

## NEIGHBORHOOD JUSTICE CENTERS AND THE MEDIATION OF HOUSING-RELATED DISPUTES

*DANIEL MCGILLIS\**

Disputes related to housing take many forms and include, among others, controversies between landlords and tenants, tenants and their neighbors, building owners and public or private agencies. A recent study of five hundred low income families in Boston indicates the extent and range of housing disputes.<sup>1</sup> Landlord-tenant disputes were second only to family disputes in prevalence as civil legal problems. Major problems reported included evictions, unreturned security deposits, substandard conditions and discrimination. Common problems with housing conditions included the prevalence of rodents, roaches and trash, leaky roofs and windows, broken locks, and insufficient heat.

Despite the severity of these conditions, the survey found that many housing problems were not viewed as legal problems by the respondents even though legal solutions were potentially available. Only 31% of the landlord-tenant problems were reported as resolved in contrast to 53% of consumer disputes, 53% of governmental disputes, and 41% of family disputes. The Boston survey was sponsored by the Boston Bar Association and noted that, "These results suggest that active efforts are particularly needed to assist low-income families in dealing with landlords and

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1. R. SPANGENBERG, *ACTION PLAN FOR LEGAL SERVICES: REPORT ON THE LEGAL PROBLEMS OF THE POOR IN BOSTON, PART I: CIVIL LEGAL NEEDS (1977)*.

securing safe and sanitary housing."<sup>2</sup> Problems with housing are not limited to low income persons, however, and the Boston Housing Court processes approximately 8,000 cases per year brought by disputants having a wide range of incomes and demographic characteristics.

Traditionally housing disputes have been processed in civil courts of general jurisdiction, small claims courts, and at times in criminal courts. More recently numerous housing courts have been established which have jurisdiction over housing related matters. Some of these specialized courts are limited in jurisdiction to housing code violations (e.g. the Pittsburgh Housing Court) while others have broad jurisdiction over all criminal and civil housing disputes (e.g. the Boston Housing Court).<sup>3</sup> The Minneapolis courts have developed an additional innovation to improve the adjudication of housing disputes: a separate small claims division dealing only with landlord-tenant cases.<sup>4</sup>

In addition to improved adjudicatory mechanisms, alternatives to adjudication are also being explored. Dispute settlement centers providing mediation and/or arbitration for a wide range of minor civil and criminal disputes have recently been developed in many cities. Some jurisdictions (e.g. Denver and Santa Cruz) have established mediation projects which are solely devoted to the settlement of housing disputes. These projects attempt to reduce the well documented problems associated with the courts, such as high costs, long delays, and insufficient resources to deal in detail with complex reciprocal offenses among landlords and tenants. Mediation hearings provide disputants with the opportunity to discuss the full range of controversies without the constraints caused by rules of evidence, attorney intermediaries, and the limited time available to present the case before the judge. A great deal of flexibility is available in a mediation hearing to fashion a mutually acceptable settlement involving compromises by both parties. Chief Justice Warren Burger summed up the promise of such mechanisms recently in stating, "The notion that most people want black-robed judges, well-dressed lawyers and fine-paneled courtrooms as the setting to resolve their disputes is not correct. People with problems, like people with pains, want relief, and they want it as quickly and inexpensively as possible."<sup>5</sup>

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2. *Id.* at 56.

3. ABA SPECIAL COMM. ON HOUSING AND URBAN DEVELOPMENT LAW, URBAN HOUSING COURTS AND LANDLORD-TENANT JUSTICE: NATIONAL MODELS AND EXPERIENCE (1977) [hereinafter cited as URBAN HOUSING COURTS].

4. *Id.* at 5.

5. W. Burger, Address to the National Conference on Minor Disputes Resolution (1977).

Housing disputes often are particularly in need of rapid resolution. Judge Laughlin Waters has noted, "A two or three month court backlog can moot a tenant's suit to have heat restored in his or her apartment and, conversely, a landlord generally cannot afford the pre-trial and during trial waiting period to collect rent from a recalcitrant tenant."<sup>6</sup> A recent survey sponsored by the National Center for State Courts suggests that American citizens are receptive to court reforms of the sort discussed above, and 91% of community leaders, 81% of the general public familiar with the courts, 78% of lawyers and 67% of judges in the sample stated that the courts are in need of reform.<sup>7</sup> This trend is shown by a simulated case involving theft by a neighbor's son in which 71% of respondents stated a preference for case processing by a mediation/arbitration project compared to only 17% stating a preference for a formal trial in court.<sup>8</sup> The simulated case approximates in some ways the types of disputes occurring between tenants in a single building or neighbors in adjacent houses.

### *Organization of this Article*

The aim of this Article is to acquaint the reader with the major types of mediation and arbitration projects which are currently processing minor disputes and to provide a preliminary indication of their role in the processing of housing matters. The Article is divided into three sections. Section I provides an overview of the structure and operations of six of the oldest and largest dispute processing projects. The programs are in Boston, Columbus, Miami, New York, Rochester and San Francisco and span the range of resolution techniques, referral sources, organizational affiliations, and mediation staff characteristics. While detailed data are not available regarding the types of housing disputes processed by these six projects, the American Bar Association Committee on the Resolution of Minor Disputes is currently conducting a study to gather housing dispute data from these projects.

Section II of this Article provides brief case studies of three Neighborhood Justice Center projects implemented in early 1978 with funding from the U.S. Department of Justice. Data regarding housing disputes processed by each project is presented in each case study. The three experimental projects were developed in light of the data cited in Section I

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6. URBAN HOUSING COURTS, *supra* note 3, at 4.

7. Yankelovich, Skelly & White, *The Public Image of Courts: Highlights of a National Survey of the General Public, Judges, Lawyers and Community Leaders* 46 (1978).

8. *Id.* at 53.

regarding the six older dispute settlement projects. The Justice Department has published a monograph incorporating the data on the six projects and recommendations for project development under the title, *Neighborhood Justice Centers: An Analysis of Potential Models*. The combined information regarding the six older projects and the three new Neighborhood Justice Centers provides a relatively comprehensive view of the structure and operations of projects which process a range of civil and criminal disputes.

