory, serves admirably as a conceptual frame for the present work. One general aspect of symbolic interactionism which is salient to this investigation is its emphasis on the importance of "direct naturalistic examination of the empirical social world" (Blumer, 1969, p.40)

as a prerequisite to theory-building, and its view of social interaction as the central process through which meaning is produced.

There are additional features of this theory which make it a particularly appropriate model for understanding the mediation process. Briefly: Symbolic interactionism employs G. H. Mead's concept of the "generalized other" as the internalized representative of society in the individual (Mead, 1964). Unlike its psychoanalytic equivalent, the superego, however, the generalized other is a product of cumulative, evolving social interactions rather than the result of intrapsychic conflict. According to Mead (1964, p.35), it is primarily through language that the individual interprets (hence symbolic interaction) and adopts the attitudes of others. Further, he stressed that communication is also a highly empathic process whereby one's verbal and non-verbal "gestures" elicit in oneself the same responses they elicit in others.

This reflexive empathic tendency, plus humans' symbolic-interpretive capacity for language, facilitate the mutual role-taking that is seen as essential to effective interaction (Blumer, 1969). Finally, symbolic interactionists conclude that through their social interactions, humans learn to assess the meaning of, to predict, and to control much of their own and others' behavior. These abilities form a central feature of the character and culture of humanity. (The assumptions,

deductions, and general propositions that lead to the general theory are summarized in Rose, 1962.)

How do these principles apply to mediation, the particular interaction process being considered here? Creating empathy between the disputants and controlling their communication are two of the major ways in which the mediator attempts to produce accord. In addition, the mediator uses modelling to encourage more effective communication by the disputants. As a neutral, objective third party, the mediator also acts as the 'agent of reality' for disputants who, in the heat of battle, tend to develop perceptual biases that intensify their differences.

In short, then, and in symbolic interactionist terms, the mediator works in three ways: S/he takes on the role of the generalized other; s/he influences the disputants to empathically modify their communication styles by imitation; and s/he encourages and controls<sup>18</sup> the expression of feelings between the disputants so that their understanding of each other's position is increased. In so doing, the mediator reduces the adversarial elements of the relationship between the disputants. Ideally, this enables the disputants to see themselves, at least temporarily, as participants in a problem-solving effort, rather than as arch-enemies.

<sup>18</sup>It is this aspect of controlling communication through manipulation that was explored in the fourth hypothesis of this study, which examined the relationship between successful mediation and the mediator's Machiavellian tendencies.

In order to begin to develop testable hypotheses for this interpretation of interaction, it was necessary to make certain assumptions, which, at a later, more sophisticated stage of conceptualization, may be abandoned. The assumptions are that successful communication (including mediation) requires the exchange of enough information to allow mutual understanding, and that a positive rather than negative emotional climate promotes successful communication. It also should be apparent from the preceding discussion of symbolic interactionist theory applied to mediation that the mediator's skill may not consist of discrete, precise, easily identifiable pieces of behavior. Instead, it may better be described as a complex of attitudes and behaviors -- including the ability and willingness to consciously manipulate the content and flow of interaction -- that are intended to produce a context for constructive communication.

Taking a symbolic interactionist approach, and given these assumptions, four predictions were made. The first two relate to the mediation process itself, and the last two to participant characteristics. Brief explanations for their presence follow each hypothesis:

- I. The greater the number of instrumental and expressive exchanges among the participants\*, the

\*Note: The term "participant" refers to all three persons involved in the mediation session (mediator, complainant, respondent) whereas "disputants" refers to the complainant and respondent only.

greater the

- a) likelihood of agreement,
- b) likelihood of the agreement's duration, and
- c) disputants' satisfaction levels.

In order for empathy to develop through language, there must be enough language occurring. How much is enough? This hypothesis predicts that the more verbal interaction that occurs, the better.

II. The more positive the quality of the verbal and non-verbal interactions between the mediator and the disputants, the greater the

- a) likelihood of agreement,
- b) likelihood of the agreement's duration, and
- c) disputants' satisfaction levels.

Taking the role of the other should be easier in a non-threatening situation. Therefore, the affective tone of the communication should be more positive to produce less defensiveness and a greater willingness to entertain others' points of view.

III. Demographic similarity between the mediator and the disputants increases the

- a) likelihood of agreement,
- b) likelihood of the agreement's duration, and
- c) disputants' satisfaction levels.

The fewer the obvious differences between the mediator and each disputant, the easier it should be for the disputants to take the mediator as a role model, and to imitate his or her communication skills.

IV. The higher the Machiavellian score of the mediator, the greater the likelihood of:

- a) agreement
- b) the agreements' endurance
- c) disputants' satisfaction.

Symbolic interactionism essentially suggests that interacting with others is what enables us to control our own and others' behavior. We therefore predicted that persons with a psychological propensity for controlling others, and greater skill in doing so, will make better mediators, just as they have been shown to be better negotiators (Geis and Christie, 1970). The Machiavellian scale, version IV, developed by the same authors, was used to measure this tendency.

The results of testing the hypotheses, plus other findings of interest from the study, are presented and discussed in Chapter VII, preceded by an explanation of the method in Chapter VI.

CHAPTER VI  
METHOD AND PROCEDURES

In this study we set out to establish some empirical evidence for conditions hypothesized to increase the effectiveness of mediation in a real-world as opposed to a laboratory setting. The method and procedures are directed toward satisfying this goal, given the considerable limitations imposed by that same real world.

Brief Overview

The study involved the systematic observation of 102 real mediation sessions. These observations were made by four research assistants who were naive to the hypotheses, knowledgeable in mediation techniques, and trained in the observation of social interaction. This training emphasized producing inter-rater reliability among the observers by group analysis of coding decisions and repeated exposure to and coding of videotaped mock mediation sessions.

The observations were augmented by post-session interviews with each of the participants (mediator, complainant, and respondent) to assess their reactions to the session. In addition, a subset of the participating mediators were subsequently interviewed in depth and completed the Mach scale to measure their manipulative tendencies (Christie and Geis, 1970), this personal characteristic being one of the few that has been

shown experimentally to have a positive impact on bargaining outcomes. Complainants were contacted one to three months after their mediation session to check for endurance of the agreement if an agreement was made. Finally, all participants signed voluntary research subject consent forms which assure confidentiality, anonymity, and lack of deception.

The remainder of this chapter describes in chronological order each procedure and the instruments used. Copies of each instrument can be found in Appendices B through G.

#### Access to the Research Site

The Institute for Mediation and Conflict Resolution (IMCR) was one of the first organizations in the country to use mediation and arbitration to settle interpersonal disputes and community disputes out of court. In the interests of increasing its own and others' knowledge of the mediation process, IMCR agreed to have its Dispute Resolution Centers serve as research sites for this study. (A full description of IMCR and its mediation procedures was presented in Chapter IV.) The researcher was a practicing mediator and staff member at IMCR during the data collection phase of the project. This was a crucial factor in obtaining permission to do the study. The Institute's administration felt that this project required the informed perspective of a research-oriented mediation practitioner. The cooperation of the IMCR staff, an ingredient essential to the project's success, was also facilitated by the daily presence of

the researcher in her role as a staff member.

#### Case Selection Criteria

Only those cases with two English-speaking disputants and one mediator were eligible for inclusion in this study. These conditions are met by the bulk of cases seen at the IMCR Dispute Resolution Centers.

#### Informed Consent of Participants

During the intake interview which precedes any mediation session, complainants and respondents in cases meeting the criteria above were asked if they would like to participate in a study of how mediation works. In keeping with New York State's human subjects research guidelines, the written consent of each disputant was required before an observation took place.

The mediators who agreed to have their cases observed also gave their consent in writing. A detailed description of the project, minus hypotheses, was presented to the entire staff and all mediators at a special staff meeting before data collection began. In both the oral presentation of the project and in the written explanation accompanying all consent forms, anonymity and confidentiality were assured, as was the lack of deception involved.

## Selection and Training of Observers

### Selection:

By prior arrangement with IMCR, the research assistant/observers were four CETA (Comprehensive Employment and Training Act)- funded employees placed temporarily at the Dispute Resolution Centers. Their primary responsibility was to collect the needed observational data for this project thoroughly and accurately. These individuals were selected for the project on the basis of their mediation trainers' recommendations and on their college social science backgrounds. The rationale for using people newly trained in mediation was, first and frankly, their availability. This choice also proved practical in that it eliminated the need to orient the research assistants to IMCR's mediation methods, and to concentrate instead on developing their research observation skills during training.

### Training:

The four assistants were trained for approximately two weeks. The bulk of this time was devoted to teaching them to become skilled observers and coders of the interactions between the participants in the mediation session. To allow repeated drill, practice, and review of these skills, two videotaped mock mediation sessions were made specifically for this purpose.

During the training, a Training Manual (see Appendix A) was developed covering each aspect of the final Observation Form. The trainees themselves had major input into this manual; it reflects the group's consensus on coding decisions and observation feasibility. The trainees also learned interviewing techniques, and practiced the attitudes and behaviors necessary to increase their unobtrusiveness during the mediation session.

Since, at the request of IMCR's administration, only one observer was permitted to be present during a mediation session, the training of the research assistant/observers emphasized building inter-rater reliability with respect to accuracy and consensus in coding the amount and type of behaviors observed. This was done by: 1)making sure the trainees understood the importance of response consistency among themselves, 2)intensive group feedback and discussion of each individual's coding decisions on mock mediation sessions, 3)creation of the Training Manual by the group itself based on their capacities to reach coding agreements, 4)modification or deletion of any items on the Observation Form on which response consistency was not achieved, and 5)repeated reinforcement by the project director of the protocols in the Training Manual during practice sessions and during data collection.

## Pilot Test of Effectiveness of Observation Procedures

Each of the observers was required to conduct four to five full observations using the penultimate drafts of the Observation Form and the post-session interview forms for disputants and mediators. The purpose of this was to address any unanticipated problems with the forms and procedures and to modify them as necessary prior to beginning actual data collection. This also gave the IMCR staff involved the opportunity to report on any difficulties they encountered in requesting subjects, scheduling sessions, room and observer assignments, etc. No such difficulties were found, although it became evident that data collection would be a slow process due mainly to the observers' limited work schedules.

### The Observation Process

The observer was introduced to the disputants by the mediator prior to the beginning of the session. In order to remain as unobtrusive as possible, the observer sat in the back of the mediation room. One-way mirror observation facilities, which would have been ideal, were unavailable. The chairs of the three participants (mediator, complainant, respondent) were arranged so that the observer had a partial view of the disputants' facial expressions while remaining out of their line of sight, and a full view of the mediator, as shown in Figure 1:

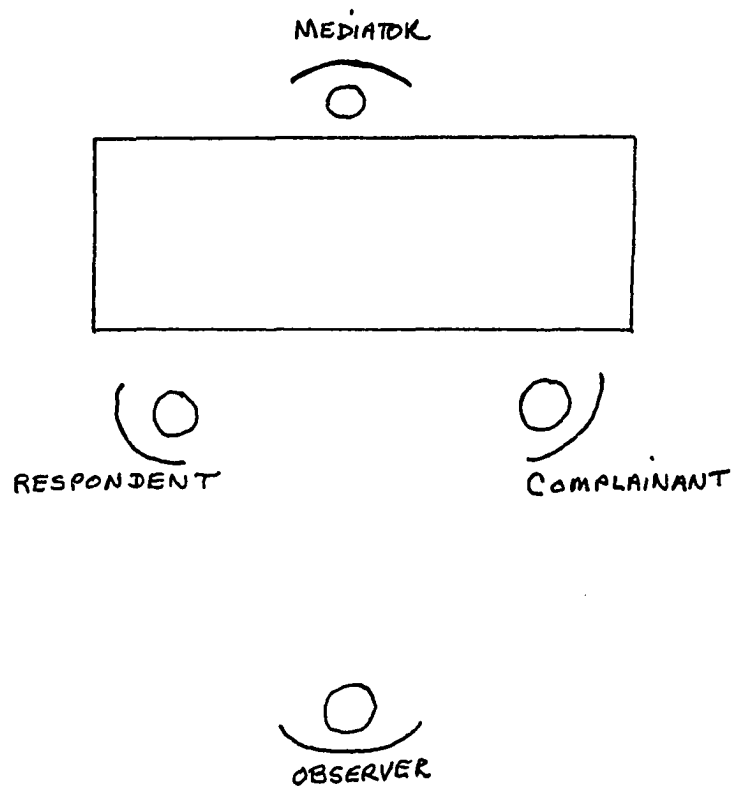


Figure 1. Room arrangement for observation of mediation sessions

Using the final draft of the Observation Form (see Appendix B), the observer recorded the verbal and non-verbal behavior of the three participants throughout the session. Specifically, they looked at and listened to the amount of communication that occurred and the affective gestures, tones, and expressions that accompanied it. Verbal communication was recorded to distinguish between fact-related (instrumental) and feeling-related (expressive) communications.

The verbal and non-verbal behaviors were also coded on three affective dimensions. These were: open/closed, friendly/hostile, and comfortable/nervous. (Details and examples can be found in Chapter VII in the discussion on testing the first hypothesis.) Demographic characteristics of each participant as perceived by the observer were also indicated. Finally, the observer noted the length of the session and its disposition.

This kind of observation, and the content of the form itself, conform loosely to that suggested by Interaction Process Analysis (Bales, 1950) and the related Systematic Multiple Level Observation of Groups (SYMLOG, Bales and Cohen, 1979). The rigor of those observation methods were only approximated in the present study. However, both these works explicitly suggest the potential value of studying conflict processes in natural settings in this manner. Because Interaction Process Analysis and SYMLOG are very difficult techniques to master, and because neither applies specifically to mediation as a conflict resolution technique, the present work observed the spirit, but not the letter, of these works.

#### Post-Session Interview Process

Immediately after each session, the mediator and disputants were interviewed individually and in private by one of the research assistant/observers. (See appendices C and D, respectively.) The protocol consisted of the interviewee's

assessment of the session, impressions of the other participants, and a prediction of the success of the agreement, if one was made. In addition, demographic data on the disputants was collected at this time. Complainants were reminded that they would be contacted by phone or mail for follow-up, and both participants were thanked for their participation in the study.

The post-session interviews augmented data from the observations; observational data alone are generally considered an incomplete measure of behavior (Blumer, 1972; Riley and Nelson, 1974). This is particularly true when looking at behavior from a symbolic interactionist perspective. The post-session interviews were included to provide the participants' interpretation and point of view, rather than relying solely on those of the observer.

#### Mediator Interview and Attitude Scale: Procedure

After all the data from the observations had been collected, mediators who contributed cases to the study were contacted for in-depth interviews by the project director. Twenty-three mediators contributed an average of four cases each to the study; fifteen of those mediators consented to in-depth interviews.

The interviews lasted about 20 minutes. The mediators were queried about their backgrounds in relation to conflict experiences, about their interest in mediation, and about the quality of their mediation training. (See Appendix E.) They were

also asked to complete a general "attitude toward life" scale, which was the Mach Scale, version IV (Christie and Geis, 1970).

One purpose of this phase of the project was simply to see if people who become interested in mediation do so on the basis of their own experience with conflict. There is nothing in the small literature on mediators to suggest that this is the case. However, it is not illogical to surmise that an interest in resolving conflict for other people may be rooted in one's attitudes toward and prior experience with conflict.

Regarding the use of the Mach Scale, the literature supports the relationship between Mach scale scores and success as a negotiator. In their review of the literature, Geis and Christie (1970) concluded:

"The primary difference between individuals who score higher or lower on the Mach scales is the high scorers' greater emotional detachment...High Machs manipulate more, win more, are persuaded less, [and] persuade others more,...in situations in which subjects interact face to face with others, when the situation provides latitude for improvisation,...[and when] affective involvement with details irrelevant to winning distracts low Machs...They are preferred as partners, chosen and identified as leaders, judged as more persuasive, and appear to direct the tone and content of interaction -- and usually the outcome."

(Geis and Christie, pp. 312-313)

The situational conditions quoted above fit mediation, and the mediator role, extremely well. Emotional detachment, in concert with the ability to convey empathy, is a major focus of mediation training. Given that the subsample of mediators was very small,

we did not expect to see more than a suggestion of a positive relationship between mediators' Mach scores and the outcomes of their cases. Nevertheless, it was worthwhile to see whether machiavellianism predicted mediation outcomes in the same positive direction as it has predicted negotiation outcomes in laboratory settings.

