
The Effects of Participants' Ethnicity and Gender on Monetary Outcomes in Mediated and Adjudicated Civil Cases

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Researchers and policymakers have long been concerned about the extent to which such sociocultural factors as ethnicity and gender determine access to organizational rewards and constraints within legal systems. Scholars have also wondered whether less formal processes, such as those found in alternative dispute resolution, are especially susceptible to bias. To test these arguments, we studied the impact of disputants' ethnicity and gender on monetary outcomes in 312 adjudicated and 154 mediated small claims civil cases in Bernalillo County (Albuquerque), New Mexico, in 1990–91. Multivariate analysis including case characteristics showed that much of the effect of disputants' ethnicity and gender on outcomes—especially in courtroom hearings—was accounted for by the kinds of cases in which women and minorities were involved. Controlling for case characteristics eliminated ethnic and gender differences in adjudication, but some ethnic differences remained in mediated case outcomes. Specifically, cases including at least one Anglo mediator resulted in higher monetary outcomes for Anglo claimants, and minority female claimants received lower monetary outcomes in mediated cases in which both mediators were women.

Conflict theorists have long held that individuals or groups with greater social power are best able to create and enforce laws for their own benefit. Although specific definitions of social power vary enormously (cf. Black 1989; Bourdieu 1990; Chambliss & Seidman 1982; Kairys 1982; Kramarae, Schulz, & O'Barr 1984; Wrong 1988), Weber's (1947:152) may be the most generally accepted: "the probability that one actor within a social relationship will be in a position to carry out his own will, despite resistance."

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Access to social power is determined in part by membership in societal subgroups, defined especially by class, race, and gender. Legal disputes provide an obvious forum for studying differential social power because they represent disagreements between two or more opposing parties, which ultimately produce “winners” and “losers.” Researchers (e.g., Black 1989; Chambliss & Seidman 1982; Collins 1975) have argued that those from subgroups with less social power are less likely than others to receive favorable outcomes during trials and other forms of official decisionmaking. Researchers and legal scholars have also asked whether less formal processes (e.g., alternative dispute resolution, or ADR) are more susceptible than judicial decisionmaking to bias against the less powerful. In particular, mediation allows sociocultural characteristics to play out in the context of less formal, less visible processes, often without reference to legal guidelines (Abel 1974; 1982; Delgado et al. 1985; Fuller 1971; Nader 1969).

Our purpose here is to report on research comparing the relative effects of disputants’ ethnicity and gender on monetary outcomes in mediated and adjudicated civil, small claims cases. More specifically, we test the “disparity” hypothesis that minority and female disputants will achieve poorer outcomes than nonminority and male disputants, whether their cases are mediated or adjudicated; and the “informality hypothesis” that the effects of ethnicity and gender will be greater in mediated than in adjudicated cases. In addition, we examine the possibility that the ethnicity and gender of the mediators and disputants interacted to affect outcomes.

I. Sociocultural Factors in Dispute Resolution

As an extension of the basic conflict argument that less powerful social groups usually do worse in a wide range of competitive situations (Black 1989; Chambliss & Seidman 1982; Collins 1975), legal theorists and researchers have argued that the effect of sociocultural variables on decisionmaking may depend in part on the nature of formal institutions (Abel 1974; Michalowski & Bohlander 1976; Nader 1969; Unnever 1982). Thus, some legal traditionalists (Damaska 1975; Fuller 1971; Wigmore 1940) have viewed the competitive presentation of evidence in the formal adversarial system as counteracting decisionmaker bias and producing fairer and more accurate decisions than less formal systems.

The rapid growth of alternative dispute resolution as a substitute for courtroom adjudication has heightened interest in whether less formal processes are more susceptible than courtroom adjudication to bias. In this regard, Galanter’s (1974) distinction between “repeat” and “one-shot” players is useful. Ga-

lanter has argued that parties who engage in many similar litigations over time (repeat players) enjoy an advantage over relatively less experienced one-shot players because of their greater expertise, economies of scale, and institutional relationships, as well as their greater ability to structure outcomes, create case precedents, and influence applicable laws. Although Galanter interprets these advantages as pervasive, transcending forum types, the distinction he makes raises the possibility that one-shot players may be particularly vulnerable in less formal forums. This conclusion is supported by those who argue that the low visibility and lack of formal rules and structures in mediation, facilitated settlement, and other relatively informal processes reduce the rights of less powerful participants (Nader 1969; Abel 1982; Auerbach 1983; Fiss 1984; Edwards 1986; Brunet 1987; Norton 1989).

Thibaut, Walker, and Lind (1972) tested the thesis that formal procedural processes are less prone to decisionmaker bias by presenting male law students with a test case and a list of "lawful" and "unlawful" factors relevant to the outcome, and asking them to consider only lawful factors in deciding the case. The results showed that even those subjects who acknowledged a personal bias gave less weight to unlawful factors in their decisionmaking. The authors concluded that formal reference to law or rules counteracts decisionmaker bias by reducing the human propensity to prejudice and make irrational categorizations.

Delgado et al. (1985) have applied similar arguments to disputes involving ethnic minorities. They argue that prejudice springs from psychodynamic, historical (socioeconomic and political), and social-psychological variables that may be either constrained or encouraged by situational factors. Because the Anglo-American judicial system has incorporated norms of fairness into its institutional expectations and rules of procedure, Delgado et al. conclude that, compared with less formal dispute resolution processes, the Anglo-American system deters prejudice (see also Harrington 1985; Hofrichter 1982; Lazerson 1982).

Many feminist legal theorists (Bryan 1992; Grillo 1991; Lefcourt 1984; Leitch 1986/87) have also speculated that compared with men, women may settle for less in mediation because they place a higher value on relationships than on monetary goals. For example, a literature review by Bryan (1992) concludes that women in divorce and custody negotiations with their former spouses are disadvantaged by economic, social, and psychological power differentials.

Despite widespread concern about potential bias against minorities and women in informal dispute resolution processes, there have been surprisingly few empirical efforts to validate or disprove the existence and severity of bias. Cross-cultural studies have been restricted to surveys on procedural preference in hy-

pothetical disputes (Leung & Lind 1986; Leung 1987; Leung & Bond 1990) and anthropological observations on nonindustrialized societies (Merry 1989; Nader 1990). Comparison of mediated and adjudicated outcomes for women have been confined mostly to divorce and custody cases, an especially personal type of dispute, and even there research findings have been contradictory (for reviews, see Bryan 1992; Pearson & Theonnes 1989).

Furthermore, descriptive studies of small claims mediation (McEwen & Maiman 1981, 1984; Vidmar 1984) have been limited to research on quasi-adjudicative procedures of short duration (10–30 minutes) in which third-party intervenors advise the disputants of probable court outcomes. These processes, distinguished as “predictive settlements” by McEwen (1991), may not provide an adequate test of the more extensive kind of mediation more commonly practiced in community justice settings (Harrington & Merry 1988).

And even these descriptive studies do not consistently support the conclusion that groups which presumably have less power outside the dispute are necessarily disadvantaged. For example, Vidmar (1984, 1987) argues that the effects of type of forum on outcomes is minimal. Compared with cases resulting in adjudication, mediated cases (based on “resolution hearings”) involve greater admissions of liability at the outset. When disputes are reconceptualized to account for these differences of admitted liability, less powerful disputants (e.g., consumers and tenants) are just as likely to achieve justice as more powerful disputants in both mediation and adjudication. In short, we were unable to identify a single published study that has systematically compared monetary outcomes for minority disputants in adjudicated and mediated civil cases or outcomes for women in nondivorce civil disputes.

