

Giving Police and Courts a Break: The Effect of Community Mediation on Decreasing the Use of Police and Court Resources

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This study examines the effect of mediation on the use of court and police resources. Using self-reported data on cases that were mediated compared to cases not mediated, this research finds that participants in mediated cases are likely to decrease their use of court and law enforcement after mediation compared to participants in cases not mediated. This study uses the Heckman two-step model to respond to the possibility of selection bias and finds that the effect of mediation holds true even when accounting for possible selection bias.

According to some estimates, there are more than 550 community mediation centers in the United States (NAFCM, 2010). These centers are either stand-alone nonprofit agencies or programs within other nonprofits, local governments, or colleges and universities. Most survive on some combination of public or private philanthropic funds, and some do contractual work to supplement their operating budgets. To justify continued public or philanthropic funds in a tight economic environment, it is incumbent on community mediation centers to demonstrate their value. Social values of community mediation include strong relationships, peaceful communities, and empowered citizens. Among the economic values of community mediation are more efficient resolution of conflict in the short run and lasting resolutions that prevent the need for court and police intervention in the long run. This article explores the longer-term impact of community mediation services on use of court and police resources.

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Literature Review

Much of the evaluation of community mediation literature focuses on agreement rate and participant satisfaction with the process, and most report a high level of satisfaction (McGillis, 1997; Clarke, Valente, and Mace, 1992) as well as resolution rates ranging from 70–80 percent (Hedeen, 2004).

Fewer evaluations measure the stability of the agreement or other results of the mediation process. Of those that do measure stability, some do so by asking participants for their perception on compliance with the agreement (McGillis, 1997). In perhaps the most noted research based on participant reports of compliance with mediated versus adjudicated disputes, McEwen and Maiman (1981) find a much higher rate of payment by defendants who used mediation in small claims cases in Maine. Of the 109 cases mediated to agreement, 70.6 percent of defendants paid in full, 16.5 percent paid in part, and 12.8 percent did not pay at all. This is compared to the 139 adjudicated cases in which 33.8 percent paid in full, 21.1 percent paid in part, and 45.1 percent did not pay at all. The authors attribute this sharp difference to the fact that when participants are part of developing a solution, they are more likely to follow through on their commitment with that solution because of a personal sense of responsibility. In addition, the authors note that mediators play a more active role than do judges in supporting participants to define a clear and specific payment plan, often with payment beginning immediately, as part of the agreement. Perhaps the most interesting finding, however, is that there is a higher payment rate even among defendants in cases that were mediated but did not reach agreement in mediation and returned to court. Of these, 52.8 percent paid in full, 13.9 percent paid in part, and 33.3 percent did not pay at all. The authors conclude that this finding highlights that the process itself seems to create a sense of responsibility about payment, through humanizing the opponent and creating a personal connection (McEwen and Maiman, 1981). Other studies examining durability of agreement have found self-reported compliance ranging from 59 percent to 93 percent (Hedeen, 2004, Wissler, 2004). In contrast, Wissler (1995, p. 351) finds that compliance in mediated cases was only “marginally greater” than in adjudicated cases in the court-annexed programs examined in her study.

The other primary measurement of stability is found through a review of the records of the relevant agencies to determine if participants have reengaged those agencies to resolve their dispute (McGillis, 1997). Studies that examine whether participants have done so are unique in their ability

to consider the long-term cost savings associated with mediation that come from developing a sustainable solution. This is distinct from the (equally important) research comparing the cost of mediating a particular dispute to the cost of adjudicating the same dispute (see, for example, Felstiner and Williams, 1982; and Mendel and Marshall, 2002). Research examining whether participants reengage agencies combined with research examining the cost comparison of handling the immediate conflict can give a true picture of the economic value of mediation.

In a study of the partnership between the Neighborhood Dispute Settlement Center of Dauphin County (Pennsylvania) and the Harrisburg Bureau of Police, Shepherd (1995) finds that use of mediation in neighborhood conflict resulted in a decrease in police calls and cost savings to the police department. Shepherd compares the number of police calls in the six months prior to and the six months after mediation and compares this period to the same one for nonmediated cases. He concludes that mediation of sixty-five cases resulted in a savings of 180 police calls. One difficulty with Shepherd's report is that he does not provide information on the "control group" (i.e., those situations that were not mediated); nor does he deal with issues of selection bias.

