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Analysis of the Efficacy of Criminal Court Mediation as a Tool of Restorative Justice

Teresa Hoerres
SIT Graduate Institute

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Analysis of the Efficacy of Criminal Court Mediation as a Tool of Restorative Justice

Teresa Hoerres

PIM 72

A Capstone Paper submitted in partial fulfillment of the requirements for a
Master of Arts in Conflict Transformation and Peacebuilding at
SIT Graduate Institute in Brattleboro, Vermont, USA.

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Advisor: John Ungerleider

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ABSTRACT	1
INTRODUCTION	2
BACKGROUND RESEARCH	4
CRIMINAL COURT MEDIATION PROGRAMS	5
MINORITIES AND RESTORATIVE JUSTICE.....	7
ADDRESSING MULTICULTURAL CHALLENGES: NEW YORK PEACE INSTITUTE STRATEGIES	14
<i>Recruitment</i>	14
<i>Training</i>	14
<i>Mediation Practice</i>	15
<i>Summary</i>	17
RESEARCH DESIGN.....	17
ETHNOGRAPHIC RESEARCH.....	18
HIGHLY STRUCTURED INTERVIEWS.....	18
SAMPLE	19
FINDINGS.....	20
DESIRED OUTCOMES AND SATISFACTION OF MEDIATION.....	21
DESIRED OUTCOMES AND SATISFACTION OF MEDIATION BY PARTY.....	23
QUALITATIVE ANALYSIS ON CRIMINAL COURT.....	27
SUMMARY OF FINDINGS	29
CONCLUSIONS.....	31
CONFLICT FORMATION.....	31
CONFLICT TRANSFORMATION	32
THEORY OF JUSTICE	33
RECOMMENDATIONS FOR FURTHER RESEARCH.....	34

ABSTRACT

This capstone research paper aims to capture the personal narratives of how participants of criminal court mediation in Brooklyn, New York actual experience the program. The program, which is facilitated by New York Peace Institute, is a cornerstone of the organization's restorative justice program. Restorative justice has been gaining traction over the last few decades, and its application to criminal matters as an alternative dispute resolution (ADR) service, is unprecedented.

The research was conducted using a mixed methodology approach, relying on the researcher's ethnographic observations of the criminal court mediation program from August 2013 through March 2014, as well as 20 highly structured interviews that provided a great amount of qualitative data directly from mediation participants.

The findings of the interviews illustrate what mediation participants hoped to get out of mediation, whether it was to repair the relationship with the person they were in conflict with, get the criminal charges dismissed, get the criminal process over with, to speak their mind, or something else. The research reveals a divergence of motive for coming to mediation based on whether the mediation participant was the perceived victim of the crime (complaining witness), or the accused wrongdoer (defendant). Interestingly, neither group identified "dismissal of charges" as the primary motivator for coming to mediation. Instead, the victim was seeking to repair the relationship, while the defendant was seeking to speak his or her mind. The intricacies of these motives, as well as the reconciliatory progress of parties, are discussed in great detail throughout the findings and conclusion of this research paper.

Introduction

High incarceration rates and equally disturbing recidivism rates have caused the classically retributive criminal justice system in the United States to come under massive scrutiny by a wide range of both practitioners in the field and those who experience the justice system firsthand. Victims' voices are lost and forgotten in the criminal system, explains Marilyn Armour, adding "the U.S. legal system treats murder as crime against the state rather than a crime against the victim's family. Family members are usually just relegated to the role of witness" (Neff, 2005). In fact, Armour is right; the nomenclature for a victim in the criminal justice system is "complaining witness".

New York Peace Institute (NYPI) facilitates perhaps one of the most prolific restorative mediation programs for criminal offenders in the United States. Funded by the New York State's Unified Court System and the office of the mayor, the Brooklyn-based criminal court program sees roughly 500 cases per year, many involving youth, and majority of them involving family members. While the program does not mediate murder cases, or any other felony charges, Armour's description of the victim's role in the prosecution of a crime resonates strongly within the New York Peace Institute. Once an arrest has been made, the District Attorney becomes the prosecutor on the case, and the defendant must answer to the state. Once set into motion, the criminal justice process is nearly impossible to reverse, sometimes even despite the wishes of the complaining witness.

Restorative justice provides opportunities for people to understand the impact of crime or violence, repair the harm, hold wrongdoers accountable, and find resolution. When the voices of people affected by crime are heard, recidivism decreases and

opportunities for both victims and offenders to rejoin the community are increased.

Together, empathy and reconciliation help provide people with a renewed outlook to their conflict. In this sense, restorative justice, as Nils Christie eloquently describes, gives the conflict back to its right owners, granting them the opportunity to decide for themselves the best solution (Albrecht, 2010).

The client constituency in the criminal court mediation program at NYPI is predominantly African American, with a mixed group of minorities representing the secondary group. The staff at NYPI as well as the pool of criminal court mediators is majority Caucasian. As Press (2013) points out, “at the time many of the first community [mediation] programs were founded, the vast majority of judges, lawyers, and court personnel were [also] Caucasian, making the system a less than friendly place for members of minority groups to resolve their conflicts” (p1). Because of this dynamic, mediator diversity has always been a high priority for NYPI, particularly for the criminal court program. While NYPI continues to diversify its team to better serve the multicultural nature of its clients, the organization has very little data on how minority groups are actually experiencing criminal court mediation. For these communities, it is important to understand whether the promises of restorative justice, particularly the reconciliation aspect of the model, are being fulfilled. Thus far, their voices are not being heard, and that, very simply, is because we have not asked them.

As the field of mediation continues to expand and become more specialized, efforts to uphold the integrity of mediation itself continue to aggregate. In terms of legal alternative dispute resolution, Sharon Press (2013) argues, “as advocates for mediation, we have a responsibility to see that both the traditional adjudicatory process and the

mediation process are as strong and respectful as they can be” (p4). Press proposes that both research grants and task force projects should be initiated that unveil the effectiveness of court mediation, particularly for minority groups. Berit Albrecht (2010) wrote an article discussing the multicultural challenges of restorative justice for minorities. She notes, “in the course of [her] research project, it became clear that more systematic research is needed, including the perspective of participants in mediations” (p3).

This capstone research paper seeks to gain a better understanding of how minority groups experience Criminal Court Mediation through New York Peace Institute in Brooklyn, New York. It is an exploration on their satisfaction with the procedure, the outcome, and content of the court mediation, and whether they are achieving what they had hoped for in the onset of the mediation.

For the purpose of this research, minority is defined as groups of non-white people who are systematically denied equal access to resources and power. It is this same group of people who are disproportionately represented in the Criminal Justice System. This research is not only important to understanding the effectiveness of restorative justice for minority communities, but the impact of such research could also help bridge the major chasm between our current Criminal Justice System and the primary group of people subjected to the system—minorities.

Background Research

Criminal Court mediation is a relatively unexplored concept, and to add minorities’ experiences to the mix makes it even more of a niche and valuable

exploration. In gathering research that captures the whole phenomenon, it became important to really unpack the research topic in two separate categories. First, there is the concept of criminal court mediation to explore; the following section will compare and contrast the ten other criminal court mediation programs in the United States. The purpose of researching other similar programs is to discover potential overlapping challenges the programs encounter, and perhaps more importantly—unveil some of the common characteristics of the programs. For example, how are the programs receiving referrals? What kinds of cases can be mediated in the criminal court programs? The second concept of the research inquiry is minorities' participation in a restorative justice program. Criminal court mediation, bringing together a perceived victim and perpetrator, by its very nature is a restorative justice program. As discussed in the introduction of this paper, restorative justice relies on principals of reconciliation and empathy in healing wrongdoings. This monumental endeavor is already challenging for participants, without taking into consideration differences in social identity among the participants. The reality is that when a restorative justice program seeks to bridge gaps especially between and among minority groups, challenges arise that must be discussed. Part two of this section will explore some of these challenges.

