

MEDIATION: A NEW REMEDY FOR CASES OF DOMESTIC VIOLENCE

Charles A. Bethel*
Linda R. Singer**

INTRODUCTION

Should mediation play a prominent part in the resolution of disputes involving domestic violence? Unlike legal sanctions, mediation allows both parties to a dispute to attempt a cooperative resolution. A mediator, someone unconnected to the parties or their particular problem, works with them together and separately to identify important issues, minimize the retrospective placing of blame, stress potential areas of agreement, and build the desire to reach a settlement acceptable to both parties. In recent years mediation has been used increasingly to resolve interpersonal disputes. Improved response to domestic violence cases demands new techniques as well as improved applications of existing ones, and mediation is often mentioned as an important new remedy.

There are several reasons why mediation has attracted interest as a remedy for victims who have been assaulted or threatened by a lover, spouse, parent or child. Mediation can be arranged and completed in much less time than can many legal remedies. Mediation not only provides a forum for the parties, but allows both of them to participate in formulating guidelines for the future. Although these guidelines may not have the power of a court behind them, they are likely to be adhered to because they were arrived at with the direct involvement of both parties. Finally mediation does not require the time of judges, prosecutors, and defense attorneys. Even though mediation may not be less expensive than court processing on a per case basis,¹ it can make extensive use of volunteer workers and does not draw upon the scarce resources of the

* Deputy Director, Center for Community Justice, Washington, D.C.

** Executive Director, Center for Community Justice, Washington, D.C. Noel Brennan, Director of DCMS and the Citizens' Complaint Center, of which DCMS is a part, contributed greatly to the content of this article.

1. The final evaluation of three neighborhood practice centers offering mediation of a variety of interpersonal disputes concluded that: "Reliable analytical data are not yet available on the costs of processing cases through Neighborhood Justice Centers as compared to court processing costs; however, available data indicates that NJC costs for at least some cases may become competitive with the courts." OFFICE OF PROGRAM EVALUATION, NATIONAL INSTITUTE OF JUSTICE, U.S. DEPT. OF JUSTICE, NEIGHBORHOOD JUSTICE CENTERS FIELD TEST—FINAL EVALUATION REPORT 107 (1980) (hereinafter cited as NIJ).

legal system.

We now have empirical evidence that permits inductions about the strengths and weaknesses of mediation as a solution for violent or threatening behavior between spouses, lovers, or close family members. This article will utilize the record of one program, the District of Columbia Mediation Service² (DCMS), as the basis for a discussion of mediation's effectiveness, its proper place in a set of legal and social service remedies, and why it should be made available to complainants in domestic violence situations.

The best evidence from the DCMS experience and from experiences at other mediation centers that have been evaluated³ indicates that mediation can provide an effective remedy for many victims of domestic violence. "Effective" in this context means that 1) there is a greatly reduced likelihood of any further violence or threatening behavior; 2) the process is perceived as fair by both complainant and respondent; and 3) the process is no more time-consuming or costly than alternative remedies likely to be available for that class of dispute.

To say that mediation can be applied effectively to cases of domestic violence is not to say that any and every use of this technique will be successful. Advocates of mediation do not argue, for example, that cases of serious repeated physical abuse should be mediated. Nor may mediation be possible if the complainant, for whatever reason, is too fearful of the respondent to make his or her own decisions. The following discussion will assume that some cases are suitable for mediation while others are not. It is nonetheless important to note that there are no data to support this assumption. It is a normative judgment, based upon considerations of equity, our current knowledge of the mediation process, and common perceptions of the function of the criminal law. More experience with mediation programs may produce evidence that this judgment is too conservative.

2. From August 1980 through April 1981, DCMS processed 1,269 cases, or an average of 141 per month. Of the total number of cases handled during this period, an agreement was reached prior to or during a hearing 612 times. Although directly comparable figures from other programs are not available, the caseload at DCMS appears comparable to or slightly larger than that of other large mediation programs, such as those in New York, Atlanta, Houston, and Honolulu. For addresses of these programs, see *infra* notes 27-30.

3. See NIJ, *supra* note 1; VERA INSTITUTE OF JUSTICE, MEDIATION AND ARBITRATION AS ALTERNATIVES TO PROSECUTION IN FELONY ARREST CASES—AN EVALUATION OF THE BROOKLYN DISPUTE RESOLUTION CENTER (1980) (first year) (hereinafter cited as VERA).

