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# Section: Dispute Resolution Processes: Practice And Research Efforts

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# Resistance to Mediation: Understanding and Handling It *

*Maria R. Volpe*
*Charles Bahn*

ABSTRACT

*One of the major challenges confronting mediators is the resistance to their intervention efforts by disputants. This article examines some of the explanations for resistance to the mediation process as well as suggested ways of coping with resistant disuptants.*

As mediation grows in acceptance, popularity, and diversity, a variety of new challenges are confronting mediators. An increasingly important area of concern for mediators is resistance to their intervention efforts by disputants. And, the fact that mediation is now being used as a compulsory court intervention process (as a result of legislation, policies or regulations) makes understanding of resistance for mediators even more critical. (e.g., Freedman 1984).

Practitioners involved in a wide range of problem-solving and intervention processes, particularly those in mental health work, have long been aware of the phenomenon of resistance by patients or clients. (e.g., Anderson and Stewart 1983; Strean 1985). In fact, understanding the causes

* Printed with permission of Plenum Publishing Company. This article originally appeared in *Negotiation Journal, 3*(1987), 297-305.

of resistance is an integral part of their professional education and training, and a body of literature on resistance theory has been built up. With few exceptions (e.g., Folberg and Taylor 1984), there is little in the mediation literature focused on resistant behavior that has been written specifically for mediators. This void is especially significant since many mediators do not have a mental health background and may not have received any education or training in detecting or handling resistance.

## The Mediation Process

Generally speaking, mediation can be defined as a short-term, task-oriented, participatory intervention process in which disputants voluntarily agree to work with a third party to reach a mutually satisfactory and balanced agreement. Depending on the nature of the case, mediation processes and outcomes may be quasi-therapeutic as well as quasi-legal.

Mediation, not unlike other intervention processes (such as counseling, therapy and social work), frequently engenders resistance from clients or patients who are *required* to face problems and deal directly with them. Individuals confronted with problems often do things which have the effect of impeding the very efforts that can help them. This occurs whether or not they have overtly made the commitment to participate in the process and despite the costs, emotional and/or practical.

Disputants are often still mired in the win-lose mode as they begin the mediation process. And, unlike many other intervention processes, mediation usually engages the disputants directly in the resolution process to thrash it out face-to-face.

While it is not expected—nor appropriate—for mediators to deal directly with the intricacies of resistance emanating from the intrapsychic world of a disputant, it is nonetheless imperative that mediators understand the dimensions of resistances so that they can more effectively deal with the mediatable issues.

## Resistance

We define resistance as actions by parties, both conscious and unconscious, that forestall, disrupt and/or impede change designed to alter customary behaviors. While resistance is typically seen as undesirable and dysfunctional, it may in fact serve some useful purpose. For example, dealing with resistance satisfactorily can facilitate resolution. Alternatively, it

can slow down or halt the decision-making process. Resistance is universal and manifests itself in many ways, some of which are obvious while others are subtly disguised as something else.

Resistance is known to practitioners in all fields that attempt to introduce new or different ways of doing things. Depending on the field of practice, the practitioners' response to resistance will vary. In fact, because of the many ways that resistance may appear and the different types of practitioners who confront this problem, the literature in the more established intervention fields offers countless theoretical perspectives and intervention modalities addressing resistance. (e.g., Anderson and Stewart 1983; Strean 1985). However, unlike long-term intervention processes where the intervener attempts to overcome client resistance by talking about feelings and actions over time, mediation requires that the mediator come to grips with the resistance more directly and quickly.

Furthermore, because their process is agreement-oriented, mediators may not always be aware of the need to be concerned about resistance or have the time to handle it. Mediators, nonetheless, should understand the resistance factor and why it sometimes occurs. In doing so, the mediator may avoid actions that may in fact contribute to disputants' resistance to the mediation process and hamper the work with the mediator. Simply stated, you cannot ignore resistance. If you try to ignore it, you may exacerbate its effects.

## Resistance to Mediation: Some Explanations

### Situational: Perceptions of Contemporary Mediation

One commonly held belief is that resistance to the mediation process is a direct result of the widespread lack of information about the process. It is widely believed that, because the use of mediation is a relatively new method in virtually all areas except labor, the process would be used more frequently, willingly and effectively by disputants if it were better known and understood. Some people even confuse the word "mediation" with "meditation." And, even among more sophisticated people, is not readily distinguished from other intervention processes, particularly arbitration. Hence, there is a considerable need to inform the public about mediation.

A second explanation focuses on mediation's relationship to the legal system. It is often argued that mediation in most sectors operates in the shadow of the law and that legal practitioners serve as gatekeepers. Riskin (1982,41) has noted, for example, that "The future of mediation in this

country rests heavily upon the attitudes and involvement of the legal profession." Further, Riskin (1982,43) points out:

> Most lawyers neither understand nor perform mediation nor have a strong interest in doing either. At least three interrelated reasons account for this: the way most lawyers as lawyers look at the world; the economics and structure of contemporary law practice; and the lack of training in mediation for lawyers.

As a result of factors such as these, law schools, bar associations and countless other groups are mounting a multitude of eclectic efforts to inform members of the legal profession about mediation and its relevance for them. (e.g., see ABA Law School Directory 1983; Sander 1984; Burger 1984).

A third possible explanation for resistance to mediation goes to the central premise of the process itself. In the literature, mediation is often characterized as an empowering process through which the mediator empowers the parties, particularly the weaker party. This raises questions about whose side the mediator is on. Colosi (1983, 2) for example, points out that the "temptation to the mediator to use the mediation process to somehow bring equity to the dispute by attempting to modify the balance of power is incredibly strong."

Drawing an analogy between the weaker party and a lamb and the stronger party and the lion, Colosi (1984, 17) further notes that

> When mediators work to empower the lamb, the mediator may be helpful in that particular case...may help that lamb...they may help that underdog to prevail and do better than perhaps the lamb or underdog might have done otherwise, without the help of the mediator. But there's a danger that the mediation may earn a negative reputation because of the activities of such mediators.

Both lion and lamb may simply ask, "What's in it for me?" and refuse to use the mediation process.

There is one vital distinction between mediators and therapists that should be underlined pertaining to the "neutral" unbiased stance that each should have. The therapist's "neutrality" is centered on ethical and moral issues. In Lewis Wolberg's book, *Techniques of Psychotherapy* (1977, 137), the author presents a list of "rules" for building a therapeutic relationship, one of which is "avoid moralistic judgments." If the patient says, "I get an

uncontrollable impulse to steal,"unsuitable responses from the therapist are 'That can get you into a lot of trouble,' 'You're going to have to put a stop to that' or 'That's bad.' The suitable responses listed include: 'Do you have an idea what's behind this impulse?'; 'How far back does this impulse go?'; or, 'How does that make you feel?' The point is that the therapist is neutral, on the patient's side, and nonjudgmental. When this approach is transferred into group therapy, the same style is employed even when dealing with conflict within the group. The therapist is on the side of the speaker, and does not make ethical or moral judgments. (e.g., see Levine 1979).

In mediation, "neutrality" is quite different. The mediator is not on anyone's side. Neutrality and impartiality imply not taking sides while stressing recognition of reality and working toward problem solving. (Moore 1986, 15).

This neutrality is not easy to achieve because the mediator's knowledge of the facts comes from the disputants, who have their own credibility and their own capacity for persuasiveness. For the mediator to be neutral, facts must always be credited to their source as that person's account of what is or what happened. The mediator's task is precisely the opposite of that of the therapist. The mediator must be seen *not* to be on one's side and, of course, not to side with one's opponent. To the comment quoted by Wolberg, "I get an uncontrollable impulse to steal," the mediator would likely say, "What would you want to achieve that way?" The mediator could also point out—to the benefit of all—that there is a difference between an impulse and an action. Or, the mediator could just ignore the remark. The mediator is there to advance the process, not to cure any individual, except insofar as the process may be quasi-therapeutic for the parties.

## Unconscious Resistance

Another set of explanations derives from an area not generally part of mediator training, more specifically psychoanalytic theories of the unconscious. It is obvious that the literal meaning of the term "unconscious" is "not in consciousness" or outside of our awareness. In developing his ideas about unconscious thoughts and ideas, Freud went beyond this simple notion. His first or basic level of meaning of unconscious was, however, at this *descriptive* level. It refers to things which we are not aware of—facts, for example, that are not "at the tip of the tongue." A friend's phone number might be one such item of knowledge. At first, we may not be able to recall it; but, with a moment's thought or effort, we can bring it back to awareness. Items that can be easily brought to consciousness are conceived of by Freud (1912, 262) as residing in the preconscious system.

However, there are also memories, ideas and thoughts that are banished from consciousness, driven underground and not subject to recall under ordinary circumstances. Painful memories, for example, are *repressed* from consciousness and never admitted as long as the repression operates successfully. This suggests the forceful and energetic nature of ideas not in consciousness, and it constitutes Freud's *dynamic* level of meaning.

Finally, as Freud investigated dreams, it became clear to him that the unconscious was characterized by an ability to condense, displace and distort ideas. These forces were understood by Freud to be dominated by the wish fulfillment aspects of the pleasure principle and by other aspects of what he called primary process thinking. Thus, unconscious ideas had their own system of organization and of process—a notion indicating the *systematic* meaning of the term unconscious.

These three levels of meaning can be summed up in terms of simple, direct questions as follows: "What is unconscious?" for the *descriptive* level; "Why is it unconscious?" for the *dynamic*; and "Where is the unconscious idea? How does it operate?" for the *systematic* level.

How do we know that the unconscious really exists, since, by definition, no one can attest to their own unconscious. We know it from its manifestations ranging from "forgotten" material that is suddenly remembered, through slips of the tongue, dreams, ideas that come up during free association, to specific behaviors induced by post-hypnotic suggestion. In this way, everyone can attest to its reality.

In psychoanalysis, resistance was originally understood to relate to the tendency of many patients to reject frequently and vigorously offered interpretations. But as attention was drawn to this resistance, therapists also noticed another level:

> Individuals ostensibly seeking psychotherapeutic help were reported, despite their obvious distress, to carry out various maneuvers which undermined and sabotaged the therapist's efforts on their behalf, despite their having consulted the therapist voluntarily, and despite the considerable amounts of money and time they expended in this search for emotional well-being. (Singer 1965, 223)

Freud's students and followers, Adler, Jung, Sullivan, Fromm-Reichman, focused on the notion that resistance is a mechanism in the service of avoidance, an attempt to keep hidden material that will heighten anxiety and thereby maintain a sense of personal dignity and continuity rather than it being a deliberate backward step.

It is important to remember that resistance reflects the individual's disbelief in alternative ways of living. Holding on to familiar ways, the person fears that any other way of dealing with things will be disastrous and shattering to self-esteem.

Psychotherapists deal directly and extensively with unconscious resistance, as well as with the nature and style of the relationship between therapist and patient, because contained within them are clues to the very deep intrapsychic conflicts that must be resolved. Therefore, in a therapeutic situation, resistances must be identified, analyzed and discussed.

The mediator may encounter similar resistances, but extensive analysis and discussion of them is not crucial to the process. In mediation, the effort is to help contending parties resolve their differences and come to an amicable agreement. Unconscious resistance is interference, and its nature, motives and feelings must be understood only in order to overcome its force as an impediment.

Experienced therapists know that interpretation, clarification and labeling of behavior is appropriate only when the individual comes with a problem, and the road to addressing it involves interpreting the behavior of the patient. In any other situation, interpretation is uncalled for, and it usually is experienced as an aggressive attack. For the mediator to interpret behaviors in terms of their unconscious roots—to label some behaviors as resistance, for example—is to risk being perceived as aggressive and hostile. The mediator should be able to recognize resistance, but be close-mouthed about interpretation of the resistance.

Recognizing resistance—even if it is not labeled as such—will help in refusing to tolerate resistant behavior. Thus, if a party in a dispute consistently arrives late for sessions, or leaves early, the mediator should quite clearly tell the offending party that, by limiting the time to work on a resolution, he or she is slowing down the process rather than helping it along. If the party offers excuses for the lateness—ascribing it to factors beyond his or her control—the response could be that the process works only when the participants make every effort, including planning to arrive early and giving themselves enough time, so that they do not cut into the time of the sessions. The discussion focuses on the behavior and its effects, not on its unconscious purposes.

One relevant psychological insight in understanding resistance to mediation concerns the relationship between resistance and transference. Transference refers to the transfer of feelings, attitudes and expectations deriving from other relationships to the situation at hand. Falling in love with the therapist is one form of transference. Hating the therapist for bigotry, intolerance, and coldness is another, even when the therapist has done nothing to merit this judgment other than keeping quiet.

Mediators encounter resistances of a similar sort when resistance to the process is expressed as a hostile rejection of the mediator. Folberg and Taylor (1984, 331) point out during negotiation it sometimes occurs that one of the participants announces that he or she "wishes to withdraw from mediation because (1) mediation is not working or (2) the mediator is biased or incompetent." Folberg and Taylor suggest that this resistance can be dealt with by "legitimizing this announcement before it happens." In the earliest stages, the participants are told that they have these feelings, that "such a response is natural," and that the appropriate thing to do is to discuss these issues in a private caucus or telephone conversation before taking any action.

The essential point is that, in moving forward toward resolution of their problems, human beings also take backward steps, fearful that movement will mean unwelcome change. These backward steps are not always deliberate and overt, but may be disguised from detection by the actor. The mediator must be aware of these forces and their negative effects so that the tasks of negotiation and mediation can be pursued.

### Conscious Resistance

A third set of explanations focuses on conscious resistance, that is resistant activity that the individual is aware of, although not always aware of its motivations and causes. It usually is found in the interior dialog of individuals. The person says inwardly, for example, "All right, they can make me appear to cooperate, but there is no way in which they can get me to do what I don't want to do."

All of us know that we have the capacity to carry on that kind of inner speech. In fact, when people are engaged in interior dialog in a laboratory setting, it is possible to monitor electrical changes and subtle muscular movement in the larynx. (Zemlin 1968, 341). The messages will vary with the person and the circumstances but the essential point is that the individuals know that their intention is to thwart a particular direction or command rather than comply. This can occur even while the person is ostensibly committed to a stated agreement.

With the increasingly compulsory nature of mediation, such as mediation in child custody cases, there are several bases for conscious resistance to the process which are fueled by specific motivations that the individual is aware of and consciously expressing.

Most common is simply the novel, unknown nature of mediation. The disputant, not knowing how mediation works, or perhaps never having even heard of mediation, fears the unknown and balks at taking part in it. Mediation is a private process not generally open to public scrutiny, and may have an image that's even more mystifying than the court process.

During the initial stage when the disputants are revealing personal positions and interests, some disputants are only able to repeat their general positions over and over, and, hence have difficulty in saying why they are insistent on that position.

Another concerns interference with the process as it goes along. Distracting comments, excessive questioning, or claimed difficulty in comprehending are all behaviors that tend to slow down or completely stop the process. In multi-session mediations, cancelled appointments and recurrent lateness may also be indications of possible resistant behaviors.

Furthermore, because mediation encourages parties to work through their own differences without the assistance of advocates, some disputants are uncomfortable being in the same room with their adversary without a buffer. Moreover, the anger and feelings of vindictiveness against the other party as well as possible stubbornness may make it virtually unable for some to concede a point. Since the emphasis is on individuals working through their own differences, the selective interpretation of information and feelings that might otherwise occur if advocates were present is minimized.

Another source of conscious resistance stems from a disputant's reluctance to change the status quo, whether or not a temporary advantage is being enjoyed. For some people, the mere thought of dealing with unfamiliar conditions often activates anxiety as well as efforts to protect themselves from changes. Hence, it is not uncommon for mediators to experience a wide range of conscious resistive behaviors, such as: pointed avoidance of relevant material; dwelling on trivia; reduction of time for work by being late; making conflicting appointments or completely forgetting appointments; development of symptoms or other emergency problems; or refusal to comply with agreements.

More often than one would want, after the work of mediation is successfully completed and an agreement identified that both parties had a hand in shaping, one party balks at the very last moment. The latter case may reflect resistance due to social factors, for it often reflects the influence of others who reject the resolution that the disputant has agreed to. They may be family members, close friends, or influential, respected third parties. Not having been part of the mediation, they continue to identify with the disputants' original position, making it a point of pride, honor, courage or machismo that the position prevail.

## Dealing with Resistance: Suggestions for Mediators

Since mediation tends to be a short-term intervention process, the mediator often does not have an opportunity to handle resistance in a protracted

manner. Given the many direct and indirect ways in which resistances surface, as well as the countless intervention modalities, it is not surprising that mediators may experience difficulty in coping with resistance. In fact, if they anticipate it and are prepared to accept it as a challenge rather than as a threat, they will be able to creatively work it into the mediation process. What follows are some suggestions to assist mediators:

- It is essential for mediators to feel secure, competent and comfortable with the mediation process. Mediators should have both procedural as well as sufficient substantive knowledge so that they can quickly recover when unexpected situations arise, to take charge of the mediation process, and to convince ambivalent or uninformed disputants. Qualities that are important include being able to provide information about mediation as well as other alternatives and referral sources; thinking "on one's feet"; and knowing or learning how disputants got to mediation in the first place. It is equally important that any challenges to the mediator not be taken personally.
- Since many mediators will not be in a position to conduct their own intake of cases and screen them as they see fit, they may find some of the disputants would not have been chosen to participate in a mediation session. In some instances, the disputants are overtly reluctant to participate since they feel that the mediation process was imposed on them. Mediators need to be careful not to become defensive while demonstrating that they are about to offer the disputants procedural assistance. Some disputants could easily question the mediator's competency or authority. Announcing of credentials and/or experience, establishing rules, providing structure, helping to find alternatives, and modeling might help alleviate this problem.
- Mediators should also be aware of the fact that they may not be ready or able to handle certain types of cases due to any number of factors including areas of personal conflict of interest, personal bias, subject matter and complexity of the issues to name a few.
- Furthermore, mediators should be alert to the possibility that they might contribute to resistant behavior through their own verbal or nonverbal communication. For example, mediators may not adequately encourage disputants to continue with the process, or may not provide sufficient structure and guidance for the parties to interact with each other. It is important for mediators to recognize and avoid creating situations that encourage resistant behavior to evolve.
- When resistance is indicated by one of the parties, the mediator needs to be alert to the possibility that the nonresistant party is trying to coopt the situation to gain advantage.

- There are times when the disputants are not ready or able to participate in the mediation process (Haynes 1985, 52) The mediator might examine why the parties sought out mediation as an intervention process and perhaps even slow down the mediation process so that they might think through why they are there.
- Some of the resistance demonstrated by the disputants may be the result of fear of the unknown, lack of knowledge, or even misguided expectations. For the mediator, then, introductory comments and/or a contract are often crucial in setting the stage for the mediation process. Useful information is imparted about expectations, roles and responsibilities for mediator and disputants that may help to reduce fears.
- At times, disputants may lack the ability or skills to negotiate adequately on their own behalf. A mediator might want to give information, caucus with the parties, or even make referrals.
- For mediators working in some organizations, resistance can be due to the problems associated with the system's processing of the cases. For example, disputants may have been delayed, subjected to excessive paperwork, rescheduled due to personnel shortages, the need for additional information, documentation, witnesses, attorneys, etc. The mediator should demonstrate empathy, and certainly apologize for the inconveniences experienced by disputants.

## Mediators and Resistance: A Final Word

Because mediation is viewed as a process in which disputants become engaged voluntarily, mediators may not be prepared to face resistance. In fact, some would argue that mediation sessions should not be conducted with resistant parties. The reality is that any intervention process activates resistance and, when it is not handled effectively, it can be a disruptive source of discomfort for mediators. Feelings of frustration, sense of failure, hopelessness, anxiety, resentment, loss of energy, insecurity, fatigue can result.

For mediators, the key to handling resistance is feeling secure with the mediation process. The hope would be that mediators, recognizing the significance of resistance to their work, would continue to learn more about its manifold roots and conceptualization, and work to develop better ways of recognizing and dealing with it.

## REFERENCES

American Bar Association (1983). *Law school directory*. Washington, DC: ABA Special Committee on Dispute Resolution.

Anderson, C. and Stewart, S. (1983). *Mastering resistance: A practical guide to family therapy*. New York: The Guilford Press.

Burger, W. (1984). "Isn't there a better way?" *American Bar Association Journal 63*, 247-277.

Colosi, T. (1983). On ethics: Of lions, lambs and underdogs.... Unpublished manuscript.

Colosi, T. (1986). Negotiating techniques. In T. Christian (Ed.), *Problem solving through mediation: Revisited* (Conference Proceedings November 30-December 1, 1984, Albany, New York). Albany, New York: Rockefeller College Press, 13-17.

Folberg, J. and Taylor, A. (1984). *Mediation*. San Francisco: Jossey-Bass.

Freedman, L. (1984). *State legislation on dispute resolution*. Washington: ABA Special Committee on Dispute Resolution.

Freud, S. (1912). A note on the unconscious in psychoanalysis. In J.Strachey (Ed.), *Standard edition of the complete psychological works of Sigmund Freud*, (Vol. 12). London: Hogarth Press, 1962, 260-66.

Haynes, J. (1985). Matching readiness and willingness to the mediator's strategies. *Negotiation Journal*, 79-92.

Levine, B. (1979). *Group psychotherapy*. Englewood, N.J.: Prentice-Hall.

Moore, C. (1986). *The mediation process: Practical strategies for resolving conflict*. San Francisco: Jossey-Bass.

Riskin, L. (1982). Mediation and lawyers. *Ohio State Law Journal, 43*, 29-60.

Sander, F. (1984). Alternative dispute resolution in the law school curriculum: Opportunities and obstacles. *Journal of Legal Education, 34*, 229-236.

Singer, E. (1965). *Key concepts in psychotherapy*. New York: Random House.

Strean, H. S. (1985). *Resolving resistances in psychotherapy*. New York: Wiley.

Wolberg, L. R. (1977). *Techniques of psychotherapy* (Vol. 1, 3rd ed.). New York: Grune and Stratton.