In another study measuring the change in calls to the police department before and after mediation, Charkoudian (2005) reports an average decrease of 8.53 calls to the Baltimore City Police Department in the six months after mediation for each case that was mediated compared to cases that were not mediated. This research used the Heckman two-step model to address the issue of possible selection bias, and the figure of 8.53 calls is a statistically significant result even after accounting for selection bias.

A North Carolina study found a lower rate of filing new charges in the 120 days after mediation among those who mediated compared to those who did not. The difference was not statistically significant; however the authors indicate that this could be because the overall rate of filing new charges within 120 days of the original charge is low. They suggest that if cases could be followed for a longer period of time "the difference attributable to mediation [may be] more discernable" (Clarke, Valente, and Mace, 1992, p. 59). A 1979 study of the Brooklyn Mediation Program found no significant difference in participants returning to court or the police being called between mediated and adjudicated cases; however, the authors indicate that this also may be because the numbers for both groups are low. The Brooklyn study did find significant and large differences in attitude between those who used mediation and those whose cases were adjudicated, with

mediation participants fearing each other less and understanding each other more (McGillis, 1997).

Lowry (1993) highlights the fact that although research indicates mediation agreements tend to be durable, this stability is more clearly proven in agreements involving a “single act” such as a monetary payment, and there is less conclusive evidence showing durability in cases involving an “on-going web of interactions.” The cases in this study involve disputes that entail monetary payment as well as disputes with ongoing personal interaction between the participants.

McGillis (1997) highlights the need for more research on the stability of mediated agreements over time. Hedeem (2004) further emphasized the dearth of research on community mediation in general and the aging of the limited research that does exist. This article seeks to begin filling this gap.

Hypothesis

On the basis of the review of literature, we hypothesize that:

Cases that were mediated are more likely to show a decrease in police involvement after the mediation, compared to cases not mediated.

Mediated cases are more likely to show a decrease in court involvement after the mediation, compared to cases that were not mediated.

Methodology

The database for this study was developed as part of a larger study coordinated by Community Mediation Maryland, formerly the Maryland Association of Community Mediation Centers (MACMC). Community mediation programs in Maryland, Pennsylvania, Delaware, New York, Washington, D.C., Northern Virginia, and New York, and a mediation program in a Maryland prosecutor’s office, furnished cases for participation in the treatment group. These same programs yielded cases for participation in the control group, with the addition of a program in Nevada. For creation of the treatment group, intake staff asked mediation clients whether they were willing to have researchers present during their sessions. Participants in seventy cases agreed. In each case, researchers interviewed the mediation participants immediately before and immediately after their mediation sessions, using a survey questionnaire that asked about the participants’ experience with the conflict,

beliefs about conflict, experiences with the mediation, and demographics. Mediators also completed a brief questionnaire before the mediation began, generating demographic information and responding to questions about their philosophy and approach to mediation. Researchers attended all mediation sessions to observe and code mediator and participant behavior.

To create the control group, center staff offered the option to participate in a survey about conflict to participants in a conflict that was referred to the center but was not going to be mediated because at least one participant did not want to mediate. The offer was made both to participants who wanted to mediate and to those who did not want to. For the control group, researchers contacted the participants by phone soon after they received their contact information. They completed a questionnaire with the same questions as those asked of treatment group participants immediately before the mediation. Researchers then followed up with the control group three to six months later to ask the same questions posed to the mediation participants in the follow-up period. All participants were paid twenty dollars per interview for all phone interviews. Mediation participants were not paid for the questionnaires completed at the mediation, so as not to create an incentive to attend additional sessions that they would not otherwise have attended.

Conflict in the study involved interpersonal conflicts, including neighbor disputes, family disputes, and small business disputes. Matters were referred to mediation from a number of sources. Some were situations in which misdemeanor criminal charges or small claims civil charges had been filed.

Most of the mediators were volunteers in a community or court program. A few mediators were paid staff of such a program. The mediators reported a broad range of experience, having previously mediated between two and more than four hundred cases each. Their initial mediation training ranged from 16 to 135 hours, and advanced training ranged from 22 to 660 hours. The programs assigned mediators to cases in different ways; the authors do not have access to information about how those assignments were made. Most cases were concluded with one mediation session, but some had a second. Mediations lasted from forty minutes to more than four hours, with a mean length of just under two hours. Almost all mediation time was spent in joint session. Separate private sessions with the participants on each side of the dispute were held in only nine cases; even in these cases, the majority of the mediation time was spent in joint session.