I. CHARACTERISTICS OF THE MEDIATION PROCESS

Mediation is a commonly used label for any dispute resolution process in which a third party with no formal coercive powers intercedes to promote a voluntary settlement between disputants. Within this broad category a widely divergent group of mediation models has developed, varying according to the type of dispute being addressed, the nature of the client contact with the mediation service, the skills of the mediators, and the management needs of the program itself. Before discussing the particular mediation model employed by the District of Columbia Mediation Service, we should consider the salient characteristics of the mediation process as it is applied to interpersonal disputes involving domestic violence. Most programs share several basic features:

1.) Mediation in this context should be considered a crisis-intervention technique. Regardless of the number or seriousness of prior conflicts, some recent event has precipitated mediation. A complainant may have become angry enough or desperate enough to seek help, or the authorities may have initiated legal action against one of the parties. The mediation process, before it can do other things, must help resolve the immediate crisis and lessen the likelihood of a recurrence.

2.) Unlike legal remedies, mediation is prospectively rather than retrospectively oriented and is not concerned with determining rights and wrongs. A discussion of past events and feelings by both parties is extremely important to the mediation process, but only because it enables an agreement to be reached about the course of future conduct. This approach is viewed unsympathetically by those who believe that legal sanctions are the most effective way to prevent future assaultive behavior. It will be shown,⁴ however, that there is a large class of cases for which legal sanctions are unlikely and/or inappropriate. It is for these cases that mediation offers its greatest promise.

3.) Mediation is not therapy. Mediation's goal is to help effect behavioral change, because it is specific behavior—assaultive behavior or threatening behavior—that one or both parties cannot tolerate. Attitudinal change, that is, a change in one party's basic feelings toward the other, may be a prerequisite for some kinds of behavioral change, but it is not the paramount goal of mediation.

4. See *infra* text accompanying notes 12-13.

Violent behavior may result from a complicated mix of psychological and situational factors. A workable mediation agreement must take into account existing feelings and life situations, but fundamental personality or attitudinal change is not required to prevent many forms of domestic violence.

The limited scope of mediation may be a handicap, but it is also a great strength: the process requires the parties to focus on crucial rather than peripheral issues, and it allows little room for excuses. The parties are treated as responsible adults and in turn are expected to participate actively in the search for a mutually acceptable agreement.

4.) Mediation is an informal, participatory method of conflict resolution. The mediator, a non-mythicized figure, has no higher authority to invoke, and rebuffs requests to make findings of fact or decisions about blameworthiness.⁵ The setting and proceedings are not judicial in tone, but the mediator does insist upon certain ground rules, chief among them that each party listen to the other without interruption. Courteousness may not previously have been the parties' strong point; the mediation process is an exemplary one in that couples are shown at least a glimpse of a more respectful way to interact.

5.) The process is participatory, but the nature of the participation is controlled by the mediator and may vary from case to case. Virtually every session begins with the parties being together. Each person in turn tells their side of the dispute to the mediator. If the parties are unable to communicate with each other, the mediator may find it useful to work with them extensively in joint sessions to promote the acquisition of some communications skills. In most programs, however, the mediator does most of his or her work in individual sessions with each party.

During this phase of mediation the mediator controls the flow of information between the parties and is able to elicit and discuss alternative solutions in ways that might not be possible if the couple were together throughout. This technique also has the virtues of minimizing disparities in power and allowing the mediator

5. In some programs mediators are empowered to arbitrate impasses and obviously enjoy some measure of additional authority as a result. At the Brooklyn Dispute Resolution Center, for example, the parties agree in writing to mediation/arbitration. If mediation is unsuccessful, a mediator may render an award that is enforceable under local statute, just as a labor-management arbitration award would be.

to probe the private feelings beneath the public statements of each party. A common misconception of mediation is that it is a three-way discussion that results in increased mutual understanding and better feelings, followed by a negotiated settlement. Although increased mutual empathy is promoted by the mediator, it appears that empathy can be achieved more surely and lastingly in individual rather than in joint sessions, particularly in emotion-laden domestic cases. Mediation is therefore cooperative in that both parties must consent to an agreement, but not in the sense that the parties do all of the work toward an agreement while together.

6.) Mediation is to some extent a voluntary process, but one party may participate only because it is the least objectionable of several alternatives. The prospect of court action, or further police involvement, or retaliation from the other party, may have substantial coercive effect. To say that there may be strong pressures to cooperate is not to say that there is no voluntariness. We all make choices that are not autonomous but that we are free to reject. It is in this sense that mediation is voluntary; it relies both on coercive external pressures and on an individual's decision to participate.