Criminal Court Mediation Programs

As a result of co-facilitating the criminal court program at New York Peace Institute and conducting extensive research into other criminal court mediation programs nationwide, five primary characteristics of criminal court mediation programs emerged which include the referral sources, types of cases mediated, the mediator, participants, and possible outcome of cases. The purpose of this comparison is to explore how other

organizations and state offices are facilitating these programs. Who are they serving, how do they doing it, and do they have similar challenges? The results of this inquiry are displayed in Table 1.

Table 1: State-by-State Comparison of Criminal Court Mediation Programs

State	Referral Source	Types of Cases	Mediator	Participants	Outcomes
North Carolina	-State Legislature -Supreme Court -Local Jurisdiction -"Mediation liaison"	No Orders of Protection permitted	State certified community members	Complaining witness, defendant, mediator	Pre-sentencing. Agreement dictates outcome of criminal charges.
Maryland	State Attorney (prosecution, defense counsel, or judge)	Misdemeanors; assault, trespassing, harassment, theft.	Community members, basic training	Complaining witness, defendant, defendant's lawyer, mediator	Inactive Docket; Nolle Prosequi
Tennessee	State Court	Pre-warrant services	Sitting judge, or sitting court clerk, referred to as the "Neutral"	Complaining witness, defendant, the "Neutral"	Alternative Dispute Resolution service
Texas	District Criminal Court, law enforcement, counsel	Varies by county-both felony and misdemeanor	Community members, basic training	No victim present	Prosecutor, defendant, and mediator decide punishment
Delaware	"Mediation officer", judges, Deputy Attorney General, assistant public defenders, and parties themselves.	Misdemeanors	Superior Court Trained	Complaining witness, defendant, mediator	Nolle Prosequi; post-sentencing in restitution dispute
Idaho	Court or participants	Felonies or misdemeanors	Judge or justice appointed by Admin Office of the Courts	Complaining witness, defendant, mediator	Sentencing options, restitution, discussion on admissibility of evidence and future contact with victim.
New Jersey	Municipal courts	Personal injury, property dispute, bill non-payment, bad checks, criminal mischief	Community members, basic training	Complaining witness, defendant, mediator	Alternative Dispute Resolution service
Ohio	Pre-arrest at discretion of police officer; social and legal service agencies; walk-ins	No domestic violence, stalking, trespassing, or violations of orders of protection	Community members, basic training	Complaining witness, defendant, mediator	A preliminary to formal court proceedings, personal agreements.
Kentucky	Mediation docket at each county court	Felonies	Judge	Defendant, defense counsel, prosecutor, and mediator	Substitute to trial, similar to plea bargaining, still includes jail time.
Florida	State Attorney office	Harassment, battery, assault	Supreme Court certified	Complaining witness, defendant, mediator	Alternative Dispute Resolution service

It is surprising how many states are actually facilitating a criminal court mediation program, and even more surprising how different they are. Each program has the same defining characteristics, but occurring in different combinations to create ten unique programs. Not all of the programs reflect the traditional victim-offender mediation

(VOM) model either; both Texas and Kentucky conduct the mediation without the presence of the victim and therefore apply criminal court mediation as a way of making the sentencing procedure more inclusive and participatory for the defendant. Forty percent of the programs exclude from mediation cases that involve orders of protection (restraining orders) or assault. Two of the programs that *do* mediate more serious offenses require a judge or a supreme court certified individual to be the mediator. Three of the programs do not offer dismissal of charges—or “nolle prosequi”—as a possible outcome of mediation. In effect, this allows the prosecutor to retain some control over the outcome of the case; self-determination of participants is limited.

In removing the victim from the dialogue, avoiding more serious misdemeanors such as assault, and taking the dismissal option off the table, are these programs effectively choosing their battles? If so, they are undoubtedly constructing program parameters that establish the programs as “low risk”, or at least *lower* risk to the participants, particularly the victims of crime. In this sense, these programs are definitely alternative dispute resolution options, but they may not be entirely committed to restorative justice in its pure form.

Minorities and Restorative Justice

Understanding what other criminal court programs in the United States are doing is only one part of exploring how minorities experience criminal court mediation. Because this is a completely new research topic, and no studies have been produced on minorities’ experiences in criminal court mediation, the literature review relies on studies produced about minorities’ experiences with restorative justice in general.

Albrecht (2010) conducted a four-month qualitative study interviewing mediators, staff, and project leaders in the restorative justice field in both Norway and Finland, specifically looking at immigrants' and refugees' experiences in restorative mediation. Albrecht highlights four primary multicultural challenges for restorative justice including communication, racism as the conflict itself, power imbalances related to immigration concerns, and culture. The first two challenges are relatively straightforward; language barriers and interpretation are perhaps the most significant hurdles in realizing the full benefits of restorative justice. Again, the goal of restorative justice is to understand the "other" in a given conflict, and communication barriers are undoubtedly a significant challenge in unlocking that magnitude of understanding. In a recent criminal court case at New York Peace Institute, both mediation parties were Chinese, but the complaining witness spoke both English and Cantonese, whereas the defendant only spoke Cantonese. While there was an interpreter present to assist the mediators during the mediation, the mediators reported several difficulties and obstacles during their debrief session with NYPI staff. First, the interpreter practiced consecutive interpretation as opposed to simultaneous interpretation, meaning the interpreter waits until the client is finished speaking, before interpreting to English. Considering that the parties understood one another in their first language, and the interpreter was working solely for the benefit of the mediators, the length of the process was slowed greatly. The mediators also explained the mediation was highly contentious, and the parties did not come to an agreement at the conclusion of the mediation. When the defendant left the mediation room, the complaining witness stayed behind momentarily to discuss with the mediators, in English, possible referral sources for counseling for herself. The defendant, witnessing

the interaction and not understanding what was being discussed, began screaming in Cantonese, at both the complaining witness and the mediators. The interpreter translated that the defendant believed they were telling lies about her. It was clear that no trust had been established during the mediation, and no rapport had been built between parties and mediator. As restorative justice practitioners, we must ask ourselves if we are doing as much as we can to ensure the availability of reconciliation to parties during mediation. Was there more that could have been done in this particular mediation, or was it, language aside, simply a case of irreconcilable differences?

Racism is another somewhat predictable, but certainly prevalent and important issue Albrecht discusses. She points out that in multicultural mediations, racism is often a part of the conflict itself, and she raises the question of how a mediator should deal with it. After conducting interviews with mediators, she reports that there are some mediators who believe it is the mediator's role to address possible racial tensions and misunderstandings between mediation participants to ensure a productive mediation, and still others who believe "that it would not be appropriate to actively address cultural diversity as an issue" (Albrecht, 2010, p12). In another article, Umbreit and Coates (2000) discuss the very same question of how a mediator should effectively navigate multicultural challenges of mediation; they suggest somewhat of a "cultural coaching" or social identity interpretation for parties before the mediation begins. In describing this preparation for participants, Umbreit and Coates (2000) say,

for example, the mediator may need to help participants understand each other's viewpoints and different communication styles prior to the mediation session. Encouraging cultural sensitivity may have little impact, but it may make a difference. At least the mediator is providing some information to help prepare participants for the encounter, which may

include what they would normally regard as insulting or disrespectful behaviors (p16).