#### Follow-up Contact:

Telephone or mail contact was attempted with each complainant whose case was mediated or arbitrated one to three months after a session to determine whether their agreement or award was upheld.

#### Summary of Method and Procedures

The method and procedures described above are guided by the hypotheses in Chapter V, and by some of the limitations imposed on research in natural settings, this one in particular. Non-intervention field studies of this kind are frequently used in the initial phases of studying naturally-occurring interactions. As noted by Parke (1979), this type of research permits little causal inference and is used more to generate than to test hypotheses. To compensate, it allows the data to speak for themselves. This phenomenological approach (Macleod, 1958) was appropriate to this study of a process about which little is actually known but much is assumed.

Using this method also reflects the theoretical basis of the project. Symbolic interactionist research relies mostly on observation and interview procedures, whereas most conflict resolution theories use games and simulations in laboratory settings. The methodological choices were also made partly to show that mediation may be as productively examined under natural as under simulated conditions, if not moreso.

A final note on the method and site for this project: it needs to be explicitly stated that the researcher's professional affiliation with the research site exerted a strong influence on all aspects of the study. This had both positive and negative implications. On the positive side, it was the decisive factor in getting permission to do the project at all. And on the negative, the researcher was not as ideally neutral toward the entire undertaking as would have been desirable.

CHAPTER VII  
RESULTS AND DISCUSSION

The Dependent Variables

For each hypothesis, the dependent variables were the same. These were: 1) whether the case was mediated or not; 2) if mediated, whether the agreement endured; and 3) how satisfied the disputants were. The derivation of these dependent measures from the data will be discussed first, followed by the results of testing each hypothesis.

Basic Outcome Measure

The first dependent measure represents the basic outcome dichotomized into mediated/not mediated. Eighty-four of the 102 cases observed were mediated. The remaining eighteen, or 17.6% of the total, were not; any of a variety of dispositions were assigned to these (see explanation in Chapter IV), but for the purposes of this study, they were coded as "not mediated" and were considered unsuccessful.

Outcome/Endurance Measure

The second measure indicated whether agreements endured in those cases that were successfully mediated. A follow-up telephone call or letter contact to the complainant in each of

the mediated cases was made from one to two months after mediation. We were able to reach 75 of the 84 complainants involved. Of these 75, eighty-nine percent reported that their agreements with the respondent remained in effect; eleven percent reported that the agreement had not been sustained.

Data on the relationship between the disputants led us to suspect that there might have been a somewhat lower endurance rate had we been able to contact more of the complainants. Specifically, at least 86% of the disputants were in relationships that involved close physical proximity. One way of avoiding this closeness if difficulties continued after mediation would be to move. Our failure to reach more of the complainants after mediation may therefore have been due to the agreement's failure: the complainants in some of the unsustained agreements may have moved. At any rate, our sample showed an 89% endurance-of-agreement rate. The outcome/endurance measure contained three nominal categories: 1)mediated and endured, 2)mediated but did not endure, and 3)not mediated.

#### Disputant Satisfaction Measure

During the post-session interviews with each complainant and respondent separately, a number of satisfaction-related questions were asked. Each of these independently was highly skewed toward the positive on a virtually equal basis for both parties. To produce a usable distribution of disputant satisfaction, the five

most reliable satisfaction measures for each party were selected from a reliability test of the seven original items. These five items were then summed and divided by five to produce a composite, or convergent, satisfaction scale (which allowed for missing data on up to two of the five items). The resulting frequency distribution of the complainant's and respondent's satisfaction was then recoded into high, medium, and low thirds to produce the final satisfaction measure. The distributions of the satisfaction measures for each disputant follows in Table 1.

In reading Table 1, the reader should keep in mind that the high, medium, and low divisions represent a strictly numeric rather than a literal distinction. The great majority of the disputants described themselves as "very" or "pretty" satisfied, with very few reporting "fairly" and almost no one reporting "dissatisfied". So, the distinctions in the table might more accurately read "extremely satisfied", "quite satisfied", and "pretty satisfied" overall.

Table 1  
Disputant Satisfaction Rates\*

	Complainant	Respondent
High	42.4%	32.3%
Medium	20.2%	27.1%
Low	37.4%	40.6%

\*To avoid any possible misinterpretation, the category "high" is actually extremely satisfied; "medium" is

very satisfied; and "low" is pretty satisfied.

Despite the seemingly small differences in the distribution between complainant and respondent satisfaction, there was no relationship between the two measures ( $r = -.08$ ,  $p = .23$ ). The items included in the satisfaction measure for each disputant were as follows:

- 1)disputant's feelings toward mediator
- 2)disputant's estimate of how well mediator did job
- 3)disputant's assessment of how much s/he got from the compromise
- 4)disputant's reported satisfaction
- 5)disputant's willingness to use mediation process again

(Because they were shown to be unreliable, the disputant's prediction of whether the award would last, and a judgement of the fairness of the process, were not included in the overall satisfaction measure.)

#### Overall Success Measure

The variables described up to this point accurately reflect the dependent measures as stated in each hypothesis. However, of more practical interest is an "overall success" measure. We wanted an inclusive success measure from both an individual and an institutional point of view. "Success" as reported in the evaluation research literature on mediation is usually simply

whether or not the case is mediated -- the first dependent measure in this study. Further refining this measure to get a more precise success measure from the institutional perspective, we were able to distinguish among those cases 1) that were mediated and in which the agreement endured, 2) those which were mediated but the agreement did not last, and 3) those which were not mediated, thus giving us three rather than two levels of success and decreasing the skewness of the basic outcome variable; this is the outcome/endurance measure.

We also wanted to include individual perceptions of success in the overall measure. The five independent satisfaction measures for each disputant discussed above were tested for their reliability with the three-level outcome/endurance measure, as were two measures of the mediator's satisfaction with the session. While the mediators were unwilling to predict whether an agreement would last, they did provide an estimate of how well the session went (very well, average, or poorly) and how good an agreement was made if any. These two mediator satisfaction measures were also included in the overall success scale after being tested and shown to be reliable in conjunction with the other items.

This more comprehensive success measure was developed for three reasons. First, the perspective it implies is more compatible with symbolic interactionism than any of the dependent measures considered separately. This theory applied to research

in a social setting supports a definition of success that incorporates both the institutional and the individual perspective. To be effective, mediation must serve the purpose of resolving disputes more quickly and cheaply than adjudication. This is the institutional goal. It must also leave the parties involved with a sense that their dispute has been equitably and satisfactorily resolved. This is the individual goal. If these two goals are perceived as being unrelated or incompatible, particularly in the disputants' eyes, the meaning, and meaningfulness, of mediation is destroyed.

Second, the overall success measure serves a valuable purpose given the data from the present study. Since the separate dependent measures are all at least somewhat positively skewed, the creation of a dependent measure with a larger and more even distribution makes inferences from correlational statistics more tenable.

Third, defining success as a composite concept that meets institutional and individual criteria allows for more effective program planning. In particular, this kind of measure should make it possible to develop ADR practices that reduce the likelihood of "revolving door" mediation. By seeking to optimize disputant satisfaction in mediated cases, the potential re-hashing of the dispute through re-mediation, or in another forum, is reduced. And finally, by including the mediator's satisfaction, the possibility of mediator "burnout" may be

reduced— an especially important consideration given that many mediation centers rely heavily on volunteer mediators.

The statistical method used to develop this overall success measure involved first a reliability test of the items described. This test used the SPSS format for reliability (Hull and Nie, 1981) and yielded a standardized item alpha of .61. While this is not particularly strong, the "if item deleted" alpha measures for each item ranged from .54 to .61, indicating that the removal of any of the individual items would not have altered the standardized alpha appreciably.

One factor contributing to the rather low alpha was that a few of the respondent satisfaction measures had small item-scale correlations. The decision was made to retain these items regardless so as to keep the satisfaction measures for the complainant and respondent parallel, rather than weighing one more heavily than the other.

This concludes the report on the construction of the dependent variables. For each of the four hypotheses, then, the independent measures will be considered in terms of their impact on:

- 1)The basic outcome measure
- 2)The outcome/endurance measure
- 3)The complainant's satisfaction
- 4)The respondent's satisfaction
- 5)The overall success measure (a reliable composite of one through four above, plus two mediator satisfaction measures).

#### Hypothesis I

"The greater the amount of instrumental and expressive verbal communication among the participants, the greater the:

- a)likelihood of agreement,
- b)likelihood of the agreement's duration, and
- c)disputants' satisfaction levels."

Essentially, this hypothesis tested a basic assumption regarding mediation. As opposed to adjudication, mediation allows disputing parties to: 1)vent their feelings and 2)work together with a mediator to reach a mutually acceptable resolution to their dispute themselves. It is to these procedural features that high client satisfaction with mediation is ascribed. In a strictly experimental study, the amounts of communication by the participants in mediation versus adjudication could be compared and evaluated against outcomes and satisfaction rates. In the present study, differences in the

amounts of communication in the sampled cases were examined as they influenced the dependent measures.

One way communication can be measured is to count the number of verbal expressions that occur in a given time segment or situation. In this study, this was done for each of the participants (mediator, complainant, respondent) twice.

The first measure was made during the fact-finding phase. During this phase, the mediator attempts to elicit from each disputant his/her perceptions of the facts and his/her feelings related to the case. Based on the context and content of the mediator's comments, questions, or statements to each party, the observer was able to indicate to whom the mediator was speaking, and whether the mediator was seeking fact-related (instrumental) or feeling-related (expressive) material.

Here is an example of how the coding worked:

The mediator may say to the complainant, "Tell me what happened that night." This would be recorded as one fact-related expression for the mediator. The complainant may then reply "He beat me up again. I can't stand it anymore. I want him to leave."<sup>19</sup> This would be recorded as one fact-related and two feeling-related expressions for the complainant. Then the respondent might chime in. "Well, you asked for it. Besides, it's the first time I ever put a hand on you." One feeling, one fact for the respondent. (It should be understood here that the

use of the word fact is only a verbal category, not related to truthfulness or accuracy) And so on, until the mediator feels s/he has elicited enough information -- or as much as each disputant is willing to give in the presence of the other -- to proceed with exploring solutions.

This is done in the next phase, the caucus, in which the mediator usually meets privately with each party separately at least once. Additional fact-finding, sometimes of a confidential nature, occurs during the caucuses, along with establishing fairly clear guidelines related to the content of the anticipated agreement. The mediator tries to ascertain what is important to each party in terms of a resolution, and what each party is willing to concede. During this phase, the observer recorded the interactions in the same manner as described for the fact-finding phase.

To summarize, the independent variables related to Hypothesis I for each participant were as follows:

<sup>19</sup>This hypothetical complaint, unfortunately, is not at all atypical: too many cases of harassment brought by women against the men they are involved with include the feature of physical abuse to at least some extent. This is partly because the law is fairly stringent about the conditions which must be met to bring a charge of assault. Unless there is clear physical evidence of bodily harm, or a physician's statement, and/or a formal complaint filed with the police, the victim must file a lesser complaint such as harassment.

- 1) Number of fact-related verbal expressions during fact-finding
- 2) Number of feeling-related verbal expressions during fact-finding
- 3) Number of fact-related verbal expressions during caucus
- 4) Number of feeling-related verbal expressions during caucus

These variables also distinguished to whom the party speaking spoke. They were analyzed separately and in various combinations (e.g. total amount of mediator-to-complainant factual expressions, all respondent feeling-related expressions, etc.). The length of the session and estimates of the percentage of time the mediator spoke were also used as independent variables related to Hypothesis I.

#### Findings Related to Amount of Talking

Table 2 shows the comparative percentages of high, medium, and low amounts of verbal communication, both instrumental and expressive, by each participant for the entire session.

Table 2

## Amounts of Verbal Communication by Each Participant

	% Low	% Medium	% High
<b>Mediator</b>			
Instrumental	55%	22%	23%
Expressive	37%	32%	31%
<b>Complainant</b>			
Instrumental	20%	33%	47%
Expressive	29%	35%	36%
<b>Respondent</b>			
Instrumental	28%	31%	41%
Expressive	37%	31%	32%

This table shows what contrasts there were between amounts of fact-related (instrumental) and feeling-related (expressive) verbal communication by each participant. From it, it is clear that the mediator speaks considerably less than either of the disputants, particularly in terms of fact-related material: in over half of the cases (55%), the mediator's level of fact-related communication was low, compared to 20% for the complainant and 28% for the respondent. Also, the mediator probed somewhat more expressively than instrumentally, as a comparison of rows one and two in Table 2 shows. Respondents on the whole were less communicative than complainants, though the differences were not great. This finding, coupled with others to be discussed, contributes to our impression that the respondent is less active and involved in the mediation process than the

complainant.

To assess the effects of the amount of verbal communication on the outcome measures, Pearson product-moment correlations were computed for each of the dependent measures with the various amount-of-communication variables. The criterion for significance was  $p = .05$ .

The first finding to note is that the overall, total amount of talking done by all three participants combined did not correlate at all with any of the dependent measures. (Correlations ranged from  $r = -.01$  to  $r = .09$ .) Thus, Hypothesis I in its most global form was disconfirmed. The independent measure used in this test was the sum of all the verbal communication, both instrumental and expressive, by all the parties -- mediator, complainant, and respondent -- as measured during both fact-finding and the private caucuses.

Furthermore, in direct contradiction to part of the hypothesis, but in support of "good" mediation as it is conceived by IMCR and other mediation experts, there was a small but significant negative correlation between the total amount of talking done by the mediator and the endurance of mediated agreements ( $r = -.23$ ,  $p = .03$ ); that is, the less talking done by the mediator, the more likely that the case would be mediated and that the agreement would endure. This finding supports IMCR's approach to mediator training, which discourages excessive verbalizing by the mediator in favor of getting the disputants to

talk instead. However, "getting the disputants to talk" produced no discernable relationships when total amounts of complainant and respondent talking were correlated with the dependent measures, even though the respondent, as shown in Table 2, did talk somewhat less than the complainant.

Continuing to explore the effect of amount of talk regardless of type of talk, we looked at differences in amounts of talking between mediator/complainant and between mediator/respondent pairs. It appears that the total amount of verbal communication between the first pair is somewhat less than that between the second, as shown in Table 3:

Table 3  
Differences in Amounts of Communication Between  
Mediator/Disputant Pairs

Amount of Communication	Mediator/ Complainant	Mediator/ Respondent
Low	40.6%	37.0%
Med	45.9%	31.5%
High	13.5%	31.5%
TOTAL	100.0%	100.0%

Despite the noticeably higher frequency of high amounts of communication between the mediator and respondent (31.5% for mediator/respondent versus 13.5% for mediator/complainant), the

difference was not statistically significant in correlations with any of the dependent measures.

The only other summed independent variable related to amount of talking that reached significance when correlated with the dependent variables was that of the mediator when speaking to the respondent. The sum of all the mediator's verbal communication to the respondent correlated negatively at  $r = -.28$  and  $r = -.24$  ( $p < .05$ ) with the basic outcome and outcome/endurance measures respectively, thus partially contradicting Hypothesis I. There was no effect shown for this measure against the other three dependent variables (complainant satisfaction, respondent satisfaction, and overall success). This indicates that, contrary to the hypothesis, there was either a negative or no relation between total mediator-to-respondent communication and the dependent measures. No other independent measures related to the amount of talking by any of the three participants were significantly related to any of the five dependent measures.

Based on the findings just discussed, we must conclude that the amount of talking did not affect the outcomes of the mediation sessions in this sample in any consistent way. Since these results show that, if anything, less rather than more communication may affect the outcome positively, possible explanations for the general disconfirmation of of this aspect of the first hypothesis will be discussed at the end of this section of the chapter.

Findings Related to Type of Communication  
(Facts vs. Feelings)

Next, distinctions between the amounts of fact-related versus feeling-related verbal expressions were considered. We looked at this type-of-communication variable in a number of different ways. Measures of the total amounts of instrumental and expressive communication by each party regardless of the recipient were derived, as were measures that distinguished the recipient. This meant, for example, that we had an independent variable to represent the number of expressive communications by the complainant for the session as a whole, as well as one to indicate whether those same communications were directed toward the mediator or the respondent. We also had separate time measures to tell us when the communication occurred, i.e. during fact-finding or during the private caucus.

The mediator's verbal communications tended to be probes and questions, referring either to facts or feelings, rather than statements. The total amount of factual probing by the mediator affected both the complainant and respondent satisfaction measures, but in opposite directions. Complainant satisfaction increased somewhat as the mediator's total factual probes increased ( $r = .15$ ,  $p = .08$ ), whereas for the respondent, satisfaction decreased ( $r = -.17$ ,  $p = .05$ ).