7.) Mediation relies on a rough parity in bargaining power between the parties to be successful. If one side dominates the other there is much less chance that any agreement will be truly voluntary or that it will accurately reflect the parties' needs. There is some sentiment that cases of domestic violence ought never to be mediated because there can be no equality of bargaining power between the parties. There is no doubt that in many cases this is true. A woman who has been victimized for years cannot participate as an equal in a discussion with an abuser whom she fears.

But in other cases the violence may not have been repetitive, or may be a relatively minor component in a complex set of problems. In any event the occurrence of violent behavior does not by itself mean that the victim is hopelessly disadvantaged, since he or she may still have sufficient personal strength to seek permanent change in a relationship. Absolute equality between people thus is not a prerequisite for mediation. A party who wishes may be accompanied or represented by a friend, relative, or even attorney, and a mediator who believes that the bargaining power held by one side is too disproportionate may decline to proceed with the

mediation.⁶ The holding of private sessions with each side helps to mitigate power differentials and safeguards a weaker party from direct pressure by the stronger. In fact, the entire mediation process is constructed so as to identify and protect the most important interests of each side. Observers of the Brooklyn Dispute Resolution Center commented:

By encouraging disputants to "vent their spleen" and to retell past outrages perpetrated against them in the relationship, and by working towards new solutions to old problems, the mediators seemed to use the process to accustom disputants to articulating their conflicts and identifying their internal sources of emotional strength; this appeared to be of value particularly to those whose self-esteem or ability to cope was at a low ebb, as in cases of domestic violence.⁷

II. MEDIATION AS A REMEDY

Current discussion of the problem of domestic violence and what to do about them focus on legal and therapeutic intervention.⁸ In fact, one common feature of writings on this subject is the use of the word "intervention," with its connotations of coerciveness and third-party decision-making. Law enforcement agencies and the courts have historically viewed domestic assault cases as annoyances, or have even actively avoided them. It is thus not surprising that reformers are concerned primarily about the welfare of victims and are suspicious of remedies that depend upon voluntary actions by assailants. This attitude is rooted also in a particular perception of the mentality of batterers:

It is characteristic of batterers to deny responsibility for their abusive behavior, and to be unwilling to seek help. Also, batterers are often externally motivated and do that which is required of them more willingly than they take steps by themselves to solve a problem. Without a court order or the threat of prosecution, few batterers seek treatment; where counseling is an alternative to prosecution or is ordered by a court, a majority are receptive to therapy.⁹

The foremost goal of reformers is to devise programs to put an

6. Unfortunately, prosecution may not be a real alternative in such cases. Unless there has been a recent incident and evidence concerning it is available, a battered woman may, in effect, be asked to wait until she is victimized again before the legal system will help her.

7. VERA, *supra* note 3, at 46.

8. See generally, Lerman, *infra* note 9.

9. Lerman, *Criminal Prosecution of Wife Beaters*, RESPONSE 11-12 (Jan.-Feb. 1981).

end to assaultive behavior once it has been discovered or reported. The means suggested generally fall into two categories: increasing the availability of treatment programs for batterers, couples and families, and improving the scope and efficiency of legal, principally prosecutorial, efforts. Included in the latter category are victim advocate programs and the use of civil protection orders or peace warrants to separate batterer and victim. Mediation has been seriously considered as an alternative only recently.¹⁰ Some advocates of increased efforts to reduce family violence, however, have deprecated mediation's potential as a technique for reducing assaultive behavior and protecting the interests of victims.¹¹ Mediation is of limited use, it is argued, because: 1) it is a simple process while the etiology of assaultive behavior is complex; 2) mediation depends upon voluntariness from a respondent who is presumed to have no interest in the well-being of the complainant, and; 3) mediators have no authority to compel a batterer to do anything. Thus, the argument goes; mediation is "toothless" as a remedy.¹²

Unfortunately, much of the discussion about remedies for domestic violence assumes a single paradigm: the repeated serious physical assault of one spouse (the victim) by another (the batterer) over an extended period of time, that occurs without causing the permanent dissolution of the relationship. It is understandable that concern should focus on this type of case; the harm being done and the potential for further violence are great. There should be little disagreement that the most direct and forceful intervention by the legal system is required to prevent further injury. The danger in designing remedies only for this worst-case example is that programs may be ill-suited for a very large number of cases in which the physical harm is less severe, or the pattern of assault is not well-established.

