

1988

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Recommended Citation

Gladys Kessler & Linda J. Finkelstein, *The Evolution of a Multi-Door Courthouse*, 37 Cath. U. L. Rev. 577 (1988).

Available at: <https://scholarship.law.edu/lawreview/vol37/iss3/2>

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ARTICLES

THE EVOLUTION OF A MULTI-DOOR COURTHOUSE

*The Honorable Gladys Kessler**
and *Linda J. Finkelstein***

Professor Frank E.A. Sander of Harvard Law School first articulated the multi-door courthouse concept in April 1976 at a conference convened by Chief Justice Warren Burger to address the problems faced by judges in the administration of justice.¹ Professor Sander envisioned the courthouse of the future as a dispute resolution center offering an array of options for the resolution of legal disputes.² Litigation would be one option among many including conciliation, mediation, arbitration, and ombudspeople.³

Professor Sander's concept intrigued the late H. Carl Moultrie I, Chief Judge of the Superior Court of the District of Columbia as soon as he learned of it. Chief Judge Moultrie saw in the multi-door concept a number of benefits for the District of Columbia's citizens and its court system. For citizens, he saw value in the availability of alternative ways of resolving disputes. Chief Judge Moultrie hoped that through a multi-door courthouse, citizens would find justice more readily accessible. Those intimidated by the

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1. Address by Frank E.A. Sander at the National Conference on the Causes of Dissatisfaction with the Administration of Justice (Apr. 7-9, 1976), reprinted in Sander, *Varieties of Dispute Processing*, 70 F.R.D. 111 (1976). Judges and attorneys from around the country attended the Pound Conference and discussed many issues previously discussed by Dean Roscoe Pound of Harvard Law School in his 1906 address, *The Causes of Popular Dissatisfaction with the Administration of Justice*. Dean Pound's address originally was published in 29 A.B.A. REP. 395 (1906); see also 35 F.R.D. 273 (1964) (full text); 57 A.B.A. J. 348 (1971) (abridged version).

2. See Sander, *supra* note 1, at 130-32.

3. See *id.* See generally Ray & Clare, *The Multi-Door Courthouse Idea: Building the Courthouse of the Future . . . Today*, 1 OHIO ST. J. DISPUTE RESOLUTION 7 (1985) (discussing development and implementation of ABA multi-door courthouse concept).

litigation process and those who could not afford or understand it might well find alternatives like mediation or arbitration more welcoming. It was also hoped that citizens would benefit from resolution techniques, which encourage litigants to design their own agreements, as well as benefiting from early assessment and evaluation of cases, accelerated case processing, and processes that were less formal and more comprehensible than litigation. Litigants might be able to resolve disputes with less expense, more satisfaction, and less acrimony if alternatives were available to the adversarial process.

For the court, accessible and workable alternatives would mean a reduction in the number of bench and jury trials and less congestion on court calendars. Certain cases would be processed more quickly, providing judges with more time to devote to the cases that require their attention and intervention. The involvement of citizens and attorneys as third party neutrals might improve the entire criminal justice system. How better to increase understanding of the burdens of disputants and the court system than through direct involvement?

I. PRINCIPLES UNDERLYING THE DISTRICT'S MULTI-DOOR PROGRAM

The American Bar Association's (ABA) Special Committee on Dispute Resolution asked the Superior Court of the District of Columbia to draft a working paper proposing the establishment of a dispute evaluation and referral service and new court-based dispute resolution programs. The paper was submitted⁴ and, approximately one year later, the District of Columbia officially became one of three multi-door sites.⁵ In January 1985, the court's first multi-door effort began with the opening of two intake and referral centers.⁶

From the outset, the founders of the District of Columbia Dispute Resolution Program (Multi-Door) were guided by important principles that had some bearing on the program's ultimate success. First, Multi-Door was to be a court-initiated, court-centered program. Multi-Door would be head-

4. Proposal, District of Columbia Dispute Resolution Program (June 6, 1983) (available from the Superior Court of the District of Columbia).