The third issue Albrecht (2010) points out is very interesting—that of minority participants agreeing to more than they are comfortable with in the agreement as to avoid further legal ramifications that they believe they will encounter if they do not concede to the points of the agreement. She explains that because “immigrants and refugees are subject to criminal law as well as residence law, they are twice as vulnerable, a fact that might be taken advantage of by the other conflict party” (Albrecht, 2010, p15). This point is especially disturbing because it challenges perhaps the most important anchor of mediation itself: self-determination. Mediation should always support voluntary participation, and by doing so, participants are protected from potential revictimization. In the case described above, between the two Cantonese parties, immigration did in fact emerge as an underlying issue to the conflict. Both parties disclosed during mediation that they were not legal residents in the United States, which the mediators reported, only exasperated the distrust and fear of coming to mediation.

For the criminal court mediation program at New York Peace Institute, immigration issues are surprisingly prevalent for clients, but with varying applications; nearly sixty percent of the cases involve family members, and it is for this reason that Restorative Justice Program Coordinator, Carrie McCann, believes that participants are more likely to favor a dismissal of the criminal court charges in the agreement. She explains that in these cases where deportation may be a real threat for the defendant, often times the related family member complaining witnesses shows sympathy, agreeing to help the defendant escape the clutches of the immigration-criminal law superpower.

The idea that fear may motivate the terms of the agreement, or even the mediation itself, is also applicable to the general population of defendants, not just international minorities. The criminal court mediation program at New York Peace Institute is an alternative dispute resolution (ADR) option for defendants; the mediation occurs pre-sentencing, giving the parties the opportunity to come to some sort of resolution of the conflict on their own terms rather than receiving a ruling from a judge. Mediation is usually offered at the defendant's adjournment hearing at the criminal court building. Both the prosecutor and the defense attorney must agree to mediation, at which time the defendant is notified that he or she has the option to attend mediation as a way of handling the criminal court charges outside of the typical criminal court system. Self-determination is the life force of criminal court mediation; the program would fail to fulfill the promises of restorative justice without it. As Albrecht (2010) points out, "it is questionable whether it can be considered as voluntary participation when agreeing to mediation mainly or partially results from fears of legal procedures" (p15).

The fourth, and final multicultural challenge to restorative justice that both Umbreit and Coates (2000) and Albrecht (2010) discuss is culture itself. While appearing to be a broad, and perhaps oversimplified issue, cultural differences among and between mediation participants pose a significant challenge to the practice, the roots of which extend to the far reaches of social identity. Common philosophical divergences among participants may include approaches to dealing with conflict, theories of justice and what constitutes punishment, and even moral values that shape behavior and dictate consequences. In analyzing the concept of justice, Umbreit and Coates (2000) discuss the traditional American-Indian philosophy of crime, purporting, "not only is the personal

relationship damaged by criminal behavior, but also the communal or tribal relationship, and likely even the relationship of the individual to the universe” (p9). The authors then pose a logical question of how the “restoration of justice” can be fostered following a crime without knowing participants’ cultural and moral beliefs. Similarly, Albrecht (2010) discusses the philosophy on guilt, reporting through her interviews with mediators, “people from Arab countries were said never to admit to their guilt”—an important component of restorative justice (p16). While keen on not developing strict generalizations about the Arab culture, she does note that some of this guilt philosophy may stem from preferred communication styles, and the importance of honor which requires a solution to the conflict that “will not cause a loss of face or honor to either side” (Albrecht, 2010, p17, excerpt from Augsburg 1992; Bukay 2003).

The philosophy of justice is an important one. It raises questions of how a crime should be dealt with, and what punishment means. It may also predict whether restorative mediation is a viable option for parties in conflict. In a misdemeanor assault case that was mediated at New York Peace Institute between extended family members from Grenada, one woman exclaimed that she wanted justice for the physical, emotional, and financial harm she endured as the result of the assault. When asked what justice meant for her, she replied that she wanted her nieces to go to jail. Despite voluntarily coming to mediation, the parties could not reach an agreement, and the case went back to criminal court. While this outcome may be attributed to a multitude of causes, the philosophy of justice was certainly a prevalent issue.

Considering the wide range of multicultural challenges to restorative justice, there are also a good number of arguments supporting its use. Albrecht (2010) highlights that it

is less formal and easier to understand than the official criminal court process, where “the legal discourse is one of experts that presupposes knowledge of the law with its specific terminology, procedural terms, and behavior, and excludes persons without this specific set of knowledge” (p15). Restorative mediation is also free, making dispute resolution services available for all people, but especially for people with limited financial means. Through restorative programs, parties can bypass worries about finding legal counsel, and the quality of counsel that their money can buy. There is also the argument that restorative justice is simply more comfortable than the criminal court process. In a recent article in the *Wall Street Journal*, journalist Anne Kadet describes her visit to New York Peace Institute,

Visiting the empty conference rooms, with their tissue boxes, candy bowls, and water carafes, I almost wished I had some nasty personal dispute to drag in for some free mediation (March 21, 2014).

Kadet is spot on; the mediation rooms are painted vibrant orange and magenta, decorated with fabric wall hangings, and the rooms are filled with a variety of plant species. The purpose of the vibrancy and passion is to let people know that conflict is okay, conflict is normal, and it can be an opportunity to enact change.

In a much larger context, Albrecht (2010) describes the potential of restorative justice to induce peacemaking as part of community culture, to “enhance social integration” and encourage “society to live together in productive and co-operative harmony built on mutual trust” (p19). What Albrecht is describing is *social change*, and the question is whether or not restorative justice is generating enough momentum to shift communities from a culture of punitive justice and revenge, to one of restorative justice and forgiveness. While the ultimate results of this endeavor remain to be seen, New York

Peace Institute consistently employs a gamut of strategies in its recruitment, training, and mediation practice that address many of the multicultural challenges outlined above.

Addressing Multicultural Challenges: New York Peace Institute Strategies

New York Peace Institute has been providing conflict resolution and mediation training to thousands of people all across New York City and beyond, for roughly 30 years. The pedagogy at NYPI has been refined through decades of expertise and input from many generations of peacebuilders and peacekeepers. It is no surprise that NYPI has developed many of its own strategies for best accommodating the multicultural nature of its clients and trainees. These strategies can be seen through the organization's recruitment, training, and mediation practice.

Recruitment

In efforts to better serve the multicultural needs of its clients, NYPI actively recruits minority mediators to join its team. Through her research, Albrecht (2010) also found two mediation centers that were actively recruiting minority mediators, and upon interviewing a general pool of mediators about this strategy, there were mixed responses. While some agreed that improved diversity allowed centers to better achieve their multicultural clients' needs, others believed that "everybody should be treated equally in mediation and that cultural backgrounds should not play a role... Principally, every mediator should be able to mediate every case" (p14).

Training

Organization wide, NYPI uses the facilitative model of mediation in which mediators support the conversation that parties choose to have by using techniques such

as reflection, asking open-ended questions, and validation. During the 40-hour basic mediation training conducted by NYPI, training facilitators divided the trainees into small groups to discuss ethical considerations that might (and assuredly have) arisen during mediations. Trainees were given five scenarios to discuss that ranged in content from LGBT issues to power dynamics in a traditional Muslim marriage. The small group discussions that ensued were rich and rife with trainees' ideas on how to manage the situations. NYPI's preemptive strategy for addressing multicultural needs of clients was creatively deployed in this training experience.

On top of the basic training and required 12-week apprenticeship program to become an approved mediator, the criminal court mediation program at NYPI requires an additional 16-hour specialized training. During the specialized criminal court training, trainees spend nearly one quarter of the training on an empathy workshop, particularly designed to increase empathy for defendants. The purpose is akin to developing multicultural sensitivity—it allows the mediator to move from a place of impartiality to one of multi-partiality. The workshop helps participants to understand their own biases and misperceptions when working with people unlike themselves. Umbreit and Coates (2000), suggest this very same idea in their recommendations for how to improve interactions in multicultural mediations. They suggest that the mediator “know thyself, get to know participants, and prepare the participants” (p 13-18). This last point—preparing the participants—is also a strategy employed by NYPI, and is discussed in the following paragraph.