The mediator's total amount of expressive probing, a key facet of mediation, was nearly perfectly unrelated to each of the dependent measures. This surprising finding demonstrates that, in this sample, eliciting the disputants' feelings in general had no effect on any of the outcome measures. In probing to permit and encourage the expression of feelings, the mediator also intends to allow each disputant to hear and respond to the other disputant's feelings. This effort in its global form, i.e. the total number of expressive probes by the mediator, was not effective in this sample, as shown by the near-zero correlations between this measure and each dependent measure.

We then looked at the type of communication between discrete pairs of participants. Here a few findings are worth noting because they indicate some more differences between the respondent and the complainant. There were a number of significant or nearly-significant correlations between the type of verbal communication by the mediator to the respondent and some of the dependent variables. However, these too tended to disconfirm rather than support the hypothesis. For example, the total amount of fact-related expressions directed by the mediator to the respondent during the session showed small negative relationships with the basic outcome, outcome/endurance, and respondent satisfaction measures, at levels of significance ranging from  $p = .03$  to  $p = .09$ . Feeling-related expressions by the mediator to the respondent also were slightly negatively-related to outcome/ endurance ( $r = -.16$ ,  $p = .09$ ). None

of the same type-of-communication measures for the mediator-to-complainant interactions demonstrated any relation to any of the dependent measures.

Considering the measures of type-of communication as they were made separately during the fact-finding and caucus phases, rather than in combined form as above, produced additional findings. Very few of these separate independent variables, however, reached significance when correlated with the dependent measures. Furthermore, when they did, the correlations were of low magnitude and were mostly negative rather than positive.

One final comment regarding instrumental versus expressive communications: in this sample, contrary to popular wisdom, there were no significant differences between the male and female mediators. The males were no more likely to favor factual probing than the females, nor were the females more likely than the males to use feeling-related probes. In fact, although the differences were too small to be significant, they tended to indicate that the women mediators used fewer expressive probes than the men and more instrumental ones. Crosstabular comparisons showed that 29% of the women mediators used high levels of instrumental communication compared to 19% of the men; conversely, 23% of the women used high levels of expressive communication compared to 35% of the men.

### Session Length

Final evidence for the overall failure to confirm Hypothesis I was provided by looking at measures of the length of the session.

One of these measures was whether more than one private caucus was held with each disputant. This occurred in 19% of the cases. Complainant satisfaction tended to decrease slightly as additional caucuses were held ( $r = -.15$ ,  $p = .09$ ). This was the only dependent measure that was affected by the number of caucuses.

Another measure related to session length, although rather indirectly, was an estimate of the percentage of time during the session that the mediator talked. Both the observer and the mediator provided such an estimate. (The mediator did so during the post-session interview.) These two estimates were very highly correlated with each other, indicating at least consensual accuracy between the mediator and the observer on one measure related to amount of talking. Here, the only finding of interest was that this measure, too, affected the complainant and respondent satisfaction measures differently. Complainant satisfaction increased the greater the portion of time the mediator talked ( $r = .19$ ,  $p = .03$ ), whereas respondent satisfaction decreased ( $r = -.17$ ,  $p = .05$ ).

These correlations, though statistically significant, are too small to justify any firm generalizations.<sup>20</sup> But, this finding does point up one possible element involved in the lack of correspondence between complainant and respondent satisfaction with respect to Hypothesis I. The complainant seemed to be more satisfied the more the mediator talked. The complainant satisfaction also increased slightly as the session length increased ( $r = .14$ ,  $p = .08$ ). But the respondent satisfaction decreased here, too ( $r = -.18$ ,  $p = .04$ ). With a mean session length of slightly over 90 minutes, and an even range from less than half an hour to three and a half hours, the complainants tolerated longer sessions better, while the respondents seemed to prefer the shorter ones. Again, in conjunction with some of the other findings, this may possibly be interpreted as a disinclination on the part of the respondent to become as involved as the complainant in this process.

#### Possible Causes for Failure to Confirm Hypothesis I

The amount of verbal communication, regardless of whether it is expressive or instrumental, seems to make little or no difference to the outcome of mediation, based on data from this sample. These results fly in the face of strongly-held tenets of

<sup>20</sup>In fact, throughout this report on the findings, the reader will find that almost all of the significant correlations are in the .15 to .25 range -- far too low for anything but justified speculation regarding relationships and effects among variables.

mediation. Therefore we considered some possible explanations for the findings. One, of course, is that the observers' recordings of the amounts of communication were inaccurate. Because the observer training was as exacting as possible, and because amount-of-communication coding achieved near-perfect consensus during the observers' viewings of videotaped mock mediation sessions rather easily, this is not a highly likely explanation.

To explore this possibility further, we looked at the amount-of-communication data of the observer who viewed the largest number of cases (52). This subsample eliminated altogether the problem of inter-rater reliability (but not that of individual differences in the same observer over time). The findings from this subsample were consistent with those from the sample as a whole, i.e. most of the significant findings were in the direction opposite that predicted by the hypothesis.

We also considered that amount of communication may have been bi-modally distributed between positive and negative outcomes. That is, we checked whether high amounts of communication characterized both the most and the least successful cases as defined by the dependent measures. To do this, the overall success measure, being the most comprehensive of the dependent variables, was collapsed into four categories based on the frequency distribution of the variable: most successful, moderately successful, less successful, and unsuccessful. Both

cross-tabular and discriminant function analyses failed to demonstrate that bi-modality was a cause for the dearth of findings relating amounts of communication to mediation outcomes. Since the bi-modality tests might have failed due to the very small N in the unsuccessful category, a Pearson correlation matrix was done excluding these cases. Again, nothing significant emerged. Therefore, it can be concluded that the sheer amount of verbal communication by the participants in mediation, while a distinguishing feature compared to the adjudication process, is not one that exerts a particularly positive effect on the outcome. Nor does the opportunity to express feelings, as well as facts -- an opportunity denied during adjudication for the most part -- exert much influence on outcome measures.

#### Summary of Findings Related to Hypothesis I

What was learned by testing this hypothesis is the following:

- 1) There may be no basis in practice for making mediation sessions last a particular time in order to allow for full discussion, since this aspect of the process did not exert any clearly consistent positive influence on the outcome measures.

2) Expressing feelings verbally during mediation was not particularly important in relation to the outcome measures used in this study.

3) The complainant and respondent did not react the same way to either amount or type of communication, either by or with the mediator. Specifically, the complainant seemed to react somewhat positively to more communication, as long as feelings were not explicitly involved. The respondent, on the other hand, consistently seemed to react negatively to higher amounts of communication from the mediator, particularly when feelings were involved.

#### Hypothesis II

"The more positive the quality of verbal and non-verbal interactions between the mediator and the disputants, the greater the:

- a) likelihood of agreement,
- b) likelihood of the agreement's duration, and
- c) disputants' satisfaction levels."

This hypothesis examined the effect of behavioral indicators of attitudes on the dependent measures. For each participant (mediator, complainant, respondent), measures of the quality -- positive, neutral, or negative -- of verbal and non-verbal

behavior were taken during the initial phase of the session (fact-finding), the middle (private caucusing), and the concluding phase (negotiations). The mediator's behavior during the introductory stage was also looked at closely. This section of the chapter reports on the findings related to verbal behavior first, followed by those related to non-verbal behavior. First, though, an idea of the overall affective quality of the sessions will be given. In creating a composite index of affect, combining both verbal and non-verbal measures, we found that each participant's affect was highly positive on the whole. Table 4 shows this.

Table 4

Participants' Overall Affect During Mediation

	% Positive	% Neutral	% Negative
Mediator	94%	6%	—
Complainant	70%	30%	—
Respondent	76%	24%	—

Certainly, an index like this masks affective changes and variations that occurred throughout the sessions. People do get angry and upset — although the mediator, as shown, very rarely displayed anything other than positive affect. The relatively rare instances of negative affect when summing all the affect measures are neutralized by the far greater frequency of positive affect. Figure 2 shows how the degree of positive affect changed

over the course of the sessions for each of the participant pairs, including by whom and to whom the affect was directed.

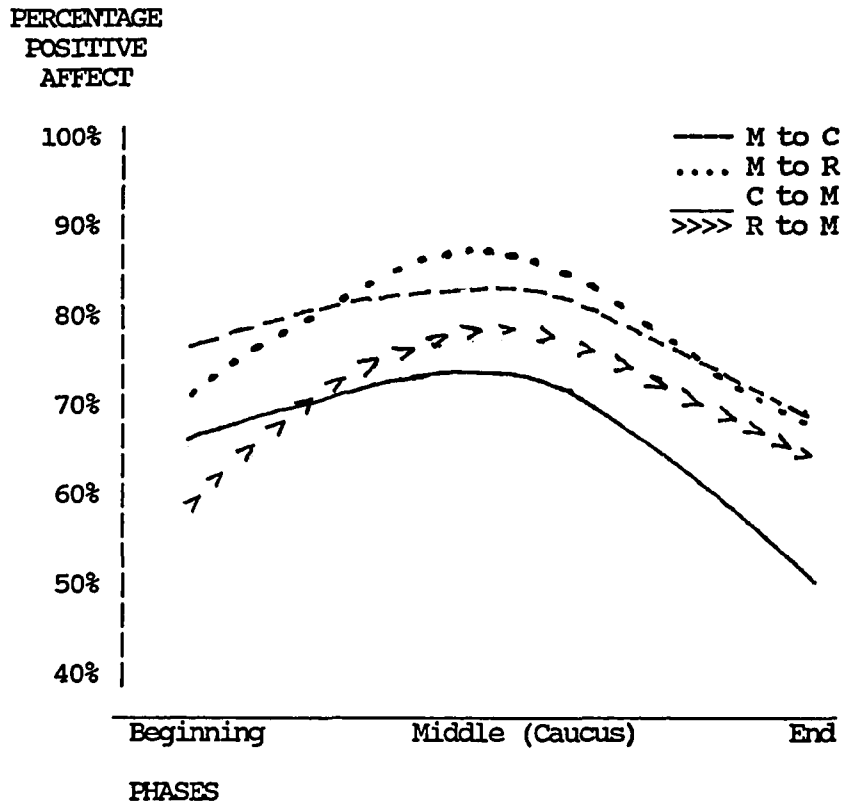


Figure 2: Changes in Positive Affect Over Time for Mediator(M), Complainant(C), and Respondent(R) Pairs

Some interesting observations can be made by examining the curve of affect in Figure 2. The mediator, for example, clearly "pulls" for the positive throughout, and particularly in the caucuses, with both disputants. The decline in positive affect for all the parties by the end of the session indicates reality setting in -- neither disputant comes out of the process with his or her affect intact; they become considerably more positive when

they're in private caucus with the mediator, and less so by the end of the mediation session. In most cases, both disputants make concessions they are not happy about. We would also surmise that it may be the quite positive tone of the private caucuses that makes the concession pill a little easier to swallow, particularly for the respondent, who is considerably more positive by the end of the session than the complainant.

#### Verbal Behaviors by the Mediator

Mediator training as done by IMCR emphasizes bringing a warm, interested, positive approach to the disputants and to the mediation process. We were able to demonstrate that particular aspects of the mediator's verbal behaviors that reflect such an approach were significantly related to a number of the outcome measures. Items or parts thereof which contributed positively to outcomes as predicted by the hypothesis will be discussed here.

First, how the mediator welcomes the disputants to the Dispute Resolution Center correlated positively with all the dependent measures but one -- respondent satisfaction. This variable, "mediator welcome", was rated as either friendly or neutral. One quarter of the welcomes were friendly, the rest neutral. Friendliness could include exchanging pleasantries, gracious wording, inquiring as to the disputants' comfort, etc. "Neutral" welcomes reflected a more business-like, rote, or perfunctory-sounding approach. The correlations for this measure were small but positive, and significant or nearly so. They

ranged from  $r = .15$  to  $r = .19$  ( $p = .07$  to  $.04$ ) with the basic outcome, outcome/endurance, complainant satisfaction, and overall success measures respectively.

Second, in the introduction, the mediator is expected to provide the disputants with an explanation of how mediation works that includes six specific items: 1) confidentiality, 2) mediation's legal status, 3) arbitration, 4) note-taking, 5) courtesy, and 6) the mediator's role and training. Curiously, it was the last of these that was least consistently provided (the mediator explained his role and how s/he was trained in 44% of the cases), and the only one of the six items that clearly related to all the outcome measures in the predicted direction. The correlations with overall success, complainant satisfaction, and respondent satisfaction were .28, .31, and .26 respectively, all significant at the .005 level at least. This aspect of the explanation also correlated positively to the basic outcome and outcome/endurance measures significantly or nearly so.

Last, the mediator may emphasize any or all of three aspects of mediation that distinguish it from both adjudication and arbitration: 1) its voluntary nature, 2) the penalties involved in failing to come to agreement, and 3) the desired participation of the disputants. The third item related positively to both complainant satisfaction ( $r = .22$ ,  $p = .02$ ) and respondent satisfaction ( $r = .17$ ,  $p = .04$ ).

These findings indicate that the mediator's initial verbal efforts to create a friendly, open, unthreatening environment for the disputants paid off in this sample, as predicted by the hypothesis. By behaving thus, the mediator is role-modelling the kind of communication behavior s/he hopes the disputants will imitate, at least during the mediation session.

A few other variables dealing with the mediator's initial verbal behavior had effects on the outcome measures. For example, whether the mediator inquired of the disputants if they had any questions related to mediation affected the overall success measure and respondent satisfaction positively. The correlation with overall success was  $r = .28$  ( $p = .005$ ) and with respondent satisfaction,  $r = .23$  ( $p = .01$ ). We can infer that, for the sake of the session's outcome overall, and for the respondent's satisfaction at least, it is worthwhile for the mediator to ask for feedback from the disputants regarding the clarity of the explanation.

Finally, related to the mediator's verbal behavior at the outset of the session, two variables involving the mediator's approach to the complainant appeared to affect adversely the respondent's satisfaction. If the mediator was non-directive as opposed to directive, and friendly as opposed to neutral or unfriendly toward the complainant, the respondent's satisfaction tended to decrease ( $r$ 's were  $-.18$  and  $-.22$  respectively, both significant at  $p < .04$ ). Corresponding verbal behavior by the

mediator toward the respondent did not produce any similar decrement in the complainant's satisfaction. In fact, if the mediator was initially friendly toward the respondent, the complainant's satisfaction increased slightly ( $r = .16$ ,  $p = .05$ ), as did the overall success and outcome/endurance levels. These findings suggest a different kind or degree of reactance on the part of the respondent as compared to the complainant; this shows at other stages of the session also, as will be seen.

In the caucus phase, the mediator speaks privately with each party. In the caucus with the complainant, the most influential verbal behavior by the mediator was whether s/he stressed, or advised the complainant of, the confidential nature of this part of the process. Usually, this is done as follows at the beginning of the caucus: the mediator says something like "I'd like you to understand that anything we discuss at this point is private and will not be shared with the respondent without your permission." The mediator did this in 56% of the cases with the complainant. This measure correlated quite highly with four of the five dependent variables (respondent satisfaction was unaffected). Correlations ranged from .20 to .29, with significance levels from .03 to .007.

The mediator usually reiterates this assurance of confidentiality at the end of the caucus by asking if there's anything else the complainant wants to discuss privately. The complainants actually gave confidential material to the mediator

in only 25% of the cases, with no correlations between this measure and any of the dependent variables. Apparently then, it is the offer of trust that matters, not the giving of it.

In the caucus with the respondent, the mediator made the same offer of confidentiality in the same percentage of cases. But the respondent provided confidential material only half as often as the complainant. This offer to the respondent related significantly to the basic outcome measure only ( $r = .20$ ,  $p = .03$ ), in contrast to the four out of five positive correlations for the mediator's offer to the complainant. It appears that the respondent doesn't choose to trust the mediator as often as the complainant does, and that the mediator's offer of trust exerts a more positive effect on the outcome measures as a whole when it is made to the complainant than when the same offer is made to the respondent.

Interruptiveness of the mediator was measured during fact-finding and the private caucuses. This good indicator of "active" listening (when interruptions are few) did not yield any valid findings. We think this occurred because of the lack of variability in the measure: there were very few instances of excessive interruptions by the mediator at any point during the session.

This essentially summarizes the significant findings related to the quality of the mediator's verbal behavior. Independently, these findings generally support the hypothesis. However, two attempts to identify a constellation of positive mediator verbal behaviors both failed. Neither a factor analysis nor a discriminant function analysis of all the significant variables related to mediator verbal behavior and discussed above yielded any significant results.