II. Study Methodology

A. The Context: Region, Court, and Mediation Center

We collected data from the Bernalillo County Metropolitan Court in Albuquerque, New Mexico, whose 481,000 residents are 37% Hispanic in origin (U.S. Census 1990)—among the highest proportion of Hispanics for any region in the United States.¹ The Metropolitan Court is a state court of limited jurisdiction that has the authority to hear minor criminal and traffic cases and civil cases involving amounts in controversy of \$5,000 or less. Legal

¹ The term “Hispanic” applies to a large and diverse group. Although there is notable legal and illegal immigration to New Mexico, many of the residents of Bernalillo county trace their ancestry back to the colonial period and self-identify as Spanish. In this study, all persons of Hispanic origin were coded as “minorities.” Following common practice in the American Southwest, we use “Anglo” to refer to non-Hispanic whites.

representation is optional. The court had an annual civil caseload in 1990 of about 9,000 filed cases (3% of the total court caseload). Of these, about 40% were eviction proceedings brought against tenants by landlords, 23% resulted in default or other nonhearing judgments against the respondent, 10% were reported to be settled by the parties, and 7% were dismissed administratively by the court. We drew our study sample from the remaining 20% of the civil caseload (about 1,800 noneviction cases) that progressed to hearing or mediation.

Mediated cases were handled by the Albuquerque Mediation Center (AMC), a private, nonprofit organization that has contracted with the State of New Mexico since 1986 to handle mediation for the Metropolitan Court. The 129 volunteer mediators who participated in the study each had received at least 40 hours of training. As a regular part of AMC training, volunteer mediators were specifically instructed to concentrate on the mediation process and to avoid giving opinions on settlements or possible court outcomes. The length of mediation sessions ranged from 5 minutes to 4 hours, with a median of 70 minutes each.

B. Case Selection and Data Collection

We collected data on 323 adjudicated and 280 mediated civil small claims cases filed between September 1990 and August 1991. We included only nonjury cases that sought money judgments; that had a single individual, business, or married couple on each side; and that had been to hearing on the merits or to a mediation in which both parties were present. Because evictions rarely go to mediation and because applicable law and court procedure are unique in these cases, we excluded them from our study. We also excluded cases in which either party was younger than 18. Our adjudication sample included 78 cases (24.1%) that had been through mediation without agreement and 10 cases (3.1%) in which claimants reported that the mediation agreement later broke down.

Court cases were heard by one of three judges.² Mediation cases were co-mediated by pairs of women, men, or mixed gender pairs; and minority, nonminority, or mixed ethnicity pairs. Seventy-eight (60.5%) of the mediators were female, and 92 (71.3%) were Anglo. We coded 27 Hispanic mediators (20.9%), 5 African Americans (3.9%), 2 Native Americans (1.6%), 1 Asian American (0.8%), and 2 "others" (1.6%) as "minorities." Participating judges were aware of the ethnicity/gender focus of our study but were unaware of the specific hypotheses or study design. Mediators were not told of the ethnicity/gender focus of

² One of the judges was African American (63 cases, 19.8%), one judge was Hispanic (116 cases, 36.5%), and one judge was Anglo (133 cases, 41.8%).

the study but participated in data collection by completing a 52-item participant observation questionnaire after each mediation.

We collected all adjudicated cases from the total dispositions entered in court the previous day. Thus, we were working with a pool of adjudicated cases that had been to a hearing after which a decision was rendered. We randomly selected mediation cases from all newly answered civil claims that met the study criteria. All parties in cases chosen for mediation received letters from the chief judge of the Metropolitan Court and from AMC explaining the mediation process, setting a date and time for the mediation, and requesting telephone confirmation.

We classified the cases in our sample as (1) collection, 24.5%; (2) private, 19.9%; (3) consumer, 16.4%; (4) landlord and tenant, 21.2%; and (5) other, 17.9%. Collection cases most often involved contested and uncontested commercial collection, private cases most often involved disputes over personal financial transactions or damages, and consumer cases most often involved claims of inadequate work or products brought against businesses. Most of the cases classified as "other" involved contract disputes or disputes over automobile accidents.

Subsequent to hearing or mediation, participants were interviewed by telephone, usually within eight weeks. With the full cooperation of the court and AMC and repeated followup calls, we achieved a response rate of 79% for the adjudicated sample (87% for claimants and 71% for respondents) and 88% for the mediated sample (90% for claimants and 87% for respondents).

C. Coding and Description of Variables

1. *Dependent Variable: Monetary Outcome Ratios*

Table 1 shows the coding of variables used in the analysis. We calculated a monetary outcome ratio (MOR) for each case by dividing the total award or settlement by the total amount claimed. Following Vidmar (1984), we also experimented with calculation methods in which the respondent's admitted liability was subtracted from the claim and the monetary award prior to determining the outcome ratio (Hermann et al. 1992). However, we found that admitted liability was closely related to two of our major concerns in the analysis: repeat-player status and type of forum. Thus, admitted liability (taken from court records) was higher in collection cases ($p < .001$), cases with claimants who were lawyers ($p < .01$), cases involving individual respondents ($p < .05$), and mediated cases ($p < .001$). Admitted liability was lower in cases involving respondents who were legally represented ($p < .001$). In short, respondents who were repeat players and disputants in adjudicated cases admitted less liability, while claimants who were repeat players faced respondents who admitted more

liability.³ Given our emphasis on comparisons between mediation and adjudication and between one-shot and repeat players, we decided to concentrate on the simple monetary outcome ratio here. Nevertheless, to facilitate comparisons, we also estimated equations using the Vidmar approach, and we report differences produced by the two methods in the results section below.

Given our focus on monetary outcomes, we were unable to include 94 mediated cases (37.9%) in which no agreement was reached during the mediation. We also had to exclude 43 cases (11 adjudicated; 32 mediated) involving nonmonetary outcomes (most often, return of personal property, repair of goods, or performance of services), because we could not reliably convert them into dollars. These procedures resulted in an analysis sample of 312 adjudicated and 154 mediated cases. We examine below how cases that did not reach agreements or that reached nonmonetary agreements compared with those resulting in monetary agreements.

We recorded the amount claimed from the original complaint filed by the claimant/plaintiff in the court records. We used interview data when the claim was for an amount "to be determined at trial" or was unclear. Outcome amounts were recorded from court orders or mediated agreements. Court records usually listed separate amounts for claims, costs, interest, and legal fees, while mediated agreements rarely did. Consequently, to allow comparison between adjudicated and mediated cases, we analyzed the total amount to be paid for both adjudicated and mediated cases rather than the amount claimed alone.

2. Independent Variables

We determined the participants' ethnicity from the following sources, listed in order: (1) self-identification, (2) information from the other party, (3) the mediators' evaluation of ethnicity (for mediated cases only), and (4) disputants' surname. Because we could not reliably code the ethnicity of 5 claimants and 5 respondents, we excluded the resulting 7 cases from the analysis, reducing the analysis sample to 306 adjudicated and 153 mediated cases. Of the cases in our sample, 60% involved at least one minority claimant or respondent. Hispanics (including Mexican Americans, Chicanos, and Spanish Americans) constitute 88% of minority claimants and 80% of minority respondents in our study sample. The balance of the ethnic minorities was African Ameri-

³ The simple monetary outcome ratio also had methodological advantages over the Vidmar scale in this particular application. Using the simple ratio reduced by 43 the amount of missing data for the dependent variable and increased explained variance in both the adjudicated and mediated models. Moreover, compared with analyses of outcome ratios that included admitted liability, variables in our multivariate models based on the simple monetary outcome ratio showed lower standard errors.