Mediation Practice

NYPI uses what is known as “pre-sessions” when conducting criminal court mediations. These sessions are individual one-hour meetings between the complaining

witness and the mediator, and the defendant and the mediator, usually conducted on separate days. Each session is intended to give the individual participant the space to talk about what they hope to get out of mediation, and ask any questions about the process they may have. Umbreit and Coates (2000) propose preparatory meetings as well, but their recommendation suggests mediators to take on a much directive approach where mediators actually interpret cultural, social, and communication differences for the parties in hopes of improving the parties' interactions when it comes to the actual mediation (p16-18).

Another culturally sensitive strategy NYPI uses in its mediation practice centers around the criminal court case management. The program mediates a multitude of criminal court cases. Men, women, and even children are named as complaining witnesses, defendants, or sometimes cross-complainants (both parties were arrested). The program has mediated parties from all over the United States who are now living in Brooklyn, and immigrants from Pakistan, Mexico, China, Israel, Russia, and Europe—just to name a few. The case management team in the criminal court program makes great effort in matching mediators to cases in efforts to maximize comfortability, trust, and rapport building between mediators and the participants. For example, in a case that involved an assault between male cousins from Iran, the complaining witness had accused the defendant of having a sexual relationship with the complaining witness' wife. In maximizing the effectiveness and appropriateness of the mediator for this particular case, the case manager selected an older male mediator for the case. In another case involving a triple cross-complaint between two sisters and their mother, a co-mediation team involving at least one female was selected. In short, the mediator assignment is not

made by random selection at NYPI; genuine efforts are made to ensure proper cultural and social-identity sensitivity.

Summary

Through recruitment, training, and its mediation practice, NYPI is making significant strides to improving and expanding its services for a wide range of clients. Together, the strategies address many of the multicultural challenges to restorative justice that have been discussed in this paper thus far. There is, however, a significant voice missing from the discussion, and that is of the minorities themselves. There is very little existing data on how minority groups are actually experiencing criminal court mediation. For these communities, it is imperative to discover whether the promises of restorative justice, particularly the reconciliation aspect of the model, are being fulfilled. We must strive to understand what the minority participants are coming to mediation for, and whether they are achieving their goals in doing so. It is also important to understand if they are generally satisfied with the procedure and outcome of the mediation so that we may assess whether mediation is the right option for all people coming through criminal court. This paper attempts to establish a better understanding of how minority groups experience Criminal Court Mediation through New York Peace Institute in Brooklyn, New York.

Research Design

This research was conducted in March 2014 at New York Peace Institute's Brooklyn office, also known as Brooklyn Mediation Center (BMC). The researcher was an intern at BMC from August 2013 through February 2014, and was granted

organizational consent from New York Peace Institute to proceed with her research inquiry. A copy of this consent can be found in Appendix A. A mixed methodology approach was used in gathering data: ethnographic research and highly structured interviews.

Ethnographic Research

The purpose of ethnographic research is to make use and attribute meaning to the researcher's access to criminal court mediation debriefs with mediators, interactions with clients, and general observations of the work of BMC and the Kings County Brooklyn Criminal Court. In gathering this data, the researcher took field notes from December 2013 through March 2014, then reviewed and extracted meaningful stories from them to reveal powerful and applicable anecdotes to the overall research inquiry. These anecdotes are described in the background research, but the general knowledge also helped guide data collection, analysis, and the conclusion of the paper.

Highly Structured Interviews

The criminal court mediation program at New York Peace Institute conducts follow-up surveys with mediation participants one week after the parties' mediation took place. The system serves as a general monitoring and evaluating mechanism for the program, asking participants about their mediator, the mediation process, and outcome of the mediation. Because these surveys are conducted verbally and all interviewees were asked the same series of questions, they are comparable to *highly structured interviews*. In describing this data collection method's usefulness, Hesse-Biber and Leavy (2011) explain "individuals have unique and important knowledge about the social world that is

ascertainable and that can be shared through verbal communication” (p 94). The application of a questionnaire, however, is helpful because “if the participant strays too much from the topic at hand or says some things that are interesting but are not directly relevant to the study, [the researcher] guides the conversation back to the interview questions” (Hesse-Biber and Leavy, 2011, p 102). The questionnaire can be found in Appendix B. This portion of the research attempts to gather the personal stories of people [minorities] who have experienced both the criminal court system and criminal court mediation in Brooklyn, New York.

Sample

Inquiring about individual’s experiences of criminal court mediation helped formulate thick descriptions on how individuals process, interpret, and attribute meaning to their experiences in the program. This type of in-depth understanding usually requires a small sample (Hesse-Biber and Leavy, 2011, p45), which for this research inquiry, resulted in twenty phone interviews.

The sampling method was in part *purposive*¹ because the researcher wanted to deliberately gather data from multiple minority groups if possible, and also part *opportunistic*² because while the researcher used a database of completed criminal court mediations to contact interview participants, it was ultimately the voluntary nature of participation that dictated the data (individual stories) collected. The primary delimiter for this research was language. This research was not funded, and therefore the researcher was unable to hire interpreters to help conduct interviews. Research on how minorities

¹ A purposive sample is “based on the particular research question as well as consideration of the resources available to the researcher” (Hesse-Biber and Leavy, 2011, p45).

² An opportunistic sample “follows no plan; it just happens” (Hesse-Biber and Leavy, 2011, p 46).

experience the restorative mediation, therefore, was limited to African Americans, or minorities who spoke English as a second language.

Findings

Twenty highly structured interviews were conducted by phone in efforts to gain an understanding of how minorities actually experience criminal court mediation. Of the twenty interviewees, eleven were females and nine were males, six were between the ages of 18 and 25, two were between the ages of 26 and 32, seven were between the ages of 33 and 50, and the remaining five were over the age of 51. The results of these demographics can be seen in Charts 1 and 2. The relationship of the interviewee to the person he or she was in conflict with is displayed in Chart 3.

Chart 1: Gender

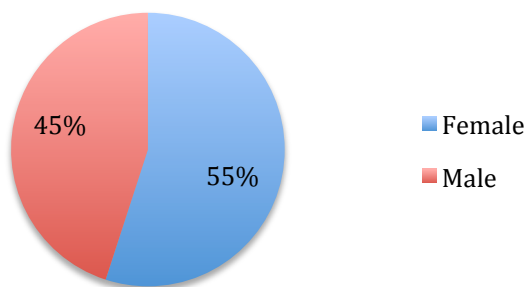


Chart 2: Age of Participants

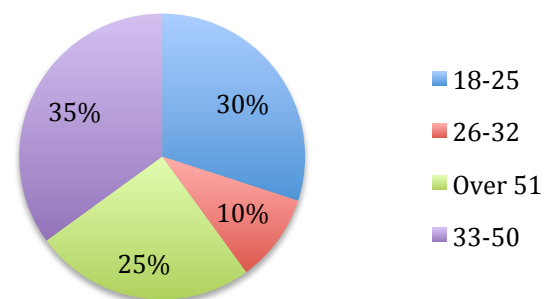
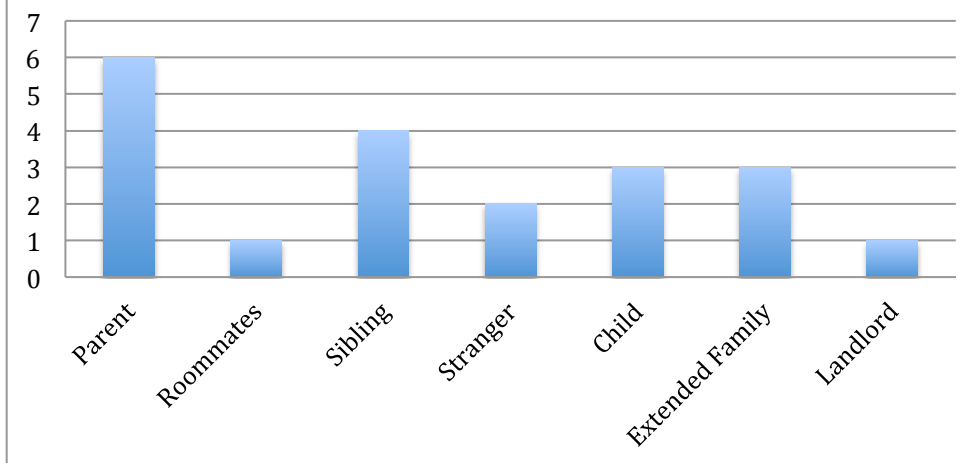


