Bitterroot Community Dispute Resolution Center: Establishment of a nonprofit alternative dispute resolution center in the Bitterroot Valley of Western Montana

Martha A. Birkeneder

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BITTERROOT COMMUNITY DISPUTE RESOLUTION CENTER:
ESTABLISHMENT OF A NONPROFIT ALTERNATIVE DISPUTE RESOLUTION CENTER
IN THE BITTERROOT VALLEY OF WESTERN MONTANA

by
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The focus of this professional paper is the establishment of a nonprofit, community-based mediation center in the Bitterroot Valley of Western Montana. The program structure of this proposed volunteer-staffed alternative dispute resolution center is designed to afford Bitterroot Valley residents an alternative to formal litigation for the resolution of interpersonal disputes. An overview of the historical roots of conflict and formal avenues established to manage social discord in the United States culture is presented. Conflict theory, including excerpts from Max Weber, is reviewed, with the main focus on Weber’s *Theory of Rational-Legal Domination*. The current trend in the United States toward informalism spawned by grass-roots organizations in search of positive social change has begun in an effort to augment the courts. The effort does not appear to be an attempt to usurp the existing rule of law. Three established alternative dispute resolution programs were studied to assist in the process of drafting a proposed program structure for the Bitterroot Center. The local Bitterroot Valley context, specifically regarding population, law enforcement, the courts, referral sources, and mediation approaches, was researched in an effort to construct a program suiting the rural community context. The balance of the paper presents a proposed program structure for the center, including a synopsis of the steps necessary to establish a nonprofit 501(C)(3) in the State of Montana.
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Martha A. "Marty" Birkeneder
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INTRODUCTION

Encountering conflict at any given moment in today’s Western world is just as likely as encountering concord. At first glance this seems a sad commentary about what we would prefer to consider our evolved, civil society. When one studies the historical evolution of human social systems, it is safe to conclude that as long as human beings inhabit the Earth, this social fact may never change. As individuals within a greater society, however, we may opt to change the way in which we allow conflict to operate in our daily lives. Human beings react to conflict in a variety of ways. As destructive as it may be, many people respond to conflict in ways that damage relationships and alienate themselves from others. In the alternative, many people address conflicted issues in a constructive, non-threatening way. As a result, they intentionally shape their daily existence by structuring their interactions with others in positive frames. This planned response entails making repeated, affirmative choices in the face of conflict to use such opportunities to engender peace rather than succumb to the defensive, non-constructive, power struggle conflict invites. Partners, families, neighborhoods, and nations, alike, have an opportunity to initiate a trend toward peace by choosing collaborative rather than confrontive, adversarial approaches to conflict resolution. What may appear to be a simple suggestion on its face becomes a difficult task to undertake in today’s fast-paced world.

With the advent of global communication, modern generations have had the opportunity to observe the effects of globalization on an unprecedented scale from living rooms, classrooms, news stands and workplaces. Given the chance to stem the tide of accelerating discord, it stands to reason that if one has the ability to choose not to engage
by peaceful means, they certainly have the power to choose the opposite: to approach conflict in resourceful ways to promote peaceful existence in a world fraught with negativity. Advocates of alternative dispute resolution methods, or “ADR,” believe that the key to successful conflict management is not to avoid conflict nor deny its existence. Instead they suggest that we approach conflicted situations in which safe engagement is possible, reasonable and constructive with an attitude of resolve and creative energy. Mediation is one form of ADR, offering a peaceful, facilitated forum within which both first time disputants as well as chronically conflicted parties are encouraged to communicate collaboratively to resolve matters of contention. Mediation promotes the potential for positive engagement in the event of future problems. In addition, the mediation process instills communication enhancement skills in those exposed and receptive to the process. *Anywhere along the vast continuum of human conflict, between a momentary struggle over a sandbox toy to full-blown nuclear war, there exists no point at which the proper application of mediation would not encourage constructive resolution of the issues in dispute.*

The focus of the following project is two-fold: the establishment of a non-profit community based mediation center in the Bitterroot Valley of Western Montana, and simultaneous production of a useful resource for mediation practitioners desiring to establish community-based conflict resolution programs in similar communities.

**PROJECT OVERVIEW**

Local research was planned from the inception of this professional paper project. Well into the program review, a recurring theme emerged. Critical in the planning process, but often a product of hindsight, was the realization by program founders that
program success depends heavily upon establishing a close connection with members of the community from the start. Failing to gather information and opinions from people around the community and making decisions about what the community needed from within the program was a common fault exposed in post-program evaluation (Beer 1986: 223). To avoid this pitfall, a cross-section of community members including a number from outside the justice system and public service agency circles were interviewed regarding the level of receptivity an alternative dispute resolution center would receive. Once the local research was finished, five project phases were undertaken to achieve the goals of creating a workable program for the proposed center and generating a useful reference tool for aspiring community mediators.

LOCAL RESEARCH

Western society has become accustomed to settling civil disputes warranting intervention through the courts. However, when legal options seem unattainable or unsatisfactory, the risk that people will seek redress through less appropriate means becomes greater. “The real weakness throughout the country is lack of conflict resolution methods other than litigation and guns” (Toffler 1991:13).

Residents of Ravalli County in the Bitterroot Valley of Western Montana are no exception. Ravalli County’s 43 percent population increase sustained over the past ten years has changed the way in which disputes are processed at the local level. The Bitterroot Valley’s population boom generated steady, significant increases in numbers of both civil and criminal court cases. Overcrowded dockets directly reduce public access to the courts. Exponential growth coupled with the inability of local government to generate adequate funding for service expansion has rendered the legal system a less
effective avenue for the settlement of interpersonal disputes. Public safety response demands, answered primarily by local law enforcement and law enforcement divisions of federal agencies, has reached an all-time high in the Bitterroot Valley, but local government budgets do not support service expansion.

Numerous and varied residents were interviewed during this project to determine the level of receptivity an alternative dispute resolution program situated at the Ravalli County seat, Hamilton, would receive. Establishing a source of low-cost or free mediation services in the valley as a community resource for the settlement of disputes was met with overwhelmingly positive response. In addition to the general public, helpful resources for this project included work groups in the local courts, law enforcement agencies, and S.A.F.E., the valley’s domestic violence crisis center and transitional housing facility, among others. Interviews with local judges, court staff, and prosecution and defense attorneys proved valuable during every phase of the project. These combined resources aided the process of tailoring the center’s program to fit the specific needs of the Bitterroot setting.

In general, the concept of establishing the alternative center was supported without reservation by most individuals interviewed. Upon hearing about the proposed center, three individuals indicated a desire to volunteer for mediation training and serve as volunteer mediators as soon as the start-up phase of the center was under way. The need for an affordable alternative dispute resolution option was confirmed by workgroups within the justice system as well as potential sources of client referral: the various courts, law enforcement, attorneys, social service agencies, non-profit programs, schools, homeowners’ association members, local businesses, and the general public. When
interviewed about this project, local justice court, city and district judges openly welcomed the establishment of an ADR program as an option to formal litigation. The consensus of the judges was that precious time would be saved by removing certain cases to ADR. In turn, more time could be spent on difficult, involved cases that, as a result, are not appropriate for referral to mediation. Upon confirmation of receptivity for such a program in the Bitterroot Valley, the project focus quickly shifted to development of a workable program structure. Insight gained from interviews with valley residents and professionals provided valuable direction during the first phase of the project.

PROJECT PHASES

The five project phases consisted of reviewing the program structure of existing non-profit mediation centers, drafting a sensible program design for the proposed center, identifying the theoretical base that supports mediation as a viable alternative to formal dispute resolution processes, research of Montana’s requirement for establishment of 501(c)(3) nonprofit organizations, and completion of the mediation resource: the final thesis document. With the exception of the fifth and final phase, the project phases are described as follows:

REVIEW OF EXISTING PROGRAMS

The first phase of the project entailed review of existing nonprofit mediation centers established in similar communities in search of a “boiler-plate” program design best suited for the rural Bitterroot Valley setting. The study of existing programs and studies from a variety of sources assisted in drafting an appropriate program structure and identifying an array of suitable mediation applications for the start-up phase of the center. Bitterroot Valley population demographics and other data were reviewed to identify the
potential client base for the dispute resolution center.

DRAFTING A PROGRAM DESIGN

The second phase, the program design drafting phase, entailed pulling elements from existing programs that seemed sensible for use in the Bitterroot center. The depressed local economy, coupled with the valley’s historically strong tendency toward committed, long-term support in the form of community volunteerism, clearly support the non-profit, volunteer-based program design. Several such programs were selected from the group reviewed to begin the program development design process. Funding plans from existing centers were researched to develop a sensible plan for the start-up phase of the center. Broad-based funding resources were researched. Grants, government allocations, private foundation awards, and private local donations were identified as the top four potential sources of financial support.

THEORETICAL BASE

The third phase of the project involved a sociological literature review in search of the theoretical base that best supports mediation as a viable alternative dispute resolution option in lieu of formal litigation. The theoretical review provided support for the proposed center’s program structure and assisted in writing the section on conflict and a brief history of conflict resolution.

MONTANA REQUIREMENTS

The fourth phase involved review of the State of Montana’s requirements governing establishment of a 501(C)(3) organization. This process provided guidance for successful completion of the steps necessary to achieve nonprofit status. Samples of the necessary forms may be found in Appendix “A.”
The results of the first four project phases follow. However, to fully appreciate the value of alternative dispute resolution options, one must first recognize both the social value and the potentially destructive nature of interpersonal conflict.

CONFLICT

While one of the most potentially destructive forms of human communication, conflict also functions along with other social constructs to shape consensus in cultural values. “Conflict is a vital, natural part of life, pressed by values, interests, needs, preferences, relationships, and competition for resources, information and meaning” (Crum 1987:1-2). Literally dozens of terms are used to describe conflict of varying degrees of severity: friction, trouble, disagreement, discord, debate, and warfare, to name a few. Although conflict is potentially valuable, each of the above examples presents a danger when the encounter is mismanaged, of escalation to a higher level of potential harm to the parties involved as well as the occasional innocent bystander. Every human being will witness and endure conflict on numerous occasions and at various levels of severity throughout their lifetime. It is how we react to conflict that determines our ability to function well despite its existence, transforming conflicted encounters into positive events whenever possible. On a positive note, there clearly is a good side to conflict. Conflict pushes us to be introspective, to evaluate and reevaluate our responses to different situations. In this manner we establish our own personal identity. “In some cases, conflict is an enjoyable and exciting experience” (Duffy 1991:17).

Humans have become conditioned to the fact that conflict exists within us and surrounds us in our daily interactions with others. It is a normal component of our home life, friendships, relationships, work, civic affairs and political decision-making.
processes. Our needs, desires, interests, perceptions and opinions are fraught with conflict, even within our own thought processes. Leon Festinger (1957) suggests that we are motivated to maintain consistency between our attitudes and behaviors. "When a discrepancy (or "dissonance") occurs, we begin the mental work necessary to restore consistency ("consonance")." Despite pervasive dissonance, we make our way in a rapidly changing world, surviving lower-level encounters relatively unscathed. These varied experiences operate to shape the world in which we live.

Moment by moment, the quality of our lives is affected in varying degrees, positive or negative, by each success, stalemate or failure experienced as a result of competition exerted to gain or maintain control over those facets of life humans deem valuable. From tussles among school mates to Wall Street maneuvering, many people function quite well despite the existence of conflict in their lives. It might be said that some individuals even thrive on the challenges conflict presents as they work to achieve personal goals.

As a result of this project, it is evident that efforts of those invested in attaining peace at the personal level might be better invested in attaining skills for successful conflict management rather than conflict resolution. To that end, many positive terms for alternative dispute resolution have been adopted across the United States including "better dispute resolution," "complimentary dispute resolution," "effective dispute resolution," "flexible dispute resolution," "improved dispute resolution," "peaceful dispute resolution," and "appropriate dispute resolution" (Duffy 1991:199-200). The positive tone of these terms sets the tone for disputing parties to glean the best possible benefit as a result of their choice to engage in collaborative dialogue. Positive outcomes often emerge from these exchanges born of negative interaction. Participants in
mediation processes are often emotionally drained after a productive session. Program evaluations completed by participants at the close of mediation sessions often reveal that, although emotionally drained after a productive session, participants often leave with a positive feeling because their efforts resulted in tangible progress, however minor.

Most conflicts are not “zero-sum” exchanges. In other words they are mixed-motive, inviting a broad array of possible outcomes beyond the stark win-lose option. Festinger (1957) suggests that human nature prompts us to work toward our personal highest gain, in most instances, the “win-lose” approach, rather than working collaboratively toward the best collective solution: the “win-win.” Human nature injects greed, distrust and fear into conflicted exchanges. Our personal commitment to empathize, to consider the well-being of those persons with whom we engage in conflict resolution, is the first step toward collaboration. Rather than maximizing our personal gain from a posture of strength and unyielding pressure, true collaborative work involves checking one’s ego and selfishness at the door. It requires that we “walk a mile” in the other party’s shoes to fully understand the sensibility of their stance in the matter at issue. To do so presents a risk that we might be perceived as “weak” or “vulnerable” by parties to the conflict. The risk must be taken. It is only in this manner that neutral ground may be sought out and secured in the best interest of all parties concerned.

Most humans have a desire to belong, needing positive socialization with others to maintain a healthy outlook on life and to enjoy a productive, fulfilling existence. We enjoy our individuality, but rely upon our ordered society to lend balance to our lives.

Society is by definition ordered; a dispute is a moment of disorder; it is therefore unthinkable as a permanent condition... key in the decision
whether to affirmatively seek order, then, is an analysis of whether the outcome is functional or dysfunctional for society as a whole or for the various individuals concerned. The notion of the need for resolution is integral to the concept of conflict (Cain and Kulcsar 1981:378).

Conflict resolution relies upon identifying underlying issues that fuel bad feelings and damage relationships. . . . The many sources of conflict suggest why it is so difficult for parties to be focused on the same issues. The most common sources of conflict are data, interests, procedures, values, relationships, roles, and communication (Isenhart and Spangle 2000:14).

Isolating the most common sources of conflict, the authors briefly relate them as follows:

*data:* people often have differences of opinion about the best source, reliability, or interpretation of data;

*interests:* specific, tangible wants or perceived needs are the most common source of disagreement;

*procedures:* parties may not engage in discussion if they do not agree with a way to solve a problem, make a decision, or resolve conflict. For instance, people abide by election results because they believe that election procedures are fair; they abide by court decisions because they feel that the trial followed a predictable process;

*values:* the hardest conflicts to resolve involve differences of opinion about the importance or priority of interests, options, or choices of direction; problems emerge when there is a value conflict about the way things should
relationships: people often resist cooperating if they do not trust others, if they do not feel respected by others, if they do not believe others are honest, or if they do not feel as though they are listened to;

roles: professional, community or family roles often create conflict because of expectations for the role or power imbalances created by the role;

communication: conflict frequently results from how something is said. People’s emotions become triggered by words that another takes personally or interprets as threatening. Withholding information also causes a negative reaction among parties to disputes and reduces levels of trust.

Many individuals use conflict to effect positive results, while others deny its potential value. Perhaps those who muddle through without making the effort to attempt to gain from encounters from which positive results might emerge miss an opportunity to enrich their lives. Sadly, many also use conflicted situations such as child custody proceedings to purposely inflict pain and exact a measure of revenge on others. It is in these situations that the neutral role of mediator enables someone outside the conflict to set the tone of the exchange and assist the parties in identifying the core of the issue at hand. Brainstorming about possible resolutions opens the door for collaboration, give and take, empathic listening, and relaxing from hardened stances.