Table 1. Variables, Coding, Means, and Frequencies^a

Variable & Coding	Adjudicated			Mediated		
	N	Mean	%	N	Mean	%
Monetary outcome ratio (MOR)^b						
Outcome in \$/Claim in \$s (S.D.)	306	0.654 (0.487)	—	153	0.614 (0.381)	—
Claimant ethnicity-gender^c						
Minority women	37	—	12.1	21	—	13.7
Minority men	70	—	22.9	27	—	17.7
Anglo women	67	—	21.9	51	—	33.3***
Anglo men	132	—	43.1	54	—	35.3
Respondent ethnicity-gender^d						
Minority women	55	—	18.0	28	—	18.3
Minority men	85	—	27.8	41	—	26.9
Anglo women	52	—	17.0	27	—	17.7
Anglo men	114	—	37.3	57	—	37.3
Case-specific variables:						
Claim size (claim in \$/1000) (S.D.)	306	1.386 (1.386)	—	153	1.325 (1.361)	—
Counterclaim (1 = present)	183	—	59.8	80	—	52.3
Prior relationship:						
0 = no ongoing relationship	101	—	33.0	34	—	22.2
1 = 1 ongoing relation	179	—	58.5	96	—	62.8
2 = 2 or more	26	—	8.5	23	—	15.0**
Repeat-player characteristics:						
Collection cases (1 = collection)	76	—	24.8	42	—	27.5
Private cases (1 = private)	50	—	16.3	31	—	20.3
Claimant individual (1 = individual)	168	—	54.9	74	—	48.4
Respondent individual (1 = individual)	175	—	57.2	94	—	61.4
Claimant w/lawyer (1 = lawyer)	81	—	26.5	28	—	18.3*
Respondent w/lawyer (1 = lawyer)	67	—	21.9	29	—	19.0
Mediators^e						
By ethnicity:						
Both mediators minority				43	—	28.1
One mediator minority				46	—	30.1
Both mediators Anglo				64	—	41.8
By gender:						
Both mediators female				47	—	30.7
One mediator female				68	—	44.4
Both mediators male				38	—	24.8

^a Significance testing by *t*-test of means or chi-square test of distribution between adjudication and mediation. All results refer to two-tailed tests.

^b From a total of 323 adjudication cases, we excluded 11 because the ruling involved a substantial nonmonetary outcome (3.4%) and 6 because either the claimant or respondent could not be reliably coded for ethnicity (1.9%). Of a total of 280 mediation cases, we excluded 29 cases because they involved substantial nonmonetary outcomes (10.4%), 97 cases because no agreement was reached (34.6%), and 1 case because the claimant could not be reliably coded for ethnicity (0.4%).

^c We coded 182 Hispanics (30.4%), 11 African Americans (1.8%), 4 Asians (0.7%), 7 Native Americans (1.2%), and 5 "others" (0.8%) as "minorities."

^d We coded 216 Hispanics (36.1%), 22 African Americans (3.7%), 11 Asians (1.8%), 5 Native Americans (0.8%), and 14 "others" (2.3%) as "minorities."

^e Three judges heard all but 5 adjudicated cases. One was African American (63 cases, 19.8%), another Hispanic (116 cases, 36.5%), and the third was Anglo (133 cases, 41.8%). All 3 were male. A total of 129 mediators mediated in the study: 78 (61.5%) were female and 92 (71.3%) were white. We coded 27 Hispanic mediators (21.0%), 5 African Americans (3.9%), 2 Native Americans (1.6%), 1 Asian (0.8%), and 2 "others" (1.6%) as "minorities."

* $p < .10$ ** $p < .05$ *** $p < .01$

can (5.8% claimants, 9.5% respondents), Native American (3.2% claimants, 1.9% respondents), Asian American (1.3% claimants, 1.9% respondents), and other (2.9% claimants, 4.8% respondents).

Our emphasis on determining whether ethnic and racial minorities received distinctive treatment in comparison with Anglos suggested combining minority groups in the analysis. However, to determine whether results differed for Hispanic and non-Hispanic minorities, we performed all analyses twice, once including all minorities and once including only Hispanics. Excluding the non-Hispanic minorities did not change our substantive conclusions, and we report results including all minorities.

We coded gender for the named party. When the party was listed as a couple, we coded the gender of the spouse who was self-identified as “most involved in the case.” For those married couples we were unable to interview (5 claimants and 15 respondents), we coded the gender of the party as male. When the party was a corporation and no personal name was listed in the suit, the gender and ethnicity of the company agent (often a lawyer) was used.

As shown in Table 1, we included three case-specific variables and six repeat-player measures in our analysis. Claim size and counterclaims were recorded from court or AMC records. We measured the extensiveness of the prior relationship between claimant and respondent based on claimant interviews.

Collection cases were generally brought by commercial repeat players against individual one-shot players. Private cases most often involved disputes over alleged property damages and unpaid debts brought by citizens against other citizens (both usually one-shot players). We coded as “individual” those private claimants and respondents who were not listed in court records as a business or “doing business as.” We coded landlords as “businesses” and tenants as “individuals.” We coded presence of lawyers (repeat players) for either claimants or respondents from entries of appearances filed in the court records. Lawyers filing on their own behalf were also coded as having legal representation.

In general, our data collection design produced two samples with considerable similarities. Most notably, we found no significant differences between the mediated and adjudicated samples with regard to the average monetary outcome ratios,⁴ and we found only one significant difference for the claimants’ and re-

⁴ By contrast, our Vidmar-style measure of the MOR showed a significant difference in mean MORs for adjudication and mediation (MOR for adjudication = .611; MOR for mediation = .515; $p < .05$; Hermann et al. 1992). These differences between the simple ratio and the Vidmar measure are probably explained by the fact that cases with some admitted liability are more likely to reach agreement once they are in mediation. Hence, an MOR that subtracts admitted liability from the dispute will generally increase differences between mediation and adjudication outcomes.

spondents' ethnicity and gender variables: compared with adjudicated cases, Anglo women were overrepresented as claimants in mediation.

Table 1 shows only one significant case-specific difference and one repeat-player difference for the adjudicated and mediated samples. Compared with claimants in adjudicated cases, claimants in mediated cases that reached agreement were more likely to report prior relationships. Compared with mediated cases, claimants in adjudicated cases were more likely to be represented by (or to be) attorneys ($p < .10$). Despite the image of mediation as a less formal forum than adjudication, respondents were equally likely to be represented by attorneys in both forums, and the difference between the two forums in presence of attorneys for claimants was modest (26% in adjudication vs. 19% in mediation). Much of the difference in the number of claimants with lawyers in our adjudication and mediation samples is due to the fact that compared with claimants without lawyers, claimants with lawyers were more likely to refuse mediation (Hermann et al. 1992). With regard to claim size, counterclaims, whether the case involved collection or a private dispute, and whether claimants or respondents filed or answered as individuals, there were no significant differences between the adjudicated and mediated samples.⁵

III. Results

A. Bivariate Analysis

In analyzing mean monetary outcome ratios (MORs), our initial theoretical expectation was that, compared with others, Anglo men would receive higher MORs as claimants and lower MORs as respondents, and that differences between Anglo men and others would be greater in mediated than in adjudicated cases. In Figure 1 and Table 2 we contrast MORs of disputants by ethnicity and gender. In support of the disparity hypothesis, Figure 1 shows that Anglo male claimants received higher MORs than other ethnic-gender groups in both adjudicated and mediated cases. Of the eight comparisons between Anglo male claimants and other claimants shown in Table 2, six are statistically significant and all six are in the direction expected. In adjudicated cases, minority men and Anglo women received signifi-

⁵ In comparisons of cases that reached a monetary settlement and those that either failed to reach a settlement or reached a nonmonetary settlement, we found five significant differences; three involving nonmonetary agreements and two involving failure to reach agreements. Cases with counterclaims filed and cases involving individual claimants were less likely to reach agreements. Individual claimants and respondents with lawyers were more likely to reach nonmonetary agreements, while individual respondents were less likely to do so. However, none of these differences produced significant differences in proportions of each variable for the adjudicated and mediated study samples.

cantly lower MORs than Anglo men, and in the mediated cases, minority women and men received significantly lower MORs than Anglo men.