Chart 3: Relationship

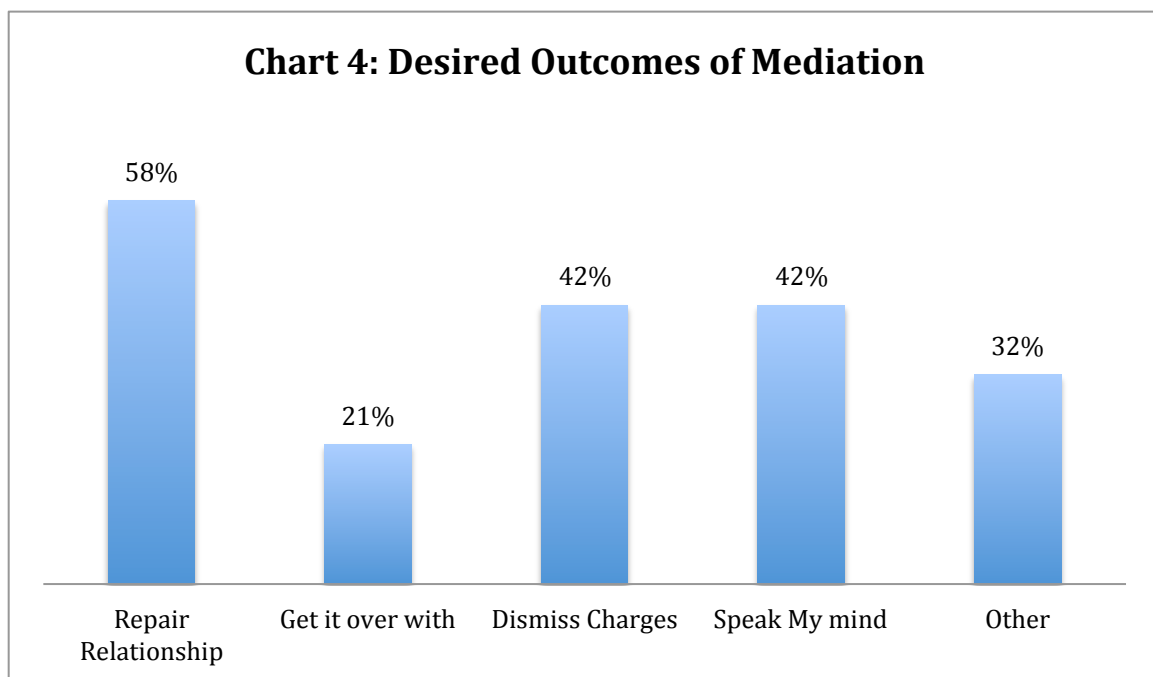


By happenstance, ten interviewees were complaining witnesses and nine were defendants. The last interviewee—the roommate—was a cross-complainant, whose answers were not included for the sake of comparative analysis between complaining witnesses and defendants. Of the six total parents interviewed, five of them were complaining witnesses, and one of them was a defendant. All of the children, and all but one of the siblings, were defendants. Two of the three extended family members were also defendants, and the landlord and strangers were complaining witnesses.

Desired Outcomes and Satisfaction of Mediation

Respondents were asked what they had hoped to get out of mediation, and they were given four choices plus an “other” option, with the opportunity to choose as many of the responses as they desired. The four choices included “repair the relationship”, “get it over with” (referring to the criminal court case), “dismiss the charges”, or “speak my mind”. The results of all 20 respondents are displayed in Chart 4. As evident from the chart, majority of interviewees wanted to repair the relationship with the person they were in conflict with.

Five out of the six parents indicated that they wanted to repair the relationship with their child, and the sixth parent, a complaining witness, wanted to dismiss the charges. In their responses to the question what they hoped to get out of mediation, all three children selected multiple options, but the common selection among them was “speak my mind”.

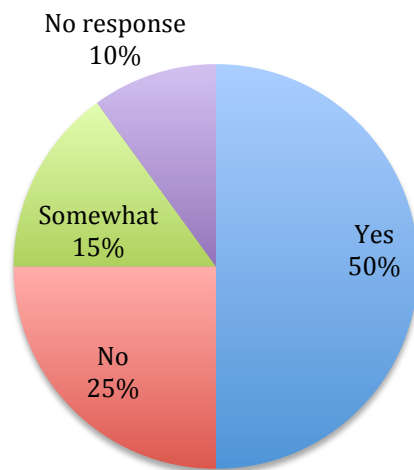


Of the twenty interviewees, three people identified a desired outcome not listed as one of the four options. These results are listed in Table 2. Interestingly, two of the three options mention truth-seeking.

Table 2: "Other" responses to desired outcome of mediation
"Just a fresh start to the new year."
"Truth seeking. We knew things would never go back to the same."
"Clarity and truth. I wanted [other party] to admit he lied."

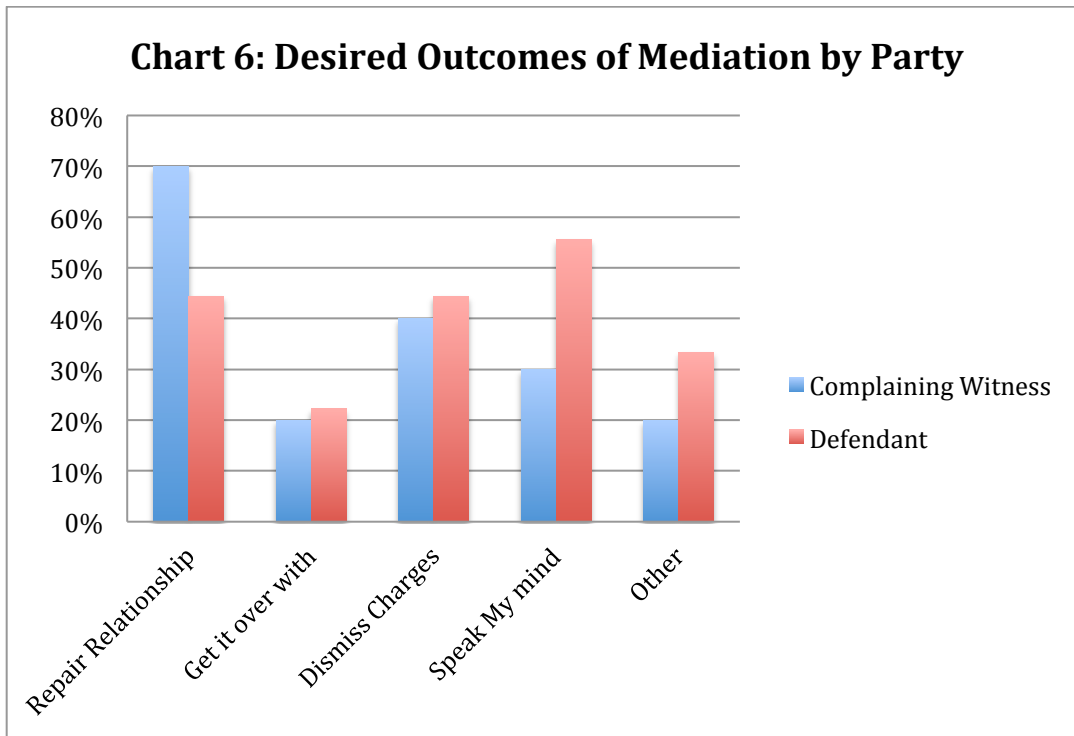
Interviewees were then asked if they felt their goal of coming to mediation that they identified in the previous question had been accomplished. 75 percent of respondents declared they got what they intended to from mediation, even if only somewhat, while one quarter of respondents reported that they did not achieve their goal. The full results are shown in Chart 5. In a broad sense, this statistic suggests that mediation was an effective tool for participants in achieving what they had hoped for at the onset of mediation.

