

C.

Leanne LEVETT: General Master and private mediator, Sanford.

D. Seminole County Bar Association Citizen Dispute Settlement, Alte Monte Springs

Joyce LAWSON: Program Director

Discussion on program offered.

E. University of Florida Law School, Gainesville

Dr Don PETERS : Lecturer on negotiation

Dr Martha PETERS : Counsellor

Research into the MBTI in the teaching of negotiation at Law School and also in counselling of students.

F. Center for Applications of Psychological Type (CAPT)

Richard HANDRAHAN: Executive Director

Mary MACCAULLEY:

Gerald MACDAID:

Gayle HANDRAHAN: Consultant

Research into the MBTI in relation to mediation, counselling and in the administration of justice (court personnel, police etc.); networking; resourcing and information exchange.

VI WASHINGTON D. C.

A. National Institute of Dispute Resolution

Madeleine CROHN : President

Discussion on training and research in dispute resolution, networking and information exchange.

B. American Bar Association

Larry RAY : Executive Director of Standing Committee on Dispute Resolution

Prue KESTNER : Assistant Director - Standing Committee on DR

Fred WOODS : Staff Attorney of ABA and former Director : Oklahoma Dept. of Corrections Post-conviction Mediation program.

C. Washington D C Multi-Door Courthouse

Melinda Ostermeyer : Director

Discussion on operation of MultiDoor Courthouse (cf. Appendix N) and training programs for intake staff and training of court staff in ADR techniques.

D. Center for Dispute Resolution

Linda SINGER : Executive Director

Lawyer/Mediator and trainer of Mediators for DC Mediation Services

Discussion on models of mediation and cross-cultural issues.

E. Svikhart & Associates

Jeanne SVIKHART: Consultant

Looking at use of personality typing in placement of law students and termination of services of lawyers

E.

Susan BELL : Lawyer, mediator and MBTI practitioner

Discussion on court-based mediation services and the use of the MBTI in workshops for lawyers.

VII PENNSYLVANIA

A. "Lawgistics" : Philadelphia

Dr Lawrence RICHARDS

Research on job satisfaction of lawyers encompassing personality the law (for MBTI)

B. Commission on Human Relations, City of Philadelphia

Lazar KLEIT : Supervisor

Anthony HOLLOWAY: Supervisor

VIII NEW JERSEY

A. New Jersey Complementary DR Program of the Courts

Donald PHELAN
Marilyn SLIVKA
Tom FARRELL

Focus on complementary dispute resolution and how to resolve cases that come into court.

B. Community Dispute Resolution Project, Essex County

Marge LEVY : Director

Discussion on operation of municipal courts' mediation services.

C. Department of Environmental Protection

Jeanne MROCZKO : Director, Office of Public participation

Discussion on function of the department and on training and differences in approach where community based, often multiparty disputes, are concerned.

D. Department of the Public Advocate

Fran SNYDER : Assistant Director, New Jersey Centre for Public DR

Discussion of mediation process and approach to multiparty disputes.

E. Seton Hall Law School

James BOSKEY : Professor of Law

Discussion of Dispute Resolution course offered and of three-segment training course for mediators

F. Rutgers Law School

Prof Paul TRACTENBERG
Linda STAMMATO
Sandy JAFFE

Teaching of Conflict Resolution at university level and the differences in approach at various universities.

IX NEW YORK

A. Institute of Mediation and Conflict Resolution

Laura BLACKBURNE : Executive Director
Edwin MARTINEZ : Director of Training

Discussion on caseload and training aspects relating to racial issues.

B. John Jay College of Criminal Justice : City University of NY

Dr Maria VOLPE : Professor of Law; Director - DR Program
Robert LOUDEN : Associate Director - Training : Criminal Justice Center

Discussion on methodology of ADR training for students; also hostage negotiation training.

C. Persons in Need of Supervision (PINS)

Pat GREY : Director

Discussion on operation of program

X MASSACHUSETTS

A. Attorney Generals Dept. - Boston
Community Mediation Project

Kathy GRANT :

Discussion of programs administered through the department, particularly relating to training of community and school mediators.

B. National Association for Mediation in Education : Amherst

Annette TOWNLEY : Executive Director

Discussion on training students in resolution of school disputes.

C. Franklin County School Mediation Service

Cate WOOLNER : Project co-ordinator

Observation of training students in resolution of school disputes.

D. American Arbitration Association

Richard NAIMARK

Discussion of arbitration and mediation programs offered and of accreditation and qualification of neutrals; selection and training of appropriate personnel and case-load statistics.

E. Massachusetts District Court Mediation Program

Albie DAVIS: Director

In-depth discussion of training issues.

F. Academy of Family Mediators

Seventh Annual Conference held in Danvers, MA. July 22 - 28 1990.

IN ADDITION TO THE ABOVE, I spoke with the following people, who provided information and assistance on programs of interest :

Dr Christopher Moore
CDR Associates
Boulder, Colorado

Ms Margaret Huber
Chair of the Board
Community Mediation Center
Vancouver, Canada

Dr Susan Zaidel
10 Koyfman Street
Haifa, Israel

Ms Jan Walker
Family and Community Dispute Research Centre
The University
Newcastle upon Tyne, UK

Mr Robert Walker
Family and Community Dispute Research Centre
The University
Newcastle Upon Tyne, UK

Mr Gary Shapiro
Project Co-ordinator
American-Soviet Conflict Resolution Project
39 Pine Crest Road
Newton Center Ma., USA

Ms Kay Butterfield
Michelmore Davies and Bellamy
Church Street
Sidmouth, Devon, UK

APPENDIX B

MEDIATOR MANAGEMENT

In Chapter 3 of the Report, I have summarized my impressions of Mediator management, dealing with selection, accreditation, evaluation of the process and of mediators, in-service training and payment of mediators at the institutions I visited in the USA. This appendix contains further details relating to each of the Centres, programs, or individuals I interviewed.