Zemlin, W. R. (1968). *Speech and hearing: Anatomy and physiology*. Englewood, N.J.: Prentice-Hall.

# Spousal Violence and Outcome in Custody and Visitation Mediation

*Richard D. Mathis*
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ABSTRACT

*To examine whether custody and visitation mediation is appropriate in cases with a history of spousal violence, the outcomes of 49 self-reported violent couples were compared to those of 29 never-violent couples in court-ordered mediation. Outcomes were not adversely affected significantly except in chronic cases where incidents had occurred both during the marriage and after separation ($p = .011$). This report calls for standardized screening to identify chronically violent spouses as well as for modified approaches to treatment of such cases.*

Mediation, an ancient approach to conflict resolution, is now increasingly being applied to the problem of reaching divorce settlements between spouses who disagree strongly, usually in regard to child custody and visitation. In divorce mediation, instead of litigating in court or negotiating out of court through lawyers, the spouses meet with an impartial third party who assists them in reaching a *cooperative* agreement which is based on their own decisions and is, theoretically, fairer and better suited to their family's needs. Often, the divorce courts themselves provide mediators, who usually have a mental health background (McIsaac 1982) such as counseling or social work.Although mediation is growing rapidly as an

alternative to other divorce interventions (Emery & Wyer 1987), a number of questions have arisen concerning its use in certain circumstances. For example, the appropriateness of custody and visitation mediation with spouses who are violent has been questioned emphatically by some non-mediators. Critics have gone so far as to state that either such cases should never be mediated (Battered Women's Advocates Caucus, 1983; Shaw, 1983), or that mediation is the least desirable of the alternatives to litigation (Lerman 1984).

Others have defended mediation with violent couples as an acceptable (or even preferred) intervention, provided it includes a combination of special screening and treatment which takes the spousal violence into account (Bethel & Singer 1982; Davis & Salem 1984; Erickson & McKnight 1988; Milne & Folberg 1988; Lemmon 1985; Marthaler 1989). This disagreement appears to be based largely on the question of whether the imbalance of spousal power which presumably results from violence renders fair negotiations between perpetrator and victim impossible.

## Conditional Support for Mediation

However, empirical and clinical evidence from the field suggests fair negotiation is possible under at least *some* conditions, even though spousal violence may have occurred. Several programs which included mediation of such cases have produced generally acceptable results (Bethel & Singer 1982; Marthaler 1989; Pearson, Thoennes, Mayer, & Golten 1986). Thus, there is qualified support for custody and visitation mediation with some types of violent spouses.

## Which Cases?

Unfortunately, the literature is not clear about what distinguishes appropriate cases from inappropriate ones. For example, does it make any difference in mediation whether the violence is current or limited to the distant past? Screening is needed, but before enlightened policies for screening can be set, additional empirical information is needed. This information should pertain to the frequency with which violent spouses are able to resolve their disputes in mediation, as well as to which dimensions distinguish the violent spouses who are successful from those who are not.

Moreover, better information is needed regarding the true *frequency* of cases involving spousal violence in mandated court mediation. For example, although extreme cases of violence often are identified prior to mediation, how many cases are there where less extreme spousal violence escapes casual screening?

## Multidimensionality of Spousal Violence

Mediation researchers generally have not distinguished formally between different levels of spousal violence. However, spousal violence has numerous dimensions which might be important in mediation, including severity, frequency, setting, mode, cause, recency, history, whether and in what context violence has previously been reported, and whether or not it has been the subject of prior interventions or is under treatment. Thus, it is important to avoid oversimplification and to recognize the multidimensionality of spousal violence in mediation. In addition, spousal violence is often accompanied by other symptoms, such as alcohol or drug addiction and individual psychopathologies (Straus & Gelles 1990).

For this exploratory study, spousal violence was conceptualized within two dimensions: *whether*, and *when* it had occurred in the stages of marriage, separation, and divorce. To the subjects, spousal violence was defined as any physical contact in anger between them. This yielded four ad hoc classifications of spousal violence based on their timing in the stages of marriage and divorce: (a) during the marriage only, (b) after separation or divorce only, (c) during marriage and after separation, and (e) never. These types were labeled "formerly violent," "newly violent," "chronically violent," and "never-violent" respectively.

## Purpose

Thus, the review of the literature raised the question of whether success in mandated court mediation between violent spouses was associated with its recency or its timing relative to the cycle of marriage, separation, and divorce. To test this, a comparison was made of four groups of spouses who differed by type from chronically violent to never-violent, according to whether or not they achieved full, partial, or no resolution. In so doing, the extent to which spousal violence was present in cases mandated for either custody and/or visitation mediation was also assessed.

## Method

### Subjects

The data for this study were drawn from 84 (N = 168 spouses) cases in mandatory custody/visitation mediation in a metropolitan family court service. The subjects were recruited serially as they registered for a premediation group orientation. All but two of the couples who participated in mediation during the recruitment period consented to be subjects in the study.

### Instrumentation and Procedure

Both spouses were given a 27-question, non-standardized self-report to complete separately prior to beginning the premediation orientation. The questionnaire was primarily intended to provide a better profile of the clients for the purpose of court-services planning. In addition to its questions about demographics and spousal violence, it asked for reactions to the premediation orientation and for parental perceptions regarding their children during their divorce. Spousal violence was of special interest due to informal mediator reports within the agency of what appeared to be a dramatic increase in the frequency with which allegations of the partner's violence arose during mediation sessions. The question was whether this was a new development in tactics by clients, or whether it was simply a case of mediation facilitating the disclosure of sensitive new information.

In the design of the questionnaire items on violence, Marthaler's (1989) warning about the use of overly crude definitions of abuse in working with clients was heeded. Marthaler found that clients may give misleading information because they are confused by general and seemingly simple questions, such as "Have you ever been abused by your spouse?." This and the fact that even well-designed self-report paper-and-pencil survey questions regarding volatile subjects such as family violence may not be very reliable are two of the limitations of this study.

The surveys were administered by the supervisor, one of the authors of this study, and collected by the mediators following orientation. The forms were placed in the case files. Thus, the mediators had access to their clients' responses to the survey and were free to use the information as they saw fit. No formal attempt was made to assess how, or if, this information was used during mediation, nor were the mediators asked to confirm whether they thought the data were correct. As cases closed, the mediators assessed their outcomes in terms of full, partial, or no resolution. These terms were defined, respectively, as either: (a) a written agreement

covering the major issues, and intended to be entered in court, (b) some agreement, or movement, on major issues relating to custody and/or visitation, or (c) no meaningful progress at all.

Case assignments were made non-selectively except where the supervisor was aware of or suspected problems that might call for a mediator with expertise in a particular area, such as bilingualism. Of the nine mediators who participated in the study, seven were women, two were black, one was Hispanic, and another was bilingual.

## Results

### Characteristics of the Sample

As Table 1 shows, two-thirds of the cases were for divorces and the remainder was for modification of existing agreements between already divorced spouses. Demographically, members of the sample were largely in their late twenties to late thirties (86.9%), Anglo white (70.3%), educated (58.0% with at least some college), and middle-income (61.5%).

Table 2 contains a breakdown of the types of spousal violence reported by the subjects. Nearly two-thirds of the couples in the sample reported spousal violence had occurred sometime during the marriage, separation, and/or divorce. Of these, the majority reported that violence had occurred during marriage but not after separation (the type designated here as "formerly violent"). Nevertheless, nearly one-in-five of the total sample (17.9%) reported they had been violent both during marriage and after separation (the 'chronically violent' type). Chi square tests showed spousal violence was not significantly associated with any of the demographic variables that were measured.

Wives' versus Husbands' Self-ReportsThe wives' reports were used to assess the level of violence because they were more likely to report it than were husbands, presumably because they were most often the victims. Husbands were more likely to report lower levels of violence or none at all. However, most husbands and wives agreed (68.0%) in their reports of violence. Where there was disagreement between spouses, it was usually the husband who minimized the extent of the violence. Although the subjects were not asked to identify the perpetrator or the victim, one husband reported being the object of spousal violence, but he added that he also was a perpetrator himself.

Table 1.
Sample Characteristics

| Variable | n | valid % | Cumulative % |
|---|---|---|---|
| Case type | | | |
| Divorce | 56 | 66.7 | |
| Modification[a] | 28 | 33.3 | 100.0 |
| Spouse | | | |
| Husband | 82 | 49.4 | |
| Wife | 84 | 50.6 | 100.0 |
| Age | | | |
| Less than 32 | 66 | 41.3 | |
| 33–40 | 73 | 45.6 | 86.9 |
| More than 41 | 21 | 13.1 | 100.0 |
| No report | 6 | | |
| Income (in thousands of dollars) | | | |
| Less than 10 | 39 | 25.0 | |
| > 10 < 25 | 61 | 39.1 | 64.1 |
| > 25 < 40 | 33 | 22.4 | 86.5 |
| > 40 | 21 | 13.5 | 100.0 |
| No report | 6 | | |
| Race | | | |
| Black | 22 | 13.9 | |
| White (Anglo) | 111 | 70.3 | |
| Other | 25 | 15.8 | 100.0 |
| No report | 8 | | |
| Education | | | |
| Up to H.S. graduate | 67 | 42.2 | |
| Some college | 52 | 32.7 | 74.7 |
| College degree + | 40 | 25.3 | 100.0 |
| No report | 7 | | |

[a] Modification: The already-divorced spouses return to court in a dispute over the custody and/or visitation terms of the existing divorce agreement.

Table 2.
Types of Spousal Violence Based on Wives' Reports for 84 Couples Entering Mandated Custody/Visitation Mediation

| Group | n | %[a] |
|---|---|---|
| Formerly violent (during marriage only) | 27 | 34.6 |
| Newly violent (after separation only) | 8 | 10.3 |
| Chronically violent (both during marriage and after separation) | 14 | 17.9 |
| Never violent (no violence or physical contact from anger) | 29 | 37.2 |
| Total | 84 | 100.0 |
| No report | 6 | 7.1[b] |

[a] percentage of cases reporting.
[b] percentage of all cases.

## Mediator Differences

The mediators varied in their case contribution from as few as four up to fifteen cases apiece. Chi square analysis in the three cases where the n was sufficiently large to make testing feasible, revealed no significant differences between mediators based on the outcomes they produced.

## Outcomes

Overall, the sample achieved full resolution in exactly half of all the cases. This is in line with rates reported for other similar court-mediation services. Chi square analysis was used to compare each of the violent subgroups against the never-violent group, 55% of which achieved full resolution. As Table 3 shows, these chi square values indicated that no significant differences existed between the formerly violent and the newly violent versus the never-violent couples, but a significant difference did exist between the *chronically violent* versus never-violent couples ($X2 (2) = 8.54$, $p = .014$). Even though the sample was sizable, when three levels of outcome were used, some of the expected cell frequencies in the chi square analysis were less than five, meaning the statistic was questionable.

Thus, the partial and no-resolution groups were collapsed together to achieve cell frequencies of adequate size. This had no effect on the results of the tests. The chi square statistic for both levels of outcome is reported in Table 3.

Examination of the observed outcome frequencies (Table 3) revealed that a majority of the formerly violent couples achieved full resolution. The newly violent couples as a group were very successful, with an even better rate of success than the never-violent group. Conversely, only one-in-five of the chronically violent group reached full agreement. Thus, all four types of violence groups were generally in balance with each other, except the chronically violent, which was extremely over represented in the partial and especially in the no-resolution classifications.

## Conclusions

The evidence indicates that, contrary to the idea that mediation is never appropriate in such cases, spousal violence does not necessarily preclude

Table 3.
Observed Frequencies and Chi Square Values for Outcome by Violence for 49 Violent Couples versus 29 Never-violent Couples in Child Custody/Visitation Mediation

| Subject group (n) | Resolution group Full | Part | None | $X^2$ (*df*) | *p* |
|---|---|---|---|---|---|
| Formerly violent (27) | 14 | 3 | 10 | .12(1) | .729[a] |
| Percentages | 52% | 11% | 37% | .76(2) | .686[b] |
| Newly violent (8) | 5 | 0 | 3 | .17(1) | .677[a] |
| Percentages | 63% | 0% | 37% | no test c | |
| Chronically violent (14) | 3 | 3 | 8 | 6.45(1) | .011[a] |
| Percentages | 21% | 21% | 57% | 8.54(2) | .014 b |
| Never violent (29) | 16 | 2 | 11 | — | — |
| Percentages | 55% | 7% | 38% | | |
| Total (84) | 42 | 8 | 34 | | |
| Total percentages | 50% | 10% | 40% | | |

[a]Computed for two levels of outcome with partial and no-resolution groups combined.
[b]Computed for three levels of outcome with some expected cell frequencies less than five.
[c]Only two outcome levels observed.

successful mediation. Specifically, mediation appears to work normally in most custody/visitation cases with a history of spousal violence except those where the violence has occurred throughout the marriage, separation, and divorce cycle—the type which has been labeled "chronic" in this study.

This general lack of success in chronic cases suggests either modified mediation or an alternative intervention is necessary. For example, alternatives might be prosecution or counseling, or, as Bethel and Singer (1982) recommended, an integrated multiple treatment program of which mediation is a component. Along the same lines, Pearson, Thoennes, Mayer, and Golten (1986) have also stressed that mediation in custody/visitation cases with spousal violence occurs within a divorce *system*, and that mediation does not stand alone as an intervention. This means mediators working with violent spouses should be aware of the resources available to them in other agencies and be prepared to employ them.

Because the extent (if any) to which the mediators in the study changed their treatment on the basis of information they noted in the survey was not assessed, it is not known how the results were affected, if at all. Future studies should better assess and control for this treatment variable.

A primary question raised by these results is why formerly and newly violent spouses fared so well compared to the chronically violent. Even though violence between newly violent spouses might have been recent, or even current, it did not seem to inhibit mediation. Perhaps this is because it was perceived by the participants as being merely situational (unique to the separation process). Thus, the couple would not behave in mediation as if spousal violence were built-into the dynamics of power, conflict management, and negotiation of the spousal/family system. On the other hand, as Isaacs, Montalvo, and Abelsohn (1986) have observed, chronic violence may become so integral to the spousal/family system that mediation would almost certainly fail because it would require a fundamental (second order) change in family functioning. Similarly, the formerly violent (those where there had been no post-separation violence) might have developed methods of controlling violence during marriage prior to separation, so that it had not become so built-in as to affect mediation. This means *the effects of present spousal violence in mediation likely depend on whether it was integrated into the spousal/family system in the past.*

From the finding that two-thirds of the cases involved histories of spousal violence, it is apparent that screening should be considered as a prerequisite to sound practice. To accomplish this, mediators should adopt a multidimensional perspective on spousal violence similar to the approach advocated by Nelson (1989) for understanding the relationship between parental hostility, conflict, and communication in joint- and sole-custody

families. Such an approach would be sensitive to the distinctions between past patterns of violence (from the marriage), present patterns (in the separation/divorce adjustment phase), and future patterns (post-divorce) which might be fostered by the very *design*—custody, visitation, logistics—of the mediated agreement. First, however, an acceptable, multidimensional definition of spousal violence that is more suitable for mediation is also needed.

Although it is clear that chronic (or extreme) cases of spousal violence require modified treatment, what about cases which are not extreme—or where violence may only be considered by the clients to be peripheral to more important issues? Additional research is needed to determine whether, or how, the less extreme cases actually differ from non-violent cases, as well as whether special mediation and/or follow-up might be called for. For example, is full resolution between violent spouses as valid as full resolution between the non-violent? In this regard, Pearson, Thoennes, Mayer, and Golten (1986) found compliance rates for violent spouses were lower, indicating agreements between violent spouses may be less valid. Research is also needed on whether agreements reached between chronically violent spouses, though few in number, are as fair as non-chronically violent agreements.

Finally, the seeming candor with which the subjects reported spousal violence in their marriages was impressive. The fact that most husbands backed up their wives in reporting violence (although sometimes they reported lesser degrees) indicates that allegations or even hints of spousal violence should never be dismissed lightly as mere negotiating ploys. A standardized self-report questionnaire covering spousal violence is needed, and these findings suggest that paper-and-pencil self-reports for premediation assessment would work well. Combined with more systematic mediator assessment of violence in the initial interviews, such an instrument should dramatically improve the present effectiveness of premediation screening. The high incidence of spousal violence uncovered in this study is a red flag that all cases should be screened as a matter of routine practice. In addition to a more standardized method of screening, guidelines for modified treatment strategies are needed in cases where spousal violence has occurred.

## REFERENCES

Battered Women's Advocate Caucus (1983). Resolution on mediation, 14th national conference on women and the law, Washington, DC, April 10, 1983. *Women's Advocate, 4*(3), 3.

Bethel, C.A., & Singer, L.R. (1982). Mediation: A new remedy for cases of domestic violence. *Vermont Law Review, 7*(15), 15-32.

Davis, A.M., & Salem, R.A. (1984). Dealing with power imbalances in the mediation of interpersonal disputes. *Mediation Quarterly, 6*, 17-26.

Emery, R.E. & Wyer, M.M. (1987). Divorce mediation. *American Psychologist, 42*(2), 472-80.

Erickson, S.K., & McKnight, M.S. (1988). *Family mediation casebook: Theory and process.* New York: Brunner/Mazel.

Grebe, S.C. (1985). Mediation at different stages of the divorce process. In J.C. Hansen (Ed.), *Divorce and family mediation* (pp.46-47). Rockville, MD: Aspen.

Isaacs, M.B., Montalvo, B., & Abelsohn, D. (1986). *The difficult divorce.* New York: Basic Books.

Lemmon, J. (1985). *Family mediation practice.* New York: Free Press.

Lerman, L. G., (1984). Mediation of wife abuse cases: The adverse impact of informal dispute resolution on women. *Harvard Women's Law Journal, 7*, 57-113.

Marthaler, D. (1989). Successful mediation with abusive couples. *Mediation Quarterly, 23*, 53-66.

McIsaac, H. (1982). Court-connected mediation. *Conciliation Courts Review, 21*, 49-56.

Milne, A., & Folberg, J. (1988). The theory and practice of mediation: An overview. In J. Folberg & A. Milne (Eds.), *Divorce mediation: Theory and practice* (pp. 18-21). New York: Guilford.

Nelson, R. (1989). Parental hostility, conflict and communication in joint and sole custody families. *Journal of Divorce, 13*(2), 145-157.

Pearson, J., Thoennes, N., Mayer, B., & Golten, M. (1986). Mediation of child welfare case. *Family Law Quarterly, 20*(2), 303-322.

Shaw, M., (1983). *PINS mediation process and procedures manual.* New York: The Children's Aid Society.

Straus, M.A., & Gelles, R.J. (1990). *Physical violence in American families.* New Brunswick: Transaction.

# In the Shadow of Best Interest: Negotiating the Facts, Interests, and Interventions in Child Abuse Cases

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ABSTRACT

*Most cases of child abuse and neglect are not as extreme or clear-cut as those reported in the media. In routine cases the perpetrator is usually a family member, the evidence of injury is ambiguous and the identity of the perpetrator is uncertain. Prosecution, removal of the child, and therapy for the family are sometimes contradictory mandates which courts and social service agencies must balance.*

*Norm-centered negotiation is the decision making process found in this study of child protective work. Child protection workers sometimes negotiate with families in their decisions to confirm abuse, representatives of different agencies negotiate with each other to establish the facts of a case, the best interests of the child, and the service plan. Negotiation is interpreted to be a practical solution to chronic factual uncertainty, contradictory mandates and multi-agency participation in decisions.*

*Recognition and legitimation of negotiation as the actual decision making process in many cases will permit agencies to keep records and data which permit more adequate monitoring of case processing. Legitimation of negotiation will permit explicit training of staff in more effective methods to negotiate in the shadow of the best interests of children.*

## Introduction: Child Abuse As a Social Problem

There is dramatic symbolism in the imagery of a playground marauder or day care center employee who molests children. Public reaction to these widely reported cases is swift and uncompromising. Offenders are to be prosecuted and severely punished. Court procedures which seem to impede prosecution or inhibit the testimony of child victims are easily criticized. There is little public sympathy for the rights of the accused and much public concern for the victim.

Child abuse (physical battery, sexual exploitation, or gross neglect) has become a social issue (Nelson 1984). Recent improvements in the public consciousness of the pervasiveness and severity of domestic violence has led to action. New child protective laws and increases in the reporting of abuse have intensified the demands on state, municipal, and family courts for vigorous prosecution and on social agencies for expeditious intervention to protect children.

However, for every child that is a victim in a highly publicized case in which the villainy and the villain are known, there are hundreds who live in more ambiguous situations. Their danger is less obvious and interventions to protect them are not clear. While expeditious decisions and an emphasis on safety characterize the new laws and agency policies, they also reflect the realities of handling large numbers of heterogeneous and ambiguous cases.

By every estimate most child abusers are members of the family. For these cases, laws and policies emphasize the interests of the child over criminal prosecution. Balancing these two objectives is difficult and controversial. There is a strongly expressed and extensive argument that the preservation and reunification of the family is in the child's best interests. The reasoning is that even a problematic family is better for child development than the loss of family (Goldstein, Freud, & Solnit 1973; Wald 1980).

On the other hand, public concerns for lowering the risk of danger to children, and deterring abusers require holding ready or using the coercive power of the law to remove children and to criminalize abusive conduct. Some criticize child protection agencies and family courts for the low rate of prosecution of family members as dereliction of the duty to protect and deter, or as simple inefficiency.

There are three models of intervention in child abuse cases that have been advocated historically. However, in this study of child abuse case processing, a negotiation model was found to typify the working style of crisis social workers and other professionals.

## The Prosecutorial Model

In the past, police and prosecutors were reluctant to make arrests within violent families. Such arrests were thought to be unproductive because of witness failure and the possible provocation of further violence by the offender upon return to the family. But the justice model has recently gained credibility through the well-advertised study of Sherman and Berk (1984), which argues that arrest in spouse abuse cases produced lower re-abuse rates than two other non-arrest options (Sherman & Berk 1984; Berk & Newton 1985).

