# Mediation and Adjudication in the Small Claims Court: The Effects of Process and Case Characteristics

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Research examining the relative effectiveness of mediation and adjudication has raised questions about whether the apparent benefits of mediation can be attributed to differences in the two dispute resolution procedures or, instead, are due to differences in the characteristics of the disputes or disputants. Litigants in four small claims courts provided multiple comparison groups that enabled us to examine case and process effects. Disputes and disputants in mediation and adjudication differed on few attributes. The process, outcomes, and impact of mediation and adjudication differed in ways generally consistent with their theoretical differences. Although the degree of liability admitted by the defendant played a role, overall, differences in the effectiveness of mediation and adjudication were due more to differences in the processes themselves than to differences in the disputes and disputants using each procedure.

Mediation was introduced into the small claims courts during the late 1970s in response to criticisms of the trial process and the quality of justice delivered. The adjudication process was viewed as not appropriate for resolving many of the disputes seen in the small claims court. Because adjudication narrows the dispute by restricting discussion to the legally cognizable issues embedded in a particular incident, a trial may resolve the legal case while leaving untouched the underlying relational or structural causes of the dispute (DeJong 1983; Eckhoff 1967; Mather & Yngvesson 1980–81; Sarat 1976; Silbey & Merry 1982). Nor may the limited range of remedies usually provided by the court adequately resolve the problem (Menkel-Meadow 1985; Ruhnka & Weller 1978). In addition, the adversarial, "win-lose" nature of a trial may lead litigants to adopt polarized positions in order to persuade the judge to decide in their favor and, thus, may exacerbate rather than resolve the conflict (Deutsch 1973; Folberg & Taylor 1984; Fuller 1981; Roehl & Cook 1985). These problems often are compounded by judges' hurried and impersonal

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processing of cases and failure to explore the facts adequately (DeJong, Goolkasian, & McGillis 1983; Yngvesson & Hennessey 1975).

The less formal and less legalistic nature of mediation is thought to make the dispute resolution process less uncomfortable and more understandable for litigants[1] (DeJong et al. 1983; Yngvesson & Hennessey 1975). The focus of mediation is on exploring the problem and alternative solutions that meet the parties' concerns rather than on applying rules of law in order to make a narrow determination of liability (Alper & Nichols 1981; Conner & Surrette 1980; Deutsch 1973; Eckhoff 1967; Folberg & Taylor 1984; Fuller 1981; Yngvesson & Hennessey 1975). Accordingly, mediation is thought to produce intermediate outcomes which, compared with adjudication's primarily binary, right/wrong outcomes (McEwen & Maiman 1981; Menkel-Meadow 1985; Sarat 1976), should make it less likely that the loser feels blamed and humiliated while the winner feels vindicated (Hayden & Anderson 1979; Lind et al. 1990).

The discussion in mediation, not bound by the claim or legal issues, can include the broader context of whatever the disputants feel is relevant to resolving the dispute, including their past relationship, current circumstances, and the future consequences that would follow from various solutions (Alper & Nichols 1981; Eckhoff 1967; Felstiner & Williams 1978; Sarat 1976; Silbey & Merry 1982), which should better enable the parties to maintain their relationship (Folberg & Taylor 1984; Fuller 1981; Roehl & Cook 1985). The disputants' greater control over the mediation process and outcome is thought to lead to greater perceived fairness of and satisfaction with the process (e.g., Houlden et al. 1978; Lind, Lissak, & Conlon 1983; Thibaut & Walker 1978; Tyler, Rasinski, & Spodick 1985) and to produce a more suitable resolution, both of which should result in increased satisfaction with the outcome and compliance (Folberg & Taylor 1984; Goldberg, Green, & Sander 1985; Greenberg & Folger 1983; Lind & Tyler 1988; Menkel-Meadow 1985; Tyler 1984). In addition to providing a more appropriate process for resolving existing disputes, proponents argue that mediation can teach people to manage future disputes constructively without having to turn to a court (e.g., McGillis 1980; Sander 1976).

The claims for mediation have not consistently been supported by empirical research (Roehl & Cook 1985). Specifically with regard to small claims courts, cases resolved in mediation had more intermediate outcomes and greater compliance than did adjudicated cases (McEwen & Maiman 1981; Vidmar 1984, 1985). Litigants in mediated cases were more likely to report re-

[1] Others argue, however, that these same attributes exacerbate resource imbalances between unequal parties, restrict the legal rights of the disadvantaged, and provide little more than second-class justice (e.g., Abel 1982; Auerbach 1983; Tomasic 1982).

duced anger and an enhanced understanding of the other party's point of view (McEwen & Maiman 1981), and litigants in a mixed mediation-arbitration procedure reported less harm to their relationship with the other party than did litigants in adjudicated cases (Sarat 1976). However, differences between mediation and adjudication in litigants' satisfaction with the process and outcome have been mixed. McEwen and Maiman (1981) found litigants in mediation were more satisfied with their general court experience than were those in adjudication, but Goerdt (1992) found no differences in satisfaction with the process. McEwen and Maiman found that mediated outcomes were seen as more fair than trial outcomes; Goerdt found that mediated outcomes were viewed with greater satisfaction only by plaintiffs; Vidmar (1985), however, found no differences in outcome satisfaction.

In contexts other than small claims court, mediated cases resulted in greater compliance and less relitigation than adjudicated cases in some studies but not in others (Kressel & Pruitt 1985; Pearson 1982). Disputants who had used mediation were more likely to report improvements in their relationships, better communication, and less anger than those who had gone through trial (Roehl & Cook 1985), although the improvements did not always last (Kressel & Pruitt 1985). Mediation users tended to be more satisfied with the process and outcome and to see the outcome as more fair than did users of adjudication (Pearson 1982; Roehl & Cook 1985).

However, even consistent findings of "advantages of mediation over adjudication need to be viewed with a skeptical eye" (Vidmar 1985:143). Because few studies have randomly assigned cases to mediation or adjudication, and because it is not possible to randomly assign cases either to reach an agreement in mediation or to not settle and proceed to trial, effects attributed to differences in the two dispute resolution procedures may be due instead to differences in the characteristics of the disputants who use each procedure (Cook & Campbell 1979; Kressel & Pruitt 1985; Levy 1984; MacCoun, Lind, & Tyler 1992). For instance, in the small claims court, mediation-adjudication differences were confounded with the dispute characteristic of admitted liability, so that cases in which the defendant acknowledged partial liability were more likely to settle in mediation, to obtain intermediate outcomes, and to achieve a higher level of compliance than were those in which the defendant denied all liability (Vidmar 1984, 1985). Thus, both admitted liability and resolution procedure have an impact on the nature of the outcome and on compliance, although there is disagreement about which factor plays a stronger role (see McEwen & Maiman 1986; Vidmar 1987). Further research is needed, therefore, to examine the relative impact of process and case characteristics.

An additional problem with existing research on the relative effectiveness of mediation and adjudication is that few studies have explored whether the two dispute resolution procedures differ in practice in the ways they are theorized to differ (Kressel & Pruitt 1985). Some researchers suggest that the contrast between mediation and adjudication processes in operation is quite small; others caution that the label applied to a resolution procedure is not necessarily identical to the process that occurs in it (McEwen & Maiman 1986; Sarat 1988; Silbey & Merry 1982; Vidmar 1987). The lack of difference between the adjudication and mediation processes may be particularly likely in small claims court, where the trial process is more informal and simplified than in general jurisdiction trial courts and where the judge is supposed to play a more active role at trial in eliciting information from the disputants, who generally are unrepresented. These concerns raise the need to more clearly elucidate the distinguishing characteristics of the mediation and adjudication processes in the courts under study (Tyler 1989).

The study reported here examined the characteristics that differentiate the mediation and adjudication processes and the disputants who use each process in order to explore the relative effect of resolution process and case characteristics on mediation-adjudication differences in litigants' evaluations of the third party, descriptions of the outcome, evaluations of the process and outcome, descriptions of their relationship, and reports of compliance. To accomplish this, we interviewed three groups of small claims litigants: those who resolved their dispute in mediation, those who went to trial after not reaching an agreement in mediation, and those who had only a trial.

We used several procedures to examine the relative impact of process and dispute attributes. For some measures, we directly compared the relative contribution of these two factors; for others, we assessed and controlled for the effect of dispute characteristics. In addition, we examined separately the group that had experienced both mediation and trial, rather than combining it with either the mediation or the adjudication group as did McEwen and Maiman (1981), or using it as the "adjudication" group as did Vidmar (1984).[2] This enabled us to explore the effect of litigant characteristics by comparing the experiences of that one group of litigants in both mediation and adjudication, as well as by comparing their reactions to each procedure with those of the other group of litigants in each procedure. We also were able to assess potential effects of self-selection by comparing cases that voluntarily used either mediation or adjudication with those that were assigned by the court either to mediate first or to

[2] Because virtually all cases were required to mediate, Vidmar (1984) had no group that went only to trial, and he relied on the failed mediation group as the adjudication comparison with the successfully mediated cases.

go straight to trial. These different methods allowed us to take into account the role of dispute and disputant characteristics while examining the effectiveness of mediation and adjudication.

## Methodology

### The Research Setting: The Small Claims Process in Massachusetts

This study examined mediation and adjudication in the small claims divisions of four district courts in the metropolitan Boston area. At the time the research was conducted, "small claims" included civil actions involving debt or damages less than $1,200, with no limit on claims for property damage caused by a motor vehicle (Massachusetts General Laws ch. 218, sec. 21). The courts varied in the size of their caseload, the socioeconomic character of their jurisdiction, and whether mediation was voluntary or mandatory.[3] All the courts studied used volunteer mediators trained by the Harvard Mediation Program, whose model of mediation is based on Fisher and Ury's (1983) concept of principled negotiation. The mediators consisted of law students, graduate students, and other members of the community.

