DIVORCE MEDIATION AND ARBITRATION: AN ANALYSIS OF THE DALLAS PLAN AND ATTITUDE FACTORS AFFECTING ITS SUCCESSFUL IMPLEMENTATION

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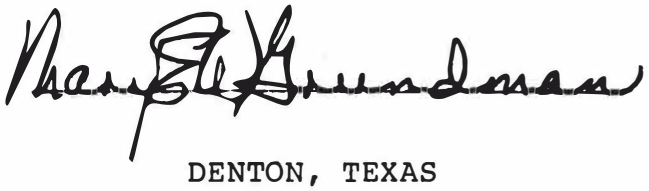

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We hereby recommend that the Thesis prepared under our supervision by Mary Ellen W. Grundman entitled DIVORCE MEDIATION AND ARBITRATION: AN ANALYSIS OF THE DALLAS PLAN AND ATTITUDE FACTORS AFFECTING ITS SUCCESSFUL IMPLEMENTATION

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Chapter 1

In the past five years, there has been a radical change in the divorce laws in Texas and nationwide, effected in the Texas Family Code which was amended in 1974 to provide what has popularly come to be known as "no-fault" divorce (Vernon's, 1975). Section 3.01 of the Texas Family Code states that, "On the petition of either party to a marriage, a divorce may be decreed without regard to fault if the marriage has become insupportable because of discord or conflict of personalities that destroy the legitimate ends of the marriage relationship and prevent any reasonable expectation of reconciliation."

The Legislature's objective in changing the Family Code was to move away from the highly divisive accusatory process that has characterized divorce in the Western world (Smith, 1964) to a system intended to lower the level of dispute (Weiss and Collada, 1977); a system recognizing that the future relationships of the parties was important (Elkin, 1973). The fault system of divorce tends to embitter the parties in such a way that they and their children are affected by the lingering acrimony

(Shipman, 1977; Freeman & Weihofen, 1972). Business Week, in the April 2, 1979 issue, comments that there are greater numbers of children suffering from the crisis of broken homes than ever before. They project that 45 percent of the children born this year will live, for at least awhile, in a one-parent family before they are 18 years of age (Business Week, 1979).

The change in divorce laws has been a swift one, virtually revolutionary in scope (Fain, 1977). New emphasis on the legal side of divorce toward preserving the respectibility and sensibilities of the divorcing parties suggests there is both an opportunity and a real need for closer ties between lawyers representing clients seeking divorce and the theraputic community (Loucks, 1974). Barton Bernstein, a Dallas Family Lawyer, concluded in an article for the Family Coordinator that, "In our complex society no one helping profession can operate without the others. The body of knowledge is so vast that within professions, sub-groups and sub-sub-groups appear. To help the individual is the goal of us all. Should not we be a team and work together?" (Bernstein, 1974).

Lawyers' training is heavily oriented toward the adversary process (Cavanagh & Rhode, 1976), while the theraputic community is directed more toward aiding the couples toward a resolution of their problems which will

enhance their personal and emotional health (Smith, 1964). Differences in approach run past procedure and into ethical viewpoints. "For example, the rules of legal evidence may be of little or no significance to the marriage counselor, while what the marriage counselor deems crucial to the case may be legally barred altogether" (Smith, 1964). The lawyer is ethically barred from talking with the other half of the divorcing couple (Coogler, 1978), while many systems-oriented marriage and family therapists would feel obligated to talk with both parties in order to do their work well (Foley, 1974). Mental health professionals observe process, and see individual actions from a symptomatic standpoint, rather than assigning blame or guilt (Watzlawick, P., Weakland, J. & Fisch, R., 1974). In an adversary system, the lawyer represents one client (Cavanagh & Rhode, 1976), and a part of that representation historically includes assigning guilt or blame to the opposite party so that the attorney's client may emerge from the contest victorious (Coogler, 1978).

With no-fault divorce, the objectives of the mental health and legal fields can grow closer together (Fain, 1977). With this objective in mind, a committee formed by the Family Law Section of the Dallas Bar Association met to design a plan for increasing interaction between lawyers and mental health professionals in the

areas of mediation and arbitration in divorce process (Greenstone, 1978).

In January of 1977, the Family Law Section of the Dallas Bar Association established a committee to study the feasibility of providing arbitration in cases of marital disputes resulting from divorce proceedings. More sensitive handling of such disputes, as well as the very crowded conditions of local domestic relations court dockets, made such a study needed at this time (Gay, Note 1). How to arrive at a procedure that would provide a significant service to clients in resolving conflicts secondary to divorce became an early question (Greenstone, 1978).

After study of the few existing programs operating at the time, including those offered by the American Arbitration Association, the Family Mediation Association and the California Conciliation Court, the committee produced a plan (see Appendix A) which combined the good points from several sources and utilized the abilities of both lawyers and mental health professionals, either singly or together (Greenstone, Note 2). A survey of the literature regarding mediation, conciliation and arbitration processes in divorce produces a paucity of materials to begin with, and a mere handful of articles relating to cooperation between lawyers in private family practice and marriage and family counselors or similar professionals in

private practice (Kressel, Lopez-Morillas, Weinglass & Deutsch, 1978).

Although the Dallas Plan was initiated by members of the Family Law Section of the Dallas Bar Association, and although the plan was a careful and well-reasoned one, it has been used very little and is not being formally used at all at this time (Greenstone, Note 2 and Gay, Note 1).

The purpose of this study is the determination of attitudes, beliefs and behavioral intent which may have affected utilization of the Dallas Plan by its initiating group, the Family Lawyers of Dallas, Texas.

An accepted definition of attitude is as follows (Fishbein, 1967).

$$\text{Attitude} = \sum_{i=1}^{n} B_i e_i$$

B_i = a belief about an object; judgment that a relationship between object and attribute is relatively true or false.

e_i = the positive or negative evaluative aspect of a belief; relative goodness or badness of object.

$\sum_{i=1}^{n}$ = the sum of n belief/evaluations running from 1 to n.

To illustrate Fishbein's operational definition of attitude we will examine a working example:

B_i= The Dallas Plan would make money for me.

UNLIKELY:			X		LIKELY
	0	+1	+2	+3	

e_i = If I made more money it would be

GOOD:							BAD
X							
extremely	quite	slightly	neither	slightly	quite	extremely	
+3	+2	+1	0	-1	-2	-3	

In scoring this example, we find the hypothetical individual holds a positive attitude toward the Dallas Plan and its potential effects on his/her income:

$$B_i e_i = (+2)(+3) = +6$$

A stable attitude measure is obtained through summing over the products of several salient-belief X value judgments.

A related concept is that of behavioral intention. Intention is defined as a particular kind of belief statement or probability judgment, one which links a person with a specific behavior or action (Fishbein, 1967; Marshall, 1976). A 7-point scale is the usual measure of intention. The scale ranges from "Unlikely," scored minus three, to "Likely," scored plus three. For example, I intend to use the Dallas Plan at the next opportunity.

UNLIKELY:							LIKELY
extremely	quite	slightly	neither	slightly	quite	extremely	
-3	-2	-1	0	+1	+2	+3	

Research shows that actual performance of a behavior is significantly correlated with the intention to engage in that performance (Fishbein, 1967; Marshall, 1976). In other words, intention immediately preceeds voluntary behavior when intention is viewed as belief about the relationship between the person and the action (Marshall, 1976).

Research has shown that attitude toward a concept is not tied with behavior, but that attitude toward behavior relates to behavior (Pomazal, 1974; Ajzen & Fishbein, 1970). Since the Dallas Plan is a concept, the behavior of using the Plan was not as predictive from attitude toward the Plan alone. If dichotomies between expressed attitude and related beliefs and behavioral intention are present, it would indicate an urgent need for further dialogue between the legal and theraputic communities, and a more accurate understanding each of the other.

Chapter II

Historical Perspective: the Adversary System of Divorce and Social Change

In the years from 1967 to 1977 the divorce rate has almost doubled from 2.6 per thousand to 5.0 per thousand population (Statistical Abstract of the United States, 1978). The divorce rate is not only increasing, but it is doing so at an increasing rate (Statistical Abstracts, 1978).

This dramatic increase marks a revolution, a fundamental transition in human roles and expectations accompanied by a decline in the influence of such social institutions as the church and our educational institutions (Fain, 1977).

Family law, the law of divorce, is being forced to follow the shifting changes in social attitudes and change in the family itself. Fain (1977) notes the changing conditions which make the family less a natural, cohesive unit, including mobility, urbanization and industrialization, which permit "an incredible increase in the number of working wives and mothers (reasonably estimated at more than 60 percent of all married women)." Education, Fain notes, has long been delegated to the public and private schools, television, movies, magazines and

literature and to peer group friends. Even the raising of children is more and more being attended by surrogates, including day care centers, schools, nursemaids or household help (Fain, 1967).

Women are becoming better educated and thus have more options for cultivating interesting roles (Glick, 1975).

These changes in our values and expectations are now being reflected by changes in the law. "Though we would like to believe that law and the rules or regulations that are promulgated pursuant to law dictate our conduct, the fact is that law is or must eventually be governed by our conduct" (Fain, 1977, p. 33).

The no-fault concept of divorce is a major element in reform of divorce in the country (DeWolf, 1973). Ms. DeWolf states that, "Laws which make divorce difficult to obtain and which permit one partner to stall or prevent divorce, are actually destructive of the personalities involved" (DeWolf, 1973, p. 23).

Almost ten years ago, September 4, 1969, California's Family Law Act was signed into law and proved the start of a revolution (Johnson, 1979, p.2C; Elkin, 1973). Key provisions of the statute are reduction of grounds for divorce to "irreconcilable differences and incurable insanity, and elimination of 'the longstanding presumption that the wronged spouse, as decided by the court, should

receive most of the couple's mutual assets'" (Johoson, 1979, p.2C).

By 1977 all but three states had dropped fault only as grounds for divorce (Fain, 1977). Drafters of the Uniform Marriage and Divorce Act recommend irretrievable breakdown as grounds for divorce where there isn't any reasonable prospect for reconciliation (Uniform Marriage and Divorce Act, 1974, Section 302). Section 305 of this same Act would permit the court to suggest counseling and provides that the court, at the request of either party or on its own motion, may order a conciliation conference (Uniform Marriage and Divorce Act, 1974).