However, child abuse cases within families are infrequently prosecuted. Absence of clear and dependable testimony from a first-hand witness is still a major factor in the low rates of prosecuting child abuse. Abused children are an extreme type of "situational" victim. The experiences of these crime victims shows that they are beset by problems which are not solved by an arrest or even a conviction. These situational victims are caught in a context which exposes them to continual or episodic contact with an offender. This contact in turn results in repeated injury, harassment, or avoidance costs. Effective escape is precluded and inhibits them or their family allies from pressing for prosecution. For abused children the privacy of the home, the extremity of dependency, and power differences may drastically reduce any gains brought about by prosecution. While the prosecution model seeks and may achieve some deterrence effect, the costs born by the victim may be considerable.

## The Clinical Model

The clinical model seeks to deliver effective services to victims and offenders. Psychological, psychiatric or social work case services are intended to restore the victims and protect them from further abuse by rehabilitating the offender, or restructuring the family situation. The full medical-case work model is brought into play in some cases, but is restricted by the high cost of trained clinical personnel and the number of cases in which the client resists seeking or accepting help.

Poor parenting skills, alcohol and drug use, and other treatable problems may be assessed as the basis for abuse or neglect. Family members may be receptive and participate in programs or services. But the time required for the achievement of treatment effects even in a favorable situation may leave the child victim at unacceptable risk during the treatment process.

Clinical models apply professional and technical expertise to human problems. They work best when there are clear diagnostic and treatment-response criteria. In a review of eleven child maltreatment programs, however

> [there is] little consensus in the field on what constitutes quality [of case management]...since we are still in the midst of debates about some of the dynamics of child abuse and neglect...it is difficult to judge with confidence how well various services are being delivered and the adequacy with which certain functions are being carried out. (Cohn & Miller 1977, 457)

## The Child Saving Model

"Child saving" emphasizes the removal and rescue of a neglected or abused child over criminal prosecution and clinical intervention. Its current revival dates from the publication of the well-known "battered child syndrome," and is an ideological animus to much of the thinking and practice in child abuse. However, child protective laws, while establishing the legal right to rescue, also prescribe limits to the removal of a child from the home. There are various rationales for these legal limits. One is the orthodox psychoanalytic conviction that disruption of parent-child bonds is inevitably disturbing to child development. A second is the advocacy of the child's rights to a place in his or her family. A third is the liberal defense of rights or citizens against the coercive power of the State. A fourth is the practical possibility of a subsequent civil action by someone too quickly or falsely accused of child abuse.

While rarely articulated, an additional reason for limitations to the removal of children, is the foster home problem. There is a relatively high risk of continued problems when a child is placed in a series of foster care homes. Reliable studies of the results of foster care suggest that the quality of supervision is often substandard, that reabuse upon return to the original family is high, and that the sheer unavailability of foster homes limit its use (Block & Libowitz 1983; Wald, Carlsmith, Leiderman, deSales French, & Smith 1985).

The three models separate the principle approaches to abuse for a clearer description and understanding. However, real life agencies and professionals

mix and use elements of all models. The models coexist as a basis and rationale for decision making in most child abuse cases.

The *severity* of abuse and the *clarity* of the facts are two case attributes which also help reveal how decisions are made. In the many confirmed cases where abuse is not severe, social workers process cases unilaterally. In these "minor" cases, families often agree to intervention, accept counseling and other supports to keep the family relatively intact and perhaps even improve the family climate for children. If families cooperate and permit intervention and closer supervision, the clarity of the facts become less important.

A small number of cases are not treated as minor. They have one or more of the following features. Injuries may be visible, and in a few cases, serious. The facts on injuries may be unclear or inconsistent. Even with clear facts showing the presence of abuse or neglect, the source and perpetrator may remain uncertain. Victimization is severe or chronic. Families do not cooperate, or appear only marginally competent to participate in treatment. The prosecution of the offender or removal of children is contemplated, usually against family wishes. In these cases efforts to establish more certainty in the facts are made, often unsuccessfully. Thus, decision making is difficult, and usually involves several professionals in different agencies.

## Research Questions

Decisions made by professionals in their processing of child abuse cases is the subject of this study. We seek to understand the processes by which decisions are made, by whom and on what basis. Three analytically distinct decision points in these cases are isolated: confirming that real abuse exists, identifying the best interests of the child (usually seen in a remove or return to family decision), and fashioning a service plan for the family.

## Data Sources

There are three data sources used in this study. Statistics on cases of reported child abuse received by a large state child protection agency were reviewed. In-depth field interviews with all child protection workers in the intake unit of the same agency were conducted and analyzed. Observations and field notes from 16 case conferences involving over 45 children were studied. Informal observations and conversations with social workers,

attorneys, and court personnel were also helpful in understanding decision processes. These constitute the empirical basis of this report.

## Results

The agency annual report describes 1,852 complaints of child abuse or neglect. Slightly less than half of these (47.3percent) were confirmed.

According to state law, all abuse complaints must be investigated and either confirmed or not confirmed. Both are entered into the data base and even non-confirmed complaints may affect decisions on the family if a subsequent complaint is received. According to the CPS workers and their supervisors:

> Confirmed means, based on the evidence, that the abuse or neglect occurred. It confirms the report made. The allegations must be specific, that is, a child was hit with a stick or belt...with threatened harm a child may [also] be removed. The profile of the parents and the family history (drug abuse, leaves the children unsupervised, teenage mother) may influence decisions. A case is considered confirmed if parents admit to the abuse. A case can be confirmed on basis of statements of child [if old enough] or sources such as medical reports, psychologists reports, police records, military police records. (Field Interviews)

To confirm neglect, the social worker will look at the family history, talk to neighbors and relatives and try to get a pattern. Before making a decision to confirm, the social worker will consult with any medical doctors, therapist or school personnel who might have information about the case. The agency uses a multi-disciplinary team for social worker consultation about the facts of the case. The team consists of a psychologist, medical doctor, social worker, nurse and deputy attorney general. The team's recommendations are not binding.

Another social worker said in some cases she will bargain with the parents over the issue of confirmation. This was more frequent with military parents, primarily because active duty military personnel are closely supervised and are subject to punishment on such a complaint. Rather than confirm abuse, this social worker will designate the family as "high risk" if the family will cooperate and actively participate in a service plan. The social worker then monitors the case and works with the military liaison person.

### Two Styles of Confirming Abuse

All agency workers stressed that in the small number of cases where there was willful abuse producing tangible injury or where there was evidence of clear danger to the child, they invariably confirmed the complaint. However, there appear to be *two* patterns among workers in deciding on whether or when to confirm in the more ambiguous cases. In the first pattern, if, upon investigation, abuse is strongly suspected but injury is minor and if the family is cooperative and caretakers indicate willingness to accept services on a voluntary basis, the social worker may decide not to confirm. If the family is uncooperative, the worker may confirm the case and take the case to court to impose an intervention. Explicit discussion of these two options with the family may result in a decision by the family to cooperate. In this pattern, confirmation is negotiated. In the second pattern, however, some social workers stated that they confirmed any case on the basis of evidence, regardless of family attitude. But if the family immediately complied with a written contract and treatment plan, the case could be reevaluated and closed. If the family voluntarily agrees to a service plan but then does not comply, the Department can take the case to Family Court and seek to get services court ordered. In the first pattern, confirmation is immediately negotiated; in the second pattern, confirmation is not negotiated, but the status of the case will be negotiated at a later time. In both cases, the child protective worker acts to increase their influence in negotiations with the family.

### Removal of the Child

In about 25 percent of the confirmed abuse cases, and 20 percent of the confirmed neglect cases, children were removed from the home for some period. In about 7 percent of non-confirmed complaints, children were also removed, however, only 4 out of 55 removals were court ordered. The remaining were out-placements arranged with the "voluntary" consent of the family. The rate of court ordered removal was much higher for confirmed abuse or neglect cases, but overall about three times as many children are removed by "voluntary" actions as by court order.

The seriousness of injury increases the likelihood of removal. For children with internal injuries, fractures, concussions, and severe psychological abuse, removal rates were 40 percent to 50 percent, compared with 8 percent for cases without such injuries. Older children (above 11 years, and especially those above 13) and children in "common law" or divorced households also are more likely to be removed.

**The Decision to Remove the Child from the Home**

The law empowers the child protection agency to remove a child if there is need for treatment, imminent threat, or probable cause to believe abuse will occur.

> In a remove/not remove decision, the case worker will look at imminent harm...the child has been harmed and it is likely the child will be harmed again. Or, if the child hasn't been harmed but the profile is so risky that it appears the child will be harmed.
>
> Items in a remove/not remove decision include: parents' expectations of the children (are they age appropriate?), characteristics of parents (particularly mental status), previous record. Information is gathered from neighbors, police, the person who made complaint, and social workers' observation of the parents' attitude toward the child. (Field Interviews)

Negotiation may occur when a worker seeks police assistance to remove a child. Sometimes the social worker can talk the parents into voluntary placement of the child and the social worker can then remove the child. According to one social worker, the judgment of the police officer often enters into the removal decision. During the day the social worker can phone the lieutenant in the police juvenile division to order an officer to remove a child. But at night, sometimes the police will not agree to remove the child. The social worker is told to "talk as fast as you can" to convince the officer to remove the child. If the worker fails to convince the police, they can talk to the parents to try to get them to release the child. A court order is the worker's last option and gets such a hearing within 48 hours. With military families, M.P.'s can remove and place the child in a Federal hospital for a workup. The agency worker can get a court order to take the child from the hospital when abuse is confirmed.

Return after removal also may involve negotiation. Our interviews indicate case workers used the option of return in connection with family cooperation with the service plan. The social worker sometimes bargains with the parents' attorney to get the family to "stipulate" in order to avoid a contested hearing. The leverage the social worker often uses is that if the family will cooperate with the services, the child can go home.

Bargaining sometimes takes place with regard to criminal charges, especially where the evidence is known to be weak. If the family will cooperate, criminal charges may be dropped. This happens most often in cases of

sexual abuse, and is justified as "more effective protection" (Field interviews). While there were approximately 200 children removed during the research year, only about 50 were removed by court order. The child protective workers negotiate with families under a shadow of potential court ordered removal. Of course, the court does not always remove a child when the worker requests it. But the threat is credible.

## The Case Conference

Much of the information gathering and decision making in child abuse work is done on the telephone between pairs of people. Sometimes informal face-to-face conferences occur over cases. Most of this work seems to be handled routinely. But cases in which the facts and interventions are not clear are processed in a more formal case conference. It is the setting in which the "factual" basis for an assessment is developed and a course of action may be determined.

We observed sixteen conferences, each lasting about 2 hours and usually dealing with three cases. They were routinely scheduled each week and were usually held in a hospital meeting room. The pediatrician (P) presided, and the typical attendees were a pediatric nurse (PN) with training in child abuse, a mental health professional, usually a psychologist (PSY), the CPS worker (W) who presented the case, the worker's supervisor (S), a lawyer (L) retained to advise the conference, and a psychology student note taker. Frequently, there were other social workers who had contact with the family, public health nurses, school counselors, and special education teachers.

In a typical conference, the case worker would begin by describing the abuse or neglect report, the information which was gathered to date and the actions that had been taken. They would identify one or more uncertainties in the case which was the reason for the conference. Usually the pediatrician would follow with a very short description of the medical history and diagnosis of any injuries. Frequently, the lawyer would be questioning the pediatrician about any injuries and exchanges among the group would follow. A typical example follows:

L "Any previous injuries?"
P "No."
L "None?"
P "None on the pictures (x rays) or in our records."
L "What caused the arm?" (A fractured bone in the upper arm of a 4-year-old boy.)

P "He said his brother."
S "The father says he fell."
L "Could he have fallen?"
P "It's a fracture that comes from twisting, not likely in a fall, usually a strong person has to do it."
L "For sure?"
P "75 percent"
L "That's good enough for me, but maybe not for Judge ____, he used to defend these people."
PN "Is he hearing the petitions this month?"
P "I don't think we are at that point yet. (To the PSY) Have you done your work-up yet?"
PSY "Sort of. The family is borderline. Mom is real needy but is hanging in there. A few scores are pretty good."
S "How's father?"
PSY "Doesn't like all the attention, but I don't see anything serious... drinks a fair amount."
W "He hasn't cooperated much."
L "Anyone know who did it? Brother or father?"
OBSERVATION: No response to L's question. Shrugging of shoulders, raising of eyebrows.
L "Well, we could get 'em on neglect. They let someone do it."
P "What are the other options?"
W "Mom is willing to do almost anything."
PN "What about temporary placement?"
S "Low priority. We could do it but not immediately. I don't think it's indicated yet."
P "If it was, how soon could you get him in?"
S "Immediately, if he was in danger. Four months to get him into a good one."
PN "I'm worried about this kid. Is he safe if we leave him?"
L "If it's Dad, can Mom stop it?"

After approximately 40 minutes of similar dialogue, the pediatrician summarized what he described as a "tentative consensus" that the child would remain in the family with close supervision by the CPS worker until both the father and mother were involved in one of several potential counseling services. No one dissented, and there was resigned agreement with such phrases as "nothing else looks practical."

At this and other case conferences, the pediatrician performed the role of mediator by calling on different people, diverting premature decision making, checking the quality of factual assessments, and the practicality of

interventions. The pediatrician also modeled brevity and grounded explanations in his discourse.

The lawyer was usually active early in the discussions on the factual basis for any legal action, and on the practical problems presented by the reputations of judges who would hear the case and lawyers who represented the parents. While less involved in discussion of the types of intervention, the lawyer was knowledgeable on entitlements and insurance benefits which she often contributed to the frequent discussions of how various counseling services could be financed.

The CPS supervisor often resisted the removal of children to foster homes more than most others at the conference. He articulated the philosophy of keeping a home intact and sometimes stated that getting and keeping foster parents was very difficult. During one conference over a pair of early teenage girls who were running away from home, he states, "These are the kinds of kids who use up foster homes. After they run away several times or try to burn down the garage, we have a helluva time keeping the foster parents."

If the conference seemed to move toward a consensus to remove a child, they would often return to the typical early discussion in which the information base for the abuse or neglect was discussed. When tangible and observable injuries were not available, the discussion would try to ferret out other bases for a justification to intervene.

PSY "Has anyone seen any bonding?"

PHN "Not recently, but last year I was working with them on managing ear infections and I noticed the little girl go to her mother voluntarily several times.

These conferences are one important venue for interagency decision making about the nature and quality of facts present in a case, the desirability and practicality of invoking a legal intervention, and the availability and financing of interventions in child abuse cases. These conferences are a form of mediated negotiations between various professionals with access to different forms of information and influenced by different organizational and philosophic interests. They also collectivize responsibility for decisions for which there is a high level of uncertainty and potentially serious consequences.

## Summary

Two types of negotiation were commonly observed:

1. negotiating a working conception of the facts of the case from fallible or contested sources;

2. negotiating a course of action between opposed interests of the parties to the dispute, including the State.

These varieties of negotiation are brought into play at three phases of case disposition:

1. to confirm the complaint of abuse and determine if an abusive risk exists;
2. to identify if the risk and the best interests of the child justify removal of the child from the home;
3. to achieve an effective disposition or resolution of the case, including an adequate, acceptable, and enforceable service plan, and long-term placement of the victim within or outside the original family.

## Discussion

### Decision Making

As of 1985, Michael Wald et al. could still write:

> The terms abuse and neglect have no agreed upon definition. (See also Ziegler 1980.) Child protection agencies become involved in abuse cases ranging from brutally beaten children with broken bones to children who suffered spankings by hand without visible injuries. Neglect cases are even more diverse. Adding to the complexities many cases involve a mixture of abuse and neglect.... Moreover...one [may] take into account a variety of factors which may be related to how seriously we should view the need for intervention, such as the actual or potential severity of injuries, the parents' mental state at the time of the incident, the presence or absence of a history of abuse or neglect and the receptiveness to intervention of the parent.... Giovannoni and Beccera (1979) found professionals from different disciplines which deal with abuse and neglect cases differ substantially when rating the seriousness of various forms of abuse and neglect. (Wald 1985, 37-40)

In the Stanford study, Wald et al. observe that

> determining re-abuse or continued neglect is difficult. While some conduct clearly constitutes either abuse or neglect, nor all physical harm to the child or parental inattention equals abuse

> or neglect, at least for purposes of permitting state intervention.... We must draw some fine lines. (1985, 87).

In a study of English, multi-agency responsibilities in child abuse cases raises questions of coordination and decision making, Dingwall, Eekelaar, and Murray (1983) concluded that agencies face major difficulties in reviewing case handling, enforcing standards and implementing policies. Careful descriptions show how agency personnel deal with factual uncertainty and inconsistent agency mandates. Their detailed analysis of a case conference concerning an injured child is illustrative of the negotiated basis of child protective decisions, which they describe as a

> clash between the medical model of the conference as an occasion for information to be collected and decisions delegated under a doctor's orchestration, and social services' view of the conference as an occasion for them to listen to discussion and take advice in the course of forming their decision. (Dingwall et al. 1983, 153)

## Public Concerns and Decision Making

The decisions made by agencies and courts in cases of child abuse have been criticized from the three perspectives— justice, clinical, and child saving—described at the beginning of this article. Hageman (1985) reports similar distinctions in work with child sexual abuse.

There are elements of casework, child saving and prosecution models in case disposition, but as overall characterizations each of these is incomplete if applied to the way organizations process child abuse cases to a final disposition. Thinking of the process as clinical casework exaggerates the degree to which a client-professional relationship can be maintained in contested situations. Thinking of it as child saving, overestimates the frequency with which families are reconstituted or children permanently relocated. Thinking of it as law enforcement ignores the small proportion of cases which result in prosecution or conviction. Each is a partial view from a different professional perspective. We found elements of all models in each case, but with variable emphasis. As a normative model each may appeal to the predispositions of advocates and theorists. As a descriptive model of the process, none were adequate. They did not help us to understand the

processes we observed, the basis of the decisions and the behavior of the participants.

No model satisfies public expectations of straightforward social control. This makes it difficult to mobilize public support for a realistic approach to services, to legislate realistic policies and explicitly train staff in some of the skills they will actually need to do their job. Moreover, it results in record systems which do not document important steps in case disposition. This in turn inhibits evaluation of the effects of various intervention strategies on the short or long term status of the victim (Chiles 1979; Conte & Berliner 1985; Fanschel and Shinn 1978; Mnookin 1973; Runyan, Gould, Tost, & Loda 1981; Stein & Rzepnicki 1983; Taw 1979; Wald 1980).

Knowledge of the complexities in the consequence of removing children from abusive homes is increasing. Some find that foster care is generally beneficial. Wald et al. (1985) presents data demonstrating that foster care can protect children from further abuse in most instances (see Bolton, Laner, & Gia 1981). Lemmon's research shows that children in foster care do not have especially low self esteem or an unfavorable self concept (Wald et al. 1985). Others have found that children in foster care fared better than they had with their parents.

The work of Block and Libowitz (1983) establishes the second side of the remove-return decision: many children who are returned to their family are subsequently removed again either by authorities or parents because of resurgence of the original abuse or problem, or because of a new problem. Others report that foster children do not have a high repeat return rate after they are returned to the family, nor a high delinquency rate (Runyan 1985). In very serious cases in which parental rights are terminated, Borgman reports that involuntary termination caused more serious problems for the child than it solved (1981, 402).

## Research Issues in Negotiation

> Negotiation is a ubiquitous part of social life. Some even say that social order itself is a negotiated phenomenon. Yet the study of negotiation as an actual discourse activity, occurring between people who have substantial interests and tasks in the real social world, is in its infancy. (Maynard 1984, vii)

Maynard was writing of prosecutors and public defenders in criminal cases, but his ideas may apply to many inter-agency case-based decisions.

The reconceptualization of the model of case disposition as a type of dispute negotiation is useful but may be controversial. Negotiation is conventionally viewed as a norm-free process involving power, bluff, and an imperative to compromise. This image is appropriate for business transactions but hardly for deciding the fate of a helpless child.

Negotiation is sometimes viewed as an unfortunate but necessary accommodation to practical problems. In Maynard's path breaking study of plea bargaining in a misdemeanor court he says

> Plea bargaining is often depicted as a response to such outside factors as overcrowding in the courts...[but he]...views plea bargaining not as reaction but as participants enaction of taken-for-granted discourse and negotiation skills...derived from practitioners own cultural knowledge and praxis rather than from outside social pressures. (1984, 2)

Negotiation research reveals a wide variety of negotiation types. Eisenberg's "norm centered model of dispute negotiation," which emphasizes that negotiation outcomes are heavily influenced by the principles, rules, and ethics that are invoked by the negotiating parties, is a useful conception of what we saw in child abuse processing (Eisenberg 1976).

To be sure in the agency we studied, practical questions were part of child abuse negotiated decision making. Does the factual evidence reach the level of "probable cause"? How will interventions be financed? Does this child need a scarce foster home placement more than some others? These concerns were discussed openly but not to the exclusion of safety and best interest. These two principles were the omnipresent shadow under which negotiations were conducted.

Our observations on how child abuse cases are negotiated in reality fit with research on disposition and settlement in regulatory agencies and in criminal prosecution. The process of working with child abuse cases as negotiation is essentially an empirical, descriptive judgment. As in studies of plea bargaining in criminal cases, there are policy questions to be raised. While research may establish that plea bargaining is a common feature in criminal court processing of cases, it is an evaluation question to what extent and under what conditions plea bargaining is consistent with the interests of justice, the protection of the community, and the constitutional rights of a defendant. Winter, in his analysis of the day-to-day enforcement of Federal Environmental Protection laws by the E.P.A., has described agency work as "barter" with the manufacturers, but wonders if "newly articulated justifications for bartering rationality may...tend to legitimate

and promote a longstanding disguise for thwarting the popular will" (Winter 1985, 248).