At the beginning of the small claims session, before calling the list of cases to determine which parties are present, the clerk announces that mediators are available to help the parties resolve their dispute without a trial.[4] The clerks' descriptions of mediation vary in clarity and comprehensiveness, although they usually emphasize that mediation will reduce the time spent waiting, that the decision to accept a settlement in mediation is voluntary, and that the case will be heard by a judge if a mediated agreement is not reached. In one of the courts studied, the first few cases on the docket list[5] for which both parties are present are first required to try to mediate their dispute; any remaining cases are heard by the judge. In the other courts, when their names are called, litigants are asked to indicate whether they are interested in mediation; mediation is used only if both the plaintiff and defendant agree to it.

The mediator generally takes the parties from the courtroom to a private office for the mediation session. The mediator begins the session by explaining that mediation can be called off at any

[3] In the court Vidmar (1984, 1985) studied, virtually all cases were required to mediate; in the courts McEwen & Maiman (1981) studied, about half the cases could choose mediation or adjudication and the other half were assigned to one of the procedures.

[4] The form the plaintiff completes to file a claim, which later is sent to the defendant as notice of trial, contains a "Notice of Mediation" that informs the parties they can, within 10 days of filing, "elect to submit the claim to mediation" (District Court Department, Trial Court of Massachusetts 1984). Although this option is available, no cases during the period of the study were docketed for mediation at the parties' prior request.

[5] The order of cases on the docket list reflects only the chronological order in which the cases were filed.

time by either party, that both parties must agree to the settlement, and that the mediator's role is not to make a decision but to assist the disputants in fashioning their own agreement. As both disputants tell their respective sides of the story, the mediator guides their discussion of the problem and possible solutions. The mediator helps the parties separate the emotional aspects of the conflict from the substantive issues, identify their underlying interests, understand the other's point of view, and generate workable options that address the concerns of both disputants. For all cases, the mean length of the mediation sessions was 44 minutes (median 35 minutes).[6]

If an agreement is reached, the mediator writes out the terms of the settlement and both parties sign it and receive a copy. The agreement is binding and enforceable, just as a court judgment would be. If an agreement is not reached, the parties return to the courtroom to await a hearing before a judge.

### The Sample

All litigants[7] whose cases were mediated or tried during a five-month period were asked to participate in the study. A total of 281 litigants (175 plaintiffs and 106 defendants) involved in 221 different cases completed an interview. The cases fell into one of three resolution groups: 72 cases achieved an agreement in mediation (the "successful mediation"[8] group), 53 cases went to trial after they were unable to reach a mediated agreement (the "unsuccessful mediation" group), and 96 cases had only a trial (the "adjudication" group). For analyses in which the unit of analysis is the case rather than the litigant, steps were taken to prevent double counting in the 60 cases in which both parties were interviewed.

In all courts, litigants who went to mediation were asked by the mediator at the close of the session whether they would consent to a follow-up telephone interview. Of the litigants in successfully mediated cases, 60% completed an interview, 16% could not be reached after 15 phone calls, and 23% refused. Of litigants in unsuccessfully mediated cases, 64% completed an interview, 19% could not be reached, and 17% refused.

[6] The mediation process in these courts was similar to that described in the Maine courts (Greason 1980; McEwen & Maiman 1981) rather than to the relatively legalistic, quasi-judicial process observed by Vidmar (1984).

[7] Attorneys arguing the cases of absent clients were excluded from this study because of a primary interest in interviewing disputants who were involved personally in the conflict. Their absent clients, usually large businesses such as utility companies, hospitals, or department stores, also were excluded because they could not report on the in-court experience. Courtroom observation, however, suggested that very few cases in this category were mediated or tried; in most, the defendant defaulted.

[8] "Successful mediation" refers merely to achieving an agreement and not to the quality of that agreement.

Different courts required different procedures to obtain the consent of adjudication litigants. In two courts, consent was obtained in the courtroom before any cases were tried. Of these litigants, 43% consented and 57% refused; 36% ultimately were reached and completed an interview. In the other two courts, litigants were contacted by mail after their case had been tried. Of these, 73% did not return the consent form; of those who did, 5% declined to participate and 22% consented to be interviewed. Ultimately, 16% of these litigants were reached and completed an interview.

The lower response rate for the adjudication sample may raise concerns about the representativeness of the adjudication respondents and their comparability with the mediation groups. I would argue that the response-rate differences are due largely to the different methods available for obtaining consent rather than to a selection artifact. Response rates varied directly with the degree of personal contact between litigants and the person requesting consent and varied inversely with the amount of effort litigants had to exert in order to grant consent. The response rate for the mailed sample is comparable to those of other small claims court studies involving mailed surveys (e.g., Elwell with Carlson 1990; Hildebrandt, Mercer, & McNeely 1982; Ruhnka & Weller 1978). Although resources did not permit a follow-up phone call to everyone who had not returned the mailed consent form, a call to 30 randomly selected litigants indicated that this nonresponse could not necessarily be interpreted as a tacit refusal. Half could not be reached, 29% refused an interview, and 21% completed an interview, producing a response rate for those who could be reached that was comparable to the in-court response rate. As further support for the "effort" explanation, changing the mailed consent procedure (i.e., asking litigants to return the form to deny consent rather than to grant it) in a second study of the same courts increased the response rate to 36% (Borrelli 1989).

Disputants' willingness to be interviewed cannot be attributed to their degree of success in the small claims process. First, the response rates of the successful and unsuccessful mediation groups were similar, despite the fact that the latter group had failed to reach an agreement in mediation just prior to agreeing to participate in the study. Second, in two courts the adjudication group's consent was obtained before the trial took place. These litigants' willingness to participate in the study, therefore, could not have been affected by their court experience, the outcome of their case, or compliance. Further, litigants who consented to an interview by mail after trial did not differ from litigants who granted consent in court before trial in their evaluations of the process and outcome, in the relative percentage of those who had won or lost the case, or in compliance.

Finally, although the adjudication group and the unsuccessful mediation group differed in their response rates, they did not differ in compliance or in their descriptions and evaluations of the trial, the judge, and the outcome. Given these findings and the general similarity of our mediation-adjudication findings, discussed below, to the findings of other studies that did not have differential response rates (e.g., McEwen & Maiman 1981; Vidmar 1984), we feel that using data from the adjudication group is not problematic. In addition, as a main focus of the study, we have examined the effect of the dispute and disputant characteristics on which the adjudication group differed from the mediation groups. If one still has concerns about the comparability of the adjudication group, however, one can instead use the data from the unsuccessful mediation group to examine the effects of trial, albeit trial following mediation.

**The Measures**

Litigants were interviewed by telephone 6 to 12 weeks after their court date. The length of the interviews ranged from 15 to 90 minutes, averaging 30 minutes. The interviews consisted of mostly fixed-alternative questions (rated on five-point, Likert-type scales) concerning the characteristics of the litigants, their relationship, and the dispute; their reasons for going to court, for choosing adjudication or mediation, and for accepting or rejecting a settlement in mediation; and the litigants' descriptions and evaluations of the process and outcome of the trial and/or the mediation session. Because the courts do not record information on compliance, litigants also were asked how much of the award or agreement had been paid and whether other terms had been fulfilled.[9] All reported compliance took place before the plaintiff had taken any further court action to enforce the judgment.

Vidmar (1984, 1987) has shown that the degree of liability acknowledged by the defendant is a key factor that must be considered when examining mediation-adjudication differences. Admitted liability was determined by asking both plaintiffs and defendants whether, prior to court, the defendant had admitted owing none, some (amount to be specified), or all of the plaintiff's claim. In cases in which both parties were interviewed, there was 67% plaintiff-defendant agreement on the extent of admitted liability. The disagreements were spread across the different categories; however, plaintiffs tended to ascribe a greater sense

[9] For those cases in which both parties were interviewed, we compared plaintiff and defendant reports of compliance and found a high level of agreement. In 85% of the cases, both parties reported the same level of compliance. In all but one of the cases in which the parties reported different levels of compliance, the difference could be explained by payment being made during the time between the interviews with the first and second party.

of liability to defendants than the defendants themselves had assumed. Defendants are likely to have an accurate understanding and memory of their initial admitted liability, whereas plaintiffs might never have had a clear understanding of the defendant's position or might remember a different amount than the defendant admitted owing at a later point in the dispute. To be conservative, and assuming that the defendant's information is accurate, we report admitted liability analyses based on defendants only.[10]

The measure of winning or losing the case reported here relies on the litigants' assessments of how close the outcome was to what they wanted, compared with how close it was to what the other side wanted. For the sake of brevity, we have not reported the virtually identical results obtained with correlated objective measures, defined as whether the amount of the award or agreement was more or less than 50% of the plaintiff's claim ($r(158) = .66$, $p < .001$) or the amount in dispute ($r(122) = .69$, $p < .001$).[11]

**Analysis**

Discriminant function analysis (DFA) is the statistical procedure used for most of the analyses. DFA derives orthogonal, linear combinations of the predictor variables that maximally discriminate among the groups (i.e., that maximize the ratio of between-group to within-group variability). DFA was the procedure chosen because (1) it holds the error rate constant over all variables in each analysis, thereby avoiding the inflation that would arise from multiple, separate analyses, and (2) it takes into account the intercorrelation among the predictor variables, thus indicating which variables have independent contributions to the overall discrimination and which are redundant (Dillon & Goldstein 1984; Harris 1985; Tabachnick & Fidell 1983). Although it is mathematically the same as multivariate analysis of variance (MANOVA), DFA provides more information about the relative contribution of the intercorrelated predictor variables to the discrimination between the groups (Tabachnick & Fidell 1983). Variables that could not be included in the discriminant function analysis (e.g., categorical measures or variables that did not involve all litigants and, thus, would result in many cases being excluded from the analysis) were analyzed separately.