5. The American Bar Association's Committee on Alternative Dispute Resolution selected three "test cities"—Washington, D.C., Tulsa, and Houston—for its multi-door courthouse programs. See J. Roehl, Multi-Door Dispute Resolution Centers Phase I: Intake and Referral Assessment, Executive Summary (September 1986) (available from the Institute for Social Analysis); see also Ray, *Creating the Courthouse of Tomorrow Today*, 70 A.B.A. J. 170 (1984).

6. See Sachs & Finkelstein, *D.C.'s New Multi-Door Courthouse*, DISTRICT LAW., July-Aug. 1985, at 68-70; see also Finkelstein, *The D.C. Multi-Door Courthouse*, 69 JUDICATURE 305 (1986).

quartered in the Superior Court courthouse and run by judges and court administrators. Chief Judge Moultrie turned to Judge Gladys Kessler, the Presiding Judge of the Family Division, and Linda Finkelstein, Director of the Court's Division of Research, Evaluation and Special Projects, to develop program plans. Ms. Finkelstein would direct the program.

Second, outside support and involvement were essential. Bar leaders were consulted about program plans and development, and bar members were informed about new Multi-Door efforts and encouraged to participate.⁷ Community groups and leaders were also consulted through an early advisory committee and the regular flow of informational materials.⁸ Input on program design was sought from interested groups, especially for programs expected to be controversial.

Third, Multi-Door relied on experts for assistance in conceptualizing and planning programs and conducting training. Linda Singer, Executive Director of the Center for Dispute Settlement and former member of the ABA Special Committee on Dispute Resolution, provided technical assistance on program development. Others with alternative dispute resolution (ADR) expertise, such as Judge Richard A. Enslen, of the United States District Court for the Western District of Michigan, and Chief Judge Robert F. Peckham and Magistrate Wayne D. Brazil, both of the United States District Court for the Northern District of California, came to Washington, D.C. to discuss the use of ADR techniques with Superior Court judges.⁹ Experts in training and evaluating mediators were brought in to provide these vital services on an as-needed basis.

Fourth, each new Multi-Door program was started on an experimental basis with the assumption that if it worked, the court would attempt to continue and institutionalize the procedure. However, the program would end if it did not succeed. Each program was to start on a small scale, and only as it proved workable and effective would it be expanded.

Fifth, the program sought to build support slowly. Knowing that most reform efforts are met with some skepticism and fear, planners implemented the two least controversial programs first, hoping for early successes that could encourage further experimentation and reform.

Finally, and perhaps most importantly, the Multi-Door program was designed to be as creative and fluid as the concept upon which it was based. From the outset, the program was intended to address the needs of the citi-

7. See, e.g., *News Briefs*, DISTRICT LAW., Jan.-Feb. 1985, at 13, 60.

8. E.g., D.C. Superior Court Multi-Door Dispute Resolution Program (available from the Superior Court of the District of Columbia).

9. See *What to Expect from the Multi-Door Program in the Next Year*, WASH. LAW., Sept.-Oct. 1986, at 18-19.

zens of Washington, D.C., changing whenever new dispute resolution needs were identified.

II. THE MULTI-DOOR PROGRAMS

A. *Intake and Referral Service*

In its first three years of operation, seven new Multi-Door programs, each of which is currently in operation, were created as part of the District of Columbia Dispute Resolution Program. In its first effort, Multi-Door opened two intake and referral centers. These were started at the sites where people go when they are involved in legal difficulties: the courthouse and the D.C. Bar's Lawyer Referral and Information Service. At each site, trained legal specialists help clients analyze their disputes. After listening to a description of a dispute, a specialist discusses the options available for resolution, and then refers a client to the most appropriate resources. Specialists introduce clients to litigation alternatives and recommend their use whenever appropriate.

