

BUILDING A MULTIDOOR COURTHOUSE:  
A BLUEPRINT FOR CITIZEN PLANNING IN MINNESOTA

by

Gerald M. Cutts

Submitted to the Department of Urban Studies and Planning  
in partial fulfillment of the Degree of Master in City Planning  
at the Massachusetts Institute of Technology

May, 1985

◦ Gerald Michael Cutts

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Abstract

This thesis is both an exploration of some of the concepts surrounding the Multidoor Courthouse (a recent alternative to criminal and civil courts) and the development of a citizen participation process for planning the implementation of a Multidoor Courthouse (MDC). The working hypothesis of this thesis is that alternatives to justice like the MDC must be planned with consideration of the political, social and economic characteristics of each site, such that each MDC will have a unique structure and relationship to its surroundings.

The thesis presents: a theoretical study of the development of the Multidoor Courthouse concept; a study of three MDC pilot projects; critical variables that affect the application of the concept in empirical settings; an empirical analysis of Minnesota as a potential site for a MDC; and finally a planning process that will enable citizens to develop a Multidoor Courthouse.

Chapter One sketches a brief history of the alternative justice movement focusing on "efficiency," "access to justice" and "community building" as goals of the movement. The Multidoor Courthouse is then described as a response to a fourth and distinct goal--that of providing "effective" resolution of disputes. Through documentary analysis and interviews with key participants in three MDC pilot projects, located in Tulsa, Oklahoma, Houston, Texas, and Washington,

D.C., the thesis traces the divergent development of these three sites.

Chapter Two describes the history and current status of alternative dispute resolution in Minnesota. In particular, it identifies three characteristics of that region that determine the nature of the MDC planning process: a culture valuing decentralization, public participation, and consensual decision making; attitudes of local service providers about intake and referral; and a large base of community organizations.

Chapter Three creates a three way planning process among government organizations, private professional organizations, and community organizations. It traces the origins of the planning process and describes how the three types of organizations would participate with the help of mediators in highly structured consensual decision making to develop a plan for a Multidoor Courthouse. Chapter Four presents the conclusions.

For Minnesota, the thesis provides a blueprint for the development of a Multidoor Courthouse. On a broader scale the thesis proposes a model for planning and citizen participation that could be applied in any setting and for alternatives to justice other than the Multidoor Courthouse.

Thesis Supervisors: Leonard G. Buckle and Suzann Thomas-Buckle

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## Introduction

The movement to establish alternatives to the traditional court system is growing rapidly. Throughout this country Neighborhood Justice Centers, Conflict Clinics, Children's Hearings Offices, and other "alternatives" are available to people with disputes. The most recently implemented and perhaps most innovative of these is the Multidoor Courthouse, which was invented by Professor Frank Sander of Harvard Law School. (Sander, 1979) Sander's original vision of the Multidoor Courthouse was of a center which "under one roof" would contain a variety of these "alternatives," in addition to litigation. Such a center would contain a number of "doors" any one of which citizens with a complaint could enter in order to have their disputes resolved. These doors might contain labels such as mediation, arbitration, fact finding, or ombudsman. The goal of the Multidoor Courthouses would be to match the dispute to the "door" which can most effectively resolve it.

People entering this courthouse would go first to an intake area where an intake specialist would help them decide what the most appropriate forum would be for their disputes. If it were determined that mediation was the most appropriate, then they might proceed to the mediation door, where a publicly funded mediator would be available. If at any point it were decided that they needed an adversarial process,

litigation would still be a possibility, as would the host of other forums and actions, including withdrawing the claim. Likewise a group of citizens with a claim against the government or an industry might elect to go through an ombudsmen door, or a door designed for handling large scale disputes such as environmental or community disputes.

There would be both court based and non-court based options. In addition to the variety of new "doors" that might be available in the courthouse (court-based doors), an intake service would be capable of referring people to doors that are already in existence in the community (non court-based doors), such as neighborhood justice centers, legal services, an Attorney General's consumer complaints department, or even to a variety of social services.

This paper has been written to explore the possibility of adopting such a Multidoor Courthouse in the state of Minnesota. I selected this state both because providers of alternative dispute resolution have expressed an interest in building a Multidoor Courthouse there and because Minnesota is an environment which seems amenable to the kind of social experimentation that adopting a Multidoor Courthouse would involve.

While this is an academic paper written to explore some of issues associated with the development and implementation

of the Multidoor Courthouse, the paper is also a proposal for the planning of a Multidoor Court, to be submitted to the Conflict Analysis Center at the University of Minnesota. The proposed planning process is an attempt to bring together people who are primarily concerned with dispute resolution in a forum which would allow them to explore what the Multidoor Courthouse concept has to offer to Minnesota. It is expected that citizen representatives, representatives of private dispute resolution providers, and government representatives would collaborate in this process to make public recommendations about the development of a Multidoor Courthouse.