Chart 5: Desired Outcome Satisfaction



Desired Outcomes and Satisfaction of Mediation by Party

To gain a better sense of what people want and expect when they come to mediation, the data from these two questions—desired outcomes of mediation and whether those goals were met—were divided based on the interviewees’ identity as either the complaining witness or the defendant. The majority response for complaining witnesses was to “repair the relationship”, while the primary response for defendants was to “speak my mind” [See Chart 6]. Dismissal of charges, which is what one might expect to be the number one motivator for people choosing to participate in an alternative dispute resolution program, was neither the complaining witnesses’ nor the defendants’ first goal in coming to criminal court mediation.



What is remarkable about the first choice—“repair relationship”—is the spread between complaining witnesses and defendants; nearly 30 percent fewer defendants were seeking to repair the relationship. This in itself is a very interesting and perhaps loaded contrast. In speaking with various defendants who come through criminal court mediation, what we have learned as practitioners is that the bulk of defendants feel as equally victimized as the complaining witness, especially considering that majority of the cases are between family members. The defendant has experienced an arrest as the result of an escalated conflict with his or her sibling, parent, friend, or other family member. For many of these defendants, the criminal incident represents their first experience with the Criminal Justice System, and they may be holding their loved one accountable. The anger, loss of trust, and resentment stemming from the defendant’s blame is one speculation for why defendants are less interested in repairing the relationship when they come to mediation. It is also possible they believe mediation is not enough to repair the

trauma experienced, or perhaps they are simply not interested in having a relationship with the other person any longer. Another question interviewees were asked is particularly helpful in shedding light on this speculation; they were asked if the relationship they had/have with the other person improved since the criminal incident occurred. Of the defendants who said they came to mediation specifically to repair the relationship, three said it was accomplished, and one said the relationship had not improved. Of the defendants who said they came to mediation to speak their mind, two people said the relationship had improved with the other person, while three said the relationship had not improved. The data reveals that regardless of the defendant's goal in coming to mediation, five report their relationships improving, and four report that the relationship did not improve—nearly equal.

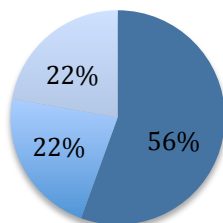
From the perspective of the complaining witnesses, we as practitioners often hear elements of guilt; when they called the police, they never expected their loved one to be arrested. Many times, as a result of the order of protection (restraining order) that is issued following a criminal arrest, the complaining witness has not been able to see or talk to the defendant since the incident occurred, which can be upwards of three to four months before they come to mediation. For parents and children with a full order of protection in place, the child is removed from the home and sent to live with an extended family member, or group home. Through criminal court mediation, however, orders of protection are modified by the court, which permits contact between the parties. Mediation, from the perspective of the complaining witness, therefore offers an opportunity to repair the relationship with the defendant, whom they have not seen since the incident occurred. From the perspective of the defendant, whose voice has been

silenced through the criminal court process, mediation offers an opportunity to speak his or her mind.

In terms of desired goal satisfaction, slightly more defendants who were interviewed reported accomplishing what they had hoped for at the onset of mediation than complaining witnesses [See Charts 7 and 8]. It must be taken into consideration that with a sample size of twenty, a seven percent difference in satisfaction may be negligible. This difference, however, is worth mentioning if it might point at a reliable trend; perhaps it is easier to speak one's mind than to repair a relationship, which is why defendants are reporting higher satisfaction. But it also suggests that defendants are ready to have a clean break from the person responsible for having them arrested. They came to mediation to speak their mind, and for 88 percent of them, this was at least somewhat accomplished, and they are ready to move on with their lives. This particular piece of the research is valuable, and the qualitative data analysis in the following sections will lend more clarity.

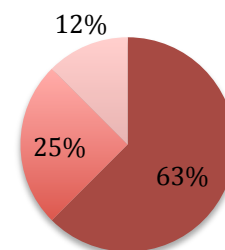
**Chart 7: Desired Outcome Satisfaction
(Complaining Witness)**

■ Yes ■ No ■ Somewhat



**Chart 8: Desired Outcome Satisfaction
(Defendant)**

■ Yes ■ No ■ Somewhat



Qualitative Analysis on Criminal Court

Criminal court mediation interviewees were asked three questions aimed at capturing the individual narratives about personal experiences with criminal court. The three questions were the most open-ended questions in the interview, and the responses generated a large collection of qualitative data. The answers were first given an initial code, which were then attributed analytical codes to further interpret the data.

The first question asked interviewees what their interaction with criminal court was like. Nine defendants and six complaining witnesses responded. Those who did not respond were complaining witnesses who had no interaction with criminal court. The analytical codes revealed that interviewees were either commenting on the process of criminal court itself, or the emotions they felt while experiencing criminal court. Interestingly, the predominant number of emotional responses came from defendants, while the complaining witnesses primarily commented on process. The results of this coding can be seen in Table 3.

Table 3: Interviewees' Interaction with Criminal Court

	Initial Code	Analytical Code	Value
D	Long, nerve racking	Process	Negative
D	Bad experience	Process	Negative
D	Not very much interaction	Process	Neutral
D	Guilty before innocent	Process	Negative
D	Scared; sad; heartbreaking	Emotion; sad	Negative
D	Never again; never again	Emotion; fear, disdain	Negative
D	Not willing; ever again	Emotion; fear, disdain	Negative
D	Never again	Emotion; fear, disdain	Negative
D	No feeling; draining	Emotion; devoid	Negative
CW	Excellent; helpful; like he was his own child	Process	Positive
CW	Okay	Process	Neutral

CW	Didn't know anything; weird	Process	Negative
CW	Fine	Process	Neutral
CW	Safer	Emotion: safety	Positive
CW	Tiring; scary	Emotion; fear	Negative

The emotional responses defendants were describing are unanimously negative. In terms of the process that the complaining witnesses were describing, interviewees generally seemed to be satisfied or nonplussed with their experience with criminal court; with the exception of the first and last accounts, complaining witnesses' descriptions were overall much more detached than those of defendants.

An important conclusion can be drawn from this data. As we learned above, many fewer defendants engage in mediation to repair the relationship with the person with whom they are in conflict than complaining witnesses. The particular set of data displayed in Table 3 may indicate the actual reasons for this; defendants experience a significant amount of pain and trauma as a result of their arrest, much of which—in their opinion—is irreparable through mediation or any other dispute resolution option.