Specialists rely heavily on a referral manual developed and updated regularly by Multi-Door staff.¹⁰ The manual provides current information on over forty dispute resolution programs in the Washington area and also includes up-to-date information on hundreds of legal and social services programs.¹¹

Individuals involved in all types of disputes are encouraged to visit or call these centers for assistance and referral information. Flyers containing information about Multi-Door's intake and referral services, written in both English and Spanish, are at the court's information desk.¹² Additionally, information is circulated regularly throughout the city to civic and community groups. Advertisements and announcements are placed in community newsletters, radio and television stations, and on city buses.

B. *Small Claims Mediation*

Multi-Door's first "door," or dispute resolution program, was Small Claims Mediation, which began in April 1985. Small claims cases, which are civil suits involving up to \$2000 in damages, are sent into mediation on the day of trial. Small claims cases that are not ready for trial may also enter the program and are mediated for Multi-Door by the D.C. Mediation Ser-

10. Referral Manual for Multi-Door Dispute Resolution Program (available from the Superior Court of the District of Columbia).

11. *Id.*

12. *E.g.*, INTAKE CENTER, MULTI-DOOR DISPUTE RESOLUTION PROGRAM (flyer available from the Superior Court of the District of Columbia).

vice. On an average, close to 200 cases are mediated each month. Of the thousands of cases mediated, 66.6% have been resolved since the program's inception.

Typically, there are seven or eight volunteer mediators in court every morning. Volunteers include area residents with a broad variety of training and backgrounds. Among the program mediators are attorneys, homemakers, government officials, teachers, sociologists, law enforcement personnel, retirees, mental health professionals, nurses, and former foreign service officials. To mediate in the program, a volunteer must successfully complete a four-day training program and mentorship with an experienced mediator. Volunteers are expected to mediate once a week for a one-year period.

C. Domestic Relations Mediation

The second dispute resolution program to open was Domestic Relations Mediation, which began in November 1985.¹³ Because the program was sensitive and controversial, it was planned carefully, in close consultation with community groups and experts in the field. Extreme care was taken in the development of eligibility criteria to ensure that parties entering the program could, in fact, meet each other as equals in the mediation process. The program was committed, from the outset, to urge parties to consult counsel throughout the mediation process and to have mediated agreements reviewed by attorneys prior to signing. However, because the program could not *require* parties to seek counsel, protections were essential.

After careful deliberation, program guidelines were drafted.¹⁴ The guidelines provide that both parties must enter the mediation process voluntarily.¹⁵ They permit most domestic relations cases that typically would come before the Superior Court to enter mediation unless one party has been seriously injured by the other, or unless there has been weapon use, a long history of repetitive violence, or a severe lack of parity in bargaining power between the parties.¹⁶ Cases are also ineligible for mediation if there has been evidence of child abuse.¹⁷

The Domestic Relations Mediation program relies on volunteer

13. See Jenkins, *New Mediation Service for Domestic Relations Cases Announced*, DISTRICT LAW., Jan.-Feb. 1986, at 16; Lester, *Family Law Division Discusses Mediation Programs*, DISTRICT LAW., Nov.-Dec. 1985, at 58; see also Forbes, *Don't Agitate—Mediate!!*, WASH. LAW., Sept.-Oct. 1986, at 53-55 (discussing domestic relations mediation).

14. Domestic Relations and Intrafamily Mediation (June 17, 1985) (available from the Superior Court of the District of Columbia).

15. *Id.* at 2.

16. *Id.* at 1-2.

17. *Id.* at 2.

mediators, many of whom are practicing family lawyers. Attorneys with other areas of expertise, as well as mental health professionals, also participate. Typically, domestic relations cases are co-mediated, and whenever possible, an attorney and a mental health professional are paired. Cases usually involve child custody, child support, visitation rights, spousal support, and/or property division. Because of the complexity and sensitivity of these issues, the forty hour mediator training for the Domestic Relations Mediation program is considerably longer and more specialized than for Small Claims Mediation training.¹⁸

In the fall of 1987, advanced training in the domestic relations law of the District of Columbia, and in tax and pension law, was provided to the most experienced mediators in the Domestic Relations Mediation program. Experts met with mediators to discuss a variety of issues and problems that had been of concern to the program and to mediators.