Building trust among the parties to enable smooth future communications is a possible outcome of successful mediation sessions. Parties to the immediate conflict may make an agreement to begin anew. This can be achieved through making introspective admissions, exchanging apologies and forgiveness, and generally replacing old
“baggage” that interferes with successful communication with a commitment to rebuild trust. Parties to conflict sometimes respond with avoidance when faced with a difficult situation. In these instances, interpersonal engagement in the face of conflict is simply out of the question.

Among the potential costs of failing to address routine events of interpersonal conflict in positive ways is a gradually increasing sense of alienation from others. Alienation is often manifested by a profound loss of one’s sense of self in greater society: “anomie,” a loss of social cohesion, “normlessness” leading to a gradual loss of one’s sense of how they are connected to the social world (Coser 1956:21, 89).

Great strides in communications technology, medicine and science have globalized human society as never before. Increasing social stratification, escalating competition for precious resources, pervasive social unrest, and unprecedented domestic and international terrorism present an urgent need for program development and education in the area of effective conflict management. From our most intimate relationships to global levels of human interplay, conflict is clearly the most problematic and ultimately destructive form of human interaction in existence. Technological advances have improved the speed and global reach of human communication and physical mobility in the most dramatic strides of all time, but society advances toward improving the quality of human communication at a level that is hardly detectible.

During the turbulent 1960s, Martin Luther King, Jr. posited that “people fail to get along because they fear each other; they fear each other because they do not know each other; they do not know each other because they have not communicated with each other.” Although stated nearly a half century ago, his words ring true today. The
interpersonal communications skills of most Americans have not evolved on par with the unparalleled scientific advancement of the past century.

In his book, “Getting to Resolution,” S. Levine states that the growth of conflict in American culture results from many forces, which include the breakdown in the covenant of trust among people who are members of the same community, lack of communication, people focusing on themselves, and concerns about rights and entitlements without thinking about the responsibilities toward others (Levine 1998:2).

Human beings tend to communicate less with others as their personal space diminishes with population growth and social congestion. This commonly observed human defense mechanism has developed over time as individuals struggle to preserve their personal privacy, individuality, and sense of control over their own lives. A simple example of this phenomenon may be observed if one compares pedestrians moving along the sidewalks of rural America versus pedestrians milling about the sidewalks in any large American city. Those in rural America tend to smile and often speak as they pass each other, whereas pedestrians in large cities rarely speak to each other, let alone make eye contact with the literally thousands of other people moving in close proximity as they hustle along their way. As our personal space becomes smaller, our tendency to interact with others in congested settings also diminishes.

Faced with the great task of improving interpersonal communication and reducing conflict by integrating collaborative skills into our social structure, perhaps the most obvious place to begin is with the individual. From this point, improved communication will naturally expand outward with a natural progression to families, communities, cities, and nations. As a background to this progression, one should first look into the history
of America's legal system.

THE RULE OF LAW

England's common law system was designed to provide citizens from all walks of life a resource through which they could obtain consistent, equitable legal remedies via the English Crown. It replaced a system fraught with injustice in which nobility or landholders had domination over the commoner. Adopted upon establishment of the United States Government, the common law system evolved via adherence to case precedent amassed over time, constitutional provisions and amendments, and legislative change.

In the early 1900s, conflict had to rise to a serious level before drawing formal dispute intervention resolution processes of law enforcement, or access to the courts. Sociologists of this era focused on conflict-oriented groups such as lawyers, reformers, radicals and politicians for their studies, while sociologists of the mid-1900s were more interested in examining groups and professions concerned with strengthening common values and minimizing group conflict (Coser 1956:29). The shift in emphasis and inquiry was perpetuated with the advent of human relations departments in bureaucratic institutions and the creation of labor unions. Some of the first attempts at mediation as an alternative dispute resolution tool occurred during union settlement negotiations in the early decades of the Twentieth Century. The rule of law found in formal processes was no longer a blanket solution to social discord.

The American legal system has made huge strides toward providing equitable remedies and affording equal access to all people, especially since the Due Process Revolution of the 1960s, during which era human rights and equal justice under the law became the focus of the United States Supreme Court. However, issues involving human
rights, including racial and gender disadvantage, have been slow in their evolutionary
development toward equal, humane social distribution of justice to all persons. Ancient
Common Law flatly stated that the husband and wife are as one and that one is the
husband, in so many words.

Authority is an institutional phenomenon; it is strongly bound up
with faith. . . . Authority resides not in the person on whom it is
conferred by the group or society but in the recognition and
acceptance it elicits in others. Power, on the other hand, may
dispense with the prop of authority.

. . . In the West, the institutional structure of marriage has invested
the husband with authority and backed it with the power of church and
state. The laws, written or unwritten, religious or civil, which have
defined the marital union, have been based on male conceptions and they
have undergirded male authority (Bernard 1972:453).

Although certainly not to the level described immediately above, the perpetuation of
male dominance in Western society continues in the workplace, home, and greater
society, at times placing women in a substandard position regarding earning ability,
attaining political office, and enjoying equal occupational opportunities on par with their
male counterparts.

Principles, rights and values have always been situated at the core of legal processes
developed to offer litigants constructive conflict resolution in Western society. Equally
important in our system of justice is the protection of individual rights. However, the
necessarily cold, formal context of the written law does not accommodate variation of
principles, rights and values that exist from one individual to the next. Americans rely upon the statutes and constitution of the United States and separate states as well as case precedent to regulate the application of justice distributed by the courts. The notion of “justice” as reflecting a society’s moral ideals about human relationships is placed at risk when court calendars suffer an ever-increasing volume of cases and struggle under the constraints of insufficient budgets. Consistency and fairness in the law fade from priority, rendering the system inadequate in its ability to accommodate cases effectively. A dramatic increase in the number of divorce cases processed in the past three decades, coupled with increasing crime rates resulting in criminal prosecution, translates into long waiting periods for settlement of minor disputes.

A degree of intolerance for these fundamental flaws has existed for decades, however, it is only in the past few years that common citizens acting as social activists have become mobilized in the direction of progressive, peaceful reform of the formal legal system. Changes have also been put into motion within the system in response to growth and budget constraints.

Procedural standardization was employed over recent decades in an attempt to process the increasing volume of cases more efficiently. Examples of these innovative remedies are selective or discretionary enforcement, selective prosecution, plea bargaining, diversion of youthful offenders out of the criminal system completely, community policing, and the adoption of uniform sentencing guidelines. The formalistic nature of these programs reveals the intent of the legal system to retain control over available avenues of dispute resolution. Critics of these various attempts argue that the lower courts have never achieved the ideals of procedural fairness intended to guarantee that
substantive justice is dispensed via the courts, and argue that recent efforts will not change that fact (Harrington 1985:206). The enhancement of discretion on the part of law enforcement, prosecutors and the drafters of sentencing guidelines is troublesome, as well. Proponents of court reform suggest that relinquishment of authority enjoyed by judges removes judgment properly placed with the courts by the whole of society, placing it instead in the hands of people who have not been legitimately entrusted with making the law. The emergence of alternative dispute resolution signifies a grass-roots movement toward informalization of the justice system via community-based programs to improve access to local justice. Its acceptance signifies a desire to improve access to the courts and the strong will to serve the common interest at the expense of competing claims, a reduction of law in society which enhances the idea of justice as a procedure rather than an outcome (Auerbach 1985:16). The motivation for such sweeping change may be explained by ever-diminishing access to the courts by persons in need of dispute resolution services. The history of conflict resolution in America is helpful in predicting future progress of alternative dispute resolution programs.

HISTORY OF CONFLICT RESOLUTION

Human nature provides the impulse and social structure the historic precedent inviting disputing parties to pit themselves against one another in competition for precious resources. Social reality is subjectively valued and socially constructed by the actors operating within it. At the very core of human interplay rests the struggle between good and evil, right and wrong, just and unjust, competition and cooperation, rich versus poor, plaintiffs and defendants, and so on. Parties to these struggles are typically pitted squarely against one another in an adversarial stance. "The expression of hostility in
conflict serves positive functions insofar as it permits the maintenance of relationships under conditions of stress" (Coser 1956:39). Classical sociologists found this contest of wills to be a natural and functional part of the social world. As a social construct, Charles H. Cooley (1909:199) defined this social facet as follows: “conflict, of some sort, is the life of society, and progress emerges from a struggle in which an individual, class, or institution seeks to realize its own idea of good.” This healthy exchange among individuals was quite commonly accepted in early America as the natural route toward establishing societal norms of the moment. “Conflict serves to establish and maintain the identity and boundary lines of societies and groups” (Coser 1956:38).

Over time, conflict operates to establish social change as the desires of controlling social groups may dictate. Until the turn of the Twentieth Century, interpersonal disputes were typically resolved directly between the parties at varying degrees of hostility. From a short verbal argument to an all-out fistfight, traditionally such matters did not require formal intervention.

Conflict occurs in many social settings: families, workplaces, public streets, academic environments, among thousands more. The environment which demands conflict resolution most often is that of the family home, a place where peace is of utmost value. Marital disputes, or family disputes involving cohabitants, typically demand quick resolution so that peace may be restored to the household as quickly as possible. Patriarchal families, churches, neighborhood leaders and community groups traditionally served as arbiters of interpersonal disputes in the less complicated world of the early to mid-1900s. Today, social service agencies and religious support systems are in place to deal with most serious matters involving families, but a variety of family matters still
result in court proceedings to find permanent resolution. Civil matters involving families that result in court proceedings include child custody or adoptions, marriage, divorce, property ownership, and probate proceedings. Examples of criminal matters involving families that come before the courts are partner or family member assault, incest, homicide, elder abuse, ungovernable minors, and various property crimes such as theft or destruction of property. Many American families follow the long-standing tradition of remaining close with the entire extended family throughout their lives, providing personal, private and long-term emotional support. However, many relocate to distant areas of the country or world for extended periods of time to obtain secondary education, to travel, or to engage in rewarding occupations. This mobility reduces immediate family support and intervention of conflict to telephone or electronic exchanges. Regarding community support for conflict resolution, today’s American communities see a high rate of resident turnover, making long-term friendships less common than in past years.

Many conflicts never find their way to the courts for a variety of reasons. Lack of public awareness of the courts removes formal processes as an option or the average person. The inconvenient and limited hours offered for litigants to access the services provided by the courts adds another practical dimension to formal conflict resolution accessibility. Lack of confidence in the process presents yet another reason why most people do not bring their complaints to court (DeJong, Goolkasian and McGillis 1983:3). Courts located deep within the inner city making access difficult or unsafe, especially at night. Cultural differences add yet another dimension to conflict resolution.

Every exchange involving interpersonal conflict is fraught with blended interests. The
consequences of these engagements are varied and unpredictable, their resolution subject to the very nature of human thought and action. Diverse cultural practices and wide-ranging interpretation and application of law result in a myriad of possible outcomes when formal processes are used. In cases where all things appear equal, the cultural context from which they emerged may cause outcomes to vary significantly. With equal access to justice the overarching goal of the established legal system, over time, social pressure has gradually pushed the standard away from formal processes and toward alternative dispute resolution. Early processes were found to be expensive, inefficient and too complex for the average person to understand. In response to growing dissatisfaction with the courts, small claims alternatives began to spring up across the country around 1912. By 1923, statewide systems of small claims courts had been established in 12 major cities.

The small claims courts of today, traditionally referred to as “people’s courts,” were created in the early Twentieth Century to increase access to justice for minor civil claims, including debt collection, landlord/tenant disputes, and complaints regarding poor workmanship and services (DeJong, Goolkasian and McGillis 1983:1).

The rationale used in the decision to establish these courts was that offering a less formal option in lieu of traditional litigation would improve access by average citizens to the justice system for the resolution of minor disputes.

The thrust of this reform effort was uniform across the nation - - to provide a forum for the minor civil disputes of all citizens, regardless of their economic circumstances, cultural background, or legal
sophistication, and to give litigants fuller participation in the resolution of those disputes (Dejong, Goolkasian and McGillis. 1983:1).

Unfortunately, today's small claims courts are the recipient of bitter criticism over those very things they were created to eliminate: excessive delay, high costs to litigants, cumbersome procedures, inaccessibility to average citizens, and mishandling of small claims cases by the courts. Access to the formal litigation system is restricted in several significant ways.

ACCESS TO THE COURTS

The Western legal system is primarily rights-based, with equal protection of principles, rights and values of all people and the equal distribution of justice its main focus. Our parallel state and federal justice systems provide avenues by which citizens may obtain formal resolution of interpersonal conflict, but falls short of providing efficient, affordable redress to all. For instance, the small claims court, the "peoples' court," may be established in the justice courts of most states. These courts provide disputing parties an alternative to formal civil litigation. In the small claims arena, neither party may be represented by an attorney. In civil court proceedings, one or both parties may be represented by counsel, always at their own expense, with the potential for the losing party to pay the prevailing party's legal expenses as a part of the judgment. Legal counsel is a constitutional right guaranteed at no cost to indigent or mentally incompetent criminal defendants. Civil litigants are guaranteed no such assistance with their cases, regardless of the circumstances. Self-representation often places litigants at a distinct disadvantage, due to the average litigant's lack of legal knowledge or familiarity with court rules. Limitations on subject matter exclude family law litigants from utilizing
small claims courts, as well.

Divorce and parenting matters, real estate cases, and water rights disputes are heard at the District Court level, as are matters involving damages exceeding the low monetary threshold set for courts of limited jurisdiction. Certain matters may sometimes be heard in more than one jurisdiction, in which case the city, justice and district court share concurrent jurisdiction over certain subject matter. Access to the courts by citizens wishing to obtain formal dispute resolution in the United States is restricted, for the most part, to those persons having the means to afford private counsel.

Civil litigants must employ their own attorney, even if they cannot afford to do so, or act pro se,' representing themselves. Their lack of legal expertise immediately places them at a significant disadvantage. Divorcing parties who can afford counsel but opt to represent themselves to maximize control and defuse the heightened conflict sparring attorneys add to the divorce court foray typically find that they have made a poor decision in the long run. A 1993 American Bar Association study revealed that pro se' litigants received lower support, fewer temporary orders, less tax advice, and opted not to utilize mediation as an alternative to formal proceedings when given the choice. A conventional divorce settlement for an average, middle-class couple, with both parties represented by attorneys throughout the process, will pay between $12,000 and $20,000 when all is said and done. If these same parties utilize mediation for settlement of disputed matters at an average cost of $2,000 per case and about $1,500 each in attorney’s fees, their total costs would total about $5,000. The number of practicing mediators has grown by 100 percent over the past five to six years; attorneys’ fees have increased by over 100 percent in the past ten years, to compound the need for alternatives

The civil docket dilemma is further compounded with the increase in criminal prosecution for drug and violent offenses experienced in the last decade across the United States. Uniform Crime Report data and National Crime Victimization Survey data both indicate that the incidence of crime has steadily decreased since its peak in 1980 (Cole and Smith 1999:2-5). However, law enforcement’s intense focus on drug “interdiction,” the increased willingness on the part of the public to report crime, and attempts to stem predatory juvenile violence via manpower allocation changes have generated time-consuming and expensive demands on both law enforcement and the courts. The resultant increase in numbers of criminal cases, coupled with the fact that criminal cases demand more immediate attention than civil matters, further strains the court system. Prosecutors and courts must give close attention to due process deadlines such as statutes of limitation and speedy trial requirements. Everyone in the criminal justice system work group must pay constant, careful attention to issues surrounding the personal liberty of criminal defendants. These demands on the criminal docket must take first priority over the civil docket for scheduling cases for hearings or trial. With this prioritization in mind, civil litigants clearly take second place. Average citizens simply do not have the financial means to prompt immediate action through an attorney in an attempt to bypass the docket. There are several other ways in which access to the courts by average or lower-class citizens is restricted.