#### Verbal Behavior by Complainant and Respondent

There were no verbal behaviors by the complainant, in either the fact-finding phase or in the caucus, that correlated with any of the dependent measures. This was not the case for the respondent, whose interruptiveness had some effect on certain dependent measures. The main one was a reverse effect on the complainant's satisfaction in the opening and caucus phases; that is, the more the respondent interrupted the complainant during fact-finding, and the more the respondent interrupted the mediator during their private caucus (when the complainant wasn't present), the more satisfied was the complainant ( $r = .23$ ,  $p = .05$ ).

This finding runs counter to the hypothesis at first glance, but not, perhaps, at second. One would suppose that fewer interruptions all around would contribute to a smoother, more polite session, and to everyone's satisfaction. This was not

shown to be the case, since there were no excessive interruptions by mediators to measure, and since there were no correlations between the complainant's interruptiveness and any of the dependent measures. But, the more "polite" the respondent was, if we accept few interruptions as an operative aspect of politeness, the less satisfied the complainant. There is a reasonable explanation for this contrary finding. The mediator would tend to censure excessive interruptions by either disputant. If s/he did so in the cases where the respondent interrupted excessively (more than three times), the complainant would be mollified and, by extension, more satisfied. If the respondent behaves badly, the complainant, by comparison, looks good. It is not improbable that this effect would operate even in the complainant's absence, as during the private mediator/respondent caucus.

A comparison of the frequency of interruptions by the complainant and respondent, incidentally, showed that the respondent did not interrupt any more than the complainant did; it also showed that the complainant and respondent both interrupted each other a lot more often than they interrupted the mediator. Since the mediators almost never interrupted excessively, these observations could be said to demonstrate both the efficacy, and the lack thereof, of the mediator's influence as a role model -- each disputant may have imitated the mediator when talking with the mediator, but not when talking with each other.

## Non-Verbal Behaviors

Non-verbal expressions of affect were measured at three different occasions during the mediation session for each participant. By training the observers to be aware of a number of physical affect cues, it was possible to obtain measures of such behavior as eye contact, smiling, tension, handshakes, and closed vs. open postures. Some interesting findings resulted from these measures, some of which supported, and others which directly contradicted, the hypothesis. On the whole, the non-verbal quality-of-communication behaviors had more impact than the verbal ones, and certainly more than the quantity-of-communication measures covered in Hypothesis I. Details of the findings are presented here for the mediator, followed by those for the complainant and the respondent.

### The Mediator's Non-verbal Behavior

Eye contact and handshakes are two very clear non-verbal behaviors. Mediators at IMCR are encouraged to shake hands with each participant at the session's outset, and to maintain eye contact throughout. Mediators consistently avoided shaking hands in this sample; in 85% of the cases, no handshakes occurred. (There were no differences between male and female mediators in this respect.) They also overwhelmingly maintained eye contact with both disputants in virtually all cases, so that testing the effect of either of these behaviors on the dependent measures was

not possible, due to the lack of variation in these independent measures for the mediator.

Initially, measures of four dimensions of somewhat more subtle non-verbal behaviors were recorded for each participant. These were: FRIENDLY-HOSTILE, OPEN-CLOSED, COMFORTABLE-NERVOUS, and AGGRESSIVE-PASSIVE. These were coded at the beginning, middle, and end of the session on a five-point Likert scale which was subsequently collapsed into three categories (positive, neutral, negative). The observers were able to make distinctions for the first three dimensions as follows:

OPEN	←-----→	CLOSED
open-handed gestures		arms across chest
willingness to speak		unresponsive or unyielding
maintaining eye contact		averted gaze
FRIENDLY	←-----→	HOSTILE
smiling		grimaces, hostile expressions
encouraging gestures		threatening gestures
nodding		yelling
COMFORTABLE	←-----→	NERVOUS
relaxed posture		tense posture
ease of speaking		anxious, fearful, or tearful tone

A fourth measure, aggressive-passive, was abandoned during the analysis because the observers, understandably, had great difficulty determining which end of the aggressive-passive spectrum was positive. This difficulty was evidenced by the observers' tendency to code this dimension of behavior at the midpoint, rendering it meaningless. Aggressive behavior was to have included speaking loudly or sharply, and using pointed, abrupt hand gestures. Passive behavior was defined as a lack of physical or vocal animation, e.g. a monotonic, low voice; disinterested, monosyllabic responses; and little or no movement. Neither of these extremes, obviously, was positive, which may have resulted in the observers' resorting to the middle.

In the initial phase, the measures of mediator non-verbal behavior had little or no impact on the dependent variables. They appear to play a slightly larger role during the private caucuses. For the mediator, the friendly-hostile dimension seemed to be the most salient of the three: this measure correlated well with the overall success measure in the private caucus with both the complainant and the respondent ( $r = .22$  and  $r = .26$ ,  $p = .03$  for both).

However, by the end or negotiation phase of the session, a change seemed to occur. The friendly-hostile dimension retained significance in the predicted direction for three of the five dependent measures, while the open-closed dimension emerged as significantly, but negatively, related to the basic outcome and

outcome/endurance measures ( $r = -.20$  and  $r = -.23$ ,  $p = .03$ ). This may be an indication that, as the session comes to a close, the mediator can and should be a bit more intractable and controlling rather than open and accommodating. This tactic appeared to be successful in the present sample, and may have served the useful purpose of getting the disputants to focus on the concrete wording necessary to writing an agreement.

#### Non-Verbal Behavior by the Complainant

We saw earlier that verbal quality-of-communication measures for the complainant had no bearing on any of the outcome measures. In the non-verbal realm, though, the complainant's ratings on the friendly-hostile dimension did correlate significantly with all five dependent measures during the initial phase, and with two of the five dependent measures during the caucus phase.

The only other non-verbal independent measure of the complainant's behavior that affected the outcome involved eye contact. If the complainant and the respondent interacted at all during the fact-finding phase, as they did in 55% of the cases, the complainant's maintaining eye contact with the respondent affected the overall success measure positively ( $r = .26$ ,  $p = .04$ ). This suggests that if such a signal is present, it may be useful for the mediator to encourage a verbal exchange between the disputants. The other non-verbal measures of communication by

the complainant toward the respondent -- open-closed, friendly-hostile, comfortable-nervous -- did not yield any findings.

#### Non-Verbal Behavior by the Respondent

During the opening phase of the session, the findings regarding the respondent's non-verbal behavior paralleled those of the complainant. That is, there were positive and significant correlations between the respondent's friendliness toward the mediator and all five dependent measures. The respondent's friendliness during the caucus also affected two of the five dependent measures positively. But, the respondent's open-closed rating during the caucus affected four out of five of the dependent measures negatively and significantly or nearly so. This means that, in this sample at least, the more open the respondent was with the mediator during the private caucus, the less likely that the case would be successfully resolved or the disputants satisfied.

Why should this be the case? One would assume that the opportunity to "open up" in confidence to the mediator would decrease the respondent's defensiveness, and ultimately promote accord. This did not occur in our sample. We suggest that the reason for this is that the respondent who is "closed" has in effect abdicated from the mediation process and acts as a passive, acquiescent, and defeated party. Respondents who were more open may have been so because they felt more justified in

and comfortable with their position, and anxious to defend it. They were perhaps able to see the mediator as a potential ally, one with whom they could be open. Another finding tends to support this interpretation: there was a significant negative correlation between the respondent's comfort level during the caucus with the mediator and the complainant's satisfaction level ( $r = -.20$ ,  $p = .03$ ); that is, the more comfortable the respondent was with the mediator in private, the less satisfied the complainant.

The sex of the respondent could have been involved in these findings. Since males are stereotypically less open than females, both verbally and non-verbally, and since 70% of the respondents in this sample were male, this had to be considered. Men are thought to be less at ease than women in situations which require some degree of self-disclosure and open-ness, such as characterizes the private caucus. However, crosstabular analysis of respondent sex by degree of open-ness showed no sex differences in this respect.

#### Comparisons of Quality-of-Communication by Participant

The findings related to Hypothesis II and discussed thus far demonstrate some scattered support for the hypothesis. To assess the effects of each participant's behavior in general on the outcome variables, various indices and composites of both verbal and non-verbal indicators of communication behavior were created for the mediator, complainant, and respondent. These more global

measures and the findings related to them will be discussed here.

The effects for overall mediator and complainant behavior were negligible or non-existent, as demonstrated by correlations with the dependent variables. However, looking at mediator-respondent interactions yielded some findings. For example, there were fairly strong positive correlations between the mediator's initial positive attitude toward the respondent and three of the outcome measures. This "initial mediator attitude toward respondent" index variable included the mediator's initial tone (positive), the frequency of interruptions by the mediator (fewer than three), and eye contact (maintained). This attitudinal measure correlated positively with the basic outcome measure ( $r = .26$ ,  $p = .005$ ), the outcome/endurance measure ( $r = .31$ ,  $p = .002$ ), and the overall success measure ( $r = .33$ ,  $p = .001$ ). There were smaller, but also positive and significant, correlations between the mediator's composite non-verbal affect toward the respondent at the session's outset and the overall success and respondent satisfaction variables ( $r = .18$  and  $.19$ , respectively).

Finally, taking the session as a whole by summing the measures of affect which were taken for each participant at three points during the session, the respondent's behavior again stands out. The respondent's overall friendly-hostile behavior rating correlated with four of the five dependent measures in the direction predicted. There was also a positive correlation of  $r =$

.20 ( $p = .05$ ) between the respondent's combined behavior on all the non-verbal measures for the whole session and the respondent's satisfaction. There was also a negative relationship between the respondent's comfort level overall and the complainant's satisfaction ( $r = -.24$ ,  $p = .03$ ).

#### Summary of Findings Related to Hypothesis II

Testing Hypothesis II gave empirical support to the following observations:

1) The mediator's initial approach to the mediation session is important: being warm and friendly had a generally positive effect on the session outcomes and on the complainant and the respondent.

2) Giving a more personal explanation of the mediation process — i.e. clarifying one's role and encouraging participation by the disputants, and asking for questions — exerted a positive effect also.

3) The respondent appeared to be particularly sensitive to signs of favoritism or bias by the mediator toward the complainant, and reacted negatively to it.

4) There is a slight indication that the mediator exerted more control at the end of the session than at the beginning, perhaps in order to help the disputants reach closure.

5) The respondent appeared to be somewhat more ill-at-ease or less satisfied with mediation than the complainant in general. But, the mediator's initial approach to the respondent seemed to offset this tendency.

### Hypothesis III

"Demographic similarity between the mediator and the disputants increases the  
a)likelihood of agreement,  
b)likelihood of the agreement's duration, and  
c)disputants' satisfaction levels."

Age, sex, and race were the three variables used to test the validity of Hypothesis III. For race and sex, new variables were created which identified those cases in which the mediator/complainant and mediator/respondent pairs were of the same sex, the same race, and/or both. Table 5 shows the frequency with which each of these conditions occurred in our sample, and, in the last row, shows the frequency of the same conditions for complainant/respondent pairs. (Although they do not relate to the hypothesis, it will be seen that similarities between complainant and respondent are the only demographic similarities that affected outcomes.)

Table 5  
Demographic Similarities  
Between Participant Pairs

	Same Race	Same Sex	Same Race and Sex
Mediator/ Complainant	53%	49%	26%
Mediator/ Respondent	51%	52%	27%
Complainant/ Respondent	83%	44%	40%

Looking at how these conditions affected the outcome measures, we found that the hypothesis was disconfirmed for both mediator/complainant and mediator/respondent similarities related to sex and race. None of the five dependent measures were affected one way or the other by the sharing of basic demographic characteristics between the mediator and either disputant.

To see whether age similarity had any effect, a crosstabular analysis of mediator age, with age dichotomized into "under 36/over 35", was done for each dependent variable. Mediators over 35 had more overall success proportionately than those under 35. For the mediators over 35, 69% of their cases were quite successful, compared to 57% of the cases for mediators under 36. While the coefficient of correlation was small ( $\tau = -.18$ ), it was significant ( $p < .04$ ). And since the modal age for both complainants and respondents was thirty, age similarity between

the mediator and either disputant did not exert a positive influence, thus disconfirming the hypothesis with respect to age as well as to race and sex. Instead, regardless of disputants' ages, the slightly older mediators produced a significantly larger number of overall successes.

Referring to Table 5 again, it can be seen that sex and race similarity were more frequent between complainant and respondent than between the mediator and disputants. These similarities also affected the outcome variables to some extent. But before examining these relationships, the frequency distributions for race and sex of each party are presented:

Table 6  
Race and Sex Characteristics  
of Participants

	Mediator	Complainant	Respondent
Black	83%	49%	57%
White	5%	33%	27%
Hispanic	12%	17%	16%
Male	60%	30%	70%
Female	40%	70%	30%

With respect to race, the figures above show the preponderance of blacks in all three participant categories. It also demonstrates the extent to which women as opposed to men

utilize the Dispute Resolution Center as complainants: 70% were women. Therefore, in any discussion of the effects of race, sex, or demographic similarity involving these variables, the characteristics of the sample preclude generalizing the findings. Particularly in relation to the differences between the complainant and respondent seen in Hypothesis II, not only the role but also the sex differences within the complainant/respondent roles must be kept in mind.

While no effects were found for similarities between the mediator and either disputant, there were effects for these similarities between the disputants themselves. Table 7 shows how these affected each of the dependent variables: (Note that the respondent satisfaction and the overall success dependent measures were unaffected, and therefore not included in the table.)

Table 7

Significant Demographic Similarities  
Between Complainant and Respondent\*

Demographic Similarity	Dependent Measures		
	Basic Outcome	Outcome/Endurance	Complainant Satisfaction
Same Race	.18	.20	
Same Sex			-.16
Same Race/Sex			-.18

\*(using Kendall's tau B,  $p < .05$ )

The table shows that race and sex similarity between the complainant and the respondent operates selectively on the outcome measures. Racial similarity, for example, has a positive relationship with the basic outcome and outcome/endurance measures: it is more likely that, on these success measures, the case will be successful if the disputants are of the same race. And in our sample, racial similarity did exist in 83% of the cases (see Table 5).

Neither the overall success measure nor the respondent satisfaction measure were affected by sex and/or race similarity between the disputants. But when disputants were of the same sex, and when they were of the same race and sex, complainant satisfaction was adversely affected. These conditions operated in 44% and 40% of the cases respectively.

What do these findings tell us? With the caveat that 50% of the disputant pairs in our sample were black and 70% of the complainants were women, we can say that racial similarity between disputants affects simple, institutionally defined mediation success measures positively. But sex similarity and sex/race similarity combined exert a negative effect on the complainant's personally-defined satisfaction, and no effect on the respondent's. One may surmise that same-sex competitiveness partly accounts for these findings. Furthermore, the closer relationships between disputants are clearly opposite-sex ones in general (e.g. married, lovers, cohabiting). It may be that the complainant, who, it must be remembered, is frequently a woman, has a greater need to resolve disputes of this kind, and a correspondingly greater satisfaction in doing so, compared to disputes in less vital or basic relationships.

Although Hypothesis III was not supported by our findings, its testing led to other findings that were not hypothesized, but are nevertheless of interest. We found that certain characteristics, demographic and otherwise, of both the complainant and mediator did affect some of the outcome measures. However, the respondent attributes did not. Nor was the outcome measure of respondent satisfaction affected as complainant satisfaction was by these attribute variables.

## Complainant Attributes

The complainant attributes which were related to outcomes are shown in Table 8:

Table 8  
Significant Correlations between  
Complainant Attributes and Dependent Measures\*

Complainant Attribute	Dependent Measures	
	Basic Outcome	Complainant Satisfaction
Sex	.17	
Race		.16
Occupation		-.16
Education		-.17

\*(using Kendall's  $\tau$  B,  $p < .05$ )

The complainant's sex affected the basic outcome as follows: 96% of the male-complainant cases were mediated, compared to 84% of the female-complainant cases. The difference is small but significant ( $r = .17$ ,  $p < .05$ ). The male complainants in this sample appear to be slightly more willing to settle their grievance immediately. However, the absence of the outcome/endurance and overall success dependent measures from the table above indicates that this sex difference between

complainants had no effect on the more stringent outcome measures.

