COMPULSORY MEDIATION : THE TEXAS EXPERIENCE

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I recently attended a conference on Mediation in London England. [2][2] One of the most discussed and contentious topics was whether mediation should be compulsory or voluntary. All of those commenting from the UK felt that mediation should not be compulsory. All of those commenting from the US felt that it should. I am a full-time attorney-mediator in Houston, TX, USA. I agree with my compatriots at the London Conference.

I will explain why by discussing the experience with compulsory mediation in Texas, in general, and my experience in Houston, in particular. While there are many schemes for compulsory mediation around the world, and while I have mediated cases of many different varieties in many different courts, the paper will focus on mediation of court-annexed, non-family, civil cases in Texas State courts, a very active area of mediation and compulsory mediation in Texas, and, in my opinion, an area which has had significant influence on the expansion of both compulsory and non-compulsory mediation in Texas and elsewhere.

I. The History of Compulsory Mediation in Texas

In 1987, the Texas Legislature passed the Alternative Dispute Resolution Act (the "ADR Act")[3], authorizing a court to refer a pending dispute to mediation or some other

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[2] Mediation After Wolff: Can the American Experience Assist? London, England, July 21, 2000.

[3] Tex. Civ. Prac. & Rem. Code Section 154.001, et seq. (the "ADR Act"). A copy of the ADR Act is attached hereto as Appendix A.

authorized procedure.[4] Section 154.021 of the ADR Act states, in part, that " A court may (emphasis added),..., refer a pending dispute ...." Obviously, this is not a pure compulsory mediation statute requiring all cases to be mediated. Instead, it leaves the discretion with the court to refer the mediation, if it sees fit. The ADR Act, generally, does not limit the type or size of case that can be referred to mediation.[5]

Section 154.022 of the ADR Act allows for the filing of an objection to the mediation by filing a motion with the Court within ten days after the mediation order is received.[6] If the court finds that there is a reasonable basis for an objection, it may not refer the dispute.[7]

Mediation was not a very well known process at the time. Some community-based disputes, such as neighborhood disputes and those involving customers and small merchants, were being mediated by an organization now known as the Harris County Dispute Resolution Center and similar community-based organizations in Texas. Some mediation of family law disputes took place but the practice was not well established at that time. Some insurance companies even established mediation programs, usually for personal injury matters, where they would request the mediator to call the Plaintiff's counsel, explain the mediation process, offer to pay the entire fee and try to convince Plaintiff's counsel to agree to the mediation. Sometimes they did. Other times they didn't. However, an insignificant number of cases were mediated in this fashion. The time for mediation had not yet come.

The large majority of attorneys, judges and clients had not yet heard of mediation. And they were not likely to unless the Courts were educated about the benefits of mediation and began using some of their newly created discretion to order parties to mediate, pursuant to the ADR Act. From my experience, attorneys are not particularly interested in engaging in new and untried processes. Particularly, if they, or their clients, have to pay for them. The attorneys were not likely to, and did not, engage freely in the

[4] See ADR Act Sections 154.021 through 154.027. These other procedures include Arbitration (binding only on the parties' agreement), Moderated Settlement Conference, Mini-Trial and Summary Jury Trial, as described in the attached statute. These other procedures are rarely used.
[5] Though some limited types of cases are not subject to compulsory mediation. See, e.g., Texas Govt. Code Section 30.0244T.2, Subt G, App A-1, 3.08
[6] Text of objection provision
[7] See ADR Act Section 154.022.

mediation process without a push from the Court. This is supported by the fact that mediation was not widely used until the Judges got on board.

This began to happen in 1988 when a well respected attorney and litigator in Dallas, Texas, Steve Brusche', hand picked a small group of other well respected litigators in Dallas, trained them to mediate and convinced a number of judges to order their cases to mediation pursuant to the ADR Act. Shortly thereafter, he came down to Houston and did the same thing. A number of judges in Dallas and Houston were sold on the idea and began ordering their cases to mediation. As expected, the attorneys were not thrilled to be forced into this new, and often expensive, process. Often thinking it would be a complete waste of time and limited resources. Being compulsory, however, they had no choice. [8]

Much to their surprise, many of the attorney's and clients found the process to be worthwhile. More importantly, so did the judges. In Dallas and Houston, the two largest cities in Texas, many of the judges began ordering most of their cases to mediation. Most cases were settling at mediation. While I know of no broad statistics on mediation results, the common figure used by mediators in Texas is an 80% settlement rate. This may be a bit high if applied to cases that settle on the day of the mediation. However, the settlement rate for cases that eventually settle, at least in part as a result of the mediation, would be at least that high.