The fault system of divorce, embodying the concepts of right and wrong, victory and punishment, with accompanying inflexibility, has been perceived as irrational (Shipman, 1977; Virtue, 1956; Elkin, 1973). Even before California moved to no-fault divorce in 1969, the divorce process in most cases involved essentially negotiated settlement (Elkin, 1973). Fault was significant only as it affected the negotiation process and provided leverage for financial and other terms (Fain, 1977). To the present day, over 90 percent of divorce cases are settled by agreement (Loucks, 1974; Fain, 1977).

The arranged or negotiated divorce (pre no-fault has been described as having discredited the profession of law

(Shipman, 1977).

The no-fault divorce revolution is, however, only the second revolution. For the first, we owe much to Henry VIII of England.

Our law is derived from that of England, which in turn owed much to the inheritance of early Christian theologians (Shipman, 1977). A principle of Canon Law is that a consummated sacramental union is, by Divine decree, stable and indissoluble (James, 1952). In the Middle Ages, in an attempt to adjust this absolute principle of indissolubility to the human situation, two methods were devised to avoid the theological issues: divorce a mensa et thoro, a form of legal separation for causes arising after the marriage but admitting the validity of the marriagè; and a provision for absolute divorce or divorticum a vinculo matrimonii, in which the Church searched for a basis to establish that the divine contract was invalid through some fundamental impediment existing prior to the marriage (James, 1952).

While the theologians could insist on the doctrine of indissolubility, the lawyers could usually find some adequate basis for nullification, with the alternative for the privileged being Papal dispensation (James, 1952).

The limits of Papal flexibility were reached in the determination of Henry VIII of England to repudiate his marriage to Catherine of Aragon. When Papal dispensation

was not forthcoming, Henry changed both the religion and the law, establishing the Church of England, retaining most of the traditional religious order, but without the influence of Rome (James, 1952). In time this permitted inclusion of protestant grounds for divorce, such as adultery and desertion and other fault-based causes arising after the marriage contract (James, 1952). Shipman states that "The civil courts adopted the basic tenents of the Canon law regarding divorce, and in the course of time, developed the four doctrines of defense: recrimination, condonation, connivance and collusion" (Shipman, 1977, p. 396). It was not until 1857 that the English Divorce Court was established with the former powers of the Ecclesiastical Courts and the power to dissolve valid marriages (James, 1952).

We have now traveled, historically, from a legal system of placing blame or fault to one where the basic question is not who is or was to blame, but rather one in which an assessment is made of the illness of the marriage and of the chances of its recovery. Esther O. Fisher describes the process in this way: "Divorce is the death of a marriage: the husband and wife togehter with their children are the mourners, the lawyers are the undertakers, the court is the cemetery where the coffin is sealed and the dead marriage is buried (Fisher, 1973).

What is no-fault divorce? It has been called divorce on demand (Fain, 1977). There are no defenses and it is rare for the divorce not to be granted. The issues are no longer fault or condonation but merely the economic implications (Fain, 1977). Where the issues are so narrowed, the "day in court" can be exceedingly brief (Young, 1978). Instead of the medieval indissolubility of divorce, we have come to divorce on the demand of one party. Every person is now Henry VIII.

How and who is to cope with the new system? If divorce is not victory and the assessment of blame, then what has become of and what should be done with the adversary system? As Freeman and Weihofen (1972, p. 47) note, "Lawyers are oriented to the role of advocate of one party against another. But in marital disputes this single-minded posture is often inappropriate. It would be well if lawyers could absorb more of the attitude of the other helping professions, that the aim is to do what is best for the family as a whole and indirectly for the community as a whole."

"The lawyer's responsibility, indeed his duty, is to determine the legal issues that will aid his client and do all that he can ethically to bring about a legal victory" (Smith, 1964, p. 721). If the lawyers for both parties seek for the maximum for each of their clients, "the result will

be resentment and ill will, which will not only scar the parties but will leave its mark upon the children" (Freeman and Weihofen, 1972).

Victory is an event that establishes winners and losers. It is not a mechanism for establishing cooperation that may have to continue over a long period of time, as in the question of alimony, child support and visitation. "The adverse consequences of misplaced advocacy may be substantial" (Cavanagh & Rhode, 1976) in these areas.

Every state has provisions for modifying divorce decrees. Divorce is thus not the last legal encounter the parties may have. Indeed, one commentator has styled it, "end of divorce--beginning of legal problems" (Robbins, 1974).

Not only is a lawyer unsuited by training to provide counseling, mediation or even-handed negotiation, he/she is severely constricted by the American Bar Association's Code of Professional Responsibility in dealing with unrepresented "adversaries" and may not proffer advice to such parties (Cavanagh & Rhode, 1976). It is common for only one party to be represented by an attorney, although even in uncontested divorces the disputed issues may be intense enough so that both sides should be represented by a lawyer.

The reliance on the adversary system may result in the lawyers staking out positions at opposite ends of the

spectrum and lead the parties to an unnecessarily divisive bargaining process (Cavanagh & Rhode, 1976).

The framers of no-fault divorce were seeking to eliminate the necessity of presenting sordid and ugly details of conduct on the part of either spouse in order to obtain a decree of divorce (Vernon's, 1978). They have sometimes failed to appreciate that when the law shifts focus from the character of the spouses to the nature of the relationships, the subject requires the services of one skilled in dealing with marital dyads (Shipman, 1977).

There is a growing awareness that the responsibility of the law and courts extends beyond narrow legal considerations in divorce and an interdisciplinary approach on the part of law and the behavioral sciences has merit (Elkin, 1973; Berstein, 1974, 1977). The concept of "irretrievable breakdown" in marriage is not one that attorneys have been trained to analyze. Among the helping professionals, marriage and family therapists are presumed to have the most experience and training in dealing with the marriage relationship (Shipman, 1977). For these reasons and due to the suddenness of the development of no-fault divorce, judges and legal scholars have had increased interest in having adequate marriage counseling available (Shipman, 1977). Shipman (1977) notes, in citing a program in Racine County, Wisconsin, that the affluent who can

afford counseling made up a small percentage of those in divorce, while the need is so great for counseling that many have had to resort to counsulting lay people. "If the leaders in marriage and family counseling do not move into the vacuum which no-fault divorce has accentuated, then others will do so" (Shipman, 1977, p. 4).

Alternatives to the Adversary System

The early enthusiasm for no-fault divorce has become less fervent as some underlying problems have become apparent. Some states drafted hasty, ill-considered laws which have now come back to haunt them (Shipman, 1977). "For older women, no-fault divorce has been a disaster. It has been especially hard for older women who have been homemakers and who assumed that marriage was till-death-us-do-part. The career world has passed them by and they cannot hope to support themselves or to provide for their old age," said Trish Sommers, President of the Older Women's League-Educational Fund (Johnson, 1979 p. 2C). She also comments that selling the family home and dividing the proceeds is particularly hard on the older women.

One particular problem in states having no-fault as only one of the grounds for divorce is that one-half of the divorcing couple can charge the other with "fault" under one of the other grounds as leverage in obtaining a more attractive property or custody settlement (Glick, 1975).

The adversary system is alive and well in many no-fault states.

A recent study done in San Diego County showed that out of 600 cases surveyed, women received $61 a month in child support under the no-fault concept compared with decrees of an average of $99 under the adversary system. Only 29.7 percent of the no-fault women received alimony as contrasted with 65 percent of the adversary process, and the awards for child support went from 94.4 percent to 89 percent (Johnson, 1979).

"No-fault has helped childless couples but it has not done much for parents. Instead of arguing about whether the husband drank and the wife cheated, couples today fight about the children" said Vert Vergon, President of Fathers Demanding Equal Justice, a Los Angeles-based organization of divorced fathers (Johnson, 1979 p. 2C). If women, men or both (as parents) are being discriminated against through circumventions of the intent of no-fault divorce, it would seem a return to the Middle Ages legally. It will certainly cause a lessening of enthusiasm for no-fault divorce (Johnson, 1979; Shipman, 1977). The question which should engage us at this point, however, is who determines whether the marriage under consideration is in a state of irretrievable breakdown (Shipman, 1977)? In the ordinary legal system, that decision must be made either by the

judge, the lawyers or the divorcing couple themselves. Virtue (1956), in interviews with family court judges, asked the number of marriages under divorce process which might be saved. "Every judge I talked with regards the problem of screening out viable marriages as among the most harrowing tasks facing the divorce judge" (Virtue, 1956). When queried as to the reasons they felt as they did, the judges gave three primary reasons: extremely large caseload, adversary distortion of the facts and the low availability and acceptance of value of court-ordered marriage counseling (Virtue, 1956). Although Virtue's study was completed over twenty years ago, the pressures on those within the judiciary and the legal profession to perform diagnosis, if not treatment, of ailing relationships remains a relevant problem.

Conciliation Courts. Althogh the California Conciliation Court syustem is known as the pioneer program in the field, utilization of marriage counselors in divorce courts began in Milwaukee and Cincinnati in 1933, when the jurisdictions established Departments of Family Conciliation (Shipman, 1977).

As Elkin (1973) points out, since marriage cannot be terminated without recourse to legal procedure, the courts are in an advantageous position to provide marital counseling services. In the California Conciliation Courts,

the objective is stated as "reconciliation of spouses and the amicable settlement of domestic and family controversies" (Elkin, 1973). Since all recognize that not all marriages can or should be saved, the counseling available goes beyond the reconciliation fuction to that of helping families to end the marriage without the recrimination and anger which is responsible for a great amount of the post-divorce return to court (Elkin, 1977).

Elkin gives great weight to the constructive use of authority in the court setting where the court becomes the strong figure on which one or both divorcing parties may lean. Consistent with this, he uses a more directive approach and uses confrontation in a short-term, existential and rational theraputic approach.

Effective use of counseling under the auspices of the California Conciliation Courts has been extended to premarital counseling for minors, recognizing the lower probability of success in marriages among the young, and to post-divorce counseling in an effort to decrease the pain and expense of post-marital legal dispute (Elkin, 1973, 1977).

The usefulness and importance of marriage and family counseling in divorce has led to some proposals for compulsory counseling (Sonne, 1974). Sonne observes that compulsion is antithetical to effective therapy, which

requires confidentiality and trust. The proposed Uniform Marriage and Divorce Act (1974) proposes counseling on the motion of either party or on the judge's own motion with respect to the issue of whether the marriage is irretrievably broken.