D. Accelerated Resolution of Civil Disputes

Multi-Door initiated its Accelerated Resolution of Civil Disputes program in June 1986 to encourage the judges handling the court's most complex civil cases (Civil I cases) to use dispute resolution techniques such as summary jury trials,¹⁹ mediation,²⁰ and early neutral evaluation.²¹ Federal judges and other experts with broad experience in using these techniques came to Washington to meet with Superior Court judges and members of the bar. As a result, each of the Civil I judges has since experimented with alternatives.²² Judges have used summary jury trials and mediation frequently, and have had particular success with mediation in complex, multi-party, multi-million dollar lawsuits. Additionally, judges have experimented with arbitration²³ and early neutral evaluation.

E. Mandatory Arbitration

A mandatory, court-annexed, nonbinding arbitration experiment began in March 1987 following careful study and recommendations for program de-

18. Family Mediation Training Materials (July 1987) (unpublished) (available from the Superior Court of the District of Columbia).

19. See Patterson, *Dispute Resolution in a World of Alternatives*, 37 CATH. U.L. REV. 591, 596-7 (1988) (discussing summary jury trials); see also *infra* note 47 and accompanying text.

20. See Patterson, *supra* note 19, at 594-95 (discussing mediation).

21. See *id.* at 598-99 (discussing early neutral evaluation); see also *infra* note 50 and accompanying text.

22. See, e.g., Patterson, *supra* note 19, at 593, 598.

23. *Id.* at 592-94 (discussing arbitration).

sign and operation by a Bench-Bar Committee headed by Judge Kessler.²⁴ Approximately 300 cases filed in the Civil Division were to be part of the experiment.

Under provisions of an order drafted by the Bench-Bar Committee and adopted with minor modifications by the Superior Court's Board of Judges on December 12, 1986, the Mandatory Arbitration program randomly identified cases from the Civil Division calendar for assignment to arbitration.²⁵ The program was intended for cases valued at \$50,000 or less.²⁶ Parties to cases involving a higher ad damnum were allowed to file a certification attesting to the fact that the case was properly valued at over \$50,000, after which the case was removed from the arbitration docket.²⁷ Cases in which a certification was not filed remained on the arbitration docket regardless of the ad damnum.²⁸

The arbitration order affords arbitrators thirty days to provide written notice of a scheduled hearing and requires that arbitrators conduct hearings within 120 days of their assignment to a case.²⁹ Arbitrators are required to file arbitration awards within fifteen days of the arbitration hearing.³⁰

Approximately 100 attorneys were trained to serve as arbitrators for the Multi-Door experiment. Arbitrators were paid \$100 for each session. The Multi-Door staff is studying carefully the results of the Mandatory Arbitration Program. Findings and recommendations on the process and value of instituting a permanent, mandatory program will be made to the court and the bar.³¹

F. Settlement Weeks

The first Settlement Week in the District of Columbia was held in May 1987.³² Following a meeting with key participants in successful Settlement Week programs in Columbus, Ohio, and Orange County, California, Judge Kessler, Paul L. Friedman, then President of the District of Columbia Bar, and Ms. Finkelstein enthusiastically recommended to Fred B. Ugast, Chief Judge of the District of Columbia Superior Court, that Multi-Door sponsor

24. See Finkelstein & Nace, *Superior Court Experimenting With Mandatory Arbitration*, WASH. LAW., Jan.-Feb. 1987, at 48-49.

25. Superior Court of the District of Columbia Order of Dec. 12, 1986, 115 Daily Wash. L. Rep. 105 (Jan. 16, 1987).

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.* at 106.