Today, the large majority of civil cases in Houston and Dallas, family and non-family, are mediated prior to trial. The large majority of civil judges in Houston and Dallas, family and non-family, require the parties to mediate prior to trial. Mediation is also used extensively in the other large cities in Texas, including the Capitol, Austin, and Corpus Christi. After significant exposure to the mediation process and its benefits, many attorneys and their clients engage in mediation on a purely voluntary basis, without court order. In fact, I have mediated many pre-litigation matters over the years.

[8] Subject to the objection procedure in Section 154.022 of the ADR Act.

II. **The Mechanism for Ordering Compulsory Mediation**

A. The Order of Referral for Mediation

I will use the Houston example to describe the procedure for instituting compulsory mediation. Some cities use similar procedures, others do it differently.
The ADR Act sets up no specific procedure for the courts to order mediation. It may be done in whatever manner each court sees fit, so long as the terms of the Order for Mediation fit within the scope of the judge's power.[9] However, some common practices have developed over time. Initially, when mediation was still in its infancy, the courts would issue an Order of Referral for Mediation, (the "Order to Mediate"), ordering the parties to mediate and specifying the mediator who was to conduct the mediation. After experience with mediation and mediators, the courts felt more comfortable allowing the parties, and the parties were better able, to choose their own mediator. Most judges now allow the parties to choose their own mediator by agreement and will order one only if the parties can't agree.

These Orders, in substantially the same form as initially used,[10] are still being used by many of the judges in Houston. In addition to the above provisions, the Orders set a timeframe for conducting the mediation. The Orders give the mediator the power to insure that the mediation is conducted timely[11], orders that all parties be present during the entire mediation process and that each corporate party be represented by a person with authority to negotiate a settlement. They also include confidentiality and privilege provisions to protect the confidentially of the process and insure that no mediation communications be admitted into evidence should a trial of the case be necessary.[12] An

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[9] In the case of Decker v. Lindsay, 824 S. W. 2d 247 (Tex. Civ. App.- Houston. 1st Dist., 1992, no writ), the Court held that a provision in an Order of Referral for Mediation requiring the parties to negotiate in good faith was unenforceable. While a party could be required to attend the mediation, it could not be required to negotiate in any particular manner or at all.. For example, if a party felt that its opponent's case
had no value, it should not be a violation of a court's order to negotiate in good faith to make no offer at the mediation. The parties are entitled to value their cases as they see fit. In practice, this ruling has not affected the use or effectiveness of mediation in any measurable way.

[10] Absent the provision ordering the parties to negotiate in good faith.

[11] The orders generally state that, absent agreement by the parties, the mediator shall set the date for the mediation and order the parties to attend.

[12] Appendix B is an example of an Order of Referral for Mediation commonly used in Houston today.

order must be prepared and sent to all attorneys in any case in which the Court wishes to order mediation. An Order may be entered at the initiative of the Court or at the request of one or more parties to a case. Some Courts enter an Order in all, or substantially all, of the cases on its docket.

B. The Scheduling Order

Mediation has become so institutionalized that, as previously discussed, most cases are mediated prior to going to trial. Rather than sending out an order in every or almost every case a Court wishes to have mediated, some courts have simplified the process by including an alternative dispute resolution ("ADR") deadline in their Scheduling Orders. These case management orders, which are sent out in every case, usually early in the proceedings, set deadlines for many activities in a case, such as discovery, and set a date for trial. The Order will usually provide that the parties must agree to mediate or object to mediation by the deadline or the Court may sign an Order to Mediate.[13]

This procedure saves the Court the trouble of having to send out an additional Order to Mediate in every case it wants mediated. However, this approach has drawbacks. The Scheduling Orders provide only a deadline for agreeing to or objecting to mediate. They do not have provisions giving the mediator the power to schedule and conduct the mediation in the event the parties are not cooperating in scheduling. They do not provide that all parties with authority to settle attend the mediation. They do not include the Rules for Mediation, which most judges incorporate into their Orders to Mediate. [14]

While it is not wise to disregard the Court's deadline for conducting the mediation, be uncooperative in its scheduling or appear at a mediation without a person with adequate authority, it is frequently done. Not having the specific orders included in the standard Order to Mediate can interfere with a mediator's ability to timely and

[13] A copy of a standard Scheduling Order is attached hereto as Appendix C.
[14] These Rules provide added protection to the confidentiality and privilege provisions of the mediation process as well as the sanctity of the mediation. One Rule, for example, provides that no one attending a

successfully conduct a compulsory mediation ordered by the Court. To alleviate this problem, a party or the mediator may request the Court to issue an Order to Mediate, including the above mentioned provisions. The Court may also do so on its own initiative. This is not always done, however, and the mediator must merely live with the complications.

