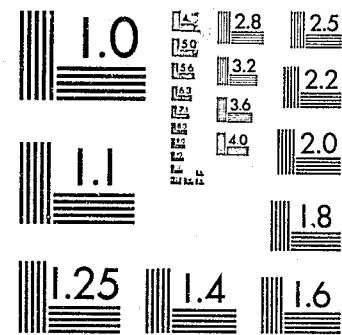


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National Institute of Justice
United States Department of Justice
Washington, D. C. 20531

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THE CLEVELAND PROSECUTOR
MEDIATION PROGRAM

BY

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CHIEF POLICE PROSECUTOR

AND

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MEDIATION COORDINATOR

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U.S. Department of Justice 91266
National Institute of Justice

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THE CITY OF CLEVELAND PROSECUTOR'S OFFICE MEDIATION PROGRAM

LOCATION

Justice Center - Courts Tower
1200 Ontario Street - 8th Floor
Cleveland, Ohio 44113
Bradley M. Weiss, Program Director
Telephone: (216) 664-4800

COMMUNITY SERVED

City of Cleveland
560,000 Population
(Crimes Occurring in the City of Cleveland)

FUNDING SOURCES

Cleveland Foundation
City of Cleveland

OPERATION

Type Of Cases: The Mediation Program handles all types of disputes, including domestic, neighborhood, landlord/tenant, and employee/employer disputes. Cases involving domestic violence, assault, trespass, damaging, harassment, noise/dog disturbances, and bad checks, among others, are commonly handled by the Program.

Referral Sources: The majority of cases are walk-ins to the Prosecutor's Office. Some cases are referred by the Police, the Courts or Community Agencies.

Staff Training: The Mediation Program is staff with one full-time Director, an Administrative Assistant, a Secretary and 30 trained Mediators (the majority who are second or third year law students). All staff members undergo extensive mediation training consisting of lectures, seminars, films, video-taped role plays, and ongoing "in-house" training. Training is conducted by the Program Director, the Cincinnati Institute of Justice and outside experts in the field of mediation and social services.

Program Procedures: Intake is handled by the mediation staff on a walk-in basis Monday through Friday, 8:00 a.m. until 10:00 p.m., and Saturdays from 9:00 a.m. until 1:00 p.m. Cases which are deemed appropriate for mediation are scheduled for a hearing within 10 to 14 days. Hearings are held weekday evenings between the hours of 5:00 p.m. and 10:00 p.m., and Saturdays 9:00 a.m. until 1:00 p.m. in the City Prosecutor's Office. One trained mediator is assigned to each dispute at the time of the hearing; and hearings generally last 45 to 60 minutes.

Follow-up call backs are made two weeks after the hearing to both parties involved in the hearing. Referrals to the suitable social service agency, court or legal aid group often accompanies the hearing disposition.

Public Relations: Newspaper articles, radio and T.V. talk shows, brochures and communication with community groups, courts and police serve to publicize the program.

CASELOAD

15,000 per year
Program Commenced January, 1982

CONSULTANTS

Cincinnati Institute Of Justice

AWARDS

Cleveland Foundations Outstanding
Program of the Year 1982

NCJRS

AUG 25 1983

ACQUISITIONS

INTRODUCTION

In late January, the Cleveland Prosecutor's Office began a new dispute resolution program. The new program uses proven mediation techniques to assist Cleveland citizens in negotiating out-of-court settlements in disputes involving criminal misdemeanor charges. The program processes an estimated 15,000 citizen complaints a year. Approximately 70 percent of these complaints will be scheduled for mediation hearings.

The Mediation Program is being funded over the next three years by the Cleveland Foundation. At the end of this three year period, the responsibility of the program will rest with the City of Cleveland.

The cases scheduled for mediation mainly involve interpersonal disputes between neighbors, friends, co-workers, family members or acquaintances. Typical charges include minor assaults, menacing, criminal damaging, dog nuisances or similar misdemeanors. Settlements reached in mediation hearings include repair, return or replacement of property, acceptance of social service referrals, payment of medical expenses, or agreements to modify or cease specific behavior. Below are typical cases that will be scheduled for mediation.