Section III of this Article provides a brief discussion of general issues arising in the mediation/arbitration of housing disputes including (1) the problem of unequal power relations among landlords and tenants and the implications of this inequality for the mediation process, (2) the question of mediation versus adjudication for the resolution of disputes involving a number of tenants in common, and (3) the problem of identifying and eliminating patterns of abuses by individuals or companies.

#### I. AN OVERVIEW OF SIX REPRESENTATIVE DISPUTE PROCESSING PROJECTS

The National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice (the Pound Conference) was held in 1976 under the joint sponsorship of the American Bar Association, the Judicial Conference of the United States and the Conference of Chief Justices. President Walsh of the ABA subsequently appointed a Task Force to insure that the reforms discussed at the conference would be carefully considered. The Task Force was chaired by Griffin Bell and produced recommendations in its *Report of the Pound Conference Follow-up Task Force*. A central recommendation was for the development of "Neighborhood Justice Centers," defined as facilities which would "make available a variety of methods of processing disputes, including arbitration, mediation, referral to small claims courts as well as referral to courts of general jurisdiction."<sup>9</sup> A number of projects have been developed in recent years which are similar in many respects to the broad definition of Neighborhood Justice Centers. These projects provide a forum for the resolution of minor disputes as an alternative to formal court action. In addition to arbitration, mediation, and referral to the courts, the projects often employ social work staff, make referrals to social service agencies, and conduct fact-finding and related functions. Virtually all of these projects are of very recent origin. The Columbus

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9. ABA, REPORT OF POUND CONFERENCE FOLLOW-UP TASK FORCE I (1976).

Night Prosecutor Program, the forebearer of many of the current projects, was only established in 1971. Similarly, another recent innovation is the pioneering work of the American Arbitration Association and the Institute for Mediation and Conflict Resolution in applying labor-management conflict resolution techniques to citizen dispute resolution.

Project selection was based on a review of the characteristics of a variety of projects across the country and discussions with leaders in the field of dispute resolution regarding the range of projects which might represent the currently available models. Projects receiving intensive study in my research for the Department of Justice were: (1) the Boston Urban Court Project, (2) the Columbus Night Prosecutor Program, (3) the Miami Citizen Dispute Settlement Program, (4) the New York Institute for Mediation and Conflict Resolution Dispute Center, (5) the Rochester American Arbitration Association Community Dispute Services Project, and (6) the San Francisco Community Board Program. The research involved site visits to the projects, administration of a project survey instrument at each site, review of all project written materials, and evaluations and interviews with project staff, sponsors, referral agencies, etc. Project intake procedures were observed, mediation hearings were attended where permissible, and past project directors were interviewed if they had recently been replaced by the current project director.

Neighborhood Justice Center projects can clearly vary on a wide range of dimensions, from where they are located to how they acquire cases, process appeals, etc. Twelve major dimensions on which Neighborhood Justice Centers can vary were investigated in the study. These dimensions comprise the most obvious, and probably the most significant variables for characterizing specific Neighborhood Justice Centers. The dimensions are: (1) the nature of the community served; (2) the type of sponsoring agency; (3) project office location; (4) project case criteria; (5) referral services; (6) intake procedures; (7) resolution techniques; (8) project staff; (9) hearing staff training; (10) case follow-up procedures; (11) project costs; and (12) evaluation.

Table 1 presents a summary of the six sampled dispute processing projects in terms of these twelve dimensions. In addition, information is provided regarding the staff organizations, the models used in developing project structures and additional services provided by the projects. The data in Table 1 provide an aerial view of the structure of typical dispute settlement projects. Major observations based upon these data include:

*Agency Sponsorship.* Projects have been sponsored by both public and private agencies. Public sponsorship has included both the court and prosecutorial agencies. In addition, the current Kansas City project is sponsored by the local city manager's office. Kansas City had previously

**Table 1**  
**Major Characteristics of the Six Sampled Dispute Processing Projects**

FEATURES		CITIES					
Project Name	Boston	Columbus	Miami	New York City	Rochester	San Francisco	
Start-up Date	9/75	11/71	5/75	6/75	7/73	In planning stages	
Community Served Name	Dorchester District, Boston, Massachusetts	Franklin County, Ohio	Dade County, Florida	Manhattan and Bronx, New York	Monroe County, New York	Selected Sections of San Francisco	
Population	Dorchester: 225,000	County: 833,240 Columbus: 540,025	County: 1,267,792 Miami: 334,859	Manhattan: 1,539,233 Bronx: 1,471,701 Total: 3,010,934	County: 711,917 City of Rochester: 296,233	San Francisco: 715,674	
Sponsoring Agency Name	Justice Resource Institute (non-profit)	City Attorney's Office, Columbus, Ohio (Contractor: Capital University Law School)	Administrative Office of the Courts	Institute for Mediation & Conflict Resolution (non-profit)	Rochester Regional Office of the American Arbitration Association (non-profit)	Community Board Program (non-profit)	
Source of Funds	Law Enforcement Assistance Administration	Originally Law Enforcement Assistance Administration. Now city funded.	Law Enforcement Assistance Administration	Law Enforcement Assistance Administration	Law Enforcement Assistance Administration	Foundation Funds	
Location	Private storefront near the court	Prosecutor's office	Government building which also houses court & district attorney	Office building in Harlem, not near court	Downtown office building near the court	Likely to have offices in the neighborhoods	
Case Criteria General Rationale	Generally ongoing relationships among disputants	Generally ongoing relationships among disputants and bad checks	Generally ongoing relationships among disputants	Generally ongoing relationships among disputants	Generally ongoing relationships among disputants	Generally ongoing relationships among disputants	