In many instances violence will flare between a couple when it

10. The Columbus, Ohio, NIGHT PROSECUTOR PROGRAM, begun in 1971, was one of the first local programs that attempted to mediate some kinds of interpersonal disputes. Encouraging data from this and other early programs helped persuade the Justice Department to fund a test of the "neighborhood justice center" concept in 1977. In the mid-to-late 1970's dozens of mediation projects were begun across the country, varying in their organization, funding, scope, and ties with the courts. Those programs that attempt to deal with disputes that are referred from the criminal courts or that arise through an allegation of criminal conduct cannot avoid cases of family violence.

11. Lerman, *supra* note 9, at 16-17.

12. *Id.* at 16.

has not occurred before, or has occurred only rarely. The current relationship may be in crisis, may in fact be ending, but the parties will continue to have some involvement with each other. Neither party may wish to punish the other, but the complainant may be ready to pursue a legal remedy if there is no other way to resolve the situation. The chances of their developing a long-term abusive pattern of behavior may not be great, but in some cases this is a real possibility if the parties' behavior does not change. In these circumstances swift intervention is necessary, but it does not have to be intervention by a court to be effective.

Actual cases are the best illustration of situations for which mediation offers a better solution than traditional legal remedies. The following case descriptions were made by intake interviewers at DCMS after speaking with complainants. They are reproduced verbatim. In each case *C*, complainant, is a female; *R*, respondent, is a male. In the first case the couple had had a relationship for several years, but were not living together:

C and *R* have known each other four years. On 3-15-81 *R* spent the night with *C* then left to visit a female friend. Later returned and a fight started with *R* beating *C*. *C* sent to Capitol Hill Hospital. Bruised but nothing broken. Given pills for pain. Last time a fight started *R* choked *C*. *C* wants *R* to stay away from her. *C* is uneasy about *R* coming to home yesterday to repay a financial debt. *R* brought an ex-con with him. *C* thinks there might be some retaliation through this ex-con. *C* changed lock. *R* carries a gun. *C* wants record albums back.

Through mediation the parties arrived at a written agreement that included promises by the respondent to return certain record albums, pay for medical bills that the complainant incurred, and refrain from any physical violence in the future.¹³

In some instances it is the breakup of a relationship that triggers violence or the threat of violence:

C and *R* lived together for six months. Separated 4-20-81 (apartment is in *C*'s name). They have two children. *C* told *R* he had to leave her apartment because the relationship was over. *R* became upset and broke living room window. Once

13. The agreement stated: I, Spencer W., agree to return all record albums and one tape of Aretha Franklin, Amazing Grace. I also agree not to hit or choke Ms. M. anymore. While under the doctor's care whatever hospitalization does not cover, Mr. W. will pay for. This includes doctor visits and prescriptions.

inside he took a knife and cut up all *C*'s clothing and shoes, busted speakers on record player, broke door mirrors and destroyed pictures of *C*. *C* says "The relationship is over" and she only wants him to see the kids. There have been prior problems where *R* has beaten on *C* and threatened her. *C* says "When *R* drinks he gets out of hand." *C* wants *R* to return the telephone taken from the apartment.

The written agreement in this case formally acknowledged the end of the relationship and provided detailed rules governing the respondent's rights to visit his children.¹⁴

The final example concerns a married couple who had no plans to separate, but whose relationship was becoming increasingly unstable:

C and *R* married 13 years, three children. On 4-25 *C* came home from work—*R* had bolt locked the door—she couldn't get in. *C* called *R* from police station; *R* hung up on her but had opened the door when she went to the house after calling. When *C* got inside, *R* accused *C* of taking \$100.00 from him, threatened to harm her, and attempted to hit her. On 4-26 *R* again accused *C* of taking money and slammed the door on her . . . *C* is here primarily to keep *R* from hitting her.

The husband signed an agreement promising his wife not to physically harm her or the children and not to lock the door when they were gone from the house. The wife agreed to talk with her husband about all matters provided that he had not been drinking.¹⁵

As these cases illustrate, "domestic violence" cases cannot be treated as if victims and batterers belong to homogeneous groups. If cases of domestic violence differ in the seriousness of the actual or threatened harm, and in the personal resources available to the

14. The agreement stated: I, Barbara M., and I, Darnez S., hereby agree to end the relationship that has existed between us. I, Barbara M., will continue to live at my mother's house and I, Darnez S., will continue to live at my mother's house.

We further agree that our two children—Martin M. . . . and Larry M. . . . will be able to visit their father at his mother's home one or more weekends a month. We agree to talk over the telephone to arrange specific dates. The children will be delivered to Mrs. Laura S's home on Friday evening by Barbara M. or a relative, and will be picked up Sunday afternoon.