- John S. and David L. were roommates. When they decided to go their separate ways, a disagreement arose over the ownership of a stereo and some record albums in their apartment. The argument escalated into a shouting match which resulted in David knocking over the stereo. John made a complaint against David for assault and criminal damaging.
- Donald R. and his son Michael R. were drinking in Donald's home. Michael, who had a history of drinking problems, lost his temper and threatened his father. Donald made a complaint against Michael for menacing.

- Dan C. and Judy S. are neighbors. Judy is a real estate agent and Dan is temporarily out of work. At a recent encounter, Judy scolded Dan for not looking hard enough for a job. The next morning, Judy found Dan in front of her home swearing, making obscene gestures and throwing rocks. Judy made a complaint against Dan for disorderly conduct.

The above cases have one thing in common, the disputing parties have family, social and neighborhood relationships which gives them strong incentives to find ways to live peacefully with one another. These situations are not unusual in that most criminal misdemeanor complaints involve family members, neighbors, friends and people who generally know each other and have an on-going relationship.

In Atlanta, Houston, Kansas City, Tucson, Cincinnati, Columbus and other major cities across the country, people like the ones just described are being given the opportunity to work out their problems in out-of-court dispute resolution programs. These programs have evolved over the past ten years and have dramatically changed the delivery of justice to citizens involved in interpersonal disputes. As a result of mediation hearings:

- David L. and John S. agreed that John could keep the stereo and that David could keep the records. David also agreed to pay for the damage to the stereo. Both promised that in the future, they will stay away from each other.
- Michael R. apologized to his father Donald R. and promised never to drink with his Dad again. After Donald left, the mediator suggested that Michael may want to talk to someone about his admitted drinking problem. Michael accepted a counseling referral and his counselor reported that Michael not only showed up but also decided to seek continued treatment.

- Judy S. apologized to Dan C. for lecturing him and Dan apologized for his response to her criticisms. Both parties agreed that the situation had gotten out of control and promised there would not be any problems in the future. Several weeks after the hearing the mediator called Dan and Judy and discovered both parties were sticking to their agreement.

In each of the hearings described above, the official charge was not the real issue at the heart of the dispute. The criminal justice system which has traditionally been geared to providing or disproving a specific charge is not designed to investigate and resolve the problems underlying an interpersonal dispute.

The inability to deal with these underlying problems has created a great deal of frustration for judges, police and prosecutors. Often, the inability of the criminal justice system to address the underlying basis for the dispute renders it ineffective in preventing further criminal acts and possible violence.

The Cleveland Prosecutor Mediation Program with its staff of trained mediators, is designed to deal more effectively with those cases where interpersonal conflicts are involved. The mediation program not only offers Cleveland citizens more effective and immediate solutions to their interpersonal disputes than can be obtained through the criminal justice system, but it also reduces the volume of cases filed in the Cleveland Municipal Court. This in turn permits the Prosecutor's Office, the Cleveland Police, and other criminal justice agencies to allocate their resources more efficiently.

AN INAPPROPRIATE FORUM

The criminal justice system is often not the appropriate forum for the resolution of citizen filed cases, since the focus of this system is usually the guilt or innocence of one of the disputing parties. For example, it is especially difficult to determine who is right or wrong in cases where reciprocal offenses are involved. In addition, citizen filed cases also suffer from problems of proof, resulting in a few successfully prosecuted cases. There are basically two reasons for this. First, there is insufficient evidence to "prove beyond a reasonable doubt" that the defendant has committed a crime. Second, a close personal relationship usually exists between the prosecuting witness and the defendant, leading the prosecuting witness to change his or her mind about pursuing the case.

As a result of these limitations in the criminal justice system, the Prosecutor's Office began to look for alternative methods for resolving minor disputes arising in the City of Cleveland. The Prosecutor's Office, after developing a planning grant, invited the Director of the American Bar Association's Special Committee on Alternative Means of Dispute Resolution to examine their office operations and procedures. As a result of this visit, the Director produced two reports which recommended that the Prosecutor's Office go ahead with their plans to develop a dispute resolution program.

THE CLEVELAND MEDIATION PROGRAM

The program that has been developed is modeled after two well established programs which prosecutor staff members observed in Cincinnati and Columbus, Ohio. These programs are the Cincinnati Private Complaint Program and the Columbus Night Prosecutor Program. Both of these programs utilize mediation techniques to resolve citizen disputes.