30. *Id.* at 107.

31. See Patterson, *supra* note 19, at 593 (discussing court-annexed arbitration programs).

32. See Caviness, *Settlement Week*, WASH. LAW., May-June 1987, at 60-63.

a Settlement Week experiment. It was recommended that all civil trials be halted for six days. During that time, judges and volunteer attorneys would mediate hundreds of the oldest pending civil cases in settlement conferences.

Settlement Week involved 701 cases on the civil docket, resulting in the resolution of approximately half the cases.³³ One hundred prominent attorneys and eight Superior Court judges mediated on a volunteer basis. Linda R. Singer and Michael K. Lewis, experienced mediator trainers, also volunteered their time to train all participating attorneys and judges in mediation techniques. Court files were available to mediators in advance of their Settlement Week assignment, and judges held breakfast meetings with their mediator teams each morning.

By any standard, Settlement Week was an unqualified success.³⁴ Approximately half of the cases were resolved.³⁵ Nearly 150 cases settled either prior to or during Settlement Week before the scheduled mediated settlement conference; 508 cases actually were mediated, and about 200 of these cases settled.³⁶ Whereas settlement rates generally tended to decrease as the value of the ad damnum clauses increased, cases valued at between \$500,000 and \$1 million settled 37% of the time.³⁷

The oldest Settlement Week case, which dated back to 1975, settled.³⁸ The case with the largest ad damnum clause (\$12 million) did not settle, but the case with the next largest claim (\$10 million) did.³⁹ Of greater importance than any Settlement Week statistic was the large number of judges, attorneys, and citizens who had never before participated in mediation and who had now learned of its potential first-hand.

Multi-Door sponsored the District of Columbia's second, and much-expanded Settlement Week in April 1988. Over 900 cases were ordered into mediation, with eleven judges and over 150 attorneys participating. Preliminary results show a settlement rate of over 46%.

Because of the Settlement Week successes, Multi-Door's Accelerated Resolution of Civil Disputes program has been expanded substantially to include *all* civil cases. Since October 1, 1987, civil cases have been ordered into mediation throughout the year if either party or attorney so requests. A court order requires all parties and attorneys involved to attend sessions con-

33. See Settlement Week: An Analysis, May 1-8, 1987, at 2 (June 15, 1987) (available from Superior Court of the District of Columbia).

34. *Id.* at 1.

35. *Id.* at 2.

36. *Id.* at 3.

37. *Id.* at 4.

38. *Id.* (settlement during a 30 minute conference).

39. *Id.* (settlement during a 50 minute conference).

ducted by a court-appointed mediator.⁴⁰ Attorneys who participated in Settlement Week and then received additional mediation training mediate all cases on a volunteer basis.

III. BENCHMARKS OF A SUCCESSFUL MULTI-DOOR COURTHOUSE

Although Multi-Door boasts seven operational programs, over 400 newly trained mediators, 100 arbitrators, and over 10,000 cases involved in alternative resolutions, the program is still in its infancy. Studies of the Mandatory Arbitration and Accelerated Resolution of Civil Disputes programs are underway. Others are in the offing, such as Small Claims mediation. Nonetheless, one can make some preliminary observations about the development and implementation of a multi-faceted, court-annexed ADR program.⁴¹

A. Financial Resources

No matter how precarious the initial funding might be for a multi-door courthouse, it is essential to have a viable plan for permanent funding in place from the outset. Because most court systems cannot depend upon increased filing fees or other guaranteed sources of permanent funds to support new ADR programs, temporary funding undoubtedly will be sought from foundations and other institutions to underwrite initial program costs. Ideally, commitments for permanent funding should be secured from the court and/or the legislature for all successful experimental programs. Without such assurances, expectations raised by the advent of effective new services and programs will be dashed in short order, undermining public confidence. Furthermore, the otherwise difficult task of fundraising will become almost impossible.