I, Darnez S., agree to return a telephone to Ms. M. which she can pick up at my mother's house as soon as tomorrow.

15. The agreement stated: I, William S., agree that I will not physically harm in any way my wife, Rita S., or my three children, Daryl, Roger, and James.

I, Rita S., agree that I will talk and communicate with Mr. S. on any subject provided Mr. S. has not been drinking when he approaches me.

parties, then it is a fallacy to presume that if these cases are not mediated they will or should be prosecuted. For these are precisely the kinds of cases for which prosecution may be too draconian a remedy. These are also just the sort of cases that promise prosecutors a high attrition rate: the specifics of any charge will be difficult to prove without the complainant's cooperation, and it may not be in the complainant's perceived self-interest to cooperate if as a result the respondent is jailed, placed on probation or required to attend counseling sessions.

What every complainant does want is a change in the current pattern of behavior between him or her and another person. If this change can be accomplished quickly, in a manner that respects the complainant but does not brand the respondent as a criminal, then everyone benefits. Does the mediation process accomplish these ends? In order to answer this question we must consider others that are raised by the sample cases described above. First, how is it assured that appropriate cases will be mediated while more serious or intractable cases are handled by prosecution or other means?

Mediation programs can accomplish this differentiation by developing careful guidelines for intake or referral of cases, and by making other remedies available concurrently. At DCMS, for example, no case of domestic violence will be mediated if 1) the victim has suffered serious injury; 2) a gun was used to threaten the victim; 3) the violent behavior is repetitive; or 4) there does not appear to be sufficient parity of bargaining power between parties.¹⁶ And at DCMS a complainant who elects to pursue mediation may also make use of other legal or therapeutic services available on the premises or by referral.¹⁷

Even if the victim's injuries were not serious and there has been no lengthy history of physical abuse, the situation may be a fearful, anxiety-laden one requiring change if worse events are not

16. DCMS does not provide more specific written guidelines for mediation, but relies upon the CCC intake-interviewing process for appropriate case selection. An intake worker, who has been thoroughly trained, discusses the details of a case with the client and suggests mediation if it seems appropriate and if the client is willing. The intake worker has a detailed set of prosecutorial guidelines and, if these apply, the case is referred to the U.S. Attorney's representative at CCC.

17. Other mediation services are not so closely affiliated with the local prosecutor's office and do not offer as many client services under one roof as does DCMS. However, any mediation service can and should develop a method of referring clients to appropriate social agencies, and of working with the prosecutor's office to assure that appropriate cases flow from that office to mediation.

to follow. How can a brief written agreement, which often does not appear to address directly the most crucial points noted in an intake interview, provide lasting help? To answer this question requires a brief description of the DCMS mediation process as it is used to settle interpersonal disputes.

III. THE DCMS PROCESS AND ITS RESULTS

Mediation by the DCMS is one remedy among a number offered to clients at the District of Columbia Citizens' Complaint Center (CCC). In some jurisdictions anyone may initiate a prosecution by obtaining a summons; in the District of Columbia only prosecutors may issue warrants. CCC was established as the place where citizens could make complaints that might cause criminal warrants to be issued or that might result in the initiation of a civil protection order, particularly in intrafamily cases.¹⁸ In 1980, 9,889 men and women came to CCC to file complaints about husbands, wives, neighbors, lovers, parents, and children. An intake worker speaks with each complainant and, depending upon the nature of the case, suggests one or more remedies:

- 1) The case may be referred to a prosecutor (the U.S. Attorney in the District of Columbia) for "papering" or the issuance of a warrant;
- 2) the prosecutor may hold a hearing at which the parties are heard and then are admonished to obey the law;
- 3) the corporation counsel (the city attorney with jurisdiction over civil and minor criminal matters) may petition the court for a civil protection order preventing the respondent from having certain kinds of contact with the complainant;
- 4) the corporation counsel may send a warning letter to the respondent;
- 5) the complainant may receive counseling from a professional at CCC or may be referred to an agency outside CCC for other services (a shelter for battered women, for example);
- 6) the case may be scheduled for mediation. This will happen if, in addition to meeting the guidelines on violence discussed earlier, the case involves parties with an ongoing relationship. There must be rough parity of bargaining power, and both

18. The District of Columbia Code requires that the United States Attorney, the Director of Social Services of the D.C. superior court and the Corporation Counsel cooperate in the disposition of intra-family offenses. D.C. CODE ANN. §§ 16-1001 to -1006 (1981). In response to this legislation, passed in 1970 as Section 131(a) of Pub. L. No. 91-358, the three agencies organized the Citizen's Complaint Center.

parties must consent to participate in mediation.