Concerning the role of Jewish Law pertaining to the Jewish family, marriage and divorce, Dr. Menachem Brayer (1968) proposes creation of Jewish reconciliation courts in an attempt to avoid hasty, groundless, impulsive divorce action by the matrimonially disoriented. Creation of Reconciliation Courts would seem partcularly helpful in bridging the two laws orthodox Jews face: The no-fault divorce available in the civil courts of the United States, and the Rabbinic law of divorce which emphasizes the religious foundation of the marriage convenant and requires formal traditional sanctions to dissolve that covenant (Brayer, 1968).

Independent arbitration and mediation services. Coogler (1978) advocates structured mediation in divorce settlement. To this end he founded the Family Mediation Association (FMA) in 1975 to provide mediation services (Coogler, 1978).

Mediation, in Coogler's view, is the agreement of two parties involved in controversy to turn to a neutral third person for help in resolving the issues. An agreement to

work out problems in this way involves a commitment to reach settlement cooperatively. The neutral third party is not expected to decide the issues; that is the responsibility of the parties who are expected to be more willing to honor decisions they have made themselves.

Coogler distinguishes conciliation from mediation in that the conciliator offers options for the parties to consider, points out the advantages and disadvantages of the options and encourages the parties to adopt an option rather than reach an impasse. In this respect the conciliator is assuming some of the parties' responsibilities. It is more directive. It may help avoid an impasse in mediation and may be useful when the parties are inexperienced in dealing with the subject matter (Coogler, 1978).

Arbitration is the mechanism Coogler would use to solve impasses in mediation. In the Family Mediation Association plan the arbitrator is also a neutral third party, but when the disputants turn to an arbitrator, they agree to be bound by the decision of the arbitrator and there is no appeal. Arbitration can be an adversarial process, since the parties compete for a favorable decision from the arbitrator.

Mediation in the structured setting is used for negotiating written settlements when the parties intend only separation and not divorce; for negotiating written settlement agreements to become part of a divorce decree;

and for negotiating changes in an existing divorce decree when there has been a change in financial conditions, the needs of the parties or the children.

The essential difference sought in mediation over the adversary legal system is a cooperative orientation rather than a placement of the parties into competitive and often emotionally damaging opposition.

Arbitration is the most time-honored alternative to the judicial process. It has long been used to settle difficult issues in business, management and labor (Robbins, 1970).

Until recently, however, its use had often been limited by court rulings holding invalid any and all arbitration provisions concerning custody and visitation (Robbins, 1970).

Now 39 states, the District of Columbia and Puerto Rico have arbitration statutes that permit courts to grant full force and effect to arbitration awards (American Arbitration Association, 1978). The courts will honor the arbitration provisions as to support payments, visitation and custody, although any award contrary to the child's best interests could be challenged in court (Robbins, 1970).

Commonly, an arbitration of dispute is provided contractually in documents such as separation agreements (American Arbitrtation Association, 1978).

Robbins suggests increasing use of arbitration as a

means of relieving crowded court dockets and avoiding making the divorce process perfunctory and administrative (Robbins, 1970).

The American Arbitration Association (AAA) is one of a number of organizations providing arbitration, but one of the few which includes marital arbitration service. It includes on its panel of marital arbitrators domestic relations attorneys, clergymen, social workers and others with a special knowledge in their field, and provides conciliation, mediation and decision by referee as well as arbitration. The functional difference between conciliation, mediation and arbitration are similar to Coogler, and the organization cooperates with Coogler's Family Mediation Association in Atlanta (AAA, 1978). The AAA has regional offices in 25 cities throughout the United States, including Dallas, but Helmut Wolfe, head of the regional office in Dallas, says that marital arbitration is a very small part of his office's work load (Wolfe, Note 4).

The AAA adds the use of referees for settling issues on which the parties are unable to agree. This use is similar to Coogler's resort to arbitration when impasse is reached in the mediation process. Parties may be represented by attorneys before a referee or in arbitration, and the decision is binding.

In January 1977 the Family Law Section of the Dallas Bar

Association formed a committee of four attorneys engaged in Family Law practice and four mental health professionals engaged in marriage and family practice in Dallas. The goal of the committee was to examine the feasibility of providing the alternative of arbitration or mediation for divorcing couples who are experiencing difficulty resolving disputes over details of the dissolution of their marriage; determine if arbitration could lessen the crowded conditions of the domestic relations courts; and provide more sensitive handling and reduced conflicts during and after the divorce.

The Dallas Plan sought to bring together qualified attorneys and helping professionals like marriage and family counselors, social workers and psychologists in an effort to help the families of their community.

The Arbitration Committee furnished its first proposal in July 1977, with approval in August to proceed.

O. J. Coogler's Marital Mediation Program from Atlanta, Georgia, served as an encouragement to the Committee due to its published success, and its and the AAA's organization and structure, although somewhat different, were valuable references for the Arbitration Committee (Greenstone, 1978).

The basic elements of the Dallas Plan are:

1. Trained arbitrator/mediator drawn from both the legal and helping professional fields works either singly or in tandem with divorcing couples.

2. Persons beginning the divorce process are apprised of the availability of the arbitration/mediation system as an option to the regular legal system of the courtroom for resolving the traditional matters of child custody, visitation, property division and child support, or any other matters in dispute.

3. Such services are suggested by the judge or by either divorcing party's legal counsel. Once arbitration or mediation is agreed on, disputed areas are resolved with an arbitrator instead of a judge and then presented to the judge in the form of an agreed order.

The Arbitration Committee perceived the advantages of the Plan to be a reduction in the time and expense of litigation and a lightening of the load on court dockets. According to James L. Greenstone, Chairman of the Arbitration Committee, "Approached in this way, successful resolution of these marital disputes will become possible under a much lesser degree of stress and tension, and without the often unnecessary, burdensome outlay of time and money required in adversary proceedings. Divorce can become an instructive experience, rather than a destructive one. Information gained through sensitive assistance can aid the persons involved to proceed with their new life more effectively and more productively, and without much of the harsh influences that are so often present"

(Greenstone, 1978).

An extensive search of the literature both psychological and legal, yields few articles of research directly pertaining to the roles of the assisting professionals during the divorce process. "To our knowledge only two studies of the role of the lawyer have been reported" (Cavanagh & Rhode, 1976; O'Gorman, 1963). "We are aware of no study that systematically describes the assistance of either psychotherapists or clergy. (Even clinical accounts of divorce counseling are relatively few)" (Kressel, et al., 1978).

Sell (1977), in his bibliography of the divorce literature published between 1970-1976, includes only 18 articles on divorce counseling, 4 of these being post-divorce adjustment. Olson & Dahl (1975), in contrast, list more than 200 articles on marriage and family therapy for just the period of 1973-1974.

Literature search for the study of legal attitudes, beliefs and behavioral intentions toward the Dallas Plan has produced only four studies which relate directly to lawyers' attitudes, and one of these concerns judicial problems and attitudes. Each pertinent study will be discussed briefly.

Virtue (1956), in her study of the organization and operation of courts handling divorce cases, cites the following causes for difficulties being encountered:

1. The changing behavior in marriage of large numbers of people.

2. Breakdown of the adversary process in divorce litigation.

3. Inefficient structure of court systems.

4. Inapplicability of much of existing substantive law to the actual conditions of litigation.

She recommends three measures be undertaken to correct the existing difficulties:

1. Revision of laws governing divorce.

2. Redesign court systems.

3. Remodel court procedure both by statute and otherwise to supplement the adversary process so as to enable the court to achieve good quality of disposition of divorce cases.

"Within the assigned field, I note that the concept of a separate court of conciliation (e.g., proceedings separate from and constituting an interruption to the divorce litigation), though it seems to offer a simple, farreaching plan to achieve fully theraputic divorce court contact, is not working out as planned in any court I have observed. I suggest the reason is that it does too much too fast, departing from the established legal traditions in such an abrupt way as to fail to commend itself to legal personnel, who are by training and experience convinced that legal

reform should be accomplished a step at a time" (Virtue, 1956, p. 252).

O'Gorman (1963) interviewed 82 lawyers in an empirical analysis of the matrimonial practices prevailing among them. Three major difficulties specific to matrimonial lawyers were found to be prevalent:

1. Difficulty in dealing with the emotionality of clients. "The difficulty encountered in representing an 'upset' client reflects something more than a lack of training; it also indicates the inappropriateness of legal skills, skills based on an objective and logical appraisal of problems" (O'Gorman, 1963). In other words, you cannot put out a fire with legal logic.

2. Client ignorance relating to: (a) inadequate knowledge of law; (b) misconceptions of a lawyer's role; and (c) vacillation regarding anticipated legal action.

3. Female clients, in 27 percent of the sample, were reported to be more difficult to represent than male clients. Major factors in the difficulty were cited as greater emotionalism and ignorance of the law, and O'Gorman specifies that this is not just a review of the other two problem factors, but more a reflection of the women's roles and social status. One respondent stated his view as follows: "Women are more emotional. Their lives are centered in the home. When the marriage breaks up, they are

lost and resentful. I'm not talking about the executive female but the average woman" (O'Gorman, 1963).

In reference to the nature of their client's problems, 23 percent of the respondents characterized matrimonial cases as personal problems and 16 percent cited them as nonlegal problems. One attorney remarked, "You're just wrapped up in the personal and emotional problems of people. It isn't really law" (O'Gorman, 1963).

Cavanagh & Rhode (1976, pp. 152-153) state that "The primary constituents of an uncontested divorce practice appear to be elementary formalities, ancillary advisory functions irregularly exercised, and episodic mediation problems that can be exacerbated by legal representation. To these characteristics must be added a final, human dimension." They argue that legal training is patently inadequate to deal with the psychological and emotional dislocations typical of the negotiation of a divorce.

Lawyers, when questioned as to their most important functions in the dirorce process, placed emotional support and personal counseling second in priority only to negotiation of disputes, and "almost one-half of the lawyers adverted to matters subsumed by one respondent under the following expansive labels: 'acting as psychologist, father figure, confidant, and psychiatrist'" (Cavanagh & Rhode, 1976, p. 152). Only one lawyer out of the 106

responding to the questionnaire mentioned making referrals of counseling professionals as one of the lawyer's most important functions.