[10] A consequence of relying on only the defendants is that our sample size for admitted liability analyses is smaller than that of Vidmar's (1984). This could, in part, explain some of our findings that are nonsignificant but in the same direction as Vidmar's significant findings.

[11] We chose to report the subjective measure because it was more highly correlated ($r(124) = -.97$, $p < .001$) than were the objective measures (claim, $r(137) = -.63$, $p < .001$; amount in dispute, $r(105) = -.60$, $p < .001$) with the litigants' own assessment of whether they had won or lost the case, a measure we could not use because it was added partway through the interviewing process.

## Results

### Dispute and Disputant Characteristics Affecting the Choice of Procedure and Settlement

In the small claims process, there are two opportunities for self-selection: choosing a resolution procedure and, in mediation, accepting or rejecting a settlement. We first examined whether litigants who chose mediation could be distinguished from those who chose adjudication on about 50 attributes, grouped conceptually into the following seven categories: goals for coming to court, conflict intensity, nature and length of the relationship between the parties, litigants' evaluations of the other party, pre-court settlement attempts, type of dispute, and demographic information.[12] Disputants who chose mediation could not be distinguished from those who chose adjudication on any of these characteristics.[13] Thus, similar to the findings of McEwen and Maiman (1981), none of the factors that Sarat (1976) found to be related to the choice of adjudication versus mediation-arbitration (i.e., the disputants' relationship, their pretrial settlement attempts, and the type of case) played a role in the choice of procedure.[14]

Second, we examined whether any attributes could distinguish cases that settled in mediation from those that did not. The only factor related to the likelihood of settlement was a set of goals for coming to court. Disputants whose objectives for coming to court reflected a competitive, nonintegrative orientation (e.g., to show the other person that they couldn't be pushed around, to show that they were right, to teach the other person a lesson) were less likely to settle than were disputants for whom these goals were not important ($F(8, 78) = 3.91$, $p < .01$). These goals of vindication rather than restitution are considered a possible indication of escalated conflict (Deutsch 1973; Holmes & Miller 1976; Leff 1970; Vidmar 1981). This finding supports Merry and Silbey's (1984) assertion that people in mediation are

[12] Included in the latter category are gender, age, education, income, and occupation, as well as previous experience in the small claims court and whether one was in court as an individual or on behalf of a business.

[13] Although the number of tests was reduced greatly by using discriminant function analysis, which holds the error rate constant over all variables in each analysis, we also used a Bonferroni-adjusted critical value to keep the alpha over all analyses at .05 (Harris 1985). Before this adjustment was applied, only one characteristic affected the choice of procedure: those who chose mediation reported being less angry with the other party before going to court ($F(1, 126) = 4.54$, $p < .05$).

[14] The lack of a difference between litigants who chose mediation and those who chose adjudication could be due, in part, to the choice not being fully informed. The clerks' descriptions of the process of mediation are minimally instructive and place a heavy emphasis on its time-saving feature. Disputants indicated that the following reasons were important or very important factors in their choice of mediation: save time (72%), might help settle the problem (71%), more informal (56%), and fairer for both sides (51%).

not likely to settle if what they really want from coming to court is to have the other party declared wrong. The likelihood of reaching an agreement in mediation was not affected by whether litigants chose or were required to try mediation (see also McEwen & Maiman 1981) or by any of the other sets of factors.[15]

Two factors that did not affect the choice of procedure or the likelihood of settlement in mediation are of particular note. First, the degree of liability admitted by the defendant did not significantly affect the choice of procedure or likelihood of settlement, although it was in a direction consistent with Vidmar's (1984) findings. Second, disputants with a past or ongoing relationship were not more likely to choose mediation than adjudication, nor were they more likely to reach an agreement in mediation. This finding is contrary to assertions in the literature (e.g., Black 1976; Deutsch 1973; Folberg & Taylor 1984; Sander 1976) but consistent with other studies of small claims mediation (McEwen & Maiman 1981; Vidmar 1984, 1985; but see Sarat 1976).

To be able to attribute mediation-adjudication differences to the procedures themselves rather than to the characteristics of the disputants who use each procedure, we need to compare the composition of the adjudication group with that of the successful and unsuccessful mediation groups. Adjudicated cases differed from mediated cases on two characteristics: the extent of liability admitted by the defendant and the type of dispute.[16] Cases in adjudication were less likely to involve partial-liability[17] disputes (11%) than were cases in both successful and unsuccessful mediation (38% and 35%, respectively) and were more likely to involve no-liability disputes (89%) than were cases in successful (45%) and unsuccessful (62%) mediation ($\chi^2(4) = 18.87$, $p < .001$). Cases in adjudication were less likely to involve full-liability disputes (0%) than cases in successful mediation (17%) but did

[15] Before we adjusted for the number of comparisons, one additional factor, the litigant's occupation, affected the likelihood of settlement. Litigants who were professionals were less likely to reach an agreement (33%) than were litigants who were business managers and owners (76%) or students and unemployed (64%) ($\chi^2(5) = 13.99$, $p < .05$).

[16] Before we adjusted for the number of comparisons, the resolution groups differed on two additional factors. Litigants in adjudication had more competitive goals for coming to court than did litigants in successful mediation ($F(8, 128) = 2.26$, $p < .05$) but did not differ from those in unsuccessful mediation. Litigants in adjudication were less likely than litigants in successful mediation, but more likely than those in unsuccessful mediation, to be business owners or managers; were less likely to be professionals than litigants in unsuccessful mediation; and were more likely to be students or not employed than were litigants in both successful and unsuccessful mediation ($\chi^2(10) = 22.02$, $p < .05$).

[17] Throughout the article, we use Vidmar's (1984, 1985) terms of no-, partial-, and full-liability. We want to make clear, however, that these terms refer only to the defendant's own assessment of her or his liability and not to any independent determination of liability.

not differ from cases in unsuccessful mediation (3%).[18] With regard to the type of dispute, cases in adjudication were less likely to involve payment for goods or services than were cases in successful mediation (31% vs. 48%), less likely to involve personal injury or property damage than cases in unsuccessful mediation (4% vs. 20%), and more likely (14%) to involve car accidents than cases in both successful and unsuccessful mediation (0% and 3%, respectively) ($\chi^2(10) = 26.71$, $p < .01$).

Thus, litigants in the three resolution groups differed on only three attributes: the goals for coming to court, the extent of admitted liability, and the type of dispute. Subsequent analyses of the relative effectiveness of mediation and adjudication examined and, where possible, controlled for the effect of these characteristics as potential confounds.[19] Although statistical control is not an adequate substitute for random assignment, the differences in case composition arose largely from a process to which disputants could not have been randomly assigned (i.e., reaching or not reaching an agreement). We also explored the effect of several characteristics that were not associated with resolution group but that might influence litigants' reactions to dispute resolution procedures: whether one was a plaintiff or defendant, whether one chose or was required to use a given process, and whether one lost or won the case.

### Litigants' Descriptions of the Mediation and Adjudication Process

Most studies of mediation and adjudication do not examine systematically whether the two processes differ (for an exception, see McEwen & Maiman 1981), apparently assuming that they vary "dramatically and categorically" (Kressel & Pruitt 1985:184). However, some researchers (Kressel & Pruitt 1985; McEwen & Maiman 1984, 1986; Silbey & Merry 1982; Vidmar 1984) have suggested that mediation and adjudication differ less in practice than they do in theory. To examine whether and how the mediation and adjudication processes differed in the courts under

[18] Because of its importance as a possible confounding factor, we examined whether admitted liability was related to other dispute or litigant characteristics. Admitted liability varied only with the type of dispute ($\chi^2(10) = 23.52$, $p < .01$). Defendants who admitted owing all of the claim were involved in disputes over loans or unpaid goods and services; defendants who denied owing any of the claim were most likely to be in cases involving unsatisfactory goods and services, car accidents, or landlord-tenant issues; and defendants who admitted some liability were most likely to be involved in personal injury or property damage cases.

[19] Analyses of the interaction of admitted liability and resolution group exclude full-liability cases because of their small number in the adjudication and unsuccessful mediation groups. In addition, it often was not possible to assess the effect of dispute type on mediation-adjudication differences due to the small $n$ in some of the dispute categories when broken down by resolution group. Using the two largest dispute categories (unpaid and unsatisfactory goods and services) as controls, mediation-adjudication differences remained throughout.

study, we obtained litigants' descriptions of 13 characteristics of the process.[20]

The processes, as implemented, are less pure than their ideal types. For example, 60% of disputants in successful mediation sessions said very few solutions were discussed. Nonetheless, the successful mediation and adjudication groups could be distinguished with 85% accuracy on the basis of the first 10 process characteristics listed in Table 1. Given that variation in each process was inevitably introduced by the 11 judges and the 33 mediators in the courts studied, this degree of discrimination between the procedures is quite remarkable.

**Table 1.** Descriptions of the Process and the Third Party as a Function of Resolution Group

| Process and Third Party Characteristics | Canonical Loadings | Group Means: Successful Mediation | Group Means: Adjudication |
|---|---|---|---|
| **Process characteristics*** ** | | | |
| Length of session | .69 | 46.90 | 15.04 |
| Hurried/unhurried | .45 | 4.28 | 3.16 |
| Few solutions discussed | .37 | 2.00 | 1.24 |
| Control over presentation or opportunity to tell one's story | .37 | 4.61 | 3.85 |
| Thorough/superficial | −.32 | 1.69 | 2.64 |
| Control over outcome | .32 | 3.72 | 2.76 |
| Formal/informal | .30 | 4.01 | 3.32 |
| Open/not open | −.26 | 1.54 | 2.20 |
| Understandable/confusing | −.25 | 1.38 | 1.97 |
| Discussion/argument | −.19 | 1.94 | 2.50 |
| **Other process characteristics** | | | |
| Private/public*** | | 1.51 | 4.10 |
| Discuss issues other than money*** | | 4.02 | 3.01 |
| Focus of session:*** | | | |
| Right/wrong | | 4% | 67% |
| Ways to solve problem | | 68% | 21% |
| Both | | 28% | 12% |
| **Third-party characteristics*** ** | | | |
| Cold/warm person | .89 | 4.09 | 3.14 |
| Interested in/concerned about dispute | .77 | 4.39 | 3.46 |
| Understood what dispute was about | .42 | 4.25 | 3.69 |
| Active/passive | −.41 | 2.17 | 2.67 |
| Remained neutral during session | .32 | 1.88 | 1.75 |

NOTE: Items with canonical loadings greater than .30 are considered to contribute to the discriminant function (Tabachnick & Fidell 1983). Length of session was reported in minutes; other characteristics were rated on five-point scales.

