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CONFERENCE
Rediscovering Mediation
in the 21st century

**PERSPECTIVES ON COURT-ANNEXED
MEDIATION IN THE PHILIPPINES**

**DEAN EDUARDO DE LOS ANGELES
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PHILIPPINES**

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PERSPECTIVES ON COURT-ANNEXED MEDIATION IN THE PHILIPPINES

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It was in 1999 when Court-Annexed Mediation was first introduced in the Philippines. At that time, more than 800,000 cases were pending in the different courts in the country, and the Supreme Court was trying to test several methods of decongesting court dockets, such as the use of summary proceedings, continuous trials, specialized tribunals and court management. Yet, these strategies were hardly able to ease the clogged dockets. The Philippines has become such a litigious society that the continuous inflow of cases drowned the judges in their caseload. Even the cases they resolved were mostly and immediately appealed to the appellate courts, so that no appreciable number of cases were removed from the court dockets.

With this milieu, the Supreme Court pilot-tested and formally launched Court-Annexed Mediation and later, Judicial Dispute Resolution, in the various courts in the Philippines. Mediation principally targeted newly filed civil cases and the civil aspect of some criminal cases. After ten years, it was reported that of the 166,901 cases that underwent mediation, 111,528 cases were settled, resulting in an encouraging success rate of 69%.

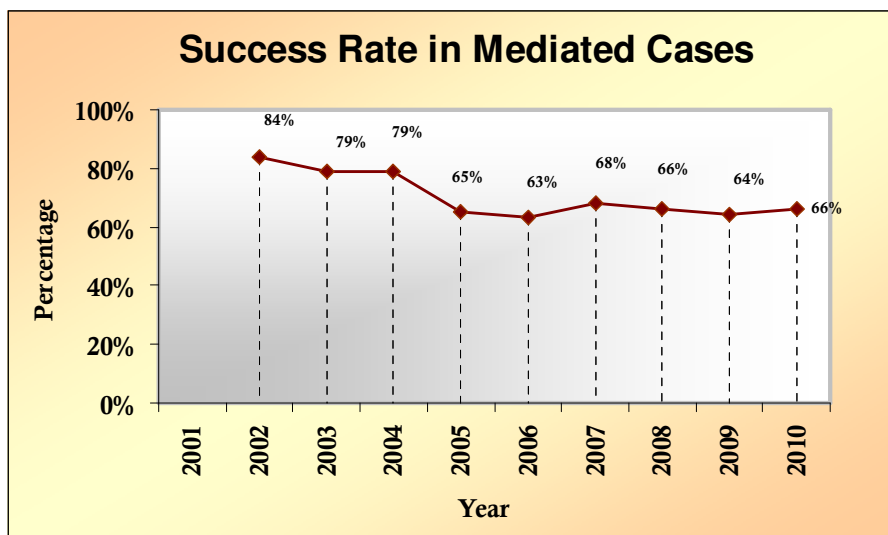
Table A

	Total Number of Cases Mediated	Successful Mediation	Percentage
2001	n.a.	n.a.	n.a.
2002	3,559	3,000	84%
2003	3,097	2,410	79%
2004	7,490	5,899	79%
2005	11,717	7,626	65%
2006	13,050	8,159	63%
2007	20,905	14,300	68%
2008	50,279	33,336	66%
2009	33,430	21,429	64%
2010	23,374	15,369	66%
TOTAL	166,901	111,528	69%

Source: Philippine Mediation Center Office

A year-to-year chart of the success rate illustrates the consistency of the accomplishments of mediation:

Chart B

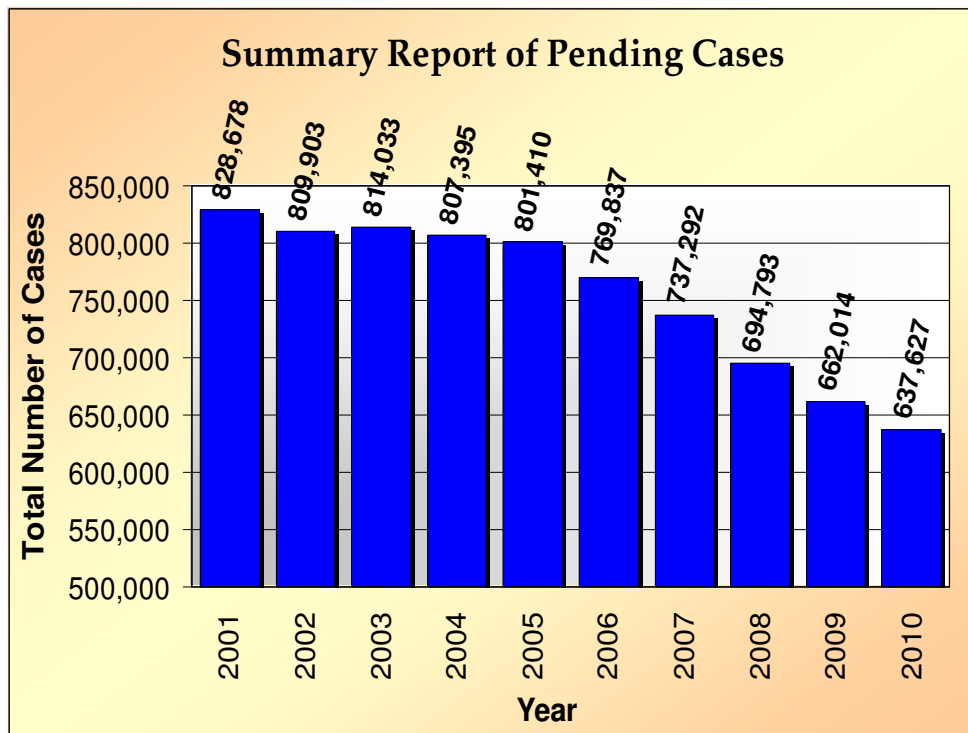


Since compromise settlements, when approved by the court, are immediately final and executory – and are not appealable – the settled cases reduced the pending cases in court dockets.

However, as my paper will reveal, while Court-Annexed Mediation appears to be successful, in absolute figures, it does not significantly decongest court dockets in the Philippines.

First, let us look at the total number of cases pending in the different courts in the Philippines, except the Supreme Court, during the last ten years:

Chart C



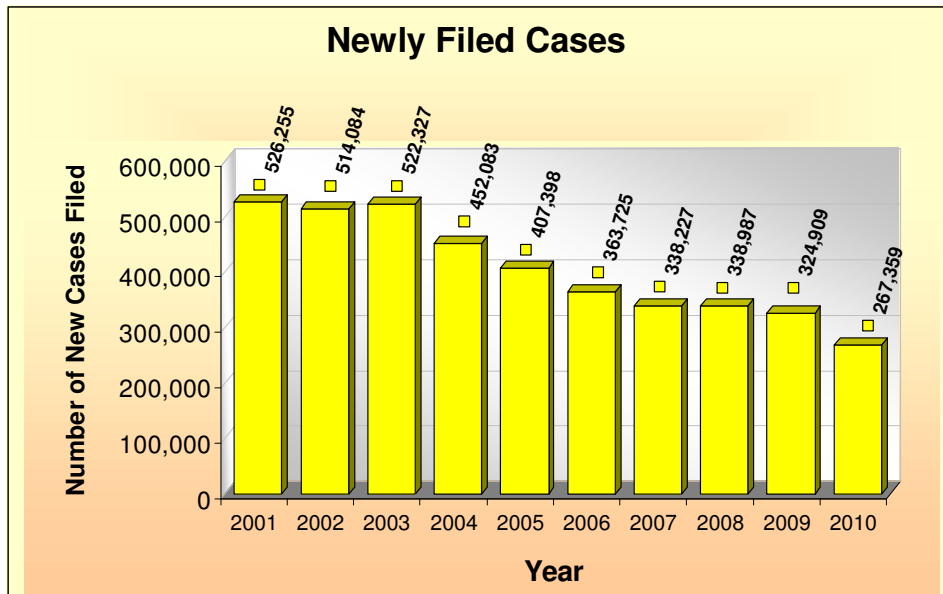
Source: Office of the Court Administrator

This chart reveals the magnitude of case congestion in the Philippines.