State statutes and uniform rules of civil and criminal procedure require representation by bar-qualified counsel at the lower court level in certain instances, the district court level in most instances, and customarily at the courts of appeal. Severe sanctions levied
upon those deemed to have engaged in the unauthorized practice of law further deter
tails by lay-persons to participate in legal processes, even though limited
representation is statutorily provided for in most states. The advantage clearly rests with
those who have the financial resources to retain private counsel. The most profound
disadvantage is evident when a litigant exercises their right to defend themselves,
appearing pro se,’ and must face an opponent who brings an attorney to the table.

Restricted access takes on yet another light when one considers that having an attorney
speak on behalf of a client in court removes the client from direct participation. This
court-sanctioned lack of participation discourages ownership of the outcome and has
been positively correlated with post-judgment non-compliance (Bingham 2002:1-29,

Attorneys must adhere to strict court rules of civil and criminal procedure adopted by
the courts. Most laymen are not aware these rules and, if aware, do not have an
understanding of them necessary to be capable of assisting in their own defense.

These internal mechanisms, grounded in statutory law, perpetuate restricted access to
legitimate dispute resolution forums by people with limited financial means or lack of
legal expertise. Other social facts that operate to restrict access are population growth and
economic decline. Increased demands on the criminal justice system narrow the margin
of access to the courts available to average citizens to dispense with their civil disputes.
Limited access to legitimate dispute resolution processes fosters a growing dissatisfaction
with the efficiency and equity of the courts, nation-wide. As a result of pervasive
discontent, grass-roots movements have begun to move selected legal processes out of
the courts and back into the hands of the individuals engaged in legal disputes.
Whatever the venue, unless mediation services are available, there are no alternative, lower-level remedies available to litigants embroiled in issues deemed appropriate for filing in the various courts. Another negative aspect impacting litigants' access to justice is the adversarial tone of proceedings in the traditional courts. The cold letter of the law promotes a “win-lose” mentality among its practitioners not conducive to collaboration.

Conversely, informal dispute resolution with its values-based central core is designed to allow disputing parties to engage in honest discussion and teamwork in search of a “win-win” result.

Community alternative dispute resolution centers have emerged throughout the United States largely in response to the various constraints to access, appearing first as models gleaned from successful labor mediation formats. Community building was the main mission of early centers, adapting program structure from early labor mediation programs of the past century. Rules were relaxed, direct participation by the parties invited, and creative resolutions encouraged.

Reconceptualization of the persons involved in disputes, from carriers of rights to human beings with needs and problems, turns the legal field from a terrain of authoritative decision making where force is deployed, to an arena of distributive bargaining and therapeutic negotiation (Silbey and Sarat 1989:479). Supporters of alternative dispute resolution assert that the “win-lose” tone of the formal justice system may be transformed to a “win-win” tone with the application of alternative dispute resolution. Handing the control of matters appropriate for alternative dispute resolution back into the hands of the parties for personal management within the context of facilitated mediation returns interpersonal conflict to conscious and self-conscious
behavior, what Robert E. Park referred to as “conditions for rational conduct” (Park and Burgess 1921: 578). As stated above, causes of interpersonal conflict vary, but remedies available via the formal litigation processes are narrowly dictated by state law.

Possible options for resolution utilizing informal proceedings are as varied as the conflicts listed above. Limitations lie only in the collaborating parties’ lack of willingness to be creative and imaginative about possible solutions. The following segment presents historical information about conflict and formal processes.

SOCIOLOGICAL THEORY

Various theoretical perspectives support the belief that mediation is a viable option in lieu of formal dispute resolution processes. Of those reviewed, several are closely related to the subject of this project: Attribution Theory, Equity Theory, Field Theory, Phase Theory, Social Exchange Theory, Systems Theory, Transformational Theory, and Rational Legal Domination theory.

Isenhart and Spangle (2000:1-15) present a number of perspectives on conflict theory that relate directly to collaborative conflict resolution. Six such perspectives are synopsized herein. A review of the theory of Rational Legal Domination concludes the section.

ATTRIBUTION THEORY

Attribution theorists posit that people make sense of the world by assigning causes of conflict to persons or situations from their personal perspective, based on what is most important to them. According to Fincham, Bradbury and Scott (1990:118-149), there are six dimensions of attributions that people commonly make when conflict is experienced:

blameworthiness: assigns responsibility for failure;
**globality:** cause of problem seen as either being narrow and specific to the situation, or wide and explanatory of many situations;

**intent:** belief that conscious decision or planning was involved;

**locus:** assumptions about where the problem lies;

**selfishness:** belief that motives are self-serving

**stability:** belief that this is a one-time occurrence or will occur many times.

Attributional bias, or the misplacement of blame by a party to a conflict who refuses to accept responsibility for their contribution to the problem, may be reduced by empathic communication between the parties. As a result of this problem leveling process, the parties learn to what extent they personally contributed to the problem. Collaborative problem solving in a facilitated environment lends to successful resolution of conflicts that emerge from misplaced attribution. Collaborative problem solving is the very basis of the practice of mediation.

**EQUITY THEORY**

People become distressed when they perceive that they are not receiving fair amounts of things that they value and feel entitled to receive. “Perceptions of equity change as we learn more about people or situations, as events alter roles or responsibilities, as people developmentally change, or as we value the benefits of a relationship with new criteria” (Roloff 1981:57).

Empathic listening improves our understanding of the “big picture” when embroiled in a conflict. “Restoring equity may involve one of many tactics: raising awareness so that the injustice may be corrected; restoring balance through apology; compensating the person harmed; discussing the rules or norms that underlie how resources in question are
divided and may be divided in the future” (Isenhart and Spangle 2000: 5).

Encouraging empathic listening is an integral part of the productive practice of mediation. It promotes the sharing of honest feelings and beliefs between the parties, opening the door for resolution.

FIELD THEORY

Field theory suggests that people's actions are a product of contextual forces which are seen, according to Kurt Lewin, “as impulses to do some things or impulses not to do other things.” The “push-pull” that results is based on expectations, commitments and loyalties. The settings within which these situations occur become psychological “fields” where antagonistic interests or competing attitudes create safe or hostile climates. Tension results from these environments (Lewin 1951; Heitler 1990:5).

During the initial phase of a mediation session, the mediator sets ground rules that establish a “safe” environment, a psychological “field” that encourages identification of the issues underlying the conflict, and promotes collaboration toward an equitable solution.

INTERACTIONAL THEORY

Interactional theory suggests that the meanings we use to guide our behavior arise out of interaction with others. Based upon the works of William James, John Dewey, George Mead and Anselm Strauss, Isenhart and Spangle (2000) generalize that interactionalists view conflict as an ongoing negotiation about what is valued, how behaviors are to be interpreted, and the meaning of events. It is a fundamental process where culture is formed, refined and remade. This perspective may be applied to conflict within families, organizations, workplaces, and negotiation processes (Strauss 1998).
During mediation sessions parties are facilitated to identify value conflicts lending to the issue at hand. They are prompted to be empathic in their listening skills as well as in their communications to each other. Events that led up to the emergence of the conflict are touched upon in an effort to identify the real, rather than perceived, intentions of the parties involved. Improved communication skills are a common result of mediation sessions when parties are receptive to working toward positive change.

PHASE THEORY

The phase theory model is defined as “describing the sequences of behaviors that interactants display as conflict unfolds over time” (Cupach and Canary 1997: 152). The phases are: attitudes and objectives (latent phase) become triggered (initiation) by an event; force and threats are used (attempt to balance power) as parties confront the issue; parties may reach a level of resolution (balance of power) until another event triggers further confrontation (disruption) (Isenhart and Spangle 2000:6-7; Rummel 1976).

“Walton (1969) characterizes conflict in two phases: differentiation, where parties raise the conflict issue, clarify positions, and discuss reasons behind the position; and integration, where parties engage in problem solving (Isenhart and Spangle 2000).

During the mediation process, the mediator sets ground rules to assist parties in the process of identifying the problem and collaborating toward a solution. This process helps parties recognize what behaviors triggered the conflict at issue. As a result of the exercise, during future interaction, the parties may be able to see the early warning signs of future problems before they escalate into situations of conflict.

SOCIAL EXCHANGE THEORY

“Homans (1958) Thibaut and Kelly (1959), and Blau (1964) proposed that we view
conflict from the perspective of market analysis” (Isenhart and Spangle 2000:8). This “cost-benefit analysis” approach suggests that we weigh the potential gains or losses to be gleaned from impending conflict. We then act based upon the trade-offs we are able to justify as necessary to secure the desired outcome.

Many tactics are used to influence the exchange of resources between conflicting parties: promises, threats, revenge, arguing, physical aggression, forgiveness, pleading, insulting, pouting and crying. Mediation provides a forum within which destructive tactics are not allowed. Instead, dialogue exposes potential equitable trade-offs in an attempt to construct a “win-win” outcome.

SYSTEMS THEORY

“The systems perspective views families, groups and organizations as units of interrelated parts who influence each other and function within a larger environment” (Isenhart and Spangle 2000:8).

Cupach and Canary (1997) describe three points of potential system breakdown:

*transactional redundancy:* where conflict is perpetuated by unchanging, destructive patterns of interaction;

*subsystem breakdown:* where one part of the system, a subsystem, becomes ineffective, rendering the larger system incapable of achieving its goals.

*exceeding delineated roles:* when someone exceeds expectations or power in their role, resulting in overall system imbalance (Isenhart and Spangle 2000:9).

Mediation encourages parties to be introspective of their role as relates to the situation at hand in an effort to avoid escalation of future issues to full-blown conflict due to repeated negative behavior born of destructive patterns of interaction.
TRANSFORMATIONAL THEORY

Transformational theory focuses more on change and process than on explanations about the roots of conflict (Isenhart and Spangle 2000:9). While other theories focus upon conflict as counter-productive, transformational theory places emphasis on the various stages of conflict, and the fact that each stage requires different strategies. For instance, attempts at conflict resolution may eliminate conflict in some instances. However, at the same time they may operate to perpetuate the inequalities and injustices that lent to its emergence. “Whereas other theories view conflict as dysfunctional and unhealthy, the transformational perspective views conflict as a vital social function where tensions are released and new communal norms are established or refined (Isenhart and Spangle 2000:9; Coser 1956:29).

The transformational perspective supports the process of “transformational mediation,” where the goal is to move beyond solutions to transforming relationships (Isenhart and Spangle 2000:10).

Transformational mediation fosters moral growth, enhances communication skills, encourages personal empowerment, and promotes empathic listening. This form of mediation focuses upon managing conflict, rather than eradicating it. The social value of conflict is recognized, and underlying causes are evaluated in an attempt to improve future communication between the parties. Review of Max Weber’s work on rational legal domination generated the following segment.

MAX WEBER

Max Weber based his theoretical claims on studies of social action. He disagreed with Karl Marx’s purely conceptual approach, thus his focus was based on observation of
actual events and circumstances. He conducted a series of investigations into culture of
in China, Greece Rome and the Middle East. His studies of The Protestant Reformation,
Indian and Chinese social structure, legal systems, various political systems and
bureaucracies, the origin of Western cities, and many concrete events in history became
the heart of his research. Weber delved into political sociology, or “the sociology of
domination,” where his objective analysis on social stratification and domination in
specific sociological contexts began. Weber identifies two interrelated elements of
domination:

*presence of beliefs about legitimacy*: the use of power is legitimate when
leaders assert that members of society have a duty to obey; a rightness in their
domination and resultant commitment obviates the need for using force to obtain
compliance;

*presence of an administrative apparatus*: society-wide authority
relationships, or staff, present throughout the system to enforce commands and
in other ways serve as a link between the leaders and the people (Turner,

Weber asserts that three types of domination are most common:

*charismatic domination*: religious in origin, or enlisted by people who by
force of their own personalities communicate their inspiration to others;
often emerges in crisis situations;

*traditional domination*: based on the sanctity of age-old rules and
powers, justified by the belief that it is ancient and therefore embodies an
inherent state of affairs than cannot be challenged by reason; often enforced
by the subordinate class taking note of the ruler’s rightful place, out of personal loyalty, made more compelling by the subordinate position and economic status;

*rational-legal domination:* based upon law; exists by virtue of statute; legitimacy grounded in belief that any legal norm can be created or changed by a procedurally correct process, i.e., procedural protocol exists for change by consensus and political action (Turner, et al 1998:171-77).

Weber’s theory on rational-legal domination sheds light on why alternative dispute resolution has emerged over time as an alternative to formal litigation practices in the United States.

Max Weber makes clear that those subjected to authority choose to accept its legitimacy out of economic or political dependence on those who hold power, because its acceptance reflects their own values (Turner, et al 1998:172). Legal domination exists by virtue of statute, the norms subject to creation or change by a procedurally correct enactment (Turner, et al 1998:174). This, according to Weber, is bureaucracy’s logically pure form. As stated earlier, sources of conflict emerge from parties’ inability to focus on the same issue, including circumstances where differences of opinion arise out of preferences for procedures. Certain sources of conflict affect other sources of conflict, further complicating matters (Isenhart and Spangle 2000:14).

Weber defined the modern state as a monopoly made legitimate by a system of laws binding both leaders and citizens. The rule of law, rather than of persons, reflects the process of rationalization . . . a modern bureaucracy (Turner, et al 1998:175). At the base of a functioning bureaucracy is the creation and enforcement of rules in the interest of all
persons, regardless of status. Weber’s ideal bureaucratic social structure included the observation that those entrusted with its governance “succeed in eliminating from official business love, hatred and all purely personal, irrational and emotional elements.” He continued that this ideal political administration “should be impersonal, objective and based on knowledge, for only in this way can the rule of law be realized” (Turner, et al 1998:175). These descriptions mirror the fundamental tenets of the rule of law as originally created and still present in the United States today.

The processes by which interpersonal disputes are settled in the Western world operate, for the most part, at the institutional level. The authority for such practice is grounded primarily in state legislation and rules of civil and criminal procedure. In the context of one-on-one interaction in a private setting or among groups of concerned citizens gathered in a public forum, the rules of engagement governing these processes have evolved over time within a formal system firmly rooted in objective analysis.

**Formalism.** Max Weber’s analysis of the evolution of the legal system written over one-half century ago shed the first light on how internal factors - the proliferation of legal technicians - and external factors - the instrumentalization of law in the service of ends of an economic or political nature - have combined with one another to increase the technical and specialized character of legal practice (Weber 1978:874-5). Weber contended that this emergence of social law would not lead to the dissolution of the legal into the political, as legal professionals and advocates of the preservation of legal formalism feared. Weber believed that such social influence would result in the reification of pure legal rationality: the mode of reasoning, the techniques and more generally, the ensemble of legal knowledge (Dezalay 1986:90-91). Weber suggested that
the emergence of pure law, reserved to the priests' priests, was in response to competition from other modes of social mediation (Dezalay 1986:90).

Although alternative dispute resolution (ADR) has enjoyed strong support as a viable alternative to the formal system, there still exists ongoing debate regarding preservation of the practice of pure law versus the emergence of what Dezalay refers to as the “living law.”

Law is at one and the same time a consecration of power and a limitation of power. Directly reflecting the class struggle, the norms of law always possess a double face. On the one side, they make legal an order that is advantageous for the possessors of capital and those who represent them; on the other, and simultaneously, they express the struggles and demands of those who have to defend themselves against that order. Any attempt to reduce legal rules to one or the other of those functions is condemned to failure (Lyon-Caen 1978:292).