1. HAWAII

1.1 The **Neighbourhood Justice Center** (NJC) in Honolulu has a corps of volunteer mediators. The NJC handles a total of approximately 1700 files per year, around 55% of which go to mediation. Around 40% of NJC's mediation work is divorce mediation, 15% small claims, 15% juvenile restitution mediation and 30% other disputes.

1.1.1 Mediators

Small claims mediation is normally done by an NJC staff member, often, but not necessarily, a lawyer.

Volunteers, however, are used on all the other matters. They come from all walks of life and there is no difficulty finding sufficient volunteers. However, because of the difficulty of getting enough volunteers during working hours, many retirees are recruited. The NJC in Honolulu has over 200 volunteer mediators on its panel, consisting of working professionals (80%) and professional volunteers (20%). Mediators are matched to the disputes on the basis of their training and substantive knowledge, i.e. mediators cannot mediate in a family dispute unless they have done the divorce mediation training and the domestic violence training. They do not ethnic-match because Hawaii has a great diversity of races (Hawaiian, Phillipino, Samoan, Caucasian). They do however try to match on a socio-economic basis. Volunteers do include a high proportion of available and good WASP women and this too makes it difficult for NJC to get diversity on a panel and an ethnic mix.

1.1.2 Evaluation

Volunteers are evaluated after the training course. Some are not accepted as probationary mediators if they do not show promise and even after the probationary period of 10 mediations, volunteers can be counselled out if the

NJC believes that there is a basic problem in their skills or attitude.

NJC staff members used to follow up mediations by telephone, in an attempt to gauge client satisfaction with the process and the agreement, and they do intend to start this again. No systematic evaluation has been done by the NJC, although the results of a preliminary survey are available. The criteria that would apply to such an evaluation would include the satisfaction of the parties involved in the process and the cost-effectiveness of mediation compared with litigation.

1.2 **The Juvenile Monetary Restitution Program (JRP)** operates in a different manner. Victims can elect to mediate (which will be done through the NJC) or to go to arbitration (in cases where the victim does not wish to meet the juvenile offender). A panel of 3 volunteers is used, trained and administered through the JRP. However, very little training is given - an hour-long briefing and a chance to read the handbook! The arbitration is non-binding and the arbitrators are answerable to the Supreme Court Program on DR.

Mediated settlements are not legally enforceable and either party can take a matter referred for mediation or arbitration back to the referring Court; this provides one method of evaluating the effectiveness of the process. Assessment of the percentage of settlements that are not acceptable to one or more of the parties, provides some idea of client satisfaction. While the JRP has only been in operation since October 1988, it has involved 274 cases monthly (either paying restitution or awaiting mediation). Of these, 70% have been settled by mediation and 30% by arbitration, though the percentage going to arbitration is on the increase.

Using the services of sociologists, the University of Hawaii has, under contract to the judiciary, done some evaluation of the court-annexed arbitration process and other ADR programs.

1.3 Who becomes a mediator?

Private mediators do also operate in Hawaii. They are mainly involved in property issues, generally not in custody or access matters. The American Association of Arbitrators (AAA) does arbitrate on commercial disputes. Lawyers doing commercial arbitrations charge commercial rates.

The University of Hawaii runs a conflict resolution centre and advises departments that offer conflict resolution through disparate university courses. It does not offer practical training. Those, therefore, who wish to become private mediators apply to do the NJC mediation training course. However, not many students are accepted as, like the CJs, the NJC prefers to offer training to those it considers will be subsequently available as mediators in the community program.

To be a family mediator, special training (lasting 26 hours) in process and procedures, substantive knowledge and domestic violence issues is required.

1.4 On-going evaluation

Once certified, there is no specific in-service training, although a great deal of informal feedback occurs where mediators work in pairs or in a panel (only 25% of all cases would be solo mediations). A newsletter goes out from NJC, keeping mediators abreast of new developments, in which some articles are written by the mediators themselves. A Volunteer Development Committee keeps contact with all mediators, organises on-going training programs and encourages mediators to keep abreast of developments by attending some of these sessions.

2. CALIFORNIA

My interviews in California focused on mediation in schools, mediation through the Court system and through a variety of local centres. The factors affecting mediators in each of these were very different, so I have treated them separately.

2.1 Peer Mediation in Schools

2.1.1. San Francisco

The Community Board Program of San Francisco (CBP) established peer mediation in schools as one of its main foci in 1990. The work is mostly done under contract to the Unified Schools District office of Integration.

In these schools, the students are the mediators, or, as they are called, the peer conflict managers. They are chosen by peers and teachers, though gender and ethnicity are also factors that balance the selection. The children selected are trained either directly through the CBP or by trained educators, either in or outside the school. It is important that the kids selected are not always the apparently *good* ones. The training is paid for (\$650 per day per trainer) as are the training materials and the manuals.

The aim of the CBP is outreach. Thus they sell training to as many schools around California, and other States, as possible. Once they train school children as conflict resolvers they leave; the school owns the program, and the school implements it or not.

2.1.2 Los Angeles DR Services (Santa Monica)

This program provides on-going supervision once a program has been implemented and established in a school, in addition to providing training of the school mediators; it also provides awareness sessions for the staff, teaching resources and teachers for a segment in the Human Relations courses; and it tries to integrate school mediators onto neighbourhood and

family mediation panels. Disputes handled range from the "she stole my boyfriend and I want him back" triangle to the threats and beatings and pulling of knives. One school is considering training joint panels of teachers and students, and it is intended to trial mediations between teachers and students.