This research is similar in findings and implications. Professionals seem to use negotiation to cope with cognitive uncertainty, program resource limitations, conflicting mandates, and clashes between opposing interests of parties to the case. There are analytic and practical advantages to explicitly conceptualizing it in this way rather than as clinical or justice decision making. One is to promote a more searching and realistic evaluation of the consequences of intervention and the extension of protection and services to an important type of victim.

Studying the disposition of child abuse cases from the standpoint of negotiation may promote better understanding of the issues faced by agencies and could facilitate the development of information systems and evaluations to better assess the effects of agency intervention.

Law and business schools have recently begun teaching negotiation. They recognized that while negotiation had been a major activity in these fields, it had never been legitimized, researched, and developed into a formal academic area. They now teach students to be critical, analytic, reflective, and skillful in negotiation. This was only possible when a body of empirical research and theory on negotiation was developed. The same professional development could be fostered in the complex and important work of controlling child abuse.

The research and analytic perspective of sociology is particularly compatible with a negotiation model of multi-profession and cross-organization decision making. We believe sociological research can provide an empirical base for the critical evaluation of negotiation processes and outcomes.

## Conclusions

In addition to a research agenda, focused on evaluating a negotiation perspective of child abuse case processing, there is an immediate practice agenda. If much of interagency decision making is truly negotiation, and perhaps informally mediated negotiation as well, are there benefits to recognizing it as such and doing it well. Many social workers and other agency personnel are not prepared to negotiate effectively. There is an ;emerging literature on designing systems and organizations to facilitate negotiated resolution of differences. Record keeping systems can be designed to capture salient features of negotiation so that assessment and ;monitoring is relevant to actual organizational practice. Education and training in the theory and practice of negotiation and; mediation could

strengthen the practice of negotiation in the shadow of children's best interest.

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## REFERENCES

Berk, R., & Newton, P. (1985). Does arrest really deter wife battery? An effort to replicate the findings of the Minneapolis Spouse Abuse Experiment. *American Sociological Review, 50*, 253-262.

Block, N., & Libowitz, A. (1983). *Recidivism in foster care*. New York: Child Welfare League.

Bolton, F.G., Laner, R., & Gia, D.S. (1981). For better or worse: Foster parents and foster children in an officially reported child maltreatment population. *Children and Youth Services Review, 3*, 37-53.

Borgman, R. (1981). Antecedents and consequences of parental rights terminations for abused and neglected children. *Child Welfare, 60*, 391-404.

Bowlby, J. (1965). *Childcare and the growth of love*. London: Penguin.

Chiles, C. (1979). *The effectiveness of a state hospital treatment program for mentally ill adolescents*. Austin: University of Texas at Austin, School of Social Work.

Cohn, A.H., & Miller, M. (1977). Evaluating new modes of treatment for child abusers and neglectors. *Child Abuse and Neglect, 1*, 453-458.

Conte, J.R., & Berliner, L. (1985). The road not taken: The ellusive path to criminal prosecution for white collar offenders. *Law and Society Review, 19*, 179-217.

Dingwall, R., Eckelaar, J., & Murray, T. (1983). *Protection of children: State resolution and family life*. Oxford: Basil Blackwell.

Eisenberg, M. (1976). Private ordering through negotiation: dispute settlement and rule making. In S. Goldman, E. Green, and F. Sander (Eds.), *Dispute resolution* (pp. 78-89). Boston: Little Brown.

Fanshel, D., & Shinn, E. (1978). *Children in foster care: A longitudinal investigation*. New York: Columbia University Press.

Giovannoni, J., & Becerra, R.M. (1979). *Defining child abuse*. New York: Free Press.

Goldstein, J., Freud, A., & Solnit, A.J. (1973). *Beyond the best interests of the child*. New York: The Free Press.

Gulliver, P.H. (1979). *Disputes and negotiation: A cross cultural perspective*. New York: Academic Press.

Hageman, J.M. (1985, November). *Legal dimensions in prosecution of sexual abuse cases*. Paper presented at the American Society of Criminology, San Diego, CA.

Maynard, D.W. (1984). *Inside plea bargaining*. New York: Plenum Press.

Mnookin, R.H. (1973). Foster care: In whose best interests. *Harvard Educational Review, 43*, 599-638.

Mnookin, R. H. (1985). *In the interest of children*. New York: W. H. Freeman.

Nelson, B. (1984). *Making an issue of child abuse*. Chicago: The University of Chicago Press.

Rosette, A., & Cressey, D. (1976). *Justice by Consent*. Philadelphia: J. B. Lippencott.

Runyan, D. (1985). Foster care for child maltreatment: Impact on delinquency. *Pediatrics, 75*, 562-568.

Runyan, D., Gould, C., Trost, P., & Loda, F. (1981). Determinants of foster care placement for the maltreated child. *American Journal of Public Health, 71*, 706-711.

Sherman, L., & Berk, R. (1984). The specific deterrent effects of arrest for domestic assault. *American Sociological Review, 49*, 261-272.

Stein, T., & Rzepnicki, T. (1983). *Decision making at child welfare intake*. New York: Child Welfare League of America.

Taw, T.E. (1979). The issue of reinjury: An agency experience. *Child Abuse and Neglect, 3*, 591-600.

Wald, M. (1980). Thinking about public policy toward abuse and neglect of children. *Michigan Law Review, 78*, 645-693.

Wald, M.S., Carlsmith, J., Leiderman, P., deSales French, R., & Smith, C. (1985). *Protecting abused/neglected children: A comparison of home and foster placement*. Stanford: Center for the Study of Youth Development.

Winter, G. (1985). Bartering rationality in regulation. *Law and Society Review, 19*, 218-250.

Zigler, E. (1980). Controlling child abuse: Do we have the knowledge and/or the will? In G. Gerbner, C. Ross, and E. Zigler (Eds.), *Child abuse: An agenda for action*. New York: Oxford University Press.

# Power Imbalance within the Setting of Special Education Mediation: A View toward Structural and Organizational Factors Influencing Outcome

*Jennifer Adams Mastrofski*

ABSTRACT

*Research on mediation as a means of dispute resolution has alluded to potential injustices that may emerge from the process when conflict occurs between persons of unequal status. An example of such inequity would be when one party in the dispute is an individual who is somehow dependent on the second party (who may represent an organization or institution).*

*In a recent evaluation of special education mediation services, structural and organizational factors were identified that could influence the impact of power imbalance between disputants (parents and school personnel) independent of the mediation session itself. This paper examines these factors and proposes that future research broaden its perspective on power-imbalance theories associated with mediation. In particular, the present examination brings into question the sufficiencies of claims that mediation is* procedurally *inappropriate when an inherent power imbalance exists in conflict situations.*

## Introduction

Alternative dispute resolution (ADR) refers to innovative approaches to ending conflicts which are usually less formal and costly than traditional litigation. Such approaches can include conciliation, arbitration, or mediation, and recently have been advocated, particularly when disputants anticipate long-term future relationships. Thus, conflict between family members, school personnel, and parents, and between landlords and tenants are especially suitable to ADR processes.

While numerous arguments have been established in favor of ADR, literature is also replete with arguments against its use in certain conflict situations. In particular, concern is raised that ADR may be inappropriate when power disparities exist between disputants (Goldberg 1989; Levine 1986; Marks, Johnson, & Szanta 1984). One example of this condition would be when one party in dispute represents an institution and the other party stands alone as an individual.

The concept of power imbalance within ADR forums is not uncommon, but *how* the concept is operationalized and applied varies by context (Goldberg 1989; Marks, Johnson & Szanta 1984; and others). With variation, the impact of power imbalance on conflict resolution changes (at least theoretically) as well. In divorce mediation, for instance, unequal economic bases (resources) represent one form of imbalance; differential status within the family system symbolizes imbalance at the interpersonal level. In landlord/tenant negotiations, legal authority of one party may place that disputant in an "advantageous" position for winning in mediated sessions, which may change by the nature of the dispute (Folberg & Taylor 1984).

Special education mediation represents the unique situation wherein power imbalance between disputants could occur at a number of levels. The parties may have a history of differential status in that parents generally follow the guidance and expertise of educators. Educators have resources with which to teach special-needs children (symbolizing an "economic" advantage); and, finally, educators employ legal authority (primarily from Public Law 94-142—see Handler 1986) to allocate these resources for special education needs.

The concern with power imbalance has been applied to special education mediation services (SEMS) over the last few years. Several states have adopted voluntary mediation services as an alternative to due process (formal, adversarial proceedings) when disagreements emerge between parents and school personnel over educational services for students with special needs (Goldberg 1989; Folberg & Taylor 1984).

Many states use employees of their educational system to serve as mediators (Goldberg 1989; Singer & Nace 1984); thus, in this forum for ADR, school parties in disputes are seen as more powerful than parents at the onset. Imbalance is exacerbated by direct administrative links between mediation services and the institution or school represented in the dispute.

## The Impact of Power Imbalances in Special Education Mediation

According to The National Survey on Special Education Mediation Systems, 35 reporting states had a SEMS in place by 1989; another 10 reporting states were developing SEMS at that time (Sykes 1989). The earliest reported SEMS was established in 1972; the most recent were established the year of the report.[1] Evaluations of SEMS since inception have occurred on a state-by-state basis.

Assessments of school-administered, special education mediation have been mixed, but the theme of power disparities lies at the root of both positive and negative conclusions. Singer and Nace (1984) contend that school-based mediation is very successful despite acknowledgment of power imbalance expressed by some participants. Goldberg (1989), on the other hand, maintains that true mediation is infeasible when services are provided by an institution for that institution and an individual disputant's benefit. The issue of power imbalance between disputants in this situation is critical to his belief:

> State sponsored [special education] mediation also fails to compensate (or may exacerbate) the inherently unequal position that exists between parents and school officials....Considering the power that school officials have in terms of experiences, training, familiarity with jargon, and potential future decisions, it is absurd to suggest that parties could ever be equal mediation partners. (452)

Common questions raised within most discussions of power-imbalance theory in special education mediation, thus, relate to whether justice can be served, given predetermined inequality of disputants (i.e., will the outcome be fair to both parties?) and whether mediators can manipulate (i.e., equalize) such inequality by virtue of behavior within the mediation session itself (Simkin & Fidandis 1986). Within this narrow framework, parties appear satisfied with mediation, regardless of their symbolic positions as

institutions or private individuals (Singer & Nace 1985). In fact, such evidence may be shortsighted insofar as researchers conclude that if the process itself can adjust for power imbalance (vis-a-vis behavior of the mediator), further concern over disparities is unfounded.

This article argues that the mediation session is only one of three key junctures in dispute resolution. During mediation, mediators clearly do have obligations and capabilities to equalize negotiations as well as formulating mediated agreements. Nevertheless, mediators are limited in their potential to modify the effects of power imbalances before and after mediation. The claim here is that power imbalance may influence disputants at each of these main junctures (points at which mediation is mutually agreed upon, mediation occurs, and outcome is implemented) and does so with a domino effect. In other words, with each conflict-resolution encounter between unequal parties, during which the outcome consistently reflects positive reinforcement for one party more than the other, imbalance is perpetuated and, in fact, exacerbates the potential for unequal outcomes over time.

In a recent evaluation of special education mediation, specifically, findings reveal that unequal status may account for the following differences across the three junctures: (1) service provisions leading to mediation; (2), opinions of parties about the sessions held; and, (3) equitability of outcome post-mediation.[2] While the focus of this evaluation was not to test the hypotheses just outlined, data provide ingredients for postulating a domino-effect theory in conflict-resolution settings involving parties of unequal status. A brief summary of this evaluation follows.

## Evaluation of Special Education Mediation Services

### Overview

The data summarized below were collected as part of a year-long evaluation of one state-administered special education mediation program. The program had been in existence for almost three years at the point of evaluation and had trained over 40 mediators during that time. Mediators for the program come from a variety of professional backgrounds across the state. Each mediator was trained by a highly reputed national training center and is compensated on a case by case basis. A few mediators have bilingual ability. Mediators are not state employees intentionally, so that disputants will not perceive them as biased toward the state's education department. Most mediators had negotiated one or two cases each at the time of the evaluation. Mediation is a voluntary alternative to due process

when both parties agree to have their cases mediated. Either party in dispute can initiate a request for mediation.

## Cases Mediated

During the evaluation period, all forms used by the state program were reviewed and revised, existing data were analyzed, and a follow-up survey of parties and participants was developed and disseminated by the evaluation project.[3]

At the time data collection ended for the evaluation project, the program had received 216 requests for mediation. Of these, 127 were initiated by parents and 32 resulted in agreement for mediation. Eighty-nine requests were initiated by school parties and resulted in 47 agreements for mediation. Thus, the majority of cases mediated were initiated by requests from school parties.

From available information on mediated cases, parties who had initiated a request for services had typically heard of mediation from pamphlets and other written materials, followed by personal communication.[4] The SEMS processed requests of one party (usually a phone request) by contacting the second party (by phone or letter) and establishing whether both parties agreed to try mediation for their dispute. At the point of agreement, SEMS staff proceeded to identify and retain a mediator, choose an acceptable mediation site, and schedule the session. Confirmation of mediation was prepared in writing for parties and participants. Mediation was not scheduled if a previously agreed upon plan for due process was scheduled within five days of the request for mediation.

At the time request for mediation was initiated, parents were more likely than school parties to list multiple issues in dispute. For instance, almost 75 percent of parents listed at least two issues, while about 56 percent of school parties listed the same number. There was general agreement on what issues were being disputed, however. Thus, issues presented by each party individually coincided with final issues to be mediated in the vast majority of cases.

Both parents and school parties listed the same top three issues in dispute first, over all other issues in dispute: (1) placement, (2) program, and (3) testing or evaluation classification. Under placement, there was a dispute as to whether the student should be receiving services within a regular placement, a special education setting such as an intermediate unit, private or home schooling, a special preschool program, or other placement options. Within programming issues, parents and/or school parties were in disagreement over specific aspects of the educational program the student

was receiving, especially delivery and quality of services, adequacy of teacher training, and program content. Finally, testing or evaluation classification referred to disputes over the validity and reliability of evaluations, the implications of classification categories for educational services, and concerns over changes in classification.

When parties mediated their disputes through SEMS, there were at least two issues in dispute for 71 percent of the cases; at least three issues in dispute for 30 percent of the cases, and at least four disputed issues between parents and school parties in 7 percent of the cases.

Analysis of issues in dispute, by cases resulting in agreement and those terminating without agreement, revealed little variation between the groups in the final issues mediated. Placement was identified most frequently as the primary issue in dispute, whether or not agreement was reached. In addition, program, individual educational plans, test/evaluation, and classification were cited as issues in cases reaching agreement. A similar pattern of concerns was identified for cases terminating with no agreement (except for program issues, which were mentioned less frequently).

Seventy-one mediations were held during the evaluation period; sixty-one of these reached agreements between the disputing parties (representing an 86 percent rate of agreement). Mediation sessions from evaluated cases lasted as little as one or two hours to more than eight hours. The majority of sessions lasted three to five hours; however, about one-third of all sessions lasted six to eight hours. Mediators are deliberately given only general information about the issues in dispute—as documented by both parties—along with the necessary background information. Special education mediation, as most mediation forums, are formatted to incorporate fact finding into the multiple stages of the mediation process (see Folberg & Taylor 1984, 38-72); therefore, elaborate details of the disputed issues are reserved for the mediation process proper. [5]

Typically, students whose special educational needs were being mediated were males (51 out of 71 cases involved males) between the ages of 10 and 11, were multiply handicapped, and were being served within a regular school setting at the time of mediation. Mediation occurred primarily in non-neutral sites (buildings owned or administered by schools) 31 days after a request for mediation was initiated.

Short Term Satisfaction of Parties and Participants

The majority of parties and participants were satisfied with services rendered and the immediate outcome of mediation, although school parties expressed higher levels of satisfaction than parents. Moreover, mediators were generally viewed as impartial, knowledgeable of the problem, and highly regarded for their role in dispute resolution.

Participants tended to represent more extreme negative perspectives than any of the other groups, although such views represent a minority of all participants. In particular, participants were more likely to criticize technical aspects (scheduling, location) of mediation and the mediator.

### Long Term Implementation of Agreements

Parents and school parties had very different perspectives toward implementation of mediated agreements. Parents felt less involved with implementation than school parties and also believed that less of the agreement was implemented in the long term than school parties. Most parents and school parties felt there was nothing else they could have done to carry out mediated agreements.

### Mediators

Mediators felt adequately trained for their responsibilities in facilitating dispute resolution and compared their training with the program favorably with other training experiences. In most cases, mediators felt positive about some aspect of mediation regardless of final outcome. Nevertheless, almost all mediators felt disappointment over some component of mediation, such as an individual's behavior or poor physical setting. Further, they expressed a sense of being constantly challenged with mediation due to some need—such as for more knowledge in a particular area or for experience in dealing with unpredictable circumstances.

### Strengths and Weaknesses of Mediation

Over time, parents, school parties, and participants for both sides believed that mediation's greatest strength lies in the mediator's role as a neutral third party in dispute resolution.[6] Most parents stated that mediation's greatest weakness is associated with difficulty in putting agreements into action—a view expressed by some parent participants as well. (Recall that parent participants are invited to mediation by parents to provide advice, input, or emotional support to the parents.) Parent participants commented as frequently, however, that mediators cannot make unwilling parties compromise. Most school parties and school participants also believed that mediation's greatest weakness lies in the limitations associated with disputants' unwillingness to compromise.

General comments of parties and participants several months after mediation reflected mediation's assets for saving money, effectiveness in coming to agreement during mediation, and the competence of mediators.

Negative comments focused on lack of enforceability, lack of progress post-mediation, and a sense of coercion sometimes perceived in mediation. Some comments indicated that agreements were actually ineffective or meaningless some months post-mediation.

Less than one-half of parents and school parties stated they would definitely use the program again for a future problem. Of persons who stated problems recurred since mediation, very few have turned to special education mediation to resolve the new dispute.

### Opportunity to Assess Power Imbalance over Time

Findings from this evaluation provided the opportunity to assess theoretically the impact of power imbalance within the context of special education mediation over a period of time pre- and post-mediation. Hypotheses have been subsequently generated to reflect how unequal status of disputants may influence final resolution. These hypotheses are framed within the context of the three junctures of dispute resolution described earlier. Specific research questions that should be addressed in future studies are then formulated.

## Power Imbalance at Three Junctures: The Domino Effect

### The First Juncture—Who Chooses Mediation?

In most cases where requests for mediation are made by one party in the program just described, mediation did not occur for a variety of reasons that have not been systematically documented, including request withdrawals, conciliations, or refusal of the other party. (Other critical issues related to rejection of mediation were also unavailable, such as demographic characteristics of parents in cases not mediated as compared to those mediated and perceptions of issues in dispute.) Requests were made almost three times more often than cases were actually mediated. And the vast majority of all requests were initiated by parents, as noted earlier.

Technically, each party has the power to reject mediation, but school personnel refused an offer for mediation far more often than parents for reasons unknown. When school parties did agree to mediate, parents were quite likely to agree to it than vice versa. When cases reached mediation, then, they had usually been initiated by school personnel rather than by parents. Consequently, special education mediation in the program evaluated serves schools' requests (the institution) more than parents' requests for services.

Two hypotheses are proposed to account for these differences, and both are tied directly to theories of power disparities introduced earlier.

First, school parties are more highly informed of their rights and stance with regard to disputes; thus, they can better pick and choose a dispute resolution forum that corresponds with this knowledge base. Further, alternatives to mediation such as due process do not carry the same financial burden for school parties as they do for parents. At the point of deciding whether or not simply to attempt mediation (the first juncture), then, school parties are equipped with greater knowledge and freedom from financial considerations in making that decision.[7]

Second, when parents are offered mediation, they are in a far weaker position to turn it down because of the ramifications associated with such refusals. At the very base, school personnel are equated with authority that must be adhered to. Sense of responsibility to children and costs of alternatives are further incentives unique to parents for agreeing to mediation.

The first research question to pursue, therefore, (and not available at the time of evaluation), is what accounts for this differential choice of mediation by parents and school personnel? Such data could certainly reveal whether power of school personnel at the onset provides these parties with greater options and awareness for choosing a particular dispute resolution forum. If empirical evidence emerges to support the hypotheses outlined above, *then power imbalance between disputants has influenced dispute* resolution before mediation has begun.

## The Second Juncture—Mediating on School Turf

The study of special education mediation services also concluded, recall, that parents and school parties feel differently about the mediation process itself, although both groups are generally positive. One possible explanation for differences might be unequal treatment in mediation, but this conclusion is not supported at present. A second hypothesis is more logical from the standpoint of power-imbalance theories (Goldberg 1989).

Greater satisfaction levels expressed by school parties could very well reflect the function of their role in initiating mediation, enhanced by comfort with the mediation setting (90 percent of all mediations in the evaluation were held in school-affiliated sites). In contrast, lower satisfaction of parents can reasonably be the result of reactive, rather than proactive, roles in the dispute resolution process (based on statistics cited earlier), exacerbated by institutional settings for reaching dispute resolution. Mediation is equated with "the school" because that is where mediation most likely

takes place, and because "the school" most likely initiated a request for mediation when it occurs.

In order to test the hypothesis that increasing power at the point of mediation initiation (the first juncture) impacts parties' assessment of their experiences during mediation (the second juncture), analyses of outcome that controls for the variable of initiating party should be pursued. (Again, such analysis was not possible within the constraints of the state evaluation.) In particular, the following question needs to be addressed in relation to the impact of power disparities on satisfaction with mediation: Do differences in satisfaction with mediation between parties dissipate when the percentages of actual mediated cases initiated by school parties and parents are equalized?

Without such information, there is no way of ascertaining whether lower satisfaction ratings of parents are linked to their reactive (i.e., subordinate) rather than proactive (i.e., superordinate) roles in the dispute resolution process, exacerbated by non-neutral the settings of most mediations.

### The Third Juncture—Who is Responsible?

Finally, as described earlier, the special education evaluation revealed that school parties believed they are responsible for some or most of the implementation associated with mediated agreements. In contrast, parents felt less responsible for implementation generally. Further, school parties rated implementation higher than parents, and parents exhibited more uncertainty about implementation overall.