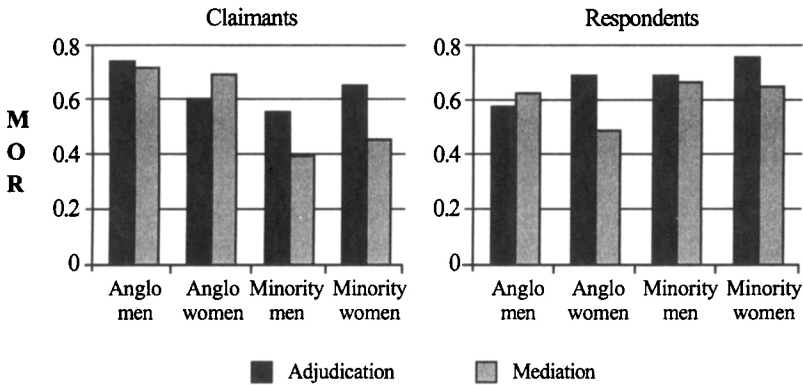


Figure 1. Mean monetary outcome ratios (MOR) by ethnic/gender group

Figure 1 shows that the disparity hypothesis receives less support for respondents—especially in the mediated cases. Of the eight ethnicity-gender contrasts among respondents, only two are statistically significant and in the predicted direction. Both of these occur in the adjudicated cases. Compared with other respondents, Anglo male respondents paid significantly less in the adjudicated cases, and compared with Anglo men, minority women paid significantly more in the adjudicated cases.

Bivariate support for the conclusion that Anglo males will fare better than other ethnic-gender groups was substantial but far from complete. In adjudicated cases, we found no significant difference between Anglo male claimants and minority female claimants or between Anglo male respondents and minority male or Anglo female respondents. In mediated cases, we found no significant difference between Anglo male claimants and Anglo female claimants and no difference between Anglo male respondents and any of the other three ethnicity-gender combinations.

The bivariate analysis permits three main conclusions. First, we found greater and more consistent evidence of ethnic-gender disparity for comparisons between claimants than between respondents. In fact, we found no significant bivariate differences in MORs between Anglo men and other respondents in the mediated cases.

Second, the results do not consistently support the conclusion that Anglo women received less favorable monetary outcomes than Anglo men. Of the four comparisons between Anglo men and women in Table 2, only one was marginally significant ($p < .10$): Anglo men received more favorable MORs as claimants in adjudication.

Table 2. Mean Monetary Outcome Ratios by Ethnic/Gender Group^a

Participants	Adjudicated			Mediated		
	Mean	S.D.	N	Mean	S.D.	N
Claimants:						
Minority women	.653	.516	37	.458**	.419	21
Minority men	.553**	.458	70	.398***	.297	27
Anglo women	.601*	.429	67	.689	.379	51
Anglo men	.735**	.513	132	.712**	.351	54
Respondents:						
Minority women	.754**	.445	55	.652	.399	28
Minority men	.687	.509	85	.664	.396	41
Anglo women	.681	.487	52	.485	.353	27
Anglo men	.569**	.483	114	.620	.371	57

^a Anglo men are used as the reference groups for comparison to each of the other three groups. Significance tests for Anglo men are in comparison to all three groups combined.

* $p < .10$ ** $p < .05$ *** $p < .01$ (two-tailed tests)

Finally, the main bivariate support for the informality hypothesis—that disparities between Anglo males and others will be especially great in mediation—is found in contrasts between minority and Anglo claimants. The mean difference in MORs between Anglo and minority men as claimants was .182 (.735 – .553) in adjudicated cases compared with .314 (.712 – .398) in mediated cases, and the mean difference in MORs for Anglo men and minority women as claimants was .082 in adjudication and .254 in mediation. However, there was no evidence that minorities and women were especially disadvantaged as respondents in mediation. In fact, Anglo women had lower monetary obligations than any other group as respondents in mediation, and none of the bivariate contrasts between Anglo men and others were statistically significant.

B. Ethnicity, Gender, and Monetary Outcomes

We next present multivariate models that include the case-specific and repeat-player variables described in Table 1. Table 3 shows the results of examining the relative effects of the independent variables on monetary outcome ratios separately for adjudicated and mediated cases.⁶ For both forums, we show two panels. In panel A, we regress the MOR on just the ethnicity and gender variables and in panel B, we add the other nine case-specific and repeat-player variables. Based on our theoretical expectations, we again use Anglo men as the reference group (i.e., the excluded category).

⁶ We also experimented with measures of income, employment, education, marital status, and prior court experience. All these variables were correlated with the case characteristic and repeat-player variables but showed no significant effects in any of the models reported.

Table 3. Regression Coefficients and Standard Errors for Predictors of Monetary Outcomes in Adjudicated and Mediated Civil Cases

Ethnic and Gender Variables:	Adjudicated			Mediated			
	Panel A		Panel B	Panel A		Panel B	
	<i>b</i>	S.E.	<i>b</i>	<i>b</i>	S.E.	<i>b</i>	S.E.
Independent Variables							
Claimants:							
Minority women	-.099	.090	-.033	.079	.092	-.148	.092
Minority men	-.197***	.071	-.080	.064	.085	-.197**	.083
Anglo women	-.143**	.072	-.050	.064	.070	.028	.064
Respondents:							
Minority women	.202**	.079	.106	.072	.081	-.056	.081
Minority men	.131*	.069	.054	.061	.074	.069	.069
Anglo women	.121	.081	.063	.071	.083	-.154*	.080
Case-specific variables:							
Claim size			-.079***	.019		-.030	.020
Counterclaim			-.138***	.049		-.158***	.052
Prior relationships			-.059	.041		-.069	.044
Repeat-player characteristics:							
Collection case			.219***	.073		.233***	.075
Private case			-.070	.073		-.024	.080
Individual claimant			-.061	.064		-.065	.083
Individual respondent			.138**	.057		.093	.063
Lawyer for claimant			.280***	.060		.041	.072
Lawyer for respondent			-.131**	.063		-.113	.070
<i>N</i>	306		306			153	
<i>Y</i> -intercept	.649***	.053	.746***	.093	.057	.794***	.103
<i>R</i> ² / <i>F</i>	.05**	2.6	.31***	8.8	5.8	.39***	5.8

* *p* < .10 ** *p* < .05 *** *p* < .01 (two-tailed tests).

Panel A for the adjudicated cases shows that all six of the ethnicity-gender variables are in the direction predicted and four are statistically significant. In sharp contrast, panel B for the adjudicated cases shows that none of the ethnicity-gender effects remained significant after we added case variables to the model. Six of the nine case-specific and repeat-player variables had a statistically significant effect on outcomes. MORs were higher in the adjudicated cases that involved collection, individual respondents, and claimants represented by attorneys. MORs were significantly lower in cases with higher claim sizes, counterclaims filed, and respondents represented by attorneys.

Panel A for the mediated outcomes shows that five of the six ethnicity-gender variables are in the expected direction, and three of these variables are statistically significant. Minority men and women received significantly lower MORs as claimants, and minority men paid significantly more as respondents. Contrary to our expectations, panel A for the mediated cases shows that Anglo women did significantly better (i.e., had lower MORs) than Anglo men as respondents in mediation. Adding case-specific and repeat-player measures to the mediation model eliminates the significant differences for minority female claimants and minority male respondents. Of the nine case variables in the mediation analysis, two are statistically significant. MORs were higher in collection cases and lower when there was a counterclaim.