The second question asked interviewees whether they felt their voices were heard in criminal court. Fourteen people responded, and only two replied yes. The two positive responses came from complaining witnesses who were also parents. In both of these cases, the parents seemed satisfied that the court was able to reinforce, or supplement, their parental authority. The other twelve responses were unanimously no, but interestingly, 25 percent of these respondents attributed the defense lawyer to helping their voice be heard, while another 25 percent attributed mediation to helping their voice be heard. It seems that while criminal court on its own seems to silence majority of respondents, there are mechanisms in place—whether it be public defense or mediation—that help those involved with criminal court to be heard.

The final question asked interviewees if now that mediation was finished, they felt like mediation was the right choice for them, and why or why not. The responses were unanimously positive. When asked why they felt it was the right decision, the qualitative answers did not pose any generalizable comparisons between complaining witnesses and defendants. The collective responses included choice, clarity, closure, communication, reconciliation, and regaining their voices.

This data is significant because in total, just over 50 percent of the cases represented in the interviews resulted in dismissal of charges. That means that while roughly half of the mediations did not result in what one might believe as the best possible outcome, 100 percent of people interviewed believed that mediation was still the right choice for them.

Summary of Findings

The research question asks how minorities are experiencing criminal court mediation in Brooklyn, New York. The sub-questions center on whether the promises of restorative justice are being fulfilled for these communities. For the purposes of this research inquiry, minority refers to a group of non-white people who are systematically denied equal access to services and power, and who are overrepresented by the criminal justice system.

Twenty interviews were conducted using both a purposive, yet opportunistic sample. Data analysis emerged in three groupings. First, desired outcomes of mediation and satisfaction of those outcomes from all twenty interviewees were discussed. We learned that overall, the majority of people participating in criminal court mediation come to mediation hoping to repair the relationship with the person they were in conflict with.

Furthermore, we learned that majority of those interviewed achieved this goal. In taking the analysis one step further, we then looked at desired outcomes of mediation and satisfaction based on whether the interviewee was a complaining witness or a defendant. Here we discovered a significant divergence in what people wanted, which also seemed to affect the overall satisfaction. Complaining witnesses primarily wanted to repair the relationship with the defendant, while the defendants wanted to speak their mind with little or no intention of repairing the relationship with the complaining witness. This finding is important because it forces us to take a step back and examine how each party may have experienced the conflict and the aftermath of the conflict. Their feelings around their experiences are profound, and were carried with participants into the mediation. For better or for worse, their experiences dictated the process and the outcome of the mediation. In light of this, questions on how our criminal justice system is being used, how it functions as a tool, and its effectiveness become a renewed platform for discussion. The last piece of data analysis, which revealed qualitative narratives about interviewees' experiences with criminal court, is perhaps an answer to this call for discussion.

Overall, defendants primarily described criminal court with emotive responses, while complaining witnesses described it more so in conjunction with criminal process as opposed to personal experience. We learned that for defendants, their experiences were negative. Instead of teaching them a lesson through punishment as the criminal justice system is theoretically designed for, their experiences left defendants angry and unwilling to repair the relationship with those they were in conflict with. Significant doubts about our retributive justice system are raised through this analysis. If defendants are emerging

from their experiences angry and resentful, they are reentering society unequipped to deal with their future conflicts. The culture this creates is one of high recidivism and individuals incapable of managing even minor interpersonal conflicts.

The actual research question of how people are experiencing criminal court mediation elicited a collection of thick descriptions that are difficult to place value judgment upon. What we have learned is that regardless of motives, outcomes, or challenges of the mediation, participants unanimously agreed that mediation was a good choice for them. 90 percent of interviewees reported being satisfied with the overall mediation, despite the fact that only 50 percent decided on dismissal of charges.

Conclusions

The qualitative exploration described throughout this paper required a constant zooming in and zooming out in data analysis. It was important to return to the research question frequently, and reevaluate how the actual findings of the research applied to the initial research question and the background research. In this sense, it was a highly iterative and holistic process in which the research project presents a micro examination of conflict. We can then make use of the study by applying it to macro theory of conflict. This discussion is described below in reference to the formation of conflict, conflict transformation, and theory of justice.

Conflict Formation

For many parties coming to criminal court mediation, they describe the incident that caused the arrest as the “last straw” of their conflict. It was, in effect, the tipping point of months, if not years, of rising tension between the parties. Many complaining

witnesses describe calling the police as a way of finally enacting change with the person with whom they are in conflict. It is interesting because while every mediation is unique in its own way, the narratives take on much of the same shape. There are decades of resentment between parties, substance abuse issues, mental health issues, all of which aggregate and inevitably lead to a tipping point. As this research paper shows, for families, the tipping point is a point of no return; once a defendant has been arrested at the doing of his or her loved one, repairing the relationship in the end poses a significant challenge, which for many defendants, is of no desire.

The solution then, turns to a preventative one. We must encourage and teach people to prevent their conflicts from reaching a tipping point. Through mediation, we model effective and productive dialogue, which we hope shapes the way people choose to manage their future conflicts. In teaching even simple conflict negotiation, we can generate social change based on nonviolent communication and active listening. We can teach people that compromising and collaborating can be effective and useful alternatives to violence.

Conflict Transformation

When a conflict does reach its tipping point, however, recovery from that conflict is difficult. When the tipping point is prison, recovery from incarceration is daunting. This study proves that for many defendants, their time spent in jail irrevocably damages the relationship with the loved one with whom they were in conflict. In this sense, reconciliation is not a desired outcome of mediation, at least not yet, anyway.

We as criminal court mediators describe the purpose of our variation of victim-offender mediation (VOM) as restorative justice, of which the point is to restore balance,

restore relationships, and repair harm. Likewise, when we ask mediators during post-mediation debriefing sessions how they are feeling, and how the mediation went, they typically judge a “good mediation” as one that ends in reconciliation. In general, we as practitioners assume that the purpose of criminal court mediation is to repair the relationship. This research was a valuable lesson in understanding that despite the purposes of restorative justice in this mediation practice, some participants are not actually seeking its primary intended outcome. This thought can be understood through the ripeness theory, which describes “why, and therefore when, parties to a conflict are susceptible to their own or others’ efforts to turn the conflict toward resolution” (Zartman, 2002, p228). While some mediation parties may not be ripe to repair the relationship right away, it does not mean they will always be against the idea. Broadly speaking, however, if parties are not coming to mediation to reconcile, then we are not achieving the essence of restorative justice in all cases. This begs the question then, what kind of justice we are creating.

Theory of Justice

During the initial intake calls with prospective criminal court mediation clients, we are sure to explain that we (the mediation center) are not the court system. The purpose of this is to put mediation clients at ease, to ensure them that the mediation process is separate and confidential from the court system. By doing so, we can ensure the voluntary sanctity of mediation as well as self-determination. The mediation center is roughly five blocks away from the criminal court building, and the center is located in the Brooklyn Municipal Building. To enter, mediation clients must stand in line and be granted entry through security guards and metal detectors. While we do not report the

specifics of mediation back to the court, we do offer the court dispositions about what the parties have elected to do with the criminal court charges. This is described as having a close relationship with Brooklyn criminal court. But considering our close proximity to the court, our structure, our building, and process, it would appear to clients that the criminal court mediation program is just another arm of the criminal justice system. This perception is manifested in defendants simply participating in mediation because they feel they have to in order to appease the courts. In a sense, this too, relates to the ripeness theory in that if a mediation participant is not genuinely engaged in the process, the conflict will not be authentically transformed.

While the primary intended outcomes of restorative justice are not always being achieved, the mediation process still offers more than the traditional retributive justice system; criminal court mediation returns a voice to the voiceless—which we learned through this research inquiry, is both the complaining witness and the defendant. Mediation participants, regardless of the outcomes of their mediations, are still unanimously reporting that mediation was the right choice for them. So if it is not exactly restorative justice, but also more than retributive justice, perhaps we are creating our own hybrid form of justice. In that case, we as mediators should continue to rely on the ethics of mediation to preserve its integrity as a practice. By doing so, we can continue to provide this highly customizable form of justice, unique to every individual participating in the criminal court mediation program at the Brooklyn Mediation Center.