FEATURES	CITIES					San Francisco
<b>Case Criteria (continued)</b> Types of Cases	Boston	Columbus	Miami	New York City	Rochester	Not Applicable
	36% family disputes; 20% neighbors; 17% friends; 10% landlord/tenant; 17% miscellaneous	89% interpersonal disputes, 61% bad checks	Statistical data are not currently available. Many assaults, harassments, neighborhood problems, domestic problems	Statistical data are not currently available. Cases include both misdemeanors and felons	Approximately 2% are interpersonal criminal matter, 14% city regulations, 5% bad checks & miscellaneous. May begin to process family court cases	
<b>Referral Sources</b>						(likely to be high)
Walk-ins	See Other	(to prosecutor)	20% approximately	6%	1975 14%, 1976 18%	(likely to be high)
Police	2.2%		20% approximately	42%	-	1%
Prosecutor	See Bench	Most cases received through this office	60% approximately		6%	11%
Clerk Bench	33.4%			5.9%	66%	70%
Community Organizations	57.4% (including district attorney)	10-15% approx.			11%	
Other	See Other				-	"Third party" referrals will be encouraged
Screening/Intake Procedures	7%	Staff members of district attorney's office & intake staff of project refer disputants to project. Respondents are requested to appear at hearing or face possible charges	Intake staff are located at the project office & interview clients referred to the project from other criminal justice agencies	Cases are received from intake workers at summons court, criminal court, & police desk of district attorney's office	2%	0%
	Staff member attends morning arraignment sessions; staff also answer calls from bench. Interviews conducted at court or project office				The project intake worker screens and refers cases at the clerk's office. Walk-in cases are screened at the project's office.	Currently being developed

**Table I (continued)  
Major Characteristics of the Six Sampled Dispute Processing Projects**

FEATURES <i>Resolution Techniques</i> Type	CITIES					
	Boston	Columbus	Miami	New York City	Rochester	San Francisco
Mediation	Mediation	Mediation	Mediation	Mediation followed by imposed arbitration if mediation is unsuccessful. Only 5% of cases have required imposed arbitration	Mediation followed by imposed arbitration if necessary. In 1976 40% of cases heard required an imposed arbitration award	Mediation
Enforceability of Resolutions	Court cases continued pending follow-up after mediation	Disputants are informed that case charges will be filed if case is not satisfactorily resolved. Respondents are occasionally placed on presecutorial probation	Disputants are informed that case charges may be filed if case is not satisfactorily resolved	Arbitration agreements are prepared at the end of all hearings & are enforceable in the civil court	Arbitration agreements are prepared at the end of all hearings & are enforceable in the civil court	Peer pressure
Time Per Hearing	2 hours	30 minutes	30 minutes	2 hours	One hour and 45 minutes	Not Applicable
Availability of Repeat Hearings	Rarely more than two	Rarely used	Very rare	Most cases are completed in 1 session. Small number require two	Rarely used	Not Applicable
Use of Written Resolutions	Yes	Rarely used	Yes	Yes. Resolutions are binding	Yes. Resolutions are binding	Yes (unsigned ones are planned)
<i>Hearing Staff Qualifications and Training</i> Type	Diverse group of community members	Law students	Professional mediators	Diverse group of community members	Diverse group of community members	Diverse group of community members
Form of Recruitment	Widespread advertising, group contact	Contacted by staff at Capital University Law School	Through community contacts	Contacts with community groups and agencies	Contacts with organizations	Widespread effort to contact. Community meetings



FEATURES	CITIES						
<i>Hearing Staff Qualifications and Training (continued)</i>	Boston	Columbus	Miami	New York City	Rochester	San Francisco	
Number Used Per Session	2-3	1	1	1-3	1	5	
Rate of Payment	\$7.50 per night	\$3.75 per hour	\$8-10 per hour	\$10 per session	\$25 per case	Not determined yet (may be same as jurors)	
Training	40 hour training cycles originally conducted by IMCR, and now by local staff	12 hours of training conducted by the Educational and Psychological Development Corporation	Discussions and co-mediation with experienced mediators	50 hours of training conducted by IMCR	40 hours of training conducted by AAA	2 day training cycles are planned	
<i>Follow-up Techniques Appeal/Rehearing Availability</i>	Yes, but rare	Rarely used. Disputants can return on new charges.	Yes, but rare	Only if both parties agree. Parties can appeal under state law if they feel award was arrived at fraudulently	Yes, if both parties agree	Probably appeal to new board	
Follow-up Contacts	Disputants are contacted two weeks after hearing and again three months later	Disputants are contacted 30 days after hearing to see if resolution is being maintained	No. Project plans follow-up in summer of 1977	Yes. 30-60 days post hearing to see if resolution is being maintained	Assist in main-taining resolution if contacted. No systematic re-contact	Some follow-up planned	
Case Preparation for District Attorney/Court	No	Yes. Charging material is prepared and filed if necessary	Court is contacted regarding outcome	No	No	No	
<i>Overall Costs and Unit Costs Annual Operating Budget</i>	\$105,268****	\$43,000	\$150,000	\$270,000	\$65,000*	\$167,500	

**Table I (continued)  
Major Characteristics of the Six Sampled Dispute Processing Projects**

FEATURES	CITIES					
	Boston	Columbus	Miami	New York City	Rochester	San Francisco
<i>Overall Costs and Unit Costs (continued)</i>						
Total Annual Referrals	350	6,429** (1976)	4,149 (1976)	3,433***	663 (1976)	Not Applicable
Cost/Referral	\$300	\$6.69 plus in-kind costs	\$36.15	\$78.65	\$98.03	Not Applicable
Total Annual Hearings	283	3,478 (1976)	2,166 (1976)	649***	457 (1976)	Not Applicable
Cost/Hearing	\$372	\$12.36 plus in-kind costs, approximately \$20	\$69.25	\$416 (recently \$270)	\$142	Not Applicable
<i>Goal Achievement</i>						
Total Annual Referrals	350	6,429 interpersonal disputes in 1976; 10,146 bad checks; total = 16,575	4,149 (1976)	3,433 extrapolated from 15-18 months through November, 1976	663 (in 1976)	Not Applicable
Percentage Having Hearing	71%	54% of interpersonal disputes	54%	46% hearing scheduled, 19% held due to clients resolving disputes	69% (in 1976)	Not Applicable
Percentage of Hearings Resulting in Resolutions	89% (i.e., written agreement)	Not Applicable	Project reports 97%	100%; 95% mediated, 5% arbitrated	100% due to arbitration provision, 60% mediated agreement; 40% arbitrated agreement	Not Applicable
Percentage of Failures to Uphold Resolutions	15%	10% (survey of 892 1976 cases)	Not Available	9% according to a follow-up	Unknown	Not Applicable
Percentage of "Resolved" Cases Returning to Court	Unknown	2.2%	Not Available	Less than 1%	5% seek enforced agreement	Not Applicable
<i>Project Organization</i>						
Total Number of Project Staff	4	Approximately 5 full-time equivalents	8	10	6	5½