Linear Regression, Ordered Logit Regression, and Selection Bias Challenges

This study begins with a linear regression to estimate the equation measuring the effect of mediation on increase or decrease in use of police and courts. The coefficients on a linear regression model reflect how much influence the independent variable has on the dependent variable, by direction (positive or negative) and relative to other independent variables. There are two potential problems with using a linear regression for a dependent variable with only three categories. The first is the problem of interpreting the values of the coefficients, and having predicted values fall outside the range of the three categories. Because we are more interested in the directional relationship and significance of this relationship than in the magnitude, this is not a significant problem. A second possible problem is a heterogeneous error term. Therefore, in addition to estimating the equation using a linear regression, an ordered logit estimation is also conducted.

Another significant challenge to the analysis we seek to address in this study is that cases were not randomly assigned to mediation. This raises the question as to whether there is a potential selection bias. The problem is that there may be some unseen variable that makes people both more likely to use mediation and more likely to stop using the police and courts to resolve their disputes. If this is the case, then a linear regression model or an ordered logit model will overestimate the impact of mediation on the change in involvement of police and courts. To account for the possibility of selection bias, the treatment effect model and the Heckman two-step estimation procedure were employed and compared with the results obtained from the linear regression and the ordered logit (Greene, 1993). This allowed us to isolate the impact of mediation on the change in police and court involvement while removing the impact that the potential selection bias may have had.

Dependent Variables

We are interested in examining the change in participants' use of police and court resources before the offer of mediation was made, to the period after mediation, and after the offer of mediation was rejected. Treatment group participants were asked in the pre-mediation questionnaire, and control group participants were asked in the first questionnaire, whether police, criminal court, civil court, juvenile court, or family court had been involved in the conflict situation. In the follow-up survey, participants were asked whether police, criminal court, civil court, juvenile court, or

family court had been involved in the situation since the mediation (for the treatment group) or since the last questionnaire (for the control group). A dummy variable (1 = yes, 0 = no) was created for police involvement, and a separate dummy variable was created for all court involvement combined. The Change in Police Involvement variable was created by subtracting the Police After variable from the Police Before variable, thus measuring whether police were involved more, less, or equally after the mediation or the lack of mediation than before. The Change in Police Involvement variable is equal to 1 if police were called before and not after, 0 if police were called before and after or if police were not called before or after, and 1 if police were not called before and were called after. The same structure holds true for the Change in Court Involvement variable. See Table 1 for an explanation of change in police involvement. See Table 2 for further description of these variables.

Independent Variables

In addition to the binary variable Mediated, which measured whether or not the case was mediated, we also controlled for other case characteristics through multivariate regression. These included whether or not the case was a family case or a romantic case, the number of months the conflict had been occurring before the offer of mediation was made, whether or not the participants expected to see each other again, and the number of months between the initial questionnaire and the follow-up questionnaire. The variable measuring whether participants expected to see each other again was included, on the basis of Lowry's assertion (1993) that mediation of a "single act" may be easier to resolve in a way that does not require future interventions than mediation of a situation involving an "ongoing web of interactions." Furthermore, participants who did not expect to see each other again, regardless of the outcome of the conflict, were not likely to find the need to involve the police or courts. The same rationalization was true for family and romantic conflicts; these relationships were more likely to involve an intense and complex "web of interactions" compared to business or neighbor disputes. As with any set of binary variables, Family holds constant for cases that were family disputes compared to all other cases that were not family disputes. Romantic holds constant for cases involving a romantic relationship compared to all other cases that did not. The variable measuring the number of months between when the conflict began and when participants were offered mediation was included, consistent with the findings of Pruitt and others (1993) that prior escalation of

Table 1. Explanation of Change in Police Involvement

	Before Mediation/First Interview	After Mediation/First Interview
-1		
0		
0		
1		

the conflict is negatively related to the long-term success of the mediation. Pruitt and his co-authors used the participants' report of the "worst incident" and the mediators' assessment of participants' behavior to measure escalation. In this study, we use participants' self-reported length of the conflict as a proxy for level of escalation.