Cavanagh & Rhode also cite the financial costs of even an uncontested divorce to the client. They found that 88.4 percent of their client sample were charged at least $500 for their divorces. "Nine pro se plaintiffs volunteered that they had been quoted prices averaging $750 for divorces they ultimately obtained themselves with the aid of the $4 Pro Se Dissolution Kit" (Cavanagh & Rhode, 1976, pp. 153-154).

Kressel, Lopez-Morillas, Weinglass & Deutsch compared the views of expert groups of lawyers, psychotherapists and clergy on the divorcing process and the role of the professional in assisting the process of divorce and the people involved in the action. The lawyers and psychotherapists were engaged in private practice of which divorce was a part. They found a greater difference of opinion and orientation on the issues among the attorneys tested than among either the therapists or clergy. Therapists and clergy showed a marked unanimity of outlook on the psychology of the divorcing experience and the criteria of a constructive divorce. Both groups cited the adversary process in divorce as creating more problems than it solves. Some of the lawyers were in agreement with this.

Kressel et al. found six distinctive lawyer orientations

toward the lawyer's role in divorce and in the lawyer-client relationship. They arranged the stances in ascending order from the more narrow, legalistic rationale to the broader and more social concerns:

1. The Undertaker, characterized by cynicism about human nature and pessimism toward possibility of the good or constructive outcome in divorce. They tend to be negative toward the value of psychological counseling.

2. The Mechanic, characterized by a pragmatic, technically oriented stance of "the customer knows best." Assesses the legal feasibility of doing what the client wants.

3. The Mediator, oriented toward a rational problem-solving approach with an emphasis on cooperation with the other side, particularly opposing counsel, primarily to reduce conflict.

4. The Social Worker, characterized by concern for client's general adjustment and welfare during and after the divorce. Tends to welcome involvement with therapists or clergy.

5. The Therapist, oriented toward trying to understand client's motivations and deal with the emotional strain and turmoil engendered by the faulty legal system. Welcomes involvement of psychotherapists if they can help the lawyer with the lagal aspects of his/her role.

6. The Moral Agent, characterized by a strong sense of right and wrong and a lack of hesitancy to act on that sense. Tries to do "what's right," especially for the children. Uses therapists often so that the right thing is done for client.

Kressel et al.'s premise is that the marked and systematic differences in the lawyers' views and their disagreement among themselves is due to a high degree of role strain in matrimonial law. Their lawyer interviews reflected that "The role of the matrimonial lawyer is an unenviable one from any point of view: The lawyer cannot expect to find a great deal of satisfaction in the traditional role of advocate, but can expect strong pressures to asume the advocate stance; to produce a settlement that will be equitable and lasting, the lawyer needs to develop a clear picture of the state of the marriage, but can expect that the picture he comes to hold will be significantly distorted by virtue of the one-sided source of his informatin; the lawyer may strive to fathom the psychological motivation of the client and to predict how the dynamics of the marital relationship will affect the legal proceedings he is trying to orchestrate, but must contend with his lack of training in understanding such matters; the lawyer may have the normal professional expectation that his work will be greeted, if not with

thanks, at least with the client's approval, but will more likely than not find that his efforts are regarded with disappointment and mistrust; the lawyer can hope for an opposing attorney who shares his views and with whom he can work easily, but can expect that this hope will be frustrated. The adoption of a stance provides a lawyer with a buffer against these contradictory terms of employment and a rationale and motivation for managing the client and the opposing attorney" (Kressel et al., 1978, p. 130).

They state that lawyers are more apt to be advocates of one party in the marriage conflict where therapist and clergy tend to assume the mediator's role. If a working alliance is to be formed between lawyer and helping professional, the advocate versus mediator stance is important to consider along with the related factors of confidentiality and impartiality. In the case of confidentiality, the lawyer can promise the client that nothing told the attorney will be disclosed except with the express premission of the client. The therapist or clergyman cannot if they wish to remain impartial, and impartiality is a central focus in establishing a working alliance between a mediator and the disputants (Kressel et al., 1978). The lawyer is an advocate for one client only, and is therefore under no constraint to be impartial. In the Cavanagh & Rhode study, 23 percent of the lawyers

responding to the questionnaire and 32.7 percent of those representing more than 10 divorce plaintiffs each year responded specifically in terms of advocacy rather than from a mediational posture.

Chapter III

Method

Subjects

Subjects were 33 members of the Family Law Section of the Dallas Bar Association. All subjects were members of the State Bar of Texas. There were 26 males and 7 females participating in the study. No age data was collected.

Instrument

The experimenter devised a questionnaire (see Appendix C) composed of 5 point Likert-type scales measuring attitude toward the Plan. Positively-stated items were scored +2 strongly agree, to -2 strongly disagree. Negatively-stated items were scored in reverse. Osgood bipolar semantic differential scales were used for measuring intention to use the Plan. For positively-stated items, +3 indicated strong intent, and -3 indicated intention not to use the Plan. Negatively-stated items were scored in reverse. Attitude toward the act of using the Plan and normative beliefs concerning what significant others thought they should do were measured with two scales, a unipolar scale measuring belief-strength and running from 0 to +3 likely, and an Osgood bipolar semantic differential measuring the +3 goodness to -3 badness evaluation of each belief.

Questions were written within the following four catagories: attitude toward the fact of using the Dallas Plan (ATTACT), attitude toward the Plan itself (ATTPLAN), intention to use the Plan (INTENT), and normative beliefs about the attitudes of significant others toward use of the plan by the subject (NORMBEF) (see Table 1).

Table 1 The four catagories and question numbers empirically assigned to each catagory.

ATTPLAN		ATTACT*	INTENT	NORMBEF
1	17	34	9	27
2	18	35	16	29
3	19	36	21	33
4	20	37	22	40
5	21	38	30	
6	22	39		
7	23			
8	24			
10	25			
11	26			
12	28			
13	31			
45	32			
15				

*ATTACT scores were summed to obtain a total attitude toward the act of using the Plan.

Procedure

The experimenter gave a short oral review of the Dallas Plan and instructions to the subjects (see Appendix B). Following the instructions, subjects were given copies of the questionnaire and the TWU standard consent form II. Subjects were allowed ten minutes to complete the questionnaire, and then questionnaire and consent forms were gathered separately to ensure anonymity of the participants. All subjects finished within the required time.

It is hypothesized that Attitudes toward the Act of using the Plan and Normative Beliefs relative to using the Plan will significantly predict Intention to use the Plan.

It is hypothesized that general attitude toward the Plan itself will not significantly predict Intention to use the Plan.

It is anticipated that expressed attitudes toward cooperation between the legal and theraputic professions will be incongruent with beliefs and behavioral intent. It is further anticipated that lawyers will exhibit low levels of confidence in the ability of helping professionals to be of competent service in the arbitration or mediation process, as evinced by low scores on items 3, 7, 12, 37, 38, and 39. It is anticipated that they will show marked reluctance to relinquish control of their clients during

arbitration or mediation; preferring to deal through negotiation with opposing counsel and come to settlement privately. Finally, it is anticipated that they would accept legislative or judicial orders to participate in a court-run arbitration or mediation program, or would use the Plan if legislatively directed to do so, although reluctant to take a chance on the private, voluntary Dallas Plan.

Statistical Analyses

Item subsets were submitted to principal axis factor analysis, using squared multiple correlations of each variable with all others as communality estimates. Factoring was done to assess the assumed homogeneity of a given item subset (Cohen & Cohen, 1975). Factors having Eigen values greater than or equal to 1.00 were retained. Multiple factor solutions were orthogonally rotated to simple structure by the Varimax procedure.

In factoring ATTACT items, 2 items out of 4 loaded significantly on one of two resultant factors. Item 8 did not load on either factor and was discarded. Item 13 received the only significant loading on the first factor, and did not load with the remaining two items on the second factor (see Table 2). Item 13 was discarded. Factor 1 was discarded. Items 32 and 33 loaded significantly on Factor II and were retained, although the level of Item 33's significance was low.

Table 2 Data of factoring attitude toward the act of using the Plan (ATTACT) items.

Item	Factor 1	Factor 2
8*	-.300	.001
13*	.991	.081
32	-.238	.547
33	-.284	.412

*Items not loading

Factor	Eigen value	% of variance	Cum %
1	1.221	72.5	72.5
2	.464	27.5	100.0

*Items not loading

Eight of 13 items loaded significantly on the first factor in ATTPLAN. Five items did not load and were eliminated from the cluster (see Table 3).

All four INTENT items loaded significantly on kthe first factor (see Table 4), therefore none were discarded.

Three of the four NORMBEF items loaded significantly on the resultant factor. The non-significant item was discarded (See Table 5).

Table 3 Data of factoring attitude toward the Plan itself (ATTPLAN) items.

Item	Factor 1	Factor 2	Factor 3
1	.663	.117	-.0004
4	.810	.183	.115
5*	.235	.628	.262
11	.577	.305	.304
15	.841	.120	.124
17*	.039	.156	.565
18	.587	-.014	-.284
20*	.183	.979	-.066
21	.572	.459	.059
24	.753	.160	.040
25*	.121	.075	-.685
28	.577	.215	.059
31*	.171	.058	.553

Factor	Eigen value	% of variance	Cum. %
1	4.599	65.3	65.3
2	1.378	19.6	84.9
3	1.066	15.1	100.0

*Items not loading

Table 4 Data of factoring behavioral intention (INTENT) items.

Item	Factor		
9	-.415		
16	.632		
22	-.426		
30	.583		
Factor	Eigen value	% of variance	Cum. %
1	1.093	100.0	100.0

Table 5 Data of factoring normative belief (NORMBEF) items.

Item	Factor		
27*	-.295		
29	.507		
34	.355		
35	.899		
Factor	Eigen value	% of variable	Cum. %
1	1.781	44.5	44.5
2	.973	24.3	68.9
3	.849	21.2	90.1
4	.397	9.9	100.0

*Item not loading.

Knowledge (KNOW) emerged from the factoring of proposed ATTPLAN as a new subset, loading on a separate factor. These items related to knowledge about the Plan, or a lack of it, with no evident implication for attitude. Five items were loading significantly, and three items did not load and were discarded (see Table 6).

Table 6 Data of factoring knowledge (KNOW) items.

Item	Factor 1	Factor 2	Factor 3
2	.799	-.032	.176
6	.525	.464	.012
10*	.266	.213	.704
12	.376	.793	-.220
14	.667	-.082	.207
19*	.295	-.708	-.089
23*	.025	-.111	.366
26	.632	.112	.030
Factor	**Eigen value**	**% of variance**	**Cum. %**
1	2.312	54.5	54.5
2	1.230	30.6	85.1
3	.633	14.9	100.0

*Items not loading.