While it is true that since 2006, there is a noticeable downtrend in the number of pending cases, the balance of 637,627 cases at the end of 2010 is still sizeable and worrisome.

Second, let us look at the number of newly filed cases during the last ten years:

Chart D

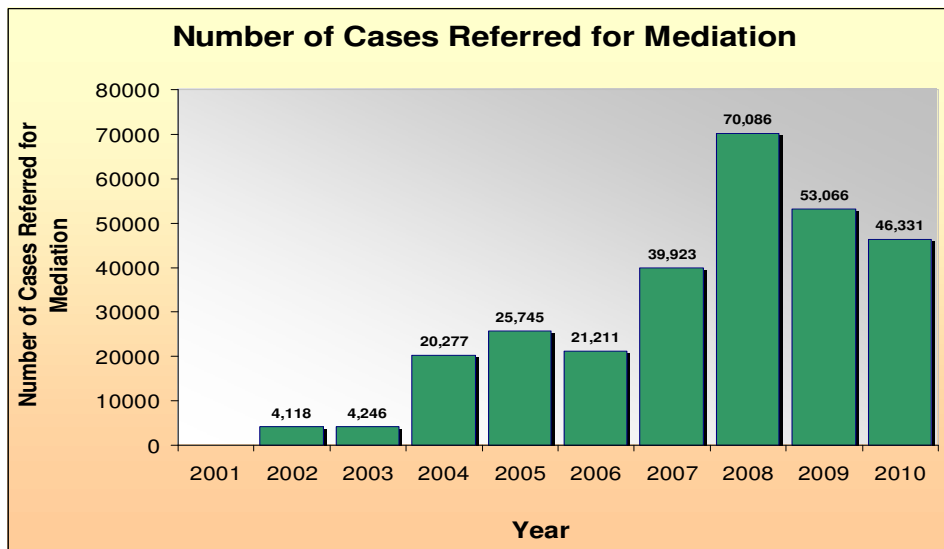


Source: Office of the Court Administrator

Again, there is a conspicuous decline of new cases being filed every year. But the 267,359 newly filed cases in 2010 still translate to 732 new cases being filed every day including Saturdays, Sundays and holidays.

Third, let us look at the total number of cases referred for mediation during the last ten years:

Chart E

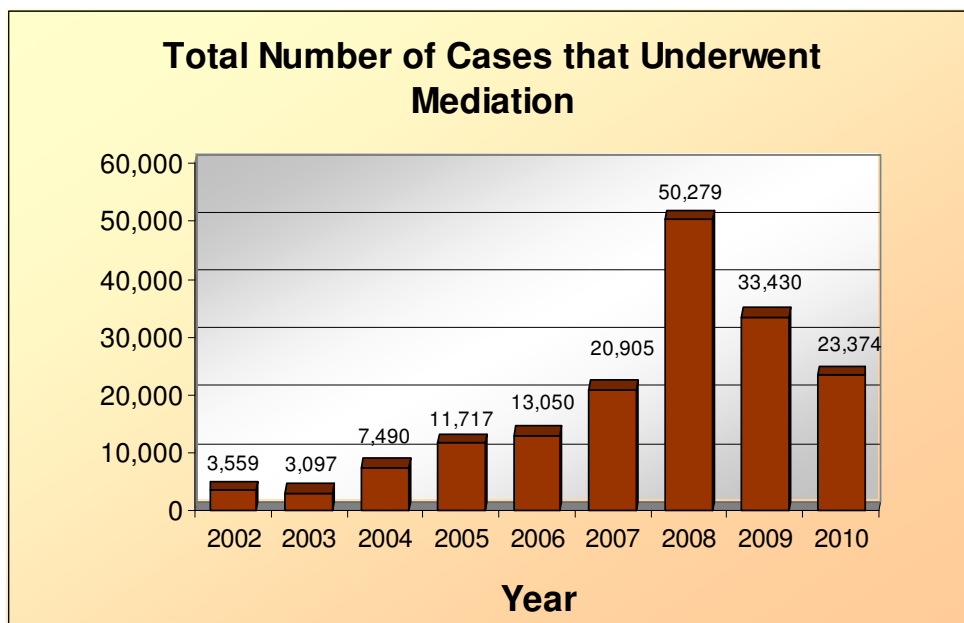


Source: Philippine Mediation Center Office

This chart shows a growing number of cases being referred for mediation. But if compared with the number of newly filed cases, it discloses that only an average of 17% of newly filed cases are referred for mediation during the last four years, up from an average of 6% over a ten-year period.

Fourth, let us look at the total number of cases that actually underwent mediation, during the last ten years:

Chart F

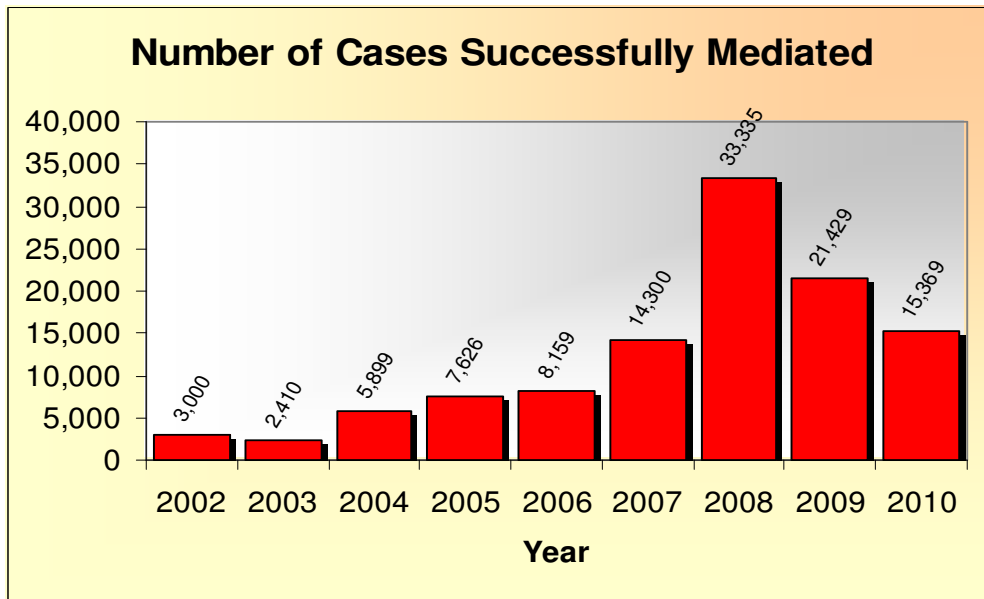


Source: Philippine Mediation Center Office

When compared with the previous Chart E, one realizes that only 59% of cases referred for mediation actually undergo mediation. This is because one or both of the parties do not attend the mediation proceedings, or because even if they do attend, they refuse to participate in the mediation proceedings.

Fifth, let us also look at the total number of cases successfully mediated during the last ten years.

Chart G



Source: Philippine Mediation Center Office

This chart illustrates an increasing number of cases being successfully mediated because more mediation centers are being established, and more mediators are being accredited. The unusual number of cases successfully mediated in 2008 is due to a designation of a settlement period when the Supreme Court directed judges to each refer an additional 20 cases for mediation.