The central argument of this paper is that the implementation of the Multidoor Courthouse concept in any particular region necessitates an individualized planning process which takes into consideration that region's political, social, economic, and institutional needs. In the following pages I develop the argument that as the government and other powerful forces in Minnesota begin to institutionalize alternative dispute resolution processes, such as the Multidoor Courthouse, community members and existing social networks will be adversely affected unless they have a voice and a role in planning for dispute resolution. Finally, I conclude that to counter these effects a community-oriented planning process should be adopted.



In order to explore the environment for dispute resolution in Minnesota and to study the Multidoor Courthouse concept as it has been implemented in three pilot projects based in Washington, D.C., Tulsa, Oklahoma, and Houston, Texas, I conducted more than thirty interviews.<sup>1</sup> These interviews were conducted by telephone and in person with a variety of people associated with the Multidoor pilot project in Washington, D.C. and also with alternative dispute resolution providers, court administrators, and social scientists in Minnesota.

The research for this project has been designed and evaluated through many hours of collaboration with Professor Frank Sander of Harvard Law School, who is the originator of the Multidoor Courthouse concept. I have also collaborated extensively with Drs. Suzann Thomas-Buckle and Leonard Buckle of the Urban Studies and Planning Department at MIT in designing the research and developing the concept of the paper.

Assistance and advice was also provided by Dr. Thomas Fuitak at the University of Minnesota. In addition to to the interviews, information about the Multidoor pilot projects was provided through the ABA's Special Committee on Alternative

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1. No list of interviewees is provided due to my promise of confidentiality to participants.

Dispute Resolution in Washington, D.C. with special help from Larry Ray.

Chapter One of the paper looks at the development of the Multidoor concept, gives brief descriptions of the pilot projects and begins to identify problems associated with its implementation.

Chapter Two describes the Minnesota dispute resolution environment and identifies specific problems associated with implementation of a Multidoor Courthouse in Minnesota.

Chapter Three recommends a specific Multidoor planning process for Minnesota derived from issues and concerns identified in Chapters One and Two.

Chapter Four is a general conclusion which draws implications for other regions from observations made about Minnesota and the three Multidoor pilot projects.

## CHAPTER ONE: THE CONCEPT AND ITS IMPLEMENTATION

### I. The Evolution of the Multidoor Courthouse

The Multidoor Courthouse (MDC) concept was first made public in St. Paul Minnesota in 1976 at a gathering which is now known as the Pound Conference. The conference was convened in commemoration of an address given seventy years earlier by Roscoe Pound to the American Bar Association. The title of Pound's original presentation was "The Causes of Popular Dissatisfaction with the Administration of Justice." Reviving Pound's theme, the 1976 conference was organized as a vehicle for a serious and comprehensive examination of questions troubling the legal profession.

The keynote address of the conference was delivered at the same podium in the Minnesota Legislative Chamber where Pound spoke seventy years earlier. It opened the sessions with a view of long term trends in the administration of justice and a call for planning to prepare for problems unresolved.

In the section that follows I discuss the broad legal and political context in which the Multidoor Court was designed and the issues that were being raised at that time about alternative dispute resolution.

## Background

At the time the Pound Conference was taking place in 1976 a movement openly critical of the justice system was occurring. The roots of the movement although quite complex were clearly associated with the Civil Rights movement and the War in Vietnam. A primary concern growing out of this period was the lack of access to the justice system. This is the same period which gave rise to the Civil Rights Act of 1964, OSHA, and reformation of the securities laws. Cumulatively these changes and the accompanying political and social activism of the time had the effect of greatly increasing the number and kinds of cases in the courts. Those for whom access to justice was the issue were trying to get the courts to recognize and uphold the rights of low income people, consumers, minorities, women, employees, tenants and others who had not had their "day in court."

Simultaneously with this increase in the number and kinds of cases in the courts was a movement to deemphasize the use of lawyers and legal institutions. This movement emphasized the use of mediation not only to resolve individual problems but to help citizens to develop problem solving skills that would build more cohesive communities. These skills and techniques could then be used to create health care centers, day care, job opportunities and other social structures that

would help to eliminate the economic bases of peoples' legal problems.