The resulting item clusters from the factor analyses were summed as item scores to obtain four scores, one for each of the catagories being measured. INTENT was regressed to a stepwise fashion on ATTACT, ATTPLAN, KNOW and NORMBEF. Power for detecting a medium to large effect [$R^2/(1-R^2)$> = .30] is at least .90 with a sample size of 33 and 4 predictor variables (Cohen et al., 1975).

Results

NORMBEF emerged as the best predictor of INTENT, with ATTPLAN as the next best predictor. Together, NORMBEF and ATTPLAN significantly predict the intention to use the Plan. ATTACT and KNOW items did not predict intention to use the Plan (see Table 7).

Table 7 Results of the stepwise multiple regression.

Multiple R	.648	ANOVA	DF	Squares	Square	F
R Square	.420	Regression	2.	150.66391	75.33196	10.87138**
Adjusted R Square	.382	Residual	30.	207.88154	6.92938	
Standard Error	2.632					

**p .001

Variables in the Equation

Variable	B	Beta	Std Error B	F
NORMBEF	.438	.435	.149	8.591**
ATTPLAN	.193	.352	.081	5.622*
(CONSTANT)	-1.948			

Summary Table

Variable	Multi. R	R Square	R Sq Chg	Simple R
NORMBEF	.558	.312	.312	.558*
ATTPLAN	.648	.420	.109	.504*

*p<.025

**p<.01

A linear combination of NORMBEF and ATTPLAN accounted for 42% of the variance in the self-reported intent to use the Plan. That NORMBEF was the best predictor of intention is consistent with findings of general attitude theory that attitude toward a general concept usually doesn't correlate as well with behavior toward a concept as does Normative Belief related to the behavior, or attitude toward performing the behavior (Fishbein, 1967; Wicker, 1969).

As expected, KNOW was not predictive of intention, but ATTACT was theoretically expected to be significantly predictive of intention. It was not.

Therefore, Hypothesis I was partially confirmed, as Normative Belief predicted Intent while Attitude toward the Act did not.

Hypothesis II was rejected because Attitude toward the Plan did predict Intent.

Factor analysis of the COOP cluster items showed items 3, 7 and 37 loading. Items 12, 38 and 39 did not load and were discarded. The items which were retained were plotted on a frequency polygon (see Figure 1). The scores were positively skewed in all three items, therefore the Hypothesis was rejected.

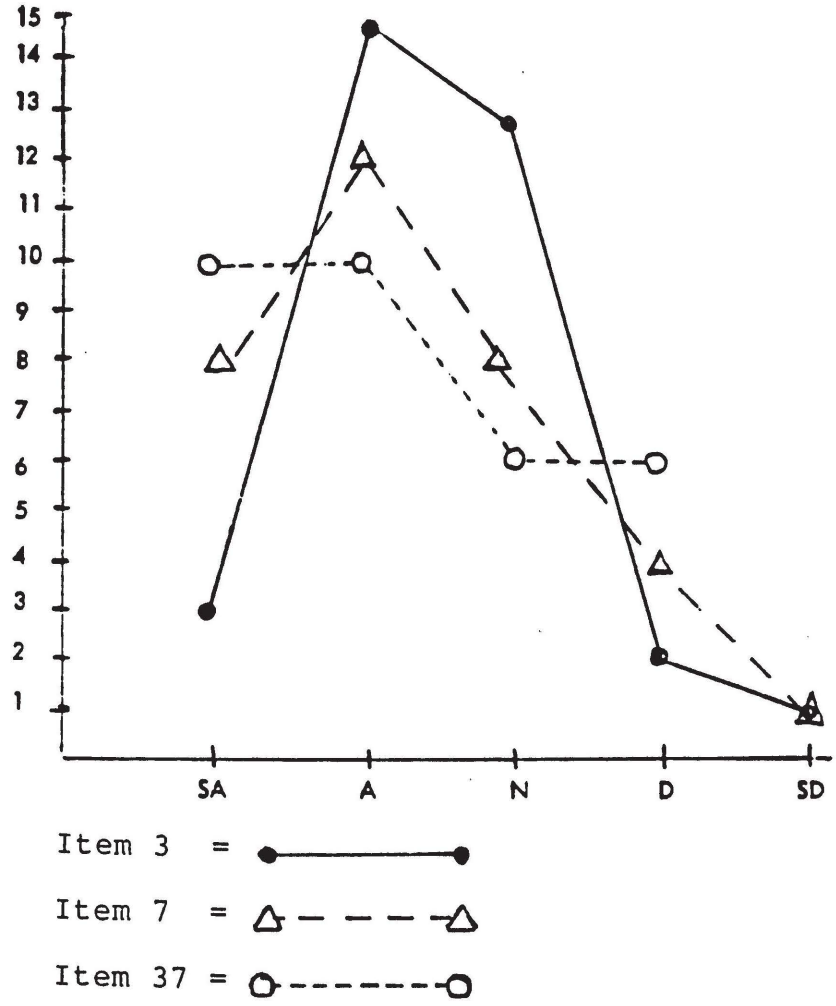
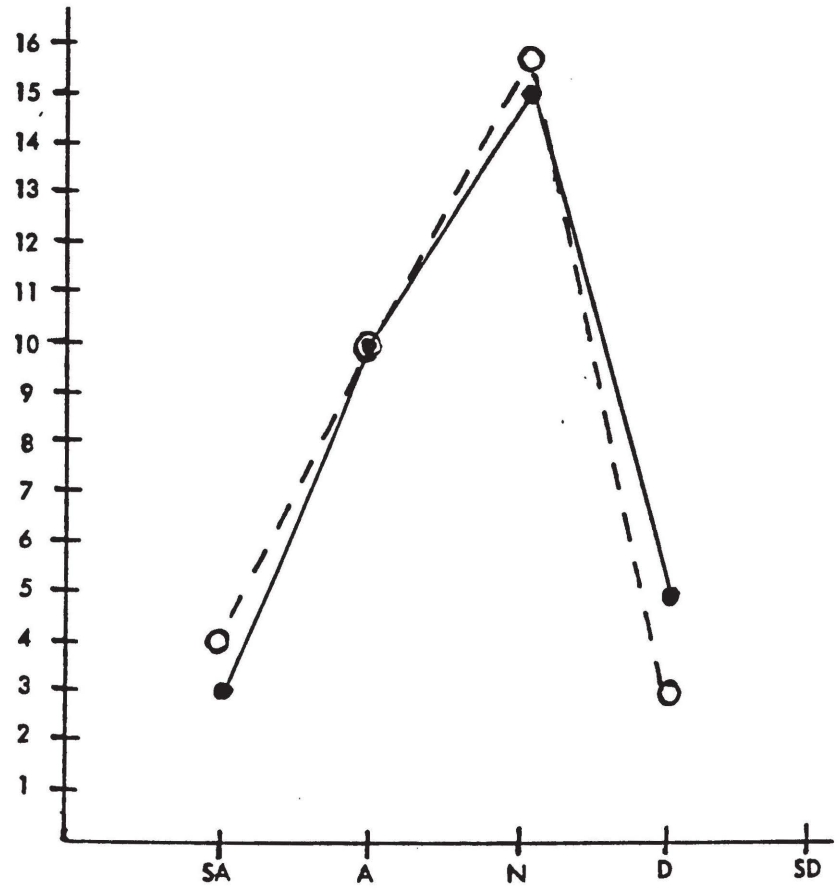


Figure 1 Plot of items loading on COOP cluster of items.

No CONTROL factor emerged from a varimax rotated factor matrix of items 9, 16, 17, 18, 19, 21, 35 and 40, therefore the Hypothesis was rejected.

Legislation showed two out of three items loading, items 11 and 28, while item 17 was discarded. They were simultaneously plotted on a frequency polygon (see Figure 2). Both items were positively skewed, therefore the Hypothesis was rejected.



Item 11 = ●——————●

Item 28 = O- - - - -O

Figure 2 Plot of items loading on LEGISLATIVE cluster.

Factor analysis of CLIENT BENEFITS items showed items 1, 6, 12, 15, and 34 loading on Factor 1, and items 8, 10, and 23 loading significantly on Factor II. Items not loading were discarded. Items loading on Factor I were plotted on a frequency polygon (see Figure 3).