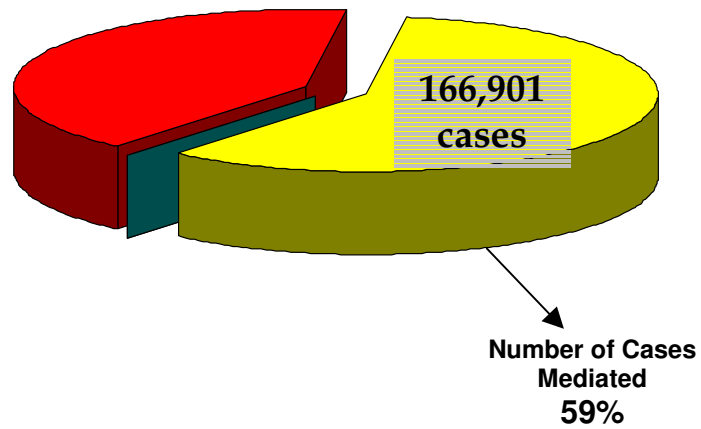
A comparison of the last three charts indicates that over a ten-year period, 285,003 cases were referred for mediation.

Chart H

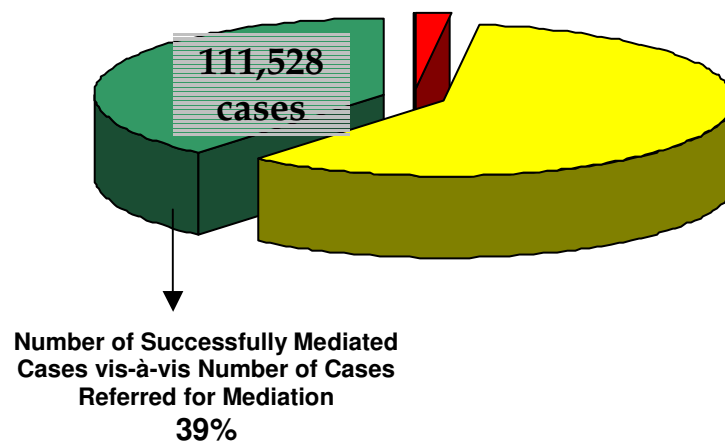


Number of Cases Referred for Mediation

Of these, 166,901 cases or 59% underwent mediation.



Of these, 111,528 cases or 69% of cases that underwent mediation were successfully settled. But if the basis for determining the success rate is the total number of cases referred for mediation (285,003 cases) – and not the total number of cases that actually underwent mediation (166,901 cases) – then, the average success rate for the period 2002-2010 is only 39%.



Finally, let us compare on a year-to-year basis the total number of cases successfully mediated to: (a) the total number of cases that underwent mediation; (b) the total number of cases referred for mediation; and (c) the number of new cases filed.

Table I

Year	Total Number of New Cases Filed	Total Number of Cases Referred for Mediation	Total Number of Cases that Underwent Mediation	Total Number of Cases Successfully Mediated
2001	526,324			
2002	514,084	4,118	3,559	3,000
2003	522,327	4,246	3,097	2,410
2004	452,083	20,277	7,490	5,899
2005	407,398	25,745	11,717	7,626
2006	363,725	21,211	13,050	8,159
2007	338,227	39,923	20,905	14,300
2008	338,987	70,086	50,279	33,335
2009	324,909	53,066	33,430	21,429
2010	267,359	46,331	23,374	15,369