In the District of Columbia, the ABA Committee on Dispute Resolution and a special committee of the District of Columbia Bar raised over \$200,000 to initiate the first three Multi-Door programs: Intake, Small Claims Mediation, and Domestic Relations Mediation.⁴² Fundraisers and citizens obtained a commitment from former Chief Judge Moultrie that as soon as the Multi-Door programs demonstrated their value and usefulness to

40. Form CV-1795 (Sept. 1987) (available from the Superior Court of the District of Columbia).

41. See generally Goldberg, Green & Sander, *ADR Problems and Prospects: Looking to the Future*, 69 JUDICATURE 291 (1986) (broadened involvement of legal and legal education establishments, as well as increased fiscal resources, needed to heighten understanding of and reliance on alternative dispute resolution).

42. See *\$200,000 Sought for Multi-Door Project*, DISTRICT LAW., Sept.-Oct. 1985, at 21; *Bar Committee Looks for Money for Multi-Door Dispute Resolution Project*, DISTRICT LAW., Sept.-Oct. 1984, at 16.

District of Columbia citizens, the court would request permanent program funding.

Each of the other Multi-Door programs also began on an experimental basis with grant funds secured by the District of Columbia Bar committees, with the active involvement of Katherine Mazzaferrri, Executive Director of the District of Columbia Bar, and Sidney S. Sachs, a prominent local lawyer who is a member of the ABA Special Committee on Dispute Resolution. Settlement Week is the only exception. From its inception, the court supported Settlement Week with some bar assistance.

B. Human Resources

1. Staff

Program staff in a court-based multi-door program should include experienced administrators with knowledge of the court system, as well as professionals with proven ADR expertise. In its three-year evolution from one operational ADR program to seven, the District of Columbia Multi-Door staff has grown from one to ten permanent, full-time employees. Since its inception, the Director of the Court's Division of Research Evaluation and Special Projects has directed the program. A deputy director oversees the program's day-to-day operations with the help of an administrative assistant. Experienced mediators, who share the services of one assistant, head the Small Claims Mediation and Domestic Relations Mediation programs. An intake director oversees all intake and referral activities with the assistance of two legal intake specialists and a receptionist. The program also currently employs a public information specialist. Finally, Multi-Door has one part-time researcher on staff.

Efforts are made to hire staff with ADR experience. Staff who join the program with no mediation background participate in mediation training and then mediate regularly.

2. Volunteers

The Multi-Door Program has been able to attract and involve large numbers of competent, active, and enthusiastic volunteers. There appears to be a strong interest in developing mediation and arbitration skills. Typically, there are about three applicants for every mediator selected to enter the program. Due to broad advertisement of training opportunities, large numbers of people from the Washington, D.C. area contact the program, and many submit the required formal application.

Additionally, when mediators are needed for special projects such as Settlement Week, the bar encourages large numbers of attorneys to volunteer.

Indeed, the court was able to use only about half of the volunteers in its first Settlement Week experience.

In the future, however, it is difficult to know whether the court will find a ready and able group of volunteers to provide all needed ADR services. For example, because mediation of complex civil cases is extremely demanding and time consuming, it may deter volunteers. While it is not surprising that cases that would take a week or two to litigate may be in mediation for thirty to forty hours, the court cannot assume that mediators will perform these services for extensive periods of time without some compensation.

Our experience has already shown the value and efficacy of a court-sponsored mediation program for large civil cases. The program has demonstrated the potential of the process to broad segments of the legal community, and experience with it has lessened doubts. Increasingly, parties and attorneys are opting for mediation. Thus, while it seems advisable for a court to create such a program, in time the court must address the dilemma created by its success—the demand for mediation—and must consider paying skilled mediators. At some point, it may be necessary for the court to consider requiring parties to underwrite the cost of mediation and other ADR techniques and use its own staff and/or outside experts to provide mediation, arbitration, and other services.