FEATURES	CITIES						
Project Organization (continued) Administrative	Boston	Columbus	Miami	New York City	Rochester	San Francisco	
Supervisor	Supervisor	Coordinator, Director	Program Director, Administrative Officer	Executive Director, Center Director, Summons Court Supervisor, fiscal officer	Project Director, Coordinator, Tribunal Administrator	Project Director Program Manager	
Intake	2 case coordinators	6 senior clerks, 6 clerks	3 intake counselors	Intake Coordinator, Intake Worker, Police Liaison	Intake Worker (partly by Tribunal Administrator)	2½ organizers	
Social Service	Case coordinators provide referrals	6 social work graduate students	Social worker	Social worker			
Mediation	Approximately 50	Approximately 30	Approximately 20	Approximately 50	Approximately 70	Will train approximately 50	Evaluator
Clerical	Administrative Assistant	None	1 secretary, 1 receptionist	Receptionist, Administrative Assistant	Administrative Assistant, Receptionist		
Project Models	IMCR Dispute Center		Columbus Project Rochester Project	Rochester Project, Columbus Project, Jewish Conciliation Boards, Bronx Youth Project	Philadelphia Arbitration As An Alternative Project	Danzig's model of Community moots	
Additional Services Provided	Disposition program/victim service component	Problem drinker's group, battered wives' group			Community Group Dispute Resolution, training programs	Community Group Dispute Resolution	

•Reprinted from D. McGillis and J. Mullen, Neighborhood Justice Centers: An Analysis of Fundamental Models

NOTES:

- \*Total budget is \$126,723, including additional components (community group dispute resolution and community organizational training).
- \*\*Interpersonal disputes only – bad check cases add an additional 10,196 referrals but involve very little project case processing time.
- \*\*\*Extrapolated from aggregated data on initial 18 months of referrals through November 30, 1976.
- \*\*\*\*Based on portion of larger Urban Court Budget attributed to the mediation component; case figures are estimates for the corresponding years (6/77 - 6/78).

operated a project under police department sponsorship. Many police departments throughout the nation sponsor family crisis intervention units which often engage in the mediation of family based disputes. Private sponsors have included the American Arbitration Association, the Institute for Mediation and Conflict Resolution, local bar associations, and non-profit organizations with special interests in court reform and related community programs.

*Project Location.* Consistent with their organizational affiliations, projects have been located in both official and independent facilities. Prosecutors' offices, court and general office buildings, neighborhood houses, and storefronts have all served as project headquarters.

*Case Criteria.* Projects tend to focus on disputes occurring among individuals who have an ongoing relationship, whether as relatives, landlords and tenants, merchants and consumers, employers and employees, or neighbors. These cases are considered most amenable to mediation/arbitration due to the possibilities for compromise and the interests of the parties in arriving at a joint settlement. Cases at the various projects vary substantially in level of seriousness. New York City's Dispute Center processes felonies occurring among acquaintances as well as misdemeanors (e.g. felonious assaults), and various civil matters. Most of the projects restrict their criminal-type cases to misdemeanors and process civil cases dealing with consumer, domestic, and housing matters.

*Referral Sources.* Projects receive referrals from many sources including the police, prosecutors, the courts, social service agencies, legal aid, and individual citizens. For example, Boston's Urban Court Project receives the majority of its referrals from the local court, while projects in Miami and Columbus receive the bulk of their referrals from the prosecutor's office. The San Francisco Program has made a major effort to solicit referrals directly from the local community.

*Intake Procedures.* Projects vary considerably in the degree to which they actively pursue clients once they have been referred to the project. Letters are typically sent to both the complainant and the respondent once a referral is received. While the voluntary participation of both parties is desirable, in some cases, respondents in criminal disputes are informed that failure to appear may result in the filing of criminal charges on the complaint.

*Resolution Technique.* Mediation involves attempts on the part of a neutral third party to settle the dispute through discussion and mutual agreements. By definition, a mediator does not have the power to resolve a dispute unilaterally, but instead can only offer suggestions and attempt to facilitate sufficient communication among disputants to encourage a

resolution. Arbitrators, on the other hand, have the authority to develop a binding agreement which is enforceable in the civil courts if the disputants fail to reach a settlement. Projects which employ arbitration (*e.g.*, Rochester and New York) typically attempt to mediate the dispute first and resort to imposed arbitration awards only when all attempts at mediation have failed. The majority of the states have "modern arbitration legislation" and can support projects using either mediation or arbitration.

*Project Staff.* Administrative, intake, and social service staff at the various projects tend to have varied backgrounds, most commonly in the social sciences. Hearing staff have included lay citizens trained in mediation or arbitration techniques (and used by projects in Boston, Rochester, and New York), law students or lawyers (typified by projects in Columbus and Orlando, respectively) or professional mediators including clinical psychologists and social workers (employed by the Miami project).

*Hearing Staff Training.* The American Arbitration Association and the Institute for Mediation and Conflict Resolution have developed rigorous training programs for mediators and arbitrators. In addition, local training resources are often available. Projects typically provide their mediator/arbitrators with forty to fifty hours of training including lectures, role-played hearings, videotaped feedback of performance, and co-mediation with experienced hearing officers in actual hearing situations.

*Follow-up Techniques.* Many of the projects recontact disputants after thirty to sixty days to determine if the resolutions remain in force. If a former complainant is dissatisfied with the progress of the resolution, the respondent is typically called and encouraged to adhere to the terms of the agreement. In the arbitration projects, staff members are available to assist disputants who wish to file a civil claim in cases where the arbitration agreement has broken down. Despite this provision, disputants have rarely chosen to enforce civil awards in court.