Chart J

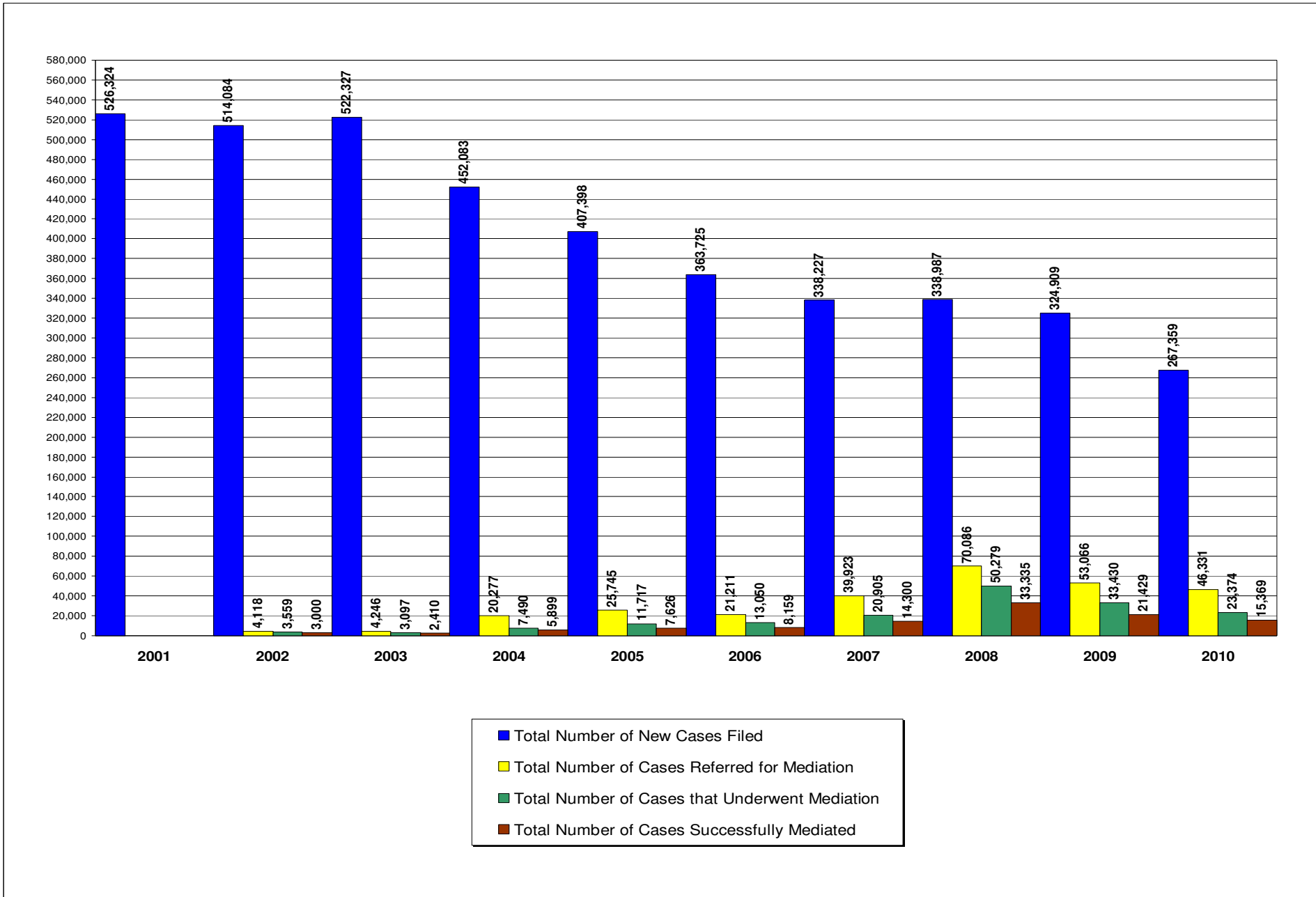




Chart J reveals how much – or rather, how little – court annexed mediation has helped drain cases from the clogged court dockets. Of the 4,393,581 new cases filed from 2001-2010, only 111,528 cases or 2.5% were settled through mediation.

Of course, it can be argued that approximately 85% of the new cases are criminal cases which cannot be mediated. But then, 60% of the criminal cases are BP22 or bouncing check cases, whose civil aspect can be mediated. Once the civil aspect is successfully mediated and the obligation is paid, the experience is that the complaining party is no longer interested to prosecute the criminal case, and will agree to its withdrawal.

Yet, statistics show that of the mediatable cases, only 10% are referred for mediation. This is why Court-Annexed Mediation hardly meets the purpose for which it is introduced i.e. to alleviate the congested court dockets in the Philippines.