*** $p < .001$

Disputants in successful mediation, compared with those in adjudication, described the process as longer, less hurried, involving discussion of a larger number of solutions, providing the disputants with more opportunity to tell their side of the story

[20] The litigants' perceptions of the mediation sessions and trials were consistent with the researcher's observations of the two processes.

and with greater control over their presentation,[21] permitting more control over the outcome, and being more thorough ($F(10, 140) = 12.75$, $p < .001$; see Table 1 and the Appendix). Whether the session was informal, open, understandable, and more like a discussion than an argument did not contribute independently to the overall discrimination between mediation and adjudication. Mediation also was reported to be more private ($F(1, 164) = 182.95$, $p < .001$), focusing more on ways to solve the problem than on who was right or wrong ($\chi^2(2) = 53.74$, $p < .001$) and providing more opportunity to discuss issues other than money ($F(1, 137) = 16.12$, $p < .001$). Thus, litigants in mediation and adjudication described the processes as differing in ways that are generally consistent with their theoretical differences (Folberg & Taylor 1984; Sander 1976; Thibaut & Walker 1975, 1978; Yngvesson & Hennessey 1975) and with the differences observed by McEwen and Maiman (1981).

Disputants in unsuccessful mediation did not differ from those in successful mediation when describing their mediation session[22] or from those in adjudication when describing their subsequent trial. However, the unsuccessful mediation group's descriptions of their mediation session and their trial differed on five of six measures (each at $p < .001$).[23] They described mediation as longer, more thorough, more open, and providing greater control over their presentation and more opportunity to tell their side of the story. The two processes did not differ on being more like a discussion or an argument. Thus, the different groups of litigants viewed the same process similarly, and the same group of litigants viewed the different processes differently. This overall pattern suggests that descriptions of the process are influenced heavily by the characteristics of the process rather than by the characteristics of the litigants in each process.

The effect of specific litigant characteristics on process descriptions was, nevertheless, examined. Two factors, admitted liability ($F(10, 51) = 2.78$, $p < .01$) and whether one lost or won the case ($F(10, 118) = 2.32$, $p < .05$), interacted with resolution group to affect process descriptions. Mediation-adjudication differences in process descriptions were larger for partial-liability than for no-liability cases, and no-liability versus partial-liability differences were larger in adjudication than in mediation. Similarly, mediation-adjudication differences in process descriptions were

[21] To avoid potential multicollinearity problems due to their high intercorrelation, "control over one's presentation" and "opportunity to tell one's side of the story" were combined to form a single item with an alpha reliability coefficient of .85.

[22] In addition to the above measures, the successful and unsuccessful mediation groups did not differ on how much they felt the mediator had pressured them to accept a settlement; 72% reported little or no pressure, and 11% reported considerable pressure.

[23] To reduce repetition and the length of the interview, we asked the unsuccessful mediation group all 13 questions about their mediation session but only a subset of 6 questions about their trial.

larger for losing than for winning litigants, and winning versus losing differences were larger in adjudication than in mediation. Nonetheless, when admitted liability and losing/winning status were held constant, mediation-adjudication differences in process descriptions remained. In addition, mediation-adjudication differences remained when the goals for coming to court were used as covariates. Nor did plaintiff/defendant status or mandatory/voluntary use of mediation or adjudication affect process descriptions. Thus, mediation-adjudication differences in process descriptions were unaffected by these factors and remained when we controlled for the two characteristics that did have an impact—admitted liability and winning or losing the case.

**Litigants' Evaluations of the Mediator and Judge**

Litigants in successful mediation described the third party more favorably than did those in adjudication ($F(5, 133) = 6.01$, $p < .001$; see Table 1). The mediator was seen as warmer, more interested in the dispute, having a better understanding of the dispute, more active, and more likely to have remained neutral than was the judge. It is worth noting that 23% of litigants in adjudication described the judge as being cold, and 25% and 27%, respectively, felt the judge was not interested in and did not understand their dispute.

Litigants in unsuccessful mediation, despite the fact that their session did not result in settlement, did not differ from those in successful mediation in their ratings of the mediator on any of the above five characteristics. Nor did litigants in unsuccessful mediation differ from those in adjudication in their ratings of the judge's neutrality and comprehension of the dispute.[24] However, litigants in unsuccessful mediation felt that the judge who heard their dispute had conducted the session in a less neutral manner ($t(52) = -2.13$, $p < .05$) and was somewhat less likely to have understood the dispute ($t(51) = 1.84$, $p = .07$) than was the mediator. Thus, the same group of litigants evaluated the judge and mediator differently, and the different groups of litigants evaluated the same third party similarly. This pattern suggests that reported differences between mediators and judges were largely unaffected by differences in disputant characteristics or by the ability of mediation to resolve the dispute, but reflect the litigants' assessments of the attitudes and actions of the third party.

Only one specific litigant characteristic had an effect on third-party ratings: whether one lost or won the case interacted with resolution group ($F(5, 115) = 6.36$, $p < .001$). Nonetheless, with losing/winning status held constant, mediation-adjudication

[24] To reduce repetition in the interview, litigants in unsuccessful mediation were asked to rate the judge on only these two attributes.

differences in third-party evaluations remained. Plaintiff/defendant status, mandatory/voluntary use of mediation or trial, and the degree of admitted liability had no significant independent effect on third-party ratings and did not interact with resolution group. In addition, mediation-adjudication differences remained when the goals for coming to court were used as covariates.

### Litigants' Descriptions of Outcomes

Adjudication's reliance on legal rules as a basis for the decision and its emphasis on monetary damages are thought to produce primarily monetary and binary outcomes, whereas mediation's allowing a wider range of concerns and criteria to be considered in forming a mutually acceptable agreement is thought to produce more intermediate monetary outcomes, as well as agreements that include nonmonetary provisions or payment schedules (e.g., Menkel-Meadow 1985; Sarat 1976). Consistent with the findings of other studies (McEwen & Maiman 1981; Sarat 1976; Vidmar 1984), the outcomes reported by litigants in mediation and adjudication differed as expected. Mediated agreements were more likely than awards in the adjudication group to involve nonmonetary conditions[25] instead of or in addition to monetary outcomes ($\chi^2(2) = 7.13$, $p < .05$), to provide time schedules for payment ($\chi^2(1) = 15.67$, $p < .001$), and to require on-the-spot payment of at least some of the money ($\chi^2(1) = 19.78$, $p < .001$) (see Table 2). For these measures, the trial outcomes of disputants in unsuccessful mediation did not differ from the outcomes of the adjudication group, but they did differ significantly from mediated agreements. In addition, mediated agreements were less likely than awards in the adjudication group to be all or none of the plaintiff's claim ($\chi^2(1) = 7.67$, $p < .01$) and were more likely to represent an intermediate percentage (i.e., between 25% and 75%) of the claim ($\chi^2(1) = 12.33$, $p < .001$). The unsuccessful mediation group's outcomes were midway between those of the adjudication and successful mediation groups and did not differ significantly from either group. Nevertheless, when we compared mediated agreements with trial awards (i.e., combining the adjudication and unsuccessful mediation groups), mediation still produced fewer binary ($\chi^2(1) = 5.64$, $p < .05$) and more intermediate outcomes ($^2(1) = 9.59$, $p < .01$).

The apparent mediation-adjudication differences in monetary outcomes, however, may be overstated by using the percentage of the plaintiff's claim awarded (or agreed to) as the outcome measure (Vidmar 1984). Because it does not reflect the amount actually in dispute in cases in which the defendant ad-

[25] Examples of nonmonetary conditions include the defendant's replacing a product that did not work, making necessary repairs on a car, or returning the plaintiff's furniture and other belongings.

**Table 2.** Outcomes as a Function of Resolution Group

| Award or Agreement | Percentages | | | |
|---|---|---|---|---|
| | Successful Mediation | Adjudication | Unsuccessful Mediation | Unsuccessful Mediation & Adjudication Combined |
| % of claim (all cases) | | | | |
| Binary (0 or 100%)* | 53 | 74 | 61 | 69 |
| Intermediate (25–75%)** | 43 | 18 | 31 | 23 |
| % of claim (defendants only) | | | | |
| Binary* | 41 | 68 | 53 | 61 |
| Intermediate** | 56 | 21 | 36 | 27 |
| % of amount in dispute (defendants only) | | | | |
| Binary | 52 | 68 | 61 | 64 |
| Intermediate† | 42 | 21 | 25 | 23 |
| Nonmonetary terms in addition to monetary** | 21 | 9 | 8 | 8 |
| Only nonmonetary terms** | 17 | 10 | 3 | 7 |
| Time schedule for payment*** | 38 | 8 | 8 | 8 |
| On-the-spot payment of at least some money*** | 31 | 2 | 0 | 1 |

NOTE: Probability levels in the table refer to the comparison of mediated agreements with trial awards (i.e., adjudication and unsuccessful mediation combined). Full-liability cases are excluded from the two "defendants only" items.