Not all jurisdictions with mediation programs offer this particular mix of remedies, nor is it common for the remedies to be located under one roof. The complainants may be referred to a mediation service in several other ways; for example, cases may be sent for mediation after prosecution has been initiated. In such a program respondents are under direct and heavy pressure to participate. Most mediation programs do share an allegiance to the process described in the preceding section¹⁹ in which a single session is used to develop a written and/or oral agreement to which both parties assent.

At DCMS, if the complainant is willing to try mediation a staff member contacts the respondent, determines whether he or she agrees to participate, and schedules a hearing date and time. Two mediators are assigned to the case (occasionally scheduling permits only one mediator). Once the hearing is completed and an agreement signed, mediators have no further responsibility for or involvement in the case. If no agreement is reached the parties are left to their own devices, except of course that any remedies being pursued concurrently at CCC continue.

Two months after each mediation hearing a DCMS staff member makes four attempts to contact each party by telephone.²⁰ Contact is made regardless of whether an agreement was reached or not. If the complainant or respondent can be reached by telephone the staff member asks a series of questions in a conversational tone about the mediation hearing and its consequences. Some of the questions inquire about the parties' reaction to the hearing itself: Were they satisfied with the hearing? Was it conducted fairly? Were both sides allowed to say everything of importance? The staff member also asks whether the agreement, if there was one, was satisfactory and whether more problems developed after the hearing. If there were further problems, what was their nature? Both sides are asked whether they have kept their end of the agreement, and whether the other side has or has not done the same. Finally, the staff member asks the parties about their level of satisfaction with the entire experience at the Citizen's Complaint Center. DCMS uses its follow-up process to judge media-

19. See *supra* text accompanying notes 13 through 15.

20. Admittedly this procedure produces only the responses of those who can be reached by telephone, but the small size of the DCMS/staff necessitates using this method.

tion's relative effectiveness with different types of cases, to spot weaknesses in the conduct of hearings that may be affecting the stability of agreements, and to learn of conduct by staff or mediators that may be adversely affecting clients' satisfaction with the service.

A recent summary of follow-up data from the six-month period of August 1980 through January 1981 reveals two noteworthy characteristics of domestic cases involving assaults or threatened assaults. First, parties in these cases do not differ significantly in their satisfaction with mediation or in the success of their agreements from disputants in domestic cases generally or from disputants in all non-domestic cases.²¹ This suggests that domestic/assault cases are not less suitable for mediation than other interpersonal disputes, at least as they are screened at DCMS. Second, in absolute terms, the data show a high proportion of mediated agreements being adhered to at least two months after hearings were held.

An examination of the responses to individual questions reveals other interesting patterns. Both complainants and respondents, for example, reported similar feelings about the mediation process itself.²² When asked about the outcome of the process, similarly high percentages of complainants and respondents reported

21. INSTITUTE FOR SOCIAL ANALYSIS, DISTRICT OF COLUMBIA CITIZENS' COMPLAINT CENTER MEDIATION SERVICE FEEDBACK REPORT 5 (Oct.-Nov. 1980).

22. 1) Satisfaction with hearing:

	<u>Satisfied</u>	<u>Partially Satisfied</u>	<u>Dissatisfied</u>
C	63 (80%)	10 (13%)	6 (8%)
R	41 (80%)	9 (18%)	1 (2%)

2) Was the hearing conducted fairly?

	<u>Yes</u>	<u>No</u>	<u>Partially/Somewhat</u>
C	74 (90%)	1 (1%)	7 (9%)
R	48 (92%)	2 (4%)	2 (4%)

3) Were you allowed to say everything?

	<u>Yes</u>	<u>No</u>	<u>Partially/Somewhat</u>
C	77 (95%)	0	4 (5%)
R	48 (98%)	0	1 (2%)

that they were satisfied or partially satisfied with the mediation agreement.²³

Two months after a mediation hearing had taken place, more than three-quarters of the participants contacted stated there had been no further problems. Some of these people had had no contact with the other party. Of the problems that did arise and which could be identified, four complainants reported further assaults, and four others complained of harassment.²⁴

An important measure of a mediation agreement's success is the degree to which its terms are being upheld by the two sides. Both complainants and respondents were asked whether they had kept the agreement, and whether the other party had kept it. It is not surprising that a high percentage of participants reported that they themselves were upholding an agreement; more interestingly, over seventy percent of complainants and eighty percent of respondents told mediation staff the opposing party was keeping the agreement.²⁵

Finally, DCMS asked parties about their general level of satisfaction with the way they were treated at the Citizen's Complaint

23. 4) Satisfaction with the agreement:

	<u>Satisfied</u>	<u>Partially Satisfied</u>	<u>Dissatisfied</u>
C	57 (80%)	11 (15%)	3 (4%)
R	39 (83%)	3 (6%)	5 (11%)

24. 5) Have there been more problems?