Thus out of this same period there were at least two parallel arguments being made about justice. One grew out of a notion of justice that focused on gaining greater access to the formal justice system. The other was concerned with creating alternatives to the justice system. As courts in their role as administrators of justice began to react to their rapidly increasing caseloads and their needs for cost effectiveness and efficiency, many seized on this second notion of justice -- the referral of cases to alternative dispute resolution processes. (Buckle and Thomas Buckle, 1982)

For those working to get access to justice by bringing the cases of underrepresented people into court any new trend by the courts to "farm these cases out" to alternatives was seen as a step backwards. They feared that alternative dispute resolution processes would be a form of second class justice and a way for courts to avoid pressing social problems. (Singer, n.d.)

For those who were trying to establish programs out of the desire to create a separate justice system, the possibility of courts referring cases to alternatives would be a mixed blessing. Referred cases would of course mean more

people using alternatives, but it would also mean dependency on the court system -- the same system from which programs were trying to remain separate. (Shonholtz, 1984)

Alternative Dispute Resolution: Some Issues from the Pound Conference

At the Pound Conference a significant number of the addresses given were about issues related to alternative dispute resolution, that reflect the divergent concerns for access to justice and efficiency -- for court based and non-court based alternatives. Supreme Court Chief Justice Warren Burger, for example, argued that alternative dispute resolution can be valuable in helping the courts to become more cost effective and efficient. (Levin and Wheeler, 1979) Judge A. Leon Higgenbotham, Jr., on the other hand, responded to this argument for effectiveness and efficiency by cautioning that the "accessible" justice system that had just begun to be gained in the last decade was in danger of being lost, if the courts diverted important disputes from the courts solely for reasons of cost or efficiency. He emphasized the rights of low income people, working people, and minorities to be heard in court. He expressed the fear that people could be referred to alternative dispute resolution processes just to lighten the case loads in the courts and that those without the means or knowledge to contest the results would become victims of the court system and its alternatives. (Levin and Wheeler, 1979, pp. 87-109)

A related set of observations was presented by Professor of Anthropology, Laura Nader as she asked why a conference concerned with popular causes of dissatisfaction with the justice system was limiting itself to the problems of the legal profession. She pointed to broader social roots of both our problems and our potential solutions. Professor Nader presented the results of some of her studies on dispute mechanisms in other cultures and drew attention to cultures where the seriousness of a dispute is measured by how it affects the society as a whole, and one measure is the number of people involved. She suggested that we pay more attention to the ability of society to deal with group or "block" problems such as the problems of groups of consumers, communities, the aged, and children who are abused in institutions. She cautioned against a justice system which categorizes these as individual problems and then sends them out to alternative dispute resolution forums where their significance as collective issues may not be recognized and, therefore, inappropriate decisions made. (Levin and Wheeler, 1979, pp. 114-119)

Whereas the comments of the speakers above were drawn from concerns for cost effectiveness and efficiency, access to justice, and identifying collective issues, the address given by Frank Sander introduced a new standard for alternative dispute resolution -- effectiveness -- and a new forum -- the

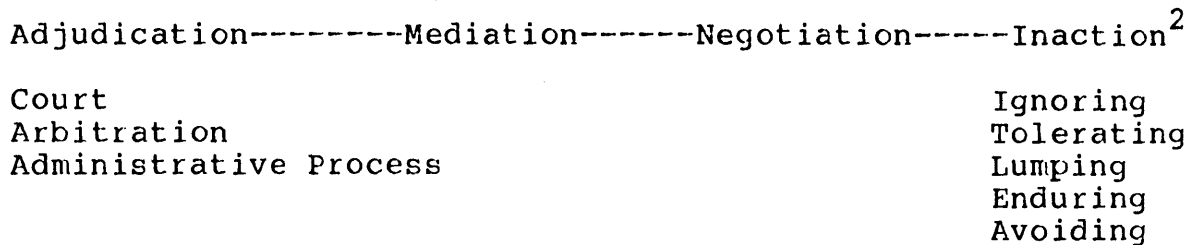
Multidoor Court house. The idea is derived in part from the work of legal scholars such as Lon Fuller who have studied how different disputes lend themselves to being resolved by different kinds of processes. (Fuller, 1971) The central goal of the Multidoor concept is to determine the most "effective" dispute resolution process for a given dispute. In his address Sander developed the concept of "effective" resolutions of disputes first by identifying a range of modes for resolving disputes, such as adjudication, negotiation, mediation and avoidance. Having distinguished among the different modes he then suggested a variety of criteria by which a person's problem might be matched with one of these modes. Finally, he suggested an intake process through which a person's claim can be analyzed, the criteria for effective dispute resolution applied, and the appropriate match made between problem and mode of dispute resolution. It is from these three considerations that the idea emerged of a many-doored dispute resolution center, where an intake specialist would help people decide which door held the appropriate process for addressing their particular problems. Section II explores some of the critical aspects of "effective" dispute resolution in more detail.