The complainant's race related to complainant satisfaction in quite different ways, depending on the race of the complainant. The following cross-tabulation table demonstrates this:

Table 9  
Cross-tabulation of  
Complainant Satisfaction by Complainant Race\*

Complainant Satisfaction	Complainant Race		
	Black	White	Hispanic
High	50%	35%	31%
Medium	17%	32.5%	6%
Low	33%	32.5%	63%
	100%	100%	100%
N	(48)	(34)	(16)

\*shown: cross-tabular column percents

Looking at the top row of the table, it is clear that black complainants are proportionately more satisfied than whites; the latter are quite evenly distributed along the satisfaction continuum. And Hispanic complainants are twice as likely to be less rather than more satisfied; however, the Hispanic sample is far too small to draw any conclusions from.

The reasons for this race difference in complainant satisfaction are unclear. Since a large percentage of the mediators were black (see Table 6), one might think that the race similarity between mediator and complainant accounts for this. But this is not the case: there was no relationship between mediator race and any outcome variables, nor between same-race mediator/complainant pairs and any of the outcome variables.

Moving to the next significant complainant attribute in Table 8, we see a negative relationship between satisfaction and occupation. The various occupations of the disputants were coded into professional and non-professional. Since only 9% of the complainants were in the professional category, which was expanded to include business executives in addition to law, medicine, and academia, findings related to this variable are merely suggestive at best. However, the tendency appears to confirm what is more clearly evident when complainant education is examined. That is, the more educated the complainant, the less satisfied (see Table 8).

In this sample, and among the general complainant population at IMCR, the less educated and the non-professionals were strongly in the majority, as were women as opposed to men. Although the sex of the complainant alone did not affect complainant satisfaction, it is not unreasonable to consider that the predominance of less-educated, non-professional, minority group women in the complainant population may have something to

do with the high satisfaction rates. That something is that the expectations of clients like these are much lower than those of well-educated, well-employed, more affluent, majority group members.

#### Mediator Attributes

Measures of mediator characteristics as they relate to the dependent measures were problematic in this study due to the small N of participating mediators. Only 15 of the mediators from the sample, who accounted for 72 of the cases, were interviewed in depth (see Appendix E). Nevertheless, a few items related to mediators' backgrounds did emerge as significant. But because of the small subsample size, these findings, which are discussed below, are, again, at most, merely suggestive.

Mediator characteristics which related significantly to the dependent variables are shown in Table 10:

Table 10  
 Mediator Attributes Significantly  
 Related to Dependent Measures\*

Mediator Attribute	Dependent Measures		
	Outcome/ Endurance	Complainant Satisfaction	Overall Success
Age			.18
Sex		.19	
SES Background		.19	
Birth Order		.33**	
Parents' Marital Status	.21	.20	

\*The absolute value of Kendall's tau B are given; clarification follows in text.

\*\*Significant at  $p < .005$ ; all others at  $p < .05$ .

Mediator age, as previously discussed under demographic similarities between participant pairs, affected overall success such that over-35 mediators were significantly more likely to have success. Moving to the next mediator characteristic, we see that the mediator's sex affected complainant satisfaction. Female mediators were significantly more likely to have more satisfied complainants. More than twice as many of the least satisfied complainants had male mediators, whereas among the most

satisfied complainants, the difference in mediator sex was negligible.

Next, the measure used to differentiate mediator socio-economic background was related to complainant satisfaction. The mediators who reported having come from areas where their neighbors were poor as opposed to lower-middle or middle class were significantly more likely to have more satisfied complainants. However, since there were no other measures of socio-economic background taken, drawing any conclusion from this finding would be untenable. The measure may represent less a true picture of SES than an indication of the mediator's self-assessment, the more modest being positively related to complainant satisfaction.

The mediator's birth order also appeared to have a strong relationship to complainant satisfaction, such that oldest-child mediators were very significantly more successful in this respect than middle or youngest children. A cross-tabulation of these two variables, complainant satisfaction and mediator birth order, showed a clear progression of higher complainant satisfaction from youngest to oldest-child mediators. However, looking at a related variable, mediator's number of siblings, led to a quite different conclusion. The first-born mediators were also the only-born. There were no first-born mediators in our sample who weren't also only children.

The inclusion of these measures in the mediator interview was based on an interest in seeing whether a) the relationship between birth order and success in general held true for mediation, and b) the ability to facilitate peace or compromise was enhanced through practice, since it is often assumed that children with siblings learn this by necessity. What we learned, contrary to expectation, was that these variables have nothing to do with basic or overall success at mediation, but that these measures did affect complainant satisfaction. Specifically, cases in our sample that were done by only-child mediators were notably more successful, from the complainant's point of view, than those done by mediators with one or more siblings (see Table 10).

Mediators from intact homes (both parents present) were significantly more successful in relation to the outcome/endurance measure than those from divorced or single-parent families: 92% of the formers' cases were mediated and endured, compared to 77% of the latter's. This same variable was significantly related to complainant satisfaction, as Table 10 shows.

Other mediator attributes that may have been related to the mediators' experience with conflict were also recorded. These included: mediator's exposure to physical fighting at home, mediator's reported level of family happiness, military duty and combat (for males), and self-defense study. None of these were

significantly related to any of the dependent variables.

### Summary of Findings Related to Hypothesis III

Although this hypothesis was completely disconfirmed, its testing led to other findings related to participant characteristics which, if they held in larger samples, would be interesting to pursue. For example, in our sample we saw that:

1) Disputant pairs of the same race were more likely to resolve their dispute than those of different races.

2) Cases with same-sex disputant pairs and same-sex-and-race disputant pairs resulted in lower complainant satisfaction rates, although the likelihood of successful mediation was unaffected.

3) While both complainant and respondent attributes were tested for whether they related to any of the dependent measures, only certain complainant attributes in fact did so. None of the respondent attributes affected any of the outcomes.

4) Black male complainants were both more likely to have their case mediated, and to be more satisfied with the outcome, than any other race/sex combination among complainants.

5) The higher the level of the complainant's education and occupation, the less likely it was that s/he would be satisfied with mediation. (This might be a working hypothesis for a larger sample with a more even distribution of these variables.)

6) Women mediators over 35 were slightly more likely to have more overall success, and more satisfied complainants, than male and/or younger mediators.

7) Respondent satisfaction rates were completely unaffected by mediator, respondent, or complainant attributes; instead, respondents were more affected by qualitative communication variables, regardless of personal attributes (see Hypothesis II). We can therefore say that, in this small sample, complainants tended to be more reactive to attributes, whereas respondents were more reactive to behavior.

#### Hypothesis IV

"The higher the mediator's Mach score, the greater the

- 1) likelihood of agreement,
- 2) likelihood of the agreement's duration, and
- 3) disputants' satisfaction levels."

Testing of the final hypothesis yielded disappointing results. There were no relationships whatsoever demonstrated between the mediators' scores on version IV of the Mach scale and any of the dependent measures. The Mach scores for mediators in the sample fell very close to those from the normative tables in Christie and Geis (1970), so that skewness could not account for the results. Because the nature of mediation, and of ADR mediation in particular, is so closely akin to the conditions

described by Christie and Geis as optimum for the exercise of Machiavellian traits, giving up this hypothesis is premature. Instead, for the present, we would say that the sample size fell far short of that necessary for a true test.

The general conclusions and implications from these findings are discussed in Chapter VIII, along with ideas for further research.

## CHAPTER VIII

### Conclusions and Implications

This final chapter must begin with a reminder that any conclusions and implications drawn from this study of ADR mediation are tentative at best. There are three reasons for this. First, it was acknowledged from the outset that, ideally, the same two observers should have collected all the observational data. Second, the number of cases was too small for anything but basic statistical analyses, especially for those areas involving assessment of the effects of mediator demographic and background characteristics. Third, the significant correlations cited throughout were of a low magnitude on the whole. Nevertheless, given these limitations, and an approach designed to minimize their effects wherever possible, a number of worthwhile findings resulted.

In the introduction, three broad objectives were set out.

These were:

- 1) To provide data on mediation that may be useful in mediation training
- 2) To identify some conditions that promote successful mediation
- 3) To present a qualitative and quantitative description of how communication is structured in ADR mediation

The present chapter is organized as a discussion of how well these objectives were met. It closes with ideas for how one

might pursue the objectives differently or more effectively, given what was learned by conducting the study.

The first objective of the study can be largely nested within the second. What this study identified as conditions that promote successful mediation are almost all of value for mediation training. Based on the first hypothesis, for example, the quantity of time spent and the amount of communication could be de-emphasized during mediation training. This is not to suggest that quantity for its own sake is currently emphasized. Instead, it may be that mediation trainees get the message that one of the positive distinctions between mediation and adjudication is demonstrated by lengthy mediation sessions. Our study made it rather clear that the length of a mediation session is not a characteristic that affects its success. In retrospect, we might have heeded Deutsch's "fractionating", or divide-and-conquer, approach to conflict resolution (Deutsch et al., 1971) prior to formulating Hypothesis I. Separating larger issues into a series of smaller ones and dealing with one at a time was more productive than taking on a large dispute in its entirety, as the Deutsch work showed. Therefore, limiting rather than expanding communication is an option to consider in mediation. We conclude that how much communication is not the issue to look at; instead, what kind and perhaps when it occurs are more important.

Furthermore, and surprisingly, the first hypothesis was disconfirmed with respect to the expression of feelings. Neither disputant showed any increase in reported satisfaction based on the amount of feeling-related communication during the session. This suggests, as far as mediation training is concerned, that trainees, if they elicit feelings from disputants at all, might better do so indirectly rather than directly. How? Perhaps a controlled narrative style of probing that focuses solely on the dispute's content, at least overtly, would be more effective than direct feeling probes.

The failure to confirm the first hypothesis has useful implications for mediation training. Trainees can be made aware that excessively drawn-out sessions, particularly of an emotional nature, may have the undesirable effect of pouring salt on the wound. Before adopting a procedural change in this direction, however, more data would be helpful. For example, the success rates of time-limited versus unlimited mediation sessions could be compared to determine the pragmatic effects of session length on outcomes. In addition, sessions in which disputants' feelings are overtly expressed or elicited could be compared with those where this is absent.

More specific guidelines for mediation training emerged through investigating the second hypothesis. These related to the quality rather than the quantity of communication during mediation. Having found, as this study did, that certain

specific information given by the mediator at the outset of mediation has a positive effect in general on outcomes, this aspect of the mediation process could be carefully emphasized during training. If the mediator is trained to adhere closely to a specific introductory protocol that includes 1) a clear explanation of his/her role and how s/he prepared to do it well, 2) inviting the disputants to participate, and 3) making sure to check for understanding by asking for questions, then both the institutional and the individual goals of mediation are more likely to be met. Demonstrating warmth and friendliness at the outset also had a positive effect, as long as it was directed equally between the disputants. Such findings show that it may indeed be possible to virtually script the introductory verbal and even the non-verbal behavior of mediators to increase their success.

The investigation of the second hypothesis also brought to light the need to attend closely to the respondent. Our findings suggested that respondents tended to be more reactive to communication behavior than the complainant. In addition to emphasizing the need to remain impartial to the parties, mediator trainees might benefit from more consideration of the psychological disadvantage of the respondent. The private caucus might be one place to apply a particularized approach to the respondent without jeopardizing the mediator/complainant relationship.

The third hypothesis was completely disconfirmed: there were no benefits or risks attached to demographic similarities between the mediator and the disputants. However, unique characteristics of the mediators and the disputants in this sample limit generalization of these findings. Whether the same findings would emerge in a sample of primarily middle-class, white mediators and disputants remains an open question.

In exploring other possible relationships between demographics and outcomes, we found complex interrelationships between race and sex of the disputants. It was more likely, for example, that disputants of the same race would reach agreement. But if sex, or race and sex, were the same, complainants were less satisfied. One might speculate that decision theory models based on social power and alternatives may have some bearing here. But again, particularly with respect to the complainant, we are limited in drawing any conclusions because most complainants in our sample were black women.

The particular demographics of this sample did have advantages, however. For one, almost no research on negotiation and conflict resolution has been done using black, or, for that matter, female subjects. Furthermore, even though no significant relationship was statistically demonstrated between demographic similarity of mediators and disputants, the black complainants in this sample had far higher satisfaction levels than either whites or Hispanics proportionately; our sample of mediators was also

disproportionately black.

The investigation of hypothesis III also disclosed that complainant satisfaction decreased as complainant's education and occupational status increased. Such a finding can be interpreted as partial empirical justification for the reality of the 'justice for the poor' issue: if urban ADR centers such as IMCR are perceived more negatively the higher the client's social status, then it is inevitable that this alternative to justice will be discriminatorily offered to clients with less clout, i.e. less access to "real" justice.

The failure to find even a shred of confirmatory evidence for the fourth hypothesis was at least partly a result of the limited mediator sample size. The Machiavellian characteristic was selected as the one most likely, based on previous research in negotiations and bargaining, to have an effect on mediation outcomes. In reality, though, it is unlikely that mediation will soon, if ever, reach the kind of professional standing that would make personality or aptitude-based selection criteria practical.

The final goal of this study was to provide a quantitative and qualitative description of the communication patterns in mediation. In general terms, this goal was met as a by-product of the study, and by the description of mediation at IMCR provided in Chapter IV. However, it is our conclusion that more could be learned about the resolution of interpersonal disputes by using a method of investigation that allows for richer details

and closer analysis of very small samples. Specifically, videotapes of real disputes could be examined within the structure of an observational analysis technique like SYMLOG simplified and modified to fit mediation.

To end, we return to the beginning: the title "The Welcome Intruder". Is the mediator welcomed, and is the process welcomed, by disputants? The answer is yes, as demonstrated by the high rates of satisfaction in this and other mediation studies. But without more direct comparisons, the effectiveness of mediator vs. no mediator, mediator vs. judge, or even mediator vs. mutual friend, cannot be determined empirically. However, the findings from this study can be read to demonstrate that the mediator is an asset to the conflict resolution process. His/her initial approach to the disputants and the process was a significant factor in the sessions' success.

If mediators manage to serve as effective catalysts or facilitators in resolving interpersonal disputes, all well and good. But it is possible that mediators could serve a longer-range purpose if mediation were structured differently. This structure is suggested by the theoretical orientation of the present work. The processes of role-modelling and taking-the-role-of-the-other that are seen as the basis of socialization in symbolic interactionist terms are processes that take time. Much of institutionalized mediation is a one-shot experience. To provide a better test of the theory, and to

investigate the long-range impact of exposure to a good communication role model, one could chart the communication patterns that change and develop over time in a series of mediation sessions. Studies of couples in divorce mediation could serve for this purpose, since usually a set number of consecutive sessions are required.

One of the least-anticipated, but perhaps most valuable results of this study is that it provides clear evidence that it is not only possible, but at least potentially worthwhile, to study a dynamic process like conflict resolution in a natural context. With many methodological refinements, further efforts like this could provide pragmatic solutions to the problem of making interpersonal disputes more manageable.

Appendix A  
Training Manual for Observers

INSTRUCTIONS  
for  
OBSERVATION FORM

PAGE 1

Date and Case #: Pencil only, so that this information can be erased.

Time: Note exact start and end times of session; compute total time in minutes, e.g. "Start 11:20; End 2:05; Total: 1 6 5"

"Start 11:20; End 12:17; Total: 0 5 7"

Observer initials: Place your first and last initials in the two spaces provided.

Sequence #: Place 0 1 through     in order on each observation you do. Each observer has his/her own folder in the bottom drawer of the file cabinet.

CHARGE INFORMATION:

1. Circle 1 for yes, 2 for no for cross-complaint information.
2. Write in the charge(s).
3. Write in issue(s) briefly, e.g. "divorce", "repayment", "end relationship", "stereo in upstairs apartment", etc.

PARTICIPANT CHARACTERISTICS:

4. SEX: Circle for all parties; if transvestite or transsexual, note.
5. RACE/ETHNICITY : Circle for all parties; if not apparent, check case folder after session and indicate category in which each disputant placed himself/herself.
6. PERCEIVED AGE: Circle for each party by guessing as well as you can the correct age. DO NOT ask the mediator his/her age!
7. DRESS STYLE: The following guidelines should be used:

	<u>BUSINESS-LIKE</u>	<u>CASUAL</u>	<u>SLOPPY</u>
<u>MALE</u>	Suit	Jeans	Dirty
	Sport jacket w/ tie	Sport jacket no tie	Bizarre (describe)
	No jeans	No jacket	Unkempt
<u>FEMALE</u>	Suit	Skirt w/sweater or casual blouse	Same as for Males
	Tailored Dress	Boots, not shoes	
	Pants + jacket	Pants/no jacket	
	Conservative look	Jeans	

PAGE 2

PHASE 1: INTRODUCTION/EXPLANATION

8. WELCOME BY MEDIATOR:

Friendly: Circle 1 if comments about weather, surroundings, apology for waiting, health inquiries, etc. are added to general greeting in a friendly way.