The Cleveland Mediation Program, like the Columbus and Cincinnati programs, is based on the mediation concept. Mediation is a process in which a neutral third party (mediator) aid the disputants in fashioning a mutually acceptable solution to their criminal dispute. Often the discussion of a problem conducted by a neutral third party opens up communication among the disputing parties and eventually leads to a solution. Frequently when the underlying problem is identified and resolved, there is less chance for recurrence.

A mediator's goal is not to impose a solution upon the disputants, but rather to have the parties themselves arrive at a mutually acceptable settlement. There are basically two reasons why a compromise reached by the disputing parties is more likely to be successful than one imposed upon them. First, the persons involved obviously know their situation better than any outside party could. The disputants more often than not have a better grasp of their own capabilities of what is likely to work for them. Secondly, people tend to resent being told what to do and are more likely to follow through on solutions which they themselves suggested and agreed to during a mediation hearing.

Mediation is a technical skill and its use in a hearing is as structured as any court proceeding. The hearings are confidential and are conducted in a private room in the Prosecutor's Office. The mediator conducts the hearing in such a way that each party has the opportunity to tell his or her side of the story without interruption. Once the problem is identified, the mediator evaluates and helps the parties generate possible solutions to their dispute.

When an agreement has been reached, the mediator records the settlement, reads it to the parties, and asks them once again for their commitment to the solution. In concluding a hearing, the mediator advises both parties that they will be contacted in one to two weeks to determine if they are adhering to their agreement.

CITIZENS BENEFIT

One of the benefits of a Prosecutor Mediation Program is that citizens have access to the legal system to resolve their disputes at no direct cost to themselves. Furthermore, the mediation hearings are scheduled at nights and on weekends to accommodate the working public. Citizens' complaints are quickly handled in that hearings are scheduled approximately two weeks after the complaint is filed with the Prosecutor's Office.

The ABA's Special Committee on Alternative Means of Dispute Resolution has found that 80 to 85 percent of those people who have gone through a mediation hearing leave out generally feeling satisfied about the process. On the other hand, experience has shown that a large majority of those people who go through the court system feel they did not get a fair deal and leave the criminal justice system feeling nothing has been accomplished.

A VALUABLE REFERRAL SERVICE FOR ATTORNEYS

The Cleveland Prosecutor Mediation Program is a very useful referral service for area attorneys dealing with minor criminal disputes. All lawyers in private practice are from time to time presented with cases in which the difference between right and wrong is minimal. Many times it is difficult to even determine who is the aggressor or who is the victim. Often attorneys are placed in compromising positions when they have to explain why the standard legal system will not effectively solve the problem at hand. Interpersonal disputes involving assault, menacing, criminal damaging, and telephone harassment are examples of cases which will be suitable for mediation. The Cleveland Prosecutor Mediation Program, with its staff of trained mediators and intake counselors, provides a viable and attractive alternative for lawyers faced with this situation.

A Cleveland Prosecutor Mediation Program is a confidential, out-of-court procedure based on the mutual cooperation of the disputants. The need for a cooperative atmosphere and confidentiality in a hearing is essential if the mediation process is to be successful. Since lawyers are trained in adversarial skills, their approach to an interpersonal dispute may sometimes not be consistent with what occurs in a mediation hearing. Because of this problem, the Cleveland Prosecutor Mediation Program reserves the final judgment on whether a lawyer will or will not be permitted to attend the hearing.

PROGRAM ADMINISTRATION AND STAFF TRAINING

The Cleveland Prosecutor Mediation Program is administered by Brad Weiss. Mr. Weiss who has advanced degrees in Law and Government, had worked extensively as a mediator with the Columbus Night Prosecutor Program.

Technical assistance in the implementation of this program has been provided by the Cincinnati Institute of Justice. This is the same group of advisors who developed and implemented the Cincinnati Private Complaint Program.

The training of the mediation staff is conducted by the Program Coordinator, the Cincinnati Institute of Justice, and outside experts in the field of mediation. All staff members who are hired undergo extensive mediation training consisting of lectures, seminars, films, video taped role plays, and individual "in-house" training.

The City Prosecutor's Office is open from 8:00 a.m. to 10:00 p.m. on weekdays and from 9:00 a.m. to 1:00 p.m. on Saturdays.

END