## II. Critical Aspects of the Multidoor Courthouse

Since "effective" dispute resolution means matching the dispute to the most appropriate process, it is necessary first



to understand the kinds of dispute resolution processes available. In order to do that, it is helpful to visualize a range of dispute resolution processes ordered along a continuum like the following:



On the far right is a process which involves no help by other parties in order to get the individual's dispute resolved - inaction. Inaction includes a broad range of nonconfrontational reactions to disputes, which involve no one taking action but the aggrieved party. Inaction might involve ignoring, tolerating, lumping, enduring or avoiding. On the opposite end of the scale, is the process involving the greatest amount of outside help for a disputant -- adjudication -- a general category of processes involving a third party who is empowered by law to make a decision for the disputants. Between adjudication and inaction are a variety of other options. Next to the extreme of inaction on the far right, is negotiation -- the most common way of resolving disputes -- which involves the parties working out a solution

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2. The basic idea for this chart comes from Sander, 1979. I have altered it by adding the category of "Inaction."

between themselves. It allows for complete control over the process and decision making by the negotiating parties.

In those cases where the parties are incapable of resolving the dispute a third party may need to be brought in. When the third party's role is to help the disputing parties work out a solution between themselves, this third party is called a mediator. This person has no power to make a decision for the disputants, only to guide them in resolving the problem. The next category includes those processes where the third party has the power to make a decision for the disputants about the outcome of the dispute. This whole category may be called adjudication and includes several processes. Of course, the most well known of these adjudicatory processes is litigation, where it is a judge who is the third party decision maker. When the process involves hiring a private third party to hear each side and then make a decision this form of adjudication is called arbitration. Various administrative processes also fall into this category. (Sander, 1979)

Matching Alternative Processes to Disputes:  
Some Criteria and Examples

A critical aspect of the Multidoor Courthouse is addressing the question of which of these dispute processing mechanisms is most effective for resolving what kind of disputes. This, of course, is the difficult challenge and the

one on which Professor Sander believes the Multidoor Courthouse depends.

Finding the most "effective" process for a dispute clearly involves analyzing a variety of factors. Professor Sander suggests that the criteria for determining the most effective process include: the relationship between the parties; cost to the parties and to society (what is the cost to the other parties of not proceeding as a group?); speed; complexity of the case; and nature of the case, which takes into consideration such diverse issues as whether or not the dispute is amenable to an all or nothing solution, what the rights are of the parties, and whether it is a routine matter which could be handled mechanically. (Sander, 1979)

Perhaps the best means to understand how these criteria might be used is to look at some hypothetical cases in which decisions are made about the proper process for a particular dispute. Following are a number of sample situations in which matching a dispute to a process is relatively simple.

Situation 1: Person A comes to the Multidoor Court intake specialist and says that she has been unable to pay rent on time to her landlady who lives next door. She has explained her financial situation to the landlady several times and the landlady agreed that she could pay her rent late when necessary. This had never turned into a problem, and in fact

they had developed quite a close relationship. Recently, however, A was several days late in paying her rent and the landlady threatened to evict her, calling her twice a day. Tenant A thinks that maybe her landlady is having personal problems, which are the real cause of the dispute.

This is a case which looks ideal for mediation. There is a long-term relationship between the parties which they need to and would like to preserve. Communication has broken down, and the neighbors are at odds with each other. It is likely that mediation could help them come to a more formal agreement about the rent situation, could help them to restructure their relationship, and also help teach them something about communicating in the future.

Situation 2: Suppose C's Auto Parts has been supplying D, a prosperous and busy mechanic, with parts for several years. C now comes to the intake specialist because D has rejected a large shipment of specialty parts worth \$3,000. These are parts that C himself "special ordered," and he cannot return them. Because they are specialty parts, they have little use to C. D claims that the shipment was too late and that she had to order the parts from someone else. C wants to continue the relationship with D. Neither C nor D wants to wait six months to go to court.

Money claims of under \$15,000 where there is a commercial

relationship between the parties are frequently handled well by arbitration, in which applying routine established principles are applied to a particular set of facts.

Situation 3: E is a citizen whose lawn was severely torn up by a garbage truck. Numerous calls to the city resulted in endless bureaucratic runarounds but no satisfaction. E conveys his story to the intake specialist who suggests meeting with the city's new ombudsperson. This person is able to make a recommendation to the appropriate department head and dates and times for repairs are arranged.

Situation 4: F is an employee of the state. After work F attends a political demonstration about the death penalty laws. F is seen by his boss carrying a sign that says "The state is the real criminal!" The next day F is discharged. In this case where F's freedom of speech is at issue, it is clear that a court is the appropriate forum for resolving the matter.