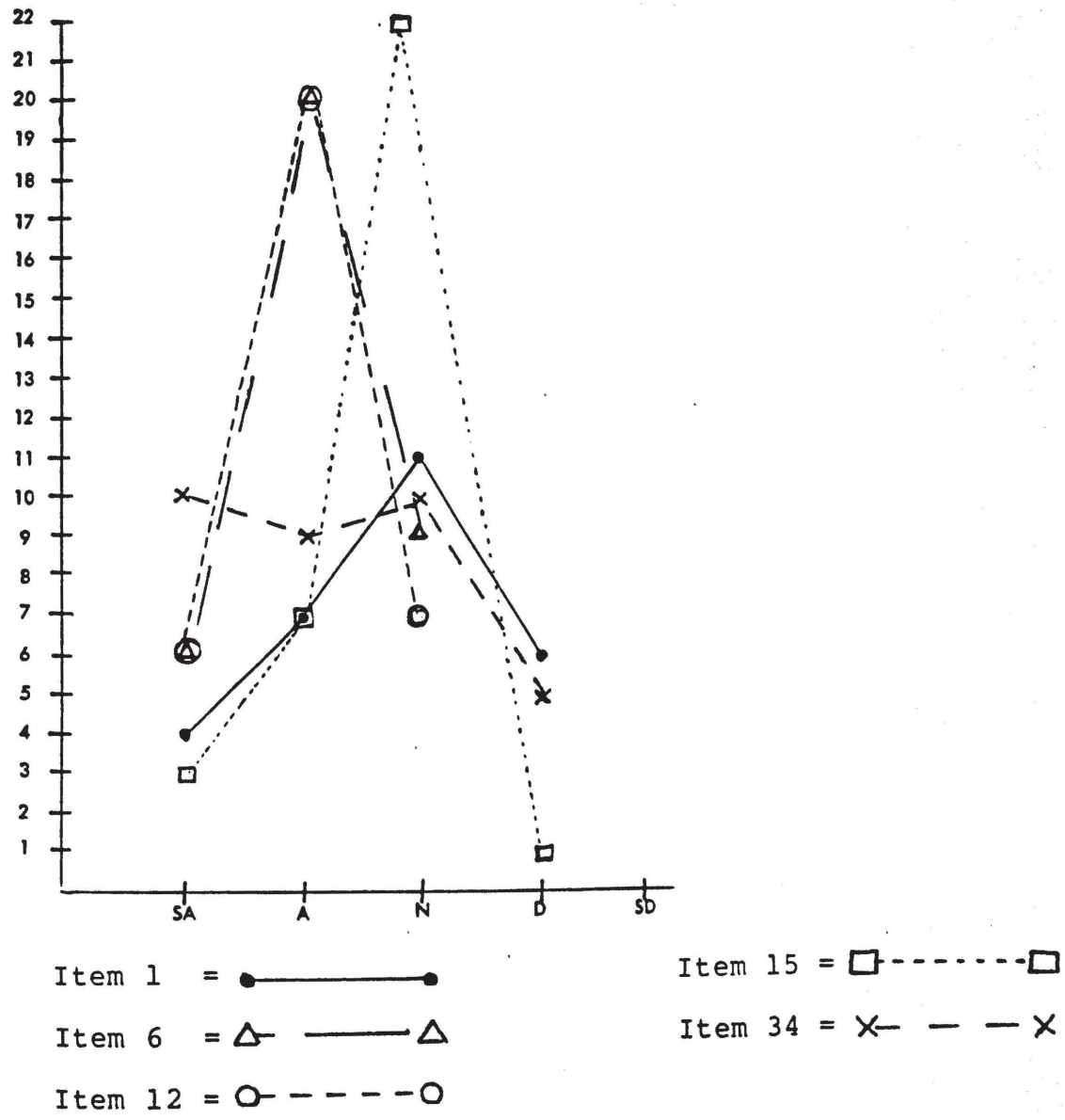
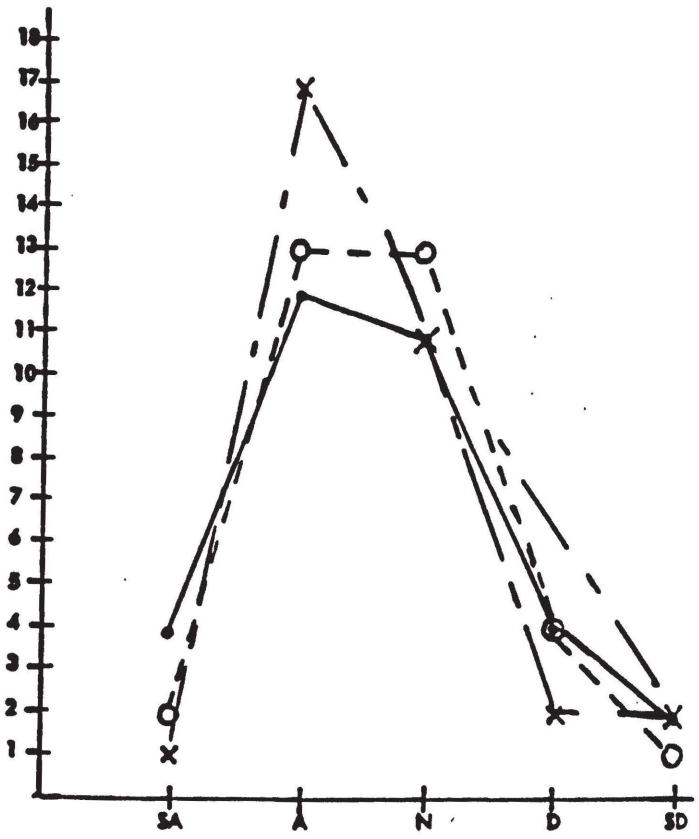


Figure 3 Items loading on CLIENT BENEFITS cluster, Factor I.

All five items showed positive skewing, so the Hypothesis was rejected. The items loading on Factor 2 were also plotted together on a frequency polygon (see Figure 4). All showed a positive skew, so the Hypothesis was rejected.



Item 8 = ●——————●

Item 10 = O- - - - - -O

Item 23 = X- ——— -X

Figure 4 Items loading on CLIENT BENEFITS cluster, Factor II.

Discussion

The Dallas Plan, a private and voluntary program of arbitration or mediation in divorce utilizing close

cooperation between the legal and theraputic professions was initiated and approved by the Family Law Section of the Dallas Bar Association. It has not been used in the two years since its inception. In an attempt to assess the components of intention to use the Dallas Plan, the Experimenter designed and administered a questionnaire to 33 members of the Family Law Section. The questionnaire was designed to decompose intention into attitude toward the act of using the Plan, normative beliefs, and attitude about the Plan itself.

Item subsets were factor analyzed to purify the item pools, Intent was regressed on Attitude toward the Act, Attitude toward the Plan, Knowledge of the Plan and Normative Beliefs.

A linear combination of Normative Belief and Attitude toward the Plan accounted for 43% of the variance in the self-reported intent to use the Plan, indicating that the lawyers will use the Plan if they feel important others think they should, and if they feel the Plan itself is a good one, therefore Hypothesis I was partially confirmed, as Normative Belief predicted Intent while Attitude toward the Act of using the Plan did not predict Intention to use the Plan. It appears that the attorneys tested will use the Dallas Plan only if other people they respect (such as collegues, law professors, close friends or family) think

that they should use it. Less importantly, but significantly, the lawyers must have good feelings about the Plan before they will use it. The data suggests a possible 'bandwagon effect' whereby the Plan will be used when important others use it.

Expressed attitudes toward cooperation with the theraputic profession, control concerns, willingness to take a chance on using the Plan, and perception of client benefits were consistent with positive skewing of the questions testing these factors in the test, so with improved information flow to lawyers new to the Bar about availability of the Plan, and more information as to how to use the Plan, and contact data for Arbitrator or Mediator services, the Plan may yet be used by the parent body.

Several Subjects wrote notes on the margins of the questionnaire indicating that they had never heard of the Plan. One respondant wrote, "I might use the Plan if I knew anything about it". The Family Saw Section devoted two meetings to the Dallas Plan at the time of its inception, but none in the two years since. There appears to be a desire among membership of the Family Law Section to know more about the Dallas Plan. Perhaps the questionnaire provided a catalyst necessary to get the Plan started. If there is sufficient positive discussion regarding the potential of the Dallas Plan, it might affect the Normative

Beliefs of enough member-attorneys of the Family Section of the Dallas Bar Association to get the bandwagon rolling.

Further research is indicated in regard to the questionnaire, especially questions designed to determine Attitude toward the Act of using the Plan. Questions dealing specifically with Subject's extent of knowledge about the Dallas Plan and more questions testing Intention and Normative Beliefs would improve the testing instrument. Another area for future research, would be an expansion of this study to encompass a larger body of attorneys. Attitudes, beliefs and intentions toward cooperation with the theraputic community in divorce or other legal issues arousing a high degree of emotion would be a useful area to explore. Attitudes of the legal profession toward movement away from the advarsary process of English Common Law, toward a more humanistic mediation process would be useful information for legislators, lawyers, theraputic professionals and clients. Would cooperation between lawyer and therapist have to be legislated, as in the California Conciliation Courts, or is there a future for the private cooperation enbodied in the Dallas Plan and the Atlanta Plan?

Further study of areas of agreement between stated attitude and belief/behavioral intention can point to areas where change and positive progress can be made. Since

research into the attitude/belief/intention system of lawyers in Family Law practice is almost nonexistent (Kressel, et al., 1978), any further study on the topic would contribute significant information in a neglected area. This study will, to the best of the experimenter's knowledge, be the fourth done on any aspect of the subject, the other three being Cavanagh and Rhode, 1976; Kressel et al., 1978; and O'Gorman, 1963 (see literature survey in Chapter II). It is the first study to statistically analyze behavioral intention in this area.

Limitations

The results of this study suggest that the determinants of intent to use the Dallas Plan can be meaningfully examined. Any conclusions, however, must be tentative due to small sample size and consequent instability of results. Stability is defined here as obtaining similar results from sample to sample to sample. In regression, stability occurs when sample size is large, perhaps as large as 200. The study did show a significant ability to predict intention to use the Plan from Normative Beliefs and Attitude towards the Plan itself. The attempt of this study was to explain intention from a set of predictors, where adequate power for detecting relationships was a more important factor than stability of regression weights and maximal sample size (Cohen et al., 1975).

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2. Greenstone, James. Personal communication, March, 1979.

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Appendix A

FAMILY ARBITRATION COMMITTEE

Rules and Regulations

DEFINITIONS

Arbitration: The settlement of family disputes by one or more disinterested persons.

Mediation: The bringing together of parties involved in a family dispute in an effort to resolve their differences by their own agreement.

Counseling: Within a comfortable, professional setting, to help each party in a relationship to decide, face to face, what they want for themnselves and their relationship and to state these wants clearly.

Binding: The parties shall be contractually bound in accordance with the contract laws of the State of Texas as regulated by the Texas Arbitration Act.

Non-Binding: Guidelines and suggestions offered by arbitrators which may be agreed upon by the parties or the parties may elect to disregard same.

Committee: A group of individuals appointed by the

Family Law Section of the Dallas Bar Association to be known as the Family Arbitration Committee.

Arbitrators: Persons who will hear evidence and determine the rights of the parties.

Characterization of Property: The determinition of whether property be separate or community.

1. AGREEMENT OF PARTIES TO MEDIATION, ARBITRATION AND COUNSELING.

The parties shall be deemed to have made these rules a part of their mediation, arbitration and counseling agreement whenever their agreement so provides or whenever they have agreed, in writing, that mediation, arbitration and counseling shall be conducted, unless their agreement provides to the contrary.

2. INITIATION OF MEDIATION, ARBITRATION AND COUNSELING.

Mediation, arbitration and counseling under these rules shall be initiated in the following manner:

(a). Petitioner and Respondent shall both make application for mediation, arbitration and counseling by submitting Form 1, executed by them and by their attorneys. The form shall be submitted to the person, or persons, as may be from time to time designated by The Committee. Submission of the form shall be accompanied by the payment of the required advance fees.