An important aspect of this program's success is due to the selection of school mediators. At each school where the program has been implemented, the Co-ordinator and the Program Director were presented with lists of those whom the teachers and students separately felt would be suitable as mediators. They refined those lists to include all ages, both sexes, all colours and importantly, to include both *baddies* and *goodies*. Isabel Moriarty, the Program Director, feels that success is due to the fact that she had discretion to appoint and train as mediators those whom she felt were the best for that job.

The principal evaluation of the scheme to date is the work being done by the trainers in the schools. Other evaluation indicates that the success of a program will depend largely on the level of planning and organisational co-operation and management of the persons involved.

(See Chapter 6 for a detailed assessment).

2.2 Court System

The University of San Francisco's Law School offers an elective in ADR which is very popular. Its purpose, though, is to provide students going into the Court system with the skills necessary for mediation of Small Claims and family disputes.

In Los Angeles the Family Court Services are training mental health professionals and attorneys to be mediators. The attorneys mediate on a voluntary basis. The other mediators are counsellors who mediate as part of their employment load (whether full or part time). Training takes the form of an extended 9 month internship, followed by 3-4 months of orientation in mediation. The internees are also counsellors who do an internship as part of their Masters in Social Science. The lawyer mediators handle the property and commercial aspects of Family Law, while the mental health specialists mediate in areas where the emotional aspects of divorce are involved. In fact, all mediators attached to the Family Court and dealing with contested custody cases are required by Californian State law to be counsellors and to have a minimum educational qualification of a Masters in Counselling. They need also to be familiar with custody law, appellate court cases on visitation, access etc. Because all couples who file for divorce have to undergo a mandatory exposure to mediation, the caseload is enormous. They are introduced to mediation through the courts so that the bulk of mediations are initiated by the Courts. According to Hugh McIsaac, 70% of all Family Court mediations are successful, while less than 2% of all cases go to trial. The Court is scheduling about 8600 mediation sessions annually.

While no psychological testing instruments are used on staff or interns wishing to be mediators, Ron Hulbert, supervisor of training and research considers that the best mediators come from those who are clearly people-oriented, those who often would go into service occupations. The retention rate of staff at the Family Court is high; Ron Hulbert feels that positions are sought after and offer job satisfaction.

Statistics are kept on the number and type of cases, outcomes and so on. Each party is requested to evaluate the service received. Around 10% do reply and their comments are generally positive. If a complaint is lodged, it is dealt with at the highest level.

2.3 Community Mediation Centres

2.3.1 Los Angeles Dispute Resolution Services

The Los Angeles Dispute Resolution Services operate several centres. Between 150 and 200 volunteers from all walks of life have been trained as mediators; several of these also help with intake. The NJC can be regarded as the "neighbourhood arm" of the Los Angeles Dispute Resolution Services. No volunteer is paid. Women make up 60% and men 40% of this volunteer force; however, there is a great shortage of bilingual volunteers from the Hispanic population.

They all undergo a minimum of 25 hours training. This is followed by a series of mediations in which the volunteer is either an observer, a co-mediator or is being observed while mediating on his/her own. In all, training will take about 40 hours. Thereafter, they can apply for certification. Mediators are also required to attend 3 to 4 in-services per year (2 hour sessions) on specific aspects of the law. If they want to do family mediations, an additional program of 8 hours training is required.

After a mediation, about 30 to 60 days later, each client is asked to evaluate the session by way of a questionnaire.

2.3.2 San Francisco

In San Francisco, although the CBP prefers people representative of the neighbourhood, anyone can apply to be trained as a mediator. Although they have 300 volunteers on file, in 24 neighbourhoods, they are still well below their target of a cultural and ethnic diversity. There is a need to over-recruit in some groups because of the high fallout rate.

2.3.3 Who does the training?

The volunteers are trained by staff trainers, all of whom have undergone a "TRAIN THE TRAINER" course. On average, about 30 new volunteers are trained annually for about 28 hours. There is also specialist training for

family disputes and youth guidance cases. The entire program is evaluated by an outside consulting firm, since this is a requirement of the funding authorities.

In addition mediators get involved in starting up Volunteer Mediation Programs in other cities. The conflict manager idea is also being developed for juvenile correctional facilities where young people are incarcerated for from 2 to 8 months.

Success is measured in different ways. In Neighbourhood work, goals are set for the annual caseload. Figures are kept of what percentage of cases go to hearings; what percentage of follow-ups indicate successful, lasting resolution; what people are trained and from which groups.

3. WISCONSIN

Since mediation in divorce cases, i.e. *contested custody/access cases* is mandatory in Wisconsin, counties have an inexpensive court-based system which can and does vary from county to county. Mediation is not mandated for other disputes. In selecting mediators in Dane County there is a preference for using mental health professionals and a perception that, at the very least, a Masters degree in counselling/psychology is a necessary professional requirement. However, in Rock County, mediators are not required to have this background. This was the only country that I visited where this qualification was not required. There is no formal training for Wisconsins - only brief workshops and presentations in mediation are required.

The Association of Family and Conciliation Courts (AFCC) is a membership organisation and resource centre providing a directory of names, addresses and contact information. Although it has no power to certify or accredit mediators it has developed standards of practice for family mediators.

4. FLORIDA

4.1 Court-based

In Florida mediators in divorce matters must have a Masters degree in Psychology and have practised for 5 years or be an attorney. The law also requires a 40 hour recognised training course in mediation. Mediators are certified by the Chief Judge of each judicial circuit and they normally operate out of Courts or as private mediators.