The situations above are relatively simple examples of the kind of cases intake workers must process. Many problems they meet are not so clear cut, and in some cases the consequences of an intake specialist making improper decisions could be serious.

If in situation 1, for example, the landlady were not a friend of the tenant, but the owner of a large tenement, the

intake workers' choice becomes more difficult. Let us also assume that A was not paying rent because her heat had not been turned on and because she was tired of rats endangering the health of her children and her neighbors' children. Her complaints have met with no results. The landlady is trying to evict her.

What kind of forum is appropriate for this dispute? If A goes to mediation what happens to all of the other tenants? In a region where the only power tenants may have over landlords is by their group action will individual mediations take that away? The intake worker is in the position of helping the person make a decision not merely about her individual rights, but also about the rights of other people around her.

Suppose the person was referred to a neighborhood justice center where a mediation was set up between her and the landlady. Will she bargain away her rights? Is she in an inferior bargaining position because of her lack of information or because of lesser bargaining skills? Would her position be stronger if she had been referred to a legal advocate?

The process to which A is referred to will make a great deal of difference in the outcome. If she is referred to a local tenant organization she will get one type of solution.

If she is referred to a mediation center, she may get another. If she is referred to legal services, she may get yet another. If she could afford to have a private attorney, she might get an entirely different solution.

### Matching Alternative Processes to Disputes; The Intake Worker

Clearly there are many pressures on a person deciding what process would be the most effective for resolving a particular dispute. A court administrator in Minnesota asked what the ideal professional background would be for a Multidoor intake specialist. In Washington, D.C., I asked this question of one of the Multidoor project evaluators at the Institute for Social Analysis and, I received the following tongue in cheek response: "A person with a doctorate in psychology, a degree in law, and a load of experience in social work."

In addition to the pressure to be nearly this well-informed and to make decisions wisely there are a variety of other institutional pressures on the intake worker, who is in some cases a volunteer. Both the literature on institutionalizing social programs (Beneviste, 1977, Hummel, 1977, Williams and Elmore, 1976, Wilson, 1967) and interviews with practitioners identified three major pressures: the tendency to act on personal bias, bureaucratic pressures, and pressures resulting from competition between "doors." These

pressures on the intake worker are discussed below. The reader should keep in mind that these issues about intake are not being raised to suggest that the intake and referral concept is impossibly difficult or inherently biased. The Multidoor Courthouse is a flexible concept in which an intake and referral process can be designed to meet particular needs, and what is being suggested here is that careful planning can overcome the problems surrounding intake.

Personal bias is a well recognized but difficult problem in an institution's decisionmaking. (Bateman, 1983) One of the people who is training intake workers for the Multidoor pilot projects related his experience in conducting a particular training session. The people that he was training had already had some experience as intake workers in referral programs. When a hypothetical case was presented to a group of these trainees, however, four entirely different responses were given. Each one said that his response was based on a "gut reaction." One such response was "Well it was a young person and I figured that they would like mediation better."

The extensive and ongoing training that is being done with Multidoor intake workers should help to eliminate this kind of response, but the impulse to react in a simple non-analytical manner, based on past patterns of prejudice runs deep. It is common knowledge that age, class, sex, and racial bias play powerful roles that affect our decision



making. Consider, for example, the implications of the stereotype that women like to resolve things peacefully, while men like a good fight.

A related concern lies with the institutional pressures that bureaucracy places on an intake worker. In an article by Richard Weatherly about implementing social programs several different factors are identified that may act on the "front line" worker causing him or her to act in ways which adversely affect the client. (Weatherly, 1980) Overload is an obvious bureaucratic pressure, and one that carries with it large risks. Having too many cases to handle could turn an otherwise principled decision maker into a mechanical decision maker. When this means the difference between an intake worker accurately identifying a constitutional claim and recommending a short mediation process for the same client, the dangers are clear.

A similar fact of life in bureaucracies is "limited resources." (Lipsky, 1980) The implications of limited resources were made clear to me in an interview with a thoughtful court administrator in Minnesota. She expressed concern that a "just adequate" budget for intake personnel for one year might well mean a 30% cut in budget for the next year and the loss of professional intake workers. She pointed out that replacing these workers with volunteers might mean that the nature and quality of the services provided would be

entirely different. Although volunteers might be extremely dedicated and effective, they lack the professional expertise that could make them consistent, objective decision makers.

In addition to personal bias and pressures resulting from working in a bureaucracy, there are also pressures on an intake worker stemming from "competition among doors." An intake worker who is working directly in a courthouse may be put in the position of having to choose between referring a person to two entirely appropriate programs, one inside the courthouse and one in the community. The director of a large and influential community based dispute resolution program in Washington, D.C. commented on this problem "I think that court-based 'doors' may eventually pre-empt the existing dispute resolution organizations. I see them competing for funds, volunteers, and publicity."