3. SCOPE OF MEDIATION, ARBITRATION AND COUNSELING.

Any mediation process requested by the parties, unless otherwise stipulated in writing, shall be related to fostering settlement and resolving controversies between them upon one or more of the following matters, to wit:

(a) Disposition and division of property;

(b) Evaluation of property;

(c) Appointment of managing conservator for the minor children, appointment of possessory conservator for the minor children, including visitation definitions and child support;

(d) Spousal maintenance;

(e) Cost of mediation, arbitration and counseling;

(f) Attorney's fees.

4. MEDIATION, ARBITRATION AND COUNSELING SITUATIONS.

Mediation, arbitration and counseling under these rules shall be applicable in the following situations:

(a) When the parties are husband and wife but have reached a decision to live separately and have filed a divorce action in Dallas County, Texas;

(b) When the parties are divorced and a controversy exists between them regarding modification of a previous decree of a court of the State of Texas and a ground for modification exists under the Family Code of the State of Texas and venue for such action is in Dallas County, Texas.

5. ADMINISTRATION.

When parties agree to mediation, arbitration and counseling under these rules, or when they provide for mediation, arbitration or counseling and an action is initiated hereunder, the parties shall select an arbitrator from the list furnished them or in the event they are unable to agree on an arbitrator, shall submit Form 1 without designation whereupon an arbitrator will be assigned by person, or persons, as may be from time to time designated by The Committee.

6. LIST OF MEDIATORS, ARBITRATORS AND COUNSELORS.

The Committee shall establish and maintain a list of mediators, arbitrators and counselors from which mediators, arbitrators and counselors shall be selected or appointed.

7. APPOINTMENT OF MEDIATORS, ARBITRATORS OR COUNSELORS.

Upon receipt of Form 1, executed as aforesaid, in the event an arbitrator has not been selected, The Committee shall appoint a mediator, arbitrator or counselor to facilitate the parties in reaching a settlement of their controversies.

8. NUMBER OF MEDIATORS, ARBITRATORS AND COUNSELORS.

Mediation, arbitration and counseling shall be conducted by a single person unless the parties requesting same shall request two or more persons, which request shall

be made prior to the first session with the parties. In no event shall there be an even number and in the event the parties fail to agree, The Committee shall appoint and add one.

9. QUALIFICATIONS OF MEDIATORS, ARBITRATORS AND COUNSELORS.

Mediators, arbitrators and counselors shall be neutral in their relationship to the parties and shall disclose to The Committee any circumstances likely to create a presumption of bias, or any financial or personal interest in the result of the mediation, arbitration and counseling, or any past or present relationships with either of the parties or persons closely related to them. Upon receipt of any information bearing on the qualifications of such mediator, arbitrator or counselor, The Committee shall determine the qualifications and shall, at its discretion, disqualify same in connection with such case and shall notify the parties to select an alternate or have one appointed in accordance with the provisions of Paragraph 7 hereof.

Helping Professionals appointed shall be certified as clinical members of the American Association of Marriage and Family Counselors or shall be state licensees by the appropriate department of the state and shall have substantial involvement in the family law field in Dallas County, Texas.

Attorneys appointed as mediators, arbitrators and counselors shall be board certified family law specialists or shall be selected by The Committee and shall have substantial involvement in the family law field in Dallas County, Texas.

10. VACANCIES.

If any mediator, arbitrator or counselor shall resign, die, withdraw, refuse, be disqualified, or for any other reason be unable to consistently perform the duties of his office, The Committee may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with these rules regarding appointment of mediators, arbitrators and counselors.

11. COMPENSATION OF MEDIATORS, ARBITRATORS AND COUNSELORS.

Each mediator, arbitrator and counselor shall be compensated at an hourly rate in accordance with the following schedule and shall receive a minimun payment of a sum equal to a one-hour charge in each case:

(a) Helping Professionals - $50.00 per hour;

(b) Attorneys - $60.00 per hour.

12. DEPOSIT OF FEES.

Upon application for mediation, arbitration and counseling under these rules, the parties shall submit payments as follows:

(a) Administrative fee of $25.00;

(b) Initial minimum fee of one hour in accordance with the foregoing schedule.

13. CANCELLATION.

In the event the parties withdraw their request for mediation, arbitration and counseling prior to the first session, the minimum one-hour fee, as aforesaid, will be refunded; provided, however, such notice shall be made to the mediator, arbitrator or counselor, or to the appropriate party designated by The Committee, at least forty-eight hours prior to the first meeting. In the event the parties fail to attend the scheduled meeting without such notice being given at least forty-eight hours in advance, then the administrative fee, together with a one-hour minimum fee as provided in Paragraph 11 hereof, shall be forfeited and the mediator, arbitrator or counselor shall receive the appropriate portion of such forfeited sum. The administrative fee of $25.00 will be retained by The Committee.

14. RESCHEDULING.

In the event either of the attorneys representing the parties, the arbitrator, mediator or counselor shall be unavoidably detained and unable to attend a scheduled meeting, then the person so detained shall forthwith notify all parties concerned and the meeting shall be rescheduled

without penalty or forfeiture.

15. COMMUNICATIONS WITH MEDIATORS, ARBITRATORS AND COUNSELORS.

The parties shall refrain from communicating with the mediators, arbitrators and counselors at all times except during regularly scheduled sessions and in the presence of all parties concerned.

16. ATTENDANCE AT MEDIATION, ARBITRATION AND COUNSELING SESSIONS

Time is of the essence in connection with matters of mediation, arbitration and counseling and the parties shall arrange their business and personal affairs so as to be able to attend mediation, arbitration and counseling sessions forthwith and upon failure of either party to attend or to cooperate in the scheduling of such sessions, the mediator, arbitrator and counselor shall immediately report same to The Committee and The Committee shall, at its own discretion, deny mediation, arbitration and counseling in appropriate cases or shall take such other action as it may deem reasonable and necessary.

17. PROCEDURE FROM MEDIATION TO ARBITRATION.

At the outset, when both parties have so requested, the mediator and arbitrator shall direct their efforts toward mediation; however, in the event they determine an impasse between the parties, they shall immediately notify the parties and proceed with arbitration of their

differences and recommend a final determination of their differences.

18. SETTLEMENT NEGOTIATIONS.

All communications between the parties in connection with mediation and arbitration shall be deemed settlement negotiations and in no event shall any of the statements made or evidence furnished to, by and between the parties be admissible in evidence unless admissible under some other rule of law.

19. TAPE RECORDING OF MEDIATION, ARBITRATION AND COUNSELING SESSIONS.

In no event shall tape recordings be made in connection with mediation, arbitration and counseling sessions except upon written consent of both parties thereto, and in no event shall such recordings be admissible in evidence except upon written consent of both parties thereto.

20. FULL DISCLOSURE.

Each party shall fully disclose in the presence of the other party all information and writings requested by the mediator and all information requested by the opposite party; however, in the event neither of the parties desire to use such disclosure, the arbitrator shall rule on the refusal in the same manner as the judge rules on the admissibility of evidence and in the event a party refuses to submit the information required by the arbitrator, the

arbitrator shall proceed without such information, taking the refusal into consideration.

21. PREPARATION OF BUDGETS.

In all cases involving child support or spousal support, the parties shall complete and submit with their application an income and expense statement.

22. PARTICIPATION OF CHILDREN AND OTHERS.

Children for whom custodial arrangements are being made, and other persons having a direct interest in the mediation, arbitration and counseling, may participate in mediation, arbitration and counseling sessions related to their interests if the mediator, arbitrator and counselor find that their participation may facilitate settlement.

The mediator, arbitrator or counselor shall, at all times, consider the best interests of the child, or children, and may, at his sole and absolute discretion, interview the child, or children, outside the presence of the parents in order to ascertain the child's wishes as to conservatorship. Counsel for the parties may be permitted to be present at the interview. In the event a child is 14 years, or older, the mediator, arbitrator or counselor shall require a written affidavit to be filed making a choice of managing conservator and, additionally, may interview the child in person.

23. THIRD PARTY INVOLVEMENT.

During the mediation and arbitration process, the parties shall refrain from discussing the matters in mediation and arbitration with all third parties, including friends and relative, and with each other except as directed by the mediators and arbitrators.

24. TEMPORARY COURT ORDER.

During mediation and arbitration, either party may request the court in which the case is pending to issue temporary orders as to matters not in arbitration or in connection with matters in arbitration in order to obtain immediate support or other relief which either of the parties may require and other matters as may be appropriate and the mediation and arbitration shall in no manner be construed as a substitute, replacement or bar against such temporary hearings or temporary orders unless specifically included in the arbitration agreement of the parties. The parties shall abide by all temporary orders during periods of mediation and arbitration.

25. BINDING OR NON-BINDING.

The parties, in advance, shall agree as to whether arbitration shall be binding or non-binding upon them and in the event they elect to enter into non-binding mediation and arbitration, if either party is dissatisfied with the results, that party shall be entitled to a full trial in the

court where the case is pending without regard to any occurences in connection with mediation, arbitration and counseling. In the event the parties agree that the arbitration shall be binding, then the results of the mediator, arbitrator and counselor shall be reduced to writing in the form of the court order, approved by the parties and their attorneys, and entered in the court as may be appropriate.

26. ORDER OF THE COURT.

Upon completion of mediation, arbitration or counseling, an appropriate order shall be prepared for such party as is directed by the mediator, arbitrator, or counselor and shall be approved by the parties, their attorneys, and the mediator, arbitrator or counselor, and shall be entered as an order of the court.

FORMS TO BE USED IN THE ARBITRATION OR MEDIATION PROCESS

CASE NO._____

IN THE MATTER OF THE MARRIAGE
OF _____
AND _____

IN THE FAMILY DISTRICT COURT FOR
THE _____ JUDICIAL DISTRICT
OF DALLAS COUNTY, TEXAS

APPLICATION FOR MEDIATION, ARBITRATION AND COUNSELING

Now Comes Petitioner, _____, and Respondent, _____, in the above-entitled and numbered cause, and make and file this application for mediation and arbitration, and would respectfully request the following:

I.

[ ] Mediation
[ ] Arbitration
[ ] Counseling

[ ] Temporary
[ ] Permanent
[ ] Both

[ ] Binding
[ ] Non-Binding

II.

Areas of Dispute

[ ] Characterization of Property
[ ] Disposition of Property
[ ] Division of Property
[ ] Possession of Property
[ ] Managing Conservatorship
[ ] Possessory Conservatorship
[ ] Restraints
[ ] Application of Liabilities
[ ] Child Support
[ ] Spousal Maintenance
[ ] Cost of Mediation, Arbitration and Counseling
[ ] Attorney's Fees
[ ] _____

III.