At the last phase of dispute resolution, then—implementation of mediated agreements—parents exhibit the most concrete evidence of powerlessness. The school (institution) ensures resolution of disputes; thus, it has ultimate symbolic power to effect mediation "success." (Not surprisingly, schools report more positively than parents that long-term success—implementation—is accomplished.) Parents have lesser roles in monitoring or bringing about success. As a result, parents are more likely frustrated and less satisfied with the process over time.

Research on power imbalance in ADR cannot ignore this critical period, because it is intimately linked with long-term satisfaction of mediation as well as long-term success of mediation. Based on the evaluation of special education mediation, I hypothesize that parental dissatisfaction with the process over time would be lessened if parents were actively involved in all components of implementation and were consulted by school personnel throughout this period. Whether or not schools must actually formalize the majority of mediated agreements, the sense of powerlessness felt by parents

is most likely a function of their interactions (or lack thereof) with school parties at this crucial juncture of dispute resolution. To test this hypothesis in depth, investigations into events taking place during implementation are called for. Qualitative assessment of inequitable outcome for parties of differential status should reveal whether role in implementation does influence outcome over time. This ideology is not dissimilar from the rationale for mediating disputes, generally, and for self-determination over traditional adversarial dispute resolution processes.

## Broadening the Scope of Power Imbalance Theory

Theory associated with dispute resolution in the face of power disparities has a strong conceptual base backed by limited empirical data. In order to understand the full impact of power imbalance in dispute resolution processes, researchers must recognize and examine organizational and structural dynamics that can either aggravate or mollify inherent differentiation. With data that test the hypotheses proposed within this article, the possibility exists for intervention at key junctures in ADR which could produce more equitable outcome for disputants, regardless of their relative status. Perhaps researchers and critics of ADR in situations of imbalance have placed far too much of the burden on mediators to make negotiations "right" in these instances.

This article formulates a theoretical model for assessing precisely how the existence of disparities may influence dispute handling from onset to final resolution. Future research should enhance our knowledge about extraneous influences on mediation outcome at multiple points and/or whether intervention can curtail this domino effect on the total dispute resolution process. Power imbalance may best characterized as a "condition" in dispute resolution. Increased knowledge is needed about behavioral consequences of this condition in order to understand its true influence over equitable outcome for disputants of unequal power.

## NOTES

1. Massachusetts was the first state to provide SEMS; Indiana and New Mexico developed SEMS as late as 1989.

2. Specific identification of the evaluation site is omitted to ensure confidentiality.

3. Parties were comprised of one or both parents and a school administrator with authorization to commit resources. Participants were made up of a limited number of persons invited by parties to support their respective cases. All parties and participants were asked to

evaluate mediation immediately after the session using questionnaires designed by the mediation program. Mediators completed separate questionnaires at this time. Parties were also asked to complete additional evaluations at 10-days and 3-months post-mediation.

4. Data were missing in almost one-third of the mediated cases.

5. Mediators in this SEMS were trained to caucus with parties as part of overall mediation process. Thus, parties initially meet with the mediator and participants to set forth perceptions of the dispute after which time each party has the opportunity to meet privately with the mediator. Negotiations and agreement-writing stages follow the caucusing period.

6. These data were collected from a follow-up survey during the evaluation period, a minimum of six-months post-mediation.

7. This situation is quite different from Goldberg's (1989) attention toward school personnel's expertise once they engage in the process of ADR.

## REFERENCES

Folberg, J., & Taylor, A. (1984). *Mediation.* San Francisco: Jossey-Bass Publishers.

Goldberg, S. (1989). The failure of legalization in education: Alternative dispute resolution and The Education for All Handicapped Children Act of 1975. *Journal of Law and Education, 18*(3), 441-454.

Handler, J. F. (1986). *The conditions of discretion: Autonomy, community, bureaucracy.* New York: Russell Sage Foundation.

Levine, M.I. (1986). Power imbalance in dispute resolution. In J.E. Palenski & H.M. Launer (Eds.), *Mediation.* Springfield, IL: Charles C. Thomas, Publisher, 63-75.

Marks, J.B., Johnson, E., & Szanta, P.L. (1984). *Dispute resolution in America: Processes in evolution.* Washington, DC: Corporate Press.

Simkin, W.E., & Fidandis, N.A. (1986). *Mediation and the dynamics of collective bargaining.* (2nd edition). Washington, DC: The Bureau of National Affairs.

Singer, L.R., & Nace, E. (1985). *Mediation in special education.* Washington, DC: National Institute for Dispute Resolution

Sykes, D. (1989). *National survey on special education mediation.* Columbus, OH: Center for Special Needs Population, Ohio State University.

# Workplace Dispute Resolution and Gender Inequality *

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ABSTRACT

*Despite substantial bodies of research on employment differentials between women and men and on conflict in the workplace, little prior research links the two. This article summarizes preliminary results of a study which attempts to fill this knowledge gap. We conceive of workplace disputes as having origins, processes, and outcomes. We theorize that these three components are patterned by sex roles, sex segregation of jobs, and work structures (unions, firms, industries). Our findings indicate that workplace jurisprudence operates differentially for women and men employees, as hypothesized. The results suggest linkages to other aspects of employment inequality and provide a theoretical framework for further research and policy making.*

Nearly all organizations have some form of workplace jurisprudence, that is, informal and formal rules that are used by employees, managers, supervisors, unions, and others in the employment relationship to resolve conflicts and disputes in the workplace. Such rules function "as a system of private law ... with its own interpretations, practices, and customs built up over time" (Thomson 1974).

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The presence of effective means of dispute resolution in the workplace protects employees against arbitrary authority and unjust punitive action and provides a route for systematic review of complaints and grievances (Scott 1965). Such procedures help to avoid lengthy, bitter strikes, litigation, government agency action, and binding arbitration, as well as promote fairness in treatment, legitimacy of the organization, and ultimately, efficiency in production. For these reasons, concern with the equity of workplace dispute resolution mechanisms is of interest to employers, unions, and employees.

Despite considerable interest in the study of industrial justice from the 1940s through the mid-1970s, these intraorganizational processes and their consequences have not been updated to account for the growth of female labor force participation since World War II, even in recent assessments (Lewin & Peterson 1988; McCabe 1988; Westin & Feliu 1988). Moreover, the substantial bodies of research on employment differentials between women and men in economics, sociology, industrial relations, and management have done little to link dispute resolution issues with issues of employment inequality.

This article summarizes preliminary results of a study that attempts to fill this knowledge gap. First, we outline our conceptual model of dispute resolution in the workplace and gender differences in it and summarize our research methodology. Then, we review our preliminary findings for gender differences in the origins, processes, and outcomes of workplace disputes and discuss their implications for theory and practice.

## Conceptual Model of Workplace Dispute Resolution

In the abstract, dispute resolution in the workplace concerns an attempt by a participant in the workforce to resolve a problem in the employment relationship. We conceive of dispute resolution as comprised of three components: *origins*, *processes*, and *outcomes*. In the course of ordinary workday activities, disputes arise over issues such as wages, discipline, tardiness, parental or family emergency leave, affirmative action, discrimination, job posting, insurance, job performance, and hours. Once a dispute is articulated, it may be pursued in various ways, such as informal settlement in conversation, peer review in the workplace, or formal procedures guided by union or company policy. The goal of such processes is to resolve disputes in the workplace justly. The extent to which dispute resolution mechanisms operate equitably for women as well as for men in the workplace is the subject matter of this research.

We postulate that all three components of dispute resolution in the workplace—origins, processes, and outcomes—are patterned by gender and,

given the highly sex-segregated nature of employment, by sex type of jobs. Thus, we argue that women, incumbents of female-typed jobs, and tokens in jobs [1] have different disputes, different experiences in dispute processing, and different outcomes in the settlement of disputes than do men and the incumbents of male-typed and mixed-sex jobs. We also argue that the three components of the dispute resolution process are patterned by work structures and that these may interact with gender roles and the sex segregation of jobs. [2]

In a detailed review of empirical and theoretical literature, we found few prior tests of these postulates; moreover, what little prior research exists is often contradictory in its findings (Gwartney-Gibbs & Lach 1990). Thus, we conducted exploratory, qualitative research to assess the validity of our conceptual model of gender differences in workplace dispute resolution. This descriptive information is intended to generate theoretical propositions for later systematic testing.

## Data and Analysis

Sixty in-depth interviews were conducted with women and men clerical and maintenance workers, half at "Firm A," a unionized public service agency, and half at "Firm B," a nonunionized manufacturing firm. We selected the firms for their contrasting procedures to resolve employees' workplace disputes: Firm A has a union-negotiated grievance procedure, and Firm B has a widely admired (but rarely studied) "open door" type of policy.

Firm A's grievance procedure is negotiated bilaterally with the union. The procedure involves several informal and formal steps and covers only certain types of conflicts . The chief steward estimated that the union hears of 30 to 40 inquiries about disputes each month, but only about 10 each year actually go all the way through the grievance procedure, and typically only one reaches arbitration every other year. Workers often spoke of the grievance procedure as a last resort; nevertheless, they said they do go to stewards frequently for information.

Firm B unilaterally offers its employees an "open door" policy, which they learn about during new-employee orientation. The open door policy allows employees to go to their supervisor's supervisor and on up the chain of command with a complaint they feel they cannot, or do not wish to, take to their own supervisor. The open door policy appears to be used frequently, but informally, because employees have frequent, informal contact with managers. Also, Firm B's use of quality circles appears to anticipate and defuse disputes before they explode.

Despite different dispute resolution mechanisms, the two firms are similar in important ways. Both have reputations for somewhat liberal personnel policies and a degree of institutionalized informality. Both are subdivisions of larger organizations, employ approximately the same number of workers (3,000-4,000) at the sites studied, and have similar mixes of professional, lower white collar, and blue collar employees. Both firms are regarded as good places to work in their cities in the Pacific Northwest, and thus, many employees we spoke with had worked there for long periods of time. In order to maximize the range of experience with disputes and dispute resolution in the workplace, interviewees were selected from a highly female-concentrated occupation (clerical) and a highly male-concentrated occupation (maintenance), including a small number of tokens (i.e., male clerical and female maintenance workers). Altogether, 34 clerical workers (including receptionists, clerks, secretaries, administrative assistants, and word processors) and 26 maintenance workers (laborers, custodians, skilled craftsworkers, and skilled repair technicians) were interviewed.

In addition to diversity by sex and occupation, sample members varied by demographic characteristics, employment characteristics, and the nature of their workplace disputes and resolution. Neither group of interviewees is statistically representative of all employees at Firm A or Firm B, but—appropriate to the exploratory nature of the research—we heard a wide range of accounts of dispute resolution in both firms, without having to interview hundreds of employees in a random sample.

Interviewees were asked to describe the history of each of their workplace problems and disputes, from beginning to end. In the unionized firm, we asked interviewees to include both grievable (according to the union contract) and nongrievable disputes. In Firm B (which has the open door type of policy), we asked interviewees to describe both small and large problems. The interviews, which averaged one-and-one-half hours in length, were transcribed and then coded and analyzed. Quotes and anecdotes from interviews are used to examine the theoretical postulates introduced earlier.

## Findings

In presenting and interpreting our findings, we draw upon gender role theory from social psychology to examine individual-level gender differences in workplace disputes. At the level of jobs, we rely upon theories of occupational sex segregation out of the stratification literature in sociology. Finally, we draw selectively from theory in industrial relations, organizations, and management concerning formal mechanisms of dispute resolution in the workplace. In each section, these theoretical perspectives guide

our analysis of the origins, processes, and outcomes of workplace disputes. We stress that our findings are preliminary and subject to modification in continuing data analysis.[3]

## Gender and the Origins of Workplace Disputes

Gender role theory suggests that the etiology, or origins, of workplace disputes experienced by women may be different from those experienced by men (cf. Gwartney-Gibbs & Lach 1990). Our findings on the origins of workplace disputes support parts of gender role theory, but contain some surprises.

Sixty different types of workplace disputes were mentioned during the interviews. The most common concerned coworkers or direct supervisors. Twenty-nine interviewees discussed difficulties with coworkers, especially poor work performance and personality conflicts. Thirty-two interviewees recounted disputes with supervisors, particularly unfair performance evaluations, task assignments, training, personality conflicts, and generally poor supervisory styles. Other problems referred to organizational policies and practices, including benefits, salary, equipment and material, hiring, and work schedules.

We posited that women workers would be more likely than men to experience problems associated with family and household duties. We found, however, that women and men alike in both firms had difficulties with such matters as coordinating child care and attending to sick family members. These difficulties occurred even though both firms seem sensitive to the needs of parents in the workplace, generally providing some allowances for flexible start and quit times, leaves for birth or sickness of children, and tolerance of family needs. Conflicts arose mainly over the implementation of these provisions. For example, one female clerical worker in Firm A recalled:

> My father was ill in the hospital in (a large city 1,000 miles away) and I needed to go there to help my mother. While I didn't have trouble getting the time off (using sick leave), which I'm entitled to, I heard about it several times from my boss after I returned—about how inconvenient it had been and what a strain it had put on the department. The general attitude was that they had done me a favor by letting me do it.

Women did not seem to have more difficulties in implementing "family friendly" policies than men.

Consistent with gender role theory, however, women workers appear to be more sensitive to problems associated with interpersonal relations in the workplace than men, more often reporting workplace disputes concerning personality conflicts. Women told us highly detailed episodes of intricate interpersonal relationships, particularly in clerical offices, which resembled "hot-houses" of feelings. Men also told us about interpersonal clashes, but their descriptions tended to be brisk dismissals that they simply did not seem to care about as much as women.

We hypothesized that because women workers tend to have more intermittent work histories than men, due to their child-bearing and child-rearing roles, they may experience more disputes associated with seniority issues (layoff, bumping, recall, promotion, reappointment, transfer). From gender role theory, we also hypothesized that men would be more likely to experience disputes over discipline, veteran's issues, and union activism. But we have no strong or consistent evidence to support either notion.

Sex stratification theory in sociology suggests that occupational sex segregation in employment may be related to the origins of workplace disputes for both women and men in sex-atypical jobs and for women in sex-typical jobs. In particular, disputes may originate for tokens (male clerical workers and female maintenance workers) in discrimination, harassment, and social isolation and in gender role spillover for female clericals (i.e., gender role stereotyping inappropriate to job duties). We find evidence for these ideas.

Tokens, both male and female, described many instances of harassment and discrimination from coworkers and supervisors. But these instances were generally mild rather than severe, and they were often in the ambiguous realm of personality conflicts. Few of our interviewees would label their experiences harassment or discrimination, for they seemed unsure whether it was really occurring or whether they might be at fault in part themselves. Thus, they were often reluctant to name, or label, how they were being treated and to ascribe this treatment to their status as tokens. A young woman, supervising a temporary crew of all-male laborers, found it difficult to name her subordinates' mocking and insolence as sexual harassment. When they hooted out of a work truck to another woman, "Hey baby I like what I see," she recognized it as sexual harassment but still was unable to label her own experiences.

Among token men clerical workers, an unanticipated finding was that many told us they have "no problems" in the workplace. Yet, they described situations in their offices that sound suspiciously like problems to us—-situations very similar to those described by women clerical workers as hothouse atmospheres in which personality conflicts and small spats exploded

into major traumas. A possible explanation for this finding is that it is inconsistent with male gender roles to admit or recognize disputes that are interpersonal in nature. A clerical worker at Firm A demonstrated this obliviousness in describing how a conference he had been asked to administer fell through:

> It was mostly my fault, but the scheduling and how things were to be done were not communicated to me clearly by my boss. It was his program. And so between that and the fact that I wasn't doing things when I should have, the whole thing fell through. It wasn't exactly resolved; it was sort of like, "Well, it's happened, it's come apart at the seams, that's it, we just have to go on." And that was the feeling of both myself and my boss.

Clearly, in the eyes of this clerical worker, his behavior in the workplace created no problems for himself, his supervisors, or his co-workers.

Gender role spillover suggests that persons in highly sex-segregated occupations will be treated on the basis of gender role stereotypes in the workplace (Nieva and Gutek 1981). This may become a disputable issue if the stereotype has little to do with the requirements of the job or the personality of the worker. Several women clerical workers described disputes under this rubric. Some reported being disciplined for not acting "nice enough" or not being "sensitive to the needs of coworkers"—expectations clearly consistent with gender role stereotypes and less clearly part of a job description. One clerical worker at Firm A told us that her supervisor started a work plan (the first step in a disciplinary procedure) that required her to "be more cheerful and smile more." Importantly, such expectations were not imposed upon male clerical workers; indeed, several of them described how they used their gender roles, especially interpersonal aggressiveness, to get their way in the workplace. One male clerical worker described a confrontation with his female supervisor this way:

> She gave me this performance evaluation and I looked at it, and I couldn't believe it. At first I said, "Well, do you really think this is appropriate for a performance evaluation? I don't think so." She got defensive about it and by my interpretation was insulting. At that point, I got angry. And then we got into a shouting match for fifteen, twenty minutes.

We chose Firm A and Firm B deliberately because differences in their dispute resolution forums create different workplace environments for nam-

ing workplace disputes. Differences between the firms' dispute resolution forums, however, did not seem to have a substantive effect on the origins of workplace disputes that interviewees discussed. In both firms, for example, employees discussed problems with supervisors, coworkers, clients, equipment, and the like. Of course, each firm also had a set of problems specific to its ongoing situation (for example, maintenance work being contracted out at Firm A and an influx of temporary workers at Firm B), but most problems mentioned during the interviews occurred in both firms.

In summary, we find evidence for differences in the origins of women's and men's workplace disputes that appear to be related to gender roles and to occupational sex segregation, consistent with expectations.[4] To the extent that women and men experience different kinds of workplace disputes, such as personality conflicts, and to the extent that formal workplace dispute resolution mechanisms are not designed to deal with those differences, women workers' aggregate patterns of workplace disputes will be different from men's.

## Gender and the Processes of Workplace Dispute Resolution

Gender differences appear clearly in the processes used to resolve disputes in the workplace, and some of these differences may be related to gender roles. We hypothesized that women with workplace disputes would be less likely to pursue them due to gender role socialization, the lack of provision for female-typed issues in formal procedures, and a lack of sympathy or support on the part of male gatekeepers (supervisors and union stewards) of the formal procedures. We find evidence to support these ideas.

Women described how difficult it is to resolve personality conflicts through formal channels. A union steward at Firm A reported:

> I've talked to people who've told me, "My supervisor's driving me nuts because they're doing this and doing that." And it's really hard to prove any of that stuff. And yet they tell me lots of times that they come across as being the terrible person. If it's really an out-and-out illegal thing that the supervisor is doing, then you can get 'em for it. But if it's just subtle little things, it's really hard.

At Firm B, a skilled maintenance worker fears that she "soils the workplace somehow, with messy interpersonal details" for her male coworkers. To avoid "unsettling" them, she takes home work-related emotional issues and attempts to resolve them there on her own. Another described "a personal-

ity clash" with her supervisor which she believes inhibited her promotion chances. She invoked the open door, going around her supervisor to try to resolve the issue, but felt "it didn't really get resolved." Because of this unresponsiveness, she says, "I don't think I'll ever use the open door again. It just didn't work the best for me." Even in cases of interpersonal conflict severe enough to be labeled harassment (a charge our interviewees were reluctant to voice), workers perceived that neither the grievance procedure nor the open door policy was designed to resolve such issues.

Women workers consistently reported using lateral transfers to move away from disputes, while men were more likely to use institutional dispute resolution methods provided by the company. A clerical worker at Firm A described the pattern:

> [Lateral transfers are] a common solution. The first thing a person usually thinks of—at least in the clerical sector where it's so easy to move—is to just transfer out. Unless they have so many things going on in their lives that they can't at that time think of taking on a new job and having to deal with that. But most of the time, that's the way that women choose to resolve their conflicts. Just by hanging in there until they can transfer out, and doing everything they can to transfer.

Firm B has a policy of not allowing employees to transfer to extricate themselves from personality conflicts; transfers are allowed only after such conflicts have been resolved. But our interviews document how women employees avoid this rule. Consider the following interviewee's comments:

> The main reason I was transferring is because of this lady we were working with who got promoted up. I felt if I had really told [our supervisor] what was going on, it would have hurt me and they might not let me go. [A coworker] said that she was moving because of [the promoted coworker] and she ended up not getting to move; [the company] wanted them to work their problems out. So, I kept my mouth shut and just said I was leaving because I wanted to try something new.

We also found ample evidence of a lack of sympathy, particularly among Firm A's male union stewards, for the personality conflicts that women workers are more likely to face. One dismissed complaints made by women maintenance workers as follows:

> All three of the women involved came to me and they all told me different stories. I tried to get information out of it, but the stories were so lacking in any real concrete detail that I couldn't think of anything. I talked with other bargaining unit members about it, and they said, "Yes, it's terrible—can't do anything about it." The union hasn't said so in so many words, but the process required to do something is long and involved and gathering the evidence is so iffy.

Whether transfers to "solve" workplace disputes are part of an avoidance pattern associated with female gender roles or are due, instead, to opportunity structures associated with female-typed occupations or lack of support from male gatekeepers of dispute resolution mechanisms remains an open question. At Firm A, women's use of lateral transfers was greater than at Firm B, but that may be because Firm A has more mobility opportunities for clerical workers than Firm B or because of Firm B's policy that personality conflicts must be resolved before employees are allowed to transfer.

We hypothesized that occupational sex segregation is related to the processes of resolving workplace disputes, but in different ways for tokens and nontokens. For tokens, we expect that high visibility generates pressure to conform in order to gain acceptance from the dominant group; if disputes are voiced, we expect little support to be received from informal networks to pursue the issue. For those in highly sex-concentrated jobs (nontokens), we expected greater support from interpersonal networks to resolve disputes both formally and informally.