	<u>Yes</u>	<u>No</u>	<u>No Contact/ None</u>
C	19 (24%)	49 (62%)	11 (14%)
R	12 (24%)	31 (61%)	8 (16%)

6) Nature of further problems:

	<u>Assault</u>	<u>Harassment</u>	<u>Non-Payment</u>	<u>Child Custody Visitation</u>	<u>Property</u>	<u>Relationship</u>
C	4 (24%)	4 (24%)	3 (18%)	5 (29%)	0	1 (6%)
R	0	2 (29%)	0	3 (43%)	1 (14%)	1 (14%)

25. 7) Has the other party kept the agreement?

	<u>Yes</u>	<u>Partially</u>	<u>No</u>
C	51 (73%)	4 (6%)	15 (21%)
R	43 (86%)	1 (2%)	6 (12%)

Center (CCC), of which DCMS is a part. More than eighty percent of complainants and respondents said they were satisfied with services at CCC. Ninety-four percent of the former group and eighty-five percent of the latter stated they would contact CCC about a similar problem if it arose in the future.²⁶

CONCLUSION

The results obtained at DCMS are consistent with those obtained from recent evaluations of the Atlanta,²⁷ Kansas City,²⁸ and Venice/MarVista²⁹ neighborhood justice centers and of the Brooklyn Dispute Resolution Center.³⁰ Participants reported a high degree of satisfaction with the mediation process and its outcome, a response that was consistent for all case types.

There is evidence that the more serious cases, particularly domestic cases with a pattern of calls to the police, were more likely than other case types to result in further contact with the criminal justice system.³¹ This fact by itself tells us nothing about mediation's suitability for domestic violence cases, beyond the truism that difficult, protracted, emotional disputes are harder to find solutions to than simpler ones. Proper case screening may make an

26. 8) Have you kept the agreement?

	<u>Yes</u>	<u>Partially</u>	<u>No</u>
C	51 (96%)	0	2 (4%)
R	37 (93%)	1 (3%)	2 (5%)

9) Satisfaction with CCC services:

	<u>Satisfied</u>	<u>Partially Satisfied</u>	<u>Dissatisfied</u>
C	64 (81%)	9 (11%)	6 (8%)
R	40 (87%)	3 (7%)	3 (7%)

10) In the future, will you contact CCC (about a similar problem)?

	<u>Yes</u>	<u>No</u>	<u>Maybe</u>
C	77 (94%)	3 (4%)	2 (2%)
R	45 (85%)	4 (8%)	4 (8%)

27. Neighborhood Justice Center of Atlanta, 1118 Euclid Avenue, N.E., Atlanta, Georgia 30307.

28. Neighborhood Justice Center, American Bank Building, 1 West Arbour Boulevard, Kansas City, Missouri 64111.

29. Neighborhood Justice Center, 1527 Venice Boulevard, Venice, California 90291.

30. Brooklyn Dispute Resolution Center, 50 Court Street, Brooklyn, New York 11201.

31. See NJJ, *supra* note 1, at 93; VERA, *supra* note 3, at 63-64.

important difference in "recidivism" rates; this is one reason why DCMS routes serious cases to prosecution.

Another lesson suggested by the data is that for more serious cases mediation "might be more effective if it were made the first step in a sustained series of interventions."³² It is common for mediation programs to refer clients to other available social and legal services. What remains a fertile field for experimentation is the design of a truly integrated program in which mediation is a precursor of or an accessory to individual or family therapy. Unfortunately, therapeutic intervention generally depends for its effectiveness upon the voluntary participation of individuals. Many of those involved in domestic violence cases simply will not choose therapy or counseling when they are offered. The challenge will be to use mediation in a way that is most supportive of other services.

The positive responses of parties to mediation should warn against making several assumptions: that all cases of domestic violence are equally serious; that if mediation is less successful with these cases than with simpler disputes it is an inappropriate remedy; that a process lacking coercive power is *ipso facto* more detrimental to the victims of violence than alternatives; and, that if cases are not mediated, they will be prosecuted. This last assumption is especially pernicious because it is contrary to the facts in most jurisdictions, where only a very small proportion of complaints of domestic violence result in criminal prosecution. It is contrary as well to the interests of many victims.