† $p = .052$ * $p < .05$ ** $p < .01$ *** $p < .001$

mits owing some of the claim, the outcome as a percentage of the plaintiff's claim exaggerates the number of nonbinary and intermediate outcomes, particularly for the mediation group because that group contains more partial-liability disputes than does the adjudication group. Vidmar (1984) has proposed the percentage of the amount in dispute (i.e., the award minus admitted liability, divided by the claim minus admitted liability) as a more conceptually appropriate outcome criterion. Accordingly, we repeated the outcome analyses using the percentage of the amount in dispute[26] and found that mediated outcomes were not significantly more likely to be nonbinary than were the outcomes of the adjudication group, although mediated outcomes were somewhat more likely to be intermediate ($\chi^2(1) = 3.47$, $p = .06$).[27] Thus, when we used an outcome measure based on the amount in dispute instead of the percentage of the claim, mediation-adjudica-

[26] Because the calculation of the amount in dispute excludes plaintiffs and full-liability cases, for comparison purposes, the second item in Table 2 provides percentage-of-claim data for the same subgroup of litigants.

[27] The unsuccessful mediation group did not differ from either the successful mediation or the adjudication group in the extent to which their outcomes were binary or intermediate. When we compared mediated agreements with trial awards (i.e., combining the adjudication and unsuccessful mediation groups), there was no difference in binary awards, but mediated agreements were somewhat more likely than trial awards to produce outcomes that represented an intermediate percentage of the amount in dispute ($\chi^2(1) = 3.76$, $p = .052$).

tion differences in the monetary outcome were greatly reduced, although not entirely eliminated. The present data may show a smaller difference between the two outcome measures than Vidmar's (1984) data because we had a smaller proportion of partial-liability cases, the only cases for which the amount-in-dispute calculation changes the outcome.

The case characteristic of admitted liability is thought to be a potential confound that may account for mediated cases appearing more likely to have intermediate outcomes (McEwen & Maiman 1986; Vidmar 1984, 1987). If no-liability cases are more likely than partial-liability cases to result in binary outcomes and less likely to result in intermediate outcomes, apparent mediation-adjudication differences in outcomes could be due to differences in the relative proportion of no-liability and partial-liability cases in the two groups. Indeed, across the three resolution groups, no-liability cases were more likely to have an outcome that was a binary percentage of the claim (63% vs. 32%) ($\chi^2(1) = 7.72$, $p < .01$) and were less likely to have an outcome that was an intermediate percentage of the claim (29% vs. 57%) than were partial-liability cases ($\chi^2(1) = 6.51$, $p < .05$). When we used the percentage of amount in dispute as the outcome measure, we found no significant differences among liability types in the percentage of binary or intermediate outcomes. Perhaps the effect disappears because the amount of admitted liability is already part of the calculation of the amount in dispute (but see Vidmar 1987).

Given that both admitted liability and resolution group affected the nature of the outcome, a set of Mantel-Haenszel[28] chi-square analyses were conducted to examine the effect of each of these two factors on the outcome while controlling for the other factor. Neither resolution group nor admitted liability, when controlling for the other, had a significant effect on whether the outcome was all or none of the claim. With admitted liability controlled, resolution group still had a significant effect on whether the outcome was an intermediate percentage of the claim ($\chi^2(1) = 5.42$, $p < .05$), but admitted liability had no effect when controlling for resolution group.[29] Thus, in contrast to Vidmar's (1987) finding that admitted liability has a stronger effect than resolution procedure on whether the outcome is binary, our data support the conclusion that resolution procedure has a stronger ef-

[28] This statistical procedure tests the association between two binary variables, controlling for a third variable (Wilkinson 1990).

[29] Using the percentage of the amount in dispute produced similar results. There was no effect on binary outcomes of either resolution group or admitted liability when controlling for the other. Resolution group had a marginal effect on whether the outcome was intermediate when we controlled for admitted liability ($\chi^2(1) = 3.52$, $p = .061$), but admitted liability had no effect when we controlled for group.

fect than admitted liability on intermediate outcomes and a relatively equal effect on binary outcomes.[30]

**Litigants' Evaluations of the Process and the Outcome**

Both the mediation and the procedural justice literatures would predict that litigants in mediation would view the resolution process and the outcome as more fair and would be more satisfied than would litigants in adjudication (e.g., Folberg & Taylor 1984; Greenberg & Folger 1983; Lind & Tyler 1988). Although some studies have found that litigants evaluate mediation more favorably than adjudication (e.g., McEwen & Maiman 1981; Pearson 1982), others have not (e.g., Goerdt 1992; Vidmar 1985). In the present study, disputants in mediation evaluated the dispute resolution process in particular, and the small claims court in general, more favorably than did disputants in adjudication, but they did not differ in their evaluations of the outcome.

The mediation *process*, regardless of whether it resulted in a settlement, was evaluated as more fair and satisfying than trial (see Table 3). When assessing the mediation session, both the successful ($F(2, 164) = 6.81$, $p < .01$) and unsuccessful ($F(2, 145) = 3.97$, $p < .05$) mediation groups felt that the resolution process was more fair and were more satisfied with it than was the adjudication group. The unsuccessful mediation group did not differ from the successful mediation group in judging the fairness of their mediation session, but they were somewhat less satisfied with the process ($F(2, 120) = 3.06$, $p = .051$). The unsuccessful mediation group's evaluations of their trial did not differ from those of the adjudication group. However, litigants in unsuccessful mediation did evaluate their mediation session as more fair than their subsequent trial ($t(51) = -3.78$, $p < .001$) and were more satisfied with the way it was conducted ($t(52) = 2.23$, $p < .05$). This pattern suggests that process evaluations are influenced heavily by the process rather than by the litigants in each process.

Litigants in mediation and adjudication did not differ in their assessments of the fairness of and satisfaction with the *outcome*.[31] Litigants in the unsuccessful mediation group evaluated their ultimate outcome somewhat less favorably than did those in successful mediation ($F(1, 120) = 3.11$, $p = .08$) but did not differ from those in adjudication. The lack of significant differences in outcome evaluations may reflect the lack of mediation-adjudica-

[30] We also examined whether other case characteristics affected resolution group differences in the outcome. Mandatory/voluntary use of mediation or trial did not affect the outcome, and mediation-adjudication differences remained when we controlled for litigants' goals for coming to court.

[31] Due to their high intercorrelation ($r(163) = .87$, $p < .001$), litigants' assessments of the fairness of the outcome and their satisfaction with it were combined to form a single item with Cronbach's alpha of .94.

**Table 3.** Process and Outcome Evaluations: Successful Mediation (SM), Adjudication (A), and Unsuccessful Mediation (UM) Referring to Mediation and Trial

| | Canonical Loadings | | | Group Means | | | |
|---|---|---|---|---|---|---|---|
| Evaluations | SM A** | SM UM† | A UM* | SM | A | UM (Med.) | UM (Trial) |
| Process | | | | | | | |
| Fairness | .80 | −.06 | .97 | 4.35 | 3.73 | 4.38 | 3.43 |
| Satisfaction | .96 | .88 | .31 | 4.25 | 3.54 | 3.75 | 3.04 |
| Outcome fairness and satisfaction | | | | $3.58_a$ | 3.27 | — | $3.07_a$ |
| Small claims courts generally fair | | | | $3.67_{ba}$ | $3.10_b$ | $3.16_a$ | |
| Would use same procedure again | | | | $75\%_c$ | $56\%_{cb}$ | 65% | $35\%_b$ |

NOTE: For the canonical loadings, the unsuccessful mediation group's evaluations refer to mediation. The items with the same letter subscript are significantly different: $_a$ at $p < .10$, $_b$ at $p < .05$, and $_c$ at $p < .001$.

† $p = .051$ * $p < .05$ ** $p < .01$

tion differences in the actual monetary outcome received and in the assessment of one's outcome relative to the other party's. To some extent, the pattern of outcome evaluations parallels differences among the resolution groups in how the award or agreement compared with what litigants had expected to receive before appearing in court. Litigants in the successful mediation group were less likely than those in the unsuccessful mediation group ($F(1, 117) = 9.02$, $p < .01$) and, to a lesser extent, the adjudication group ($F(1, 158) = 3.13$, $p = .08$) to say that their outcomes were worse than expected.

Differences appeared in disputants' more general assessments of the small claims court. Litigants in successful mediation were more likely to say the courts generally are fair in dealing with small claims disputes than were litigants in adjudication ($F(1, 149) = 5.77$, $p < .05$) and, to a lesser extent, in unsuccessful mediation ($F(2, 199) = 2.81$, $p = .063$).[32] Of those litigants who expressed a clear preference for which procedure they would want to use if they had a future small claims case, 75% in successful mediation said they would want to use mediation again, whereas only 56% in adjudication said they would want to use adjudication again ($\chi^2(1) = 12.61$, $p < .001$). Litigants in unsuccessful mediation did not differ from those in mediation in their willingness to use mediation again, even though they did not achieve a resolution of their dispute through that procedure. They were, however, less likely than those in adjudication to say they would use adjudication again ($\chi^2(1) = 5.23$, $p < .05$). Unsuc-

[32] Admitted liability, plaintiff/defendant status, and mandatory/voluntary use of procedure did not affect perceptions of the court's general fairness independently or in interaction with resolution group. Mediation-adjudication differences remained when litigants' goals for coming to court were used as covariates. There was, however, a marginal interaction of losing/winning status and resolution group ($F(1, 129) = 3.11$, $p = .08$). When we held losing/winning status constant, there were no mediation-adjudication differences between winning litigants, only between losing litigants ($F(1, 51) = 9.40$, $p < .01$).

cessful mediation litigants were almost twice as likely to say they would prefer mediation to adjudication for a future case.