In general, Table 3 provides some qualified evidence of ethnic-gender based disparity. Most notably, of the 12 ethnicity-gender coefficients shown in panel A for adjudicated and mediated cases, 11 are in the direction expected and 7 of these are statistically significant. However, when case characteristics are added to the models, only one significant effect remains (minority male claimants in mediation). Thus, while ethnicity and gender are clearly related to the outcomes in these cases, much of their influence is due to the fact that female and minority claimants tend to be involved in types of cases that result in lower monetary outcome ratios.

Support for the informality hypothesis that ethnicity-gender variables will be more important in mediation than adjudication is limited. Comparing panel A results for both forums shows that four of the six ethnicity-gender variables have significant effects for both adjudication and mediation. And one of the significant mediation effects (Anglo women) contradicts the predictions of the informality hypothesis. The strongest support for the informality hypothesis is for minority male claimants, who received significantly lower MORs in mediation, even when case variables are controlled for.

Additional support for the informality hypothesis comes from comparing explained variance and the size of the individual coefficients in the two forums. In general, measures of ethnicity and

gender have a greater impact on MORs for mediation than for adjudication. Thus, explained variance is much higher for the ethnicity-gender variables in mediation (.19) than in adjudication (.05), while the increase in explained variance due to adding case variables is greater for adjudication (.26) than for mediation (.20). The differential strength of the ethnicity-gender variables in the two models also provides support for the informality hypothesis. None of the ethnicity-gender variables remains significant when case characteristics are added to the adjudication models. By contrast, for the mediated cases the effect for the claimant minority male variable is greater than all the case-characteristic variables except one (collection cases).

Table 3 shows considerable support for Galanter's assertion (1974; see also Black 1989) that repeat players enjoy substantial advantages over one-shot players in disputes. According to Table 3, four of the six repeat-player variables have a significant effect on the adjudicated outcomes and one has a significant effect on the mediated outcomes. In each case, repeat players receive more favorable outcomes. In fact, the two best predictors of outcomes for the adjudicated cases (collection cases and attorney for the claimant) and the best predictor for the mediated cases (collection cases) are all repeat-player measures.

We also reestimated the same models substituting the Vidmar (1984) MOR for the simple ratio of final outcome to amount claimed. In general, the results for the two methods of estimating monetary outcomes were similar. We found only one significant difference for the adjudicated models and two for the mediated models. For the adjudicated cases, substituting the Vidmar MOR eliminates for respondents the significant advantage (i.e., negative effect on MOR) of having a lawyer. For the mediated cases, the effect for minority female claimants becomes significant with the Vidmar ratio, but the negative effect of counterclaims is eliminated.

All three of these differences are in turn related to admitted liability. The diminished effects on MORs for respondents with lawyers in adjudication and respondents filing counterclaims in mediation reflect the fact that both variables represent cases in which respondents admitted less liability. When respondent's admitted liability is included in the MOR equation, the effect of both variables on the MOR disappears. The different outcomes for female minority claimants in the analysis using the Vidmar-style MOR is due to the effects of two cases in which the claimants were professional collection agents. When the effect of respondent's admitted liability in these cases is subtracted in the dependent variable, minority female claimants as a group received significantly lower MORs than Anglo male claimants.

C. Effects of Ethnicity and Gender on Case Characteristics

Given the evidence that repeat-player measures have a substantial impact on monetary outcomes in both forums, we were next interested in the extent to which disputants' ethnicity and gender were in turn related to these variables.⁷ We were especially interested in the results for the ethnicity-gender variables that had a significant effect on monetary outcomes in the bivariate but not in the multivariate analysis. To examine these issues systematically, we regressed each of the six repeat-player variables on the six measures of disputants' ethnicity and gender (using Anglo males as the excluded category). Because the repeat-player measures were dichotomous, we used logistic regression analysis.

Table 4 shows the results for both forums. Recall that for the adjudicated cases, four ethnicity-gender variables had significant effects on outcomes before the case-characteristic measures were included in the model: minority male claimants, Anglo female claimants, minority female respondents, and minority male respondents. Table 4 helps explain the differences between the bivariate and multivariate models. Minority male claimants in adjudication were more likely to be in private cases as individual claimants. Anglo female claimants were significantly less likely to be involved in collection cases, to be represented by attorneys, and to face individual respondents (i.e., they more often faced corporations). Minority female respondents were less likely to face individual claimants and were more likely to be involved in cases as individuals. Minority male respondents were more likely to answer as individuals and were less likely to be represented by attorneys.

In general, the adjudication results show that minorities and women in adjudication were less likely than Anglo men to be repeat players. For the six repeat-player variables in the adjudication results, Table 4 shows a total of 13 significant ethnicity-gender effects. All 13 support the conclusion that minorities and women were more likely to be involved as one-shot players.

For the mediated cases, the two ethnicity-gender effects that lose statistical significance when case characteristics are added are minority female claimants and minority male respondents. Table 4 shows that compared with Anglo men, minority female claimants were significantly less likely to be in collection cases and to be represented by attorneys. They were significantly more likely to file in private cases and as individuals. Compared with

⁷ Although we were especially interested in connections between the measures of ethnicity and gender and the repeat-player measures, we also analyzed connections between the former and the three case-specific variables. Ordinary least squares regression on claim size and prior relations and logistic regression analysis of counterclaims showed that there were no significant effects for ethnicity and gender on counterclaims or prior relations in either forum. However, compared with Anglo men in the adjudicated cases, minority men filed significantly higher claims ($b = .623, p < .01$).

Table 4. Maximum Likelihood Estimates (and Standard Errors) for Ethnicity-Gender Groups Regressed on Repeat Player Variables for Adjudicated and Mediated Civil Cases

	Collection Est.	Private Est.	Claimant Individual Est.	Respondent Individual Est.	Claimant Lawyer Est.	Respondent Lawyer Est.
Adjudicated Civil Cases (N = 306)						
Claimant minority women	-.724** (.281)	.197 (.250)	.232 (.192)	-.335* (.197)	-.147 (.208)	-.045 (.237)
Claimant minority men	-.251 (.172)	.400** (.194)	.359** (.159)	-.127 (.161)	-.190 (.169)	.145 (.176)
Claimant Anglo women	-.356** (.182)	-.072 (.232)	-.032 (.153)	-.345** (.160)	-.335* (.182)	.071 (.184)
Respondent minority women	.220 (.190)	.249 (.223)	-.585*** (.174)	1.004*** (.208)	.106 (.185)	-.126 (.191)
Respondent minority men	.107 (.172)	-.026 (.218)	-.108 (.149)	.308** (.148)	.126 (.162)	-.387** (.184)
Respondent Anglo women	.109 (.199)	.462** (.218)	-.167 (.172)	.486*** (.176)	-.037 (.199)	-.246 (.206)
Y-intercept	1.800*** (.411)	.939** (.428)	-.024 (.325)	-.918** (.342)	1.328*** (.366)	1.615*** (.393)
Mediated Civil Cases (N = 153)						
Claimant minority women	-1.132*** (.415)	.677** (.298)	1.895*** (.469)	.031 (.292)	-1.135** (.546)	.222 (.346)
Claimant minority men	-.874*** (.324)	.296 (.298)	1.154*** (.321)	-.264 (.262)	-.686* (.358)	.421 (.302)
Claimant Anglo women	-.256 (.223)	-.226 (.289)	-.014 (.220)	-.026 (.215)	-.147 (.246)	.118 (.267)
Respondent minority women	.677** (.269)	-.173 (.312)	-1.297*** (.364)	.972*** (.305)	.340 (.291)	-.030 (.273)
Respondent minority men	.323 (.257)	-.005 (.268)	-.354 (.260)	.213 (.217)*	.361 (.276)	-.652** (.318)
Respondent Anglo women	-.338 (.319)	.072 (.314)	-.229 (.260)	.559** (.261)	-.522 (.412)	-.292 (.319)
Y-intercept	2.264*** (.605)	.930* (.548)	-.982* (.564)	-1.463*** (.503)	2.993*** (.773)	1.586*** (.572)

* $p < .10$ ** $p < .05$ *** $p < .01$ (two-tailed tests)

Anglo males, minority male respondents were significantly less likely to be represented by attorneys. Of the six repeat-player measures for mediation, we find 12 significant ethnicity-gender effects. All 12 support the conclusion that minorities and women are more likely than Anglo men to be one-shot players. Interestingly, the main exception to this general pattern is that none of the 6 repeat-player measures for mediation indicate that compared with Anglo male claimants, Anglo female claimants were more likely to be one-shot players.