C. Objections to Mediation

As previously discussed, a party may object to a mediation within 10 days from the date the mediation is ordered. Generally, there are no specific statutory grounds for objection to the mediation. Common reasons I have seen include a party's belief that the mediation has no likelihood of success, and, as such, would be a waste of time and money. Another is that a party can't afford the cost of the mediation. A third may be that the case is not ready to be mediated, perhaps because additional discovery is necessary. A party may plead whatever grounds for objection it sees fit.

Some courts will almost never grant an objection to mediation. Others will grant any objection that is filed. Most of the judges will decide on a case by case basis, but generally, are reluctant to grant the objections. It is my belief that this is because the judges like the mediation process and feel it works. However, never granting an objection can be problematic. As I have discovered over many mediations, some cases are not meant for mediation and the process can be a waste of time and money. Forcing a case to mediation that shouldn't be there can sour parties and their attorneys to the process and make them reluctant to engage in mediation at some later date.

In defense of the judges, it is often impossible to determine whether an objection should be granted prior to the mediation. For example, sometimes it is obvious that a case will not settle prior to the mediation. At other times it is not so obvious. I have been involved in many mediations where even I thought the case had no chance of settlement and with patience, hard work and perseverance, the case settles. I would err on the side

mediation may be served with any type of process at or near the mediation. A copy of the Rules for Mediation commonly used by the courts is included as Appendix D.

of requiring the parties to mediate.[15] The relative cost of mediation is generally small in relation to the potential cost, time and stress savings of a successful mediation.

***III. Pro Bono* Mediations**

If a party cannot afford mediation the Judge has options other than canceling the mediation. In Houston, a judge can send a case to the Harris County Dispute Resolution Center, which offers *pro bono,* or free, court-annexed mediation for cases with no more than three parties to the lawsuit and with an amount in controversy of no more than $100,000 US. In Dallas, Dispute Mediation Services provides a similar service.[16] Other cities have similar agencies, though many cities and towns do not.

In this situation, or where the case does not meet the criteria for free mediation, the Judge can request that a specific mediator conduct the mediation at no cost to the parties. If the Judge asks you to mediate a case for free, you mediate it. The Judges are appreciative of the help and he or she may be a source of future mediations. Additionally, you may mediate with attorneys you don't know, who may also be a source of future business. Finally, some mediators who have been ordered to conduct a mediation would rather mediate the case for free, or at a reduced rate, than telling the Court they won't mediate the case because the parties can't pay. The Judge can, of course, grant the Objection to Mediation.

***IV. Pro Se* Parties**

A problem sometimes arises when a case has been ordered to mediation but one or more parties are *pro se,* or not represented by an attorney. Generally, the judges prefer to have these cases mediated because they usually create many problems for a judge in the management and trial of the case. Mediators are generally reluctant to mediate these cases. Some *pro se* parties have a history of filing lawsuits against anyone and everyone and the mediator doesn't want to be next. This risk is increased by the fact that

[15] Of course I would say that. I'm a mediator.

[16] These agencies are usually publicly funded, with the mediations conducted by volunteer mediators. In court-annexed mediations, most of the mediators are attorneys.

unrepresented parties have a tendency to look to the mediator for legal advice, notwithstanding the fact that they have been clearly informed that the mediator is not acting as that party's attorney. If they are not satisfied with a mediation agreement they have signed they may claim that the mediator coerced them into the agreement or gave them bad legal advice. This could lead to a lawsuit. And even a lawsuit that is won is expensive. At other times, *pro se* parties don't want to pay for the mediation. And mediators prefer to be paid.

Notwithstanding these problems, I and other mediators conduct pro *se* mediations. Again, you don't want to go back to the Judge who ordered you to mediate the case and tell him or her that you won't mediate a *pro se* case. Particularly, one the Judge would prefer not to try. Additionally, an attorney representing one of the parties appreciates your efforts to settle a case, which causes problems for the attorney as well as the Judge. Perhaps this leads to future business. The mediation practice, in Houston and in most of Texas, is, after all, still a business as well as a profession.