The dichotomy exposed above reveals the paradigmatic legal controversy pitting equal against equal, one party and lawyer against another. The appearance of equality depicted by the blindfolded “lady justice” is deceptive. Human beings are not machines capable of computer-like calculation, free of emotion or empathy. The people involved in the practice of law lend the social element to its equity and occasionally, its lack thereof. Richard Abel, a staunch opponent of informal alternatives to the practice of pure law, admits that most of these battles are grossly unequal: the state versus the individual defendant, the personal injury plaintiff versus the insurance company, the discharged worker versus the employer (Abel 1994:383). Yet it is within this system that litigants
are offered their best chance for achieving equitable remedy under the law. Abel continues by asserting that only within the legal system can advocates even hope to pursue the ideal of equal justice in a society driven by inequalities of class, race and gender and dominated by the power of capital and state. “Formal law cannot eliminate substantive social inequalities, but it can limit their influence” (Abel 1994:383). He closes his opinion, “Only equals can risk a confrontation within the informal processes of the economy and the polity (384). Here, Abel asserts that informal processes fail to level the playing field as effectively as do formal processes. He suggests that any persons other than the “priests’ priests,” certainly excluding mediators, are incapable of successfully barring the influence of status, wealth, power, privilege, and so on, from the decision making process. The predicted outcome is limited to one that perpetuates inequality of class, race and gender. Abel’s assertions underestimate pure, altruistic human potential, although they are worthy of consideration. When disputants are given the freedom to work outside the scope of statutory constraints, such creative collaboration injects the human element lacking in formal procedures back into the legal process. With proper training and adherence to the standards of alternative dispute resolution practice, ADR practitioners facilitate perpetuation of the trend toward informal dispute resolution. Benefits directly related to implementation of informal ADR services include: flexible rules, easier access, speedier resolution, lower costs, and finally, a sense of ownership of the outcome by the parties to the final agreement. Contrasted with the formal system, these benefits present a sensible, affordable option to those who find the courts less accessible.

Adherence to the written law, dutiful following of preceding cases and regard to jury
instructions and rules governing procedure reinforce the stability of the system by keeping the officers of the court on course. However, the final word has always rested with the judge.

The primary regulatory element of social systems in the Western world is the court of law. The judiciary plays an important role in structuring dispute processes to absorb demands for social justice on the one hand, and maintain social order and stability on the other hand. The form of legal participation, therefore, has always been central to the mediation function of dispute processes (Harrington 1982:203).

It is the ability to balance these demands and see the larger perspective that allows capable judges to have a positive impact on the legal system. The great judge was great because when the occasion cried out for new law he dared to make it. He was great because he was aware that the law is a living organism, its vitality dependant upon renewal. The great judge was great because he could dare to (innovate) and yet convince his public that he spoke with an authority greater than his own. It was the judge speaking, yet paradoxically it was the common law which spoke through him (Jaffe 1969:1).

Ultimately it is the judges of jurisdiction over low-level disputes, partnered with the other officers of the courts (prosecutors, defense attorneys, probation and parole officers), who will allow alternative dispute resolution to exist and thrive as a viable alternative to formal proceedings. Referral of appropriate cases to established community ADR programs for mediation will stem the tide of increasing caseloads in the courts. Courts
whose judges recognize the value of ADR in the broader community also recognize the
value of increased effectiveness and revitalized community involvement. Courts staffed
by progressive judges constitute the most common source of referral to alternative
programs.

The theoretical review undertaken to support this project identified varied conflict
perspectives supporting the practice of mediation as a viable alternative dispute
resolution method. Effective communication is at the heart of successful human
interaction. Mediation promotes effective communication, empathic listening and
positive social change.

Perhaps the most tangible positive social change may be implemented not from the top
down as conventional social practice dictates via the court systems, but rather from the
bottom up, from constructive interaction at the very core of society. The key to
successful social reform lies in the most basic human interaction which transpires in our
day-to-day social world: within our homes, communities, churches, schools, and
neighborhoods.

ALTERNATIVE DISPUTE RESOLUTION

Americans have become accustomed to stepping up to the judge's bench for their "day
in court" when their personal affairs become too difficult to resolve outside the formal
legal system or without third-party intervention. However, over the past thirty years, a
welcome trend has emerged with the advent of alternative dispute resolution, or
"A.D.R." Alternative dispute resolution (ADR) is the term associated with the resolution
of disputes outside of, or in conjunction with, the formal legal system. A.D.R. removes
willing participants from the formal justice system and facilitates informal interpersonal
engagement for the collaborative, rather than adversarial, settlement of conflict.

In recent decades Americans have found ever-increasing success in settling interpersonal conflict by informal means. Varying forms of alternative dispute resolution have been implemented in an attempt to offer disputing parties options in lieu of formal court processes, the most common of which are negotiation, mediation, and arbitration.

It is important to distinguish these three types of A.D.R., one from the other. Negotiation occurs directly between disputants without an impartial third (neutral) party present, whereas mediation is a discussion and negotiation that is facilitated by a third party neutral, the mediator. Arbitration, like mediation, involves an impartial third party who, with limited party input, decides on the resolution of the conflict. These facilitated processes are employed to augment the legitimate courts in meting out justice to the public. A side benefit is that these alternative processes enable the disputing parties to enjoy more personal participation in the process. Perhaps the most practical outcome is enjoyed as the court dockets are cleared to process only difficult cases not suited for referral to alternative dispute resolution. The focus of this project is the practice of mediation at the community level.

Practitioners of mediation, mediators, have consistently found that the sheer gesture of engagement in a safe, neutral setting sets the tone for successful discourse between the disputing parties. The process may or may not go forward at the point of the first meeting. The value may be limited to the fact that the parties had an opportunity to meet in a neutral environment and took the time to stop and listen to each other for perhaps the first time since trouble began. This initial meeting often presents the first opportunity for the parties to empathize with each other regarding the matter in dispute. The process may
indeed go forward at the first meeting, or may be limited to stipulation of the ground
rules for future sessions. In any event, the first attempt at collaboration between
disputing parties in a mediation session typically encourages more of the same efforts on
a track toward conciliation and settlement. The development of mediation as an
alternative dispute resolution tool is historically young when compared to the established
rule of law governing human interaction. Its theoretical base is still developing,
grounded in ongoing reform and fraught with diverse debate over how, under what legal
authority, and by whom mediation should be practiced.

MEDIATION

In civil, and many criminal proceedings, the litigant/defendant is moved to a
secondary position, one of indirect participation. In these scenarios, they are represented
by counsel who address the court, question witnesses and generally become the litigant’s
voice to the court. The current move toward informalism in the legal system involves
increasing the active personal involvement in the processes by those invested in the
outcome. Ownership of the outcome is the single-most powerful predictor of success of
voluntarily mediated processes (Bingham 2002:1-29, Pearson and Theonnes 1984:509,
515).

In these cases, litigants are allowed to invest themselves in the structure of the process
agreed upon as well as the decisions made about their lives, desires and futures. This
self-determination born of the process encourages litigants and defendants to follow
through with what they have agreed to do regarding the ultimate and final resolution of
their disputes.

Challenges to legal formalism constitute a central theme in the sociological study of
law. The intellectual origins of sociological jurisprudence and concept of "legal realism" were based on a critique of legal formalism. Both movements criticized analytical

infinite in the pursuit of gaining to acknowledge the social character of the law (Hunt 1985:714). The social character of the law dissolves into a contest of equalization within the formal legal realm. Informality allows the assertion of rights by claimants who otherwise could not afford to do so, or feared doing so due to their social position. Opponents of informalism claim that protections inherent in formal legality, such as due process and the right to be represented by legal professionals at no cost to the defendant, protect parties to legal action. "The more coercive the action, the more powerful the claim for protection (Abel 1985:380-81)." Yet Abel's argument is moot when civil litigation and the lack of guarantee of legal representation is discussed. These attacks on formalism have provided an ideological framework for judicial reform in the Twentieth Century.

... contemporary judicial reforms explicitly spoken of as alternative dispute resolution have their antecedents in progressive reforms associated with sociological jurisprudence (Harrington 1982:33).

Popular justice programs have emerged from settings in which a desperate need for greater access to justice was identified by a population profoundly unsatisfied with the state's ability to mete out justice. These movements surfaced primarily in response to heavy-handed or corrupt law enforcement, overburdened court calendars and ineffective indigent defense programs. Recently, however, the emergence of alternative dispute resolution programs may also be attributed to a growing desire for improved community cohesion and a collective desire to rely more on the discourses of the world outside the legal system than those within it (Merry and Milner 1989:4).
Popular justice rarely puts a previously disempowered group in control of its own conflicts or provides a setting in which a community exercises autonomous authority and makes independent, logically determined judgments. Nor does it typically challenge hegemony of state law. Unless it establishes a base of power outside the legal system, popular justice is more likely to entrench and reinforce social change already occurring in other segments of society or to consolidate changes accomplished through other forms of political transformation (Merry and Milner 1989:9).

The value of alternative procedures must then be evaluated and recognized at the individual level.

At the core of the alternative dispute resolution movement was the hope that handling local problems in community-run forums independent of the legal system would strengthen local self-governance and rejuvenate the self-reliant communities of the past.” These forums extended the promise that they would return control over personal issues to the people. They hoped to replace the dominance of the legal profession and the courts with the control of neighbors and peers (Merry and Milner 1989:10).

It is from this type of grass-roots political movement that mediation and other forms of alternative dispute resolution emerge. In the United States this movement was not mobilized to initiate overarching political change. Historically, social reform movements focused upon access to justice function to improve the less-than-effective status quo
dispute resolution opportunities available via conventional means. The evolution of mediation has remained interactive with, and complimentary to, the traditional legal system. The primary purpose of establishing alternative dispute resolution programs is to remove the adversarial tone and restrictive policy of formally litigated disputes. The scope has been expanded to address many forms of conflict in as many settings.

The hidden beauty and sustaining common thread inherent in successful mediation practice, is the potential for improving the communication skills of all participants. Whether a first time participant or a highly trained and experienced mediator, the gift of mediation is to forever after own the skills participants take away from the mediation experience as their personal tools for use in a myriad of future settings: parenting, workplace interaction, family dynamics, school, church or professional interactions.

Many district courts and courts of limited jurisdiction in the United States and other countries currently use mediation programs for the resolution of a variety of types of cases: victim/offender, divorce and parenting, parent/teen, labor dispute, neighborhood consensus building, civil and small claims matters, water rights disputes, homeowner association disputes, and many others. Community mediation centers assist families in preparing for appearances in district court, the court of original jurisdiction in matters of family law regarding temporary custody agreements, trial separation agreements, or petitions for dissolution of marriage. Mediation sessions are conducted with the statutory guidelines for binding legal agreements in hand. Using templates that list issues likely to arise in future court processes streamlines the hearings to follow. Hard costs and emotional strain on the parties involved are reduced as a result. Abel’s concerns raised above regarding “leveling the playing field” have been addressed by mediation experts.
for decades.

Mediators engaged in the process of family law mediation must be aware of power imbalances, the presence of any history of violence between the parties, and ethnic and gender imbalance issues at all times. The process holds the potential to help the parties generate an equitable agreement if successful implementation of rules of engagement that balance the power of the parties is combined with a willingness on the part of both sides to seek conciliation. Should the mediation practitioner fail to avert the injection of bias and prejudice into the process by the various participants, including themselves, the neutrality so vital to effective mediation practice may be immediately compromised.

“Mediation is a method of facilitation geared toward turn[ing]
destructive conflict into a constructive, life-enhancing experience”
(Yarbrough and Wilmot 1999:xiv). Mediation is both a science and an art: it is the science of constructive communication within a theoretical framework, and the art of pure, empathic reasoning. It is a framework within which people with polarized viewpoints can deliberately rise above them and see innovative possibilities for tailor-made solutions to problems. These solutions are much more variable and liberal than those solutions typically meted out in family law court arenas (Yarbrough and Wilmot 1995:xvi).

The process of conflict management, injected with open-minded creativity, bears no limitations beyond the imagination of the parties. Gayle Yarbrough and Bill Wilmot use what may be the perfect analogy for mediation in their book, Artful Mediation. The authors ask the reader to close their eyes and create a mental picture of a calm pool of
water suddenly disrupted when a stone falls somewhere on its surface. The stone sends a slow, concentric ripple effect across the surface of the water, which expands into wider and wider circles until it disappears at the shoreline. The authors equate this ripple effect with that of transforming a negative situation into a more positive situation through mediation. "Through the practice of mediation, you expand a more positive way of being in the world" (Yarbrough and Wilmot 1995:xvii).

Success realized through this process requires the willingness on the part of those engaged in the process to be open to a different perspective of the world. The outcome they enjoy is comprised of their own handiwork and imagination, fueled with enthusiasm about achieving conciliation. In contrast, narcissism is a brick wall to successful alternative dispute resolution. The parties must be amenable to empathizing with each other’s situation as it relates to the matters in dispute between them. The "neutral" presence of the mediator allows the parties to take risks they might never consider in an adversarial setting. The facilitator does not take sides in the conflict and does not make decisions or give advice. The mediator’s role may be compared to that of a train engineer embarking for the first time on a new route. They keep the train on the track, always vigilant of obstructions to the journey ahead but remain detached from control of the route laid out in the tracks ahead. Each length of track the parties lay out is a step in furtherance of resolution. In the best case scenario the mediator guides the parties toward productive discussion in hopes of encouraging empathic listening, patience, and a concerted effort to reach a resolution that is acceptable to all of the parties. The process of mediation requires that all participants "give a little ground" in the process and agree to be open minded and realistic. Fundamental to successful mediation is acceptance of
the fact that no one gets everything they desire out of conflict resolution, just as in life. As a result of this spirit of realistic expectation and cooperation, a true "meeting of the minds" becomes possible. "[S]he is an educator, who helps the participants in mediation to gain a greater sense of self-respect, self-reliance, and self-confidence (Bush and Folger 1994:65).

This is what the authors term the "empowerment dimension of the mediation process" (Bush and Folger 1994:66). Education and acceptance of limitations to their role dictates the mediator's ability to prevent themselves from succumbing to personal bias, a critical element in the successful practice of mediation. The mediator may guide the parties through the process at times when a lull in forward motion occurs, but they must be able to stimulate progress by suggesting certain "switches" in the journey that may be taken toward successful resolution without interfering. The mediator must disengage personally from the outcome so that the parties may truly "own" the process. There are varying schools of thought on the subject of just how engaged the mediator may properly become without treading the line of unauthorized practice of law. State mediation associations have organized to establish networks between mediators and mediation centers. Many states have adopted rules of practice to standardize and regulate the practice of mediation. The Montana Mediation Association encourages mediation practitioners and community centers to establish a positive relationship with the local bar associations to foster partnerships in formal and informal practices.

Mediation applications in use today run the gamut along the continuum mentioned above, from international relations settings to minor one-on-one disputes between individuals. Although conflict is deeply embedded in our social structure, there exists a
potential for improvement in the way consensus is reached and peace is restored in issues
disputed in a variety of settings.

Diversion programs for young people, victim-offender mediation and family law
mediation are examples of mediation applications finding great success in the United
States.