4.2 PAY

Volunteers are also used by Prosecution Alternatives for Youth (PAY) in Seminole County, Florida, a program that has been in operation since 1970. The volunteers are often white middle-class professionals who become Hearing officers. The program attempts to recruit these volunteers from all

sectors of the community but finding black or Hispanic volunteers is difficult. All volunteers undergo training which is conducted in a classroom situation using college facilities but with guest lecturers and staff. There is no use of role-play or simulations. However, observations of hearings and doing a hearing under supervision form an important part of the training, 30 hours in all. Roll call is taken and participants can miss no more than 2 sessions (which have to be made up).

On graduation, the new Hearing officers are given a Certificate of Appreciation. In-service training is also available - about 6 hours per year. After each session, participants evaluate the hearing by filling out a questionnaire. The Director of the program also sits in on Hearings as she chooses, particularly if the feedback on a particular Hearing Officer has not been that positive.

5. WASHINGTON D. C.

5.1 Multi-Door Courthouse

The Multi-Door Courthouse runs several court programs. Seven volunteer mediators are in court each day in the Small Claims program. They get paid \$25 per day and have undergone 40 hours training before being assigned to mediate. The Civil Disputes Resolution program uses lawyers as volunteers. They undergo 4 days training and are paid \$25 per day. Mediators in the Domestic Relations Program undergo 40 hours special training, even if they have already taken the basic training suitable for small claims disputes. The rationale is that if all mediators go through the same process and content training, everyone is of the same standard and conversant with the same issues. The Court supports close staff monitoring in an attempt to be sure that its child support guidelines are being adhered to and, if not, what justification there has been for exceeding them.

About 50% of the mediators are lawyers and an attempt is made to mix them with non-lawyers. Mental health professionals are particularly keen to do the training needed for the Domestic Relations program. (cf. Appendix I).

5.2 D.C. Mediation Service

The Center for Dispute Settlement provides a Basic Interpersonal Mediation Training program of 40 hours for D.C. Mediation Service. This is followed by an apprenticeship during which a mediator must co-mediate with a mentor for at least 5 cases and then mediate solo. This is highly recommended by the Center because it enables the staff to take a good look at the aspirant mediators throughout the period. After a year they will be considered for other kinds of mediation, for example, specialist cases of sexual or racial discrimination via the local Human Rights office, large community disputes or construction disputes. Extra training is given but is usually of short

duration,(about half to one f
context and to increase their

Mediators are accredited afte
long it takes them to becom
issued.

Private mediators are also tra
over them after the 40 hours

5.3 Selection of Mediators

Difficulty is encountered at
Mediators are generally selec
demonstrated through written
also show a desire to serve,
mediation. Other factors tak
racial, gender and age distribu
on and a preference for living
in the suburbs. No psych
overabundance of white, unen
apply; their numbers distort t

6. COLORADO

CDR Associates provide train
and overseas. Anyone, therefore,
advanced family mediation courses.
extended courses on commercial me
multi-party disputes is quite differ
Trainees are progressively evaluated
have completed a CDR course. This

As needed CDR selects mediators a
them, on the basis of the evaluation
trial period, working with experience
hour from the time the mediation sta
for intake or debriefing.

7. NEW JERSEY

7.1 Court-based mediation

Dispute Resolution in New Je
who are often probation officers, get
Training in the form of a basic 18 h
not yet a requirement. Attorneys d

duration, (about half to one full day) with the aim of giving them a sense of context and to increase their comfort level.

Mediators are accredited after varying periods of practice, depending on how long it takes them to become adept. After accreditation a certificate is issued.

Private mediators are also trained through the Center but there is no control over them after the 40 hours training program.

5.3 Selection of Mediators

Difficulty is encountered in attracting ethnic mediators in Washington D.C. Mediators are generally selected on the basis of their communication skills demonstrated through written application and an interview. Candidates must also show a desire to serve, over and above a simple desire to get into mediation. Other factors taken into account in selecting mediators include racial, gender and age distribution, diversity in occupation, background, and so on and a preference for living in the district being served, as opposed to living in the suburbs. No psychological profiles are used. Once again, an overabundance of white, unemployed women who have a great deal to offer, apply; their numbers distort the kind of diversity that is being sought.

6. COLORADO

CDR Associates provide training for mediators throughout the United States and overseas. Anyone, therefore, can join their training courses, except for the advanced family mediation courses. They provide the basic or general courses with extended courses on commercial mediation and family mediation. The training for multi-party disputes is quite different and a different training course is available. Trainees are progressively evaluated by coaches and are given a certificate that they have completed a CDR course. This does not imply any form of accreditation.

As needed CDR selects mediators after the completion of the course to work with them, on the basis of the evaluations completed by the coaches. They are given a trial period, working with experienced mediators. CDR mediators get paid \$22 per hour from the time the mediation starts to the time it finishes. No payment is made for intake or debriefing.

7. NEW JERSEY

7.1 Court-based mediation

Dispute Resolution in New Jersey is very much court-based. Inhouse staff, who are often probation officers, get an additional stipend for doing mediation tasks. Training in the form of a basic 18 hour course is available for inhouse staff but it is not yet a requirement. Attorneys do not have to undertake the training, but some

have. Law clerks who mediate special civil cases must undergo training (a 2 day course).