We find evidence for these claims, but the experiences of male tokens appear to be different than those of female tokens. For example, a highly skilled maintenance worker at Firm B found that learning the "male way" of problem solving was one of the most difficult parts of her job:

> [My male co-workers] don't let other men push them around as much as women do. I see in maintenance how much these men will make a stand. They're not at all afraid to confront [the manager] in front of a whole group. They're right out there in the open with a loud voice and criticism. It's just so different than how women respond. I think there's a lot to learn; part of me was learning to make my stand too. It's very acceptable for men to express anger in the workplace, and a lot of them do; they almost expect it—almost want it. It's not as acceptable for a woman to express anger in the workplace.

Women maintenance workers we talked with often had difficulty articulating their conflicts, finding coworkers to talk with, and finding out what to do. Sometimes, the processes went on for years and the conflicts worsened while the worker was waiting for the next step to occur. In part, this has to do with the nature of the conflicts (the mildness of social ostracism compared to a fistfight, for example, and the difficulty of documenting or concretely describing the ambiguous feeling of exclusion or isolation from other workers). But it is also because formal dispute resolution mechanisms rarely have provisions for, or experience with, the types of conflicts tokens are more likely to experience.

Moreover, cases of employees (tokens and nontokens) who struggled with the difficult task of documenting discrimination and harassment were legends in both firms' corporate culture and served to deter individuals from pursuing disputes through to resolution. Thus, few tokens with disputes attempted to use formal mechanisms of resolution; rather, they lived with their conflicts or resolved them informally.

Male tokens were less likely to report any problems at all, as mentioned earlier. When they did, however, they described using institutional procedures successfully to resolve conflicts, and they mentioned managers sensitive to personal issues that created temporary problems in the workplace (e.g., a wife temporarily unavailable for child care). Moreover, several male tokens described being adopted, like pets or mascots, by their female coworkers and coached in resolving disputes over such issues as promotion, equipment, and personal space. A clerical worker at Firm B clearly enjoyed his role:

> I knew all these other secretaries on site. We'd go to meetings and they'd always give me a bad time; they all enjoyed me. Its a big thing being an admin [administrative] person, being in the trenches like that. I understood what they were going through, so there was camaraderie in that sense. I was probably a group mascot.

Problems and disputes of male tokens were less often in the range of interpersonal difficulties, but when such problems did occur, they did not conform to the passive and subordinate behavior stereotypical of clerical workers. A clerical worker at Firm A illustrated his method for handling conflicts in the workplace:

> You gotta look at it this way: I'm 39 years old and I'm not a woman. When I'm dealing with these people [professionals], a lot of them are my contemporaries, a few of them are even

> younger than I am. So it's like, you know, are they gonna give me a lot of flack, really? You see what I mean? So I'm not too worried about it. Are they gonna try to bully me? No! Cuz like I said, I'm older than some of them and I'm not a woman. I don't flip out if someone tries to abuse me. If they threaten me, I threaten them right back.

Such men draw upon their male gender roles as experienced outside the workplace, and they are treated as "men" by the persons they serve, even in a predominantly female occupation.

We hypothesized that the different formal dispute resolution forums available within Firm A and Firm B would have different consequences for employees' access to and experiences with such forums. Both firms provide regularized and well-exercised dispute resolution mechanisms, but these are different in character as well as in the environments they create for resolving disputes. While we find that these structural differences between the firms are associated with differential processes of workplace dispute resolution, we also find similarities, particularly in the key role played by the gatekeepers of the dispute resolution forum and in the fear of retribution. Each of these is discussed below.

Some employees at Firm A, both women and men, expressed dissatisfaction in how a question or grievance was handled by a union steward, and this seemed to color their opinions of the union in general. Importantly, others at Firm A, most particularly women, viewed the union as a source of strength and help during conflicts. Union stewards helped them learn the process of filing grievances, attended disciplinary meetings with their supervisors, accompanied them to related appointments outside the workplace, and generally reminded them of their rights to pursue grievances. One clerical worker described what her steward did in pursuing her grievance:

> She heard my story. She would have lunch with me and try to get details from me. A lot of times when I talked with her, I was in tears; I was just beside myself. She said, "There is no question that you are being railroaded, that you are the victim, that (your supervisor and co-workers] wanted to get you out any way they could." She said she had never seen a case like this. This was after she talked with my department to see exactly what was going on. Then she said, "You definitely need to file a grievance." She arranged meetings, she contacted my doctor, and she contacted Personnel. She knew exactly what to do, and

> if she wasn't sure, she would check it out. She really kept on the ball, because if we missed one little meeting or one little thing, they could throw it out.

Men at Firm A did not describe this type of relationship with union stewards. They talked matter-of-factly about the protection provided by the union contract, which some described as adequate and others as inadequate. While many employees at Firm A said they had gone to their supervisors before going to the union, few spoke of their supervisors as being as instrumental and helpful in dispute resolution as the union stewards they spoke of; rather, many felt their supervisors had misled them.

At Firm B, corporate culture is carefully inculcated by management, and employees believe strongly in the open door policy's utility for resolving workplace disputes. Indeed, many employees seemed to regard it as disloyal to tell us, as outsiders, of conflicts they experienced. But complaints also seemed to be regarded as more normal, and doing something about them seemed to be regarded as more ordinary, in Firm B as compared to Firm A.

For example, employees we spoke with were often not sure if they had ever invoked the open door policy because so little social distance exists between themselves and their supervisors and managers. If a problem comes up, they just say so. When the open door policy fails—i.e., when a problem is not resolved or an employee sustains retribution—it is commonly viewed as an individual manager's idiosyncrasy rather than as a failing of the company or of the open door policy. A male maintenance worker's comments illustrate how such idiosyncrasies are rationalized:

> There is a certain way that [upper management] would like the open door policy to be perceived by everybody in the company and administered. But the problem is that everybody has a different personality and when you've got people dealing with other personalities, sometimes what corporate wants us to do isn't always the way it ends up going.

One male clerical worker also described how broad management policy can be interpreted differently by individual managers:

> [Firm B] has a very unique style of dealing with management, which is, "We don't tell you what to do. We give you broad guidelines to go by." That has advantages and disadvantages, and one of the disadvantages is that you can have someone being very negative and constrictive, etcetera, but still be within the guidelines.

In both firms, employees who had had unsatisfactory experiences with the gatekeepers of dispute resolution forums (union stewards in Firm A and managers in Firm B) experienced distrust and detachment. When asked to rate their satisfaction or happiness with their job on a one-to-five scale, unsuccessful problem solvers consistently rated their satisfaction lower than successful problem solvers.

Also, in both firms nearly all employees expressed some fear of retribution for pursuing a dispute to resolution. Corporate culture plays an important role here, for tales of retaliation experienced by others heavily influenced individuals' decisions to file a grievance at Firm A or to go around a supervisor at Firm B. A female union steward at Firm A described why workers don't go to the union with workplace disputes:

> One of the barriers is a fear of retaliation by the supervisor. That's a very real fear which is kept going by management. [Workers] are afraid; they'll say, "I'm going to see if I can solve this myself, because I really don't want to get 'em mad." Retaliation can take the form of a painter being stuck painting bathrooms for the next four years, or it can mean getting the [worst] jobs. That's a possibility; that's been done. It has been done to people who have come to the union.

A male maintenance worker at Firm B also recounted a fear that using the open door policy with certain individual managers might result in retribution:

> I think it depends on the manager and their interpretation of the open door policy. I've seen too often the case where we have open door policy and people exercise that opportunity, and they get bit for it later.

It also appears that knowledge of the many steps at which a dispute must be proved and justified dissuaded use of the grievance procedure at Firm A and caused some discontent. On the other hand, at Firm B the open door policy seemed to create an expectation among workers that few workplace problems should exist, because all disputes are resolved or resolvable. Problems that persist then violate the normative environment.

It is important to note that most of these preliminary findings concerning work structures say little about differences for women as compared to men or for tokens as compared to nontokens. While we know that in the aggregate, women are less likely to be union members and less likely to be

in industries and large firms that have regularized dispute resolution mechanisms (Gwartney-Gibbs & Hundley 1988), in this study they were, by design, in the same firms as men.

## Gender and the Outcomes of Workplace Dispute Resolution

Women's propensity to use lateral transfers instead of institutional procedures to solve workplace disputes has several possible outcomes. One is that disputes that do enter the formal processes (e.g., grievance procedures, arbitration, or government agency action) do not represent the day-to-day conflicts experienced by women at work.

Another outcome of lateral transfers in Firm A is that several women clerical workers who transferred found that the best new jobs available to them were not covered by the union contract, and this worried them greatly (particularly those who had successfully used the grievance procedure before). One successful grievant in an emotionally grueling case had this to say about her new job, which is not contract covered:

> It scares me in a way, in the sense that I hope to God that I never have to go through anything like this again. I wish I was covered. Then at least I'd feel like I had some protection.

Perhaps the most significant outcome of the use of lateral transfers to solve disputes in the workplace is that it is likely to put women workers at a disadvantage in terms of human capital, i.e., job-specific training and expertise. Employers are more likely to invest in job training and offer promotional opportunities to employees who stay on the job. Our male interviewees did not use transfers to solve workplace disputes and our female interviewees did; likewise, our male interviewees had longer average job tenure than our female interviewees.

High levels of turnover and labor force intermittency have long been recognized as one explanation for lower earnings of women workers. If lateral transfers are similarly associated with lower job-specific skills and training for women workers than men, turnovers internal to an organization may have a similar effect on the earnings of women who use lateral transfers to resolve conflict.

A possibe outcome of workplace disputes related to occupational sex segregation may be the persistence of a sex-segregated work force. That is, to the extent that sex-segregated work environments are more conducive to the settlement of everyday workplace disputes, it makes sense for women

to prefer to work among women and men to work among men. Our data do not allow a direct test of this hypothesis, but it would be a logical conclusion from the preliminary findings reported here.

In summary, we have found some patterns of gender differences in the processes and outcomes of workplace disputes that appear to be attributable to gender roles. But many of the gender differences we find also appear to interact with sex-typed jobs. Thus, it is difficult to disentangle explanations of gender differences in workplace dispute resolution which are based upon gender roles from explanations that give precedence to the different structural positions of women and men workers. Concerning different dispute resolution forums, we are not yet in a position to evaluate whether an open door policy or a union-negotiated grievance procedure operates better for one group as compared with another.

## Implications for Theory and Practice

The research summarized here indicates that systems of workplace jurisprudence operate differentially for women and men employees. We find that workplace disputes experienced by women workers are often different from those encountered by men; that formal dispute resolution mechanisms often do not accommodate gender differences in dispute origins; that women workers are often discouraged by the gatekeepers of dispute resolution forums within unions and firms; and that women are more likely to transfer jobs to escape disputes, while men are more likely to employ formal dispute resolution mechanisms. These differences in workplace dispute resolution appear to be rooted in the social organization of work, particularly occupational sex segregation, as much as in gender roles.

Moreover, our results suggest that gender differences in workplace dispute resolution help explain gender differences in other aspects of employment, such as earnings. To the extent that the workplace disputes experienced by women are different from those encountered by men, and to the extent that the means for resolving such conflicts are less effective for women workers than for men, women can be expected to have greater job turnover, lower job satisfaction, and more occupational segregation—and, thus, lower earnings.

Our results also suggest that for practitioners to best mediate and negotiate on behalf of women in employment disputes, it is necessary to understand the social structural and gender role experiences that constrain clients. Working women appear to enter formal dispute resolution forums less often because gatekeepers discourage them, because of socialized ten-

dencies to avoid conflict, and because the types of disputes they experience are less often recognized, informally and formally. If our interviewees' types of experiences are pervasive, it implies that a large proportion of the labor force is inadequately represented in employment disputes.

Importantly, however, women workers who enter formal dispute resolution in the workplace and are well-represented report a sense of empowerment that men interviewees do not; this finding is of particular significance to unionists.[5] Finally, our results suggest that mediators and negotiators need to understand how corporate culture plays a role in defining disputes and ways of pursuing resolution. It appears that the consequence of not recognizing and accommodating women's and men's differing patterns of workplace dispute resolution is to perpetuate employment inequality.

## ACKNOWLEDGMENTS

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## NOTES

1. "Token" refers to women in male-typed occupations, such as plumbing, and men in female-typed jobs, such as nursing.

2. Note that our discussion of workplace dispute resolution is conceptually distinct from procedural or distributive justice in that it concerns the effects of aggregate-level phenomenon on individuals' (or groups') objective workplace experiences, rather than individuals' subjective perceptions of the equity of dispute resolution procedures or beliefs about the outcomes they justly deserve (Deutsch 1985; Hochschild 1981; Lind & Tyler 1988; Major 1987).

3. The authors are currently at work on a book manuscript from this research project, tentatively titled *Gender And Workplace Conflict*.

4. It is important to note that men and women in clerical and maintenance work also often have similar workplace disputes, such as those over equipment, materials, job evaluations, task assignments, safety, and training. We stress, however, that women and men still tend to have different experiences with those disputes due to the nature of the jobs they are typically in; i.e., women in sex-typical jobs tend to use different equipment and materials and have different task sets and sequences than men in sex-typical jobs.

5. See Gwartney-Gibbs and Lach (forthcoming) for a more detailed discussion of our findings' implications for unions.

## REFERENCES

Deutsch, M. (1985). *Distributive justice: A social-psychological perspective*. New Haven: Yale University Press.

Gwartney-Gibbs, P.A., & Hundley, G.S. (1988). "Sex differences in union contract coverage" (Working Paper No. 31). Center for the Study of Women in Society. Eugene OR: University of Oregon.

Gwartney-Gibbs, P.A., & Lach, D.B. (1990). "Gender and workplace jurisprudence" (Working Paper No. 35). Center for the Study of Women in Society. Eugene, OR: University of Oregon.

Gwartney-Gibbs, P.A., & Lach, D.B. (forthcoming). Gender differences in grievance processing and its implications for re-thinking shopfloor practices. In S. Cobble (Ed.), *Women workers and the labor movement: Forging a new partnership.* Ithaca, NY: ILR Press.

Hochschild, J.L. (1981). *What's fair? Americans' beliefs about distributive justice.* Cambridge, MA: Harvard University Press.

Lewin, D., & Peterson, R. (1988). *The modern grievance procedure in the United States.* New York: Quorum.

Lind, E.A., & Tyler, T.R. (1988). *The social psychology of procedural justice.* New York: Plenum.

Major, B. (1987). Gender, justice, and the psychology of entitlement. In P. Shaver & C. Hendrick (Eds.), *Sex and gender.* Newbury Park, CA: Sage, 124-48.

McCabe, D.M. (1988). *Corporate nonunion complaint procedures and systems.* New York: Praeger.

Nieva, V., & Gutek, B. (1981). *Women and work: A psychological perspective.* New York: Praeger.

Scott, W.G. (1965). *The management of conflict: Appeal systems in organizations.* Homewood, IL: Irwin, Dorsey.

Thomson, A.W.J. (1974). *The grievance procedure in the private sector.* Ithaca, NY: School of Industrial and Labor Relations, Cornell University.

Westin, A. F., & Foliu, A.G. (1988). *Resolving employment disputes without litigation.* Washington: Bureau of National Affairs.

# Consumer Complaints and Public Policy: Validating the "Tip-of-the-Iceberg" Theory

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ABSTRACT

*This article examines data from a statewide study to test whether organizational aberration theory or systemic pattern theory is supported by data on complaining. The article concludes that citizen and consumer complaints can serve both as early-warning and fail-safe functions leading to increased accountability and safer, more effective, high quality processes, products, and services.*

Are citizen and consumer complaints, especially those to third-party organizations, instances of unique organizational aberrations, or are they indicators of patterns in organizational processes, products and services? Many organizations behave as if the former is the case. Others use complaints as strategic intelligence about their operations and products. While there is considerable literature about consumers and consumer behavior when problems and complaints occur, there is a dearth of literature about complaints and their role in organizations that cause them. This article takes a step toward bridging the gap by examining data about consumer complaining to identify whether complaints should be considered as unique occurrences or whether they might be reflective of broader organizational malaise. It examines the

"tip-of-the-iceberg" theory using survey data about general consumer problems and in particular, serious utility consumer complaints.

The classics in organizational literature support arguments for both perspectives, but tend to suggest that the former may describe what actually occurs in most corporations and government agencies. Merton (1952) suggests a process of "sanctification" of organizational norms and the vesting in middle-level managers of the power and prestige of the structure which results in "exaggeration of position with reference to the public" and consequent rigidity in defense of established routines. Crozier (1964) discusses the process whereby organizational culture and communications develop into patterns of interest at all levels to the point that bureaucracies "become unable to correct their own errors." Kaufman's (1973) study found considerable communication within agencies coupled with a tendency for information on problems to be screened from high executives. Bar-Josef and Schild (1973) identify the complaint-handling process as an organizational defense mechanism whereby complaints are considered as exceptions: once dealt with individually, organizational action terminates, thus putting the onus on the external individual or occasional mistakes by the organization. Kanter (1979) identifies the process as "power failure in management circuits" wherein "limited or blocked lines of information about lower levels of organization" prevent top executives from hearing about potential problems. This perspective obviates the need to consider further action that might disturb the status quo within the organization. The implication is that complaints represent unique events that reflect problems with specific products, services, or individuals. We will call this perspective the *organizational aberration theory* of complaining behavior.

Another perspective, which we will call the *systemic pattern theory*, asserts that complaints contain messages that extend beyond specific situations to organizational policies, processes, products, or services. Hill (1981) and Hyman (1979, 1990) suggest that "latent messages of policy or program interest are often concealed in the specific content of one or many individual problems. Development of pattern recognition or negative feedback techniques can transform" specific complaints into messages about systemic patterns or problems (Hyman 1987). An offshoot of this perspective is the tip-of-the-iceberg theory.

The "tip-of-the-iceberg" theory asserts that consumer complaints to a third-party intervenor are but a portion of those that exist in the broader population. Third-party intervenors include public and private consumer protection agencies, regulatory commissions, and government officials, such as ombudsmen, that receive and investigate complaints. Therefore, complaints to third-party intervenors can be an important source of information for managers, executives, and policymakers. Such information

can make top officials aware of the nature of problems experienced by consumers and of systematic errors in organizational processes and systems which should be corrected. The use of consumer complaints as policy and organizational indicators builds on the "tip-of-the-iceberg" principle, using analysis of the "visible" portion of complaints as being reflective of a broader universe of problems that exists (Hyman 1987, 1990).

Previous studies into complaining focus on individual steps in the complaining process, such as problem perception, voicing, or resolution. They lead to the inference that only a portion of all complaints reach third-party agencies. None has examined the entire process in one study. This study examines the entire complaint process from problem occurrence through resolution. It takes a pivotal step in the direction of validating the process of formulating public policy based on those complaints which do reach third-party intervenors. We first examine the extent to which consumers perceive they have problems or disputes with sellers about products or services. Data is presented on the extent to which consumers take action to resolve problems, with whom and by whom. We also examine what actions, if any, consumers take to complain to a third-party agency such as a consumer protection office or utility regulatory commission. Specific attention is given to problems encountered in the use, payment, and service of residential utilities (gas, electric, water and telephone). Data on associated issues involving chronic complainers and seriousness of problems are examined.

A research model based on five stages of the consumer problem-solving process guides the analysis. Data from a major statewide survey are used to test two competing hypotheses about the nature of complaints. The *organizational aberration hypothesis*, asserts that most serious consumer problems are perceived, voiced, and presented to the offending business or organization. Therefore, the universe of complaints is the universe of problems experienced by consumers. The *systemic pattern hypothesis* states that individual personality, organizational, or environmental factors operate to inhibit the problem-solving process at any of several stages following occurrence. Therefore, the universe of problems perceived, voiced and complained about will be successively smaller than the universe of problems experienced by consumers. The five-stage consumer problem-solving process guides our study.

## The Five-Stage Consumer Problem-Solving Process

This study examines data on the entire problem-solving process. Previous research has examined portions of the problem perception and complaining process. Different studies support parts of the systemic pattern

hypothesis. Best (1981) describes three stages of the complaining process: problem perception, voicing of complaints, and resolution of complaints. Warland, Herrmann, and Moore (1984) develop a typology of consumers based upon consumer complaining behavior. Landon (1977) finds that the availability of a channel for complaining and the expected cost of complaining influences whether people will complain or not. Hyman's (1990) hierarchy of consumer participation segments consumers into the following groups: consumer influentials are active in their own decision making as well as in policy and advice-giving activities; active consumers make their own decisions based on a variety of information sources; dependent consumers do what others tell them (including acquaintances and sellers), thus allowing others to decide for them; and, nondecision makers have no active involvement in their decisions, taking no action and/or allowing sellers to decide for them (e.g. default options). Inferences drawn from these and other studies support the tip-of-the-iceberg hypothesis, although no single study has examined the total process from problem occurrence through voicing perception, complaining, and resolution. This study takes a pivotal step in the direction of validating or refuting inferences that the stages are empirically linked.

Figure 1 depicts the five-stage conceptual model of the problem-solving process that guides our analysis: occurrence, perception, voicing, complaint-handling, and resolution. The stages are sequential. Consumers may "exit," thus terminating the process at any stage. Exit actions are the key to the tip-of-the-iceberg theory in that they represent the unseen part of the universe of complaints.

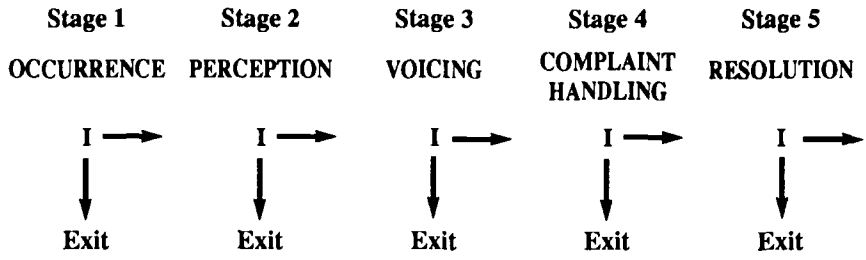


Figure 1. Model of the Consumer Problem-Solving Process

Stage 1 involves the incidence, *occurrence*, of an event involving a problem or defect in a product or service; occurrence represents the universe of problems in the population. Stage 2 indicates that consumer *perception* that a problem or dispute with a seller/provider exists is prerequisite to action. Perception of problems associated with products or services may be shadowed by a number of factors, including the difficulty in finding the relevant facts (Best 1981). Facts may not be evident to injured parties; therefore, they do not perceive a legitimate problem or follow through on their dissatisfaction. All too often, consumers are not aware of their rights regarding redress and the process of complaining. Many consumers have difficulty defining and articulating problems. Perception is prerequisite to active recognition that a problem or complaint exists—but does not address action.