V. Delays

A. In Conducting the Mediation

It is not uncommon to have difficulty in scheduling a mediation by the date ordered by the Court. This can be caused by obstinate parties or their attorneys, logistical problems in getting all of the appropriate people together at the same time or the case may not be ready to mediate because there is not yet sufficient information to fully evaluate the case. I have found that most judges aren't overly concerned about this so long as the mediation is conducted some specific number of days prior to a trial of the case, e.g., seven days or thirty days. Some judges require the parties to file a motion requesting an extension of the time to conduct the mediation, to be ruled on by the Court. A letter to the Court explaining the situation is sufficient to satisfy other Courts. It is important to know, or learn, the preferences of each Judge.

B. In Proceeding to Trial

Generally, the mediation has no impact on the time that the case goes to trial. The Court determines when a case is to go to trial. A good mediator will insure that the case is mediated before it gets to trial. If it has not been mediated, the Judge could be dissatisfied with the mediator, which is bad.

On occasion, a compulsory mediation will not have been held prior to the trial. Sometimes a judge will demand the parties go to mediation or will allow the parties to give mediation a try, if they wish.[17] In either event, the case will be delayed. This, almost always, leads to increased cost. However, if the mediation is successful and an agreement is reached, the parties could save considerably over the cost of a tria1.

VI. Sanctions

If a party, or its attorney, does not follow the Court's Order to Mediate, the Judge may impose sanctions against the offending party and/or its attorney. The most common violation is failure to bring a person with adequate authority to the mediation. On occasion, a party or an attorney may not appear for the mediation. In one case, a party was sanctioned for attending, but not participating in the mediation because it did not file a motion objecting to the mediation.[18] I'm sure attorneys have found, and will find, other creative means of getting sanctioned for violation of the Court's Order to Mediate. Only time will tell.

While the evidence I know of in Texas is anecdotal, sanctions for violations of the mediation order are not frequently imposed. When they are, the most common sanction is to require the offending party to pay the other party's mediation fee. At times, the Court may also require the payment of the other parties attorney's fees, if any, occasioned by the violation of the Order.

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[17] Even though a case has been ordered to mediation, some judges won't require the mediation if it has not been conducted prior to trial. Some may penalize the parties by putting the case at the end of the docket, seriously delaying the trial.

[18] Texas Department of Transportation v. Pirtle, 977 S.W.2d 657 (Tex. Civ. App.- Ft. Worth, 1998) This court apparently believed that, while a party could not be required to negotiate in good faith, it had the obligation to object to the mediation if its intent, from the outset, was not to participate in the mediation.

Violation of a Court's order is considered Contempt of Court, which, in the extreme case, gives the Court the power to incarcerate the offender. Under its general sanctioning powers, a Court can, in the extreme case, either dismiss a Plaintiff's case or prevent the Defendant from putting on a defense. Such extreme sanctions are not favored and are not likely to be used for violation of an Order for Mediation. But they do exist if the conduct is sufficiently egregious. There are many lesser sanctions a Court can impose in the appropriate circumstances.

VII. Conducting the Compulsory Mediation

In reality conducting the compulsory mediation is almost identical to conducting the voluntary mediation. The main difference is how the parties got there. The roles of the mediator, the attorneys and the clients are the same in both mediations. The mediator attempts to facilitate the resolution of the dispute in his or her own style. The attorneys use the same strategy and approach to the mediation. And the clients participate as much or as little as the attorneys allow.

Under the ADR Act, a person must have at least forty hours of training in mediation to be appointed as a mediator in the Court's Order for Mediation.[19] The Court, however, may waive this requirement[20] and generally lets the parties choose who they wish to use as the mediator. Thus, generally, though not always[21], the mediators in both types of mediation are chosen by the parties. They are, almost always, attorneys. The attorneys representing a party in mediation feel more comfortable having an attorney-mediator because usually, the mediation involves a lawsuit or potential lawsuit.

There is no difference in the drafting or enforcement of a mediation agreement or the Court's involvement in the enforcement process.[22.] While some

[19] ADR Act Section 153.052.
[20] Id.
[21] Some judges still prefer to use certain mediators but most judges allow the parties to choose.
[22.] ADR Act Section 154.071 states that a mediation agreement is as enforceable as any other contract. As such, breach of a mediation agreement must be enforced by the same means as any other contract. This could require a new lawsuit or additional pleadings claiming breach of contract in the existing lawsuit. A contract, however, would often be easier to prove and enforce than the more vague and uncertain claims

protections to the process may be added by an Order for Mediation, the ADR Act provides strong protections for confidentiality and privilege in all mediations, ordered or otherwise.[23] Additionally, many mediators provide Rules for Mediation similar or identical to those on the Order to Mediate.[24] These Rules are often contractually agreed to by the parties prior to the mediation. Thus providing the same protections to the mediation process as the Court's Order.