C. Judicial and Bar Support

The active involvement of judges who hold leadership positions in the court is absolutely essential if a reform effort like Multi-Door is to gain a foothold. While judges, like everyone else, may be wary of instituting major new reforms, they are more likely to react favorably to ideas presented by one of their peers who has experienced the same daily problems and frustrations. Furthermore, an effective judge with a leadership role in the court system is in the best position to coordinate both the policies and procedures required for operation of a successful Multi-Door program.

Multi-Door would not have been initiated in the District of Columbia if Chief Judge Moultrie had not seen the potential of transforming the Superior Court into a dispute resolution center. Judge Moultrie stayed at the program's helm until his death in April 1986, after which Chief Judge Fred B. Ugast took over, offering his continuing support. Judge Kessler, from initial planning through implementation of each new program, has been the primary spokesperson for the program before the Board of Judges and the bar. She also provides ongoing policy guidance to the program.

Judges increasingly have become interested in Multi-Door programs as each new effort has proven its value and utility and as the scope of the pro-

gram has increased. From the beginning, Multi-Door enjoyed substantial visibility. Since the first alternative program was in small claims court, a number of judges learned about mediation quickly because of the rapid rotation of judges in the small claims assignment. Judicial involvement was also bolstered during Settlement Week when many judges received "hands-on" mediation experience along with large numbers of prominent bar leaders and members.

Bar support has also been invaluable. No strategic program decisions in Multi-Door have been made without consulting bar leadership. Bar members assisted in the development of program guidelines. Bar committees raised seed money for new projects⁴³ and undertook educational and public relations efforts. Bar journals regularly describe new Multi-Door programs and help in recruiting mediators and arbitrators.⁴⁴ Moreover, the bar and the court work as a team during Settlement Weeks.

D. ADR Techniques

While the District of Columbia's Multi-Door program has seen broad experimentation with some ADR techniques, it is too early to speak definitively about the comparative efficacy of those techniques. Some comments and cautions, however, can be made.

Mediation as a technique seems to hold promise for appropriate and successful use in a broad variety of cases: small claims cases, a wide range of civil disputes involving thousands or millions of dollars, and domestic relations cases. Yet there are pitfalls, and caution is warranted.

Mediation can be inappropriate, especially in domestic relations disputes, when the relationship between the parties has involved physical abuse.⁴⁵ Since mediation is dependent upon some parity in bargaining power, the process will most likely be subverted when one party is in fear of the other unless the mediator fails to play the traditional role of a third party neutral. While mediation can be useful in such cases in resolving ancillary issues that typically require more attention and detailed planning than a judge has time to provide, it is inadvisable to mediate these issues unless the former victim has the protection of the court through a civil protection order.

In domestic relations cases with no history of violence, caution is also

43. See *supra* note 42 and accompanying text.

44. See, e.g., sources cited *supra* notes 6-7, 9, 24, 32, 41-42.

45. See generally Lerman, *Mediation of Wife Abuse Cases: The Adverse Impact of Informal Dispute Resolution on Women*, 7 HARV. WOMEN'S L.J. 57 (1984); Note, *Domestic Violence and Custody Litigation: The Need for Statutory Reform*, 13 HOFSTRA L. REV. 407 (1985).

advised.⁴⁶ A mediation program bears the heavy responsibility of ensuring fairness and compliance with existing laws, regulations, and guidelines. Mediators must be well trained to ferret out all relevant information and facts, especially in cases involving property, and to protect the rights and interests of the parties as well as the parties' children. This can be an overwhelming responsibility unless mediators are successful in urging parties to have all agreements carefully reviewed by attorneys.

In large as in small civil cases, mediation may be somewhat less problematical. In large civil cases, parties are almost always represented by counsel, and when large amounts of money are at stake, counsel are typically very familiar with all aspects of their cases and are able to involve clients in informed discussions of issues and possible trade-offs. Civil cases generally are less emotionally charged than domestic cases. Additionally, mediators in civil cases do not have the moral responsibility to children that they typically have in domestic cases.