Stage 3, *voicing*, is the first step where problem-solving action may, but does not necessarily, occur. Voicing a problem to others varies from merely giving injured parties some satisfaction (as in "getting things off their chest") to initiation of major action toward rectification or resolution. In general, consumers are not well-informed about how to complain and contact third-party complaint agencies. Analyses show that some groups of consumers, in particular low-socioeconomic status consumers, tend to have lower participation rates regarding voicing of complaints to problem-solving agencies (Thomas & Shuptrine 1975; Haefner & Leckenby 1975). Voicing to a legitimate third-party complaint-handling agency is an obstacle for some consumers. Consumers possessing little knowledge of complaint resolution agencies may have to contact two or even three agencies before the dispute ends up in the right hands. This may create great psychological and economic costs for consumers and, after several attempts which result in reaching inappropriate agencies, they may become resigned to accept the situation and give up. This reinforces the belief that complaining does not generate positive results.

*Complaining* to a seller or a third-party is Stage 4 of the complaining process (voicing and complaining may occur simultaneously). If consumers are motivated to pursue a problem to positive resolution, they will complain to the seller, manufacturer, service provider, or to a third-party agency. Barriers to complaining include lack of self confidence and/or motivation, difficulty in determining the facts, difficulty in identifying legal rights, the frequently complex and time-consuming character of the complaining process, and inadequate awareness of legitimate third-party complaint-handling programs (Best 1981; Thomas & Shuptrine 1975; Haefner & Leckenby 1975).

Finally, Stage 5, *resolution*, involves the action process culminating in a decision, or outcome of complaints. Resolutions may be successful or

unsuccessful from the perspective of the consumer. The majority of consumers enter the complaining process to achieve a successful outcome for their complaint. Resolution may occur at any stage in the complaining process; that is, one must not pass sequentially through each stage before resolution may occur. Ideally, complaints that are not successfully resolved at an earlier stage will proceed to the next stage of the complaining process.

## Conflicting Perspectives on the Problem-Solving Process

Empirical documentation of the process is important for both research and practice. While the stages of the problem-solving process are fairly straightforward and logical, there is considerable debate in the field about whether most consumers have access to the entire process, or whether barriers exist which prevent some (or most) from proceeding to the later stages. Best (1981), Warland (1977, 1984), and Hyman (1981, 1990) contend that the problem-solving process operates to discourage consumers from proceeding through the various stages. There are barriers to perceiving, voicing, complaint handling, and resolution. Only a portion of the problems/defects that exist are actually perceived; only a portion of those perceived are voiced; only a portion of those voiced gain access to a complaint-resolving party; and only a portion at each stage are resolved successfully. They infer that the body of complaints that reach a third-party complaint program is but a fragment of those that exist. This perspective follows from the systemic pattern perspective and encapsulates the "tip-of-the-iceberg theory."

Another perspective, which we associate with the organizational aberration theory, is that most problems and complaints are dealt with directly and at the appropriate level. This perspective emerges from the organizational literature and from numerous discussions with managers and directors of corporations and consumer service programs. Complaints are seen as resulting from serendipitous breakdowns, exceptions to the rule, which affect only those few people who complain. It is also reasoned that seriousness determines the level of action. Consumers will not act if the problem is not worth their effort. Less serious problems are dealt with by sellers/providers. The few complaints that reach later stages of the complaint process represent the universe of serious complaints that exist. We are unable to locate studies of management's response to complaints and how they are used in organizational processes.

Two corollaries to the organizational aberration theory also endure. One, the "chronic complainer hypothesis," contends that many of the complaints

to third-party complaint-handling organizations are from a few people who habitually complain about everything. This argument is usually accompanied by the assertion that most complaints are not really important and that people should be able to handle these complaints without assistance from others. The second argument, the "serious complaints hypothesis," suggests that the complaints that reach a third-party organization are the more serious complaints: all others are minor complaints. Both of these arguments imply that the complaints that reach a third-party organization should be considered in themselves and that inferences to the broader population and about the systems that generated them are not proper. The tip-of-the-iceberg theory denies these assertions. The empirical analysis presented herein is thus a test of the iceberg theory and will shed light on whether the organizational aberration or systemic pattern theories are more appropriate. Our analytical framework is as follows.

## The Organizational Aberration and the Systemic Pattern Theories

If all consumer problems are perceived, voiced, and presented to the offending business or organization, then the universe of complaints is the universe of problems experienced by consumers. This situation, depicted below as Hypothesis 1 (Figure 2), flows from the organizational aberration theory.

If, however, individual personality, organizational, or environmental factors operate to inhibit the problem-solving process at any of the stages following occurrence, then the universe of problems perceived, voiced, and complained about will be successively smaller than the universe of problems experienced by consumers. This latter situation is depicted in Hypothesis 2 (Figure 2), and is associated with the systemic pattern perspective.[1] A number of writers suggest that the latter case is, in fact, what tends to occur in the real world (Best 1981; Warland, Herrmann & Moore 1984; Hyman 1990).

Some policymakers and researchers take this reasoning one step further (Krendel 1970; Hyman 1987, 1990). They suggest that the complaints which reach a third-party complaint-handling agency can be equated to a sample of those that exist in the broader environment (Farrell 1986). While the representativeness of the complaint sample of the larger universe of problems is a researchable question, there is a substantial drop-off from perception to voicing to complaining. Further, only a portion of the complaints ever reach a third-party complaint-handling agency. It follows, then, that the messages inherent in a few complaints can be said to "represent"

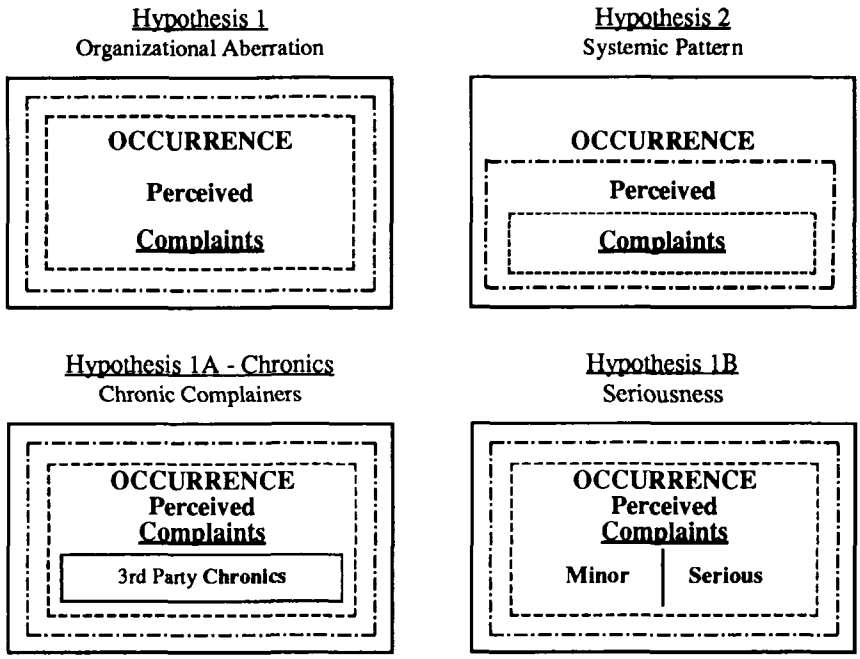


Figure 2. Competing Hypotheses about the Problem-Solving Process

probable patterns of others that exist but do not reach the third-party complaint stage.[2]

If complaints which reach the third-party level are reflective of those that do not, then analysis of patterns and trends of complaints can provide "indicator areas" where attention by managers and policymakers may be appropriate. Aggregate analysis of the "tip-of-the-iceberg" thus produces "error signals" and "problem indicators" of underlying potential problems in policy, law, regulation, or procedure. Despite the assertion in the literature that this latter perspective is accurate, and the fact that the approach has been effectively applied in a number of areas, the fundamental assumptions have not been empirically demonstrated heretofore in a single study. We tested these hypotheses with data from a major statewide study.

## Data and Methods

A 1985 statewide representative sample of residential telephone customers in Pennsylvania is the primary database for the analysis. The sample was selected using modified random digit dialing to assure representation of customers with both listed and unlisted telephone numbers. The final sample size is 500, based on a 59 percent response rate. Sampling tolerances are estimated at plus or minus 3 to 4 percent at the 0.05 level of significance. A second source of data is from a 1981 sample of general residential electric utility customers in Pennsylvania. The sample was randomly assigned based upon residential utility customer account numbers provided by all regulated electric utility companies in the state. The final sample size is 559 based on a 65 percent response rate. Sampling tolerances are similar to those for the 1985 study. Analyses herein are from the 1985 study unless identified otherwise.

Pennsylvania has the fourth largest urban population and the largest rural population among the fifty states. Ninety-six percent of the residential households receive electric service from regulated utility companies, and ninety-seven percent have telephone service. We tested for differences in results on similar items between the samples which would not be expected to change significantly between the two studies (e.g. heating fuel). Differences are not statistically significant; thus we suggest the results of the two studies are mutually supportive and comparable. The studies are considered to be representative of utility consumers statewide; and, because of the market penetration of utilities, they are fairly representative of the population.

Our data allow us to examine the consumer complaining process in general with specific focus on utility problems, such as with electric, gas, water, or telephone service. Utility services provide necessities of life, such as heating, lighting, water heating, drinking, cooking, and communications (Hyman 1987). One does not have to look further than the daily newspaper to find examples of the importance of utility services or of the consequences of unvoiced or unresolved complaints and problems with utility service. Many people on fixed incomes, including the poor and elderly, find themselves without heat or telephone service because they cannot successfully resolve a problem with their bill or service. Each winter newspapers carry reports of people who freeze to death following the termination of their utility services. Fires often result from poor equipment or from consumer actions to compensate for the lack of utility services, such as heating or lighting. Thus, utility services are important elements of household budgets, essential components of modern living, and can provide an important source of data on the complaining process.

## Research Findings

### Differential Perception: The Universe of Consumer Problems [3]

To document the initial stages of the complaining process—occurence and perception—consumers were asked if they had a problem or complaint about a variety of products and services during the past two years (1983-85). The items (Table 1) are derived from the Consumer Problem Index as developed by Warland et al. (1984). The utility and telephone items were added for this study. Consumers' perception of problems vary across the categories mentioned. Results of the reliability test (Chronbach's Alpha) is similar to that for the Warland study both without and with the two additional items included. At most, only one in four consumers perceive a problem or complaint in any of the ten areas, and in some areas less than one in ten perceive a problem. Thus, consumer problem perceptions appear to involve a judgment/motivation process as suggested by previous studies, and the rate of problem perception differs across products/services, suggesting differences in the occurrence-perception processes predicted by Hypothesis 2.

Note also that perception of complaints about utility companies (telephone or gas/electric) does not show an appreciably higher or lower rate of

Table 1.
Perception of Major Consumer Problems

| "During the past two years (1983-85), have you had a problem or complaint about..." | YES % |
|---|---|
| Misleading advertising | 24.6 |
| A utility company (gas/electric) service | 21.6 |
| Defective products | 21.2 |
| Poor quality auto repairs | 20.4 |
| Mail order sales | 18.0 |
| Telephone service | 17.8 |
| Little attention to consumer complaints | 17.2 |
| Health Insurance | 12.2 |
| Misleading packaging and labeling | 10.4 |
| Home improvements | 8.3 |

occurrence as compared to other types. Utility services (gas and/or electric) are mentioned second most often out of ten areas. Telephone rates are sixth. Thus, some consumers perceive problems with their utility service, and the rates are not significantly distinct from those for other areas. Irrespective of occurrence rates, the problem perception rate is about 10 to 20 percent across the ten areas. A minority of consumers perceive problems in any one area.

## The Pervasiveness of Problem Perception

The data reported in Table 1 indicate that ten to twenty percent of consumers perceive problems in each of the ten areas in a two-year period. These data do not indicate the percentage of consumers that report problems across several or all areas. Figure 3 addresses this latter issue; it presents data on the percent of people (in the representative statewide sample) who report having consumer problems in zero to ten areas. The data reflect the total number of areas where a respondent reported having a problem (a respondent could thus perceive problems in zero to ten areas). These data allow us to identify whether most consumers perceive some problems or whether a few consumers perceive most problems.

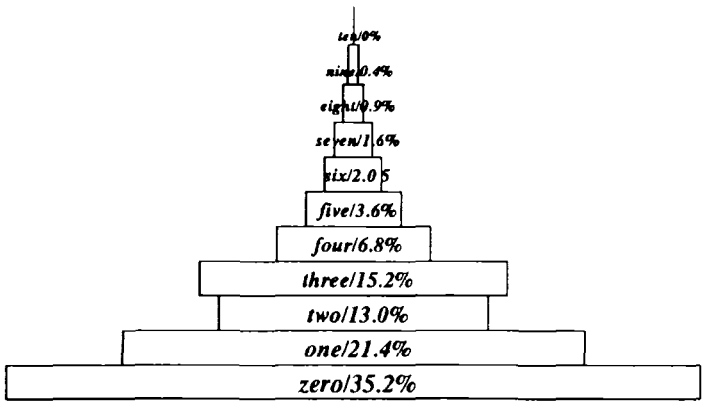


Figure 3. The Pervasiveness of Complaining Pyramid
(Percent of consumers reporting problems or complaints in ten areas.)

The data show that problem perception is spread widely throughout the population. First, over one-third report no problems in any of the ten areas in a two-year period. Second, a majority report problems in three or fewer areas. This means that the overwhelming majority report problems in one or more areas—even though no single area is perceived by a majority. Finally, only a small percentage of consumers report problems in six to nine areas, and no consumers report problems in all ten areas. Most problems that have an opportunity to enter the problem-solving process are identified by people who perceive problems in only a few areas over a two-year period. We conclude that perception of problems is a selective process—only a portion of the universe of consumers perceive problems. Perception varies considerably across the wide majority of the consumer public; and, as seen below, generally across various socioeconomic groupings.

## Who Are the Problem Perceivers?

A comparison of the social background characteristics of consumers who perceive utility problems to the general population shows that problem perceivers are generally similar to the overall population, although some differences do exist (Table 2). Both telephone and utility problem perceivers are quite similar to the overall consumer population. That is, there are few differences between groups with different types of complaints. Older people, retired people, and people with incomes less than $10,000 do tend to perceive problems at lower rates than the average consumer. We conclude that utility problem perceivers are quite similar to a cross-section of the overall consumer population.

## Are Most Perceivers "Chronic" or Habitual Complainers?

These data also allow us to address the question of whether most consumers who complain are "chronic" complainers. Webster defines chronic as "marked by long duration or frequent occurrence." By our standards, individuals are considered to be chronic complainers if they perceive problems in most of the areas studied during a two-year period. Looking again at Figure 3, we see first that the overwhelming majority of consumers report problems in zero to four areas. Second, less than 10 percent report problems in five to seven areas. Third, only a minuscule proportion reports problems in eight or nine areas (less than one percent of the total), and no consumers report problems in all ten areas. These data do not eliminate the fact that there may be a few chronic complainers; it does indicate that the overwhelming number of problems perceived are not by chronic complainers.

Table 2.
Social Background of Consumers with Utility Problems or Complaints in Two Years (1983–1985)

| | Telephone Complaint | | Utility Complaint | | Statewide Average |
|---|---|---|---|---|---|
| | NO % | YES % | NO % | YES % | TOTAL % |
| AGE | | | | | |
| LT 30 | 17 | 20 | 16 | 20 | 17 |
| 30-44 | 33 | 53 | 34 | 48 | 37 |
| 45-59 | 26 | 18 | 25 | 20 | 24 |
| 60 + | 24 | 9 | 25 | 11 | 22 |
| | p = .001 | | p = .002 | | |
| EDUCATION | | | | | |
| LT H.S. | 18 | 9 | 18 | 9 | 16 |
| H.S. Grad | 43 | 49 | 44 | 45 | 44 |
| Some College | 16 | 14 | 15 | 19 | 16 |
| College Grad | 23 | 28 | 23 | 27 | 24 |
| | p = .2 (n.s.) | | p = .2 (n.s.) | | |
| EMPLOYMENT | | | | | |
| Employed | 69 | 87 | 69 | 84 | 72 |
| Unemployed | 5 | 8 | 5 | 7 | 6 |
| Retired | 20 | 6 | 20 | 7 | 17 |
| Homemaker | 5 | 0 | 6 | 2 | 5 |
| | p = .001 | | p = .006 | | |
| MARITAL STATUS | | | | | |
| Married | 66 | 63 | 68 | 58 | 66 |
| Single | 13 | 16 | 11 | 21 | 13 |
| Divorced | 8 | 16 | 9 | 12 | 10 |
| Widowed | 13 | 6 | 12 | 9 | 11 |
| | p = .05 | | p = .05 | | |
| INCOME | | | | | |
| LT $10K | 21 | 9 | 21 | 12 | 19 |
| $10K-$20K | 26 | 26 | 26 | 27 | 26 |
| $20K-$35K | 32 | 37 | 29 | 44 | 33 |
| $35K+ | 21 | 28 | 24 | 17 | 22 |
| | p = .3 (n.s.) | | p = .2 (n.s.) | | |

*Chi Square test used in data analysis. (n.s.) = not significant. The Chi Square test statistic is considered statistically significant at the p =.05 level or better.

To summarize the analysis so far, the universe of problem perceivers is smaller than the universe of consumers. Problem perceivers vary in the number of problems perceived over a two-year period. Most problems are not perceived by "chronic" complainers. Problem perceivers are widely distributed throughout the population. These findings support the initial part of "tip-of-the-iceberg" hypothesis. It refutes the chronic complainers hypothesis. The next section examines data on the voicing/complaining stages of the model.

## Voicing and Complaint-handling

The "tip-of-the-iceberg" theory is supported fully only if it can be demonstrated that many consumers who experience problems do not present problems or complaints to complaint-handling organizations, especially those that are more serious. Table 3 shows responses for items derived from previous studies (Warland 1977; Hyman 1990). People were asked to respond "yes" or "no" to a series of questions about "actions you may have taken" during the past two years to deal with problems or complaints with products or service. They were asked whether they told others about a problem, stopped using the product/service, complained to the seller, complained to the manufacturer, complained to a private third-party organization, or complained to a governmental third-party. Consumers could answer "no" to all possible actions; they could answer "yes" to more than one. Respondents who answered "no" to all six categories and did not indicate an "other" response are recorded as having done "nothing."

Table 3 shows that there are varying degrees of action that individuals pursue when faced with dissatisfaction over products or services. More than one in three consumers (36 percent) do nothing about perceived problems. Over half of the consumers, however, tell someone else about their dissatisfaction (54 percent). "Someone else" is generally a family member or friend. For many, complaining stops at this point. The effort required to contact the seller and to articulate the problem, the anxiety over what may happen when confronting a seller or manager, and similar barriers to voicing beyond family and friends have been documented elsewhere (Best 1981). Moreover, the sense of dissatisfaction or injustice may fade with continued voicing to understanding peers. Voicing may temporarily relieve the anxiety for the consumer even though the problem still exists. In addition, some people simply "stop using" the product or service. Just less than one in three (31 percent) indicate they took this action.

The "do nothing," "told others," and "stopped using" actions play a key role in understanding the "tip-of-the-iceberg." They represent consumers

Table 3.
Voicing/Complaining Channels: Action Taken on Perceived Consumer Problems

| Contacted: | Percent |
|---|---|
| Government | 6 |
| BBB or C. of C. | 10 |
| Manufacturer | 29 |
| Seller/Manager | 35 |
| Stopped Using | 31 |
| Told Others (family, friend) | 54 |
| Nothing | 36 |

N = 500

who drop out of the complaining process (exit) at a very early stage—a stage at which neither the seller, manufacturer/provider, nor third-party organizations have an opportunity to address the issue directly (presumably if enough consumers stop using a product or service, the message will come through indirectly). Actions involving exit from the process without directly addressing the problem represent the majority of responses to perceived consumer problems. The preponderance of complaints is unknown to those who might do something about them.

A minority of problem perceivers report actions that allow their problem to be addressed directly. Just over one in three contact the seller/manager (35 percent). Somewhat fewer contact the manufacturer (29 percent). The seller/manufacturers have the largest opportunity to provide redress (although only for a minority of perceived problems). *Third-party organizations have a less than one-in-ten opportunity to deal with perceived problems and complaints.* Private sector third-party organizations (such as the Better Business Bureaus and Chambers of Commerce), are contacted by 10 percent of the consumers. Public sector, third-party organizations (such as consumer protection offices or public officials), are contacted by 6 percent of the consumers. Thus, for the overwhelming majority of consumers who perceive problems in one or more of the ten general problem areas identified earlier, only a small minority report making contact with a third-party complaint-handling organization about any of the problems they perceived in a two-year period. These findings strongly support the hypothesis that most consumer problems do not come to the attention of third-party complaint-handling programs. Hence, the data support Hypothesis 2—problems

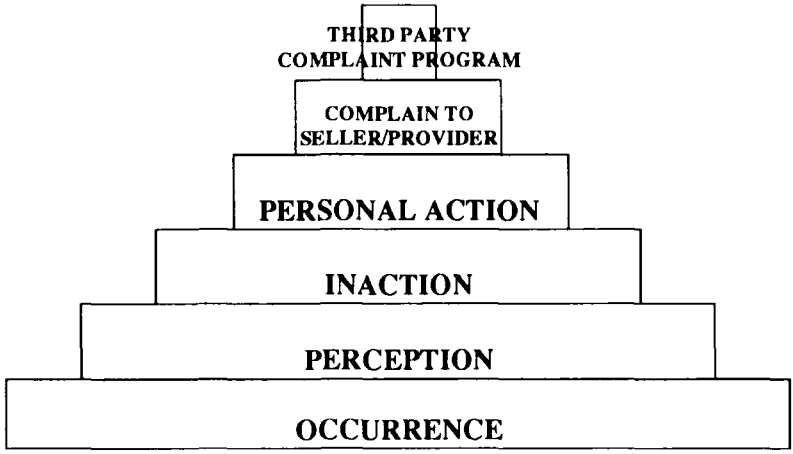


Figure 4. Heirarchy of Consumer Action on Problems/Complaints
*"The Tip of the Iceberg"*

reaching a third-party organization represent the "tip-of-the-iceberg" of problems which exist in the broader consumer community.