Choice of Person to Mediate, Arbitrate or Counsel

[ ] We hereby agree on the following person as mediator, arbitrator and counselor: _____
_____

[ ] We hereby request the appointment of a mediator, arbitrator and counselor.

IV.

The parties hereto hereby agree and will not need arbitration in connection with the following matters and agree that they may be included in the report or order resulting from mediation, arbitration or counseling:

_____

_____

V.

The following is submitted as background information to facilitate the mediator, arbitrator and counselor in making his decisions:

[ ] Copy of Petition
[ ] Copy of Restraining Order, if any
[ ] Copy of Inventory by both parties, if there is a property dispute
[ ] Proposal of division of property and liabilities, if there is a property dispute or dispute about payment of debts

VI.

Attached are certain instruments which will be relied upon by the parties in establishing their positions with regard to the matters to which the instruments relate. (In all matters involving property, an inventory must be attached. In matters involving real estate, a letter from a realtor or other extrinsic evidence must be furnished. In matters involving child support or spousal support, income and expense statements shall be furnished, and tax returns for the previous two (2) years shall be furnished or the parties shall show that such returns are unavailable.)

WHEREFORE, PREMISES CONSIDERED, the parties pray as in former pleadings on file herein, and that they be permitted mediation, arbitration and counseling, as aforesaid, and for such other relief, special and general, at law or in equity, to which the parties may be justly entitled.

_____ _____

Petitioner Respondent

_____ _____

Attorney for Petitioner Attorney for Respondent

NO._____

IN THE MATTER OF THE MARRIAGE	X	IN THE FAMILY DISTRICT COURT
OF _____	X	FOR THE ___JUDICAL DISTRICT
AND _____	X	OF DALLAS COUNTY, TEXAS

ARBITRATOR'S RECOMMENDATIONS

Pursuant to the order of this Court, the Arbitrator conducted hearings in this cause; and based upon the findings of fact and conclusions of law in said cause, recommends to the Court that orders be entered as follows:

1. Conservatorship _____.
2. Support _____.
3. Visitation _____

_____

_____.

4. (Temporary use of property) (Division of property)_____

_____

_____

_____.

5. Restraining order _____

_____

_____.

6. Each party to file inventory on or before _____.
7. Bills to be paid by WIFE _____

_____

_____.

8. Bills to be paid by HUSBAND_____

_____

_____.

9. Other agreements and recommendations (attach extra sheets as necessary)____

_____.

DATE_____ APPROVED AND IT IS SO ORDERED

_____ _____

ARBITRATOR JUDGE

Appendix B

Instructions to Subjects

Good afternoon. Let me begin by thanking you for this opportunity today and for your welcome. As many of you know, I feel very much at home with lawyers--some of my very best friends are lawyers--as is my husband, Rock.

I'm involved in the completion of my Master's Degree at TWU, and when time came to discover a meaningful project which involved family therapy, the Dallas Plan struck a responsive chord.

Your section of the Dallas Bar Association established a committee back in January 1977 to determine if arbitration and mediation could lessen the crowded conditions of the domestic relations courts, provide more sensitive handling of clients, and reduce the conflicts of divorce.

The Dallas Plan sought to bring together qualified attorneys and helping professionals like marriage and family counselors in an effort to help the people of our community. Attorneys involved in the original work on this Plan included Jack Gay, Don Gilly, Craig Fowler and Kenneth Fuller.

The Committee furnished its first proposal in July 1977, with approval in August to proceed.

What then are the basic parts of the Dallas Plan:

1. Trained arbitrators and mediators from both the

legal and helping professional fields working either singly or in tandem.

2. Persons beginning the divorce process are appraised of the availability of this system--in contrast to the regular legal system of the courtroom--to resolve the traditional matters of child custody, visitation, property division and child support.

3. Such services can be suggested by the judge or by either counsel. Once such service is agreed on, disputed areas are resolved by a chosen arbitrator. This instead of a judge. The result of the arbitrator process is reported to the judge in the form of an agreed order.

The arbitrators and mediators involved in the Dallas Plan meet certain requirements and are involved in the program by invitation. Additional training takes place as required to insure their knowledge not only of the legal aspects but also the psychological.

The Dallas Plan today is composed of twenty-five short paragraphs to describe how it works.

When it was first announced, the local media paid great attention to it. Many called it worthwhile and of value and, as you all know, the Dallas Bar Association stood strongly behind it, as did your Section and many judges throughout our legal system.

But what started out with great fanfare, support and the

rationale of value has not worked--or at least not being used.

The "why" of that is why I'm here today. To gain your feedback--and yours, the initiating group, is the only group I will be questioning--hence the importance of your honest reaction and your strictly voluntary cooperation.

Your feedback will hopefully result in two events: One, the granting of my Master's Degree so that I may return to being a normal human being; and two, helpful information to the Bar Association on why the Plan has not worked; if it should work; and what might be done to help it work if it is retained.

Now we will be passing out a short questionnaire, and I'd like to ask your cooperation in filling it in. We'll be allowing ten minutes for this, and I'd appreciate your first, off-the-gut, if you will, reactions to my questions. If any of you would like to talk more about this program or have additional feedback or questions about any of the procedures, if you'll note that on the permission form with your phone number, I'll call you, or make an appointment.

One last request. While your name is not required or invited on your questionnaire, I do require your permission to use your feedback--hence the permission slip attached to each questionnaire. The permission slip may be turned in separately from the questionnaire to insure anonymity, if

you wish. Just don't use purple ink!

Thanks again for your help and support.

APPENDIX C

QUESTIONNAIRE: FAMILY LAW SECTION, DALLAS BAR ASSOCIATION

Key: SA = strongly agree A = agree N = neutral D = disagree SD = strongly disagree

Please check only one possibility per question. Place check or X directly over your choice. For example: ____:____:____:__X__:____
SA A N D SD

1. The Dallas Plan puts Dallas in the forefront of progressive Family Law nationwide.

_____:_____:_____:_____:_____
SA A N D SD

2. I do not understand the Dallas Plan.

_____:_____:_____:_____:_____
SA A N D SD

3. The mental health professionals I have worked with have been competent and well-trained.

_____:_____:_____:_____:_____
SA A N D SD

4. Good points of the Dallas Plan outweigh the bad.

_____:_____:_____:_____:_____
SA A N D SD

5. In my opinion, the Dallas Plan would apply to <u>at least</u> 7 out of 10 of my present divorce clients.

_____:_____:_____:_____:_____
SA A N D SD

6. The purpose of the Dallas Plan is to speed up court procedure.

_____:_____:_____:_____:_____
SA A N D SD

7. Marriage and Family therapists get in the way of an efficient divorce.

_____:_____:_____:_____:_____
SA A N D SD

8. My clients would be benefited from the mediation process under the Dallas Plan.

_____:_____:_____:_____:_____
SA A N D SD

9. How likely is it that you will use the Dallas Plan in the next divorce you handle?

LIKELY:_____:_____:_____:_____:_____:_____:_____:UNLIKELY
extremely quite slightly neither slightly quite extremely

10. The purpose of the Dallas Plan is to decrease the cost of divorce.

_____:_____:_____:_____:_____
SA A N D SD

11. I see the Dallas Plan only as a last option.

_____:_____:_____:_____:_____
SA A N D SD

12. An important ingredient of the Dallas Plan is the close cooperation between lawyers, clients and helping professionals.

_____:_____:_____:_____:_____
SA A N D SD

13. I see the Dallas Plan like no-fault insurance: better service for the client and less income for me.

_____:_____:_____:_____:_____
SA A N D SD

14. I rarely think of the Dallas Plan.

_____:_____:_____:_____:_____
SA A N D SD

15. The Dallas Plan benefits the children in a divorce action.

_____:_____:_____:_____:_____
SA A N D SD

16. How willing are you to use the plan in a custody action?

UNWILLING:_____:_____:_____:_____:_____:_____:_____:WILLING
extremely quite slightly neither slightly quite extremely

17. The Dallas Plan should be enforced nationwide.

_____:_____:_____:_____:_____
SA A N D SD

18. Should the Dallas Plan become popular my practice would suffer.

LIKELY:_____:_____:_____:_____:_____:_____:_____:UNLIKELY
extremely quite slightly neither slightly quite extremely

19. Generally my clients do not understand the Dallas Plan.

_____:_____:_____:_____:_____
SA A N D SD

20. In my opinion the Dallas Plan would apply to only 1 out of 10 of my present clients.

_____:_____:_____:_____:_____
SA A N D SD

21. If I were involved in my own personal divorce I would use the Dallas Plan.

LIKELY:_____:_____:_____:_____:_____:_____:_____:UNLIKELY
extremely quite slightly neither slightly quite extremely

22. I intend to find out more about the Dallas Plan.

LIKELY:_____:_____:_____:_____:_____:_____:_____:UNLIKELY
extremely quite slightly neither slightly quite extremely

23. The purpose of the Dallas Plan is to decrease the emotional pain of divorce.

_____:_____:_____:_____:_____
SA A N D SD

24. I wouldn't use the Dallas Plan unless required by law.

_____:_____:_____:_____:_____
SA A N D SD

25. In my opinion the Dallas Plan would apply to only 4 out of 10 of my present clients.

_____:_____:_____:_____:_____
SA A N D SD

26. Prior to today, I really didn't know much about the Dallas Plan.

SA : A : N : D : SD

27. Many other lawyers I know speak highly of using the Dallas Plan.

SA : A : N : D : SD

28. The Dallas Plan must be legislated into full use before I'll use it.

SA : A : N : D : SD

29. My law professors would approve of my using the Dallas Plan.

LIKELY: extremely : quite : slightly : neither : slightly : quite : extremely :UNLIKELY

30. To me the Dallas Plan makes sense and I intend to use it.

UNLIKELY: extremely : quite : slightly : neither : slightly : quite : extremely :LIKELY

31. The Master in Chancery can accomplish everything the Dallas Plan can.

LIKELY: extremely : quite : slightly : neither : slightly : quite : extremely :UNLIKELY

32. The Dallas Plan would allow me to use my time more efficiently.

UNLIKELY: extremely : quite : slightly : neither : slightly : quite : extremely :LIKELY