There is no quarrel with the desire to prosecute rigorously in instances of serious physical abuse. But there is a great need across the country for an effective response to conflicts between spouses or lovers that involve violence that is not yet serious or protracted. Victims may be uninterested in prosecution not only out of fear, but also out of love, or economic concerns, or consideration for children. That these cases may be more difficult to mediate successfully than others does not mean they should be prosecuted.³³

Victims also have an interest in a remedy that is speedy, hu-

32. VERA, *supra* note 3, at 65.

33. Because of their relatively low interest in punitive outcomes and relatively high interest in relief from harassment, complainants with strong ties to defendants may bring cases which are particularly suitable for diversion from the court. That their cases also tend to involve histories of hostilities with the defendants further suggests that an overburdened court may have particular difficulty resolving them successfully. VERA, *supra* note 3, at 37.

mane, and does not make burdensome demands on their time. Both the Neighborhood Justice Center evaluation³⁴ and the study of the Brooklyn Dispute Resolution Center³⁵ conclude that mediation can operate more quickly, in a manner more satisfying to both disputants, than can court proceedings. This does not necessarily mean that mediation costs less per case than court processing. Fluctuations in caseload size and the large number of other variables involved have made cost/benefit ratios difficult to compute. Evaluators have not yet been able to assign "a monetary value to the rather dramatic positive effects mediation had on the perceptions and attitudes of disputants whose cases were diverted from the court process."³⁶

There is interest in establishing local mediation services to resolve a variety of interpersonal disputes. If cases of domestic violence are to be among the disputes mediated, experiences at DCMS and other pioneer programs can provide guidelines for an effective remedy. These experiences suggest that a mediation program should adhere to several essential principles:

1.) Whatever case intake method is used must provide for careful screening of complaints. Those cases suitable for mediation should be identified and preserved, and others should be referred to appropriate legal or social agencies.

2.) Mediators, whether volunteers or professionals, must be carefully selected and trained, and their performance must be monitored to assure continued provision of high-quality services by the program. One proven way of helping to accomplish the necessary monitoring is to assign two co-mediators to each dispute. Mediators will then receive criticism and suggestions about their performance as a normal part of their work.

3.) Mediation must include, at a minimum, one private individual session between the mediators and each party. This is essential in domestic violence cases to discover and incorporate into the agreement the true feelings and interests of each side.

4.) Mediation must be timely. Although no absolute period exists beyond which mediation will be ineffective, it is clear that the degree of the clients' satisfaction depend upon a relatively short

34. NIJ, *supra* note 1, at 105-06.

35. VERA, *supra* note 3, at 64.

36. VERA, *supra* note 3, at 69.

wait between contact with the program and the conclusion of mediation.

5.) Program staff must conduct systematic follow-up interviews with at least a sample of disputants to learn their feelings about the mediators, the process and, most importantly, the agreement and its durability. This information is needed to identify problems and make necessary program alterations, and also to provide a means of comparing the cost and effectiveness of mediation with those of other remedies.

6.) Mediation should not be an exclusive remedy. In some cases other legal remedies, such as prosecution or protective orders, may be appropriate in addition to mediation, and one or both parties may need some type of counseling or other service. A mediation program will best serve its clients as one of an array of resources that can be tailored to the circumstances of each case.

7.) The mediation program must deal forthrightly with the issue of coercing the respondent. Mediation is in theory a voluntary process, albeit one in which a party participates because the cost of not participating is too high. But if the alternative to mediation is criminal prosecution, this coercive element should not be disguised, and the respondent should not be treated as if he or she is not under substantial external pressure to cooperate. At the same time the program should not mislead any participant by suggesting, even subtly, that sanctions will be applied upon a refusal to mediate if this is in fact not the case.

Mediation is a promising technique because it is "quick, responsive, and humanistic—a powerful and, one suspects, increasingly rare combination in the lives of many citizens."³⁷ Early indications are that many domestic conflicts, even those with some elements of violence, can be successfully resolved if a mediation program is well-designed and managed. The promise mediation offers is to improve the choices available to victims and relieve the judicial system of cases not suitable for prosecution, in a timely and humane manner. Further experimentation should help increase our ability to select suitable cases for mediation and integrate programs with existing social and legal services.

37. NIJ, *supra* note 1, at 91.