Figure 4 depicts the hierarchy of consumer actions on problems or complaints. The universe of consumer problems which exists at the *occurrence* stage is successively reduced at later stages to the point that only a small percentage reach the *complaining* stage. This model of the consumer problem and action process is supported by the empirical data presented above.

Additional light is shed on the issue of chronic complainers and an associated issue that some "activists" may account for a large portion of the complaints. We tested the likelihood that people who perceive more problems are the ones that take more actions by creating two combined scores for each respondent as follows: the "problem perception index" is the total number of areas where a respondent indicated having a problem in the last two years (Table 1); the "voicing/complaining index" is the total number of types of voicing/complaining actions taken (Table 3). Each consumer in the study could have a problem index of zero to nine and a complaining index of zero to six. In both cases, the higher number indicates higher involvement.

As shown in Table 4, people perceiving zero or one problems tend to do nothing; although those that do act are represented at all levels, but at a

Table 4.
Problem Perception versus Voicing/Complaining

| Problem Perception Index | Voicing/Complaining Index 0 | 1 | 2 | 3 | 4 | 5 | 6 | Total %/N |
|---|---|---|---|---|---|---|---|---|
| 0-1 | 31.8 | 7.4 | 9.0 | 5.0 | 0.8 | 0.6 | 0.2 | 56.6/283 |
| 2-5 | 4.0 | 7.0 | 9.4 | 9.4 | 5.8 | 1.5 | 0.6 | 38.6/193 |
| 6-9 | - | 0.2 | 0.6 | 1.6 | 0.8 | 1.4 | 0.2 | 4.8/24 |
| | | | | | | | | 100/500 |

rapidly declining rate. People in the mid-range of perception (two to five problem areas) have higher rates of voicing/complaining actions in the mid-range as well. Finally, those highest on the problem index (six to nine problem areas) are a small minority whose voicing/complaining actions span the entire continuum of responses. (The Chi Square statistic is highly significant for these data.) We conclude that most of the problems perceived by consumers receive little action on the hierarchy of voicing/complaining; and, those consumers who perceive a large number of problems only infrequently go to the top in their search for redress.

## Consumer Actions and Social Background

As noted earlier, utility problem *perceivers* come close to representing a cross-section of the overall consumer population. A quite different pattern emerges when we examine data on the social background of consumers who pursue consumer problems to the *voicing/complaining* levels of the complaint hierarchy (Table 5). The data show that income, education, age, and employment status are significantly related to the complaining behavior of consumers. Significant differences exist between those who do nothing and those who take action; and there are also significant differences between those who voice complaints and those who contact a complaint-handling agency or manufacturer.

*Income.* Table 5 shows that fewer consumers (24 percent) in the $35,000 and above income bracket choose to do nothing about a problem or complaint. Consumers in this income group are more likely to contact the manufacturer about a faulty product. Twice as many consumers in the less than $10,000 income category are more likely to do nothing about a problem or

Table 5.
Action Taken on Complaints by Social Background

| | No Action % | By Self % | Ctc Seller % | Ctc. Mfr. % | 3Rd.Pty % |
|---|---|---|---|---|---|
| INCOME | | | | | |
| LT $10K | 51 | 13 | 18 | 11 | 7 |
| $10K-$20K | 39 | 20 | 15 | 12 | 14 |
| $20K-$35K | 32 | 18 | 15 | 20 | 15 |
| $35K + | 24 | 9 | 14 | 34 | 19 |
| EDUCATION | | | | | |
| LT H.S. | 51 | 16 | 22 | 5 | 6 |
| H.S. Grad | 42 | 18 | 11 | 16 | 14 |
| Some Coll. | 23 | 13 | 21 | 26 | 18 |
| College Gr. | 22 | 12 | 17 | 33 | 15 |
| AGE | | | | | |
| LT 30 | 25 | 18 | 21 | 20 | 16 |
| 30-44 | 32 | 12 | 12 | 27 | 17 |
| 45-48 | 36 | 18 | 17 | 16 | 13 |
| 60+ | 50 | 17 | 17 | 10 | 6 |
| MARITAL STATUS | | | | | |
| Married | 35 | 13 | 15 | 21 | 16 |
| Single | 26 | 24 | 17 | 21 | 12 |
| Divorced | 37 | 15 | 19 | 19 | 11 |
| Widowed | 47 | 18 | 16 | 11 | 9 |
| EMPLOYMENT STATUS | | | | | |
| Employed | 32 | 14 | 15 | 24 | 15 |
| Unemployed | 36 | 14 | 25 | 7 | 18 |
| Retired | 45 | 19 | 18 | 11 | 8 |
| Homemaker | 68 | 18 | 5 | 5 | 5 |

* Percentages total across rows. n=500

complaint over a product or service. Lower income groups are less likely to contact the manufacturer or a third-party to resolve the complaint. Higher proportions of people in the upper income brackets are likely to complain to a third-party.

*Education.* Over half of the consumers with less than a high school education report doing nothing about a complaint. Consumers with some college education and college graduates have higher rates of authoritative actions in response to consumer complaints. The college graduate group is most likely to contact the manufacturer about a service or product problem.

*Age.* Fifty percent of the consumers 60 years of age or older do nothing about a problem or complaint. These consumers may have difficulty accessing a manufacturer or third-party; therefore, they have fewer opportunities to voice complaints when faced with dissatisfaction over a product or service.

*Marital Status and Employment.* Widowed consumers voice problems or complaints to a manufacturer or third-party to a much lower degree than their married counterparts. Likewise, retired persons or homemakers contact a manufacturer or third-party at a much lower rate than employed consumers.

These data provide additional insight into the consumer complaining process. We saw earlier that at the *perceiving* stage, the social background of consumers is quite similar to that of the general consuming population. Definite differences emerge at the *voicing* stage. At the *complaint- handling* stage the acting group is even more different. Those consumers who drop out of the complaining process at earlier stages tend to have lower incomes, lower levels of education, or to be over sixty. We also note that consumers who experience socially stressful or less socially rewarded situations (such as unemployment, being a homemaker, or being widowed or divorced) also show higher rates of inaction and lower levels of action.

It is hard to conceive situations where utility problems would systematically occur differentially based on these criteria. It seems most reasonable to conclude that problem occurrence is most likely spread across all social background categories; and, that consumers who encounter barriers, either personal or external, to pursuing complaints at higher levels have higher proportions of social disadvantage. This perspective is supported by the analysis of perceivers which shows lower social background differences from non-perceivers. The process operates so that those who have tend to get action, while those who have not tend to get inaction.

## Do the Serious Complaints Filter Up to Third-Party Agencies?

Utility services for heating, cooking, and appliances are considered to be necessities of life in contemporary society. Threat of deprivation of necessary utilities is a serious problem. The 1981 study gathered data on four different statewide samples which allow us to examine the issue of whether only serious problems are presented to a third-party organization and conversely whether all serious problems reach the third-party. The four

samples are comprised of the following: the general statewide consumer population, people with overdue utility bills who received a termination notice that their service would be shut-off in ten days if the bill was not paid (termination notice sample), people whose service was actually terminated for nonpayment (service terminated sample), and people who contacted the public utility commission for mediation of payment problems with utility companies following a ten-day notice (PUC/BCS). People were asked, "Have you had a problem or complaint about a utility company service or bill in the past year?" (The question for the utility commission sample was preceded by, "Other than a problem managing your utility bill, have you had a problem or complaint...?")

Note first that the percentages of each sample reporting a problem are similar with the exception of the service terminated group. The percentage of people who perceive they have problems does not vary substantially, even for the more serious termination notice group. In addition, over half of the service terminated group did not perceive their termination situation as a "problem or complaint about a utility." Problems exist across the spectrum of seriousness, and many people in serious situations do not perceive that problems as such exist. Second, the patterns of action taken are all similar. All four groupings overwhelmingly report contacting the business involved, and only small percentages report contacting public officials or the complaint agency (utility commission). Higher percentages of those in the more serious situations do contact the complaint agency, but at most only one in six. Finally, note that the successful resolution rates (". . . did you get what you wanted?") are almost identical: successful resolutions are reported for just less than half of all complaints for all groupings. Successful resolutions are higher for the general and notice populations than for those whose service was terminated for nonpayment (Table 6).

Again, there is a clear message contained in the data. Only a small percentage of problems is presented to third-party complaint-handling organizations. This is true even of those seriously threatened with deprivation of utilities that are considered necessities of life. The business involved resolves problems successfully in only a minority of the cases (except where an overdue bill is involved). These data support the "tip-of-the-iceberg" theory and document the need for third-party complaint-handling programs.

## Does the Tip Reflect the Berg?

An associated issue addresses the question of whether the complaints that reach a third-party organization are a specialized subset, or whether

Table 6.
Complaint Perception, Voicing , and Seriousness (1981 Study)

| | | *General Consumer Population* % | *Overdue/ Termination Notice* % | *Service Terminated Nonpayment* % | *Contacted Utility Commission* % |
|---|---|---|---|---|---|
| PERCEPTION—GENERAL CONSUMER PROBLEMS | | | | | |
| Had Consumer Problems in the Last Year (type not specified) | No | 84.7 | 88.7 | 88.6 | 85.2 |
| | Yes | 15.3 | 11.3 | 11.5 | 14.8 |
| PERCEPTION—UTILITY PROBLEMS | | | | | |
| Had Utility Problem in Last Year | No | 75.7 | 71.9 | 58.0 | 76.8 |
| | Yes | 24.3 | 28.1 | 42.0 | 23.2* |
| COMPLAINING—ACTION TAKEN ON UTILITY PROBLEM | | | | | |
| Did You Contact Anyone About it? | No | 23 | 17 | 11 | 15 |
| | Yes | 77 | 83 | 89 | 85 |
| Who was contacted? | | | | | |
| Nobody/Handled by Self | | 17.9 | 10.8 | 14.1 | 9.7 |
| The Business Involved | | 76.7 | 84.1 | 78.9 | 74.1 |
| Public Officials/ Complaint Agency | | 5.4 | 3.3 | 7.05 | 16.1 |
| RESOLUTION OF UTILITY PROBLEM | | | | | |
| Successfully Resolved by Company—No Overdue Bill | | 41 | 44 | 42 | 41 |
| Successfully Resolved by Company—Overdue Bill | | 73 | 62 | 49 | N/A |

they are reflective of the broader universe of complaints. Table 7 presents data on the types of problems reported by the general residential and service terminated samples, along with the universe of all cases presented to the Public Utility Commission's Bureau of Consumer Services (PUC/BCS). The same coding scheme was used for all three data sets.

The comparisons in Table 7 are quite revealing. The general sample and the PUC/BCS universe are quite similar, supporting the generalization that

Table 7.
Does the Tip Reflect the Berg?

| | Billing/ Credit | Rates | Termination Services | Termination of Service | Other | Total N |
|---|---|---|---|---|---|---|
| General Pop. | 49.2 | 20.3 | 25.8 | 2.4 | 2.3 | 100/128 |
| Terminated Customer | 56.5 | 13.9 | 9.2 | 15.8 | 4.6 | 100/108 |
| PUC/BCS Clients* (1981) | 48.1 | 6.1 | 28.3 | 10.0 | 7.5 | 100/6670 |

*Source: *Consumer Services Activity Report: 1981*, PA Public Utility Commission, June 1982.

the problems that reach the third-party consumer organization are generally reflective of the types of problems that exist in the general population. Two differences are notable. Rate complaints are much more prevalent in the general population than in the PUC/BCS universe; termination problems are more extensive in the PUC/BCS group. Note, too, that the service terminated and PUC/BCS clients defined (perceived) their problems as billing/credit rather than termination of service issues, shedding some light on the differential perception phenomenon. The sample of terminated customers is skewed considerably toward the billing/credit and termination-related problem areas. These findings are not surprising given the serious nature of having basic utility services terminated. We conclude that there is only a slight tendency toward more serious complaints to gravitate toward third-party organizations, and that only a proportion of the serious complaints that exist reach this level.

## Discussion and Conclusions

Consumers' dependence on a market environment is increasing, and their confidence in businesses to provide honest service and high quality products is diminishing (Best 1981). Consumers must rely upon sellers to provide high quality products at fair and reasonable prices. Consumer problems arise when buyers feel they are not receiving proper goods or services, when problems or defects exist, or when they are not treated fairly. In this environment, the burden of action typically is on individuals, who

have the responsibility to express their dissatisfaction to sellers/manufacturers. Action based on individual problems, however, does not address systemic patterns or problems.

This analysis supports the "tip-of-the-iceberg" perspective to consumer complaining and problem solving. The problems that reach a third-party program such as an ombudsman, consumer protection agency, or regulatory commission are but a portion of those that exist in the community. In their own way, then, complaints that reach this level can be said to "represent" many others that for whatever reason are not voiced. This perspective has been adopted by many ombudsman and complaint-handling programs both nationally and internationally.

While data on Stage 1, occurrence, is not available, the study shows that Stage 2, perception of consumer problems/complaints, occurs for only a portion of the general population. Most importantly, consumers' responses to perceived problems and complaints vary considerably: many do nothing, others simply voice their complaints to acquaintances or stop buying the product. A considerable proportion are presented to the seller/manufacturer for redress. Only a small percentage, however, ever reach the third-party complaint-handling stage. Thus it is reasonable to infer that for each complaint reaching a third-party complaint program, many others most likely occur in the broader community—some of which get effective action.

From the tip-of-the-iceberg perspective, the resolution of those complaints that do not reach the third-party stage is a secondary issue. If a broader pool of complaints exists, it is most likely reflective of systemic problems in products or services, which in turn are indicators that call for action on issues of policy, management, or substance. This is not to say that resolution at lower levels is not an important issue, but it is important mainly from the perspective of the individuals who experience the problem. The mere existence of the larger pool of problems in an aggregate sense should be a phenomenon of considerable concern to managers and policy makers. Identification of patterns by analyzing the portion that reaches the complaining stage can provide a valuable tool for those responsible for accountability, guidance, and control.

We are not articulating an idea which is unknown to the American consumer. Complaints that number in the hundreds frequently lead to product recalls numbering in the millions. The few complaints which are voiced and do reach the managerial or policy-making level provide indicators of potentially, broad-based problems, which in turn, are used to trigger investigation and, as appropriate, correction of policies, products, or services. The few precipitate inquiry to determine whether the many exist and, if so, to take corrective action. This analysis of the tip-of-the-iceberg theory and

its implications provides insight for managers and policy makers at the very top of the decision-making hierarchy. Managers who utilize a system for tracking consumer complaints can key into specific problem areas for further inquiry. In turn, changes in complaint rates in an area where action has been taken, can be used to monitor implementation. The model of the consumer problem-solving process needs to be expanded to reflect this perspective. Figure 5 depicts an expanded model that is in keeping with the findings of this study and reflective of the systemic pattern perspective on complaints. Exit from Stage 6, pattern analysis, represents missed opportunities for identifying systemic problems in policy, law, regulation or process. Exit from Stage 7, system change, represents missed opportunities for changing organizational management, structure, or process in response to the environmental feedback identified in Stage 6. The consequences of the latter two actions are organizational adaptation or decreased accountability and responsiveness.

The data from this study are a part of over a decade of work with utility-related complaints perceived by consumers in Pennsylvania. We know that those complaints that reach the utility commission are reflective of more that exist. For years, the utility commission in Pennsylvania has tracked complaint rates, taking action with utility companies based on investigation following analysis (Alexander 1986; Hyman 1987). Monitoring of complaint rates following action appears to demonstrate the utility of the hypothesis: declines tend to occur when companies take corrective action. Alexander (1986) demonstrates this phenomenon in an examination of five case studies. Ritti and Silver (1986) also address the Pennsylvania process of establishing new "rules of the game" for public utility operations.

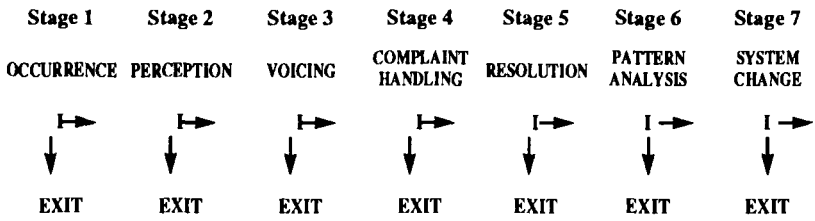


Figure 5. Expanded Model of the Consumer Problem-Solving Process

We are *not* talking about complaint tracking simply as a way to improve consumer operations units, as would be the response of those using the organizational aberration perspective (although that may occur). *We are talking about complaint tracking as a source of strategic intelligence about aspects of the entire system as envisioned by the systemic pattern theory.* The use of consumer complaints as problem and organizational indicators promises to thrust consumer affairs directly into the organizational policy and decision-making arena. From this perspective, the ideas examined herein apply and individual complaints take on a meaning far beyond their immediate content. Each complaint which contributes to the aggregate may carry messages about broader patterns which exist in the environment. Complaints may be reflective not just of specific situations, but of product, service, and operations in general. From this perspective, the "tip-of-the-iceberg" principle may allow complaint-handling operations to serve both early-warning and fail-safe functions. We believe it behooves those in positions of responsibility to take note and to take action. Safer, more effective, high quality service and accountable operations are the result.

## NOTES

1. We can also conceptualize situations where complaints are imagined, unjustified, or contrived, which could lead to a situation where the universe of complaints is larger than the universe of problems.

2. This perspective does not assert the converse, that the complaints that reach a third-party are representative of all types of complaints in the population. It does assert that for each complaint *that reaches a third-party there are probably others* of that type *in the broader population*.

3. The occurrence of problems, Stage 1, is practically impossible to document quantitatively. It would require either continuous observation of respondents for an extended period of time, or extensive personal diaries. Thus, *perception* becomes the most feasible point at which to begin analysis.

## REFERENCES

Alexander, D.P. (1986). *Organizational-goal attainment and environmental change: Assessing the impact of an energy consumer advocate on the interorganizational environment.* University Park: Pennsylvania State University, Graduate School.

Bar-Josef, R. & Schild, E.O. (1973). Pressure and defenses in bureaucratic roles. In E. Katz & B. Danet (Eds.), *US-bureaucracy and the public* (pp. 288-299). New York: New York Basic Books, Inc.

Best, A. (1981). *When consumers complain.* New York: Columbia University Press.

Crozier, M. (1964). *The bureaucratic phenomenon.* Chicago: The University of Chicago Press.

Farrell, J. (1986). *Customer complaints in Pennsylvania: The electric, gas, and water industries 1982-1984, (May)*. Harrisburg: PA Public Utility Commission, Bureau of Consumer Services.

Haefner, J.E., & Leckenby, J.D. (1975). Consumers' use and awareness of consumer protection agencies. *The Journal of Consumer Affairs, 9*, 205-211.

Hill, L. (1981). Bureaucratic monitoring mechanisms. In C. Goodsell (Ed.), *The public encounter* (pp.160-186). Bloomington: Indiana University Press.

Hyman, D. (1979). Participation through hot-lines and citizen's advocates. In S. Langton (Ed.), *Citizen participation perspectives* (pp. 148-155). Medford, MA: Lincoln Filene Center.

Hyman, D. (1987). Citizen complaints as social indicators: The negative feedback model of accountability. *The Ombudsman Journal, 6*, 47-64.

Hyman, D. (1990). Utility consumer dispute settlement: A regulatory model for mediation, arbitration and class advocacy. In M.K. Mills (Ed.), *Conflict resolution and public policy* (pp. 63-76). Westport, CT: Greenwood Press.

Kanter, R.M. (1979). Power failure in management circuits. *Harvard Business Review, 57*(July-August), 65-75.

Kaufman, H. (1973). *Administrative feedback: Monitoring subordinate's behavior*. Washington, DC: The Brookings Institution.

Krendel, E.S. (1979). A case study of citizen complaints as social indicators. *IEEE Transactions on Systems Science and Cybernetics, SSC-6*, 265-272.

Landon, J.H., Jr., (1977). A model of consumer complaint behavior. In R.L. Day (Ed.), *Consumer satisfaction, dissatisfaction and complaining behavior* (pp. 31-35). Bloomington, IN: Indiana University.

Merton, R.K. (1952). Bureaucratic structure and personality. In R.K. Merton (Ed.), *Reader in bureaucracy* (pp. 361-371). New York: The Free Press.

Ritti, R.R. & Silver, J.H. (1986). Early processes of institutionalization: The dramaturgy of exchange in interorganizational relations. *Administrative Science Quarterly, 31*(March). 25-42.

Thomas, W.R., & Shuptrine, F.K. (1975). The consumer complaint process: Communication and resolution. *Business and Economic Review, 21*, 13-22.

Warland, R.H., Herrmann, R.O. & Moore, D.E. (1984). Consumer complaining and community involvement: An exploration of their theoretical and empirical linkages. *Journal of Consumer Affairs, 18*(1), 64-78.

Warland, R.H. (1977). A typology for consumer complainers. In R.L. Day (Ed.), *Consumer satisfaction, dissatisfaction and complaining behavior* (pp. 144-146). Bloomington, IN: Indiana University.