Section I presented some of the social and intellectual history behind the development of the Multidoor Courthouse. Section II posed some of the theoretical and practical problems associated with providing effective dispute resolution in this way. Section III presents the reader with descriptions of the three Multidoor pilot projects, examining the ways in which they are dealing with these issues and adapting to their differing environments.

### III. The Multidoor Court Pilot Projects

#### Overview

In the early '80s the leadership of the American Bar Association (ABA) began to promote the idea of developing experimental Multidoor Courthouses as pilot projects. Through interviews, I learned that David Brink and Ronald Olson of the ABA were especially instrumental in gathering support for the idea, and that Professor Daniel McGillis of Harvard University was hired to write a proposal for the development of pilot projects. (Professor McGillis was chosen in part for his experience in analyzing the Neighborhood Justice Centers for the Department of Justice.)

When McGillis' design of the pilot project was approved by the Board of Governors of the ABA, a competition was held in which cities submitted proposals for the development of a Multidoor Courthouse in their regions. The sites selected would then be given technical assistance by the ABA in developing their own projects. Tulsa and Houston were chosen out of a group of ten finalists, which included Minnesota. Later, it was decided that a third site would be added, and Washington, D.C. was chosen.

Funding for each individual site was to come from grants, loans, local fund raising and in some cases regional legislative appropriations. Major sources of the grants and loans were the Culpepper and Hewlett Foundations and

additional grants were given to each site by the National Institute for Dispute Resolution (NIDR). The Washington, D.C. project also received a grant from the Meyer Foundation.

The ABA's Special Committee for Alternative Dispute Resolution acting in conjunction with the Institute for Social Analysis provided technical assistance to the projects on training, planning, and evaluation. The Special Committee's efforts were supported by the Hewlett and Culpepper Foundation, as well as a grant from NIDR and allocations from the ABA. A grant from the National Institute for Justice funds the Institute for Social Analysis's research and evaluation activities. (American Bar Association, 1984)

The general plan that was adopted by the ABA Board of Governors includes three phases. In the initial phase (8 months) projects would create diagnostic intake services and standardized procedures to refer complaints to existing or improved dispute resolution processes in each jurisdiction. Ongoing technical assistance and assessment would be provided throughout the initial phase.

Based on the research and assessment of the first phase, in the second phase (12 months) a specific plan to improve dispute resolution services would be developed for each site. Several approaches would be possible: new services or "doors" could be created; existing services might be expanded or

improved; or some services would be consolidated to provide for more efficient resolution of disputes.

In the final phase (6 months) an outside organization would evaluate the Multidoor Dispute Resolution Centers to determine their effectiveness as models for resolving disputes. A final report would be distributed throughout the dispute resolution "community," including state and local bar associations, court systems, and citizen organizations. Consideration would be given to developing a model that could be replicated in other jurisdictions.

#### The Pilot Projects

Below are general descriptions of the three Multidoor sites. Information was taken from original plans of February, 1984 and my interviews, so that details may have changed as implementation has begun.

##### 1. District of Columbia

Phase I of this pilot project, which began in September of 1984 involves the coordination of three major intake and referral points. The Citizen Complaint Center and Lawyers' Referral and Information Service -- projects which were already in operation -- serve as two of the intake points. A third intake and referral point was created in the Superior Court as part of Phase I, and was opened in January, 1985.

The intake and referral effort is operated by staff members and volunteers and supervised by professionals. Training in interviewing skills, case diagnosis and referral techniques is being provided to all participants. The project has developed a referral manual, including all existing legal, social service, and dispute settlement programs in the area.

Cases will be referred to a wide variety of dispute processing forums. Two existing non-litigation alternatives are to be expanded as part of Phase I. The first is the Court's Voluntary Civil Arbitration Program. The other existing forum which will be expanded is mediation at the Citizen's Complaint Center.

Other programs are being considered under Phase II. (Finkelstein, 1984) They include an experiment with "accelerated resolution of major civil disputes." In this experiment two Superior Court judges would be asked to try a number of alternative ways of resolving disputes. They might try setting up a summary jury or allow parties to present their evidence to a neutral expert for a pretrial assessment. Serious consideration is also being given to establishing a mandatory arbitration program in the D.C. Superior Court. Other proposals are to set up a Public Advocates Office, an Ombudsman's office, and an Office of Public Mediation on an experimental basis.

Finally, mediation of minor criminal and delinquency matters is being considered. Court officials would set up procedures under the auspice of the U.S. Attorney to ensure that certain types of cases are sent to mediation on a regular basis. It is anticipated that many shoplifting and vandalism cases and minor neighborhood assaults and disputes would be successfully handled through mediation.