The variable measuring the number of months between the initial questionnaire and the follow-up questionnaire was included by necessity. The goal in the research design was to conduct the follow-up questionnaire three months after the mediation or the rejection of the offer to mediate. Because of a number of logistical challenges and staff turnover, this did not occur. As a result, the average number of months between initial contact and follow-up was 7.7 months, with a range from 3 to 18 months. This variable was included with the concern that additional time between the initial intervention and the follow-up would increase the likelihood of police and court intervention. Including this variable tests for this possibility and controls for any effects related to the differences in the time. (As it turns out, the coefficient on this variable is not significant, indicating that these differences in time period do not change the outcome.) This lack of consistency in the follow-up time is also the reason the primary dependent variable measured is whether or not there was police or court intervention,

Table 2. Descriptions of Variables

<i>Variable</i>	<i>Description</i>	<i>Mean</i>	<i>SD</i>	<i>Min</i>	<i>Max</i>
Mediated	1 if case was mediated, 0 if not	0.51	0.5	0	1
Change in police involvement	-1 if police called before and not after, 0 if police called before and after or if police not called before or after, 1 if police not called before and called after	-0.54	0.5	-1	0
Change in court involvement	-1 if charges filed before and not after, 0 if charges filed before and after or if charges not filed before or after, 1 if charges not filed before and filed after	-0.44	0.562	-1	1
Family	1 if case was a family dispute other than husband-wife or custody, 0 otherwise	0.17	0.373	0	1
Romantic	1 if participants had or have romantic relationship or children together (including husband-wife or custody), 0 otherwise	0.06	0.229	0	1
Length of conflict	Self-reported number of months between when conflict began and when mediation was offered; averaged if participants reported different lengths	20	43	0.0155	360
Length of conflict squared	The value of the length of conflict (above) squared to create a quadratic	2267	13753	0.0002	129600
See person again	1 if participants expect they will see the other person after the conflict is resolved, 0 if not	0.57	0.495	0	1
Months to follow-up	Number of months between mediation and the follow-up call or between control group initial interview and the follow-up call	7.69	3.632	3	18
Public agency involved	1 if public agency other than courts or police was involved before referral, 0 otherwise	0.25	0.437	0	1

Note: Total number of observations: 93

rather than the number of police calls and court charges, because the latter would be more likely affected by differences in the time period.

In addition to the equation we are interested in, which measures the impact of mediation on the change in police or court intervention, an equation predicting whether or not participants will enter into mediation is also needed because we are using the Heckman two-step estimation procedure. This equation needs to include at least one variable that (1) predicts whether or not participants will use mediation and (2) does not have a statistically significant impact on the change in police or court involvement. The variable Public Agency Involvement plays this role. It measures whether a public agency other than the court or police was involved in the conflict before the offer of mediation. This may have been a city or county agency, department of social service, or other office. The findings below demonstrate that cases in which other agencies are involved are less likely to be mediated. The other variables included in the mediation prediction equation are the Length of Conflict and the Length of Conflict Squared. These are included on the basis of the findings of Charkoudian and Wilson (2006) that the relationship between length of time and a decision to mediate is a quadratic one, with the likelihood of mediation increasing with the length of the conflict (but at a decreasing rate). Charkoudian and Wilson (2006) also find that those involved in personal relationships, such as family relationships, are more likely to use mediation; therefore, an indicator for a family conflict is also included in the Mediation Predictor equation.

Results

Table 3 shows the results of the ordinary least squared regression of the independent variables outlined above on the Change in Court Involvement and the Change in Police Involvement.

Table 3 shows a negative and statistically significant effect of mediation on the Change in Court Involvement and the Change in Police Involvement, meaning that cases mediated were likely to decrease their use of police and court resources.

Table 4 shows the result of the ordered logit regression of the independent variables outlined above on the Change in Court Involvement and Change in Police Involvement.

Table 4 shows a negative and statistically significant effect of mediation on the Change in Court Involvement and the Change in Police Involvement,

Table 3. Results of the Estimated OLS Regression on Change in Court and Change in Police Without Accounting for Selection Bias

	<i>Dependent Variable: Change in Court Involvement</i>	<i>Dependent Variable: Change in Police Involvement</i>
Romantic	0.688**	
Family		0.210
Length of conflict	0.001	-0.003*
See person again	-0.072	-0.150
Months to follow-up	0.012	0.014
Mediated	-0.353**	-0.455**

Note: * statistically significant at the 0.05 level ($p < 0.05$); ** statistically significant at the 0.01 level ($p < 0.01$)

Table 4. Results of the Ordered Logit Regression on Change in Court and Change in Police Without Accounting for Selection Bias

	<i>Dependent Variable: Change in Court Involvement</i>	<i>Dependent Variable: Change in Police Involvement</i>
Romantic	3.049**	
Family		1.115
Length of conflict	-0.006	-0.022
See person again	-0.275	-0.792
Months to follow-up	0.057	0.080
Mediated	-1.390**	-2.220**

Note: * statistically significant at the 0.05 level ($p < 0.05$); ** statistically significant at the 0.01 level ($p < 0.01$)

meaning that cases mediated were likely to decrease their use of police and court resources. The fact that the ordered logit regression yields the same direction and level of significance as the linear regression indicates that the possible problem of a heterogeneous error term in the linear regression does not bias our results.