## II. CASE STUDIES AND HOUSING DISPUTE DATA FOR THE JUSTICE DEPARTMENT CENTERS

This section provides three brief case studies and summaries of housing dispute data for the Neighborhood Justice Centers recently funded by the U.S. Department of Justice. The projects all began operation in March of 1978 and the Justice Department effort was initiated by Attorney General Griffin Bell due to his earlier work on the ABA Task Force. The information in this section regarding the Atlanta, Kansas City

(Missouri), and Los Angeles projects is based upon data gathered by the author in repeated site visits to the projects and meetings with project policymakers and staff at technical assistance conferences. Data was also compiled from project generated reports and the reports of the Institute for Social Analysis, the government-funded project evaluator.<sup>10</sup>

A. *The Atlanta Neighborhood Justice Center.*

The Atlanta project serves the two counties in which Atlanta is located (Fulton and DeKalb). The project is sponsored by a non-profit corporation, the Neighborhood Justice Center of Atlanta, Inc. The corporation was established for the purpose of operating the project, and its Board of Directors includes persons from the local courts, police, agencies, and bar associations. The center provides a relaxed and informal setting for mediation. In some cases in which the disputants' homes were quite distant from the project office, the project has held mediation sessions in the disputants' local neighborhoods.

The Atlanta project case criteria are broad, and a wide variety of types of cases have been processed by the project. Case criteria stress the project's preference for disputants involved in ongoing relationships, willingness to process both civil and criminal matters, and the voluntary nature of the project. Approximately 60% of the project's cases in its first six months of operation can be classified as civil matters with typical cases including consumer/merchant (22%), landlord/tenant (17.5%) and employer/employee (13.3%) matters.<sup>11</sup> The major referral sources for these cases are the small claims section of the state court and the Governor's Office of Consumer Affairs. The remainder of the caseload is comprised of domestic, neighborhood, and acquaintance disputes. These disputes often have both a criminal and a civil aspect but tend to be referred by the criminal courts as assault or harassment cases. Interestingly, the assault and harassment cases differ markedly in their processing with the domestic, neighborhood, and acquaintance disputes accounting for approximately two-thirds of the hearings but only forty percent of the project intake. A number of factors may influence this disparity including the higher proportion of judicial referrals for the domestic and

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10. D. SHEPPARD, J. ROEHL & R. COOK, NEIGHBORHOOD JUSTICE CENTERS FIELD TEST: INTERIM EVALUATION REPORT (1979). All numerical data reported in this Article regarding the Neighborhood Justice Centers in Atlanta, Kansas City, and Los Angeles have been drawn from the Interim Evaluation Report and various separate data printouts provided the author by the evaluators. The assistance of the Institute for Social Analysis evaluators is greatly appreciated.

11. *Id.*

neighborhood types of disputes and the tendency of the landlords, merchants, and employers to avoid the nuisance of a hearing and settle the matter informally with the party prior to the hearing date. Presumably, judicial referral is a strong incentive for parties to attend a hearing, and seventy-eight percent of judicial referrals resulted in hearings.

The Atlanta project has developed an effective referral network and has formal referral agreements with the local municipal and state courts, the Atlanta Police Department, the City and State Offices of Consumer Affairs, the Public Defender's Office, the Legal Aid Society, the County Mental Health Department, and others. The largest source of case referrals (48.6%) is the court clerk's office (civil and criminal sections), followed by the bench (20%), government agencies (8.6%), self-referrals (8.2%) and other groups. One of the reasons for the project's marked success with court referrals is its extensive use of volunteer intake workers in the court. The project has recruited volunteers from the local Junior League, local universities, and other groups. The intake workers receive referrals from the court intake stations (*e.g.*, civil and criminal warrants desks) and from judges at bindover hearings.

The project's mediation hearings are quite similar to those used in most mediation projects. Project mediators are lay persons with a wide variety of backgrounds and trained by the American Arbitration Association and a local group called the Bridge. Mediation sessions typically are initiated with an introduction by the mediator explaining the process. This is followed by a statement by the complainant regarding the nature of the problem and a response by the respondent. Attempts are then made to clearly define the issues and work toward a mutual settlement. If deemed necessary, the mediator will excuse one party from the room and hold an individual caucus with the other party to further determine the party's "bottom-line" position regarding a settlement. If disputants are successful in arriving at a resolution, the settlement is written-up on a project form and signed by the disputants.

Landlord-tenant disputes accounted for 17.5% of the Atlanta project's referrals over the first ten months of the project's existence (March - December, 1978). A total of 250 landlord-tenant cases were referred to the project with the main sources of referral being the court clerk's office (32.4%), government agencies such as the State Office of Consumer Affairs (30.4%), self-referrals (18.9%), and the remaining 20% of referrals distributed over community agencies, legal aid organizations, judges, the police, and other groups.<sup>12</sup> Ninety-four of the 250 cases referred (37.6%)

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12. Data on referral source proportions apply to the initial six months of operation. Data on the first ten months of case processing will be available shortly.

were not processed further because the respondent in the case could not be located or refused to participate in the project. An additional 53 cases (21.2%) were unresolved because one or both parties to the dispute failed to attend the mediation hearing or the complainant withdrew the complaint without a resolution. Sixty-nine cases resulted in resolutions of the dispute prior to the conduct of a hearing. The project staff often played the role of conciliator in these disputes and contacted both parties by phone to facilitate a resolution. The Institute for Social Analysis evaluators are investigating a sample of cases reported to have been resolved prior to hearing to determine the extent and durability of the resolutions. Thirty-four cases proceeded to mediation hearings, and thirty of these resulted in written settlements to the problem. The evaluators are also investigating the longevity of these settlements.

Landlord-tenant disputes processed by the Atlanta project tend to be resolved prior to a hearing more often than any other category of dispute (*e.g.*, domestic, consumer-merchant, employer-employee, etc.). As in the case of other types of civil disputes processed by the project, landlord-tenant disputes result in a lower proportion of hearings being conducted than in the case of criminal matters (assault, harassment, and similar offenses). The relatively low proportion of hearings in civil matters seems to be caused by the combined effect of more resolutions prior to hearing and less cooperative respondents. In the case of landlord-tenant matters, 37.6% of respondents cannot be located or refuse to cooperate with the project compared to only 7% in domestic assaults and 17.8% in neighborhood assaults. The latter criminal matters tend to be referred to the project by the court, and respondents may be more cooperative in these cases out of fear of criminal charges if they do not cooperate.