New Jersey has a unified court system. The Chief Justice is head of the courts and presides over the Supreme Court. He also has control over all of the judges in the Superior Court as well as Municipal courts, even though these latter are appointed by local townships or communities where the courts reside. In an effort to determine how to integrate DR into the justice system, 25 programs were funded over a 2 year period so that there was wide exposure to the application of the principles of complementary DR. The aim is to fashion courthouses into comprehensive justice departments - like Multi-Door Courthouses - where litigants are able to select the forum best able to provide the optimal solution in their particular case. However, the difference lies in the fact that in the New Jersey experiment, an effort is made to resolve cases that come into court, not in diverting cases from the court (cf. Multi-Door Courthouse, Washington D.C.)

7.2 Types of Program

New Jersey focuses on complementary dispute resolution, that is resolving cases that come into court. Most court districts provide mediation for custody disputes while all districts have matrimonial property settlement panels, staffed by volunteer attorneys. There are three types of program for settling family issues :

- (1) where the mediators are either court employees, staff or court managers;
- (2) where a list of community mediators is available - lawyers or mental health professionals; or
- (3) private practitioner mediators. Mediation in the courthouse is free though the economics of the situation might push the programs onto a "user pays" basis.

The type of program run will depend on the funding available. If counties are responsive and provide funding, in-house programs will be run. If not, there will have to be some reliance on community funding. Ultimately the model will be a combination of in-house capability and community resources, forcing clients into a community service for which they will have to pay.

Different counties operate different systems. Two particular County Bar Associations were found to be very positive. Atlantic County Bar has joined with a state college to set up a Justice Institute to handle all municipal court mediations, that is small claims cases. The Essex County Bar Association runs a mediation program involving volunteers who are trained over a weekend. They handle courts in 16 municipalities, including Newark Municipal Court. Volunteer attorneys give up one morning a week to mediate *pro bono*, doing intermediate Civil cases (from \$1000 to \$5000). Volunteers are also trained to work in the Juvenile area.

7.4 Evaluation and qualifications

No accreditation or evaluation of the services are available and the qualifications that mediators should have are not mandated. The issues of accreditation and careful selection of mediators from among the volunteers still has to be addressed.

8. NEW YORK

8.1 Institute of Mediation and Conflict Resolution

This Institute has been in operation for 20 years. In order to mediate for IMCR, mediators must, after the initial training and evaluation, be certified. Certification attests to the fact they they have mastered the training and demonstrated the ability to mediate. But that is not a permanent licence to mediate for IMCR. All mediators have to be evaluated every 2 years. A checklist of the elements of the mediation process is used as a guide for this evaluation and shows mediators what they are being evaluated on.

Mediators are paid a stipend of \$20 to \$25 per case, regardless of the length of the session. They are also subject to client feedback; clients are asked to comment on the mediation experience. Mediators are debriefed by supervisors and occasionally they are sent for retraining or are told that they will no longer be used.

8.2 Persons in Need of Supervision (PINS)

In the PINS program, which operates in 38 out of 58 social service districts, mediation is extensively used if the case is deemed to indicate that mediation will produce positive results. Some of the mediators are staff of PINS who are trained in mediation or family work, while others are Legal Aid lawyers or other community people. To assess those suitable for training PINS interviews everyone (to get a good sense of where people's skills lie and what they are bringing to the course). Some self-selection and *weeding out* takes place throughout the course. Those who are suitable are accredited and certificated. There are different categories of pay for the mediators; staff persons who supervise get \$13 per hour; staff mediators \$12 per hour while other volunteers get \$10 or \$13 per session depending on their experience. Volunteers also get \$2.30 in car fare per mediation.

In-service training is extensive and takes place every 6 weeks.

9. MASSACHUSETTS

9.1 Schools Program

The National Association for Mediation in Education (NAME), while based in Massachusetts, is in the process of establishing a National Training Institute for training trainers in the use of conflict resolution in schools. In Franklin County a school mediation program has already been established, in addition to the program (SCORE) that forms part of the Attorney-General's department of the Commonwealth of Massachusetts. (cf. Appendix D for details of training and Chapter 6 for details of the program)

9.2 Parent/adolescent Mediation

To date NAME has trained 44 mediators with a basic 40 hour program but adds an extra 2 hours every month for a year as in-service. Additional material dealing with adolescent development, the family life cycle, etc. are added after the normal generic mediation training. A case co-ordinator or project assistant supervises each mediation, not sitting in but checking at time of caucus. These mediation sessions can take up to 8 hours, in which case they are broken into 2 sessions. This family mediation is very specialised and requires specialised training.

APPENDIX C

MEDIATION CASELOAD AND APPLICATIONS

1. HAWAII

Last year the Neighbourhood Justice Center (NJC) opened 1700 files of which 55% went to mediation, while another 5% were conciliated prior to mediation. Around 40% were divorce matters, 15% small claims, 15% juvenile restitution (around 274 cases monthly) and 30% neighbourhood or community disputes, as follows :

In the court-based ADR programs NJC mediators are called upon to mediate on small claims, if the matter is so directed by the Judge. Besides small claims (mainly landlord/tenant or debt collection disputes), the NJC is involved with family and neighbourhood issues. These issues include family violence, sexual harassment, parent/child disputes, condominium disputes, spouse mediations.

A proposal to mediate in teams on Temporary Restraining Orders which presently go to the Small and Regular Claims Courts is being considered. NJC is already called in if there is evidence in the Order application that violence is involved, but its general procedure is to put the matter out for pre-mediation counselling. This is often done by the Family Peace Center whose function is to empower the woman to take part in mediation and to help her through that process.

The Program on ADR, established in 1985, is involved in public interest disputes, for instance disputes involving actual or threatened court actions over the allocation of scarce resources or the siting of public facilities; and the Juvenile Resitution program. The emphasis in this latter program is on restitution for victims, rather than rehabilitation for the juveniles and this is decided either through mediation (using NJC), arbitration or the Courts. Of these cases 70% choose mediation and 30% prefer arbitration but these figures are changing.