The project will operate for 18 months as a test of dispute screening, diagnosis and referral mechanisms. The total budget for the period is \$353,143 and includes expenses for personnel, supplies and equipment, training, technical assistance and assessment. The ABA and National Institute of Justice have committed \$89,260 for the technical assistance and assessment of the program. Other funding is to be provided by the Culpepper and Meyer Foundations with an additional grant by NIDR. Local funding will provide the first \$33,184.

## 2. Tulsa

The Tulsa Multidoor project, which is housed in the Tulsa Citizens' Complaint Center, officially opened in April, 1984. At the current time, there are three intake points to the Tulsa Complaint Center. The central intake point is the municipal courthouse and is called the Police/Prosecutor Complaint Office. Another intake point in Tulsa is Channel 2's Troubleshooter program, an action line operated by a local

TV station. The third intake point is the local Better Business Bureau (BBB). The majority of the people bringing cases to the Complaint Center office are walk-ins, referred by court personnel or police officers in the field or courthouse. As of the end of May 1984, approximately 200 cases had been handled by the courthouse office involving primarily assault, harassment, property damages, and other minor criminal matters. The vast majority of case are referred from the Citizen's Complaint Center to the prosecutor's office.

Project Early Settlement, a mediation and arbitration program, is also a recipient of referrals from the screening centers. The project is known nationwide for its dispute settlement efforts and currently has approximately 130 trained mediators who handle 1,200 cases per year. The program is suitable to mediate small claims disputes, minor criminal matters, domestic relations cases, restitution issues associated with the Municipal Court traffic violation cases, automotive warranty disputes (in conjunction with the local BBB) and related matters.

Other doors that will receive referrals include existing social service agencies that handle housing issues, consumer matters, mental health services, family counseling, assistance to the elderly and related functions.



A partial assessment of Phase I in Tulsa has revealed the desirability of adding new "doors" or shoring up existing ones. (Simonson, 1983) Included in the recommendations are the need for an arbitration program. It has also been recognized that improvement can be made in the way consumer disputes are handled, as there are currently deficiencies in the processing of these cases, in the Center's accountability, and in the identification of appropriate forums. Discussions are underway with the Attorney General to address all the problems noted in the assessment -- in particular, their processing of consumer disputes.

Funding for the Tulsa Project is provided by a loan from the Hewlett Foundation, a grant from NIDR, the Oklahoma Bar Foundation, the Tulsa County Bar Foundation and 27 local corporations, as well as local law firms.

### 3. Houston

The Alternative Dispute Resolution Committee of the Houston Bar Association will direct the Houston-Harris County Multidoor Center. This committee will serve as the central clearinghouse for the multidoor program and will coordinate all aspects of the county-wide dispute resolution system.

Included in this system will be several dispute settlement services or doors: mediation; conciliation; arbitration; minitrials; community conflict resolution;

prisoner mediation and legal aid.

In addition, formal justice system doors will be available through liaison with the county and district courts; justices of the peace and municipal courts; and the offices of the city, county, and district attorney. The multidoor program will also refer citizens to related "doors" such as mental health and housing services, and programs to assist the victims of domestic abuse and violence.

The central intake and referral service for the mediation and conciliation will be located at the Neighborhood Justice Center in Houston's Harris County Criminal Courts Building.

In addition to funding from the ABA and NIJ, State legislation providing funding for dispute resolution is expected to yield a minimum of \$174,210 toward the program, leaving a balance of \$181,610 (from a total of \$445,080) to be raised for completion of Phase I.

\* \* \* \*

At each site the development of budgets for phases II and III is contingent upon the results of the initial assessment. During Phase Three outside evaluators will determine the effectiveness of the Multidoor Dispute Resolution Centers as models for resolving disputes. They will ask important questions such as, has it been possible to match an

individual's problem with an appropriate dispute resolution process? If so, was the process chosen "effective"? What new processes or doors could lead to more effective resolution of disputes?

It is clear from the descriptions of the three pilot projects that, although each has grown out of a central Multidoor Courthouse idea, each is evolving in its own way. Intake and referral are central to each program, although in Houston there is one dominant intake center, in the District of Columbia there are three, and in Tulsa, three. In Tulsa and Houston the local bar associations are administrators of the programs, but in the District of Columbia it is the Superior Court that is the administrative body. Funding has been pursued differently in each location, with legislatures and city governments playing a significant role in some cases and none in others. The original idea grows differently in each environment, with its unique social, political, economic and institutional characteristics. Chapter Two provides an overview of the Minnesota dispute resolution environment, and the particular characteristics which are likely to influence the growth of a Multidoor Courthouse.