The effect of specific litigant characteristics on process and outcome evaluations was examined.[33] Admitted liability significantly interacted with resolution group to affect both process[34] ($F(1, 65) = 17.46$, $p < .001$) and outcome evaluations ($F(1, 63) = 8.03$, $p < .01$). When we held admitted liability constant, mediation-adjudication differences appeared for partial-liability cases but not for no-liability cases. Defendants in partial-liability cases evaluated the process ($F(1, 17) = 99.78$, $p < .001$) and outcome ($F(1, 17) = 13.55$, $p < .01$) of mediation more favorably than adjudication. This suggests that admitted liability may partially account for mediation-adjudication differences in evaluations. However, the effect is not due to generally more positive evaluations by defendants in partial-liability cases. In fact, across resolution groups, defendants in partial-liability cases evaluated the process *less* favorably than did those in no-liability cases ($F(1, 65) = 5.31$, $p < .05$) and did not differ in outcome evaluations.

The interaction reflects that defendants in partial-liability cases are particularly dissatisfied with adjudication. Holding constant resolution group, we found that defendants in partial-liability cases evaluated the trial process ($F(1, 33) = 12.24$, $p < .01$) and, to a marginal extent, the outcome ($F(1, 31) = 3.39$, $p = .075$) less favorably than did those in no-liability cases. However, the reverse was true for mediated cases: defendants in partial-liability cases evaluated the outcome ($F(1, 32) = 5.94$, $p < .05$) and, to a marginal extent, the process ($F(1, 32) = 3.83$, $p = .06$) *more* favorably than did those in no-liability cases. Defendants who admit partial liability may want to explain the circumstances involved in the dispute to justify why they owe only some of the money, but they cannot do so under the narrowed scope of relevance and time constraints at trial. Thus, defendants who admit partial liability may find a better fit between what they feel is needed for a fair resolution and mediation's broader discussion, whereas the more right/wrong focus of adjudication may provide a better fit for defendants who deny liability.

Whether one lost or won the case also interacted with resolution group to affect process ($F(1, 139) = 9.15$, $p < .01$) and outcome ($F(1, 137) = 9.80$, $p < .01$) evaluations. When we held losing/winning status constant, only among litigants who lost were the mediation process ($F(1, 55) = 19.32$, $p < .001$) and outcome ($F(1, 54) = 13.41$, $p < .01$) evaluated more favorably than the ad-

[33] Plaintiff/defendant status and voluntary/mandatory use of mediation or adjudication did not affect process and outcome evaluations independently or in interaction with resolution group. Nor did the pattern of evaluations change when litigants' goals for coming to court were used as covariates.

[34] To reduce the number of analyses conducted, measures of process fairness and satisfaction were combined to form an index with Cronbach's alpha of .80.

judication process and outcome. When we held resolution group constant, differences between losing and winning litigants in their assessments of the process and outcome were larger for adjudication (process: $F(1, 89) = 47.32$, $p < .001$; outcome: $F(1, 88) = 242.91$, $p < .001$) than for mediation (process: $F(1, 50) = 3.90$, $p = .054$; outcome: $F(1, 49) = 31.10$, $p < .001$), with litigants who lost at trial making the most negative evaluations. These findings are consistent with the "vindication/condemnation" effect observed by Lind et al. (1990) and McEwen and Maiman (1981).

For those cases in which both parties were interviewed, we examined the level of agreement on process and outcome evaluations. The parties in 73% of mediated cases, compared with 58% of adjudicated cases, agreed[35] on their rating of the fairness of the process. The parties in 58% of mediated cases, but only 33% of adjudicated cases, agreed on their assessment of the fairness of the outcome and their satisfaction with it. Although these findings are not statistically significant, they are consistent with McEwen and Maiman's (1981) finding that litigants were more likely to share perceptions of the fairness of the outcome following mediation than adjudication. These findings on plaintiff-defendant agreement in mediation-adjudication evaluations parallel the above pattern of differences between losing and winning litigants.

### Correlates of Process and Outcome Evaluations

We were interested in exploring how different factors influenced litigants' perceptions of procedural and distributive fairness (see generally Leventhal 1976; Lind & Tyler 1988). Analyses were conducted across all three resolution groups to examine the extent to which process and outcome evaluations were related to characteristics of (1) the dispute and disputants, (2) the process, (3) the third party, and (4) the outcome.

None of several sets of disputant characteristics were significantly related to either process or outcome evaluations, accounting for only 1% to 4% of the variance. The characteristics examined included litigants' goals for coming to court, the litigants' relationship, admitted liability, previous experience in small claims court, and the litigants' age, education, income, and gender.

A set of procedural characteristics[36] accounted for 65% of the variance in procedural fairness judgments ($F(6, 189) = 57.58$,

[35] Agreement was defined as both parties rating an item "1" or "2" or both rating it "4" or "5."

[36] In the analyses in this section, the unsuccessful mediation group's assessments referred to their trial, the procedure in which their outcome was determined. Descriptions of only six features of their trial and two characteristics of the judge had been obtained. Analyses using the full set of process and third-party variables, with the unsuccessful mediation group describing mediation, produced similar results.

$p < .001$). The features of the process that contributed to evaluations of the process as fair and satisfying included the session being thorough, open, providing disputants with an opportunity to tell their side of the story and with control over the presentation, and, marginally, providing disputants with control over the outcome[37] (see Table 4). In addition, evaluating the third party as neutral and as understanding the dispute accounted for 48% of the variance in procedural evaluations ($F(2, 211) = 95.88$, $p < .001$).

Thus, consistent with the procedural justice literature, disputant control over the process was a major factor affecting assessments of the procedure and played a stronger role than outcome control (Houlden et al. 1978; Lind et al. 1983; Thibaut & Walker 1978; Tyler et al. 1985; see also Conley & O'Barr 1990). "Dignitary process features" also were found to have an impact on procedural fairness judgments (see also Lind & Tyler 1988; Lind et al. 1990; Tyler 1984, 1988). Litigants who participated in a session that they considered to be thorough and open, with a third party who they saw as neutral and understanding the dispute, may have felt that their dispute was taken more seriously and that any decision reached was based on an unbiased consideration of more complete information, contributing to their more favorable evaluations of the process.

Outcome measures accounted for 30% of the variance in procedural fairness judgments ($F(3, 192) = 27.57$, $p < .001$), less than half the amount of variance accounted for by process characteristics. The outcome measures that contributed to procedural fairness evaluations were whether the outcome was better or worse than one expected and whether the outcome was closer to what the disputant wanted compared with what the other party wanted. The objective measure of the outcome as a percentage of the plaintiff's claim was not related to procedural assessments (see also Lind et al. 1990).

The set of process characteristics accounted for 46% of the variance in outcome evaluations ($F(6, 186) = 26.00$, $p < .001$), a smaller impact than on process evaluations. The process features that were related to assessments of the outcome as fair and satisfying included the process permitting control over the outcome, being thorough, and, to a marginal extent, being more like a discussion than an argument.[38] The importance of outcome or decision control is consistent with control and procedural justice

[37] Outcome control showed a significant bivariate correlation with process evaluations but only a marginally significant regression coefficient, suggesting that outcome control is related to procedural judgments through its relationship with other process characteristics.

[38] Length is not directly related to outcome evaluations, given its nonsignificant bivariate correlation, but appears to make a significant contribution because it suppresses irrelevant variance in the other predictor variables (see Tabachnick & Fidell 1983). When length is dropped from the equation, the other predictors show virtually the same rela-

**Table 4.** Correlates of Process and Outcome Evaluations

| Variable | Process Evaluations | | Outcome Evaluations | |
|---|---|---|---|---|
| | *r* | *Beta* | *r* | *Beta* |
| **Process-related variables** | | | | |
| Control over presentation or opportunity to tell one's story | .66*** | .21*** | .34*** | −.04 |
| Thorough/superficial | −.72*** | −.38*** | −.47*** | −.26*** |
| Control over outcome | .47*** | .08† | .59*** | .48*** |
| Open/not open | −.66*** | −.26*** | −.37*** | −.04 |
| Discussion/argument | −.38*** | −.07 | −.28*** | −.11† |
| Length of session | .15* | −.01 | −.10 | −.20*** |
| Variance accounted for ($R^2$) | | .65 | | .46 |
| **Third-party evaluations** | | | | |
| Understood dispute | .65*** | .25*** | .55*** | .50*** |
| Remained neutral | .39*** | .58*** | .30*** | .16** |
| Variance accounted for ($R^2$) | | .48 | | .32 |
| **Outcome-related variables** | | | | |
| Outcome as percentage of claim | .13† | .03 | .23** | .07† |
| Outcome relative to expectations | .46*** | .20* | .71*** | .28*** |
| Outcome relative to other party's outcome | .53*** | .39** | .83*** | .63*** |
| Variance accounted for ($R^2$) | | .30 | | .74 |
| Evaluation of the court's general fairness | .58*** | | .63*** | |
| Outcome evaluations | .61*** | | | |

† $p < .10$ * $p < .05$ ** $p < .01$ *** $p < .001$

research (e.g., Fiske & Taylor 1984; Greenberg & Folger 1983; Langer 1983; Liem 1975). The openness of the process and the opportunity to tell one's story and have control over the process showed significant bivariate correlations with outcome evaluations but nonsignificant regression coefficients, suggesting that these features are related to assessments of outcome fairness and satisfaction through their relationship with some other process characteristic. Evaluations of third parties accounted for 32% of the variation in outcome evaluations ($F(2, 208) = 48.70$, $p < .001$), with both the third party's neutrality and understanding the dispute making significant contributions.

The set of outcome measures accounted for 74% of the variation in outcome evaluations ($F(3, 190) = 179.49$, $p < .001$), more than twice as large an impact as on process evaluations. The subjective measures of the outcome relative to the other party's outcome and relative to pre-court expectations were better predictors of assessments of outcome fairness and satisfaction than was the objective measure of the outcome as a percentage of the claim (see also Lind et al. 1990).[39] This pattern is consistent with theories that maintain that outcome satisfaction is influ-

tionship, individually and jointly ($R^2 = .43$), with outcome evaluations as when length is included in the equation.

[39] Analyses using the percentage of the amount in dispute instead of the percentage of the claim as the objective outcome measure produced a similar pattern of results for both outcome and process evaluations.

enced more by one's assessment of the outcome compared with expectations or with others' outcomes than by the absolute outcome received (e.g., Adams 1965; Brickman, Coates, & Bulman 1978; Helson 1964; Kelley & Thibaut 1978).

In summary, process, outcome, and third-party attributes were related to both process and outcome evaluations, whereas disputant characteristics were not related to either process or outcome evaluations.[40] Process characteristics were related more strongly to procedural than to outcome evaluations, and outcome measures were related more strongly to outcome than to procedural evaluations.[41] Nonetheless, the set of process features made a significant independent contribution, beyond that made by the set of outcome measures, to evaluations of the process ($F(6, 171) = 33.60$, $p < .001$) and the outcome ($F(6, 171) = 3.32$, $p < .01$). This supports the view of process-oriented procedural justice theories that procedural fairness judgments are influenced more by the process than by the outcome received (e.g., Lind et al. 1983; Lind & Tyler 1988; Tyler et al. 1985).

The relative predictive ability of these sets of factors is similar to that found in tort cases (Lind et al. 1990) and suggests that the more favorable process evaluations of mediation over adjudication are more likely due to differences in the processes than to differences in the litigants using each procedure. The greater perceived fairness of and satisfaction with the mediation process is not surprising given that mediation was rated higher than adjudication on the four characteristics contributing most to process evaluations: thoroughness, openness, process control, and outcome control. And the lack of mediation-adjudication differences in outcome evaluations is consistent with the lack of differences in both the objective and subjective outcome measures. Mediation's more favorable procedural justice ratings may explain the mediation group's greater willingness to use the same procedure again and their greater likelihood to rate the small claims court in general as more fair (see generally Lind & Tyler 1988).

### Litigants' Descriptions of Their Relationship

Compared with adjudication, mediation is thought to reduce the hostility between the parties (e.g., Folberg & Taylor 1984; Fuller 1981) and has been found to reduce the parties' anger, enhance their understanding, and be less destructive to their relationship (McEwen & Maiman 1981; Sarat 1976). In the present

[40] Separate regression analyses with plaintiffs and defendants produced similar patterns.

[41] The set of outcome measures accounted for a greater proportion of the variance in the general assessment of the fairness of the small claims court ($R^2 = .35$) than did the process characteristics ($R^2 = .28$) or third-party evaluations ($R^2 = .24$).

study, the effect of the dispute resolution procedures on the parties' relationship was mixed. Disputants in successful mediation, compared with those in adjudication ($F(1, 124) = 5.47$, $p < .05$) and unsuccessful mediation ($F(1, 85) = 8.41$, $p < .01$), showed a greater pre- to post-court reduction in their negative ratings of the other party (e.g., as unreasonable, stubborn, unpleasant) on a six-item index. The successful mediation group's ratings of the other party became less negative ($t(50) = -2.29$, $p < .05$), the adjudication group's ratings did not change, and the unsuccessful mediation group's ratings became somewhat more negative ($t(35) = 2.03$, $p = .05$). All three groups reported a similar, significant reduction in anger toward the other person.

Litigants who resolved their dispute in mediation were more likely to report that the other person had tried to understand their point of view during the session than did litigants in adjudication ($F(1, 157) = 13.26$, $p < .001$) and unsuccessful mediation ($F(1, 109) = 17.78$, $p < .001$). The mediation group did not differ from the adjudication and unsuccessful mediation groups in how well they felt they understood their opponent's point of view by the end of the session, although the unsuccessful mediation group felt they understood the other party's position better than did the adjudication group ($F(1, 141) = 6.32$, $p < .05$). Disputants involved in ongoing relationships who reached an agreement in mediation said the dispute had a less negative effect on their relationship than did those in adjudication ($F(1, 47) = 6.05$, $p < .05$) and unsuccessful mediation ($F(1, 32) = 5.60$, $p < .05$).

In sum, mediation, when it resulted in an agreement, was more effective than adjudication in reducing disputant animosity for some but not all measures. When mediation did not produce settlement, however, it seemed to increase disputants' bad feelings and did not buffer the effect of a trial. Plaintiff/defendant status, voluntary/mandatory use of procedure, winning/losing status, and admitted liability did not interact with resolution group to affect these measures, and differences remained when litigants' goals for coming to court were used as covariates.

### Litigants' Reports of Compliance

Mediation is thought to result in greater compliance with the award or agreement than adjudication (e.g., Folberg & Taylor 1984; Goldberg et al. 1985). Studies of other small claims courts have found that defendants in mediated cases were more likely to comply (McEwen & Maiman 1981, 1984, 1988; Vidmar 1984, 1985) and to report a greater sense of obligation to comply (McEwen & Maiman 1981) than were defendants in adjudicated cases.[42] In other settings, however, mediated cases have not con-

[42] Arbitrated small claims cases did not have greater compliance than adjudicated cases (Caro 1984).

sistently shown improved compliance (see e.g., Kressel & Pruitt 1985; Pearson 1982). In the present study, defendants in mediated cases were only marginally more likely to comply with the specified monetary award or agreement than were defendants in the adjudication group ($\chi^2(2) = 4.12$, $p = .13$, see Table 5). The unsuccessful mediation group's compliance did not differ from that of either the successful mediation or the adjudication group.[43] The groups did not differ in their compliance with any nonmonetary conditions or in the degree to which they felt obligated to meet the terms of the agreement or award. Nor did the groups differ in the extent to which they reported that the dispute really was settled.

**Table 5.** Compliance as a Function of Resolution Group

| | Resolution Group (%) | | | |
|---|---|---|---|---|
| | Mediation ($n$=56) | Adjudication ($n$=55) | Unsuccessful Mediation ($n$=38) | Adjudication & Unsuccessful Mediation Combined |
| No compliance | 18 | 31 | 21 | 27 |
| Partial compliance | 20 | 9 | 8 | 9 |
| Full compliance | 62 | 60 | 71 | 64 |

Several factors might account for differences in the pattern of compliance observed between this and other studies, including how long after the court date compliance was assessed, whether the figures include coerced compliance (i.e., in response to further court action) or only voluntary compliance, and possible variation in the court procedures, the type of disputes, or the type of outcomes. Compliance in both the adjudication and unsuccessful mediation groups was higher in the present study than in comparable studies (e.g., McEwen & Maiman 1981). For the adjudication group, this difference could be a reflection of the lower response rate for that group in the present study (i.e., if defendants who responded had a higher compliance rate than those who did not). However, this explanation overlooks the likely scenario that any such tendencies on the part of defendants would be canceled out by a probable *opposite* reaction from plaintiffs, who may be *more* willing to participate in the study in order to express their frustration with the defendant and the court if they have *not* been paid. In addition, the response-rate explanation does not explain why the unsuccessful mediation group, which did not have a low response rate, also had a higher level of compliance than in other studies.

Similar to the findings of McEwen and Maiman (1984), compliance was related to the nature of the outcome. Defendants

[43] When mediated agreements were compared with trial awards (i.e., adjudication and unsuccessful mediation combined), compliance was marginally higher for mediated cases ($\chi^2(2) = 4.58$, $p = .10$).

paid a larger proportion of the award or agreement if they owed a smaller absolute amount ($r(149) = -.39$, $p < .001$) and if the amount owed represented a smaller percentage of the plaintiff's claim ($r(148) = -.36$, $p < .001$). If the agreement or award included a series of payments instead of a single lump sum, defendants were more likely to pay at least some of the money but less likely to pay the full amount ($\chi^2(2) = 52.93$, $p < .001$). Defendants paid a larger percentage of the award or agreement if they felt a greater obligation to fulfill the terms ($r(62) = .37$, $p < .01$).

Compliance was not significantly related to the defendants' assessments of the fairness of or satisfaction with the process or the outcome. This is consistent with Vidmar's (1985) finding of no relationship between compliance and outcome satisfaction but at variance with McEwen and Maiman's (1984) finding that judgments of outcome fairness affected compliance. Compliance was greater if defendants thought the session was more thorough ($r(60) = -.34$, $p < .01$) but was not significantly related to other characteristics of the process or the third party.[44] Nor did compliance vary with whether the defendant chose or was required to use a given procedure. These data suggest that compliance may be affected more by the nature of the outcome (and by the ability to pay) than by characteristics of the dispute resolution process.

Unlike Vidmar's (1984, 1985) findings, compliance was not related to admitted liability. Nor did the degree to which defendants had admitted liability affect their sense of obligation to comply with the award or agreement, contrary to Vidmar's (1985) hypothesis that conceding liability would increase the felt obligation to pay and the pressure to comply. In addition, compliance was not related to the defendants' goals for coming to court, to the nature or intensity of their relationship with the plaintiff, or to the amount of prior experience in the small claims court.

Lack of compliance angered plaintiffs, many of whom considered the defendant wildly irresponsible and the court ineffectual (see also O'Barr & Conley 1988). Whether the plaintiff felt the dispute really was settled was strongly related to the percentage of the award or agreement the plaintiff had received ($r(124) = .77$, $p < .001$). This is not surprising, given that 84% of plaintiffs said that getting the money was an important goal for their coming to court. Plaintiffs who received a greater proportion of the award or agreement were more likely to say that the small claims

[44] The findings reported in the text were still significant after adjusting for the number of comparisons. The following items, prior to the adjustment, were related to compliance at the $p < .05$ level. Compliance was greater if the defendant reported greater satisfaction with the process ($r(62) = .26$), more control over the presentation ($r(62) = .30$), the third party was neutral ($r(61) = .27$), and the small claims court in general was fair ($r(55) = .28$). Compliance also was greater if the award or agreement represented a smaller percentage of the disputed amount ($r(104) = -.22$) and if the defendant's income was higher ($r(47) = .31$).

court generally is fair ($r(111) = .20$, $p < .05$) (see also Ruhnka & Weller 1978), although compliance did not affect plaintiffs' more specific assessments of the process and the outcome.