Taken together, the results permit three main conclusions. First, as predicted by the disparity hypothesis, compared with Anglo men, minority and female disputants generally received less desirable monetary outcomes in both adjudicated and mediated cases. The main exception was for Anglo female respondents in mediation.

Second, much of this disparity is explained by the connections between disputants' ethnicity and gender and case variables. In general, compared with Anglo men, women and minorities were less likely to file as claimants in collection cases and to be represented by attorneys and were more likely to be in private cases and file as individuals. However, there were important differences between gender-ethnicity categories and repeat-player variables between forums. Note that Anglo female claimants in adjudication were significantly less likely to be in collection cases and to be represented by attorneys while neither of these variables was statistically significant in mediation. Thus, compared with Anglo women whose cases are heard in court, Anglo women who mediate were less often one-shot players. This pattern was generally reversed for minority claimants. That is, compared with minority claimants whose cases were adjudicated, minority claimants who mediated were more likely to be one-shot players.

Finally, in support of the informality hypothesis, disputants' ethnicity does have more important direct effects on outcomes in mediation than in adjudication. However, the concern that mediation might be more susceptible than adjudication to the influences of repeat players was not supported. Four of the six repeat-player measures had significant effects on adjudication outcomes compared with only one significant repeat-player variable in mediation. In general, the impact of ethnicity and gender on adjudication was largely eliminated by the repeat-player variables; in mediation, repeat-player variables were somewhat less important and the effects of ethnicity and gender were more important.

D. Effect of Mediator Ethnicity and Gender

We were next interested in the extent to which the mediators' ethnicity and gender interacted with disputants' ethnicity and gender to affect outcomes. Because the mediated cases in our sample generally involved two mediators, we were able to compare monetary outcomes for disputants with two minority or two female mediators, those with one minority and one Anglo mediator, or one female and one male mediator (i.e., mixed pairs), and those with two Anglo or two female mediators.⁸ We used two Anglo mediators as the excluded category for the analysis of mediator ethnicity and two male mediators as the excluded category for the analysis of mediator gender.

Columns (1) and (2) in Table 5 show the results with product terms for mediator ethnicity by the ethnicity and gender of claimants and respondents. Most of the main effects shown in

⁸ For analysis purposes, we coded five cases involving one minority mediator (all men) and eight cases involving one Anglo mediator (six women and two men) as homogeneous ethnic and gender pairs.

Table 5. Regression Coefficients and Standard Errors for Predictors of Monetary Outcomes in Mediated Civil Cases with Mediator Ethnicity and Gender Interactions ($N = 153$)^a

Independent Variables	By Mediator Ethnicity		By Mediator Gender	
	<i>b</i> (1)	S.E. (2)	<i>b</i> (3)	S.E. (4)
Claimant minority women	-.325**	.137	.100	.162
Claimant minority men	-.326**	.137	-.171	.155
Claimant Anglo women	-.046	.097	-.163	.134
Respondent minority women	-.140	.126	-.124	.139
Respondent minority men	-.006	.106	-.142	.134
Respondent Anglo women	-.163	.114	-.091	.247
Claim size	-.029	.020	-.039*	.020
Counterclaim	-.188***	.054	-.129**	.054
Prior relationships	-.072	.045	-.076*	.044
Collection case	.231***	.076	.219***	.076
Private case	-.006	.081	-.058	.085
Individual claimant	-.064	.086	-.079	.082
Individual respondent	.089	.065	.076	.062
Lawyer for claimant	.033	.074	.036	.075
Lawyer for respondent	-.129*	.074	-.145*	.073
Product Terms				
Mixed ethnicity/gender mediator pair	-.021	.125	-.193	.138
C. minority women × mixed mediator pair	-.021	.209	-.162	.208
C. minority men × mixed mediator pair	-.014	.207	-.051	.193
C. anglo women × mixed mediator pair	.033	.162	.316*	.163
R. minority women × mixed mediator pair	.011	.191	.164	.175
R. minority men × mixed mediator pair	.231	.174	.396**	.175
R. Anglo women × mixed mediator pair	-.057	.180	-.063	.267
Two minority/women mediators	-.306**	.133	-.010	.141
C. minority women × 2 min/women mediators	.502**	.211	-.652***	.224
C. minority men × 2 min/women mediators	.392**	.191	-.077	.217
C. Anglo women × 2 min/women mediators	.189	.162	.102	.174
R. minority women × 2 min/women mediators	.220	.188	.015	.217
R. minority men × 2 min/women mediators	.046	.167	.026	.178
R. Anglo women × 2 min/women mediators	.076	.207	.005	.276
Y-intercept	.919***	.121	.939***	.147
R^2 / F	.46*** / 3.7		.50*** / 4.2	

^a We used two Anglo mediators as the excluded category in the first equation and two male mediators as the excluded category in the second.

* $p < .10$ ** $p < .05$ *** $p < .01$ (two-tailed tests)

Table 5 are similar to the earlier results. Thus, claims by minority men, counterclaims, and cases in which respondents were represented by attorneys all resulted in significantly lower MORs; col-

lection cases resulted in significantly higher MORs. But note that when the mediator ethnicity product terms are added to the model, the minority female claimant variable becomes statistically significant: minority female claimants, like minority male claimants, negotiated significantly lower MORs.⁹

The most striking results in column (1) are for mediation with two minority mediators. First, the results show that compared with cases with at least one Anglo mediator, cases mediated by two minorities resulted in significantly lower MORs, regardless of the disputants' gender or ethnicity. And second, while the main effects show that compared with Anglos, minority female and male claimants both received significantly lower MORs, these disadvantages are greatly reduced for both minority female ($-.325 + .502 = .177$) and minority male claimants ($-.326 + .392 = .066$) in cases mediated by two minority mediators. By contrast, none of the coefficients for mixed ethnicity mediator pairs was significant. Table 5 also shows that explained variance was increased substantially by adding the mediator ethnicity by disputant ethnicity and gender product terms (from .31 to .46). In fact, the two ethnicity-gender product terms (minority male and minority female claimants) had the largest regression coefficients in the model.

Note that the mediator ethnicity effects in Table 5 are being produced not by ethnicity-specific outcomes in cases mediated by two minorities but rather by outcomes in mediation that included at least one Anglo mediator. This pattern is shown more clearly in Table 6, which compares monetary outcome ratios for minority and Anglo claimants mediated by Anglo, minority and mixed ethnicity mediator pairs. According to Table 6, compared with other mediator ethnicity-claimant ethnicity combinations, mediator teams with at least one Anglo resulted in significantly higher MORs for Anglo than for minority claimants, while cases with two minority mediators resulted in similar MORs regardless of the claimant's ethnicity.