Business-like: Circle 2 if welcome is straight-forward, formal, cool, or perfunctory, e.g. "Welcome to the IMCR Dispute Center." Consider the tone, not just the words: if tone is sincere, personal, and genuine-sounding, mark Friendly.

None: Circle 3 if no words of welcome are said.

9. HANDSHAKES: Self-explanatory

10. INTRODUCTION OF MEDIATOR TO DISPUTANTS:

Clear: Circle 1 only if mediator clearly enunciates his/her name when introducing self to disputants.

Unclear: Circle 2 if mediator states his/her name, but enunciation is garbled, inaudible, or too rapid for disputants to hear clearly.

None: Circle 3 only if mediator does not introduce himself by name.

11. PRONUNCIATION OF DISPUTANTS' NAMES:

Clear/Correct: Circle 1 if mediator clearly pronounces both parties' names, or, if s/he is unsure of pronunciation, asks, obtains, and uses correct pronunciation from party.

Unclear/Incorrect: Circle 2 if mediator glosses over names of parties incorrectly, or mispronounces name(s), or persists in mispronunciation even after party corrects him/her. Note which party's name is mispronounced if this occurs with only one.

12. EXPLANATION OF PROCESS: Circle 1 for Yes as each item in list is mentioned or addressed, and 2 for any items not mentioned.

13. MEDIATOR STRESSES: This one is difficult! You should circle 1 for Yes to any of the items listed that are stressed, emphasized, and/or gone into in more depth than a brief but clear explanation warrants. In other words, considerable elaboration of the voluntary aspects of the process, the penalty aspects, or the disputants' participation/involvement should elicit a circled 1. If these aspects are simply mentioned, or not mentioned at all, mark 2 for No. Note that the mediator may stress a point above inaccurately, e.g. by giving wrong and excessive information about penalties for broken agreements. If this occurs, circle 1 for Yes and make a note as to what information was given.

14. MEDIATOR ASKS IF ANY QUESTIONS: Self explanatory.

15. IF QUESTIONS, DESCRIBE: Make a brief note as to what disputants ask, and who (R or C) asks it.

16. RELATIONSHIP BETWEEN DISPUTANTS: The 15 categories listed seem to be all-inclusive; circle the correct descriptor code number. If parties had a former relationship, e.g. former lovers, note "former" to left of category description circled. Circle 15 for Other only if category is not listed, e.g. "friends" and indicate the relationship to the left of "Other" category.

PHASE II: FACT-FINDING

NOTE: This phase starts when mediator asks one party or the other to explain what brought him/her to Dispute Center. Normally, the Complainant is asked first, in which case you start with page 3 (mediator-complainant fact-finding); if Respondent is asked first, begin with page 4 (mediator-respondent fact finding) and then go to page 3 when Complainant begins. Pages 3 & 4 are duplicates of each other except for numbering of the questions and the bottom portions of the pages. DO NOT neglect the bottom sections!

16/25. MEDIATOR'S TONE IN INITIAL REQUEST FOR INFORMATION:

Directive: Circle 1 if mediator's tone and/or words in the initial statement to Complainant or Respondent in this phase give the impression of issuing an order, e.g. "Mr. X, you are to tell me why you have come here today."

Non-directive: Circle 2 if request for information is clearly a request, not an order. This may be conveyed either by actual words (e.g. "Would you please tell me...", "Why don't you begin by telling me...", "I'd like you to explain why...") or by a tone of non-authoritative interest.

17/26. MEDIATOR'S INITIAL ATTITUDE:

Warm/Interested: Circle 1 if mediator's inflection, tone of voice, and over-all non-verbal approach is sincere/interested/personal/friendly/concerned when s/he initiates dialogue with party indicated (C or R).

Neutral/Business-like: Circle 2 if mediator's inflection, tone of voice, and over-all non-verbal approach is impersonal/efficient/officious/let's-get-down-to-business/no nonsense, but professional when s/he initiates dialogue with party indicated (C or R).

Disinterested/Rote: Circle 3 if mediator's inflection, tone of voice, and over-all non-verbal approach conveys boredom or a lack of interest in the process or parties when s/he initiates dialogue with the party indicated (C or R).

18/27. PROBES/EXPRESSES FACTS:

Circle or slash off under the correct person-category each time the MEDIATOR, COMPLAINANT, OR RESPONDENT either asks about or expresses (as an answer to a question or in a general statement) a fact, i.e. "who/what/where/when" -- but not "why" -- questions, answers, or comments. Count as one any complete unit of speech, whether it is a word (e.g. "yes", "no"), a sentence or phrase (e.g. "ten years" or "We've known each other ten years"), or a long, uninterrupted monologue of factual information. IF a person is on a fact monologue, and during it also expresses feelings, mark off one FACT and one FEELING (see next question's instructions). REMEMBER, the mediator may probe and/or express facts, as may the disputants. Indicate by a "+" if more than 10 facts are probed/expressed.

19/28. PROBES/EXPRESSES FEELINGS/WANTS/NEEDS:

Use the same method as in 18/27 to mark off each time MEDIATOR, COMPLAINANT, or RESPONDENT either asks about or expresses a feeling, want, or need.

Examples of PROBES:

"How did you feel about that?"  
"What do you think he meant by that?"  
"How did you feel when he said that?"  
"How do you think you could do that?"  
"Do you think that's a good idea?"  
"Why do you think he did/said that?"  
"What would you like to see happen?"  
"How likely is that?"  
"Do you think that's fair?"

--In other words, any probe that requires or seeks an opinion, a guess, or an expression of non-factual, uncertain, or emotion-related information is a FEELING/WANT/NEED probe.

Examples of EXPRESSIONS:

"That's very understandable."  
"I agree/disagree."  
"I want/need him to..."  
"I think/feel he should/ought to..."  
"I feel good/terrible/angry..."  
"He's crazy/wrong..."  
"I love/hate him..."  
"He needs to..."  
"You seem to understand/misunderstand..."  
"It's not right/honest..."  
"Try to understand..."  
"I wish that..."

--In other words, any statement that deals with emotions, values, expectations, opinions, judgements, needs, desires, etc. should be marked in this category under whoever makes it. REMEMBER, all parties, including the mediator, may express as well as probe for these items. Also, note if you notice a great many head nods or other non-verbal expressions of agreement, approval, etc., as well as any non-verbal expressions of disapproval, annoyance, etc. (e.g. shaking finger at someone, clucking, etc.)

20/29. VERBAL STYLE DURING INTERACTION:

Articulate: Circle 1 for each party whose over-all verbal style during fact-finding is clear, i.e. good diction, effective communication skills displayed, able to express self with no apparent difficulty. If party has a foreign accent but speaks English well and gets point across, s/he may still be articulate.

20/29. (con't)

Inarticulate/Unclear: Circle 2 for each party whose over-all verbal style during fact-finding is not effective due to mumbling, speaking too quickly, mispronunciation of words, or poor vocabulary which makes it difficult for other parties to understand what is being said.

Incoherent: Circle 3 for each party whose over-all verbal style during fact-finding is incomprehensible due to bizarre/wandering/tangential/vague speech content; this category should be used only for parties whose apparent mental state is abnormal due to pathology or to being under the influence of drugs or alcohol. Party may speak clearly, but make no sense.

Uncommunicative: Circle 4 for each party whose over-all verbal style during fact-finding can be characterized by an inability or refusal to speak, to communicate verbally. No answers, or barely monosyllabic responses, and no explanations, would put a party in this category. NOTE: A person might be in this category during this public session, but might later speak in a private session.

21/30. VERBAL TONE DURING INTERACTION:

NOTE: This question deals primarily with verbal tone and manner; however, the response category you circle may be influenced by the part's general demeanor to some extent. On the other hand, be aware that verbal tone could be at odds with non-verbal attitudes noted in question 22/31. If this seems to be the case, make a note of it. IF, in this question and in 22/31, a definite shift in response category occurs with the indicated party during fact-finding, e.g. from "Disinterested/Passive" to "Positive/Interested/Warm" or from "Closed(2) to Open(5)", you may indicate this drawing an arrow from one circled item to the other. But do this only when the shift is quite noticeable.

REMEMBER: You are dealing with the MEDIATOR-COMPLAINANT interaction on page 3, and with the MEDIATOR-RESPONDENT interaction on page 4; your responses to questions 20-24 and 29-33 are to deal with these specific interactions separately; questions 34-37 deal with the interaction, if any, between the two disputants during this phase. Try not to mix these up, because it is entirely possible that the MEDIATOR, COMPLAINANT, and RESPONDENT may react to each of the other two parties differently.

22/31. (con't.)

Hostile---Friendly: Circle the point on the scale which best indicates each party's over-all non-verbal attitude toward the indicated party during the fact-finding phase with respect to hostility-friendliness. An angry/loud tone, shaking finger in other's face, raised voice, abrupt or exasperated movements or noises show hostility; smiles, nods, casualness, and personal attentiveness show friendliness. NOTE: If a 5 rating for friendliness includes what looks like flirtatious behavior, make a note of this.

Nervous---Comfortable: Circle the point on the scale which best indicates each party's over-all non-verbal attitude toward the indicated party during fact-finding with respect to nervousness-comfortableness. A clenched, tense quality of posture, particularly around mouth and hands, stuttering or rapid speech, frequent loss for words show nervousness; expansive, loose movements, relaxed posture, direct gaze, and ease of expression show comfortableness.

23/32. EYE CONTACT:

Maintained/Sought: Circle 1 if person maintains or seeks eye contact with the party indicated during their interaction in fact-finding phase most of the time.

Avoided: Circle 2 if person avoids looking at or averts gaze during most of fact-finding phase with party indicated.

24/33. INTERRUPTIONS:

Frequent: Circle one if person interrupts the indicated party frequently during fact-finding phase; frequently may be taken to mean 4 or more times.

Few: Circle 2 if person interrupts party indicated anywhere from one to three times during fact-finding phase.

None: Circle 3 if person does not interrupt party indicated at all during fact-finding phase.

34. DO DISPUTANTS INTERACT DIRECTLY DURING THIS PHASE? (bottom page 3)

Yes: Circle 1 if there is any actual or attempted verbal dialogue between the two disputants during fact-finding phase, or if one or both parties engage in any type of obvious non-verbal communication directed toward the other, e.g. laughing, noises, physical contact.

No: Circle 2 if there is no actual or attempted verbal dialogue between the two disputants during fact-finding phase, or if parties react in some non-verbal way, but not so that the reaction is directed toward the other disputant.

NOTE: Interrupting the other party should be considered an attempt at interaction, so circle 1 if this occurs.

NOTE: If you circle 1 for question 34, answer questions 35-37; otherwise, do not answer 35-37 and go directly to questions 38-39.

35. EYE CONTACT:

Maintained/Sought: Circle 1 for each disputant if s/he maintains or seeks eye contact with the other disputant during their direct interaction between them, if any, during fact-finding phase.

Avoided: Circle 2 for each disputant if s/he avoids eye contact with the other disputant during any direct interaction between them in the fact-finding phase.

36. INTERRUPTIONS:

Frequent: Circle 1 for each disputant who interrupts the other disputant while they are speaking to each other during fact-finding if this occurs four or more times.

Few: Circle 2 for each disputant who interrupts the other disputant from one to three times while they are speaking to each other during fact-finding.

None: Circle 3 for each disputant who does not interrupt the other at all while they are speaking to each other during fact-finding.

NOTE: DO NOT code MEDIATOR-DISPUTANT INTERRUPTIONS here, but in questions 24/33.

37. NON-VERBAL ATTITUDE DURING (COMPLAINANT-RESPONDENT) INTERACTION:

Circle the appropriate point on the scale (from 1 - 5) for each of the four dimensions listed only if the two disputants interact directly during fact-finding phase. Follow the notes and instructions given for questions 22/31.

NOTE: MAKE SURE YOU COMPLETE QUESTIONS 38 and 39 FOR ALL CASES.

38. DOES MEDIATOR REFER DIRECTLY TO TIME PRESSURE DURING FACT-FINDING PHASE?

Yes: Circle 1 if MEDIATOR exerts pressure to proceed or complete fact-finding more rapidly by making some verbal <sup>reference</sup> to time. <sub>or non-verbal</sub>

No: Circle 2 if mediator makes no reference whatsoever to time, need to hurry, etc. during fact-finding.

NOTE: COMPLETE Q. 39 ONLY IF ANSWER TO Q. 38 IS YES.

39. TIME PRESSURE IS IN REFERENCE TO:

Self: Circle 1 if mediator refers to time pressure in relation to him/herself, e.g. "I have another session/appointment.", "I have to get out of here.", etc.

Complainant: Circle 2 if mediator refers to time pressure in relation to the complainant, e.g. "Could you wrap this up?", "It's time we hear from the respondent", "You're taking too much time.", etc.

Respondent: Circle 3 if mediator refers to time pressure in relation to the respondent, as above for complainant.

Both parties: Circle 4 if mediator refers to time pressure by directing such remarks to both parties, e.g. "Gentlemen, we've been here two hours ", "Don't you both want to finish up?". etc.

39. (con't.)

Schedule/Time: Circle 5 if mediator uses time pressure by referring to scheduling/time, but in an impersonal way, e.g. "It's 3 o'clock", "We've been here quite some time", "We may have to reschedule this since it's 8 o'clock", "We haven't much time", "We close at 9 o'clock", etc.

Other factors: Circle 6 if mediator refers to time pressure in some way not mentioned above. AVOID using this code if possible.

PAGES 5 & 6

PHASE III: PRIVATE CAUCUS

NOTE: Pages 5 and 6 are duplicates, except for the bottom of page 6. Use page 5 for the first private caucus, and page 6 for the second private caucus.

40/50. FIRST/SECOND PARTY IS:

Complainant: Circle 1 if first/second party is complainant.

Respondent: Circle 2 if first/second party is respondent.

41/51. PROBES/EXPRESSES FACTS:

Proceed as per instructions for questions 18/27 on page 3.

42/52. PROBES/EXPRESSES FEELINGS/WANTS/NEEDS:

Proceed as per instructions for questions 19/28 on page 4.

43/53. VERBAL STYLE DURING INTERACTION:

Proceed as per instructions for questions 20-29 on pages 4-5.

44/54. VERBAL TONE DURING INTERACTION:

Proceed as per instructions for questions 21/30 on pages 5-6.

45/55. NON-VERBAL ATTITUDE DURING INTERACTION:

Proceed as per instructions for questions 22/31 on pages 6-7.

46/56. EYE CONTACT:

Proceed as per instructions for questions 23/32 on page 7.

47/57. INTERRUPTIONS:

Proceed as per instructions for questions 24/33 on page 7.

48/58. IS CONFIDENTIALITY STRESSED DURING PRIVATE CAUCUS?

Yes: Circle 1 if mediator mention of the confidential nature of the private caucus at any time during the caucus. Even if s/he only mentions it in response to a query from the complainant/respondent, circle 1.

No: Circle 2 if mediator fails to mention or remind the complainant/respondent that the caucus is private/confidential.

49/59. IS CONFIDENTIAL MATERIAL PROVIDED?

Yes: Circle 1 if complainant/respondent gives any information that s/he wishes withheld from the other party, whether or not at the mediator's request or reminder of confidentiality.

No: Circle 2 if complainant/respondent fails to provide or feels it unnecessary to provide any confidential information.

60. ARE ANY ADDITIONAL PRIVATE CAUCUSES HELD?

Yes: Circle 1 if more than one private caucus is held with either party. You need not mark down any observations for such additional caucuses, but if they substantively alter the

60. (con't.)

rest of the mediation process, make a note as to what transpired.

No: Circle 2 if no more than one private caucus is held with each disputant.

NOTE: ANSWER Q. 61 ONLY IF THE ANSWER TO Q. 60 IS YES:

61. ADDITIONAL CAUCUS HELD WITH:

Complainant: Circle 1 if additional caucus is held with complainant only.

Respondent: Circle 2 if additional caucus is held with respondent only.

Both parties: Circle 3 if additional caucuses are held with both parties.

PAGE 7

PHASE IV: NEGOTIATIONS

62. INITIAL RECAPITULATION BY MEDIATOR:

Thorough: Circle 1 if the mediator reviews all the points of concession and negotiation that have been obtained from both disputants during fact-finding and private caucuses. This does not mean that all issues have to have been decided, but just that mediator puts them all on the table and clarifies what can and cannot be dealt with and/or accomplished.