Recommendations for Further Research

Interviewees included participants from Israel, Pakistan, Jamaica, Haiti, Trinidad, Grenada, and the rest were non-white Americans. None of their responses throughout the

interviews appeared to be specific to their culture or social identity. Instead, the data naturally self-categorized by interviewees' identity as either complaining witness or defendant; the criminal tag seemed to trump both national and social identity. It would be interesting to conduct research that seeks to compare how individuals' experiences with mediation and expectations of criminal court vary by culture. This type of research would best be conducted as a very small selection of case studies.

Another interesting research inquiry would be instead of using a relatively opportunistic sample and interviews, conduct case studies on individual conflicts. That way, responses would be self-contained within one relationship. Answers of the complaining witness and defendant would therefore be in comparison to each other rather than a random pool of other complaining witnesses and defendants. Because it would be based on individual relationships, the resulting data might be more accurate. This type of case study would also allow the researcher to track changes in the relationship over time, which would perhaps shed light on some of the more long-term effects of mediation and alternative dispute resolution in general.

BIBLIOGRAPHY

- Albrecht, B. (2010). Multicultural Challenges for Restorative Justice: Mediators' Experiences from Norway and Finland. *Journal of Scandinavian Studies in Criminology and Crime Prevention*, 3-24. doi:10.1080/14043851003616204
- Hesse-Biber, S. N., & Leavy, P. (2006). *The practice of qualitative research*. Thousand Oaks: SAGE Publications.
- Kadet, A. (2014, March 21). Free Mediation in New York City. *Wall Street Journal* [New York]. Retrieved from <http://online.wsj.com/news/articles/SB10001424052702303802104579453391404056908>
- Neff, N. (2005). *Feature Story: Restoring Justice: Mediation programs aim to help victims heal and offenders account for their crimes*. Retrieved March 2014, from <http://www.utexas.edu/features/2005/justice/>
- Press, S. (2013, Summer). Court-Connected Mediation and Minorities. *Dispute Resolution Magazine*, 20(4). Retrieved from http://www.americanbar.org/publications/dispute_resolution_magazine/2013/summer/court-connected-mediation-and-minorities.html
- Umbreit, M. S., & Coates, R. B. (2000). *Multicultural Implications of Restorative Justice: Potential Pitfalls and Dangers*. Retrieved from National Criminal Justice Reference Service website: https://www.ncjrs.gov/ovc_archives/reports/restorative_justice/restorative_justice_a_scii_pdf/ncj176348.pdf
- Zartman, W. (2002). The Hurting Stalemate and Beyond. *International Conflict Resolution after the Cold War*. Ed Paul C. Stern and Daniel Druckman.

References for State-by-State Comparison of Criminal Court Mediation Programs

General Resource

<http://www.mediationworks.com/medcert3/staterequirements.htm>

Delaware

<http://courts.delaware.gov/forms/download.aspx?id=45808>

Florida

<http://www.17th.flcourts.org/index.php/court-administration/court-programs/mediation-a-arbitration>

Idaho

<http://www.isc.idaho.gov/icr18-1>

Kentucky

<http://migration.kentucky.gov/Newsroom/kycourts/PR03272008A.htm>

Maryland

https://www.americanbar.org/newsletter/publications/law_trends_news_practice_area_e_newsletter_home/09_fall_lit_feat4.html

New Jersey

<https://www.judiciary.state.nj.us/>

North Carolina

<http://www.nccourts.org/Support/FAQs/FAQs.asp?Type=25&language=2>

Collins, S. (2014). Mediation Can be a Win-Win Proposition. Blue Ridge Now. [North Carolina] Retrieved from

<http://www.blueridgenow.com/article/20140209/ARTICLES/402091013>

Ohio

http://www.hamilton-co.org/municipalcourt/mediation/mediation_of_criminal.htm

Tennessee

<https://www.knoxcounty.org/gsjudges/mediation.php>

Texas

<http://www.tjjd.texas.gov/publications/reports/RPTOTH200901.pdf>

<http://www.wisemediation.com/criminal>

Appendix A: Institutional Consent



February 21, 2014

To Whom It May Concern,

I, on behalf of New York Peace Institute (NYPI), grant permission to Teresa Hoerres, an intern of NYPI, to compile a report of data collected from surveys conducted with Criminal Court Mediation participants to be used for her Capstone Research Paper. The surveys have been generated by NYPI, and therefore fall under the NYPI Consent to Mediate form. This form protects the rights and welfare, including privacy/confidentiality rights, of all participants of mediation at NYPI. If you have any questions or concerns, please contact us.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michele Kirschbaum". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michele Kirschbaum

Director of Programs

718.834.6671 X15
mkirschbaum@nypeace.org

Appendix B: Interview/Survey Questionnaire



Criminal Court Mediation Program Follow-Up Survey (Full Mediation)

Name: _____ Mediators: _____
 Role: ☐ CW ☐ D ☐ Cross-CW | Relationship: _____
 Agreement: ☐ None ☐ Dismissal ☐ Violation ☐ ACD

Last Session Date: _____
 Evaluation Date: _____

Case #: _____
 Court Disposition: _____

Introductory Questions

1. Were you satisfied with mediation overall? ☐ Yes ☐ No
Comments: _____
2. During the pre-session, did the mediator explain how the process would work? ☐ Yes ☐ No
Comments: _____
3. Did you feel like you had a choice whether or not to mediate? ☐ Yes ☐ No
Comments: _____
4. Was there anything else you got out of the pre-session? _____

Mediator/Mediation

5. Did you feel that the mediator was neutral?
☐ Yes ☐ No
Comments: _____
6. a. Was there anything that the mediator did especially well?

b. Was there anything that the mediator could have done better?
7. Were you able to speak your mind? ☐ Yes ☐ No
Comments: _____
8. Did you feel that <other party> listened to you during mediation?
☐ Yes ☐ No
Comments: _____
9. a. What did you hope to get out of mediation?
☐ Repair relationship ☐ Get it over with
☐ Dismiss charges ☐ Speak my mind ☐ Other

b. Was that goal accomplished? ☐ Yes ☐ No
Comments: _____
10. Why do you think you (were/weren't) able to reach an agreement? _____

Post-Mediation

11. a. Has your situation with <other person> improved since the incident? ☐ Yes ☐ No
Comments: _____

b. (If "yes") Do you think mediation helped or did the change happen on its own? ☐ Mediation ☐ On its own
Comments: _____

c. Do you think things would be different if you hadn't done mediation? ☐ Yes ☐ No
Comments: _____
12. a. Before mediation did you feel concerned about your safety? ☐ Yes ☐ No

Comments: _____
b. (If "yes") Do you feel safer after having mediated?
☐ Yes ☐ No
Comments: _____

c. Again, was that change due to mediation or to something else? ☐ Mediation ☐ Something else
Comments: _____
13. Are you concerned of there being conflict with <other party> in the future? ☐ Yes ☐ No
Comments: _____

Criminal Court

14. What was your interaction with Criminal Court like?

15. Do you feel that your voice was heard in the Criminal Court system?

16. Now that mediation is finished, do you feel like mediation was the right choice for you? Why or why not?

Wrap Up Questions

17. Would you recommend mediation to a friend if they were in a similar situation? ☐Yes ☐No

18. Is there anything our staff could have done better for you?

19. Do you have any other feedback for us?

20. Can we quote you without using your name for feedback to the center and for publications? ☐Yes ☐No

21. Are there any other services or referrals that we can provide you with? ☐Yes ☐No

Comments: