

finer of the UT Law School while pursuing his law degree and his decision not to venture over to the business school at Texas in my labor relations courses. I am eternally grateful because given my reasonably long service on the postal panel, he probably has saved me a lot of instances of disclosure.

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Karen Casselman is the Director of Labour Relations with a grievance and arbitration portfolio as well as a corporate projects and initiatives portfolio for the Canadian Post Office. I'm told she is the one in the Canada Post to whom arbitrators on their panel mail their awards. So, she is most familiar with the Canadian postal panel. Karen brings 30 years of experience in labor relations to the table this afternoon.

It is my pleasure to turn the podium over to Lisa.

II. MEDIATION OF DISCRIMINATION COMPLAINTS AT THE USPS: PURPOSE DRIVES PRACTICE

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Introduction

There is currently a vibrant dialogue among scholars of employment law and dispute resolution regarding aspirations for justice in the new social compact at work. At issue are questions of the fairness of mandatory arbitration, the justice of mediation, and

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voice at the workplace in the face of declining unionism. In this article, we review the results of a longitudinal study of employment mediation for civil rights cases in a major, unionized employer, the United States Postal Service (USPS). We argue here that the design of this program, which entails voluntary mediation in the transformative model and no mandatory arbitration, furthers goals of justice at the workplace while preserving worker access to justice and producing substantial benefits in efficiency of dispute processing for employer and employee alike.

Dispute System Design in the Workplace

Traditionally, workplace conflict management was primarily reactive and utilized existing administrative or court forums to solve conflict.¹ Dissatisfaction with these traditional forums drove organizations to look for other options. Organizations were dissatisfied with the traditional time-consuming and costly processes that often did not produce satisfactory outcomes.² Businesses realized that workplace conflict often resulted in inefficiency and that a quality conflict management system was essential.³ Lipsky, Seeber, and Fincher suggest that the rise of alternative dispute resolution (ADR) in the workplace reflects a changing social contract between employers and employees.⁴ Although employers used to dictate the workplace rules in the first part of the 20th century, unions and collective bargaining began to change the top-down workplace structure and, today, a new system of conflict resolution is emerging.⁵

These changes have led to the concept of dispute system design. Dispute system design (DSD) is a phrase coined by Professors William Ury, Jeanne Brett, and Stephen Goldberg to describe the purposeful creation of an ADR program in an organization.⁶ Dispute resolution processes can focus on interests, rights, or power.⁷ Interest-based systems focus on the disputants' underly-

¹See Lipsky, Seeber & Fincher, *Emerging Systems for Managing Workplace Conflict: Lessons from American Corporations for Managers and Dispute Resolution Professionals* (2003), at 6.

²*Id.*

³*Id.*

⁴*Id.* at 36.

⁵For a much more detailed account of the changing social contract in the United States, see *id.* at 29–74.

⁶Ury, Brett & Goldberg, *Getting Disputes Resolved: Designing Systems To Cut the Cost of Conflict* (1988), at 41–64.

⁷*Id.* at 3–19.

ing needs (interests), such as those for security, economic well-being, belonging to a social group, recognition from others, and autonomy or control. Rights-based processes focus on legal entitlements under the language of a contract, statute, regulation, or court decision. Power-based systems are least effective as a basis for resolving conflict; workplace examples include strikes, lock-outs, and corporate campaigns. These researchers theorize that organizational dispute systems will function better for the stakeholders if they are designed to resolve disputes based on interests, rather than rights or power. Thus, a healthy dispute system would be designed to resolve the great majority of disputes based on interests. Rights-based approaches could be used as a fallback when disputants reached impasse, and parties would not generally resort to power.

Their work on DSD grew from experience with industrial disputes in the coal industry.⁸ After a series of wildcat strikes, it became clear that the traditional multi-step grievance procedure culminating in binding arbitration was not meeting the needs of coal miners, unions, and management. Ury, Brett, and Goldberg suggested an experiment: grievance mediation. This involved providing mediation, a process for resolving conflict based on interests, as soon as disputes arose. The addition of the grievance mediation step changed the traditional rights-based grievance arbitration DSD to one including an interest-based “loop-back,” i.e., a step that returned the disputants to negotiation, albeit with assistance. It focused on the disputants’ immediate needs or underlying interests as distinguished from their rights under the contract.

There are growing numbers of workplace mediation programs across the country in various settings from federal and state governments to a variety of private enterprises. Although many have unique features, almost all of these workplace mediation programs have a similar singular purpose: settling workplace disputes. This goal makes perfect sense because of the fact that settling disputes early through mediation saves an employer time, money, and other resources that otherwise would go into defending disputes. This transactional approach to mediation focuses on tangible problems that can be resolved through concrete solutions usually involving an economic component.

⁸*Id.* at 101–03.

Mediation at the United States Postal Service: REDRESS®

Eleven years ago, when the USPS sought to address an alarming increase in equal employment opportunity (EEO) complaints, it needed more than a good settlement tool. The USPS had lots of experience settling cases. Arbitration weeks, in which the Postal Service and its unions would handle dozens of grievances during one week, had been tried with only a temporary reduction in grievances. Federal court cases had been settled through a wide variety of mechanisms (settlement conferences, court-ordered mediation, and neutral case evaluation), but nothing seemed to make a lasting difference in the number of disputes that were initiated. It became apparent that a solution was needed to address the root causes of conflict between labor and management that had been deeply embedded in the culture over many years.

It was this backdrop that drove the USPS to find a different purpose for mediation beyond resolving disputes. Management sought a tool that could improve workplace culture through increased communication and understanding between the employees involved in a dispute. After having studied the available data on employment mediation, the only model that encompassed a broader purpose—a shift by parties towards strength, responsiveness, and constructive interaction—was transformative mediation.⁹ Employees needed to understand each other more and have the opportunity to safely express themselves so that they could regain the capacity to work together effectively. It was with this purpose—improving employee communication—that the USPS created REDRESS®.

This different purpose created a challenge: How does one define success? Most employment mediation programs traditionally evaluate success based on settlement rates, but that was not the program's driving goal. The USPS needed to identify indicators of success that measured more than settlement rates. To do this, two new concepts—"Participation" and "Closure"—were introduced. Participation occurred at the beginning of the process. This was an important indicator because mediation was a voluntary decision by the employee who brought the complaint of discrimination. To maximize the number of people who voluntarily accepted

⁹See Bush, *Handling Workplace Conflict: Why Transformative Mediation?*, 18 *Hostra Lab. & Emp. L.J.* 367, 370 (2001); Nabatchi & Bingham, *Transformative Mediation in the United States Postal Service REDRESS™ Program: Observations of ADR Specialists*, 18 *Hofstra Lab. & Emp. L.J.* 399, 406 (2001).

the offer of mediation, the Postal Service established a new benchmark. This new criterion, the participation rate, measured the number of employees who, when offered mediation, voluntarily accepted it. The USPS set the target participation rate at 75 percent, and this became a national goal tracked monthly. It was clear that to really make a difference, the USPS needed as many people as possible to accept and experience mediation. In 2004, that participation rate was over 80 percent nationally.

Although outcome was important, program managers chose not to track settlement rates, but instead developed a new concept, "Closure Rates." This was a broader notion than settlement, and included withdrawing, dropping, or settling a complaint as a result of mediation. REDRESS[®]'s goal was to recapture the broader purpose of mediation. These new concepts were tracked monthly by each division (85 in all) in a mediation activity report.

In addition, the USPS, in collaboration with the Indiana Conflict Resolution Institute at Indiana University's School of Public and Environmental Affairs, developed instruments for collecting information about each mediation case: a mediator data tracking report to determine outcome and exit survey distribution, and a participant exit survey completed by all participants and their representatives (lawyers, union representatives, family, friends, or co-workers).

This largest employment mediation program in the world (mediating more than 1,000 disputes a month across 90 different cities) was tracked and evaluated for more than 10 years to determine if its initial purpose was realized. The substantial financial and human investment in implementing such a massive and highly controlled mediator approach, by requiring all 3,000 mediators to train and commit to using the transformative model of mediation, motivated management to measure its success. What follows is a summary of a decade of research evaluating the effectiveness and unique purpose of the program—to improve workplace climate.

Choice of Mediation Model

Since the beginning of the mediation movement, numerous models have been used to describe and clarify various mediation styles. Today, three dominant models of mediation have emerged: evaluative, facilitative, and transformative. These models influence the way researchers and practitioners frame mediation issues and design programs. These models also impact how

practitioners value the outcomes of mediation. In the past, mediation was thought to be successful only if it resulted in settlement. More recently, other outcomes, such as improved party relationships, are viewed as successes, particularly in the context of transformative mediation. Unfortunately, few studies attempt to quantify these other beneficial outcomes.

Evaluative and Facilitative Models of Mediation

In 1996, Riskin proffered a grid of mediation styles called the Problem Definition Continuum that proved to be highly influential in the field.¹⁰ This model describes what mediators “do” in terms of either evaluation or facilitation along one axis, and ways of defining the problem as either broad or narrow along the other axis. To understand the grid, it is useful to define these axes in more detail. The evaluative mediator focuses on helping the parties understand the strengths and weaknesses of their case by providing assessment, prediction, and direction.¹¹ In this model, the mediator generally asks the parties to make formal opening statements presenting their case, and then the mediator conducts one or more caucuses with each side. The mediator focuses on collecting facts, identifying issues, and the parties’ legal arguments. The mediator then develops a sense of the worth of the case. In other words, the mediator evaluates who is likely to win and how much they would probably recover. In order to pressure the parties to settle, the mediator will judiciously share this evaluation with each side at strategic moments. The mediator oftentimes proposes a particular settlement. This model also tends to involve a more directive mediator, one who will not hesitate to “arm-twist” the parties to achieve settlement. Attorneys sometimes appreciate this approach because it helps them control unrealistic clients.

On the other end of the what mediators “do” axis, the facilitative mediator focuses on clarifying and enhancing communication between the parties and helping them decide what to do.¹² The mediator generally will listen to opening statements and may conduct caucuses, but the focus of the process is not on the legal merits of the dispute, so much as on the parties’ underlying needs and how those needs might be met in an interest-based

¹⁰Riskin, *Understanding Mediator’s Orientations, Strategies, and Techniques: A Grid for the Perplexed*, 1 Harv. Negot. L. Rev. 7, 17 (1996).

¹¹*Id.* at 45.

¹²*Id.* at 24.

settlement. The mediator generally will avoid evaluating the case, but may engage in “reality-testing” to help the parties achieve a more objective sense of their alternatives to a negotiated settlement. The mediator will help the parties engage in brainstorming to generate ideas for resolving the dispute, and will also suggest options to include in a settlement.

The other axis in Riskin’s grid is the problem definition axis. Riskin envisioned mediation issues ranging from litigation issues (narrow) to community interests (broad). The Problem Definition Continuum was an attempt to capture the different kinds of goals in mediation. Although widely used, Riskin’s grid is not without problems; one major criticism is that the narrow/broad continuum does not capture all the potential goals of mediation.¹³ Practitioners have interpreted the grid to mean that in both facilitative and evaluative mediation, the goal is to reach agreement. Other potential goals of mediation such as improved communication were largely ignored in this continuum.

Transformative Mediation

Although much attention has been focused on assessing evaluative and facilitative mediation, studies of transformative mediation are conspicuously absent. In their research, McDermott and Obar included transformative mediation as a form of facilitative mediation,¹⁴ because they felt it most closely represented their operational definition. However, theirs is not an entirely accurate characterization of transformative mediation. Admittedly, drawing distinctions between evaluative mediation, facilitative mediation, transformative mediation, and even what has been termed therapeutic justice is not always easy. According to Bush and Folger’s 2004 book *The Promise of Mediation: The Transformative Approach to Conflict*,¹⁵ one key difference among facilitative, evaluative, and transformative mediation centers around the goal of the mediation processes. The primary goal of both facilitative and evaluative mediation is settlement—reaching an agreement or solving a problem. In transformative mediation, the focus is not on

¹³Riskin, *Decisionmaking in Mediation: The Old Grid and the New Grid System*, 79 Notre Dame L. Rev. 1, 22–23 (2003).

¹⁴*Id.* at 81.

¹⁵See generally, Bush, & Folger, *The Promise of Mediation: The Transformative Approach to Conflict* (2004). [hereinafter Bush & Folger 2004]. The 2004 edition is a revised and updated version of the original landmark book: Bush & Folger, *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition* (1994).

problem-solving, but rather on empowerment and recognition. Transformative mediation does not set settlement as a goal, largely viewing this as a derivative of empowerment and recognition. It views the most important aspect of mediation as its potential to transform the people who are in the very midst of the conflict.

Transformative mediation frames conflict as a crisis in some human interaction that tends to destabilize parties' perception of self and other, leaving both more vulnerable and self-absorbed.¹⁶ The model views conflict as an interaction between parties.¹⁷ Transformative mediation seeks to change the quality of the conflict interaction from negative and destructive to a positive interaction that allows parties to recapture their sense of competence and connection and reestablish a constructive or neutral interaction.¹⁸ Therefore, success in the transformative model is achieved when parties experience growth along two dimensions: empowerment and recognition. Empowerment is movement away from weakness to strength; becoming clearer, more confident, more articulate, and more decisive.¹⁹ Recognition is movement from self-absorption to responsiveness; becoming more attentive, open, trusting, and understanding of the other party.²⁰

Because transformative mediation is not settlement-oriented, mediators engage in behaviors that are not seen in traditional evaluative or facilitative mediation. In the transformative model, the mediator does not unilaterally structure the process by setting ground rules, asking for opening statements, calling caucuses, brainstorming, and the like. Instead, the mediator will ask the participants how they would like to structure the process and, if necessary, will offer them a series of choices or examples. The mediator does not evaluate or offer opinions on the merits of the dispute, does not pressure participants to settle, and does not recommend particular settlement terms or options. Instead, the mediator attempts to highlight moments in the discourse when one participant recognizes and acknowledges the perspective of the other.

In their article, *Transformative Mediation and Third-Party Intervention: Ten Hallmarks of a Transformative Approach to Practice*, Bush

¹⁶Bush, *Handling Workplace Conflict: Why Transformative Mediation?* 18 Hofstra Lab. & Emp. L.J. 367, 399 (2001). See also Bush & Folger 2004 at 46–51.

¹⁷See Bush & Folger 2004, at 53.

¹⁸*Id.*

¹⁹*Id.* at 55.

²⁰*Id.*

and Folger illustrate what a mediator actually does in mediation.²¹ These behaviors are summarized here. In the opening statement, the transformative mediator explains the mediator's role and the objectives of mediation as being focused on empowerment and recognition. The mediator leaves responsibility for the outcomes with the parties and does not judge the parties' views and decisions but rather takes an optimistic view of the parties' competence and motives. Transformative mediators allow and are responsive to parties' expression of emotions, statements of past events, and uncertainty. The transformative mediator remains focused on what is currently happening in the mediation setting and realizes that conflict can be a long-term process and that mediation is one intervention in a longer sequence of conflict interactions. Finally, transformative mediators feel (and express) a sense of success when empowerment and recognition occur, even in small degrees. They do not see a lack of settlement as a "failure." In theory, empowerment and recognition may enable the participants to reach a settlement. Even if settlement is not reached, however, participants gain a new perspective on the dispute. If they choose not to resolve the dispute, it is not regarded as a failure for either the parties or the mediator.

Transformative mediation is a reflection of the ideological shift away from input-output to studying communicative events that occurred in the social sciences in the mid-1980s.²² At the time, critics of social science research argued that it was important to study humans in a more complex way to better encompass human interactions, creation of meaning, and communication.²³ As with any relatively new change in practice, transformative mediation has been met with some resistance in the field of conflict resolution.²⁴ However, the model is gaining acceptance as new research emerges showing that it is a valuable tool for practitioners, especially as applied to employment and workplace mediation.²⁵

²¹ See Folger & Bush, *Transformative Mediation and Third-Party Intervention: Ten Hallmarks of a Transformative Approach to Practice*, 13 *Mediation Q.* 263 (1996).

²² See Folger, *Mediation Research: Studying Transformative Effects*, 18 *Hofstra Lab. & Emp. L.J.* 385, 389 (2001).

²³ *Id.*

²⁴ *Id.* at 393 (describing how a New Zealand university graduate program was openly outspoken against the transformative model and went so far as to ban a book about the model from the library).

²⁵ See generally, Della Noce, Bush & Folger, *Clarifying the Theoretical Underpinnings of Mediation: Implications for Practice and Policy*, 3 *Pepp. Disp. Resol. L.J.* 39 (2002).

Overview of the National REDRESS® Program

The National REDRESS® program provides mediation for EEO disputes involving complaints of discrimination under Title VII of the Civil Rights Act of 1964,²⁶ the Age Discrimination in Employment Act of 1967,²⁷ and the Americans with Disabilities Act of 1990.²⁸ These Federal laws prohibit discrimination based on race, sex, color, national origin, religion, age, and disability, and also prohibit sexual or racial harassment or retaliation for raising a claim of prohibited discrimination or harassment.

The organizational structure of the USPS resulted in a situation where, when given a choice, both supervisors and employees would choose to litigate through the traditional EEO process rather than mediate.²⁹ The USPS recognized that supervisors would be respondents in most cases; therefore, to be successful, REDRESS® had to be structured in a manner that would change employees' preferences so that they would want to mediate before pursuing litigation.³⁰ For this reason, the timing of the intervention, the neutrals used in the mediation process, and the nature of the intervention were critical factors in encouraging employees to pursue mediation before litigation.³¹

The USPS conducted focus groups with stakeholders as part of its initial design process, but did not negotiate about the specifics of the program. The key system design features that continue to be part of the program are that mediation is voluntary for the EEO complainant, but mandatory for the supervisor respondent who represents the USPS as an organizational entity. As required by EEOC regulations,³² complainants are entitled to bring to the table any representative that they choose. These can include lawyers, union representatives, professional association representatives, family members, co-workers, or friends. The USPS, as a party, also designates a representative. The supervisor respondent must have settlement authority, or be in immediate telephone contact during the process with someone else in the organization autho-

²⁶42 U.S.C. §2000(e), *et seq.*

²⁷29 U.S.C. §633(a), *et seq.*

²⁸42 U.S.C. §12112, *et seq.*

²⁹For a detailed discussion of game theory within the USPS, see Nabatchi, *Game Theory and Dispute System Design: Making Mediation a Dominant Strategy in the U. S. Postal Service* (2004), at 19 (unpublished manuscript submitted to the 17th Annual Conference of the International Association for Conflict Management, on file with Indiana Conflict Resolution Institute, Indiana University).

³⁰*Id.* at 22–23.

³¹*Id.* at 23.

³²29 C.F.R. §1614.605.

rized to approve the settlement. Mediation occurs during work hours, is private, and generally occurs within two to three weeks of a request. Taken in combination, the fact that the national REDRESS® program is voluntary for complainants but mandatory for respondents, comparatively fast, and uses outside mediators that meet stringent training requirements helped to shift the incentives for respondents from litigation to mediation, but there was still a critical choice left to make: which model of mediation to employ.³³

The USPS pilot program initially used a facilitative model of practice; however, after a period of experimentation, the USPS chose transformative mediation for the national model. Unlike other models, the USPS model and training provides that the mediator should not evaluate the case's merits, even if the participants request it. The mediator may not give a personal opinion regarding the merits, any assessment of the likely outcome in court, or specific proposals for settlement. All choices regarding the process, ideas for settlement, and the outcome of mediation are placed in the hands of the parties.

The USPS goal for this system is to afford the maximum participant self-determination.³⁴ The theory behind this choice is that by affording the participants both the power and opportunity to take responsibility for resolving their own conflict, over the long term, the USPS will build conflict management capacity in the workforce. The goal of the USPS and the goal of transformative mediation (as Professor Bush has described it) seem well matched; mediation "can help parties change the quality of their interaction from negative and destructive to positive and constructive, in the very midst of conflict, as they explore issues and possibilities for resolution."³⁵ There is, of course, a difference between a system's design and the way it functions; mediators, like cats, are hard to

³³ See Bingham, *Self-Determination in Dispute System Design and Arbitration*, 56 MIAMI L. REV. 873-908 (2002).

³⁴ *Id.* at 881 ("Self-Determination" is defined as "the parties' experience of control over both process and outcome in a single dispute."). The Model Standards of Conduct for Mediators emphasize the importance of self-determination: "Self-determination is the fundamental principle of mediation. It requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement." Am. Arbitration Ass'n, American Bar Association Dispute Resolution Section & Litigation Section, & Society of Professionals in Dispute Resolution, Model Standards of Conduct for Mediators, available online at <http://www.abanet.org/dispute/modelstandardardsofconduct.doc> (last visited May 5, 2005).

³⁵ See Bush *supra* note 25 at 368.

herd. For this reason, the USPS implemented an evaluation system at the same time it implemented the national program.³⁶

The Task Force was to create a national roster of experienced mediators.³⁷ The initial roster of about 3,000 mediators nationwide was the product of a massive outreach effort. USPS REDRESS® program staff attended mediator conferences and bar association meetings in an effort to deliver roster application forms (called the ADR Provider Survey) to the most experienced mediators in each geographic area. Minimum qualifications for consideration included at least 24 hours of approved mediator training and experience as the lead mediator in at least 10 cases. In addition, mediators had to agree to attend at least two additional days

³⁶USPS management elected to roll-out the REDRESS® program nationally over a two-year period using a special, independent budget to pay for all program costs, including administration and personnel, mediator fees, and training for mediators and participants. To guide the implementation process, the USPS created the REDRESS® Task Force. The Task Force had a governing body made up of the General Counsel, and the Vice Presidents of Labor Relations, Employee Relations, and Diversity. This council approved the plans and discretion of the Task Force. This was an unusual organizational approach for the Postal Service designed to free the Task Force to implement the Redress Program throughout the entire country in two years. This governing board eventually became an independent office with a direct report to the Deputy Postmaster General. Under the direction of the governing board, the Task Force had to develop an implementation plan and provide qualified mediators, institutional support, training for participants, and informational literature. It had to get programs in place, publicize them, and implement evaluation processes in each of the 85 Postal areas across the nation.

A first step in the implementation process was to determine program administration and personnel. USPS management authorized the two-year detail (temporary assignment) of 120 EEO ADR Specialists and Coordinators nationwide. A key element in the creation of these new positions was building an esprit de corps among the EEO ADR Specialists and Coordinators, while at the same time fostering cooperation between the REDRESS® program staff and EEO Counselors. However, USPS management recognized that the REDRESS® Task Force, staff, and EEO ADR Specialists and Coordinators might resist the new program if they felt their job security was threatened. From the outset of implementation, the Task Force was identified as a temporary organization, and the EEO/ADR positions as temporary assignments. There were initially 11 area ADR coordinators and 85 district ADR coordinators. It was made clear that when and if the jobs became permanent, they would be open to bidding and not simply filled by those previously "detailed" into the positions. This created an incentive for others to learn about the program and support it. The notion was that the USPS would not be eliminating EEO counseling positions, but instead, converting some of these positions to permanent ADR jobs. Moreover, the plan from the outset was to transfer responsibility and budget for the program from the Task Force to the EEO functions at the USPS Headquarters. These decisions regarding program administration and personnel were designed to reduce internal institutional resistance to the innovation.

At present, there are 9 EEO/ADR Coordinators, one for each of the current geographic areas to oversee the REDRESS® program in their areas and to provide support to the districts. There is a Manager of Dispute Resolution and from one to three Dispute Resolution Specialists in each of the now 80 districts. These positions are in addition to EEO staff at the district level, including a Manager, EEO Compliance and Appeals Officer, one or more Appeals Review Specialists, a Senior EEO Investigator, and an EEO Technician. Staff at USPS Headquarters include the REDRESS® National Program Manager, an ADR analyst, and three Dispute Resolution Specialists.

³⁷See Gann & Hallberlin, *Recruitment and Training of Outside Neutrals*, in *The Federal Administrative Dispute Resolution Deskbook*, eds. Schatz & Laufer (2001), at 623.

(20 hours) of transformative mediation training sponsored by the USPS.³⁸

In keeping with the transformative model, the USPS did not limit the roster to mediators with employment law expertise; this was unnecessary because mediators were not expected to evaluate the merits of the cases. Instead, the USPS opened the roster to mediators from varied professional backgrounds, including psychology, counseling, and social work. The roster included teachers, academics, human resource professionals, and retirees from these professions. Many of the mediators had extensive experience in family and domestic relations practice. This outreach produced the most diverse roster then available, comprised of 44 percent women and 17 percent minorities.³⁹ These requirements are maintained in the program, as is the diversity of the roster. The REDRESS® mediator roster reflects a fairly high level of racial diversity. In a sample of 671 active mediators, 570 were Caucasian, 77 were African-American, 4 were Asian-American, 3 were Native American, and 17 were Latino.⁴⁰

Not all mediators were comfortable practicing the transformative model, and some elected not to participate after training.⁴¹ Those who remained were subject to additional quality control measures. To ensure that mediators were in fact practicing the transformative model in REDRESS® sessions, USPS EEO ADR Specialists observed at least one mediation session, and often

³⁸Lastly, successful applicants had to agree to mediate one case pro bono during which a USPS ADR Specialist could evaluate their effectiveness as a mediator using transformative framework. Interestingly, this process basically resulted in 3,000 free mediations. At a cost of about \$1,000 per mediation, the free services provided in effect cancelled out the \$300,000 cost of the training program. Persons who serve as arbitrators for disputes involving the USPS or who have brought litigation against the USPS within two years prior to application are not eligible for inclusion on the roster. No current or former employees are eligible for inclusion on the roster. This exclusion of current and former employees is intended to maintain the perception among employees of the fairness and neutrality of mediators.

³⁹Gann & Hallberlin, *supra* note 37.

⁴⁰Pitts, Moon & Bingham, *Individualism, Collectivism, & Transformative Mediation* (2002), at 8 (unpublished manuscript prepared for presentation at the 15th Annual Conference of the International Association for Conflict Management, Salt Lake City, Utah, on file with Indiana Conflict Resolution Institute, Indiana University).

⁴¹The Task Force also took steps to institutionalize quality control among its mediators. In collaboration with Professors Bush and Folger, it developed specialized advanced 20-hour transformative mediation training for experienced mediators from a variety of different practice models. The USPS identified a cadre of experienced mediation trainers and convened a Train-the-Trainers retreat in March 1998 at which they were taught the transformative model and how it would be implemented in the REDRESS® program. The trainers then fanned out across the country to train the new mediators. The USPS developed a code of ethics and standards of practice for the program, because there were certain USPS policies, such as zero tolerance for threats of violence, with which mediators had to comply as a condition of participation in the program.

multiple sessions, for each mediator.⁴² Research has shown that these Specialists understand the transformative model and that they were appropriately screening mediators based on the implementation of this form of practice.⁴³ After two years of this screening process, the national roster stabilized at about 1,500 active mediators. Mediator fees are negotiated locally on an individual basis. In general, to deemphasize settlement, mediators are paid per session, not per hour, and travel expenses are covered. Another element that contributed to institutionalization was found in the cooperation of the Equal Employment Opportunity Commission (EEOC). Through agreement with the USPS, complaints originating in the USPS use the REDRESS[®] mediator roster and model.⁴⁴

Despite all of these efforts, the Task Force knew that the REDRESS[®] program would fail unless there was empirical evidence to guide the implementation process in the short-term and guarantee program quality for survival and success in the long-term. The Task Force invited the Indiana Conflict Resolution Institute (ICRI) to continue their collaboration with the USPS and their evaluation of the national REDRESS[®] program.

National REDRESS Evaluation Project

From inception of the pilot program in 1994 to the present, the USPS has worked with the ICRI at the Indiana University School of Public and Environmental Affairs to evaluate the REDRESS[®] program. ICRI is a social science research laboratory that conducts field and applied research on conflict resolution programs. In collaboration with Task Force officials, ICRI developed and

⁴²As the trainers fanned out across the country to train mediators, the USPS Task Force also trained key stakeholders and participants within the USPS. The EEO ADR Specialists received 40-hour mediation training and attended the advanced mediator training for potential roster members in their region. Other key stakeholders, including union leadership and shop stewards, plant managers and supervisors, and local postmasters, received a 4-hour training about mediation and the program. A brochure was mailed to each employee's home. Supervisors conducted "stand-ups," brief workplace meetings at which they explained the program to craft employees. Information was also provided through the internal USPS video network and through literature in EEO Counseling offices. All of these activities were helping to institutionalize the REDRESS[®] program in Post Offices throughout the nation.

⁴³See Nabatchi & Bingham, *Transformative Mediation in the United States Postal Service REDRESS[™] Program: Observations of ADR Specialists*, 18 Hofstra Lab. & Emp. L.J. 399 (2001).

⁴⁴Given the huge contribution of the USPS to the EEOC's caseload, some of the success attributed to the EEOC mediation program actually properly should be attributed to the REDRESS[®] Program.

implemented a longitudinal, multi-faceted evaluation design for the National REDRESS[®] program. ICRI and USPS started the evaluation process by setting up systems for continuous, contemporaneous data collection, which initially included participant exit surveys and data tracking reports filled out by the mediator. Both forms were sent to ICRI for evaluation. The USPS also kept internal records called “Mediator Activity Reports” that included information on the complainant, scheduling time, participation rate, and on cases settled before mediation. Over time, and in response to interesting evaluation results and research questions, the project expanded to include surveys of REDRESS[®] mediators and EEO/ADR Specialists at the USPS. This section discusses the evaluation design and reports on results from a variety of studies on the transformative model over this longitudinal research relationship.

Overview of Evaluation Design

REDRESS[®] was fully implemented by July 1, 1999, six months ahead of schedule.⁴⁵ It has been in place nationwide for more than six years at the time of this writing. Following is an examination of the various research instruments and data collection procedures used in the REDRESS evaluation program. Two instruments were designed to measure the multiple aspects and perspectives at work in the REDRESS[®] program, the participant exit survey⁴⁶ and a data

⁴⁵Research on the program was ongoing throughout the national roll-out to help guide the implementation process and identify areas where additional work or attention was needed. This research and the regular program feedback for the EEO ADR Specialists and Coordinators proved to be another key element of institutionalization. During implementation, ICRI conducted analyses of participant satisfaction with the program every six months by geographic district (initially 85 and now 80) and area (initially 13 then reduced through reorganizations to 9). This data was shared with USPS program staff through a form called the Exit Survey Analysis Report. This one-page summary separately showed employee and supervisor satisfaction levels with the mediation process, mediators, and outcome of mediation. The Report was prepared for each geographic district. This feedback created an incentive for program staff to collect the data and improve implementation practices. The USPS enhanced this incentive by creating awards and ways of recognizing geographic areas with the highest levels of participant satisfaction.

⁴⁶The exit survey is the second instrument that has been used throughout the evaluation project. Upon conclusion of each mediation session, mediators distribute a completely confidential, four-page exit survey to the participants and their representatives. The surveys are then mailed directly to ICRI where staff input the responses into a secure electronic database. The number of completed surveys is compared to the total number of disputed surveys on the data tracking form to calculate response rates. The response rate has historically averaged in excess of 75%.

tracking form.⁴⁷ Both of these forms were used since the inception of the national program until 2006. In addition, ICRI collected and analyzed data from other sources, including a mediator survey, EEO ADR Specialist survey, and various USPS databases.

The exit survey allows for a more comprehensive analysis of issues and aggregate cases. It collects information about the parties in the dispute, ascertaining whether the person is a complainant, respondent, or a representative of either the complainant or respondent. It also asks the representative if he or she is an attorney, a union official, a co-worker, or some other person (friend or family member). Finally the survey asks participants about the position they hold in the USPS to determine whether they are supervisors, managers, or craft employees.⁴⁸

The remainder of the exit survey design measures various aspects of the mediation session. In addition to asking if the dispute was fully, partially, or not resolved, the survey uses indicators on a five-point Likert scale ranging from "strongly agree" to "strongly disagree," to measure participants' satisfaction with the process, mediator, and outcome. These measures are common and have a strong theoretical foundation in mediation research and evaluation. Additional measures were developed to assess the "transformational" aspects of the REDRESS[®] program. Specifically, several questions were designed to capture the levels of empowerment and recognition experienced by disputants.

In addition to these instruments used longitudinally, researchers prepared a brief e-mail survey for USPS EEO ADR Specialists and Coordinators. The survey had eight open-ended questions asking the Specialists to describe what they had seen or heard mediators do or say that fostered or interfered with party empowerment or recognition (the basic facets of transformative mediation) among the parties. The surveys were designed to see if the Specialists were connecting mediator behavior with transformative theory in their evaluations of mediators. In addition, the survey was designed to provide preliminary evidence about how the

⁴⁷After each mediation session, the mediator must complete data tracking forms as a condition of payment by the USPS. This form is a simple, one-page questionnaire designed to help track response rate on participant exit surveys. These forms report the number of complainants, respondents, and representatives present; which parties had representatives; the duration of the mediation; the number of surveys distributed to participants; the general subject matter of the dispute; and the outcome of mediation. The data tracking form is then mailed to ICRI, where staff enter the information into a secure electronic database.

⁴⁸Bingham, Kim & Raines, *Exploring the Role of Representation in Employment Mediation at the USPS*, 17 Ohio St. J. Disp. Resol. 341, 359 (2002).

mediators were implementing and enforcing the transformative model and how they cultivated empowerment and recognition among the parties.⁴⁹ The qualitative responses were coded using Folgers and Bush's 10 hallmarks of mediation as a framework.⁵⁰

Lastly, researchers developed and administered a mail survey to all mediators who served in the REDRESS[®] program between April 1998 and July 2001 as listed on the USPS mediator roster. Mediators completed the surveys, sealed them in envelopes, and returned them to the ICRI at Indiana University for analysis. The survey was developed around the 10 hallmarks of mediation.⁵¹ It asked mediators to indicate how frequently they employed different transformative and directive/evaluative behaviors and tactics in their sessions. In addition, the survey asked mediators to categorize specific behaviors as transformative or directive/evaluative and to categorize statements made by disputants as reflecting an either more or less transformative mediation session.

Before and shortly after the national roll-out, researchers conducted longitudinal interviews by periodically conducting in-person interviews with participants and others about the program.

Evaluation Results

Use of the REDRESS[®] program has steadily increased since its inception. In 1999, the USPS held 8,274 mediation sessions in which 8,801 cases were mediated (often more than one case involving the same disputant is mediated in a single session). By 2002, it held 10,806 sessions for 11,085 mediated cases. In 2004, it held 11,496 sessions for 11,663 mediated cases.

Much of the research about the REDRESS[®] program is based on the participant exit surveys and the data tracking forms used since the inception of the program. By 2005, there were more than 205,000 exit surveys in the database. By comparing ICRI data to the USPS mediator activity reports, these exit surveys represent a response rate in excess of 75 percent. These results represent the largest workplace mediation database in the world. Each case involves at least one complainant and one respondent, and usually one or more representatives. Thus, each session typically

⁴⁹ See Nabatchi & Bingham, *Transformative Mediation in the United States Postal Service REDRESS[™] Program: Observations of ADR Specialists*, 18 Hofstra Lab. & Emp. L.J. 399, 406 (2001).

⁵⁰ *Id.* at 408–09; Folger & Bush, *Transformative Mediation and Third-Party Intervention: Ten Hallmarks of a Transformative Approach to Practice*, 13 Mediation Q. 263 (1996).

⁵¹ *Id.*

involves two to four USPS employees. The subject matter of the cases involves craft employees who feel they have been subject to discrimination. The discussions are typically about communication issues, rarely about discrimination, and address overtime, sick leave, promotions, working conditions, schedule changes, and various supervisor and employee behaviors including harassment.

The following discusses evaluation results at the program level.

Program Level: Implementation and Process Evaluation. Before researchers can assess the impact of a program on agency goals, they must verify that the program has in fact been implemented and is functioning as designed; this is called a process evaluation.⁵² To date, researchers have conducted two process evaluations. First, researchers surveyed USPS EEO ADR Specialists to assess whether REDRESS® was being implemented in accordance with the transformative model of mediation.⁵³ As described above, EEO ADR Specialists and Coordinators were asked to describe what they had seen or heard mediators do or say that fostered or interfered with party empowerment or recognition (the basic facets of transformative mediation) between the parties. This provided a rich collection of descriptions and anecdotes about what was happening in mediation, from the perspective of an outside, dispassionate observer. An analysis revealed that the USPS program staff had correctly categorized mediator moves as fostering or hindering empowerment and recognition, in that their descriptions corresponded with the hallmarks of transformative mediation practice described by Folger and Bush.⁵⁴ This study provided evidence that EEO ADR Specialists understand the transformative model and indicates that the Specialists are applying this understanding to their screening of mediators. Moreover, the study provided preliminary evidence that REDRESS® mediators also understood and were correctly implementing the transformative model in their sessions.

Given these preliminary findings, it was important to assess more thoroughly whether mediators were correctly implementing the transformative model of mediation in their REDRESS® sessions. A second aspect of process evaluation for the program emerged

⁵²Scheirer, *Designing and Using Process Evaluation*, in Handbook of Program Evaluation, eds. Wholley, Hatry & Newcomer (1994), at 40–68.

⁵³*Id.* See Nabatchi & Bingham, *Transformative Mediation in the United States Postal Service REDRESS™ Program: Observations of ADR Specialists*, 18 Hofstra Lab. & Emp. L.J. 399 (2001).

⁵⁴Folger & Bush, *Transformative Mediation and Third-Party Intervention: Ten Hallmarks of a Transformative Approach to Practice*, 13 Mediation Q. 263 (1996).

from the survey of mediators. The results of this survey indicate that REDRESS[®] mediators understand the transformative model of mediation. The majority of REDRESS[®] mediators frequently engage in behaviors that are consistent with the implementation of transformative mediation, and do not engage in behaviors that violate its premises and principles. Mediators are comfortable with conflict, respect the parties and their choices, are patient with the processes of conflict and disputant interaction, and attend to opportunities for empowerment and recognition. Most importantly, the results suggest that REDRESS[®] mediators understand that relinquishing control of the process to the parties, and steering away from direct problem-solving for the parties, are part-and-parcel of transformative mediation. The triangulation of the results from the EEO ADR Specialist survey and mediator survey, along with other studies, suggests that the REDRESS[®] program has been implemented as it was designed.

The mediator survey has resulted in other interesting findings. As noted earlier, the REDRESS[®] roster is racially diverse. Recent research examines the relationships among a mediator's race and his or her satisfaction with and comprehension of the transformative model of mediation.⁵⁵ Although the research found no differences among the mediators in terms of their comprehension of the transformative model, it did show a statistically significant, higher rate of satisfaction with transformative mediation among mediators of color than among white mediators.⁵⁶ The researchers suggest that this may be because the transformative model of mediation's 10 hallmarks described earlier are heavily weighed in favor of collectivism, which is a value orientation emphasized more by ethnic minority groups in the U.S. than individualism, which is a value orientation emphasized in white groups.⁵⁷ This finding suggests that ADR programs that focus on a collective, group-oriented approach to conflict resolution may remove the biases against groups of color in the United States that some scholars have argued are currently present in the legal system.⁵⁸

⁵⁵Pitts, Moon & Bingham, *Individualism, Collectivism, & Transformative Mediation* (2002), at 1 (unpublished manuscript prepared for presentation at the 15th Annual Conference of the International Association for Conflict Management, Salt Lake City, Utah, on file with Indiana Conflict Resolution Institute, Indiana University).

⁵⁶*Id.* at 12.

⁵⁷Ho, *Family Therapy With Ethnic Minorities* (1987).

⁵⁸Pitts, Moon & Bingham, *supra* note 55, at 12–13; Crenshaw, *Race, Reform, and Retrenchment: Transformative and Legitimation in Anti-Discrimination Law*, 101 *Harv. L. Rev.* 1331–1387 (1988); Torres, *Local Knowledge, Local Color: Critical Legal Studies and the Law of Labor Relations*, 25 *San Diego L. Rev.* 1043–088 (1998).

The USPS set *participation rate*, the percentage of all employees offered mediation who agreed to participate in the process, as the key indicator of success for each district and area.⁵⁹ The reasoning was that the program could affect workplace conflict management only if people used it: “We knew that to really have an impact, we needed as many people as possible to accept mediation.”⁶⁰ Initially, the USPS set a goal of a 70 percent participation rate.⁶¹ Subsequently, it raised the bar to 75 percent. Each time the target was raised, the program met this national goal. Headquarters staff eventually developed a one-page bar chart showing participation rate graphically for each of the 85 geographic districts, with recognition and awards for those with the highest participation levels, to create an incentive structure for EEO staff to support the program, market it, and work to maintain its reputation among employees. Currently, the participation rate is 88.1 percent (FY 2004).

Settlement and Case Closure Rates. Typically, mediation programs use *settlement rate*, the percentage of all cases submitted to mediation that resulted in a settlement, as their barometer of success.⁶² Currently the settlement rate or the “resolved at the table” rate for the REDRESS® program is 54.4 percent (FY 2004).

However, settlement is explicitly *not* a goal of transformative mediation. Instead, the goal is to provide the participants with opportunities to take control of their own conflict (empowerment) and reach a better understanding of the other participant’s perspective (recognition). It is hoped that the process may provide an opportunity for participants to resolve their conflict, but that is not the mediator’s objective. Given this, the USPS also maintains records on case closure rates, as distinguished from settlement rates.⁶³ Case closure includes not only cases where the parties reached a resolution in mediation, but also cases where

⁵⁹Hallberlin, *Transforming Workplace Culture Through Mediation: Lessons Learned From Swimming Upstream*, 18 Hofstra Lab. & Emp. L.J. 375, 279 (2001).

⁶⁰*Id.*

⁶¹In order for people to use the program, someone had to have an incentive to encourage them. Goals for participation rates gave everyone associated with the program that incentive. With participation rate as the target, it did not matter whether anyone believed mediation had any likelihood of success. The goal was simply to get people to talk to each other in a safe, private environment. If they resolved their conflict, that was a good thing, but if they failed to do so, it did not reflect adversely on the program staff. In contrast, had the program used settlement rate as the measure, there would have been a counterincentive; program staff might have counseled what they perceived as hard-to-settle or intractable cases out of the program.

⁶²Sander, *The Obsession with Settlement Rates*, 11 Negotiation J. 329–32 (1995).

⁶³Hallberlin, *supra* note 59, at 379.

the parties conclude a formal settlement within 30 days thereafter, or where the complaining party drops, withdraws, or fails to pursue the case to the formal EEO complaint stage. The case closure rate varies from 70 percent to 80 percent and as of FY 2004 it was 72.3 percent.

Time Series Analysis. Satisfaction levels with the REDRESS® program have remained stable and consistent for a five-year period. Researchers recently analyzed the mean process, mediator, and outcome indices nationally by four-week accounting period. Participants rate their satisfaction on a five-point Likert scale, ranging from “highly dissatisfied” (coded 0) to “highly satisfied” (coded 5). The mean process and mediator indices exceed 4.5 consistently over a period of years, while the mean index of satisfaction with outcome is slightly over 4 for this same period.

Often, skeptics criticize claims about participant satisfaction in ADR programs based on theory of a “honeymoon” effect. They claim that people respond positively to any new program just because it is novel; however, the USPS REDRESS® program is no longer new. There is no obvious decline in participant satisfaction associated with permanent institutionalization of the program in July 2001 after the termination of the REDRESS® Task Force. Moreover, there is no evidence that external events (exogenous variables) affected the program at a national level, such as the terrorist attacks of September 11, 2001, and the subsequent terrorist anthrax attacks of October 2001. There is a drop in the transformative index that is an artifact associated with a change in survey design. However, participant satisfaction with the program is remarkably stable, and cannot be attributed to a temporary honeymoon effect from a new program.

Transformative Indicators. This section summarizes the ongoing research at the program level by exploring mediator and participant behaviors in the REDRESS® program that are consistent or inconsistent with the transformative model. This is important to ensure that the program continues to be implemented as it was designed. To do this, several questions in the exit survey ask participants about: behaviors associated with transformative mediators, behaviors associated with directive (evaluative) mediators, and participant behaviors that indicate party empowerment and recognition. The results presented below are based on two sets of data. First, the national exit survey analysis report for fiscal year 2004 (FY 2004) examines the results of thousands of exit surveys entered by ICRI staff between October 2003 and September 2004.

This data provides a snapshot of the REDRESS® program. Second, the aggregate national exit survey analysis report (aggregate) examines all of the surveys entered between 1999 and March 2005. At the time of this writing there were 205,621 surveys included in the aggregate analysis. Both reports give percentages of respondents who reported that they strongly agree or agree with each indicator. These results are compiled in detail in Appendices 1 and 2 respectively. Selections from the FY 2004 data are included as tables within the text below.

Transformative Mediator Behavior. The exit survey asks participants several questions designed to determine whether mediators are engaging in behaviors associated with the transformative model. An analysis of the exit survey data entered in FY 2004 indicates that the majority of complainants and supervisors agreed or strongly agreed that the mediator helped disputants clarify their goals. See Table 1 (see also Appendix 1 for more detail). More importantly, the majority also agreed or strongly agreed that the mediator helped them understand the other person's point of view. Similarly, the majority agreed or strongly agreed that the mediator helped the other person understand their point of view. This improved mutual understanding is a principal goal of transformative mediation. These findings are consistent in the aggregate data as well (see Appendix 2).

Evaluative (Directive) Mediator Behavior. As a check on mediator strong-arm tactics, exit surveys ask whether participants agree that

TABLE 1: Transformative Mediator Behavior (FY 2004)

	Complainant		Supervisor	
	%	n	%	n
Transformative Mediators				
<i>Percent Agreement</i>	66.0%		64.6%	
Mediator Helped:				
Clarify My Goals	80.4%	7924	75.3%	7234
Me Understand Other Person's View	61.2%	5929	61.6%	5872
Other Person Understand My View	56.2%	5427	56.9%	5407

the mediator predicted who will win, evaluated the strengths and weaknesses of their case, or pressured them to accept a settlement. Ideally, in the transformative mediation model, participants should not experience this type of mediator behavior. In general, the rates at which participants in the REDRESS® program agree or strongly agree that mediators have engaged in these behaviors is relatively low, which is good evidence that the mediators are implementing the model as designed. There is an interesting pattern in this data, in that there is a slight difference in the rates between the complainants and all other participants. Analyzing the aggregate data (see Appendix 2), complainants report that mediators predict who will win about 11 percent of the time, while all others report this happens in about 9 percent of the cases. Complainants report that mediators evaluated strengths and weaknesses in about 32 percent of the cases, while all others including complainants' representatives report this happened in 20 percent or fewer of the cases. Complainants report that they felt pressured to accept a settlement in 15 percent of the cases, while their own representatives and others report that this happened in 11 percent or fewer of the cases. Although these differences are small, they are consistent. They may reflect complainant sensitivity to an outside neutral. Complainants are the moving parties; they are the ones pushing to alter the status quo by taking issue with an event or decision at work. Because they are pushing against the status quo by filing a complaint, they may be more sensitive to any mediator communication that might be perceived to reflect on the complaint's merits. However, on the whole, these results suggest that mediators are avoiding directive and evaluative behaviors in the substantial majority of cases.

Evidence of Empowerment and Recognition. Finally, the exit survey asks participants questions about events that can happen during mediation that are associated with empowerment and recognition, the hallmarks of transformative mediation. These results indicate that parties are indeed experiencing the promise of transformative mediation. See Table 2 (see also Appendices 1 and 2 for more detail). These indicators will be examined in greater detail in the following discussion of participant satisfaction, but for purposes of examining the program, these experiences are indicative that the program has been implemented as designed.

**TABLE 2: Indicators of Empowerment and Recognition
(FY 2004)**

Empowerment & Recognition	Complainant		Supervisor	
	%	n	%	n
<i>Percent Agreement</i>	48.3%		49.3%	
Other Person Listened	68.9%	6790	69.9%	6736
Other Person Learned	56.8%	5509	54.8%	5227
I Learned Other's Viewpoint	52.8%	5126	58.0%	5554
Other Acknowledged	47.7%	4608	45.1%	4286
I Acknowledged as Legitimate	60.0%	5755	69.9%	6636
Other Apologized	28.9%	2790	16.5%	1566
I Apologized	23.4%	2239	30.5%	2881

In summary, the research conducted at the program level shows that the program has been implemented as it was designed. Further, participation, settlement, and case closure rates are all high. The mediator roster reflects diversity among the mediators. Finally, the program continues to perform at a stable level over time, indicating no evidence of a honeymoon effect. The next section explores research conducted at the participant level.

Participant Level

This section explores the satisfaction levels of the participants in the REDRESS® program. The results presented below are based on the FY 2004 and aggregate data described in the previous section. These results are compiled in detail in Appendices 3 and 4, respectively. Both reports give the percentages of respondents who reported that they were very satisfied or somewhat satisfied with each indicator discussed below. Selections from the FY 2004 data are included as tables within the text below. This section will first discuss the satisfaction of the complainant and respondent, followed by a discussion about the satisfaction of representatives who participate in the process.

Complainant and Respondent Satisfaction Levels. As noted earlier, the exit survey was designed to assess various aspects of the mediation session with measures that are common and have a strong

theoretical foundation in mediation research and evaluation. Specifically, the exit survey has questions that reflect the three dominant theories used to explain participant satisfaction with dispute resolution processes: distributive justice (satisfaction with the outcome), procedural justice (satisfaction with the process), and interactional justice (satisfaction with the interpersonal treatment experienced during mediation). Each of the theories and the relevant exit survey results are explored below.

Participant Satisfaction With Outcome. Distributive justice is based on the idea that individuals' attitudes and behaviors are motivated by their self-interests and material gains.⁶⁴ Therefore, the distributive justice model suggests that participants will be most satisfied with the outcome of a dispute resolution process when they "win" their case, because winning is associated with a gain.⁶⁵ To assess levels of distributive justice, the survey included a question about the resolution achieved in the case and a series of questions about the participant's satisfaction with the outcome of a case. See Table 3.

The substantial majority of employees and supervisors who participate in the program are satisfied or highly satisfied with the outcome of mediation (on average, 64 percent and 69 percent, respectively, based on the aggregate data). Measures of satisfaction with outcome are affected in part by whether or not the participants reach a full or partial resolution of the dispute. However, participant satisfaction with the mediation process and the mediators remains high even when the disputants do not fully resolve the dispute.⁶⁶

Participant Satisfaction With Process and Mediator. Procedural justice suggests that, in addition to the resolution, the actual process of reaching a decision is a factor in participant satisfaction.⁶⁷ Procedures that afford participants an opportunity to participate in the decision-making process by expressing their voice are generally perceived as being more fair than procedures that do not. To measure the various aspects of procedural justice, the exit survey

⁶⁴Walster, Walster & Berscheid, *Equity: Theory and Research* (1978).

⁶⁵*Id.*

⁶⁶Moon & Bingham, *Transformative Mediation at Work: Employee and Supervisor Perceptions of the USPS REDRESS Program*, 11 *Int'l Rev. Pub. Admin.* 43 (2007).

⁶⁷See Bies & Shapiro, *Voice and justification: Their Influence on Procedural Fairness Judgments*, 31 *Acad. Mgmt. J.* 676–85 (1988); Thibaut & Walker, *Procedural justice: A psychological analysis* (1975); Austin & Tobiasen, *Legal Justice and the Psychology of Conflict Resolution*, in *The Sense of Injustice: Social Psychological Perspectives*, ed. Folger (1984), at 227–74.

TABLE 3: Participant Satisfaction With Outcome (FY 2004)

	Complainant		Supervisor	
	%	n	%	n
Satisfaction with Outcome				
<i>Average Percent Satisfaction</i>	63.2%		69.5%	
Overall Outcome	58.3%	5743	65.6%	6312
Speed	82.8%	8168	76.1%	7328
Expectations of Outcome	58.6%	5749	67.4%	6477
Fairness of Outcome	58.4%	5735	69.8%	6718
Control over Outcome	65.7%	6411	73.1%	7020
Long-term Effects of Mediation	55.5%	5362	64.8%	6204

has a series of questions about the participant’s satisfaction with the mediation itself. In addition, several questions are asked about the participant’s satisfaction with the mediator, as the theory of procedural justice frequently includes mediator behavior as part of the process.

Participant satisfaction with the process is high. See Table 4 (see also Appendices 3 and 4). More than 90 percent of all employees and supervisors who participated in the program were somewhat satisfied or very satisfied with the mediation process. Both complainants and respondents were particularly satisfied with the way in which mediation affords them an opportunity to present their

TABLE 4: Satisfaction With Process (FY 2004)

	Complainant		Supervisor	
	%	n	%	n
Satisfaction with Process				
<i>Average Percent Satisfaction</i>	90.6%		91.3%	
Information about Process	90.1%	8879	88.5%	8521
Control over Process	85.8%	8446	84.2%	8110
Opportunity to Present Views	92.7%	9159	92.6%	8925
Fairness with the Process	86.5%	8451	91.3%	8763
Participation in Process	93.8%	9214	93.1%	8951
Understanding of Process	94.1%	9296	95.2%	9193
Treatment in Process	91.0%	8988	94.0%	9080

views (92.7 percent, 92.6 percent), to participate in the process of resolving the dispute (93.8 percent, 93.1), and with the way they are treated in mediation (91.0 percent, 94.0 percent). These results are consistent in the aggregate data for complainants and respondents as well (93.8 percent, 93.3 percent; 94.5 percent, 93.9 percent; and 91.8 percent, 94.5 percent, respectively).

In addition, complainants and respondents were overwhelmingly satisfied or very satisfied with the mediators who were assigned to their case. On measures of respectfulness, impartiality, fairness, and performance, between 96 percent and 97 percent of all complainants and respondents were either satisfied or very satisfied with the mediators. See Table 5 (see also Appendices 3 and 4). It is significant that complainants and their representatives are so satisfied with the mediators' impartiality (95.6 percent and 96.1 percent), especially given that the USPS created the roster, assigned individual mediators to each case, and paid the full costs of the process. These results, accordingly, suggest that the program design has successfully addressed any latent concerns regarding mediator bias.

Interpersonal Treatment. Finally, interactional justice focuses on the quality of interpersonal treatment the participants receive during the enactment of the dispute resolution process and suggests that participants perceive dispute resolution procedures as fair when they are treated in an ethical and respectful way.⁶⁸ Several dynamics of interpersonal communication appear to be important to achieving interactional justice including: showing regard for people's concerns, giving apologies or showing empathy, sensitivity, truthfulness, respect, propriety of questions, and justification.⁶⁹ These indicators of interactional justice are clearly connected to the transformative model of mediation.⁷⁰ At the core of the transformative model are the concepts of empowerment and recognition. In theory, a disputant who experiences empowerment will become more open to the other disputant and

⁶⁸Bies & Moag, *Interactional Justice: Communication Criteria of Fairness*, in *Research on Negotiation in Organizations*, eds. Lewicki, Sheppard & Bazerman (1986), at 43–55; Folger & Cropanzano, *Process and Procedural and Interactional Justice*, in *Organizational Justice and Human Resource Management*, eds. Folger & Cropanzano (1998), at 25–49.

⁶⁹Greenberg, *The Social Side of Fairness: Interpersonal and Informational Classes of Organizational Justice*, in *Justice in the Workplace*, ed. Cropanzano (1986), at 79–103.

⁷⁰Nabatchi & Bingham, *Expanding our Models of Justice in Dispute Resolution: A Field Test of the Contribution of Interactional Justice* (2002) (unpublished manuscript presented at the International Conflict Management Association (IACM), on file with Indiana Conflict Resolution Institute, Indiana University).

TABLE 5: Satisfaction With Mediator (FY 2004)

Satisfaction with Mediator	Complainant		Supervisor	
	%	n	%	n
<i>Average Percent Satisfaction</i>	96.3%		96.7%	
Mediator Respect	97.6%	9677	97.8%	9448
Mediator Impartiality	95.6%	9430	96.1%	9268
Mediator Fairness	95.9%	9483	96.5%	9312
Mediator Performance	96.2%	9502	96.2%	9272

more able to hear and understand the other person's perspective. This, in turn, will lead to recognition, that is, the ability to accept and to some degree validate the other person. The experience of empowerment and recognition may lead to settlement. This dynamic occurs to a greater or lesser degree in all forms of mediation; however, the distinctive nature of the transformative model is that it makes this dynamic of interaction, not settlement, the mediator's goal.

In REDRESS[®], 70 percent of all complainants and supervisors agreed that the other person in the conflict listened to them during mediation.⁷¹ See Table 6. Although it may seem tautological that people will listen to each other in mediation, this is in fact a critical component often missing from a disputant's experience of justice in an organization.

Recent studies on the REDRESS[®] program have found that when the participants report listening to each other, acknowledging each other's views, and sometimes, giving apologies, they are more satisfied with the outcome of mediation and its fairness.⁷² In mediation, the parties listen to each other. Beyond that, 52.8 percent of complainants and 58.0 percent of supervisors report that they agree or strongly agree with the statement that they learned about the other person's viewpoint (see Appendices 1 and 2).

The ability to listen to each other and learn about each other's viewpoints makes it possible for the participants to move toward one of the ultimate goals of the model: recognition. In exit surveys, 60 percent of complainants and 69.9 percent of supervisors agreed or strongly agreed that they acknowledged as legitimate

⁷¹ See Nesbit, Nabatchi & Bingham, *Relationship Between Interactional Justice and Settlement* (2005) (unpublished manuscript, on file with Indiana Conflict Resolution Institute, Indiana University).

⁷² Nabatchi, Bingham & Good, *Organizational Justice and Workplace Mediation: A Six Factor Mode*, 18 Int'l J. Conflict Mgmt. 148 (2007).

TABLE 6: Indicators of Empowerment and Recognition (FY 2004)

	Complainant		Supervisor	
	%	n	%	n
Empowerment & Recognition				
<i>Percent Agreement</i>	48.3%		49.3%	
Other Person Listened	68.9%	6790	69.9%	6736
Other Person Learned	56.8%	5509	54.8%	5227
I Learned Other's Viewpoint	52.8%	5126	58.0%	5554
Other Acknowledged	47.7%	4608	45.1%	4286
I Acknowledged as Legitimate	60.0%	5755	69.9%	6636
Other Apologized	28.9%	2790	16.5%	1566
I Apologized	23.4%	2239	30.5%	2881

the other person's perspective, views, or interests (62 percent and 71 percent, respectively, in the aggregate data). Although the majority of participants report that they acknowledged the other disputant, the data suggest that the other disputant does not always hear this acknowledgment. Nearly half of complainants (47 percent) and supervisors (45.1 percent) from the FY 2004 data report that the other person acknowledged them. Nevertheless, the gap is not large, and these percentages suggest that there is substantial exchange of perspectives during mediation.

The most telling indicator of recognition is an apology. An apology is often not possible in litigation, because it can be treated as an admission of guilt and evidence of liability. It is significant that complainants and supervisors generally agree on the frequency with which apologies occur to the complainant. Supervisors report that they apologize to the complainant about some aspect of the dispute about 32 percent of the time, and complainants report that they received an apology about 33 percent of the time (30 percent and 29 percent in the aggregate data). These numbers corroborate each other, suggesting that they are reliable. There is less agreement about complainants apologizing to supervisors; complainants report that they apologize 23.4 percent of the time, while supervisors hear an apology in 16.5 percent of their exit survey reports (23 percent and 16 percent, respectively, in the aggregate data).

The nature of this communication—listening, acknowledging, apologizing—is bilateral and between those closest to the dispute. This is substantially different from what happens to disputants in an adjudicatory process, such as arbitration, administrative adjudication, or litigation. By practicing these communication skills and by having the mediator model conflict resolution behaviors when he or she paraphrases or highlights a moment of recognition between the parties, the participants in mediation may be learning conflict management skills to take back to the workroom.

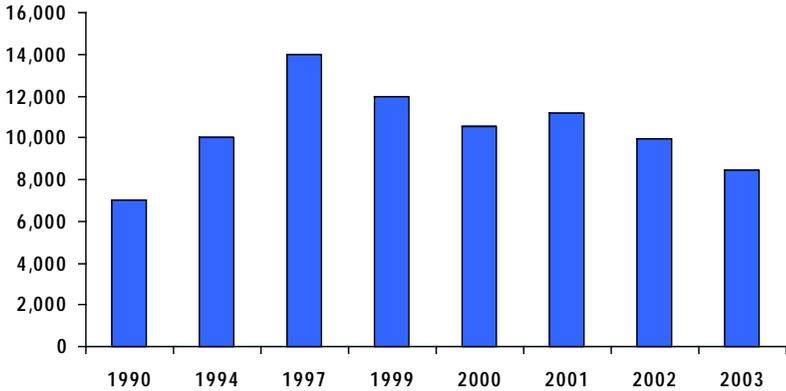
Participant satisfaction is a necessary but insufficient condition for a dispute resolution program's success. In its absence, the program would certainly fail due to lack of employee participation. High participant satisfaction contributes to high participation rates. High participation rates in turn make it possible to examine whether the program is having an effect on the USPS system for handling disputes. Figure 1, showing a decline in formal EEO complaints from a high of over 14,000 in 1997 to around 8,500 in 2003 illustrates evidence of this effect.

Representatives. The REDRESS[®] program differs from some private sector DSDs in that it allows employees to bring any representative they choose to the mediation session, including lawyers, union representatives, professional association representatives, and friends or family. Some employees chose not to bring a representative. Although best practices guidelines like the *Due Process Protocol for Mediation and Arbitration of Statutory Disputes Arising out of the Employment Relationship*⁷³ require free access to representatives during the ADR process, some consultants have suggested it is preferable to exclude outside representatives, particularly lawyers, because they may interfere with settlement. In the private sector, DSDs are sometimes marketed as a way to avoid a union organizing campaign. Thus, REDRESS[®] demonstrates that representatives need not be excluded in order to have a successful ADR program.

Representative Satisfaction. In addition to examining complainant and respondent levels of satisfaction, researchers also looked at the satisfaction levels of representatives. These levels are detailed in Appendices 1–4. The representative satisfaction rates generally parallel the satisfaction rates of the complainants and respondents; they are generally the same and often higher than the satisfaction

⁷³*Due Process Protocol for Mediation and Arbitration of Statutory Disputes Arising out of the Employment Relationship*, available online at www.adr.org (last visited May 5, 2005).

FIGURE 1. Trend Line for Formal EEO Complaint Filing Before and After Implementation of REDRESS®



of the complainants and the supervisors. For example, average percent satisfaction with the process in FY 2004 was 92.2 percent and 93.3 percent for complainant and management representatives respectively compared to 90.6 percent and 91.3 percent satisfaction reported by the actual complainant and supervisor. The aggregate data is nearly the same (92.1 percent, 93.4 percent compared to 91.3 percent, 91.6 percent).

The fact that the representatives support the program is significant. Although parties can bring anyone as a representative, many of them are union representatives. Traditionally labor relations within the Postal Service have been adversarial. Indeed, at the outset of the program, the American Postal Workers Union (APWU) advised the union representatives not to participate in the program. However, because the USPS worked with the union representatives from the outset in the design of the program, the local union reps became important partners and supporters of the program.

The support from both complainant and supervisor representatives is a strong indicator of the programs fairness. Representatives are often repeat players and continue to report satisfaction with not only the process, but also with the mediator (96.2 percent, 97.0 percent FY2004) and the mediation outcome (66.2 percent, 72.7 percent FY2004).

Interestingly, representatives perceive listening and learning, and hear apologies and acknowledgements more than the parties they represent. For example, in FY2004, management representatives thought the other party listened 77.7 percent of the time, while 69.9 percent of supervisors reported the same (77.8 percent, 70.5 percent aggregate). Similarly, 30.2 percent of complainant representatives heard an apology from the other party as compared with 28.9 of the complainants (30.2 percent, 29.2 percent aggregate).

The Role of Representatives. In addition to satisfaction levels, researchers also have looked at the role that various kinds of representatives play and the impact they have on the mediation session.⁷⁴ The researchers found that, in general, representation had a positive impact on settlement. The settlement rate for mediations where neither party was represented was 55 percent, whereas the settlement rate for mediations where both parties were represented was 61 percent, a statistically significant difference of 6 percent. Representation also was associated with longer mediation sessions. The mean duration for mediations where neither party was represented was 152 minutes, but that number rose to 184 minutes for mediations where both parties were represented.

Researchers also compared resolution rates among different types of complainant representation: fellow employee, attorney, union representative, or "other." The highest rate of partial and complete resolution (65 percent) occurred when union or professional association representatives were present on behalf of complainants. Presence of fellow employees as representatives produced a 60 percent resolution rate, while attorney representatives produced a resolution rate of only 50 percent. It is possible that the cases with attorney representation were more difficult to settle because attorneys' fees became an issue. It is possible that in these cases, attorneys hope to recover monetary damages in adjudication. However, since non-monetary resolutions were not separately coded, researchers have no way of assessing the relative strength of the participants' claims across different categories of representation.

⁷⁴Bingham, Kim & Raines, *Exploring the Role of Representation in Employment Mediation at the USPS*, 17 Ohio St. J. Disp. Resol. 341, 356 (2002).

Organizational Level Evaluation

This section explores the research at the organizational level of the REDRESS[®] program. One of the goals of the USPS was to improve the way employees and supervisors handle conflict, and ultimately to empower the participants to more efficiently manage their conflict for themselves, resulting in a better, more productive work environment. This section will first discuss elements of interactional justice between the complainants and the respondents, followed by a discussion about supervisors using conflict resolution after participating in REDRESS[®] training and mediation. Third, the section will describe research on the workplace climate pre- and post-REDRESS[®] as well as compare different dispute processes. Finally, this section will include a discussion of how REDRESS[®] has decreased complaint filing at the USPS.

Interactional Justice. A recent study of REDRESS[®] participants explores the relationship between disputants' roles in mediation, experiences of interactional justice in the mediation process, and the quality of the mediated outcome.⁷⁵ Interactional justice is a model used by organizational justice researchers to explain perceptions of fairness. The interactional justice model suggests that interpersonal treatment impacts employee satisfaction with both organizational decision making and perceptions of fairness.⁷⁶ They discovered that employees and supervisors report high rates of settlement when they perceive high levels of interactional justice in transformative mediation. This research indicates that the quality of the participant's interactions in mediation is related to the quality of the outcome. Interactional justice research suggests elements of communication critical to employee perceptions of fairness, including: honesty, respect, propriety of questions, justification, kindness, politeness, consideration, and treatment with dignity and respect.⁷⁷ These elements of communication allow disputants to provide an explanation of their behavior that describes their decision-making process and allocates responsibility. This

⁷⁵Nesbit, Nabatchi & Bingham, *Disputants' Interactions in Mediation: Exploring the Relationship Between Interactional Justice and Settlement* (2005) (unpublished manuscript, on file with Indiana Conflict Resolution Institute, Indiana University).

⁷⁶Bies & Moag, *Interactional Justice: Communication Criteria of Fairness*, in *Research on Negotiation in Organizations*, eds. Lewicki, Sheppard & Bazerman (1986), at 43–55; Folger & Cropanzano, *Process and Procedural and Interactional Justice*, in *Organizational Justice and Human Resource Management*, eds. Folger & Cropanzano (1998), at 25–49; Sheppard, Lewicki & Minton, *Organizational Justice: The Search for Fairness in the Workplace* (1992).

⁷⁷Bies & Moag, *id.*; Skarlicki & Folger, *Retaliation in the Workplace: The Roles of Distributive, Procedural and Interactional Justice*, 82 *J. Applied Psychol.* 434–43 (1997).

kind of explanation is called a causal account and is an important element of interactional justice. The researchers argue that transformative mediation can successfully address interactional elements of conflict by enabling the parties to describe their own issues and seek their own solutions. "In fostering empowerment and recognition, transformative mediation directly addresses the interactional elements of conflict by changing the way disputants experience and interact with both self and other in the midst of their continuing conflict."⁷⁸ The research provides support for the claim that transformative mediation has the potential to transform the workplace culture by causing both employees and supervisors to become more adept at managing conflict and by fostering good communication skills between employees and supervisors.⁷⁹

Supervisors Using Conflict Resolution. Napoli reports evidence of changes in the way that supervisors describe how they handle conflict at the workplace before and after experiencing a three-day REDRESS[®] mediation training or REDRESS[®] mediation.⁸⁰ Her research indicates that supervisors change how they manage conflict in response to both the training and the mediation.⁸¹ For example, before training, 13 percent of the participants said that they communicated openly to manage conflict at work, but after training the number jumped to 50 percent of the supervisors.⁸² Similarly, before training 30 percent said that they give direct orders to manage conflict at work, but after training, only 19 percent managed conflict that way. Before training, 10 percent of supervisors thought that listening works best for managing conflict, but after training, 38 percent felt that listening works best.⁸³ In general, comparing the "before training" data with the "after training" data shows a movement among supervisors to integrate ideal conflict management techniques.⁸⁴

The mediation results are similar to the training results. For example, before participating in a mediation session, 50 percent

⁷⁸Nesbit, Nabatchi & Bingham, *supra* note 75, at 7.

⁷⁹Bush & Folger, *The Promise of Mediation: The Transformative Approach to Conflict* (2004).

⁸⁰See Napoli, *USPS Supervisors and Conflict Management Techniques: Evaluating Training and Mediation Interventions* (2004), at 61 (unpublished Ph.D. dissertation, Indiana University, on file with author).

⁸¹Lisa-Marie Napoli, *United States Postal Service Supervisors and Conflict Management Techniques: Evaluating Training and Mediation Interventions at 61-62* (2004) (unpublished Ph.D. dissertation, Indiana University) (on file with author).

⁸²*Id.* at 86.

⁸³*Id.* at 89.

⁸⁴*Id.* at 101.

of supervisors said that they would communicate openly to manage conflict at work compared to 71 percent after the mediation.⁸⁵ Before mediation, 27 percent of supervisors thought that listening works best for managing conflict, but after training, 43 percent felt that listening works best.⁸⁶

Overall, Napoli's research shows that as a result of participating in REDRESS[®] training and mediations sessions, supervisors listen more, are more open to expressing emotion, and take less of a top-down hierarchical approach to managing conflict.

Workplace Climate Before and After REDRESS[®]. In 2003, researchers conducted a pre-post study of USPS employees at all levels of the workforce to examine the workplace climate prior to and after the introduction of the REDRESS[®] program. The study also compared the three available dispute processes (grievance, EEO, and REDRESS[®]). Participants in the study were USPS employees from three cities: San Francisco, New York, and Cleveland.⁸⁷ Researchers collected pre-REDRESS[®] data in May and June 1998, and post-REDRESS[®] data in April and May 2000.⁸⁸ One interesting and significant finding is that before REDRESS[®], almost one-third of employees and 44 percent of the supervisory personnel perceived that "doors were open," meaning that employees, supervisors, and managers could easily approach each other to discuss problems. But in the interviews after REDRESS[®] was implemented, these numbers increased so that more than half of employees and two-thirds of supervisory personnel reported a belief that there are "open doors," creating opportunities for communication.⁸⁹ Another significant finding was that before REDRESS[®], the second-most common response to the question "How does your supervisor deal with conflict?" was that supervisors or managers deal with conflict by "yelling, arguing, disciplining, or intimidating" their opponents. In the after interviews, this response was drastically less common—dropping by 15 percentage points for employees and 18 points for supervisory personnel.⁹⁰ Although these results are encouraging, some of the significant findings of the research contradict the goals of the REDRESS[®] program. For example, participants reported an increase in firing as a disciplin-

⁸⁵*Id.* at 106.

⁸⁶*Id.*

⁸⁷Bingham, Hedeem, Napoli & Raines, *A Tale of Three Cities: Before and After REDRESS* (2003) (copy of report to USPS on file with authors).

⁸⁸*Id.* at 2.

⁸⁹*Id.* at 25.

⁹⁰*Id.* at 26.

ary method after REDRESS[®], as well as an increase in non-supervisory personnel reporting that their supervisors responded to conflict by telling them to “Go file a complaint.”⁹¹ These behaviors are not constructive approaches to communication or conflict management skills.

After REDRESS[®], supervisory personnel felt that management was more willing to resolve differences cooperatively, but this perception was not shared by non-supervisory employees.⁹² The data also indicated a small but statistically significant decrease in the level of tension within workgroups at the USPS after REDRESS[®].⁹³ There were also three significant findings regarding how employees deal with conflict after REDRESS[®]. The percentage of employees who say they file a grievance decreased slightly, as did the percentage who say they file an EEO claim. Also, there was a slight decrease in those stating that they ask for a transfer to get away from the conflict.⁹⁴

The research also compares the three dispute processes available to employees (EEO, Grievance, and REDRESS[®]) on several levels. Most relevant to this discussion is the finding that half of the supervisors in the EEO and Grievance processes said that there was no change in their relationship with the person after the process, but this was only 29 percent for the supervisory personnel involved in the REDRESS[®] mediation process. This finding suggests that REDRESS[®] is able to change relationships.⁹⁵ Additionally, 40 percent of supervisors and 27 percent of non-supervisory employees stated that the REDRESS[®] process improved communication and/or resolved the problem between the parties. This was only about 16 percent for both groups using the grievance process and 5 percent or less for those using the EEO process.⁹⁶ Finally, when asked how the process has affected the relationship with the other party, more than twice as many disputants stated that their relationships were better or much better after the REDRESS[®] process than after the other two processes.⁹⁷ Because the major goal of REDRESS[®] is to improve workplace relationships and the workplace climate, these are important findings.

⁹¹ *Id.* at 27.

⁹² *Id.* at 30.

⁹³ *Id.* at 33.

⁹⁴ *Id.* at 37.

⁹⁵ *Id.* at 97.

⁹⁶ *Id.*

⁹⁷ *Id.* at 98.

Decrease in EEO Complaint Filing. Figure 1 demonstrates that since the USPS implemented the mediation program, formal complaints of discrimination have dropped from a high of about 14,000 a year to about 8,500 a year. A statistical analysis indicated that the turning point in this trend and subsequent drop in formal complaints correlated with implementation of the program in each geographic district.⁹⁸ In other words, it is fair to conclude that the program caused the drop in complaint filings. There were no extraneous factors at work during the period, and economic conditions were stable. This trend suggests that mediation has a positive impact on the USPS system for addressing complaints of discrimination in that these complaints are resolved at an earlier step in the administrative complaint process. They are resolved through mediation at the informal complaint stage and do not reach the formal complaint stage; hence, there is a drop in formal complaint filings.

Resolving workplace conflict earlier may have a variety of positive benefits. It avoids the hardening of positions and acrimony associated with a prolonged dispute. It may also contribute to improved communication between the disputants. There is some evidence that during mediation, the disputants experience and practice some positive conflict management skills.⁹⁹

There is evidence of this “upstream effect” from mediation.¹⁰⁰ Controlling for changes in the size of the workforce, informal EEO complaint filings have dropped 30 percent since their peak before the USPS implemented REDRESS®. Bingham and Novac examined a natural field experiment afforded by the national roll-out of mediation for employment disputes.¹⁰¹ Theory suggested that early mediation would lead to earlier, more durable settlements and transaction cost savings. Researchers examined a national dataset including the number of informal and formal

⁹⁸Bingham & Novac, *Mediation's Impact on Formal Complaint Filing: Before and After the REDRESS Program at the United States Postal Service*, 21 Rev. Pub. Personnel Admin. 308 (2001).

⁹⁹This evidence is described in the research on Interactional Justice. See Nesbit, Nabatchi & Bingham, *Disputants' Interactions in Mediation: Exploring the Relationship Between Interactional Justice and Settlement* (2005) (unpublished manuscript, on file with Indiana Conflict Resolution Institute, Indiana University).

¹⁰⁰For a description of upstream effects, see Anderson & Bingham, *Upstream Effects From Mediation of Workplace Disputes: Some Preliminary Evidence from the USPS*, 48 Labor L.J. 601 (1997); Hallberlin, *Transforming Workplace Culture Through mediation: Lessons Learned From Swimming Upstream*, 18 Hofstra Lab. & Emp. L.J. 375 (2001).

¹⁰¹Bingham & Novac, *Mediation's Impact on Formal Complaint Filing: Before and After the REDRESS™ Program at the United States Postal Service*, 21 Rev. Pub. Personnel Admin. 308 (2001).

EEO complaints filed each accounting period (4 weeks) by zip code. They were able to control for fluctuations in the number of employees (employee census) and geographic area by district and area. They found that implementation of the mediation program resulted in a significant decrease in the number of formal discrimination complaints and concluded that a well-designed employment dispute mediation program could resolve disputes at an earlier stage in the administrative process, and thereby reduce the number of formal complaints filed. Overall, formal EEO complaints have declined by more than 30 percent since their peak in 1997 at 14,000 formal complaints a year.

Moreover, there is a change in the composition of the complainant pool. The complaints are now coming from 40 percent fewer people; this means that the people now filing complaints are more likely to be repeat filers. Interviews with a random sample of employees in three cities before and after implementation of the program suggest that there is higher satisfaction with the EEO process after REDRESS®.¹⁰² This result suggests that the EEO process may be functioning differently because cases amenable to mediation are resolved quickly, allowing other complaints of discrimination to progress more effectively within the system.

Finally, there has been a gradual increase in “pre-mediation,” or efforts by the parties to a dispute to resolve it after a request for mediation is made, but before they get to the table. The rate at which cases are resolved before mediation is now 14 percent. This too is evidence that conflict management skills are moving upstream. Longitudinal research on these trends is continuing.

Conclusion

Control over DSD brings with it responsibilities. Some employers have chosen to use that control solely for the purpose of risk management, to alter the settlement value of a discrimination case, and render it impossible for an employee to obtain effective recourse from the public justice system through the imposition of mandatory arbitration. Other employers, admittedly for whom unilateral imposition of binding arbitration is not a legal option, have instead pursued different objectives: improving opportunities for voice and seeking longer term change in conflict management

¹⁰²Bingham, Hedeon, Napoli & Raines, *A Tale of Three Cities: Before and After REDRESS* (2003) (copy of report to USPS on file with authors).

in the workplace. Looking back over a decade after REDRESS[®] was first implemented, although no program perfectly achieves its design, there is no question that REDRESS[®] has served and continues to serve its greater purpose, to improve the workplace climate. The institutionalization of the program, its voluntary use by employees (more than 100,000 disputes have been mediated), and the significant reduction of formal complaints, suggest that employers may achieve efficiencies through a DSD that is voluntary and allows employees to pursue their cases to the public justice system.

Appendix 1 to Chapter 10
Program Level FY 2004

REDRESS Exit Survey Descriptive Statistics - FY 2004

Transformative Indicator

Percentages of Complainant and Respondent/Supervisor Who Responded "Strongly Agree" or "Agree"

Number of Surveys	Complainant		Supervisor		Rep. Com.		Rep. Mgmt.	
	%	n	%	n	%	n	%	n
10033			9768		7737		8154	
Transformative Mediators								
<i>Percent Agreement</i>								
Mediator Helped:	66.0%		64.6%		66.7%		66.5%	
Clarify My Goals	80.4%	7924	75.3%	7234	75.6%	5655	75.7%	6071
Ms Understand Other Person's View	61.2%	5929	61.6%	5872	63.4%	4674	63.4%	5049
Other Person Understand My View	56.2%	5427	56.9%	5407	61.2%	4503	60.6%	4810
Directive Mediators								
<i>Percent Agreement</i>								
Predicting Who Will Win	39.1%		21.7%		20.8%		19.9%	
Stranger and Weaknesses	12.8%	1223	10.5%	999	10.2%	757	10.9%	871
Control of the Process	32.1%	3105	20.4%	1934	20.3%	1497	16.6%	1325
Pressure to Accept a Settlement	55.0%	5311	45.0%	4285	41.6%	3070	40.3%	3204
	16.3%	1579	10.8%	1026	11.3%	835	10.1%	807
Empowerment & Recognition								
<i>Percent Agreement</i>								
Other Person Listened	48.3%		49.3%		53.1%		53.9%	
Other Person Learned	68.5%	6790	69.9%	6736	75.2%	5648	77.7%	6258
I Learned Other's Viewpoint	56.8%	5509	54.8%	5227	64.0%	4727	63.3%	5059
Other Acknowledged	52.8%	5126	58.0%	5554	63.2%	4677	66.1%	5282
I Acknowledged as Legitimate	47.7%	4608	45.1%	4286	53.5%	3943	52.3%	4170
Other Apologized	60.0%	5755	69.9%	6636	64.5%	4743	74.7%	5944
I Apologized	28.5%	2790	16.5%	1566	30.2%	2212	17.3%	1369
	23.4%	2239	30.5%	2881	20.9%	1517	25.6%	2023

10/17/2004

Indiana Conflict Resolution Institute

Appendix 2 to Chapter 10
 Program Level Aggregate

REDRESS Exit Survey Descriptive Statistics
 Transformative Indicator

Percentages of Complainants and Respondents Supervisors Who Reported "Strongly Agree" or "Agree"

	Complainant		Supervisor		Rep. Com.		Rep. Mgmt.	
	%	n	%	n	%	n	%	n
Number of Surveys		55537		52665		40691		42226
Transformative Mediators								
<i>Percent Agreement</i>								
Mediator Helped:								
Clarify My Goals	67.3%		66.2%		67.9%		68.6%	
Me Understand Other Person's View	81.3%	44179	76.8%	39771	77.9%	30494	77.7%	32165
Other Person Understand My View	62.6%	31232	63.0%	30372	64.0%	23367	65.1%	25027
	58.1%	28827	58.9%	28304	61.7%	22473	62.8%	24012
Directive Mediators								
<i>Percent Agreement</i>								
Predicting Who Will Win	28.6%		21.6%		21.6%		19.9%	
Strengths and Weaknesses	11.3%	5550	9.0%	4323	9.7%	3566	9.3%	3593
Control of the Process	32.0%	15861	19.9%	9537	20.8%	7609	16.9%	6481
Pressure to Accept a Settlement	55.9%	27810	47.2%	22699	44.8%	16372	44.0%	16857
	15.2%	7359	10.1%	4885	11.3%	4115	9.3%	3575
Empowerment & Recognition								
<i>Percent Agreement</i>								
Other Person Listened	49.9%		50.3%		53.8%		54.5%	
Other Person Learned	70.3%	38315	70.5%	36638	75.0%	29563	77.8%	32305
I Learned Other's Viewpoint	58.7%	31496	56.6%	29139	64.9%	25211	64.5%	26323
Other Acknowledged	55.2%	29768	60.3%	31197	64.0%	24984	67.1%	27735
I Acknowledged as Legitimate	49.8%	26590	47.0%	24144	54.6%	21219	54.0%	22247
Other Apologized	62.0%	32971	71.0%	36466	65.9%	23511	75.9%	31210
I Apologized	29.2%	14481	16.2%	7755	30.2%	10966	16.9%	6451
	23.9%	11722	30.7%	14669	21.7%	7807	25.5%	9694

3/3/2005

Indiana Conflict Resolution Institute

Appendix 3 to Chapter 10
Participant Level FY 2004

REDRESS Exit Survey Descriptive Statistics - FY 2004

Procedural Justice Indicators

Percentages of Complainants and Respondents/Supervisors Who Reported "Very Satisfied" or "Somewhat Satisfied"

National	Complainant		Supervisor		Rep. Com.		Rep. Mgmt.	
	%	n	%	n	%	n	%	n
Number of Surveys	10053		9768		7737		8154	
Satisfaction with Process								
Average Percent Satisfaction	90.6%		91.3%		91.2%		93.3%	
Information about Process	90.1%	8879	88.5%	8321	91.1%	6913	90.9%	7316
Control over Process	83.8%	8446	84.2%	8110	86.4%	6545	87.5%	7054
Opportunity to Present Views	92.7%	9159	92.6%	8925	93.3%	7052	93.8%	7548
Fairness with the Process	86.5%	8451	91.3%	8763	90.3%	6799	93.7%	7519
Participation in Process	93.8%	9214	93.1%	8951	93.6%	7075	95.0%	7637
Understanding of Process	94.1%	9296	95.2%	9193	96.3%	7318	96.2%	7748
Treatment in Process	91.0%	8988	94.0%	9080	94.3%	7156	96.1%	7738
Satisfaction with Mediator								
Average Percent Satisfaction	96.3%		96.7%		96.2%		97.0%	
Mediator Respect	97.6%	9677	97.6%	9448	97.6%	7441	98.1%	7912
Mediator Impartiality	95.6%	9430	96.1%	9268	95.6%	7276	96.5%	7783
Mediator Fairness	95.9%	9483	96.5%	9312	95.9%	7307	96.9%	7809
Mediator Performance	96.2%	9502	96.2%	9272	95.7%	7282	96.4%	7757
Satisfaction with Outcome								
Average Percent Satisfaction	63.2%		69.5%		66.2%		72.7%	
Overall Outcome	58.3%	5743	65.6%	6312	61.1%	4631	67.8%	5454
Speed	82.8%	8168	76.1%	7328	82.5%	6231	79.9%	6429
Expectations of Outcome	58.6%	5749	67.4%	6477	61.7%	4661	70.2%	5637
Fairness of Outcome	58.4%	5735	69.8%	6718	63.6%	4723	73.2%	5878
Control over Outcome	65.7%	6411	73.1%	7020	68.0%	5109	76.9%	6147
Long-term Effects of Mediation	55.5%	5362	64.8%	6204	61.6%	4549	68.2%	5447

12/17/2004

Indiana Conflict Resolution Institute

Appendix 4 to Chapter 10
Participant Level Aggregate

REDESS Exit Survey Descriptive Statistics
Procedural Justice Indicators

Percentages of Complainant and Respondent Supervisors Who Reported "Very Satisfied" or "Somewhat Satisfied"

National	Complainant		Supervisor		Rep. Com.		Rep. Mgmt.	
	%	n	%	n	%	n	%	n
Number of Surveys	55337		52665		40691		42226	
Satisfaction with Process								
<i>Average Percent Satisfaction</i>	91.3%		91.6%		92.1%		93.4%	
Information about Process	90.5%	49445	88.2%	45908	90.7%	36259	90.7%	37821
Control over Process	86.6%	47176	84.3%	43861	86.2%	34357	87.3%	36369
Opportunity to Present Views	93.8%	51259	93.3%	48622	93.1%	37016	94.1%	39171
Fairness with the Process	87.3%	47414	91.5%	47483	90.4%	35891	93.7%	38972
Participation in Process	94.5%	51364	93.9%	48777	93.5%	37230	95.0%	39580
Understanding of Process	94.6%	51744	95.7%	49869	96.4%	38587	96.7%	40413
Treatment in Process	91.8%	50197	94.5%	49242	94.4%	37760	96.2%	40144
Satisfaction with Mediator								
<i>Average Percent Satisfaction</i>	96.6%		97.0%		96.2%		97.2%	
Mediator Respect	98.1%	53759	98.2%	51247	97.6%	39203	98.4%	41117
Mediator Impartiality	95.6%	52212	96.4%	50231	95.5%	38317	96.8%	40441
Mediator Fairness	96.1%	52570	96.8%	50461	95.9%	38450	97.1%	40569
Mediator Performance	96.5%	52625	96.5%	50142	95.6%	38265	96.6%	40180
Satisfaction with Outcome								
<i>Average Percent Satisfaction</i>	64.3%		69.6%		67.2%		72.8%	
Overall Outcome	59.9%	32575	66.3%	34384	63.7%	25002	68.8%	28620
Speed	82.2%	41698	75.3%	36624	81.1%	30762	78.8%	30561
Expectations of Outcome	59.8%	32433	67.1%	34759	63.3%	25138	70.3%	29204
Fairness of Outcome	59.7%	30143	69.7%	33838	65.6%	23786	73.2%	28388
Control over Outcome	66.8%	35995	73.7%	38092	68.9%	27178	77.4%	32071
Long-term Effects of Mediation	57.5%	30705	65.6%	33892	62.4%	24262	68.7%	28338

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Indiana Conflict Resolution Institute