#### B. *The Kansas City Neighborhood Justice Center.*

The Kansas City project serves all of Kansas City. The project is sponsored by the Community Services Department of the Kansas City, Missouri city government. The Community Services Department is responsible for the project's policies and operation, and in addition to the Neighborhood Justice Center, the Department operates a drug abuse program, a drinking driver program, probation and parole, and other services. The project has established an active Advisory Board. The Board has twenty-three members including community representatives, and city government and criminal justice agency personnel. The Advisory Board cannot establish project policies because of the city government's retention of this power, but the Board does advise the project director on a variety of subjects including referral sources, public rela-



tions, and project institutionalization.

The Kansas City project case criteria are quite broad and are similar to those cited earlier for the Atlanta project. In contrast to the Atlanta project, however, the majority of the Kansas City cases can be classified as primarily criminal in nature. Seventy-two percent of the cases consist of domestic, neighborhood, and acquaintance disputes involving such issues as harassment, assault, and related matters; only 40% of the Atlanta caseload involves such matters. The cases can have civil components as well as criminal components but they are typically referred by criminal justice agencies such as the police, prosecutor, and criminal court. Sixty percent of Atlanta's caseload and 58% of the Los Angeles cases are primarily civil disputes such as landlord-tenant, consumer-merchant, and employer-employee matters. The civil matters in the Atlanta and Los Angeles projects tend to be referred by the local small claims courts while in Kansas City similar cases are received primarily through referrals from community agencies. The predominance of primarily criminal matters in the Kansas City caseload makes the project similar to the older dispute centers in Miami, Boston, Columbus and elsewhere that were described in Section I.

The Kansas City project has referral arrangements with a number of agencies including the Kansas City Police Department, the City Prosecutor's Office, the Municipal Court, community agencies and others. The project's largest source of referrals is the prosecutor's office (31.3%). A project staff member screens cases at the City Prosecutor's office in conjunction with an Assistant City Prosecutor. The police are the second largest referral source for the project (23%). The project has worked very hard at developing police referral mechanisms including training 150 officers at fourteen three-hour small group sessions in early 1978, riding with officers in squad cars to answer questions regarding the project, and so forth. Self-referrals and judicial referrals both constitute approximately 13% of the Kansas City caseload with community agencies, government agencies, and legal aid organizations contributing approximately 7, 6 and 5%, respectively.

The project employs arbitration as well as mediation and is similar in its use of arbitration to earlier projects in New York and Rochester (cited above). The project requires disputants to sign voluntary submission forms which indicate that the parties are willing to submit the dispute to arbitration. Hearings are held in similar fashion to those described earlier for the Atlanta project. The hearing officers stress that they would rather see the dispute settled by a mutual agreement among the parties but have the authority to impose an arbitrated resolution if mediation fails. The arbitration award is presumably enforceable in

court. In the project's first six months of operation it has imposed arbitrated settlements in only approximately 10% of the cases receiving hearings. Mediated agreements are written up as consent agreements and notarized. The project has not as yet had a case challenged in the courts, although some legal scholars question the enforceability of the awards in Missouri due to issues of informed consent of disputants and procedural limitations on arbitration of interpersonal disputes. Problems in drafting behavioral settlements that are clearly enforceable can be severe. In some cases precise language may be impossible due to the complexity of human interrelationships and the difficulties of quantifying certain behaviors (*e.g.*, a settlement asking a husband to be more considerate of his wife is unlikely to be worded in terms of the number of compliments he is required to offer her per week). Cases involving such behavior as trespass, child visitation and so forth, however, can be relatively precisely described in agreements.

Landlord-tenant disputes make up 11.5% of the Kansas City project's referrals over the first ten months of the project's existence (March-December, 1978). A total of 68 landlord-tenant cases were referred to the project with the main sources of referral being community agencies (31.1%), self-referrals (24.4%), prosecutor's office referrals (13.3%), police referrals (11.1%), and the remaining referrals spanning judges, government agencies, legal aid organizations and others. Twenty-five cases were not processed further because the respondent in the case could not be located or refused to participate in the project. An additional four cases were not resolved because one or both parties to the dispute failed to attend the mediation hearing or the complainant withdrew the complaint without a resolution. Twenty-seven cases resulted in resolutions of the dispute prior to the hearing. The project staff often played the role of conciliator in these disputes through telephone contacts with the parties. As was noted earlier in the Atlanta case study, the durability of these resolutions is being explored by the government-funded evaluators, the Institute for Social Analysis. Twelve cases proceeded to mediation hearings and ten of these resulted in settlements. The Kansas City project allows a small proportion of the program's caseload (approximately 5%) to have the hearing conducted without the option of imposed arbitration. In these cases, if mediation fails the problem is left unresolved without an imposed settlement by the hearing officer. This procedure is followed if parties will consent to mediation hearings but refuse to participate in imposed arbitration sessions.

As in the case of the Atlanta project, landlord-tenant cases tend to be resolved prior to a hearing more often than other types of disputes:

39.7% were resolved at this point — second only to 44.2% for consumer/merchant matters, and far larger than such matters as domestic assault (11%) and neighborhood assault (8.5%). As in the case of the Atlanta project, landlords and tenants appear to be able to achieve resolutions when the prospect of a hearing is imminent. The earlier cited data regarding landlord-tenant problems among the poor in Boston suggest that these disputes do not readily reach resolutions without some form of outside intervention or prospect of intervention. The pattern of findings discussed in the Atlanta case study that civil disputes result in a lower proportion of hearings than criminal disputes is also true in Kansas City and apparently for the same reasons cited earlier.

The Kansas City project has begun to develop referral ties with the local housing authority and is encouraging the referral of housing related matters. The project has also been active in processing contractor-home-buyer disputes. The first case of this type was referred to the project by a person having a rehabilitation loan from the Department of Housing and Urban Development. She requested a hearing with the contractor to discuss problems with the quality of his services. The disputant had heard of the program from a neighbor. The project received approval from HUD to process the case and was successful in resolving the matter. Both the complainant and the contractor referred others to the program due to their satisfaction with the settlement, and the project is processing an increasing number of such cases.