Columns (3) and (4) in Table 5 show results for product terms formed by multiplying the gender composition of the mediator dyad (two women, mixed, two men) by the disputants' gender and ethnicity. We found no significant main effects for disputants' gender and ethnicity but three significant product terms. Anglo female claimants received marginally higher MORs ($p < .10$), and minority male respondents paid higher MORs in cases mediated by a woman and a man; minority female claim-

⁹ This difference between Tables 5 and 3 should not be exaggerated. Note that minority female claimants also received significantly lower MORs in the analysis of the ethnicity-gender variables (panel A for mediation, Table 3) and that the variable was nearly statistically significant ($p = .11$) in the full model (panel B for mediation, Table 3). Recall also that an analysis based on a Vidmar-style MOR showed significant negative effects for minority female claimants (Hermann et al. 1992).

Table 6. Mean Monetary Outcome Ratios in Mediated Civil Cases by Claimant and Mediator Ethnicity^a

	Mediator Ethnicity											
	Two Anglo Mediators			Mixed Ethnicity Pair			Two Minority Mediators			All Mediator Pairs		
	Mean	S.D.	N	Mean	S.D.	N	Mean	S.D.	N	Mean	S.D.	N
Claimant:												
Anglo	.715***	.331	46	.759***	.404	32	.607	.361	27	.701***	.364	105
Minority	.374	.315	18	.406	.388	14	.495	.371	16	.424	.352	48
Total	.619	.359	64	.652	.428	46	.565	.364	43	.614	.381	153

^a Significance testing between Anglo and minority claimants for each column is noted in the first row.

* $p < .10$ ** $p < .05$ *** $p < .01$ (two-tailed tests)

ants received significantly lower MORs in cases mediated by two women.

To better understand these results, we examined in greater detail the specific combinations of mediator gender and disputant ethnicity and gender which produced the significant product terms. Twenty cases involving Anglo female claimants were mediated by female-male mediation teams. Further analysis showed that MORs were especially high for 5 cases involving minority male respondents (MOR for the 5 cases = 1.21; MOR for the other 15 cases = .61; $p < .05$). We reconsider these findings below in our general discussion of mediation, gender, and ethnicity.

The other significant product term for mediator gender (col. (3)) in Table 5 shows that minority female claimants received significantly lower MORs in cases mediated by two women. In all, 47 cases included in Table 5 were mediated by two women and 6 (12.8%) of these cases involved minority female claimants. The mean MOR for the minority female claimants was .060, compared with a mean of .674 ($p < .001$) for the other cases mediated by two women. Again, we discuss these findings in greater detail below.

As in earlier models, collection cases resulted in higher MORs and cases involving counterclaims resulted in lower MORs. In addition, column (3) of Table 5 shows a modest ($p < .10$) tendency for higher claims, prior relationships, and respondents represented by attorneys to result in lower MORs in the mediated cases.

IV. Discussion and Conclusions

The bivariate results offer considerable support for a disparity hypothesis. Minority women received less as claimants in mediation and paid more as respondents in adjudication; minority men received less as claimants in adjudication and mediation; Anglo women received less as claimants in adjudication. In general, the bivariate disparities were more consistent for claimants than for respondents and for minorities than for Anglo women. However, the multivariate analysis showed that much of the effect of ethnicity and gender on monetary outcomes disappeared when we added case-specific and repeat-player variables to the models. Of the two remaining ethnic-gender effects, only one supported the disparity hypotheses: minority male claimants received significantly lower MORs in mediation. Contrary to the disparity hypothesis, Anglo female respondents negotiated significantly ($p < .10$) lower MORs in mediation.

Subsequent analysis showed that most of the bivariate effect of disputants' ethnicity and gender on monetary outcomes is explained by repeat-player variables—especially for adjudicated

cases. In general, minorities and women were less likely to be in either court or mediation as repeat players: They were less likely to be in collection cases and to be represented by attorneys; they were more likely to file as individuals and to be in private cases. The main exception was for Anglo female disputants in mediation.

We found limited support for an informality hypothesis—that ethnic and gender disparities are greater in mediation than in adjudication. The multivariate analysis showed that ethnicity and gender were more important determinants of mediation than of adjudication outcomes. However, we found no significant disparity for minority female or male respondents or Anglo female claimants; and compared with Anglo males, Anglo female respondents received somewhat more favorable outcomes in mediation.

A. Ethnicity and Monetary Outcomes in Mediation

Overall, we found the strongest evidence of ethnic and gender disparity in the treatment of minority claimants in mediation. In the analysis including product terms, both minority male and female claimants received significantly lower MORs—even when we included the nine case-specific and repeat-player variables. Of greatest concern is the fact that this disparity was only present in cases mediated by at least one Anglo mediator. Cases mediated by two minorities resulted in lower MORs, regardless of claimant ethnicity.

We believe that these results were most likely produced by three related processes. First, we found evidence that both Anglo and minority respondents were more willing to legitimate the monetary claims of Anglo than of minority claimants. Thus, initial admitted liability was lower in minority than in Anglo claimant cases ($p < .05$), and during mediation, respondents—especially Anglo respondents—made fewer concessions to minority than to Anglo claimants ($p < .05$). These patterns are illustrated by a case in which a minority female claimant was suing an Anglo male respondent for repairs and title to a trailer she had purchased. The Anglo respondent began mediation by simply stating, “I won’t pay any money.” Similarly, in a neighborhood vandalism case filed by a Hispanic female claimant, the Hispanic female respondent told us, “I was not going to agree with her. The mediators kept trying to talk me into paying. I kept saying no.” Both of the above claimants dropped their full claims, without substituting a nonmonetary exchange.

Second, Anglo mediators were more likely to assume that monetary claims brought by Anglos were nonnegotiable while claims by minorities were more open to nonmonetary resolutions or negotiations that minimized monetary outcomes. Compared

with Anglo claimants, minority claimants dropped their claims nearly three times more often (16.7% vs. 5.7%, $p < .05$). Again, we found many examples from our qualitative data. In a vandalism case brought by a Hispanic man against his Anglo neighbors, the claimant had witnesses and the Anglo respondents had already confessed to most of the damages. Nevertheless, the two Anglo female mediators reported that the Hispanic claimant was “rigid and authoritarian” and turned their attention to actively assisting the Anglo respondents to clarify “what they wanted.” In another case, an Anglo female mediator described the minority claimant as “less willing” to negotiate because “it took him longer to drop his claim” but described the respondent, who had refused to concede anything, as “more willing” to negotiate because he offered nonmonetary substitutes that were unacceptable to the claimant.

Finally, compared with Anglo claimants, minority claimants generally defined their own goals in less stringently monetary terms. A strong family, relational, and community orientation in the Hispanic/Chicano culture is a characteristic noted by many scholars (e.g., Duryea 1992; Nader 1990; Mirandé 1985; Abalos 1986; Keefe & Padilla 1987). Moreover, Hispanics and others from “high-context” and collectivist cultures are more likely to have “face” needs for affiliation and honor (Ting-Toomey 1988; Triandis et al. 1988).

Compared with Anglo claimants in our study, minority claimants settled twice as often for nonmonetary outcomes (26.1% vs. 12.5%, $p < .05$). We also found that compared with cases resulting in monetary outcomes, minority claimants in mediation were significantly more satisfied with cases that included substantial nonmonetary outcomes ($p < .05$), a difference that was not significant for Anglo claimants. Following a mediation in which a Hispanic female owner of a jewelry business filed for the cost of a silver belt buckle that an Anglo businessman had damaged and which resulted in a nonmonetary settlement, the female claimant concluded, “I was not happy with it. But I also was not comfortable with confronting him in this situation.” Nevertheless, she reported that she was “very satisfied” with the outcome.