DIVERSION PROGRAMS FOR YOUTH

Diversion programs have been developed in youth courts in conjunction with schools
throughout the country in an attempt to separate youthful offenders from the legal system
that processes adult offenders. These programs encourage young people to improve their
decision-making skills through positive interaction with case workers and their peers in
an educational rather than punitive setting. This process offers both the opportunity and
the vehicle for youth to avoid continuing along a path of criminal activity as they mature
into adulthood. They are assisted in establishing ties with their peers, families and
communities to gain a sense of belonging and accountability along a positive path of
future behavior. Part of the process involves mediating restitution issues between the
offender and victims of crimes they have committed to ensure that full payment for their
acts is made. Restitution serves, in these cases, as closure for both the victim and
offender and a way for the offender to atone for their acts without legal ramifications.

VICTIM-OFFENDER MEDIATION

Victim-offender mediation programs have been developed to remove the personal
issues surrounding restitution in property or personal injury cases from the public court
room and back into the hands of the people affected by the crime. The victim is given an
opportunity to explain directly to the offender how the offender’s actions affected their
life and/or that of their family or neighborhood, as well as their sense of security, safety, physical health, and well-being. It is hoped that out of these encounters the offender feels empathy for the person's whose face they now, perhaps for the first time, associate with their crime. It is believed that as a result of this experience they may feel a stronger sense of belonging and accountability to their community and a sense of responsibility that may deter them from re-offending.

FAMILY LAW MEDIATION

Family mediation is offered to parties seeking dissolution of marriage, trial separation, custody agreements, post-judgment relief in the form amendment of existing court orders or resolution of other family-related issues. This option allows parties to have greater participation in the final outcome of their cases using informal processes. Trained mediators use boiler-plate agreements gleaned from the state statutes and uniform guidelines to prepare an agreement between the parties for presentation to the court. Once signed by the parties and approved by the court, these agreements carry the weight of a judge's order. Specialized training is available to mediators to prepare them for advanced mediation applications such as parent-teen mediation, neighborhood dispute mediation and peer mediation.

MEDIATION APPROACHES

Many different mediation approaches have been developed over the years for use in varied applications. Mediation takes place in many settings and accommodates settlement of diverse issues by persons of diverse backgrounds. Mediation sessions are facilitated by persons with equally varied backgrounds and levels of education and experience. Mediation training programs address these different approaches and their appropriate
application. Model Standards for Mediators adopted in 1995 by the American Bar
Association Standing Committee on Dispute Resolution offers nine most commonly used
several examples of basic mediation approaches, synopsized below:

*Scrivener Mediation.* The mediator plays a limited, rather passive role focusing on the
clarification and writing stage of the mediation. In this capacity they take “minutes” of
the process, recording the concerns and points of agreement or disagreement of the
parties, or may serve merely as a silent witness. The scrivener approach depends on the
parties having a relatively equal power balance and needing little or no mediator
intervention. It requires a safe and peaceful venue, an expectation of reasonableness, and
someone to clarify and record the final agreement.

*Crisis Mediation.* This approach focuses the parties on defusing the crisis at hand,
rather than reaching an agreement. Serious situations such as child Abductions, unilateral
transfers of assets, deadlines for a choice of school, and economic starve-outs are all
common examples of matters suited for this approach. The goal of this type of mediation
is to increase the stability of the situation so that the parties can work on a longer-term
solution without a series of emergency court hearings or other extreme measures brought
about by the exigencies of the crisis.

*Shuttle Mediation.* The parties do not meet in the same room. The mediator works
separately with each party and conveys the offers and responses for the parties, one to the
other as they materialize. This works well in extremely hostile situations when one or
both parties are poor communicators or need special attention, in long-distance
mediations, or with parties who cannot or refuse to attend mediation together.
Muscle Mediation. The mediator tells the parties what is fair and appropriate and then works with the parties to persuade, cajole, and wrestle them into agreement. Agreements may be reached frequently and quickly by mediators who impose their solutions, but it is unlikely to produce a resolution that will work effectively for the parties in the long run using this method. It is contrasted with arbitration in which a result is imposed formally by a binding decision maker. Parties and lawyers often prefer muscle mediation to long and protracted litigation. It is often used with high-conflict couples as a last resort to reach agreement in the mediation process, permitting the parties to retain control over the terms of the agreement rather than leaving the decision to the judge.

Facilitative Mediation. More active and interventionist than in a scrivener role, the mediator works collaboratively with the parties in setting an agenda, improving the communication, clarifying feelings and concerns, and monitoring the bargaining process. Working with the parties together, the mediator downplays or eliminates knowledge or expertise and does not offer options, solutions or opinions about the outcome. Instead, the mediator facilitates the parties to articulate their own offers and responses directly to each other with the mediator present. This model works well with couples with relatively equal bargaining power or with consulting lawyers in the mediation room with their clients.

Single-issue Mediation. One isolated issue is sent to mediation, and the balance of the case is resolved by direct attorney negotiation or by the court. This can occur pendent elite (before the trial date requiring temporary agreements or court orders), over an issue regarding a bifurcated trial (where issues are tried separately, i.e., guilt and punishment or guilt and sanity in the case of a criminal trial; or trial of a person’s liability for damage or
personal injury to another prior to facing a trial on the question of damages) (Black's 1991) modifications, time-sharing agreements, disposition of the family residence or business, allocation of lawyer's fees, and in the event of many other issues.

**Comprehensive Mediation.** Parenting, financial, personal conduct and all miscellaneous issues can be resolved in one mediation session or series of sessions. A comprehensive mediation is often initiated before a physical separation occurs or to prevent move-out struggles or problems with bank accounts or other assets, but it can be initiated at any point. Issues left unresolved issues are then subject to formal litigation. Issues are often revisited with subsequent sessions as issues emerge from the ongoing attempt by the separating parties to finalize their business.

**Transactional Mediation.** This does not stem from a dispute but rather from a desire to take advantage of a positive opportunity to maintain a current relationship, or to create a new one. Premarital agreements, working out the details for jointly-held assets following a divorce, or finalizing an adoption are common examples of issues appropriate for transactional mediation. The mediator works with the parties to increase the possibility of finalizing the arrangement and maximizing harmony thereafter.

**Education Mediation.** Parties want to negotiate their own agreement directly with each other but wish to have additional information from a neutral expert. Lawyers, accountants, therapists, real estate agents, financial planners and clergy all provide this service. The mediator offers information, opinions, resources, and other information as desired by the parties but does not attempt to facilitate dialogue or agreement making between them unless explicitly requested. Educational mediations often transform into other approaches at the will of the parties engaged.
Flexibility in mediation approaches has prompted a significant movement away from formal litigation and toward alternative dispute resolution in the past decade. The growing acceptance of alternative dispute resolution processes such as mediation and arbitration have secured ADR as a viable alternative in the future for successful integration of the community and courts. State statutes legitimize these processes by incorporating them as acceptable alternatives to formal litigation in family, civil, and criminal law. Enforced standardization of practice and certification of ADR practitioners is also common throughout the United States.

EVALUATION OF EXISTING PROGRAMS

Research on dozens of existing mediation projects located throughout the United States was reviewed to identify the best program structure for the Bitterroot center. The following three projects were chosen for presentation herein. First, The Friends Suburban Project’s Community Dispute Settlement Project, a community-based, volunteer mediation program selected as a result of the initial guidelines supporting its program structure. The Major Civil Pilot Program in Illinois, a small-scale mediation program with court referral as its main source of cases fits the Bitterroot setting in that many of the referrals to the center will be directly from the local courts. The Dispute Resolution Center for Missoula County, a community-based mediation center staffed primarily by volunteers, chosen due to its geographic proximity and similar program structure to that which is being proposed for the Bitterroot center.

DELAWARE COUNTY COMMUNITY DISPUTE SETTLEMENT PROJECT

The Friends Suburban Project of Delaware County in suburban Philadelphia, chose to sponsor the Community Dispute Settlement Project in 1976 in furtherance of their three
customary project guidelines: nonviolence, alternatives and empowerment while addressing community peace and justice. The partnership between the Friends Suburban Project of Delaware and the Community Dispute Settlement Project spawned from an active search by three local women seeking an alternative to the formal legal system for the settlement of minor disputes. The Friend’s Suburban Project was approached by the ladies in hopes that they would act as the umbrella organization for the proposed center during its fledgling stages. The proposed alternative dispute resolution project seemed to fit well under the Friends Suburban Project guidelines:

1) community dispute settlement would be an experimental alternative to suing family members or neighbors in court;

2) early intervention in community conflicts would decrease the potential for violence and provide a model for handling future troubles;

3) because disputants construct their own agreements, mediation would empower people to take control of their own problems (Beer 1986:3).

The initial goal of the project was to help more people discover the benefits of mediation (Beer 1986:227). Expansion from the original simple format to provide additional services and educational opportunities was always the plan, but the scope of community impact planned for the center evolved over time. Over the years the program became politicized, working its way firmly into the criminal justice system and local political system as a means of attaining sustainability. “As a result of this transition, the center gave up several of the program’s values (liberal, participatory, empowering) and relinquished control to groups with different philosophies” (Beer 1986: 226). In the interest of achieving its fundamental goal of reaching as many people with mediation
skills building, the program fluctuated between radical principal and political co-optation (227).

The three project founders obtained training through the American Bar Association prior to approaching the Friends Suburban Project for financial and organizational support. An executive director was hired to oversee the new program. The Friends Suburban Project, the new center’s “incubation board” set about connecting with local agencies to arrange for referral and to design reporting systems that served both sides of the arrangement. A core of volunteer mediators formed quickly. For the first six years, the program remained relatively small, operating from a discreet location in a rural section of Delaware County. Upon moving the center to a storefront in Darby Pennsylvania, a location much closer to the greater Philadelphia boundary, the entire program dynamic began to change. Whereas the primary mediation application had been small claims referrals directly from the courts, the program quickly evolved to provide neighborhood dispute resolution, family intervention, parent/teen mediation, family law mediation and communication skills building. After a total of 10 years, the center became the completely autonomous “Community Dispute Settlement Program,” by that time enjoying its own, solidified funding base. By 1986, on the average, the center handled four mediations a month, out of an average of 300 contacts each year (Beer. 1986:4).

Overall, the Community Dispute Settlement project design described above is a good fit for adaptation for the proposed Bitterroot Center. The small cadre of trained volunteer mediators, under the direction of an executive director and solid board of directors is a sensible format for the start-up phase of the proposed Bitterroot center. Starting small
with minimal funding and building gradually toward an autonomous program is a sensible plan for the Bitterroot community center. The rural Philadelphia project struggled with program expansion during the early years. They faced the dilemma of balancing their desire for independence from the legal system with being able to keep their values intact. They learned that choosing the desired program model did not result in building case volume, although the mediation work they performed in the early years was satisfying and well done. According to Merry and Milner (1989, research on mediation centers shows their disturbing tendency of freezing into institutional patterns prematurely, restricting themselves from positive change even under the guidance of second generation leadership. Becoming “stuck” in stagnant program format due to tight funding, limited volunteers, lack of confidence and loss of those original participants who gave the original programs its vision and form are often fatal to small mediation centers.

The salient points derived from review of this project are that it is imperative that the program structure be dynamic and flexible for the purpose of maintaining financial sustainability; that new types of intervention be developed and new training available to expand the proficiency of the volunteers as well as the offerings of the center in an effort to keep the community and volunteers motivated and confident in the services provided; keeping the concept of “community” close to the heart; and that increasing volunteers’ and administration members’ awareness of culture, race and class as it relates to conflict resolution is imperative to program success.

MAJOR CIVIL CASE MEDIATION PILOT PROGRAM: 17TH JUDICIAL CIRCUIT OF ILLINOIS

The 17th Judicial District pilot program began in 1994 in an attempt to reduce the
congestion in the courts and improve access to justice for civil litigants. The State of Illinois enacted a court-annexed arbitration statute in 1985 and appropriated funds toward the creation of a court-sponsored program in 1987. The program's main focus was on the objective of diverting major civil cases from the traditional litigation process to mediation, the ADR method best suited in this application. The goals included:

1. Diversion of eligible cases to mediation to allow the court to process eligible cases faster than was possible before mediation was implemented, thereby reducing the time these eligible cases must wait for disposition, allowing the court to process the remaining cases faster.

2. Improvement or stabilization of the speed of disposition of cases not referred to mediation.

3. Reduction of case-processing costs where the mediation process results in a settlement.

4. Enhance satisfaction of litigants and lawyers with the mediation process and the overall quality of justice.

5. Save parties and attorneys time, effort and expense in cases referred to mediation (Schildt, Alfini and Johnson 1994:4).

Under a grant from the M. R. Bauer Foundation, the Northern Illinois University College of Law conducted a study to assess the program's impact on civil case processing. The program was found to be quite successful overall.

*Findings.* Of the 149 cases referred to mediation during the Illinois project's first year of operation, 107 (roughly 2/3) were completed prior to the evaluation. The findings of
the study generally suggest that:

1. Approximately 44 percent of the cases mediated resulted in settlement at the mediation conference;

2. Personal injury cases comprise the bulk (77%) of the types of cases mediated in this study, suggesting that these types of cases are excellent candidates for resolution through mediation. Further study using a larger sample size is necessary to validate this finding.

3. Over 60 percent of the attorneys indicated that mediation was effective in identifying realistic resolutions to their cases and helped them understand the opposing parties’ positions. Thirty-six percent of the attorneys and 57 percent of the parties involved in mediated case which settled, had not been confident prior to the mediation conference that a settlement could be reached.

4. Respondents overwhelmingly believe that mediation is less costly and much faster than traditional case processing.

5. The respondents overwhelmingly feel that the mediation process is fair and the mediators are impartial. This was found to be true whether the case was settled during the mediation process or was returned to court for litigation.

6. In terms of levels of satisfaction with the process, the attorneys placed greater importance than do parties on case outcome and mediation’s ability to identify realistic resolutions. Parties’ level of satisfaction tended to be a product of the participatory aspect of mediation and mediator qualities.

7. Overall, all parties (plaintiffs, defendants and attorneys) were very satisfied with the mediation process.
8. The complexity of the case has no apparent influence on either settlement or levels of satisfaction.

9. The older the case, the less likely it is to settle through mediation, although the levels of satisfaction were not affected by the age of the case.

10. The average duration of a mediation conference is 140 minutes, less than 2.5 hours. One-half of the time was spent caucusing, or in separate meetings discussing proposed settlement (Schildt, et al 1994:4).

   Overall, the 17th Judicial Circuit pilot program was deemed a resounding success. Participants were satisfied with the quality, pace and cost-saving aspects of the alternative dispute resolution process of mediation. The findings also showed that, given the opportunity, both litigants and attorneys would be willing to attempt mediation again. The mediators were found to be fair and impartial. The program is reducing the burden on local judges and, although this aspect remains on a small scale, the potential exists for a much greater impact to be enjoyed (Schildt, et al 1994:1-2).

   The Illinois project is relevant to the Bitterroot project due to the fact that court referral will be a strong component of case loads processed through the Bitterroot center. The case load for the Bitterroot center will be comparable, although larger, than that of the Illinois project. The program structure will be very similar, in that the Bitterroot center will draw direct referrals primarily from the courts, local attorneys, school districts, and social service agencies such as family services, council on aging and government-sponsored mental health providers. The Bitterroot center will structure its referral system with the input and support of each of these agencies.
The Dispute Resolution Center for Missoula County was established by Art and Kitty Lusse of Montana Mediators in the mid-1990s. A cadre of trained volunteers with an average constant size of 40 active and available mediators serves the center. The center provides primarily civil and small claims mediation to the Missoula Justice courts and family law mediation to the Missoula area district courts. Advanced mediators offer parent-teen mediation, neighborhood dispute resolution, victim-offender mediation, among others. Mediators are typically assigned cases in teams of two. Each volunteer is certified as a sole mediator prior to handling their first case as a team-mediator without a trainer present. The center uses a scheduling coordinator to set the mediation center’s daily routine. Each volunteer provides mediation services an average of two times per month.