In some housing disputes, the project holds two hearings. The first hearing determines the nature of the problem. A staff member then goes to the home to inspect the area and observe the problem. A second hearing is held in light of the staff member's observations. The housing authority referrals to the project have included a variety of matters such as neighborhood harassment, disputes between security guards and tenants, etc. Other housing disputes involve the classic issues cited earlier of eviction, insufficient notice of leaving the premises, security deposit disputes, housing conditions, and similar matters. The ABA Committee on the Resolution of Minor Disputes' data should provide detailed summaries of the incidence of these various classifications of disputes in each of the projects once it is completed.

### *C. The Los Angeles Neighborhood Justice Center.*

The Los Angeles project serves only a small section of the Los Angeles area. The project's primary target area is the Venice/Mar Vista section of the city, an area with a population of approximately 100,000. The population of the area is quite heterogeneous in demographic character-

istics. Originally all three of the Neighborhood Justice Projects were designed to serve limited sections of their cities. The Atlanta and Kansas City projects chose to expand their service areas, but the Los Angeles project has continued to serve a smaller area to test the viability of a *neighborhood* justice center. In addition to the primary target area, the project has also selected an adjacent "extended target area" from which cases are accepted. No formal outreach activities are conducted in these areas (including Santa Monica, Marina Del Rey, Culver City, Palms, Del Rey, and Ocean Park). The combined populations of the original and extended target areas exceed 300,000 people, and during the project's first six months of operation 57.6% of all complainants and 43.9% of all respondents came from the original target area. The Venice/Mar Vista project is sponsored by the Los Angeles County Bar Association. This sponsorship is likely to have benefited the project in a number of ways including increased credibility with some justice system agencies, attorneys, and some segments of the general population. The project is located in a storefront on a major street in the target area and appears to be well suited for the project's purposes.

The project's case criteria are similar to those in Atlanta and Kansas City. The project also has some interest in mediating disputes involving juveniles and cases involving intergroup disputes. For example, gang members have recently been involved in a series of homicides in the Venice area, and the project has held community meetings at the Center to discuss the problem and potential solutions. The project feels that it is viewed as a neutral meeting ground for widely differing groups in the community. As was noted earlier, civil cases dominate the Venice/Mar Vista caseload with the major types being consumer-merchant cases (28.1%), landlord-tenant matters (22%), and employer-employee matters (6.4%).

The Venice/Mar Vista project has stressed the importance of self-referrals in keeping with its philosophy as a community-oriented project, and self-referrals make up 46.9% of the project's caseload. Outreach activities by the project have included extensive media coverage, distribution of brochures at homes and shopping centers, distribution of bumper stickers advertising the project, presentations at community meetings, conduct of a block party, mail contacts with the business community, and an open house for community agencies. The project has also recently begun to develop referrals from the West Los Angeles Small Claims Court. Cases are received from the court either at intake or at the time of small claims hearings, and 15.1% of the project caseload comes from court intake and 9.9% from the bench. Other sources of case referral include community agencies (9.4%), the police (9.9%), legal aid organiza-

tions (3.4%), government agencies (2.9%) and other groups.

The project's mediation hearings are similar to those used in other mediation projects, and the case study of the Atlanta project summarizes these procedures. The project written agreement form is somewhat unique, however, in that it states that the agreement can be enforced in court. A test case may be required to ascertain the true contractual nature of the agreements. As was noted earlier, behavioral agreements, as opposed to monetary ones, may be very difficult to enforce legally.

Landlord-tenant disputes made up 22% of the Venice/Mar Vista caseload over the first ten months of the project's existence (March-December, 1978). A total of 86 landlord-tenant cases were referred to the project with the main sources of referral being self-referral (69%), community agencies (11.9%), the police (9.5%), and the remaining 10% distributed over the court, legal aid organizations, government agencies, and other groups. Forty-three cases were not processed further because the respondent in the case could not be located or refused to participate in the project. An additional 14 cases were unresolved because one or both parties to the dispute failed to attend the mediation hearing or the complainant withdrew the complaint without a resolution. Fifteen cases resulted in resolutions of the dispute prior to the holding of a hearing, and as in the case of the other projects, the staff often played the role of conciliator in assisting disputants to resolve these cases. Fourteen cases proceeded to mediation hearings and 10 of these resulted in written settlements to the problem. As was noted earlier, the evaluators are exploring the durability of these resolutions.

The Venice/Mar Vista project has a somewhat higher rate of landlord-tenant cases being terminated due to the failure to locate the respondent or respondent's refusal to participate (50% compared to 37.6% in Atlanta and 36.8% in Kansas City). The low number of cases processed in the first six months of project operations, however, is likely to make these figures unreliable. The interim evaluation report of the Institute for Social Analysis provides an extended discussion of the possible reasons for the discrepancies in the overall caseload sizes of the three projects in their first six months of operation (Atlanta, 1427 cases; Kansas City, 591 cases; and Venice/Mar Vista, 391 cases). The projects have very different types of environments, and the Venice/Mar Vista project serves a much smaller area than the other projects and attempts to receive referrals from walk-ins rather than formal agencies. The discrepancies in caseload size are likely to be reduced as the projects further institutionalize referral arrangements, and future evaluation reports will provide data on changes in caseloads.

The Venice/Mar Vista project has developed summaries of a number

of its cases to provide concrete examples of case processing. One of these case studies illustrated the use of mediation in a landlord-tenant matter.<sup>13</sup>

The hearing occurred in the Spring of 1978 and lasted approximately one hour and fifteen minutes. The complainant (Jane) rents a small house from the respondent (Dave) which is located in the back of Dave's property. Dave lives in the front house. Jane rented the house because of the fence around it to prevent her dog from going into the street. Dave has not repaired the various things he promised Jane he would repair when she moved in. He has torn down the fence and cluttered the yard with building materials which Linda thinks are hazardous to herself and her small child. Her dog ran into the street, was hit by a car and had to be taken to a veterinarian. She has asked Dave to remove the building materials and replace the fence. Dave refuses.

Dave brought the co-owner of the property to the mediation session. Jane agreed to allow the co-owner to sit in on the mediation if he would be a silent observer. The co-owner agreed to this. Dave made several concessions regarding cleaning up the yard to make it a safe place for Jane and her child. Dave also gave Jane an oral 30-day eviction notice in the mediation session. This was upsetting to Jane although she seemed to be expecting this to happen. Dave agreed to create a safe place in the front yard for Jane's dog. He also agreed to remove the debris from the garage area within fourteen days and to create a walk way from Linda's house to the alley by May 3. Both parties agreed on the rent and utilities to be paid by Jane for the time she remained on the premises. Project follow-up determined that Dave had removed the debris, created a walk way from Jane's house to the alley and created a safe place for her dog. Jane did not receive a written notice to leave the premises. But, since noisy construction work is going on in the front house, she has decided to move.