VIII. Advantages of Compulsory Mediation

I'm a strong proponent of the mediation process. Anything that can get all of the parties necessary to the settlement of a case in the same place, at the same time, concentrating on the case with, at least most of the time, an eye toward settlement can only be positive. Settlement at mediation can save time, cost, stress of a trial and avoids the risk of loss. It can salvage business and personal relationships that would otherwise have been lost. In my opinion, these potential benefits outweigh the extra cost and time spent if the mediation is unsuccessful. In Texas and particularly Houston, the large majority of cases settle at mediation. Many cases settle without mediation. However, mediation often leads to greater cost and time savings over other settlements which often settle at the courthouse steps, after all of the time and money has been spent on the case.

The main advantage to compulsory mediation is that it gets more people to the mediation table than voluntary mediation. Some attorneys won't try mediation because it is a new, unfamiliar process, which costs money. Many attorneys who initially felt that way in Texas are now strong supporters. I have seen it with my own eyes. These attorneys may never have tried mediation unless forced to do so by the Court. Many of them now mediate their cases on a voluntary basis. Other attorneys are willing to mediate but, frankly, wouldn't get around to it without an order and a deadline from the Court.

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made in many lawsuits. Additionally, a Judge may be more willing to grant a Summary Judgment, or summary relief without right of trial, to a breach of contract claim over more vague and uncertain claims.

[23] ADR Act Sections 154.053 and 154.073.

[24] See Appendix; D.

Others want to mediate but don't want to suggest it for fear that their opponent may view it as a sign of weakness. Compulsory mediation creates a safe environment where neither party has to suggest it and both start on a level playing field. Some attorneys feel it would be in the best interest of their client to have a case mediated but have reluctant and obstinate clients. These attorneys don't wish to appear weak to their clients by suggesting mediation. The compulsory mediation puts the responsibility for the mediation on the Judge and gets their clients to the table, often ending in a result more favorable to the client than a trial would likely have been.

Many attorneys don't want to go to mediation because they believe the case will never settle and that it will be a complete waste of resources, better saved for trial. Many, if not most of these cases settle. But for compulsory mediation, these cases would be tried with the added expense and uncertainty of trial. Many times their clients lose at trial. Even in cases that don't settle, the mediation can narrow the issues, which can cut down the cost and time of trial, potentially benefiting both sides.

IX. Disadvantages of Compulsory Mediation

I don't see many disadvantages to compulsory mediation. However, some cases should not be mediated. They will never settle for their own particular reasons. If a Judge is unwilling to grant a reasonable objection, the parties will have to spend the time and money on a futile endeavor. This could be a hardship on a client, particularly one with limited resources. Again, it is sometimes impossible for the Judge to know which cases will and won't settle. However, I believe it can be pretty clear in some cases. Some judges, however,. seem unwilling to grant any objections, which I think can be a detriment to and a disadvantage of the compulsory mediation process.

Some might argue that a party should have freedom to conduct its case as it sees fit and not be required to spend money on a mediation it does not want. I would argue, however, that it is acceptable to have reasonable restrictions and requirements on litigants availing themselves of the public dispute resolution system.

X. Has Compulsory Mediation Been a Success?

Judging by the significant expansion of the use of mediation in Texas over a relatively short period of time, I would have to say that compulsory mediation has been a resounding success. It has, more or less, been institutionalized in Houston, Dallas and other areas. It is obvious that most of the Judges approve of mediation by their continued insistence on the use of mediation in their courts.

Most of the attorneys I deal with on a daily basis express their belief in the process. I now conduct numerous mediations without Court Order. It is regularly utilized in small, medium and large, simple and complex cases. It is my belief that it has become so accepted as a usefu1 tool in dispute resolution that it would continue to be used even if it were no longer required by the Court. It has become another means of dispute resolution rather than an alternative means.

Additionally, it is the general perception that most clients are satisfied with the mediation process. It provides them with their "day in court", without the added stress, risk and cost of trial. It allows them to actively participate in the decision making process. It takes the decision out of the hands of strangers, i.e., the Judge and/or jury. It usually puts the case to rest earlier than a trial, allowing the client to move on with their lives.