A formal report or statistical evaluation of the Missoula center’s work over the life of the center was not available at the time this project was done. However, from the many conversations with the directors, Art and Kitty Lusse of Montana Mediators, personal mediation training and observation of actual mediation sessions conducted by the Lusse’s and advanced mediators over the past three years, overall success of their program is evident. Personal training and subsequent mediation experience with Montana Mediators and the Dispute Resolution Center of Missoula County was helpful in getting a feel for the program structure and the ongoing success the center has enjoyed since its establishment. The center maintains a settlement rate of approximately 80 percent of the civil and small claims cases referred to the program by the courts for mediation. The center’s divorce and parenting plan service is reported to be an ongoing success,
mediating an average of 70 cases per year. The center requires that evaluation forms be completed at the close of each session, regardless of the subject matter or application used. These evaluation instruments assist the program directors in keeping the services as efficient and professional as possible (Lusse 2001, 2002).

Excellent preliminary training and continuing education is available in Missoula and surrounding areas through Montana Mediators. The training is offered at a reduced fee to students who commit to serve as volunteer mediators for the Missoula Center for a period of time after the training is completed.

Montana Mediators offers additional, specialized training which allows students desiring enhanced mediation education the opportunity to achieve “full mediator” status with the Montana Mediation Association. Training seminars are held periodically throughout the year to sustain the Missoula center’s cadre. Individual seeking mediation training, including volunteers from other centers, may attend all seminars. The Lusse’s also manage and teach the mediation component at the Montana School of Law on the University of Montana campus, and provide peer mediation program instruction and oversight to Missoula area schools.

The Missoula center’s mission statement includes the goal of encouraging the establishment of satellite mediation centers in Western Montana to achieve the broadest geographical availability of ADR services possible. Incubation of new centers under the Missoula center’s 501(C)(3) nonprofit status is negotiable for pilot centers during the first year of operation. One year is the typical time frame necessary to achieve sole status as a stand-alone 501(C)(3) nonprofit agency.

The Bitterroot Center will be similar in its operations to the Missoula center.
Demographic differences between the Missoula community and the Bitterroot Valley will require program adjustment to accommodate the special needs of Bitterroot Valley residents. The presence of a high percentage of retired persons and young families, and absence of a university community, dictates that the program be sensitive to wide variations in income. It is common practice for community dispute resolution centers to assess a nominal fee for services to encourage clients to take ownership of their efforts and to assist in sustaining the program. These fees are typically set on a sliding-fee scale, which means that a person’s fees are dictated by their income level.

THE LOCAL CONTEXT

Examination of the financial health of Ravalli County government reveals that services provided to local populations and visitors are dwindling due to budget constraints, increasing population and the resultant demand on services, and increasing political pressure fueled by competing interests and legislative changes. Public demand on law enforcement agencies previously relied upon for the settlement of minor disturbances resulting from civil matters has increased along with population growth. Many incidents drawing law enforcement response never rise to levels that require formal intervention. Officer intervention often results in successful restoration of peace between the parties. A significant increase in frequency of more serious matters has reduced attention to relatively minor matters such as animal problems, neighborhood disputes, vandalism, and various nuisances.

POPULATION

The Bitterroot Valley has been the fastest growing county in the State of Montana for the past decade, with an overall 42 percent population increase during that period.
(United States Census 2000). Changes have been implemented by state and local
government in an attempt to accommodate the growing pains and to strategically plan for
future growth. For the first time in the history of Ravalli a planning board has been
established to assist the county government planning office in scrutinizing future land
development and implementing zoning ordinances. A concise Geographic Information
System (GIS) map of the entire county is being created to assist the board in future
planning strategy and to provide data essential to the implementation of enhanced 911
dispatch capabilities for law enforcement and emergency services.

Internal and external conflict among residents and governmental authorities is evident
as a result of the increasing centralization of power in Ravalli County. In the case of
Hamilton, Montana, situated at the Ravalli County seat, city government is forced to
accommodate the financial burden forced upon them by exponential population growth
exacerbated by budget constraints. The City of Hamilton collects taxes from its
approximately three thousand city residents, but provides services to over eleven
thousand county residents residing within a close margin of its boundaries due to the
necessary overlap in services. Annexation of designated areas around the perimeter of
the city is slow, controversial and expensive. The expansion of water and sewer
infrastructure, the geographic expansion of police, fire, and emergency service coverage,
as well as street and sidewalk maintenance must be coordinated and budgeted for each
proposed annexation.

Local officials charged with balancing the county budget suffer under the strain of
insufficient funds and ever-increasing demands for service. Population growth
complicated by extraordinary costs associated with recent natural disasters such as the
fires and flooding of 2000 and fires of 2003 make matters nearly intolerable. To make matters worse, costs associated with increased crime rates paralleling growth throughout the valley stresses the county budget to the maximum. Future legislative sessions are predicted to shift the district courts' budgets to the counties by 2006. This decision alone will add nearly one million dollars to the county budget. Now more than ever before, reducing the operating expenses of the courts' budgets seems a logical first line of attack in response to the financial crisis looming on the horizon for Ravalli County.

THE COURTS

Formal litigation processes in Ravalli County have been augmented to an extent with the introduction of creative policies and experimental programs. Diversion programs have been implemented in the youth court, and community sentence review boards are used in some jurisdictions to reduce the court’s involvement and increase community support for defendants and the courts. Volunteer search and rescue personnel and reserve police and deputy divisions have been in place for several decades. When cases require mediation prior to formal processes the district court appoints local attorneys from a pool of willing participants to provide mediation services to local individuals and families engaged in family law disputes. Private mediation practitioners also work with these individuals, but on a much smaller scale due to the court referral process now in place. Both of these options add significant expense to the litigants’ costs associated with their cases.

Ravalli County District Judge Jeff Langton (2003), and Ravalli Justices of the Peace Jim Bailey (2003) and Robin Clute (2003) all embrace the concept of requiring mediation as a court-ordered, first phase attempt at resolution of civil, small claims, and family law
cases. The judges agree that referral of these cases to a viable mediation center for resolution will provide a welcome service to the courts and community at large. They also recognize mediation as a natural progression to settlement short of formal proceedings. The consensus among the judges with whom the program was discussed was that the program will be cost-effective for the courts as well as the parties, quick, less adversarial, and will allow the parties to have greater ownership in the outcome. Stacey Umhey, Executive Director of S.A.F.E. (2002), the local womens’ shelter and transitional housing facility, shared that local attorneys have not been receptive to providing pro bono mediation services to women seeking assistance in the drafting of parenting plans or temporary custody agreements. Mrs. Umhey (2003) stated that mediation services would assist her case workers in providing these valuable services to their clients and residents. As a result of overwhelming agreement on the part of public service professionals approached that family law mediation would be the most valuable application for the proposed center’s first phase program, the focus shifted to a plan for providing mediators for the center.

Lower court judges presiding over Hamilton City and Ravalli County Courts voiced the need for mediation for the settlement of relationship separation disputes clearly not addressed by temporary orders of protection, and thus outside the jurisdiction of the court. District court is statutorily granted full jurisdiction of matters involving property division and child custody and visitation. However, these issues are also addressed in temporary orders of protection pending the hearing to establish the extension, dissolution, or permanence of the order. Justice of the Peace Jim Bailey (2003) stated that he believed providing affordable mediation services to these couples would operate to
"declaw future processes." He concurred that settling at least some of the more difficult issues prior to hearings on family law matters should simplify hearings by disposing of contested issues that tend to keep disputing parties postured for debate. He also supported the idea of hosting communication skill building workshops. He inquired about the feasibility of offering participation in such workshops as options in lieu of fines or jail time in sentences imposed as a result of non-violent family disputes. Many misdemeanors such as disorderly conduct, theft, vandalism are committed by couples in the throes of ending their relationships. He acknowledged that mediation between physically combative partners would require long-term preparation of the parties by social service and mental health experts as well as special training for the volunteer mediators. Secondary, but equally important to the lower court justices, was the need for civil and small claims mediation.

Finally, the justices agreed that mediation would be a wonderful resource for the courts to use to establish restitution for damages in the myriad of property damage cases they hear. District Court Judge Jeff Langton (2002) also voiced a need for family law oriented mediation services as a vehicle to simplify divorce, child custody and temporary separation agreements brought before his court. He offered to establish a policy requiring all parties filing post-judgment relief cases to attend mediation before appearing on the pleadings in an attempt to simplify the formal processes, save the litigants money, and save the court precious time. He also stated that he would like to make water rights mediation available to litigants in the future as the center expands its areas of emphasis.
LAW ENFORCEMENT

Law enforcement officials characterized establishment of a mediation center as a sensible solution for the frequent and repetitive domestic calls they answer regarding the exchange of children for visitation. These couples often demand the attention of law enforcement officers or other social service agency specialists in "keep the peace" situations during these exchanges of children or retrievals of property determined by the courts. Law enforcement officials concurred that they deal with the same individuals, over and over again, embroiled in disputes surrounding the end of intimate relationships. The emotional needs of the children of the parties are often lost in the heat of the moment. The parents demanding law enforcement intervention are consistently incapable of maintaining any semblance of civility in their dealings concerning future co-parenting arrangements.

Apprehension of drug offenders and implementation of community policing in the schools has become a high priority in the United States in the past decade as a result of social pressure. Montana is no exception. Neighborhood Watch, D.A.R.E., and Mothers Against Drunk Driving are examples of groups promoting informal reform that have emerged to augment law enforcement and draw attention to social problems unaddressed or inadequately addressed by governmental agencies. To bring the issue home to Ravalli County, if the past year's statistics for lab identification and seizure continue throughout 2003, it is anticipated that between fifteen and twenty methamphetamine labs will be "taken down" in the current fiscal year in Ravalli County alone (Basnaw 2003). The success of law enforcement's identification and apprehension of these drug operations is due, in large part, to the increasing awareness of Bitterroot Valley residents and their
disdain for illicit drug production, sales and use. The staggering number of drug-related deaths in Ravalli County over the past eighteen months has made the issue even more pressing to law enforcement, schools and the communities affected.

Drug interdiction operations are dangerous, expensive to carry out in terms of law enforcement safety, manpower, and demands on prosecutorial time and expense. The primary focus of manpower currently allocated to the Ravalli County Sheriff’s Office detective division. Other cases go temporarily to the back burner while a concerted effort is made to stem the shocking increase in clandestine drug production. Although another significant drain on manpower, placement of School Resource Officers has held high priority over the past decade.

A full-time, sworn officer has been assigned to each of the six high schools in Ravalli County in an attempt to curtail predatory school violence and drug use and to improve the relationship between youth and law enforcement. These allocations of manpower have significantly reduced the number of deputies available for routine patrol duty. In the meantime, the volume of criminal cases flowing through Ravalli County district courts and courts of limited jurisdiction continues to rise. Proactive responses to crime rate increases please the public, but confound the courts with higher caseloads.

The current county budget includes a proposed “emergency manpower reduction” of three deputy positions from the 2004-2005 budget, despite the fact that the county sheriff’s sworn staff is currently 17 officers below the number recommended by standard national demographic indicators. Manpower reductions and resultant decreases in service, coupled with decreased public access to the courts for disposition of civil and traffic-related cases will predictably further frustrate the public.
DRAFT PROGRAM MODEL

Review of existing mediation centers’ programs quickly confirmed that a full-time, paid staff is out of the question for the Bitterroot center. Funding for such a program might be attainable through grants for the initial years, but sustained funding for a private practice is not feasible because of the local economy. The best program structure for the Bitterroot application was that of a non-profit center governed by a volunteer board of directors. The board of directors will oversee a small paid administrative staff. Initial paid staff will include an executive director and program development director, with later additions of a financial director and volunteer coordinator. In this format, the paid staff is supported by a cadre of well-trained, volunteer mediators. The draft Bitterroot Community Dispute Resolution Center (BCDRC) first-phase program model was structured to provide primarily divorce and parenting mediation services, with gradual expansion to provide additional services. The need for family law mediation applications emerged quickly from interviews conducted with members of the courtroom work groups, making family law the obvious first priority.

VOLUNTEER MEDIATORS

The first steps in building a cadre of well-trained volunteer mediators involve careful screening of applicants, selection, and training. A standard application and interview process will be conducted during the center’s first phase. Volunteers are expected to pay for and complete their basic training, and to be available to mediate periodically with reasonable notice. To accommodate these requirements, the first group of volunteers selected must have flexible schedules. As the center evolves, funded basic training and enhanced mediation skill-building opportunities will be made available to volunteers.
Mediators operate in teams of two, but successful completion of the training and certification by experienced mediators allows new volunteers to conduct “solo” mediation when two volunteers are not available. Art and Kitty Lusse of Montana Mediators in Missoula, Montana provide periodic local training seminars for volunteer mediators that serve the Missoula Community Dispute Resolution Center. The first group of 10 volunteer mediators will be scheduled for training at the next available session or, if possible, at a special session held for the Bitterroot area volunteers. Basic mediation and divorce and parenting plan mediation will be the focus of the first week-long course, preparing the volunteers for family law, civil and small claims mediation.

Program expansion in three phases will add services suited for a variety of mediation applications as program funding and program expansion milestones are reached. The BDRC’s cadre of volunteer mediators will receive basic training, but those wishing to augment their training to expand their area of expertise and range of mediation subject matter may opt to complete additional, specialized training qualifying them for other areas of emphasis. Examples of specialized training include neighborhood dispute resolution, parent/teen, victim/offender, landlord/tenant, and disputed debt resolution. Although high quality training opportunities are often available through Montana Mediators, such courses may also be available at periodic mediation conferences nationwide. Selected volunteers will have an opportunity to obtain group facilitation training to prepare them for working with voluntary group educational opportunities for the enhancement of personal communication and problem-solving skills. The center’s educational offerings will be designed to encourage community cohesion in group settings in the hope that clients will choose to settle their future differences peacefully.
and informally. Students attending the workshops will have an opportunity to gain interpersonal communication skills through hands-on mediation experience appropriate for use in numerous social settings. All services offered by the center will be tailored to suit the special needs of the fast-growing, rural Montana setting.

SOURCES OF REFERRAL

Other referrals to the Bitterroot center will come from S.A.F.E. (Supporters of Abuse Free Environments), Hamilton's domestic violence crisis center and transitional housing facility, from churches, schools, law enforcement and a variety of other sources.

Providing affordable mediation services to litigants whose cases are deemed appropriate for ADR will free the court dockets of the matters deemed appropriate for mediation. Cases that emerge directly from the communities such as nuisance issues or neighborhood or subdivision association matters may be resolved before the parties approach the courts. Schools that utilize the center's mediation services will avoid handling simple disputes through law enforcement or youth court. Minor civil matters traditionally handled by law enforcement for lack of other options may be referred to the center's communication education program which will offer seminars through the center periodically. In each of these examples, precious time and tax dollars will be saved by providing efficient ADR services at the community level.

PROPOSED MEDIATION APPROACHES

The types of mediation that will be used at the Bitterroot Center will depend upon the subject matter, age of disputants, and several other factors. With the range of subject matter expected in the Bitterroot Valley context, it will be beneficial for volunteers to obtain training in as many approaches as possible. The Bitterroot center volunteers will
be expected to become adept at crisis, shuttle, facilitative, single-issue, comprehensive and educational mediation techniques to afford litigants a comprehensive array of expertise.