2. CALIFORNIA

2.1 Community Boards Program, San Francisco

One focus in 1990 of the Community Boards Program of San Francisco was on education, particularly in helping schools develop peer mediation programs. Work in this area is also done in colleges. The idea of conflict management is also used in juvenile correctional facilities (ranches) where young people are imprisoned for from 2 to 8 months.

The Boards also have an extensive neighbourhood mediation program which uses volunteers on the panels. The largest category of disputes is "money, goods and services", followed closely by "noise". Other disputes arise between landlords and tenants (financial, eviction, roommate disputes) and fall under the category of "property care and use". The next largest category is "harassment" (excessive phone calls, throwing things into neighbours' yards, threatening behaviour, etc). The Board does not take on a case of domestic violence, if it is felt that participation will endanger someone, or if there is a history of recent abuse. Truancy issues, too, are often mediated.

In the Family Court system, volunteer lawyer mediators dealing with property disputes dealt with 750 cases in 1989, and a success rate of 75% was achieved. Full-time counsellor/mediators dealt with 8600 mediation sessions in the same period. Those counsellors who do evaluation requested by the Court, for example in child custody disputes do not mediate the same case. Using a specially developed protocol, the service does now mediate cases of domestic violence, though this involves meeting with the parties separately.

2.2 Los Angeles Dispute Resolution Services

The Community Mediation Services in Santa Monica, deal largely with disputes between landlords and tenants (eviction notices, rent control, payment schedules), neighbours, employee and employer, business and business, consumers and merchants, parties in auto accidents and family members. If domestic violence is an issue, and it was not discovered at intake, the mediation sessions stop and the woman is referred for counselling. The mediation will not continue until the counsellor says that she (the disputant) is ready to do so.

Around 2000 calls per month are handled by all centres in the region. About 10% of cases go to mediation. In the month of May 1990, of 1000 intake calls of all centres except for West Hollywood, 77 cases were mediated and there were 40 open cases waiting for sessions to be arranged. Of the 77, 59 had been resolved. The proportion of cases depends on the centre : in Santa Monica where many properties are rent-controlled, landlord/tenant disputes predominate. In South Beach, divorce is more of an issue and custody or property (or both) disputes are more prevalent.

The number of cases handled by the Courts' Program of the Los Angeles DRS varies from centre to centre, for example the Pasadena Municipal Court Program has a caseload of 10 mediations per month; the Central District Municipal Court handled 200 mediations in 11 months.

The Long Beach Superior Court Program handles 8 mediations weekly; the Joint Association Officers Settlement Program operates 5 days per week. Each volunteer deals with up to 4 conferences each day. Further details on these programs are found in Chapter 2.

2.3 Schools' Mediation Program : See Chapter 6

3. WISCONSIN

Ann Milne is a highly respected mediator in private practice who is also the Executive Director of the Association of Family Conciliation Courts. Her work covers all aspects of divorce as well as other family disputes, for example generation conflict, extended family disputes. If domestic violence is an issue, the mediation process does not automatically stop, but the mediator negotiates with the parties as to whether mediation is the most appropriate process for them. The same applies if abuse of children, which the mediator is mandated to report, arises during the process.

Family Court mediators are increasingly called upon to empower people to resolve family and divorce issues themselves. While mediators concentrate on the emotional and family aspects of divorce, they do occasionally address issues of property or support, though this is generally not their brief. If parents do wish to negotiate a comprehensive agreement, they can do so through mediation, even though, in Wisconsin, there is little variation from the prescribed percentage guidelines allowed. Mediators are also involved in a wide range of post-judgment matters well after the divorce, for example changes to custodial arrangements, sharing of time with the children. In cases of domestic violence, there is normally no direct contact between the spouses involved but nevertheless the form of communication between them has to be mediated, for example access. Where it is clear that there has been abuse, the victim can ask for waiver of mediation (which is normally mandated).

4. FLORIDA

(a) Prosecution Alternatives for Youth (PAY)

The PAY program in Seminole County tries to help both the juvenile and the victim through a mediation/arbitration process. While the juvenile can deny the wrong action, in 90% of cases, this does not occur. Most of the cases taken by the program involve burglary, auto theft, drug offences (dealing). Aggravated battery or assault cases using a weapon are not generally accepted. An increasing number of cases involving satanism are coming to their attention, which have formerly been passed over as *kid's pranks*.

(b) Family Mediation Court Services

The Family Mediation Programs of the Circuit Courts deal largely with matters referred by the courts on issues such as determining primary residence for the children, formulating a shared parenting schedule and calculating state-guidelined child support. Where domestic violence is involved, the matter is not referred to mediation, though some such cases have gone through to a successfully mediated outcome. The service is presently preparing to expand, to do simple property settlements defined by attorneys.

5. WASHINGTON D. C.

(a) The **Domestic Relations Mediation Program**, which is a division of the Multi-Door Courthouse (see Appendix H) attached to the Superior Court, handles divorce-related issues though the parties do not have to be married, for example child support, custody, spousal support, property division, grandparents or sisters involved in parenting of the child. This program handled 500 cases this year and they expect this to increase to 900 next year.

(b) The **Small Claims Day of Trial** program handles 2500 cases per annum.

(c) Mediators connected to the Superior Court are involved in the annual **Settlement Week**. Lawyers, who act as volunteers, go through the case files made available by the judges, prior to a mediation session. Cases range from civil cases to personal injury to family cases. Sometimes these sessions are attended by attorneys, but not always. The process often involves keeping the parties apart with the mediator shuttling between the parties. The settlement week normally involves 500-900 cases with a 50% settlement rate.