Sketchy: Circle 2 if mediator mentions some of the issues that have been brought out by both disputants during fact-finding and private caucuses, but either does not mention all of them or ignores needed details.

None: Circle 3 if mediator does not review any of the results/concessions/issues, etc. that have come out of the preceding parts of the session

63. SOLUTIONS/COMPROMISES OFFERED PRIMARILY BY:

NOTE: This question is intended to suggest which party comes up with and/or yields the most concessions or makes the most compromises in order to reach an agreement. In other words, which party appears to be most flexible in terms of developing compromises, or, in the case of the mediator, who offers the most suggestions and alternatives which may eventually produce agreement? This need not be related to the points which end up in the agreement. Simply put, who is the most active and imaginative party, or the most willing to entertain alternatives, in the creation of an agreement? This may have occurred in private sessions.

Complainant: Circle 1 if it is the complainant who is most active or flexible in developing points for negotiation, whether in the negotiations phase or previously in private session.

Respondent: Circle 2 if it is the respondent who is most active or flexible in developing points of negotiation, whether in the negotiations phase or previously in private session.

63. (con't.)

Both parties equally: Circle 3 if it appears to you that both parties are about equal in terms of their levels of activity or flexibility in developing points of negotiation.

Mediator: Circle 4 if it is mediator who primarily offers the suggestions, alternatives, and/or compromises that may produce agreement. The disputants should be either passive or recalcitrant for this code to be circled.

All parties equally: Circle 5 if it is all three parties who appear to be equally involved in developing concessions, compromises, etc.

64. IS THERE A SUBSEQUENT RECAPITULATION BY MEDIATOR?

Yes: Circle 1 if mediator reviews clearly with the disputants whatever points are to be included in final agreement. S/he may say something like "I'd like to go over the things we've discussed to make sure we all understand them...", or, "Are we all agreed that the following points are what you've agreed to?"

No: Circle 2 if mediator does not review with the disputants the things they've agreed to or what s/he will write up as the agreement. S/he may just say, "All right, I'll write all this up and then you can sign it..."

65. DO PARTIES COME TO AN AGREEMENT?

Yes: Circle 1 if parties agree to agree.

No: Circle 2 if parties refuse to make an agreement and mediator must make some other disposition, or if parties request that changes, additions, or deletions to what has been verbally agreed to.

NOTE: ANSWER Q. 66 ONLY IF ANSWER TO Q. 65 IS YES, AND THEN GO DIRECTLY TO Q. 70.

66. WHOSE SOLUTIONS/CONDITIONS ARE AGREED TO PRIMARILY?

NOTE: This question refers the verbal agreement, and is distinguished from Q. 63 in that it deals with which disputant "gets" the most, "wins", or with who has the most control or influence over the outcome.

Complainant's: Circle 1 if complainant's needs, wants, demands, etc. are acceded to in the verbal agreement mostly.

Respondent's: Circle 2 if respondent's needs, wants, demands, etc. are acceded to in the verbal agreement mostly.

Both equally: Circle 3 if the needs, wants, demands, etc. of both disputants seem to be about equally reflected in the final verbal agreement.

Mediator's: Circle 4 if the final terms of the verbal agreement appear to be the result of decisions, suggestions, and/or advice provided mostly by the mediator rather than by the parties.

All equally: Circle 5 if the final terms of the verbal agreement appear to be the result of equal involvement, activity, and solutions from all three parties.

NOTE: ANSWER Q's 67, 68, and 69 ONLY IF ANSWER TO Q. 65 IS NO.

67. WHO OBJECTS TO AGREEMENT?

Complainant: Circle 1 if complainant refuses to make agreement or if s/he insists on changes being made before making agreement.

Respondent: Circle 2 if respondent refuses to make agreement or if s/he insists on changes being made before making agreement.

Both disputants: Circle 3 if both the disputants refuse to reach an acceptable agreement.

Mediator: Circle 4 if only if mediator intervenes to prevent an agreement being made, for whatever reason. To circle this code, the disputants themselves must have reached or seem to be ready to reach an agreement which is disallowed by the mediator.

68. EXPLAIN SUBSTANCE OF OBJECTION BRIEFLY:

Self-explanatory; note who makes objection as well as what it consists of.

69. INDICATE DISPOSITION MADE BY MEDIATOR:

Arbitrated: Circle 1 if mediator arbitrates the case.

Return to Court: Circle 2 if mediator returns case to court, no matter what court; Please make note, however, of which court case goes to.

Reschedule: Circle 3 if mediator reschedules case; arrange to be available to continue observation on the reschedule date, and mark your observation form accordingly.

Other: Circle 4 if case is determined non-amenable or receives some other disposition not listed above.

IF OTHER, EXPLAIN: Self-explanatory

70. NON-VERBAL ATTITUDE OF PARTIES DURING NEGOTIATIONS PHASE:

Follow instructions as per Q. 22/31 on pages 6-7, taking the over-all behavior of each party individually during negotiations phase into account.

PAGE 8

PHASE V: OUTCOME (TO BE COMPLETED ONLY ON MEDIATED/ARBITRATED CASES)

71. IF WRITTEN DOCUMENT IS COMPOSED, IT IS:

Mediation Agreement: Circle 1 if mediation agreement.

Arbitration Award: Circle 2 if arbitration award.

72. NUMBER OF POINTS WRITTEN INTO AGREEMENT/AWARD:

N of Points: Place number of points, from 01...etc., in the two blanks provided.

73. DOES MEDIATOR READ AGREEMENT/AWARD TO PARTIES?

Yes: Circle 1 if mediator does read document to parties.

No: Circle 2 if mediator does not read document to parties; this should not occur except in cases that are ARBITRATED.

74. ARE OBJECTIONS RAISED TO WRITTEN AGREEMENT/AWARD?

Yes: Circle 1 if either disputant objects to wording or content of agreement/award or requests changes, whether such changes are made or not.

No: Circle 2 if no objections or requests for changes are made by either party.

NOTE: ANSWER Q's 75 and 76 ONLY IF ANSWER TO Q 74 IS YES:

75. PARTY WHO OBJECTS IS:

Complainant: Circle 1 if it is complainant who objects or requests changes.

Respondent: Circle 2 if it is respondent who objects or requests changes.

76. ARE ITEMS ADDED, DELETED, OR CHANGED?

Yes: Circle 1 if, in response to objections or request from either party, the mediator makes any changes in the agreement/award as it was originally written.

No: Circle 2 if mediator makes no changes in agreement/award as originally written.

NOTE: ANSWER REMAINING QUESTIONS FOR ALL MEDIATED/ARBITRATED CASES.

77. ARE COMPLIANCE PROCEDURES EXPLAINED BY MEDIATOR?

Yes: Circle 1 if mediator, either before or after award is completed, explains to disputants how to contact compliance or reviews penalties and/or procedures re: broken agreements (May or may not be in response to question)

No: Circle 2 if mediator does not discuss compliance procedures at this point.

78. QUALITY OF WRITTEN DOCUMENT:

NOTE: This is a subjective judgement. You are to quickly review the written document either after or before you do the mediator post-session questionnaire and rate it on a scale of 1 to 5 for each of the three dimensions listed. Detail/Specificity has to do with the content, Legibility/Neatness with the appearance, and Style/Grammar/Language with the correctness of the language in the written document.

79. ESTIMATE OF PERCENTAGE OF TIME SPENT TALKING BY MEDIATOR:

Use the two blanks to write in your estimate, in percentage form, of the amount of time the mediator was actually talking during the entire session.

ADDITIONAL COMMENTS:

Use the space provided to note down anything and everything about the case which was unique, odd, interesting, problematic, etc., and which you feel is not clarified or covered elsewhere on the observation form.

**Appendix B**  
**Observation Form**



PHASE I: INTRODUCTION/EXPLANATION

3. WELCOME BY MEDIATOR:

Friendly	1
Business-like	2
None	3

9. HANDSHAKES:

Yes, to both	1
Yes, to Complainant	2
Yes, to Respondent	3
None	4

10. INTRODUCTION OF MEDIATOR TO DISPUTANTS:

Clear	1
Unclear	2
None	3

11. PRONUNCIATION OF DISPUTANTS' NAMES BY MEDIATOR:

Clear/Correct	1
Unclear/Incorrect	2

12. EXPLANATION OF PROCESS:

	<u>yes</u>	<u>no</u>
Confidentiality explained	1	2
Arbitration "	1	2
Note-taking "	1	2
Legal status "	1	2
Courtesy "	1	2
Mediator role/training explained	1	2

13. MEDIATOR STRESSES:

Voluntary aspects	1	2
Penalty aspects	1	2
Disputants' involvement	1	2

14. MEDIATOR ASKS IF THERE ARE ANY QUESTIONS:

1	2
---	---

15. IF THERE ARE ANY QUESTIONS, DESCRIBE:

---

3a. RELATIONSHIP BETWEEN DISPUTANTS:

Spouses	01
Common-law marriage	02
Divorced	03
Cohabitation	04
Lovers (not cohabitating)	05
Neighbors	06
Room-mates (non-sexual)	07
Parent-child	08
Other family	09
Landlord-tenant	10
Employer-employee	11
Business relationship	12
Acquaintances	13
Strangers	14
Other	15





PHASE III: PRIVATE CAUCUS(MEDIATOR/FIRST PARTY)

40. FIRST PARTY IS:

Complainant 1  
Respondent 2

INTERACTION

	<u>MEDIATOR</u>										<u>FIRST PARTY</u>										
41. PROBES/EXPRESSES	<u>FACTS</u>	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7	8	9	10
	<u>FEELINGS</u>																				
42. PROBES/EXPRESSES	<u>WANTS</u>	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7	8	9	10
	<u>NEEDS</u>																				

	<u>MEDIATOR</u>					<u>FIRST PARTY</u>				
43. VERBAL STYLE DURING INTERACTION:										
	Articulate				1					1
	Inarticulate/Unclear				2					2
	Incoherent				3					3
	Uncommunicative				4					4
44. VERBAL TONE DURING INTERACTION:										
	Positive/Interested/Warm				1					1
	Neutral				2					2
	Disinterested/Passive				3					3
	Distraght				4					4
	Angry				5					5

		<u>MEDIATOR</u>					<u>FIRST PARTY</u>								
45. NON-VERBAL ATTITUDE DURING INTERACTION:															
	Closed	Open				1	2	3	4	5	1	2	3	4	5
	Passive	Aggressive				1	2	3	4	5	1	2	3	4	5
	Hostile	Friendly				1	2	3	4	5	1	2	3	4	5
	Nervous	Comfortable				1	2	3	4	5	1	2	3	4	5

46. EYE CONTACT:										
	Maintained/Sought				1					1
	Avoided				2					2
47. INTERRUPTIONS:										
	Frequent				1					1
	Few				2					2
	None				3					3

48. IS CONFIDENTIALITY STRESSED DURING PRIVATE CAUCUS?		
	Yes	1
	No	2

49. IS CONFIDENTIAL MATERIAL PROVIDED?		
	Yes	1
	No	2

PHASE III: PRIVATE CAUCUS (MEDIATOR/ SECOND PARTY)

50. 2nd PARTY IS:

Complainant 1  
Respondent 2

INTERACTION

	<u>MEDIATOR</u>										<u>SECOND PARTY</u>									
51. PROBES/EXPRESSES <u>FACTS</u> :	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7	8	9	10
	<u>FEELINGS</u>																			
52. PROBES/EXPRESSES <u>WANTS</u> :	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7	8	9	10
	<u>NEEDS</u>																			

	<u>MEDIATOR</u>					<u>SECOND PARTY</u>				
53. VERBAL STYLE DURING INTERACTION:										
Articulate	1					1				
Inarticulate/Unclear	2					2				
Incoherent	3					3				
Uncommunicative	4					4				
54. VERBAL TONE DURING INTERACTION:										
Positive/Interested/Warm	1					1				
Neutral	2					2				
Disinterested/Passive	3					3				
Distraught	4					4				
Angry	5					5				

		<u>MEDIATOR</u>					<u>SECOND PARTY</u>				
55. NON-VERBAL ATTITUDE DURING INTERACTION:											
Closed	Open	1	2	3	4	5	1	2	3	4	5
Passive	Aggressive	1	2	3	4	5	1	2	3	4	5
Hostile	Friendly	1	2	3	4	5	1	2	3	4	5
Nervous	Comfortable	1	2	3	4	5	1	2	3	4	5

56. EYE CONTACT:		
Maintained/Sought	1	1
Avoided	2	2

57. INTERRUPTIONS:		
Frequent	1	1
Few	2	2
None	3	3

58. IS CONFIDENTIALITY STRESSED DURING PRIVATE CAUCUS?		
Yes		1
No		2

59. IS CONFIDENTIAL MATERIAL PROVIDED?		
Yes		1
No		2

60. ARE ADDITIONAL PRIVATE CAUCUSES HELD?		
Yes		1
No		2

IF YES, ANSWER Q. 61:

61. ADDITIONAL CAUCUS HELD WITH:	Complainant	1
	Respondent	2
	Both Parties	3

PHASE IV: NEGOTIATIONS

62 .INITIAL RECAPITULATION BY MEDIATOR:

Thorough	1
Sketchy	2
None	3

63 .SOLUTIONS/COMPROMISES OFFERED PRIMARYLY BY:

Complainant	1
Respondent	2
Both Parties Equally	3
Mediator	4
All Parties Equally	5

64 .IS THERE A SUBSEQUENT RECAPITULATION/REVIEW BY MEDIATOR?

Yes	1
No	2

65 .DO PARTIES COME TO AN AGREEMENT?

Yes	1
No	2

IF YES, ANSWER Q 66:

66 .WHOSE SOLUTIONS/CONDITIONS ARE AGREED TO PRIMARYLY?

Complainant's	1
Respondent's	2
Both equally	3
Mediator's	4
All equally	5

IF NO TO Q 65, ANSWER Q's 67,68, and 69:

67 .WHO OBJECTS TO AGREEMENT?

Complainant	1
Respondent	2
Both Disputants	3
Mediator	4

68 .EXPLAIN SUBSTANCE OF OBJECTION BRIEFLY:

---



---

69 .INDICATE DISPOSITION MADE BY MEDIATOR:

Arbitrated	1
Return to Court	2
Reschedule	3
Other	4

IF OTHER, EXPLAIN:

---

70 .NON-VERBAL ATTITUDE OF PARTIES DURING NEGOTIATIONS PHASE:

1	2	3	4	5	<u>MEDIATOR</u>	<u>COMPLAINANT</u>	<u>RESPONDENT</u>
Closed	Open	1	2	3	4	5	1 2 3 4 5
Passive	Aggressive	1	2	3	4	5	1 2 3 4 5
Hostile	Friendly	1	2	3	4	5	1 2 3 4 5
Nervous	Comfortable	1	2	3	4	5	1 2 3 4 5

PHASE V: OUTCOME

71 .IF WRITTEN DOCUMENT IS COMPOSED, IT IS:

Mediation Agreement	1
Arbitration Award	2

72 .NUMBER OF POINTS WRITTEN INTO AGREEMENT:

N of points	___
-------------	-----

73 .DOES MEDIATOR READ AGREEMENT TO PARTIES?

Yes	1
No	2

74 .ARE OBJECTIONS RAISED TO WRITTEN AGREEMENT?

Yes	1
No	2

IF YES, ANSWER Q's 75 and 76:

75 .PARTY WHO OBJECTS IS:

Complainant	1
Respondent	2

76 .ARE ITEMS ADDED, DELETED, OR CHANGED?

Yes	1
No	2

77.ARE COMPLIANCE PROCEDURES EXPLAINED BY MEDIATOR?