Some judges, attorneys and clients are not satisfied with mediation. Not all cases settle and not all clients and attorneys are satisfied with their settlement even though it was agreed to voluntarily. However, on the whole, the level of satisfaction with mediation remains high.

XI. Expansion of Conventional Mediation Through Compulsory Mediation

I first became aware of mediation in 1988. I learned that some mediation was taking place but to a very limited extent. In 1989 and 1990, I watched as the Courts in Houston and Dallas became interested in the mediation process. In succeeding years I watched, and participated in, the rapid growth of mediation in the civil, Non-family State Courts in Houston. I experienced the increase in purely voluntary mediation. I saw the Family Law Courts jump on the bandwagon, going from no mediation practice to almost

universal use of mediation in a very short period of time. I watched as mediation laws in a few States turned into mediation laws in all 50 States of the US. I witnessed the Federal government and many State governments pass mediation laws for use in their government agencies. I saw the expansion of mediation in the US Federal Courts. I looked on as Shell Oil in Houston and Brown and Root, a large engineering company, as well as other companies, developed internal mediation programs for use by their employees. I watched the US Postal Service, the largest employer in the US, expand its internal mediation program for use in certain employee-management disputes. I saw mediation laws passed in Argentina, Australia, Singapore, England and many other countries. I see new interest in France and elsewhere. The list goes on and on.

From where I stand, I saw this expansion when attorneys, many of whom make the laws of the land and are in positions of power and influence, were introduced to a process they would not have otherwise used but for an order of the Court. When they and their clients saw the benefits of mediation firsthand. When these positive results were seen as an example by others around the US and the world.

I'm not a mediation historian. I'm a practitioner. I don't know if the trend started in Florida or California or Texas or Canada or China. It just seems like too much of a coincidence that most, if not all, of this rapid expansion began so soon after the significant use of compulsory mediation. After parties were forced, more or less, to learn the benefits of the mediation process. Perhaps I'm biased but I believe compulsory mediation played a big role in the expansion of mediation and conventional mediation.

XII. Alternatives to the Texas Approach to Compulsory Mediation

The main disadvantage I see to compulsory mediation in Texas is the inconsistent manner in which it is practiced. The decision to order mediation rests solely with the Judge. This means that in some areas of Texas mediation is practiced and in others it is not. In some Courts in Houston it is practiced and in others it is not. Fortunately, enough Judges have bought into the mediation process to make it the success it is today. Had they not done so, which was completely within their discretion, the ADR Act would lay dormant and the benefits of mediation may never have been fully realized.

This approach to compulsory mediation may not be effective everywhere. In another State or Country where the Judges are not willing to try a new process, or perceive it not to be in their best interest to do so, mediation would likely play no significant role in dispute resolution.

In such places, it may be necessary to convince the legislative body to create a stricter regimen of compulsory mediation with little or no discretion on the part of Judges to interfere with the mandate to mediate. This will create some hardship in those cases where mediation is net appropriate. However, I believe this hardship would be outweighed by exposing the benefits of mediation to an otherwise skeptical Bar and public, allowing the process to take a foothold that would encourage its continued use and benefit.

In the event of an unwilling Legislature and Judiciary, it would likely take some type of public movement for mediation to become a viable means of dispute resolution. If attomeys and/or businessmen believe mediation to be an effective alternative to an inefficient legal system, they may, with concerted effort, have enough clout to establish the practice of mediation in their country. This may then lead to acceptance and use of mediation throughout other elements of societv. While I believe this approach has a lesser likelihood of success than a policy of compulsory mediation, it is a worthwhile endeavor, particularly if it is the only alternative.

Conclusion

I come from the point of view, based upon my experience, that the benefits of mediation are so numerous that the process sells itself. In other words, to know mediation is to love mediation. However, if you can't get to know it, you won't learn to love it. That is where compulsory mediation comes in. It forces an otherwise skeptical group, who might never have tried mediation voluntarily, to know mediation, and thus to love mediation.

It happened in Houston, and Dallas and other States in the US. It is likely happening in other parts of the world, as we speak. It may not be appropriate or successful in every country. Perhaps the balance of power is so much in favor of some

that they don't wish to level the playing field. Perhaps it is not appropriate due to the characteristics of a particular culture.

However, in societies where the real interest in the legal system is to fairly, reasonably and efficiently resolve disputes, mediation will likely be a useful tool in accomplishing that goal. If compulsory mediation can lead to faster acceptance and use of the process, it can be a significant aid to that society, and its use should be seriously considered.