DRAFT ORGANIZATIONAL STRUCTURE

Utilizing the Dispute Resolution Center of Missoula County program structure as a guide for drafting program structure for the Bitterroot Valley center is a logical choice. The Missoula program directors, Art and Kitty Lusse, have been gracious in sharing program structure assistance as well as suggestions for start-up of the Bitterroot center during the planning stages. Part of the mission statement of the Missoula center is establishing satellite centers throughout Western Montana under the umbrella of their board of directors to spread the availability of mediation services in as wide a geographic area as possible. Although they welcomed me to establish my center under their board of directors and non-profit status with the state of Montana as such a satellite program, I opted to establish a stand-alone 501(c)(3) entity with no legal ties to their program for a number of reasons, although I will incubate my program during the start-up phase under an existing 501(c)(3). The rationale for this decision is many-faceted. First, to establish a program in which the community is fully involved, the program will be most successful if it emerges as a local effort rather than a satellite of another program; second, keeping the financial structure and management local will lend to overall financial efficiency; and finally, because the Bitterroot community values a degree of individuality and independence from its neighboring Missoula community, keeping the center’s program local will promote small-town pride and a sense of accomplishment in a successful project. Scheduling board and member meetings, fund raisers and other program
activities in convenient locations will promote local support in the form of board participation, donors and volunteers.

Program Ownership. The fact that the Bitterroot Community enjoys a degree of independence from its neighboring communities bears heavily on the decision to establish the center free from direct ties to the Missoula center. Maintaining a strong relationship with the Missoula Center is imperative, however, to program success. The Missoula Center offers training opportunities, mentoring and ongoing support for fledgling centers as a part of its Mission. The long-term future success of the Bitterroot center relies heavily upon the community’s willingness to embrace the community-based, volunteer program structure from its inception. The community’s willingness to play an integral role in its nurture and future sustenance may depend upon a solid initial foundation in the Hamilton and greater valley community. Recruiting the center’s board of directors from local communities throughout the valley will instill a sense of program ownership in its supporters. As a result, supporters may be more motivated to invest their support in the success of the center. Affiliation with the Missoula center would require that the principles of the Bitterroot center attend the Missoula meetings (regular board meetings, annual, special and committee meetings). The time, alone, when added to the periodic commute to Missoula is a lot to ask of board members. These points translate into significant expense and loss of time which would be much better spent on local program development and volunteer recruitment.

The second consideration is that of fund management. Should the Bitterroot center be established under the umbrella of the Missoula center, all budgeting, fund-raising and grant attainment and administration would have to be conducted through and approved by
the Missoula center. This may significantly reduce the control the Bitterroot center board and volunteers would have on fund-raising timelines and the budget’s bottom-line during the critical first-phase activity. Establishing a non-profit 501(c)(3) corporation will be addressed in the next portion of this paper.

Organization Name. Selecting a name for a new organization is the first step in making the plan a reality. The name should encourage ownership by the community in which it is established, and should reflect the nature of the services the organization will provide. The name chosen for the mediation center is the “Bitterroot Community Dispute Resolution Center,” hereafter “BCDRC.” This name makes clear the fact that the center, although located at the county seat in Hamilton, Montana, invites citizens from the entire Bitterroot Valley to make use of its services and participate in its success.

Board of Directors. The BVDRC board of directors composition will ideally be a cross-section of professional and community members to achieve the broadest geographical and occupational outreach possible for the center. The number of board members will vary from 8 to 12. The following list includes backgrounds of potential board members that may be best suited for a community-based dispute resolution center, among others:

1. Schools (school board member, administrator, or counselor): Board members from this background will be able to represent the interests of area schools which will be encouraged to enjoy mediation services for the resolution of interpersonal disputes between students, between teachers and students, or between students from different schools.

2. Law enforcement (police officer, deputy sheriff, administrator: sheriff, chief of police,
lieutenant, sergeant): These board members will represent the law enforcement community and will have an interest in the availability of mediation to citizens with whom they interact who might be in need mediation or communication skills. Their area of work will lend to identifying areas in which the center’s services would be most valuable.

3. **Victim/witness advocate to courts**: This board member will also network directly with S.A.F.E. (Supporters of Abuse Free Environments), the local women’s shelter and transitional housing facility located in Hamilton. This member will have an ongoing interest in the communication education programs that will be available to individuals in need of improving communication and problem-solving skills.

4. **Medical community**. (doctor, nurse, mental health practitioner): This board member will lend expertise to program structure and operations from a medical standpoint. They will have an interest in coordination of efforts between the law enforcement and medical community in keeping peace among families and citizens. In addition, they may agree to serve as an integral liaison with programs available to local families.

5. **Courts** (judge, clerk): This board member will have an interest in the use of trained mediators for resolution of civil and small claims cases and victim/offender mediation for non-violent offenders convicted of property crimes in the lower court context. In the district court arena, the focus will be upon family law, water rights, civil and small claims realms for Ravalli County’s two district courts. Their input regarding the legal system will be helpful in identifying needs of the local courts and their litigants as well as facilitating smooth coordination between the center and the courts.

6. **Church community** (pastor, priest): This board member will represent the religious
aspect of the needs of parish families regarding mediation and education services, which will assist the center in providing appropriate, confidential services to all community members.

7. Bar association (attorneys): Board members from this area of expertise will lend assistance to board activities involving legal issues as well as represent the legal community in overseeing the program to see that the range of needs and availability of affordable mediation services to their clientele are met.

8. Business (owner, administrator): This board member will lend insight into ways in which the center might serve the business community most effectively: financial dispute resolution, bad debt collection, employee discord, product and service quality and a variety of other circumstances affecting local businesses and their personnel.

9. Neighborhood residents (representatives from the various downtown associations throughout the valley, of which there are seven separate communities: Florence, Stevensville, Victor, Pinesdale, Corvallis, Hamilton and Darby): These board members will represent the concerns of their communities to the board and assist the center in establishing county-wide availability of mediation services.

10. Financial expert: (Accountant/bookkeeper): This board member will assist the organization in keeping accurate financial records necessary for center operations. Their expertise will lend to the overall board structure in many ways: financial knowledge, tax knowledge, fund-raising tactics, funding options for program expansion and many other necessary board functions.

Board members will serve for a renewable period of three years, at which time they will nominate candidates for their own replacement for consideration and selection by the
full board. Once their term on the board is completed they may be asked, at the discretion of the board, to remain as an ex-officio member to advise the board and serve on standing committees as they see fit. They may return to the Board as a full member after one year. This rotating-in of new members will keep the board fresh and maintain constant outreach into the communities of the valley for a continued, rotating program of support. New members will be given a packet of information about the organization consisting of:

- Mission Statement
- By-laws
- Board minutes from the last six meetings and the last annual meeting
- Current financial statement
- List of other board members' telephone numbers, addresses, Email addresses
- Flow-chart of organization structure
- Program descriptions
- Event calendar
- Organization journal (history of founders, start-up, original board composition, etc.)
- List of board expectations for board members

In addition, a mentor will be assigned to each new board member to meet with them prior to the first meeting to familiarize them with board practice and other general information that will make their indoctrination smooth. Board members will be apprised of the expectations the board and organization will have for them concerning attendance, committee participation, active participation in fundraising planning and functions, outreach among their circle of association, financial support within their means, and such
other information that may assist the new member in a smooth transition.

STATE OF MONTANA REQUIREMENTS

*Employer Tax Identification Number.* This step includes filing Form SS-4, Application for Employer I.D. Number. An example of this form may be found in Appendix A at page 82.

*Articles of Incorporation.* This step was completed using the format suggested by the office of the Attorney General, Bob Brown. An example of the form and instructions may be found in Appendix B at pages 84 and 85.

*By-laws.* This step was completed using a template offered at the following web site: “electric law library” at <http://www.lectlaw.com/forms/f163.htm>. The draft By-laws for the Bitterroot Community Dispute Resolution Center may be found in Appendix C at pages 87 through 93.

*Obtaining tax-exempt status.* Applying for tax exempt status is a relatively simple process involving the filing of Form 1023, Application for Recognition of Exemption Under Section 501(C)(3) of the Internal Revenue Code. The completed draft form may be found in Appendix D at page 95.

*Registering the Center as a Charitable Organization.* Registering as a “charity” with the State of Montana entails noting such on Form 1023 listed under step six establishes that the organization receives more than half of its financial support from the public rather than from program fees. A sample Form 1023 may be found in Appendix D at page 95. In addition, Form 990: Return of Organization Exempt From Income Tax, and Schedule B, Form 990: Schedule of Contributors, must be filed with the Internal Revenue Service each year to disclose sources of financial support for the organization. Samples
of these forms may be found in Appendix D at pages 96 and 97.

PROGRAM STRUCTURE: START-UP SERVICES

The center's structure will be built around court referral and a platform of community outreach from its inception. Close coordination with government, educational institutions, and private entities throughout the valley will raise the awareness of ADR as a viable alternative to formal litigation for the resolution of disputes in the Bitterroot Valley. The types of mediation offered initially will include family law mediation, civil and small claims case mediation, and interpersonal dispute mediation including referrals from neighborhoods, schools, and businesses. As the cadre of volunteers expands its basic training with additional specialized workshops, the center's programs will be expanded to share those special skills with the residents of the valley.

Educational Programs. The plan to offer basic communication skills enhancement workshops will be explored early in program development. These programs will be developed in conjunction with agencies such as Families First, the YMCA and YWCA, S.A.F.E., local churches, schools and service clubs to draw from widest pool of potential students, valley-wide.

FUNDING

Initial start-up costs must be carefully planned for by drafting a proposed budget for the first year or more of organization operations. Funding for the first year of the Bitterroot center will be covered by a combination of local efforts: local fund-raising events, grants, private donations and government allocations. Fund-raising events will be organized by the board of directors and executive director. Activities such as food booths at the county fair, rodeos, sporting events, and many other local functions will be planned
to advertise the program, generate local support in the form of volunteers and prospective board members, and to encourage donations from valley residents. An intensive grant search will be conducted early in the planning phase. Grantors appearing to be the "best fit" for the center mission statement, monetary award and timing will be approached for funding. Local service clubs and foundations will be asked to contribute to the first phase funding. Funding drives will be held to encourage financial support and recruit volunteers and board members. Appearances at local events will assist in outreach efforts. Finally, the Ravalli County Commissioners and Hamilton, Stevensville, and Darby City Councils will be approached for financial support. A power-point presentation will be prepared for each of these settings to assist in this process.

CONCLUSION

At the very heart of conflict lies the key to its solution: acceptance of ownership of the problem by those involved. The fundamental oversight humans seem to inflict on themselves and greater society is failing to recognize where we are "stuck," and how we aimlessly continue the futile struggle in a way that clearly fits the adage that "insanity" is doing the same thing over and over again fully expecting different results. It is clear that our social structure lacks a foundation of effective interpersonal communication and consensus building, perhaps clouded completely by our tendency toward self-centered goals and hampered by our long-standing patriarchal influence.

The fact that the Montana statutes pertaining to family law are gender-neutral is but one important element in the process of mediation. The professionals engaged in the process must practice within their area of expertise in a manner that is faithful to the intent of the process. They must operate on a truly neutral level, balancing the power
dynamic when necessary and being ever vigilant in identifying and arresting their own issues of bias or prejudice before they emerge during the course of their practice.

If every person made an effort to improve their one-on-one relationships with others, to learn to listen and empathize with those with whom they interact, especially those they hold close in their lives, the ripple effect of such positive discourse may eventually circle the globe. As the world becomes “smaller” with technological advances and increasing human mobility, there will be a corresponding increase in the strength of the correlation between the health of our one-one-one relationships and measurable degree of global unity. Once we learn to deal with conflict effectively in our every day lives, perhaps global peace will be achieved some day, one person at a time. It is safe to predict that constructive discourse will be the path, reduction of human disadvantage and avoidable harm by peaceful means will become a realistic goal, and that education will be the vehicle.

If managed well, the Bitterroot Dispute Resolution Center will have the potential to become the first community-based Bitterroot Valley movement toward alternative dispute resolution with the goal of valley-wide positive social change.
**Application for Employer Identification Number**

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**Employer Identification Number**

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**Type of entity (Check only one box) (see instructions)**

- [ ] S-proprietor (SSN)  
- [ ] Corporation (incorporated)  
- [ ] Partnership  
- [ ] Foreign association  
- [ ] Other corporation (specify)  
- [ ] Government  
- [ ] Federal government  
- [ ] State government  
- [ ] Other (specify)  

**State**

- Montana

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**First date wages or salaries were paid or will be paid (month, day, year):**

- July 15, 2003

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**Principal activity (Check only one box) (see instructions)**

- Volunteer mediation services

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**Signatures**

- Martha A. Birkeneder, Exec. Dir.

**Phone Number**

- (406) 369-0909

**Note:** Do not write below this line. For official use only.
APPENDIX “B”: SAMPLE FORMS AND DOCUMENTS
STATE OF MONTANA

ARTICLES OF INCORPORATION
for DOMESTIC NONPROFIT CORPORATION
(35-2-213, MCA)

MAIL: BOB BROWN
Secretary of State
P.O. Box 202804
Helena, MT 59620-2001

PHONE: (406)444-3643
FAX: (406)444-3976
WEB SITE: www.sos.state.mt.us

Prepared, dated, and signed an ORIGINAL AND COPY of this form. This is the only form information required.
(This space for use by the Secretary of State only)

☐ Priority Filing Add $20.25

Executed by the undersigned person for the purpose of forming a Montana nonprofit corporation.

First: The name of the Nonprofit Corporation is Bitterroot Community Dispute Resolution Center.

Second: The name and address of the registered office/agent in Montana:

Name: Martha A. Birkenden
Street Address: 924 Sharrot Hill Loop, Stevensville, MT 59870
Mailing Address: P.O. Box 1212
City: Hamilton, MT 59840
MONTANA Zip Code: 59840
Signature of Agent (Required)

Third: The name and address of the incorporator is as follows:

Name: Martha A. Birkenden
Address: P.O. Box 1212 Hamilton, MT 59840
Zip Code: 59840

Fourth: The Nonprofit Corporation ☐ WILL ☒ WILL NOT have members.

Fifth: This Nonprofit Corporation is a (check one):
☒ Public Benefit Corporation
☐ Mutual Benefit Corporation
☐ Religious Corporation

Sixth: Upon dissolution, the assets shall be distributed in the following manner:

gifted to S.A.F.E. (Supporters of Abuse-Free Environments),
Hamilton, MT, 59840

Signature of Incorporator Date

Revised 01/02/2001
Articles of Incorporation for Domestic Nonprofit Corporation

HELP SHEET

Use this form to file Articles of Incorporation for a Montana nonprofit corporation.

You may request priority filing of your document. Simply mark the “priority filing” box and include an additional $20.00 with your filing fee for a total of $40.00. Priority filing ensures that your application will be handled within 24 hours of receipt of the document by our office.

Please type or clearly print the requested information.

This form provides the minimal information necessary to file a nonprofit corporation. It is advised that you contact an attorney for assistance and guidance in consideration of additional provisions that may be necessary for your organization.

The Internal Revenue Service (IRS) requires specific language to be included in Articles of Incorporation in order to qualify for nonprofit tax status. It is advised that you contact the IRS for their language requirements.

Unless otherwise specified, the existence date for the corporation will be the date the Articles of Incorporation were filed with the Secretary of State. (35-2-214, MCA)

Article Fourth:
Members are those individuals who can vote to elect the board of directors or elect delegates who in turn elect the board of directors.