While we suspect that all three of these processes contributed to the poorer monetary outcomes of minority claimants in the mediated cases, future research should explore in greater detail the specific dynamics at work. More research on the often subtle differences in the relative contributions of mediators, claimants, and respondents to mediated outcomes would be useful. Of particular importance is our finding of no significant ethnic disparities in cases mediated by two minority mediators.

B. Gender and Monetary Outcomes in Mediation

While we found some evidence for disparate treatment of minority female claimants in mediation, we found no evidence that Anglo women were disadvantaged as claimants or respondents in mediated cases. In fact, Anglo females appear to have done fairly well in these mediated cases. Anglo women were more likely than others to agree to mediate ($p < .001$), were more likely to reach agreements in their mediated cases (agreement rate of 75% compared with 60% overall, $p < .05$), and rarely accepted nonmonetary outcomes in their cases (4% compared with a mean of 10%, $p < .10$). The main statistically significant difference between Anglo women and Anglo men in mediation was for Anglo women to pay somewhat lower MORs as respondents in mediation (i.e., receive more favorable outcomes). These findings are important in light of scholarship (e.g., Bryan 1992; Grillo 1991) which argues that mediation is unfair to women. Our study shows this fear to be unfounded for Anglo women, at least in the types of small claims court disputes we have examined here. However, the results might well be different for the mediation of larger disputes in courts of general jurisdiction or for particular types of cases, such as those involving divorce or child custody.

The results for Anglo female claimants in mediation are probably due in part to the fact that the Anglo women who chose to mediate and reached agreements in our study were not differentiated as one-shot players. While compared with Anglo men, Anglo women were less likely to be repeat players, when they were repeat players Anglo women were more likely to choose mediation. For example, 5 of the 13 (38.5%) mediated cases involving lawyers as collection agents were Anglo women. By contrast, only one of 36 (2.8%) adjudicated cases involving lawyers as collection agents was an Anglo woman ($p < .001$). Our interviews suggested that some Anglo female repeat players preferred mediation to court because they expected to collect more money in mediation. One Anglo female lawyer in mediation told us, "I hate to strap people . . . I let them tell me how much they can afford. I find you get more that way. I don't have to get a judgment."

These Anglo women, like other repeat players in mediation, often agreed to lower MORs and to forgo court-ordered judgments. However, this sacrifice was strategic. Unlike court-annexed mediation programs described elsewhere (e.g., McEwen & Maiman 1981; Vidmar 1984), mediated agreements in this jurisdiction were not routinely enforced by court orders. Thus, the Anglo female claimants in our study appear to have used the mediation forum to exchange somewhat lower overall monetary outcomes and the collection capability of court orders in return for higher probabilities of compliance (McEwen & Maiman 1984,

1989; Van Koppen & Malsch 1991; Rack, Barnes-Anderson, & Margolin 1996).

One of the implications of our findings is that prior research on mediation which has treated ethnic minorities and women as equally disadvantaged may be masking complex interaction effects. Notably, female mediators may pose some unique risks for minority disputants: In particular, our results showed that minority female claimants received significantly lower MORs in cases mediated by two women.

These results may be due in part to differences in the goals of male and female mediators. Carnevale et al. (1989) found that compared with men, women/negotiator subjects in experimental settings were likely to strive harder for integrative agreements and to overestimate the common ground in disputes. Similarly, in interviews with mediators, Buldoc (1990) found that compared with men, women had stronger philosophical associations with mediation, seeing it as part of an ideological commitment to peace, whereas men more often viewed mediation as a straightforward mechanism for increasing dispute processing efficiency.

We found similar patterns in our data, especially in minority claimant cases mediated by women. Compared with other mediator dyads, minority claimant cases mediated by two female mediators were more likely to end in nonmonetary outcomes. In cases mediated by two women, minority claimants reached nonmonetary agreements in 31.8% of the cases, compared with a 9.7% nonmonetary agreement rate for cases mediated by two men and a 16.3% rate for cases mediated by a man and a woman ($p < .05$). In our full sample, there were 10 cases involving two female mediators and a minority female claimant. Remarkably, 9 of these cases reached agreement during the mediation session and the tenth reached agreement immediately following the session.

Given the relatively small sample sizes at this level of disaggregation, more research is clearly required before reaching definitive conclusions. However, our results are consistent with the conclusion that when confronted with an unwilling respondent and a claimant open to nonmonetary solutions, female mediators were significantly more likely than male mediators to encourage resolution rather than returning cases to court.

Taken together, these results amplify research (e.g., Mann 1995; Sampson 1987; LaFree 1985) which concludes that contemporary examples of racial, ethnic, and gender disparities in the United States are often complex, indirect, or institutionalized. Thus, evidence of disparity in the treatment of minorities and women was limited mostly to minority male and female claimants in mediated cases. Minority male and female claimants did worse in cases mediated by at least one Anglo mediator; minority female claimants did worse in cases mediated by two wo-

men. Outcomes in adjudication were explained mostly by case characteristics; there was little evidence that minority and female respondents were disadvantaged in either forum.

C. Implications for Future Research and Small Claims Mediation

Our research was limited to a small claims court in Albuquerque, New Mexico, and whether the findings can be generalized to other ethnic communities in different geographic locations remains open. The minority disputants in our study were mostly Hispanic. Perhaps members of other racial and ethnic groups would fare differently in mediation than do New Mexican Hispanics. Possibly, Cuban Americans in Miami or Puerto Rican Americans in New York might achieve different results in mediation than do New Mexican Hispanics. Indeed, even Hispanics from different parts of New Mexico with different cultural backgrounds might fare differently. Thus, it will be important to replicate this study in other jurisdictions, paying particular attention to differences in mediator attitudes and behavior.

We found that subtracting admitted liability from the MOR is problematic in terms of studying the influence of repeat players on small claims outcomes. We suggest that future small claims researchers instead explore the possibility of including counterclaims as a measure of active disputes. Frequency of counterclaims was unrelated to disputants' ethnicity, gender, or repeat-player status.

Our results raise at least two policy questions for the mediation movement. First, is the relevant model for mediation one that replicates court outcomes? If so, settlement by mediation is more similar to adjudication (McEwen 1991: note 17), and mediators should advise disputants of probable court outcomes. By contrast, if mediation is an alternative to court, then mediators should clearly distinguish mediation from adjudication in terms of variables such as the availability of nonmonetary outcomes and the ability of the process to respond to individual styles and needs. In practice, this might involve clarifying these two forms of mediation or determining which of them is appropriate in a particular dispute.

Second, our results raise the question of how mediators, perhaps especially women, can be strengthened to act in situations in which disputants have unequal expectations and resources. Bush and Folger (1994) argue that the problem of mediator bias stems from differences in mediator goals for agreement. They argue for a "transformative" model of mediation in which the main goal is clarification of the disputants' interests, not the resolution of the dispute. This model blends mediation more fully into therapeutic models (McEwen 1991: note 17) and eliminates settlement facilitation as a primary goal. In a related conclusion,

Duryea (1992) has argued for an “educative” model for dispute intervention in which mediators resemble conflict consultants, suggesting to the parties the advantages and disadvantages of various dispute resolution forums to which they might bring their cases.

In the name of neutrality, mediators may fail to deal with power imbalances in negotiations. Mediator training needs to include cultural awareness, especially awareness of assumptions about the legitimacy of monetary claims and defenses made by nonminorities. Mediators need to develop mechanisms for confronting unwilling disputants. In the predominant form of small claims mediation currently practiced in North America, this confrontation might be handled better through further delineations of the process, its expectations, the disputants’ alternatives, and the mediators’ role. Finally, mediators need greater awareness of their power to bring parties to agreement and to forgo that power when negotiations are imbalanced.

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