6. NEW JERSEY

(a) Complementary Dispute Resolution Program

The **Complementary Dispute Resolution Program** of the Courts focuses on how to manage and resolve cases that come into the court, not to divert cases from the court. Most districts provide mediation for custody disputes, which however, is not mandatory for the parties, while all districts have matrimonial property settlement panels staffed by volunteer attorneys who attempt to settle the financial issues. Law clerks also mediate small claims - some counties push all cases to mediation, while others do not.

Mediation is also used to some extent in adjudicating lower level status offences by juveniles and between juveniles and victims or juvenile and his/her family where restitution is needed.

Of the 22 municipalities in Essex County, 16 of them are involved in the DR Project of the County. The volunteers mediate between complainant and defendant in complaints such as simple assaults, obstruction, harassment, smoking in public, dog and animal complaints, small thefts (under \$US200), trespasses, nuisance, disorderly behaviour, interference with transportation, shoplifting, malicious destruction of property. Other disputes involving merchant and customer, landlord and tenant, property and family are also mediated.

(b) Department of Environmental Protection

The **Office of Public Participation** forms a part of this department. The Office serves an Ombuds function, liaising on behalf of the Department with the

community, environmental groups and citizens groups. It works also with various subdepartments to try and find ways to improve its public participation. Activities are sought which will instil public confidence in the department which will assist the department to work with the public rather than antagonise it.

(c) Department of the Public Advocate

These disputes are often multipartied and very complex. In an interview with Fran Snyder, the Assistant Director, she explained that the model used involves shuttle diplomacy and the parties appoint spokespersons, clarify the issues and agree to mediate. While the mediation process continues, the parties will repeatedly caucus to plan and report back to their constituents. The purpose is to find agreement in principle before negotiation on the substantive issues occurs.

The New Jersey Center for Public Dispute Resolution forms a part of this department. Cases dealt with include matters affecting the environment, public services, the use of natural resources, planning and development, and acts of government agencies. It is not authorised to deal with purely private disputes.

The Division of Mental Health Advocacy provides individual representation to clients admitted involuntarily to state and county psychiatric hospitals and appears on their behalf at their commitment hearings.

(d) American Arbitration Association

Caseload managers handle 800 commercial/construction cases, 200 auto accident and negligence cases and 200 regular management cases. The commercial/construction cases are very varied and some of them very complicated so those managers have a smaller caseload.

(e) Community Dispute Resolution Project of Essex County

The major caseload is in Newark Municipal Court - 35 cases are scheduled weekly. Approximately one-third of those are ready for mediation. The yearly mediation caseload is 400. In the 16 Courts, the total is 1200.

The Landlord/tenant program, co-ordinated through the Superior Court of New Jersey employs a full-time mediator with a legal background. 6000 cases are mediated yearly.

7. NEW YORK

(a) John Jay College of Criminal Justice, City University of New York

One training program offered at this College is the Hostage Negotiator program, offered to police who have reached at least the rank of detective. This program commenced in 1973 (as a result of the Munich Olympics). Up until the late

1970s the group generally handled about 20 cases per year, including cases where international terrorism was involved. In 1984 the team's mandate was changed to include cases of danger involving emotionally disturbed people. Its caseload has therefore increased tenfold.

(b) Persons in Need of Supervision (PINS)

Of the 58 social service districts in New York, 38 have a PINS program. This is a pre-delinquent program which involves the family filing a petition stating that the child is uncontrollable. Instead of the matter going to court, it is diverted to a program of full assessment of the family by a trained social worker. Thereafter, mediation is an option available to the family to enable it to resolve the crisis.

The program is contracted to deal with 210 youngsters but the number of cases handled is consistently higher.

8. **MASSACHUSETTS**

There are over 30 community mediation programs in Massachusetts, as well as small claims mediation agencies. Most matters are referred by the Courts or Consumer Protection agencies.

The Attorney General's Department of the Commonwealth of Massachusetts administers 7 community mediation programs. Each program handles 100 mediations annually from an intake of 500. They are not funded to handle neighbourhood disputes; rather their caseload focuses on family disputes - divorce and parent/adolescent.

The school mediation programs operating in Somerville and Worcester are in their infancy. Their caseload is detailed in Chapter 6.

APPENDIX D

TRAINING FOR MEDIATORS

1. HAWAII

(a) Peter Adler, Director of the **Court Program on ADR** in Hawaii runs a 2 day seminar on ADR to interested people, such as legal agency personnel at a nominal fee.

(b) For the **Juvenile Restitution Program**, the volunteer arbitrators are not given training but simply an hour-long explanatory talk and an opportunity to read the handbook. However, they must attend at least one hearing as an observer before sitting in on a panel.

(c) The Honolulu **Neighbourhood Justice Center** provides a 60-hour training course. This costs \$90 per person. An apprenticeship of ten mediations follows the basic training program. The same model - the Atlanta model - is used on all the islands and at CR centres. It is then adapted for particular types of cases.

The training course operates as follows :

Mediators have 25 hours basic generic mediator training using the "non-contingent model" developed by Chris Moore (CDR - Colorado). After the basic 25 hours they mediate with experienced mediators and then return for the remaining 30 hours of additional, more complex, work.

The emphasis during the training course is firstly on attitudes, then processes and finally skills. Role-plays are incorporated as the course progresses.

Attitudes :

- * Why, if conflict is so natural, is it difficult to resolve?
- * How do we develop a method of getting our own way?
- * What are the criteria for mediatable conflict?