Article Fifth:

a.) Public Benefit Corporations are those corporations operating for public or charitable purposes. As such, members may not sell their interest or receive distributions from the organization. Written notice of intent to dissolve must be given to the Attorney General.

b.) Mutual Benefit Corporations are organizations such as trade associations, social clubs, and fraternal organizations designed to benefit their members. Members, as such, are given broader voting rights. Members, while not entitled to receive distributions while the organization is operating, will be entitled to sell their memberships and receive distributions when the organization dissolves.

c.) Religious Corporations are treated in the same way similar to public benefit corporations. Written notice of intent to dissolve must be given to the Attorney General.

Upon completion, mail the original, one copy, and the correct filing fee to the Secretary of State, PO Box 202801, Helena, MT 59620-2801. Make check payable to the Secretary of State.

The Secretary of State will send a letter of acknowledgment to you once your document has been filed with our office.

Annual reports must be filed with the Secretary of State prior to April 15 each year. The Secretary of State will mail the report to the corporation’s registered agent during the month of January, beginning the year following incorporation. (33-2-904, MCA)

If you have any questions regarding this form, please contact the Secretary of State, Business Services Bureau at (406) 444-3665.

Please be advised that the Business Services Bureau of the Montana Secretary of State will process your business documents within 10 working days of initial receipt. During this period if it is determined that your document does not meet statutory requirements, a letter outlining the deficiencies will be returned to the original submitter. If the document is complete and correct, the document will be filed and no acknowledgment copy showing completion returned to the original submitter.
APPENDIX "C": SAMPLE FORMS AND DOCUMENTS
BITTERROOT COMMUNITY DISPUTE RESOLUTION CENTER

** By-laws **

The following are the By-laws slated for adoption at the first meeting of the Bitterroot Community Dispute Resolution Center Board of Directors, which meeting and adoption are slated for the 15th day of September, 2003, to be effective immediately and to stand until such time as they are amended or repealed by the Board of Directors.

ARTICLE I. OFFICES

The principal office of the organization in the State of Montana shall be located in the City of Hamilton, County of Ravalli. The mailing address shall be P.O. Box 1212, Hamilton, Montana, 59840-1212.

ARTICLE II. PURPOSE AND OBJECTIVES

The purpose of this organization is to help provide citizens of the Bitterroot Valley, Ravalli County, Montana, with quality, low-cost alternative dispute resolution services and ongoing educational opportunities in the form of workshops, lectures and training about dispute resolution methods for families, neighborhoods, businesses and schools. The center's long-term goal is to promote constructive personal problem-solving skills, engender a strong commitment to community solidarity, and to empower individuals to choose to engage with each other by peaceful means to work out their differences. The organization shall at all times, be conducted in a manner constant with the requirements of section 501 (C) (3) of the Internal Revenue Code of 1954, or any corresponding provisions of any future or subsequent similar legislation.

ARTICLE III. FISCAL YEAR

The fiscal year of the organization shall begin on July 1, of each year and end on June
30 of the following calendar year.

ARTICLE IV. MEMBERSHIP

There are no members.

ARTICLE V. BOARD OF DIRECTORS

Section 1. Number of persons comprising board. The property, affairs, activities and concerns of the organization shall be vested in a Board of Directors consisting of eight (7) to twelve (12) members. The members of the board shall enter upon the performance of their duties following the meeting at which they were elected, and shall continue in office until such time that their successors have been duly elected. A member shall serve for a period of one (3) years from and after their election to office, or until the next annual meeting, whichever shall occur first, but they shall continue in office until their successor shall be duly elected, or until they resign. The members shall each have one equal vote in the conduct of the business of the organization with the exception of the Chairperson who will exercise one vote during regular processes, and an additional vote in tie-breaking situations.

Section 2. Criteria for Eligibility. Eligibility for membership to the Board of Directors shall include:

1. Agreement with the philosophy and purposes of the organization;

2. Commitment to a three (3) -year term of office;

3. Commitment to attend Board meetings as scheduled;

4. Maintaining and upholding confidentiality of the organization;

5. Conducting themselves in an ethical manner at all times, consistent with the philosophy and purposes of the organization;
6. Obtaining knowledge about alternative dispute resolution practices by attending the first session of the volunteer training and obtaining continuing training as deemed appropriate and necessary;

7. Demonstrating the expertise applicable to governing the organization's interests and responsibilities;

8. Agreeing to obey the requirements contained in the Board Member Job Description packet.

Section 3. Special Meetings. A special meeting of the Board of Directors may be called by any three (3) active Board members. Notice of the necessity and content of matters to be discussed at such special meeting is to be given to all Board members by phone or other expedient means. No business other than that specified in such notice of the meeting shall be transacted at any special meeting of the Board of Directors. When a special meeting cannot be called, a telephone vote of the Board may be taken by the Board Secretary.

Section 4. Board Meetings. All members of the Board of Directors are expected to attend regularly scheduled monthly meetings to transact all business affairs of the organization. The meeting may be open to all committee members, whether members of the Board of Directors or not, but only Board members have a vote at Board meetings. At regularly scheduled Board meetings, a quorum shall consist of four (4) Board members.

Section 5. Duties of the Board. The affairs of the organization shall be managed by its Board of Directors. The Board may hold meetings at such times and places as it deems proper, establish committees comprised of members of the Board or non-
members as deemed appropriate by the Board. The Board shall delegate to appropriate personnel such duties as bookkeeping, public relations work, and Dispute Resolution Center management; devise and carry into execution such other measures as it deems proper and expedient to promote the objectives of the organization; conduct itself to best protect the interests and welfare of the members; provide regular meetings and notices thereof; and, provide for such other rules and procedures as may be necessary, as long as such rules and procedures are consistent with the By-laws and the purpose of the organization.

Section 6. Compensation. Board members shall not receive any salaries or other compensation for their service on the Board of Directors.

Section 7. Vacancies. Whenever any vacancy occurs on the Board due to death, resignation or otherwise, it shall be filled without undue delay by a majority vote of the members of the Board at a special meeting that shall be called for that purpose. At the next annual meeting, a majority vote of the members of the Bitterroot Valley Dispute Resolution Center Board of Directors shall elect a member to the Board of Directors to complete the absent member’s vacated term.

Section 8. Removal of Board Members. Any one or more of the Board members may be removed, for just cause, by a vote of two-thirds of the Board of Directors. Should any Board member fail to attend three (3) consecutive meetings of the Board without prior notification to the Secretary, such Board member may be removed from office by a majority vote of the remaining members of the Board of Directors.

ARTICLE VI. OFFICERS

Section 1. Chairperson. The chairperson shall preside at the meetings of the Board of
Directors, communicating to the Board such matters and making such suggestions as may tend to promote the prosperity and increase the usefulness of the organization; and, shall perform such other duties as are necessarily incident to the office of Chairperson.

Section 2. Vice-chairperson. The vice-chairperson shall assume the duties and responsibilities of the Chairperson in the event that the Chairperson is unable to perform their duties.

Section 3. Secretary. The Secretary shall hold no other rotating functions as a Board member. The duties of the Secretary shall include: keeping the minutes of the meetings of the members and the Board of Directors in one or more books provided for that purpose; attesting any legal and binding documents of the organization; seeing that all notices are duly given in accordance with the provisions of these By-laws of the organization as may be required by law; keeping a register for the post office address of each member which shall be furnished to the Secretary by members; and, in general, performing all such duties as, from time to time, shall be assigned by the Board of Directors and incident to the duties of the office of Secretary.

Section 4. Treasurer. The Treasurer shall keep and maintain, open for inspection by any Board member, adequate and correct accounts of the properties and business transactions of the organization, and deposit them in the name of, and to the credit of, the organization with such depository that the Board may designate; disperse the funds as owed and approved by the Board of Directors; make an annual report; attend all regularly scheduled Board meetings and otherwise serve as a resource when called upon by the Board of Directors or fund-raising committees; prepare such financial statements as required; and, perform such other duties as may be incidental to the offices of
Treasurer and as prescribed by the Board of Directors.

ARTICLE VII. COMMITTEES

Section 1. All Board Members shall serve actively on one or more committees. Each committee shall have one representative present at each regular Board meeting. One member shall be elected to serve as chairperson. There shall be no specific number of Board members on any one committee.

Section 2. Job descriptions of each committee shall be retained by the Secretary. Committees are as follows, but not limited to: Volunteers; Grievance; Training; Fundraising; Public Relations; Community Development; Advisory Board; Personnel; Budget; and, Steering Committee. The steering committee shall be comprised of the Chairperson of each separate committee and the Chairperson of the Board of Directors of the Bitterroot Valley Dispute Resolution Center.

ARTICLE VIII. ANNUAL MEETING

Section 1. Board Meetings. The Annual Board meeting shall be held in order to appoint new board members and conduct such other business as may be necessary. A majority of the Board members present shall then constitute a quorum. At any annual meeting of the Board of Directors, two-thirds of the Board of Directors shall constitute a quorum. Action at any annual meeting shall be taken on the basis of a majority vote.

Section 2. Order of Business. The order of business at all annual meetings of the Board of Directors of the Bitterroot Community Dispute Resolution Center shall be as follows:

a. reading of the minutes of the last annual meeting

b. action items
c. reports of the board members

d. reports of the committees

e. unfinished business

f. election of board members and grievance committee

g. new business
**Application for Recognition of Exemption**

Under Section 501(c)(3) of the Internal Revenue Code

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**Identification of Applicant**

<table>
<thead>
<tr>
<th>1a</th>
<th>Full name of organization (as shown in organizing document)</th>
<th>Bitterroot Community Dispute Resolution Center</th>
</tr>
</thead>
<tbody>
<tr>
<td>1b</td>
<td>C/O Item (if applicable)</td>
<td></td>
</tr>
<tr>
<td>1c</td>
<td>Address (number and street)</td>
<td>P.O. Box 1212</td>
</tr>
<tr>
<td></td>
<td>City, town, or post office, state, and ZIP + 4, if you have a foreign address, see Special Instructions for Part I, page 3.</td>
<td>Hamilton, MT 59840</td>
</tr>
</tbody>
</table>

**Employer Identification Number (EIN)**

(If name, see page 3 of the Special Instructions)

---

**Name and Telephone Number**

To be contacted if additional information is needed

---

**Date Incorporated or Formed**

July 15, 2003

**Date Incorporated or Formed**

---

**Web site address**

bedrc@in-tch.com

---

**Check here if applying under section:**

[ ] Yes [ ] No [ ] Sect. 509(
[ ] Yes [ ] No [ ] Sect. 501(
[ ] Yes [ ] No [ ] Sect. 501(
[ ] Yes [ ] No [ ] Sect. 501(

---

**Check the box for the type of organization. ATTACH A CONFIRMED COPY OF THE CORRESPONDING ORGANIZING DOCUMENTS TO THE APPLICATION BEFORE MAILING.**

(See Special Instructions for Part I, Line 10, on page 3.) See also Pub. 557 for examples of organizational documents.)

- [ ] Corporation—Attach a copy of the Articles of Incorporation (including amendments and restatements) showing approval by the appropriate state officials; also include a copy of the bylaws.
- [ ] Trust—Attach a copy of the Trust Indenture or Agreement, including all appropriate signatures and dates.
- [ ] Association—Attach a copy of the Articles of Association, Constitution, or other creating document, with a declaration (see instructions) or other evidence the organization was formed by adoption of the document by more than one person; also include a copy of the bylaws.

If the organization is a corporation or an unincorporated association that has not yet adopted bylaws, check here D- [ ]

---

**Sign**

(Your organization must sign this application.)

---

**Order**

(Your organization must sign this application.)

---

**For Paperwork Reduction Act Notice, see page 2 of the instructions.**

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Return of Organization Exempt From Income Tax

Under section 501(c) of the Internal Revenue Code (except those organizations described in sections 501(c)(4), 501(c)(5) or 501(c)(6)) required to file this form.

A. For the IRS, identify state or country of residence.

□ Check if required.

□ Change of address.

□ Change of city, state, or ZIP code.

□ Affiliated return.

B. Organization Type (check only one)

□ Tax-exempt social club

□ Church or convention center

□ R.O.C. (domestic)

□ Foreign non-profit organization

C. Organization Name (print)

Bittersweet Community Dispute Resolution Center

P.O. BOX 1217

CORNELIUS, NC 28031

D. Telephone number.

□ 406-362-0209

□ Fax number.

□ City or town, state or country, and ZIP code.

Hamilton, MT 59940

E. Check if this return is a group return.

□ Yes □ No

□ Member of group:

□ Caption for group

□ Name of group

□ Signature

F. Check if additional information

□ Yes □ No

G. Gross receipts

1. Contributions, gifts, grants, and similar amounts received:
   □ Direct public support
   □ Indirect public support
   □ Government contributions (grants)
   □ Total (add lines A through D) Less charitable donations (attach schedule)
   □ Program service revenue (interfere with government fees and contracts)
   □ Membership dues and assessments
   □ Interest on savings and temporary cash investments
   □ Dividends and interest on securities
   □ Gross receipts
   □ Less: rental expenses
   □ Net rental income or (loss) (subtract line E from line F)
   □ Other investment income (describe B)
   □ Gross amount from sales of assets other than inventory
     □ Gain or (loss) (attach schedule)
   □ Other income (describe B)
   □ Gross revenue (not including B, contributions reported on line 1e)
   □ Less: direct expenses other than fundraising expenses
   □ Net expenses (add line 1C and line 1D)
   □ Gross sales or fee income from special events (attach schedule)
   □ Less: cost of goods sold
   □ Gross profit or loss (subtract line 1E from line 1D)
   □ Other revenue (from Part VII, lines 1E, 1F, and 1G)
   □ Total revenue (add lines 1E, 1F, 1G, 1H, 1I, 1J, 1K, 1L, 1M, and 1N)

H. Expenses

□ Program services (line 1C)

□ Management and general (line 1E)

□ Fundraising (line 1F)

□ Payments to affiliates (attach schedule)

□ Total expenses (add lines 1D and 1J)

I. Net Assets

□ Less: Excess (deficit) for the year (subtract line 17 from line 16)

□ Net assets or fund balances at the beginning of the year (from line 73, column A)

□ Other changes in net assets or fund balances (attach schedule)

□ Net assets or fund balances at the end of the year (columns 18, 19, and 20)
Bitterroot Community Dispute Resolution Center

General Instructions

Purpose of Form
Schedule B (Form 990 or 990-EZ) is used by organizations required to file Form 990, Return of Organization Exempt From Income Tax, or Form 990-EZ, Short Form Return of Organization Exempt From Income Tax, to provide the information regarding their contributors that is required for the 1st of Form 990 or Form 990-EZ.

Contributors Required To Be Listed on Schedule B
See the instructions for Form 990 and Form 990-EZ for phone help and the public inspection rules for these forms and their attachments, which include Schedule B (Form 990 or 990-EZ).

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See the instructions for Form 990 and Form 990-EZ for phone help and the public inspection rules for these forms and their attachments, which include Schedule B (Form 990 or 990-EZ).

Public Inspection
Schedule B (Form 990 or 990-EZ) is:
• Open to public inspection for a section 527 political organization.
• Generally not open to public inspection for the other organizations that must file this form.

If a non-section 527 organization files a copy of Form 990, Form 990-EZ, and attachments with any state, it should not include its Schedule B (Form 990 or 990-EZ) in the attachments for the state unless a schedule of contributors is specifically required by the state. States that do not require the information might make the schedule available for public inspection along with the rest of the Form 990 or Form 990-EZ.

Note: This form is generally not open to public inspection except for section 527 organizations.

See the instructions for Form 990 and Form 990-EZ for phone help and the public inspection rules for these forms and their attachments, which include Schedule B (Form 990 or 990-EZ).

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REFERENCES


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____ 2001. Personal Interview Regarding Dispute Resolution Center


Appleton-Century-Crofts.