The typical small claims case, in our experience, can be mediated in one to two hours, whereas the complex civil dispute typically takes over thirty hours to mediate. Commercial disputes with complicated fact patterns often benefit from mediation. When cases involve a number of issues, tradeoffs often occur in mediation, increasing the likelihood of early resolution. To date, the Superior Court's mediation agreement rate in large civil cases approximates its agreement rate in small claims cases (66%).

Summary jury trials may have more limited potential than mediation, but can be highly effective in cases that would take over ten days to litigate.⁴⁷ Superior Court judges have found summary jury trials to be most useful in cases in which valuation of the damages is at issue and least useful when basic facts are in dispute or when the case warrants heavy reliance on expert witnesses.

The Superior Court's experience with a small sample of twenty-four cases reveals that summary jury trials are most effective when parties are far apart and have divergent views of the facts and the evidence. Although judges sometimes hold summary jury trials just prior to the scheduled trial date, Superior Court judges have found it advisable to schedule summary jury trials several weeks in advance to allow time for parties to mull over the results.

46. See generally *Special Section on Mediation*, 17 FAM. L.Q. 451, 451-540 (1984) (including mediation bibliography).

47. See Patterson, *supra* note 19, at 596. The summary jury trial is an abbreviated trial before a jury that gives an "advisory" ruling after hearing an expedited presentation of the case by attorneys. The jury's advisory "verdict" reveals to parties the probable trial outcome, providing information intended to foster resolution.

A fairly sizeable percentage of Superior Court cases (37%) settled following the *scheduling* of summary jury trials and 40% settled following the summary jury trial itself. Of some concern is the fact that some summary jury trial "juries" have issued verdicts that are so disproportionately high as to impede settlement. Yet, it should be pointed out that several judges, including two federal judges—Judge Richard A. Enslen⁴⁸ of the United States District Court for the Western District of Michigan and Judge Thomas D. Lambros⁴⁹ of the United States District Court for the Northern District of Ohio—have reported very substantial success with summary jury trials in large numbers of cases.

Although we are just beginning to use early neutral evaluation,⁵⁰ the approach seems to hold some promise. It has been used once successfully in the Superior Court of the District of Columbia, and we expect that it will be researched and used further.

IV. CONCLUSION

Although in operation for three years, conclusive evaluative data is not available yet from the District of Columbia's Multi-Door program. There is still much that we do not know.

What we *do* know is that alternatives have been used in over 10,000 cases of various types and that approximately 8,000 people have been referred to appropriate resources for assistance with their legal difficulties through Multi-Door's intake and referral services. We also know that statistics tell only part of the story. The other chapters reveal that a courthouse has been transformed: fifty-one judges and thousands of parties and attorneys have been introduced to alternative dispute resolution, and many of the judges and lawyers have incorporated ADR into their regular work. Thousands of individuals have had their disputes resolved satisfactorily without the need for a trial. Finally, litigants in cases ranging from small claims to multi-million dollar malpractice cases know that they do, in fact, have alternatives available to them. In a relatively short period of time, the Superior Court of the District of Columbia has indeed become a multi-door courthouse.

48. See Simon, *The Riddle of Rule 68*, 54 GEO. WASH. L. REV. 1, 79 n.341 (1985) (citing speech by The Honorable Richard Enslen, Program of AALS Section of Alternative Dispute Resolution, New Orleans, La. (Jan. 5, 1986)).

49. See Lambros, *The Summary Jury Trial and Other Alternative Methods of Dispute Resolution—A Report to the Judicial Conference of the United States Committee on the Operation of the Jury System*, 103 F.R.D. 461, 472-74 (1984).

50. See Patterson, *supra* note 19, at 598. Early neutral evaluation is a pre-trial case evaluation by a highly experienced attorney who assesses the case and discusses it with all parties and counsel.