Nevertheless, it cannot be denied that the drop from 828,678 pending cases in 2001 to 637,627 pending cases in 2010, or a drop of 191,051 cases, can be partly credited to mediation, which during the same period was able to settle 111,528 cases. The success of mediation in settling many of the newly filed cases referred for mediation, provides the judges more time to resolve the older cases pending in their courts.

Table K

Number of Pending Cases		Total Number of Cases Successfully Mediated from 2002 - 2010	
2001	: 828,678 cases		
			
2010	: 637,627 cases		
			
Number of Cases Disposed	: 191,051 cases	111,528 cases	58%

The question is why were only 10% of the mediatable cases referred for mediation?

First, the Philippines consists of many islands, and for lack of logistics and infrastructure, not all courts are provided with mediators and facilities for Court-Annexed Mediation. Second, courts, which have facilities for Court-Annexed Mediation, do not refer all mediatable cases for mediation. The rules are such that only cases in the pre-trial stage are required to be referred to mediation. Many of the old pending cases are past this pre-trial stage. While lawyers for both litigants can file a joint motion for the court to refer a case undergoing trial for mediation, they are not inclined to do so. This is because: (a) lawyers have been trained to be adversarial and so, they would rather proceed with the trial; (b) they do not realize the benefits of mediation; and (c) some of the lawyers – especially those exclusively practicing in the provinces – have few cases, and if they are settled through mediation, they will no longer have cases for livelihood.

Third, occasionally, the Supreme Court announces a “Settlement Period” where a month is designated and courts are authorized – even without a joint motion from the parties – to cull from their inventory twenty old cases to be referred for mediation. But this project is not scheduled regularly and if so scheduled, is implemented only in key cities and not all over the country. Likewise, only 20 old cases are required to be referred by a judge for mediation. Hence, only about a thousand additional cases are settled through mediation during this period. This will hardly reduce the caseload.

Fourth, lawyers and litigants do not know how to take advantage of mediation. Many lawyers and litigants think that since they are already in court, the time to negotiate is over and that the judges should simply hear and resolve their cases. Fifth, there are not enough mediators who have been trained and accredited to facilitate settlement in various courts in the country. Many of the mediators even drop out after serving two or three years.

Sixth, there is lack of advocacy in promoting and explaining the purpose and advantages of mediation to the public. Finally, the Bar Association was not invited to participate as a stakeholder in Court-Annexed Mediation project and therefore, it did not extend its full cooperation.

To my mind, these problems can still be addressed, as they must be addressed. Otherwise, at the rate cases are referred for mediation and at the rate litigants take advantage of mediation, it will take twenty years to reduce the backlog to more manageable levels.

Today, there are approximately 220 law schools in the Philippines. However, less than 10 offer subjects in negotiation and mediation. Even then, they are offered as elective subjects. Only a few enroll in these elective subjects. The great majority of law students are trained – as present law practitioners have been trained – to litigate, making them combative and adversarial. They are and were not exposed to ADR, particularly mediation. They are not taught creative thinking. They are not trained to acquire skills in negotiation. As a result, mediation does not appeal to them and they do not know how to use mediation to obtain concessions and forge a settlement of the dispute. Not knowing how to make a paradigm shift, lawyers attend mediation proceedings only to defend their legal positions without exploring avenues for settlement and without offering solutions to the problem.

On the other hand, some Judges do not refer cases for mediation because they feel that it is their duty to adjudicate – to receive evidence and decide the dispute. They do not realize that justice can be obtained not only through litigation, but also through alternative dispute resolution. They do not realize that mediation was introduced by the Supreme Court to assist them unclog their dockets, not to undermine their power to adjudicate.

There is therefore need to reform legal education to de-emphasize litigation and prepare future lawyers to learn how to negotiate settlements. There is need for more advocacy to persuade litigants to amicably resolve their disputes. There is need to regularize the Settlement Periods and to closely monitor Judges to refer all mediatable cases for mediation. This way, it is not only the success rate but also the actual number of successfully mediated cases which will significantly be increased to clear the dockets of the courts and to allow a better dispensation of justice.