## Discussion

### Assessing Mediation and Adjudication

Contrary to assertions that different dispute resolution processes that deal with similar disputes differ little in practice, in the small claims courts under study, mediation and adjudication differed significantly in terms of litigants' perceptions of the nature of the process, the outcome, and the actions and attitudes of the third party. Mediation was seen as permitting a longer, less hurried, and more thorough discussion of a broader range of issues and solutions while allowing the disputants to have more control over the process and the outcome. Mediated agreements were more likely than trial awards to contain nonmonetary terms and payment arrangements. In addition, the mediator was more likely than the judge to be seen as neutral and as interested in and understanding the dispute.

Mediation performed better than adjudication on many of the criteria commonly used to evaluate the effectiveness of dispute resolution procedures (see e.g. Bush 1989; Sheppard 1984; Tyler 1989). Litigants in mediation, compared with those in adjudication, were more likely to say that the process was fair and that they were satisfied with it; that the small claims court generally is fair; and that they were willing to use the same process in a future case. Litigants in successfully mediated cases were somewhat more likely than those in adjudicated cases to report improved post-court attitudes toward and understanding of the other party. In addition, parties who had an ongoing relationship and who resolved their dispute in mediation said that the process had a less negative effect on their relationship. However, mediated cases showed only marginally greater compliance than adjudicated cases, and only among litigants who lost did mediation-adjudication differences in evaluations of the fairness of and satisfaction with the outcome appear.

These findings appear to conflict with those of a study of tort litigants in general jurisdiction trial courts (Lind et al. 1990), in which litigants whose cases had been resolved by trial viewed the process as allowing more participation and as being more careful, dignified, understandable, and fair than did those whose cases were resolved by bilateral (nonmediated) settlement. This led Lind et al. (1990:982) to conclude that trials "pose fewer disadvantages than most commentators suppose" and that "there is a need to reconsider how litigants view settlement processes." The apparent differences between the findings of the two studies

are likely due to differences in the nature of both the trial and the settlement processes observed in the different court settings. The small claims mediation process involved the parties in telling their side of the story and discussing how different options would address their interest and concerns. In contrast, the tort negotiation process typically consists of attorney-to-attorney discussions, with the parties participating indirectly through consultations with their respective attorneys. Mediation took place in the courthouse with the clear support of the court; negotiations, where the imprimatur of the court is absent, may have the look of backroom deal making. With regard to the adjudication process, a trial in small claims courts is shorter and is designed to be less formal procedurally; thus, it may be seen as less careful and dignified than a trial in a court of general jurisdiction.

Indeed, when examining comparable measures in the two studies, adjudication in the small claims court received lower ratings on the thoroughness and understandability of the process, but higher ratings on participation and fairness, than did adjudication in the higher level court. The differences in the ratings between the two trial settings, however, were quite small, except for the amount of participation. In contrast, the small claims mediation process received considerably higher ratings than the tort negotiation process on all four measures. These comparisons suggest that it is not settlement-oriented procedures per se that diminish feelings of participation and fairness, but bilateral settlement in particular. This comparison demonstrates the need to specify the nature of the dispute resolution procedures being studied and to be cautious when generalizing the results to other procedures or settings (Esser 1989; MacCoun et al. 1992; Sarat 1988).

Litigants' assessments of dispute resolution procedures provide an important measure of their performance (see Bush 1989; Lempert 1980–81; Lind & Tyler 1988; MacCoun et al. 1992; Sheppard 1984; Tyler 1989). Litigants' experiences in court, particularly their judgments of procedural fairness, have been found to affect their general views of the legal system and its legitimacy (Lind & Tyler 1988; see also Lempert 1980–81). However, using these assessments to evaluate a procedure's performance may be misleading, as procedures that seem fair may not be fair by more objective standards (e.g., Lind & Tyler 1988; Kressel & Pruitt 1989). For instance, litigants may express satisfaction with a process that gives them the opportunity to tell their story, even if it does not produce just outcomes (O'Barr & Conley 1985). Because evaluations of the outcome depend less on the objective outcome received and more on subjective assessments of the outcome (i.e., relative to others' outcomes and to one's own expectations), litigants' satisfaction may reflect not objectively fair outcomes but their lowered expectations or lack of awareness of

what they are entitled to receive or what other procedures might offer (Lind & Tyler 1988; Luban 1989; Tyler 1989; see also Abel 1982; Bush 1989).

Problems arise, however, in deciding what standards independent observers should use to assess the fairness of different procedures (Bush 1989; Rogers & McEwen 1989). In addition, some questions can only be assessed through an individual's subjective judgment about the interaction. For instance, judging how much opportunity a litigant had to tell his or her side of the story and whether the session was thorough would depend on knowing what information that litigant felt was important to present for a complete airing and resolution of the conflict. Assessing whether the third party understood what the dispute was about could be misleading if the outside observer herself did not have a clear understanding of the dispute. In a dispute over an orange (see Fisher & Ury 1983), if an observer did not know that one party wanted the fruit and the other wanted the peel, evaluating the fairness of either party's outcome might be misleading.

Some studies suggest, however, that participant-observer assessments do not necessarily diverge (Thibaut & Walker 1975). Participants and observers showed similar patterns of differences between their ratings of an inquisitorial procedure and an adversarial procedure in terms of the fairness of the procedure, their satisfaction with it, and the opportunity it provided for the presentation of evidence. Additional research involving process and outcome evaluations of the same case by both participants and observers is needed in order to know how to interpret each set of assessments when evaluating dispute resolution procedures.

### The Effects of Process and Case Characteristics

Assessing the relative effect of case and process characteristics on the mediation-adjudication differences described above required various sets of comparisons. We examined potential self-selection effects by comparing litigants who chose mediation or adjudication with litigants who were required to use a given procedure. First, litigants who chose mediation did not differ significantly from those who were required to attempt mediation on any of 50 measured characteristics. Second, mandatory versus voluntary use of a procedure did not affect, independently or in interaction with resolution group, any of the effectiveness criteria examined. This suggests that possible unmeasured differences in the resolution groups as a result of the choice of procedure had little or no impact on mediation-adjudication differences.

As noted earlier, random assignment of cases to dispute resolution procedures cannot address differences in case composition that arise at a second stage of self-selection—accepting or rejecting a settlement in mediation. Accordingly, even research

involving initial random assignment would need to examine the effects of litigant and case characteristics. In the present study, the three dispute resolution groups differed on just 3 of 50 measured characteristics. Only one of these, admitted liability, had an effect on some mediation-adjudication differences. Admitted liability and resolution group interacted with process and outcome evaluations, so that defendants in partial-liability cases had more favorable assessments of mediation than adjudication, whereas defendants in no-liability cases evaluated adjudication more favorably. Admitted liability also affected the monetary outcomes received, having a weaker effect than resolution group on whether outcomes were an intermediate percentage of the claim and an equal effect on whether outcomes were binary. Admitted liability did not affect other effectiveness criteria, most notably, compliance or the felt obligation to comply.

In the present study, analyses comparing the unsuccessful mediation group with the adjudication and successful mediation groups suggest that any unmeasured characteristics on which the three groups potentially differed (as well as characteristics on which they were known to differ) had little or no effect on descriptions and evaluations of the process, compared with the effect of the procedural characteristics. The unsuccessful mediation group described and evaluated their mediation and trial sessions differently; nevertheless, they generally did not differ from the successful mediation group when assessing mediation or from the adjudication group when assessing trial.[45] For other effectiveness criteria, however, the relative effects of resolution group and case characteristics for the unsuccessful mediation group are less clear.

Considering the overall pattern of findings across the various criteria and across different sets of comparison groups, I conclude, as did McEwen and Maiman (1986), that although admitted liability has some effect, differences in the effectiveness of mediation versus adjudication are due more to differences in the processes themselves than to differences in the characteristics of the disputes and the disputants in each procedure.

[45] Accordingly, as noted earlier, if readers concerned about the low response rate in the adjudication group instead use the unsuccessful mediation group to examine the effects of trial, the general conclusions of the study regarding the effects of mediation and trial remain the same.

## **Appendix.** Litigants' Descriptions and Evaluations

| | % Litigants Who Rated Each Item "4" or "5" on 5-Point Scale | | | |
|---|---|---|---|---|
| | | | Unsuccessful Mediation | |
| | Mediation | Adjudication | Mediation | Trial |
| **Process descriptions** | | | | |
| Unhurried | 73 | 43 | 74 | — |
| Many solutions discussed | 14 | 6 | 10 | — |
| Party has control over presentation & opportunity to tell story | 76 | 60 | 79 | 53 |
| Thorough | 80 | 56 | 64 | 41 |
| Party has control over outcome | 59 | 38 | — | 25 |
| Informal | 73 | 55 | 67 | — |
| Open | 83 | 61 | 74 | 54 |
| Understandable | 87 | 72 | 72 | — |
| Like a discussion | 67 | 47 | 53 | 52 |
| Public | 10 | 75 | 4 | — |
| Chance to discuss issues other than money | 66 | 40 | 58 | — |
| **Third party** | | | | |
| Interested in dispute | 75 | 50 | 83 | — |
| Remained neutral | 84 | 74 | 85 | 67 |
| Active | 60 | 53 | 47 | — |
| Understood dispute | 77 | 62 | 69 | 57 |
| Warm person | 68 | 37 | 72 | — |
| **Evaluations** | | | | |
| Process is fair | 77 | 62 | 76 | 56 |
| Satisfied with process | 79 | 61 | 60 | 42 |
| Outcome fair & satisfying | 57 | 48 | — | 49 |
| Small claims court generally is fair | 62 | 44 | — | 46 |

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