Yes	1
No	2

\* \* \* \* \*

OBSERVER'S JUDGEMENT OF AGREEMENT/AWARD:

78 .QUALITY OF WRITTEN DOCUMENT:

	Low			High	
Detail/Specificity	1	2	3	4	5
Legibility/Neatness	1	2	3	4	5
Style/Grammar/Language	1	2	3	4	5

79 .ESTIMATE OF PERCENTAGE OF TIME SPENT TALKING BY MEDIATOR:

\_\_\_ %

ADDITIONAL NOTES/COMMENTS :

**Appendix C**  
**Mediators' Post-session Interview**

MEDIATION RESEARCH PROJECT  
MEDIATOR'S POST-SESSION QUESTIONNAIRE

DATE \_\_\_\_\_

OBSERVER INITIALS \_\_\_\_\_

CASE # \_\_\_\_\_

SEQUENCE # \_\_\_\_\_

MEDIATOR INITIALS \_\_\_\_ / \_\_\_\_

(above in pencil Only)

1. HOW DID YOU FEEL TOWARD THE COMPLAINANT: DID YOU LIKE, DISLIKE, OR HAVE NO FEELINGS TOWARD HIM/HER?

Liked	1
Disliked	2
No feelings	3

2. HOW DID YOU FEEL TOWARD THE RESPONDENT: DID YOU LIKE, DISLIKE, OR HAVE NO FEELINGS TOWARD HIM/HER?

Liked	1
Disliked	2
No feelings	3

3. HOW DO YOU THINK THIS SESSION WENT: VERY WELL, ABOUT AVERAGE, OR NOT TOO WELL?

Very well	1
About average	2
Not too well	3

IF VERY WELL OR NOT TOO WELL: COULD YOU EXPLAIN WHY?

---

4. DO YOU THINK ONE PARTY FELT MORE SATISFIED WITH THE OUTCOME THAN THE OTHER?

Yes	1
No	2

IF YES, WHICH ONE?

Complainant	1
Respondent	2

ASK QUESTIONS 5 and 6 ONLY IF MEDIATED:

5. WHAT DO YOU THINK OF THE AGREEMENT? IS IT A PRETTY GOOD, ABOUT AVERAGE, OR NOT SO GOOD AGREEMENT?

Pretty good	1
About average	2
Not so good	3

6. IN YOUR OPINION, WILL THIS AGREEMENT BE KEPT OR WILL IT BE BROKEN IN THE NEXT MONTH OR SO?

Kept	1
Broken	2
Don't know	3

IF BROKEN: WHICH PARTY DO YOU THINK WILL BREAK IT?

Complainant	1
Respondent	2
Both	3

ASK QUESTION 7 ONLY IF ARBITRATED:

7. WHY DID YOU DECIDE TO ARBITRATE THIS CASE?

---

ASK QUESTION 8 ONLY IF RETURNED TO COURT:

8. WHY DID YOU DECIDE TO RETURN THIS CASE TO COURT?

---

ASK QUESTIONS 9 and 10 ONLY IF SESSION MUST BE STOPPED:

9. AT WHAT POINT DO YOU THINK THE SESSION WAS LOST?

---

10. IS THERE ANYTHING YOU NOW THINK YOU COULD HAVE DONE TO CHANGE THE COURSE OF THE SESSION?

Yes	1
No	2

IF YES: WHAT MIGHT YOU HAVE DONE?

---

ASK FOLLOWING IN ALL CASES:

11. WOULD YOU PLEASE ESTIMATE THE PERCENTAGE OF TIME YOU SPENT TALKING DURING THIS SESSION, THAT IS, ANYWHERE FROM 0 TO 100 PERCENT?

\_\_\_\_\_ %

12. DID YOU HAVE ANY PARTICULAR FEELINGS ABOUT THE ISSUES DISCUSSED IN THIS CASE?

Yes	1
No	2

IF YES: COULD YOU DESCRIBE YOUR FEELINGS?

---

Appendix D  
Disputants' Post-session Interview

MEDIATION RESEARCH PROJECT

DISPUTANTS' POST-SESSION QUESTIONNAIRE

DATE \_\_\_\_\_ OBSERVER INITIALS \_\_\_\_\_  
CASE # \_\_\_\_\_ SEQUENCE # \_\_\_\_\_  
MEDIATOR INITIALS \_\_\_\_\_ INTERVIEWEE:  
(above in pencil only) Complainant 1  
Respondent 2

1. HAVE YOU EVER BEEN HERE BEFORE?

Yes 1  
No 2

2. HOW DID YOU FEEL ABOUT THE MEDIATOR AS A PERSON? DID YOU:

Like him/her? 1  
Dislike him/her? 2  
Have no feelings? 3

3. HOW WELL DO YOU THINK THE MEDIATOR DID HIS/HER JOB?

Very well 1  
Fairly well 2  
Not very well 3

4. I'M GOING TO READ YOU A LIST OF POSSIBLE OUTCOMES OF SESSIONS. PLEASE  
TELL ME WHICH ONE APPLIES IN YOUR CASE:

Agreement reached by parties 1  
Mediator made agreement for us 2  
Mediator arbitrated or judged 3  
Case was returned to court 4  
Case was rescheduled 5  
Don't know what outcome was 6

IF 1,2,or 3, PROCEED TO QUESTIONS # 5-11; IF 4,5, or 6, GO DIRECTLY TO  
QUESTION 7 and PROCEED:

5. HOW MUCH OF WHAT YOU WANTED OUT OF THIS SESSION DID YOU GET? EVERYTHING,  
SOME THINGS, OR NOTHING?

Everything 1  
Some things 2  
Nothing 3

6. IN YOUR PERSONAL OPINION -- PLEASE REMEMBER, THIS IS COMPLETELY CONFIDENTIAL --  
DO YOU THINK THE AGREEMENT/AWARD WILL BE KEPT?

Yes 1  
No 2

IF NO :

WHOM DO YOU THINK WILL BREAK IT? YOU, THE OTHER PERSON, OR BOTH OF YOU?

- I, Me 1
- Other person 2
- Both of us 3

7. HOW SATISFIED ARE YOU WITH THE OUTCOME OF YOUR SESSION: ARE YOU VERY SATISFIED, PRETTY SATISFIED, NOT TOO SATISFIED, OR DISSATISFIED?

- Very satisfied 1
- Pretty satisfied 2
- Not too satisfied 3
- Dissatisfied 4

8. IS THERE ANYTHING THE MEDIATOR DID OR SAID THAT YOU ESPECIALLY LIKED?

- Yes 1
- No 2

IF YES, PLEASE DESCRIBE:

9. IS THERE ANYTHING THE MEDIATOR DID OR SAID THAT YOU ESPECIALLY DISLIKED?

- Yes 1
- No 2

IF YES, PLEASE DESCRIBE:

10. DO YOU THINK THIS PROCESS WAS FAIR OR UNFAIR?

- Fair 1
- Unfair 2

11. BASED ON YOUR EXPERIENCE TODAY, IF YOU HAD ANOTHER DISPUTE TO SETTLE, WOULD YOU WANT TO COME HERE AGAIN INSTEAD OF GOING TO COURT?

- Yes 1
- No 2

NOW, JUST A FEW QUESTIONS ABOUT YOURSELF AND THEN WE ARE FINISHED:

12. WHAT IS YOUR AGE?

Age \_\_\_\_\_

13. WHAT IS THE HIGHEST GRADE YOU HAVE COMPLETED IN SCHOOL?

- Less than 12 1
- 12 2
- 13 to 15 3
- 16 4
- More than 16 5

14. IF YOU WORK, WHAT IS YOUR OCCUPATION?

\*\*\*\*\*  
 15. CLIENT'S SEX: M 1, F 2  
 16. CLIENT'S RACE/ETH: B1 1, Wh 2, Hisp 3, Oth 4

**Appendix E**  
**Mediators' Background Interview**

MEDIATION RESEARCH PROJECT  
MEDIATOR INTERVIEW FORM

Form 6, page 1

INTRODUCTION:

For the final phase of the mediation research project, I'd like to ask you a number of questions about yourself, and give you two questionnaires to answer. Before we start, I want to stress to you again that all this information, and the observations that were made of a number of your mediation sessions, is completely confidential and anonymous; no one, including the computer, will know which information came from which person. Further, no records of this research project will be kept at IMCR. As with your prior participation in the project, this phase of it is also completely voluntary; if there are any questions I ask which you'd prefer not to answer, you may do so. I will be asking questions about your background, which will take about ten minutes, and then I will ask you to complete two questionnaires, one having to do with your use of words, and one having to do with some opinions you have about life in general.

Once all the interviews have been completed, I will debrief you by explaining in detail the purpose of the entire project, and will answer any questions you may have about it. I must ask that you do not discuss the contents of this interview or the questionnaires with any of your fellow mediators until all the interviews are completed.

-----

MEDIATOR: \_\_\_\_\_ 1. CODE # \_\_\_\_\_  
INTERVIEWER \_\_\_\_\_ 2. INTERVIEW DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

3. MEDIATOR'S SEX:                    male                    1  
    female                    2

4. MEDIATOR'S AGE:                    \_\_\_\_\_

5. MEDIATOR'S RACE/ETHNICITY:        black                    1  
    white                    2  
    hispanic                3  
    other                    4

6. MEDIATOR'S EDUCATION (HIGHEST LEVEL ATTAINED):

Less than HS	1	2 yr degree	5	prof degree	9
HS Graduate	2	Bachelor's	6	PhD	10
HS Equivalency	3	somegrad school	7		
some college	4	Master's	8		

- |                                 |                    |   |
|---------------------------------|--------------------|---|
|                                 | retired            | 0 |
| 7. CURRENT OCCUPATIONAL STATUS: | unemployed         | 1 |
|                                 | part-time employed | 2 |
|                                 | full-time employed | 3 |

ANSWER # 8 ONLY IF ANSWER TO # 7 IS 2 OR 3:

- |                        |                        |   |
|------------------------|------------------------|---|
| 8. CURRENT OCCUPATION: | _____                  |   |
|                        | law-related            | 1 |
|                        | health-related         | 2 |
|                        | business-related       | 3 |
|                        | social-welfare-related | 4 |
|                        | politically-related    | 5 |

ANSWER # 9 ONLY IF ANSWER TO # 7 IS 0 or 1:

- |                                     |                        |   |
|-------------------------------------|------------------------|---|
| 9. PRIMARY OCCUPATION WHEN WORKING: | _____                  |   |
|                                     | law-related            | 1 |
|                                     | health-related         | 2 |
|                                     | business-related       | 3 |
|                                     | social welfare-related | 4 |
|                                     | politically-related    | 5 |

10. CURRENT MARITAL STATUS:

- |                    |   |
|--------------------|---|
| single             | 1 |
| married            | 2 |
| divorced/separated | 3 |
| widowed            | 4 |

11. BIRTH ORDER:

- |          |   |
|----------|---|
| oldest   | 1 |
| middle   | 2 |
| youngest | 3 |

12. NUMBER OF SIBLINGS: \_\_\_\_\_

13. MEDIATOR ANY OF THE FOLLOWING:

- |               |   |
|---------------|---|
| step-child    | 1 |
| foster-child  | 2 |
| orphan        | 3 |
| none of above | 4 |

14. DID MEDIATOR GROW UP IN 2-PARENT HOME?

- |     |   |
|-----|---|
| yes | 1 |
| no  | 2 |

15. WERE PARENTS DIVORCED/SEPARATED DURING MEDIATOR'S CHILDHOOD?

- |     |   |
|-----|---|
| yes | 1 |
| no  | 2 |

16. HOW MUCH ARGUING WAS THERE IN MEDIATOR'S HOME?
- none 1
  - a little 2
  - some/average 3
  - a lot 4
17. HOW MUCH PHYSICAL FIGHTING WAS THERE IN MEDIATOR'S HOME?
- none 1
  - a little 2
  - some/average 3
  - a lot 4
18. HOW DOES MEDIATOR DESCRIBE HIS/HER CHILDHOOD/FAMILY LIFE?
- happier than most 1
  - about average 2
  - unhappier than most 3
19. WAS MEDIATOR RAISED IN RURAL, SUBURBAN, OR URBAN AREA?
- rural 1
  - suburban 2
  - urban 3
20. HOW DOES MEDIATOR DESCRIBE FINANCIAL STATUS OF NEIGHBORS/NEIGHBORHOOD ?
- poor 1
  - lower middle class 2
  - middle class 3
  - upper middle class 4
21. WAS MEDIATOR EXPOSED TO WIDE RANGE OF CULTURAL/ETHNIC GROUPS AS A CHILD, OR WERE MOST PEOPLE THE SAME IN THIS RESPECT?
- dissimilar 1
  - similar 2
22. DID MEDIATOR PLAY ANY TEAM SPORTS AS A CHILD FAIRLY REGULARLY?
- yes 1
  - no 2
22. DOES MEDIATOR NOW PLAY ANY TEAM SPORTS FAIRLY REGULARLY?
- yes 1
  - no 2
23. WAS MEDIATOR EVER IN MILITARY SERVICE OF ANY KIND?
- male yes 1
  - male no 2
  - female yes 3
  - female no 4

ANSWER # 24 ONLY IF ANSWER TO # 23 is 1:

24. WAS MEDIATOR EVER IN COMBAT?

yes	1
no	2

25. DOES MEDIATOR CARRY ANY TYPE OF WEAPON FOR SELF-DEFENSE ON A REGULAR BASIS, INCLUDING JOB-RELATED?

yes	1
no	2

26. HAS MEDIATOR EVER STUDIED MARTIAL ARTS OR SELF-DEFENSE?

yes	1
no	2

27. ABOUT HOW MANY CASES PER MONTH DOES MEDIATOR MEDIATE?

1-2	1
3-5	2
6-10	3
11-20	4
21-40	5

28. IN GENERAL, DOES MEDIATOR PREFER TO MEDIATE ALONE OR TO COM-MEDIATE?

alone	1
co-mediate	2

29. HOW LONG HAS MEDIATOR BEEN MEDIATING?

\_\_\_\_\_ yrs

30. IN GENERAL, IS IT EASIER OR MORE COMFORTABLE FOR YOU TO MEDIATE WITH PARTIES OF THE SAME \_\_\_\_\_ AS YOU?

30.	SEX	yes	1
		no	2
31.	RACE	yes	1
		no	2
32.	AGE	yes	1
		no	2

33. ARE THERE ANY TYPES OF PEOPLE OR SITUATIONS FOR WHOM YOU REALLY DISLIKE MEDIATING FOR ANY REASON?

yes	1
no	2

If YES, describe: \_\_\_\_\_

34. HAVE MEDIATOR RATE HIS/HER MEDIATION TRAINING:

excellent	1
good	2
fair	3
poor/inadequate	4

35. HAVE MEDIATOR DESCRIBE, TO WHAT EXTENT IF AT ALL, S/HE ENJOYS MEDIATING:

very much	1
somewhat	2
not much	3

36. GIVEN HIS/HER CURRENT FINANCIAL SITUATION, WOULD THIS PERSON MEDIATE ON A STRICTLY VOLUNTEER BASIS?

yes	1
no	2

37. QWT RAW SCORE     \_\_\_ \_\_\_  
 QWT RANK SCORE     \_\_\_ \_\_\_  
 QWT %-ILE           \_\_\_ \_\_\_

38. MACH RAW SCORE   \_\_\_ \_\_\_  
 MACH RANK SCORE     \_\_\_ \_\_\_  
 MACH %-ILE           \_\_\_ \_\_\_

**Appendix F**  
**Mediators' Consent Form**



MEDIATION RESEARCH PROJECT  
MEDIATOR RELEASE FORM

Dear Mediator,

If you wish to participate in the research project as outlined in the accompanying memorandum, please complete the form below. Your participation is voluntary, and all data collected is anonymous and confidential. Your help is valuable and sincerely appreciated.

Thank-you,

Claire Francy  
Research/Information Specialist

\* \* \* \* \*

I, \_\_\_\_\_, hereby grant the mediation research team permission to observe five of my mediation sessions, and to answer brief questions about these sessions and about my background. I understand that all information for the project is anonymous and confidential.

Signature: \_\_\_\_\_

Telephone: \_\_\_\_\_

**Appendix G**  
**Disputants' Consent Form**



MEDIATION RESEARCH PROJECT  
CLIENT RELEASE FORM

Dear Client,

We are conducting a research project in order to improve upon our mediation services. In order to accomplish this, we are asking for your cooperation in allowing a trained observer to view your mediation session. In addition, we would like to speak with you very briefly after your session in order to get your opinions about it, and to contact you one month from now to see if your agreement is still in effect. We will contact you by mail only if you do not have a telephone.

Your cooperation is voluntary and will in no way affect your case or its outcome. All information collected is anonymous and confidential and will not be seen by anyone except members of the research team, who have taken oaths of confidentiality as have the mediators.

We will be most happy to answer any questions you may have about the project. Thank-you very much; your assistance is valuable and greatly appreciated.

\* \* \* \* \*

Please sign below to give your permission:

I, \_\_\_\_\_, hereby grant the mediation research team permission to observe my mediation session and to contact me one month from now to ask about the agreement's status.

Signature: \_\_\_\_\_

Address (if no phone): \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

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