### III. GENERAL ISSUES RELATING TO THE MEDIATION OF HOUSING DISPUTES

As was noted in Section I, housing disputes may include landlord-tenant disputes, tenant-tenant disputes, or disputes between building owners and public and private agencies. The data presented in Section II indicate

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13. Disputant names have been changed. The case study is quoted from the project developed summary.

the active role of the three Neighborhood Justice Centers in processing landlord-tenant disputes; proportions of the project caseloads devoted to landlord-tenant disputes range from 22% for the Venice/Mar Vista (Los Angeles) project, to 17.5% for Atlanta and 11.5% for Kansas City. Disputes among neighbors are also common in the project caseloads. Some of these disputes are clearly housing related in the narrow sense and may involve violations of local codes relating to noise, sanitation, zoning, and related matters. Other disputes among neighbors involve interpersonal animosity which results in assaults, harassment, and other forms of aggression. These disputes are housing related to the extent that they occur among individuals whose housing is in close proximity and might not have occurred if the individuals were not neighbors or tenants of the same building. These disputes, however, may be caused by a variety of factors that are otherwise unrelated to housing. The three projects differ considerably in the incidence of disputes among neighbors. Assault and harassment disputes account for 21.8% of the Kansas City caseload, 6.3% of the Atlanta caseload, and 1.8% of the Venice/Mar Vista caseload, while other types of disputes among neighbors excluding assault and harassment account for 13.7% of the Kansas City caseload, 11.3% of the Venice/Mar Vista caseload and 4.2% of the Atlanta caseload. Data are not available on the proportion of the latter type of cases involving strictly housing matters such as code violations. The two types of disputes among neighbors combined with the landlord-tenant disputes account for 47% of the Kansas City caseload, 35% of the Venice/Mar Vista caseload, and 28% of the Atlanta caseload. The projects also process disputes among family members which in some cases could be considered housing related, particularly if they occurred between relatives living near one another. The projects have typically avoided processing disputes between individuals or companies and public and private agencies. The projects focus upon disputes occurring among individuals in most cases, and as a rule, they do not process disputes between building owners and public and private agencies.

Researchers have often noted potential problems with the conduct of mediation among parties having unequal power relations.<sup>14</sup> Mediation typically presumes the possibility of compromise between the parties, and if one of the parties is considerably more powerful than the other sufficient incentives may not be present for that party to compromise. In

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14. See D. MCGILLIS & J. MULLEN, NEIGHBORHOOD JUSTICE CENTERS: AN ANALYSIS OF POTENTIAL MODELS 19-21 (1977); F. SANDER, VARIETIES OF DISPUTE PROCESSING, 70 F.R.D. 111 (1976).

housing disputes, such disparities in power can presumably occur if a landlord has no dependence of any sort on the tenant and grows to be unconcerned regarding the attitudes of a single tenant. Research is needed on the extent to which mediation can successfully occur among parties with differing power. Incentives can presumably be built into the process; for example, in Fairfax County, Virginia merchants must agree to have consumer disputes handled by mediation as a precondition for membership in the local Chamber of Commerce. A similar mechanism might be developed among landlords in some jurisdictions, and presumably would increase the incentive to mediate cases in good faith. Another remedy often suggested is the use of ombudsmen in cases of power disparity among the disputants. Newspaper action lines and similar services are often used by tenants complaining about abuses from large corporations operating housing units. The ability of the ombudsman to publicize abuses serves to equalize the power differential and serves as an incentive for the landlord to remedy the problems.

An additional issue regarding housing disputes is the question of whether matters affecting a large number of tenants should be mediated on a piecemeal, individual basis by separate tenants. Such matters as the condition of common areas in a building, rent increases, and so forth may be more appropriately dealt with by group action through a tenant's association. It is reported that the San Francisco Community Board Project mediators have decided to exclude such common housing problems from mediation and instead to focus upon disputes involving issues relevant to individual tenants (*e.g.*, specific repairs, conditions in the individual apartment, etc.). Mediation may be ineffective for large scale abuses, and joint effort combined with adjudication may be needed. It has recently been noted that Neighborhood Justice Centers should be sensitive to the possibility of weakening the ability of low and moderate income groups to mobilize adjudication against "the increasingly institutionalized and concentrated power of organizations with vast resources, *e.g.*, landlords, creditors and government bureaucracies."<sup>15</sup>

Similarly, efforts will need to be made to identify and eliminate patterns of abuse such as corporations that violate housing codes in a large number of buildings. Neighborhood Justice Projects should maintain files that permit the identification of repeat violators, and if it appears appropriate, victims of an individual or organization that has been the subject of repeated complaints should be advised that mediation of the

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15. Hofrichter, *Justice Centers Raise Basic Questions*, 2 *NEW DIRECTIONS IN LEGAL SERVICES* 168 (1977).



complaint might not suffice given the past record and that adjudication may be called for. Staff members of the current Neighborhood Justice Centers have noted that they readily spot repeat offenders. When project caseloads become very large a systematic means of identification will probably be needed. The mediation project cannot become involved in any adjudicatory efforts because of the possibility of the project losing its image of neutrality. Clients can be advised that adjudication may be necessary, however, without violating the project's neutral position.

Neighborhood Justice Centers appear to meet a real need in American society. Further investigation is needed of the range of court cases which may be appropriate for mediation as well as of the number of disputes which presently do not reach the courts but could benefit from mediation. Projects will eventually need to be designed to meet the level of need that exists in the community, and it seems possible that Neighborhood Justice Centers could eventually process a substantial proportion of our society's minor disputes. The current role of Neighborhood Justice Centers in processing housing related disputes has been reviewed in this Article, and continuing research efforts by the Institute for Social Analysis and the American Bar Association's Committee on Resolution of Minor Disputes promise to shed more light on the potential role of mediation for the settlement of housing disputes.