However, as stated above in the methodology section, neither standard OLS nor the ordered logit takes into account the possibility of selection bias. Therefore we also use the Heckman two-step process to account for the possibility of selection bias. The results of the Heckman Two-Step Process are shown in Table 5.

Table 5. Results of the Estimated Heckman Two-Step Process on Change in Court and Change in Police Accounting for Selection Bias

	<i>Dependent Variable: Change in Court Involvement</i>	<i>Dependent Variable: Change in Police Involvement</i>
Family		0.361
Romantic	0.664**	
Length of conflict	0.001	-0.004*
See person again	-0.033	-0.147
Months to follow-up	0.008	0.014
Mediated	-0.662*	-0.926*
	<i>Dependent Variable: Case Mediated</i>	<i>Dependent Variable: Case Mediated</i>
Family	0.806	0.803
Length of conflict	-0.020	-0.021
Length of conflict squared	0.000	0.000
Public agency involvement	-0.837*	-0.776*

Note: * statistically significant at the 0.05 level ($p < 0.05$); ** statistically significant at the 0.01 level ($p < 0.01$)

Table 5 shows a negative and statistically significant effect of mediation on the Change in Court Involvement and the Change in Police Involvement, even after taking into account the possibility of selection bias.

Together, Tables 3, 4, and 5 show a negative effect of mediation on the Change in Police Involvement and the Change in Court Involvement. This means that in cases mediated (compared to cases that were not mediated), participants who used police and court resources before were likely to stop using police and court resources after mediation. It also means that in cases mediated (compared to cases not mediated), participants who did not use police and court resources were not likely to start using them after the mediation.

Conclusions

These findings have important implications for courts and communities as they assess the utility and cost-to-benefit ratio for mediation programs. The repeated use of court and police resources is costly to communities as well as to the individuals involved.

Policy Implications

The findings of this study indicate that people who use mediation are more likely to stop using police or court resources in the period following mediation compared to those in conflict who did not use mediation. Moreover, those who had not used police and court resources prior to the mediation were less likely to use these resources in the months following the mediation, compared to those who did not use mediation. These findings are consistent with those of Shepherd (1995) and Charkoudian (2005), who identified a decrease in use of police resources in mediated cases compared to those not mediated. These findings depart from those of Clarke, Valente, and Mace (1992) and the 1979 study of the Brooklyn Mediation Program (see McGillis, 1997), which do not detect a significant difference between mediated and nonmediated cases returning to court in the months following mediation. One reason for this could be the longer period that was captured in this dataset compared to the 120-day window in the data used by Clarke and colleagues. However, another significant difference is that the dataset used in this study involved participants' self-reports.

Despite potential drawbacks associated with self-reported data, these results highlight the real potential for mediation to create resource savings for the court and law enforcement in the medium to long run. These findings on the long-term cost savings to public agencies, combined with the multitude of studies finding a high rate of resolution, high satisfaction, and positive experiences with procedural justice (see, for example, McGillis, 1997; Clarke, Valente, and Mace, 1992; Hedeem, 2004), and the studies finding that the cost of mediating a case is lower than the cost of processing a case through court (see, for example, Felstiner and Williams, 1982; Mendel and Marshall, 2002), demonstrate that community mediation gives participants a better experience and gives police and courts a break.

Law enforcement agencies and court personnel should increase the number of cases referred to mediation to realize the potential resource savings. Community mediation centers should use these results as they work to build creative partnerships with police, courts, and other agencies. Centers can use these quantitative results, which match many individual police officers' or judges experience, to develop stronger and more creative partnerships to increase the number of people who receive mediation services. Community mediation centers can also use these results as they work to secure funding from public and private sources. These results join the other research in making a strong case for continued public funding of community mediation.

Research Implications

These results are promising, but, as highlighted in the literature review, there is inadequate research at present examining the medium and longer-term effect of community mediation on public resources. This article adds to the available information, but more is needed. Ideally, a more complete study would include comparison of mediated and nonmediated cases, following each type over six to twelve months after the intervention. Such an analysis should include both ongoing interviews with participants and a review of court case files and police call reports. With this additional information, such a study could quantify the amount by which mediation decreased the use of these resources, making possible a more robust cost-benefit analysis.

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