The mediators internal dialogue :

- * How to operate in *neutral*;
- * how to move from *impose* to *expose*, from *furious* to *curious*;
- * how to respond during a mediation when you feel averse to or in accord with one of the parties.

Processes :

- * How does a mediator respond to complexities in a simple way?
- * What are the processes of the mediation model?

Skills :

The basic framework :

- * reframing for neutrality;
- * responding in a way that identifies a common concern;
- * listening for both issues and interests (content & feeling);
- * asking focused questions;
- * summarizing, organising;
- * building a bridge to the next issue;
- * focusing on empowerment of parties rather than providing a solution.

Methodology :

The methodology used involves the use of a manual, worksheets, videotapes, report-back from groups, caucusing options, writing anticipated agreements, self-assessment of skills.

Since about one half of the mediation cases are divorce cases, everyone goes through a separate course after the basic course. There is also an advanced course on divorce issues which is developed in the Centre.

In addition to the manuals for the basic course and for divorce mediation, training manuals have been written for Mentor Training (i.e. evaluating trainees during an NJC training course), Intake Training, Computer Training, Ethics and Procedures. There is no particular Conciliation Training.

The NJC also offers a Conflict Management Program to outside organizations, charging from \$50 to \$100 per hour for 2 staff people.

2. CALIFORNIA

(a) Training in peer mediation processes in schools by the **Community Boards Program of San Francisco** focuses on the educators as trainers, so that they in turn can train the students. It also includes developing resources within the school district so that these people can assist the schools directly. Schools buy a set of manuals (elementary manual costs \$42 and a series of manuals for conflict manager programs \$15 each). The course of training runs over 3 - 4 days; the fee charged is \$650 per day per trainer.

Where the program is used in ranches (juvenile correctional institutions), the staff of the ranches are not used to train mediators.

(b) The basic training of **volunteer mediators** at the Community Boards Program in San Francisco consists of about 28 hours of training. Usually about 25 - 30 volunteers are involved in 2 groups with 2 trainers in each group. A great deal of use is made of role-plays of disputes being mediated by a panel of 3 or 4 since this is the method used in mediation. Handouts are supplied during the training sessions, and a manual is gradually built up. Because of the diversity of the population, the training includes discussions about dominant cultures and some of the aspects that follow from being or not being part of that culture. Attention is also given to the development of teamwork among the panel during training.

At the training session that I attended I was impressed by the visual training aids used. The quality of mediation observed varied considerably. However, their use of 4 to 5 mediators per session ensures that the standard of mediation offered to clients is maintained. Although this was the last session, the enthusiasm of the participants for mediation was undiminished. Perhaps this is because, unlike CJs, they are not subjected to the pressures of evaluation for certification.

Additional specialised training, for example on Youth Guidance and Family Conciliation involves 18 hours of work over 2 Saturdays and 2 evenings. All trainers need to undergo a "Train the Trainer" course before being allowed to train. This course normally takes about 12 hours and includes :

- * briefing the role-players;
- * interventions;
- * responsibility as a trainer;
- * debriefing;
- * giving constructive criticism;
- * working with trainees in an encouraging way;
- * using time effectively.

(c) Most of the training provided by the **Family Court Services of the Los Angeles County Superior Court** is to counsellors who already have an extensive background in mental health and where the emphasis is on the transfer of clinical concepts into court services. While a knowledge of some of the legal material is important, for example custody law, divorce, access, the training in mediation processes and skills, through simulating mediation situations, is the core of the work. Graduates from several major universities also do internships at the Court. They come from Departments of Family Therapy, Psychology or Social Work.

The internship normally lasts about 9 months with a 3-4 month orientation program. Most of the people doing internships have had some cross cultural component in their training, though they now have the opportunity of seeing it *in vivo* at the Family Court, where translators and interpreters, particularly Spanish, are used extensively.

The Court also offers some seminars for example on divorce and child custody mediation, but this is not a major component of their work.

(d) At the **Community Mediation Program** of Dispute Resolution Services (previously the Neighbourhood Justice Center) the volunteer mediators follow a basic 40/45-hour program of training which is offered about once a year.

The class work takes up about 25/30 hours, while the on-the-job training (observing mediations, co-mediating, mediating under observation) takes an additional 15 hours, after which they are certified. Any volunteer who wishes to do family mediation must undergo an additional 12 hours of training.

The mediators working in the Municipal Courts Program are trained in the community model (described above). They have additional training of 4 hours in relevant legal issues, for example differences between criminal and civil codes or between landlord and tenant laws.

In addition the Los Angeles DRS has a **Train the Trainer** program and then takes on apprentice trainers. These apprentice trainers begin by helping in the volunteer mediator training for which they are paid \$15 per hour. After evaluation, they become certified trainers and are paid up to \$75 per hour. They are used in the PACT programs, that is the outside training arm of the DRS.

The training of school mediators for the **School Mediation Program** runs for 18 hours over one half-day and two full days. The training focuses on basics, with much role-playing. Every time a concept is taught it is locked in with a role-play. A mediation checklist is given to the students and the training focuses on making them comfortable with these steps.

The students' 18 hour training program includes the following :

Day 1 : 3 hours

- * Expectations and benefits of being a mediator;
- * The training schedule;
- * Listening exercises;
- * What is conflict?
- * Ways of dealing with conflict;
- * Positive outcomes from conflict.

Day 2 : full day

- * Mediation steps;
- * Introductions and opening statements;
- * Active listening techniques;
- * Roadblocks to communication;
- * Non-verbal communication;
- * Importance of feelings in mediation;
- * "I" messages;
- * Mock mediations.