CHAPTER TWO: HISTORY AND CURRENT STATUS OF  
ALTERNATIVE DISPUTE RESOLUTION IN MINNESOTA

I. An Overview of the Dispute Resolution Environment

Introduction

In 1981, Minnesota became the second state, after New York, to appropriate state money for alternative dispute resolution (ADR) programs. (Byrne, 1984) One hundred thousand dollars was committed to fund two pilot dispute resolution programs: the Dispute Resolution Program in Ramsey County and the St. Louis Park Juvenile Mediation Project. The funding of the two community dispute settlement programs sparked considerable interest in ADR. The St. Louis Park Juvenile Mediation Project, for example, was later folded into a larger effort, the Mediation Center. The Mediation Center sought and received foundation and bar association money and has assisted several Hennepin County communities in establishing dispute settlement centers. Overall, the growth in dispute resolution programs has been so great that the Minnesota State Bar Association (MSBA) has developed a Directory of Alternative Dispute Resolution Programs which now lists and describes forty public and private organizations. (MSBA, 1984)

Data for this section have been derived from the Bar Association Directory, from interviews, and from a paper on Alternative Dispute Resolution Programs in Minnesota provided

by the Minnesota State Planning Agency. (Byrne, 1984)

For the purposes of this paper, I will consider only programs that are administered by the government to be "public" programs; all other programs will be considered "private" programs, even though some may receive partial public funding or serve a public function.

Private dispute resolution organizations include professional organizations, community organizations, religious based organizations, and organizations based in educational, hospital, and mental health institutions. Public dispute resolution programs can be divided into court based programs and non court based programs. The private dispute resolution programs will be described first and then the public programs.

#### Private Organizations

There are approximately eleven private professional organizations that provide dispute resolution services in Minnesota. These include both lawyers and mental health professionals. Typically these organizations offer services in the areas of domestic violence and private divorce mediations, with much of their funding coming from client fees. (MSBA, 1984) It is likely that there are many more professional organizations providing these kinds of services, but they have either not categorized themselves as ADR

providers or have not made their way to the MSBA Directory.

A second group of private professional organizations do not provide services, but represent specific groups of professionals. These include regional bar associations, mental health associations, the Society for Professionals in Dispute Resolution (SPIDR), the American Arbitration Association (AAA), and the Minnesota Council of Family Mediators. (MSBA, 1984)

Community dispute resolution organizations are also private organizations in the sense that they are not supported totally by public funds. Most programs that identify themselves as community programs receive funding from a variety of sources. Typically a majority of the funding comes from foundations, with some government funding from the courts or from state or municipally legislated appropriations. (MSBA, 1984) In fact, these community programs tend to be both public and private, and they are able to play a unique role in dispute resolution planning in Minnesota. They will be referred to here as Community Dispute Resolution Programs (CDR).

In 1984, a non-legislated source of funding became available for CDR programs. Presently there is a large sum of money generated from interest in lawyers' trust accounts (IOLTA). Administered by the IOLTA committee, under the aegis

of the state's Supreme Court, this grant money was recently made available to ADR programs. The funds were distributed to three CDR programs in the state. Of twenty-two operating IOLTA funds in the country, Minnesota's was the first to fund ADR programs. (Byrne, 1984)

Most CDR programs deal with neighborhood problems, landlord/tenant problems, juvenile problems, consumer problems, employer/employee relations, and some commercial problems. While each program cultivates its own referral sources, in general programs tend to attract some clients by word of mouth and receive referrals from police, legal services, community organizations, social services agencies, health care professionals, public officials, and private attorneys. (MSBA, 1984)

Other private dispute resolution programs include church-based, college-based, and hospital-based programs. The two church programs offer a wide variety of services similar to the community programs and are funded by the churches, through foundations, and by individual fees. The two private college programs listed in the Minnesota ADR Directory are funded out of their college budgets and focus on student-related disputes. In addition, mediation services are provided in a private hospital and a mental health center. (MSBA, 1984)

Finally, many of the private organizations in Minnesota provide training for their own staff and volunteers and for outside organizations. When in-house training is not available training may come from national professional dispute resolution groups or from local practitioners. Both the Mediation Center and the Dispute Resolution Center have been involved in developing and conducting a training program for county welfare units who expressed an interest in using mediation to resolve family disputes and child custody disputes. The Hawthorne Area Neighborhood Dispute Settlement Program conducts training for those neighborhoods interested in the Community Boards model for dispute resolution.

Both Hamline and William Mitchell Schools of Law have expressed an interest in receiving information and training in the area of ADR, with the intention of eventually building it into their curricula. The University of Minnesota's Law School already has a class on ADR. With more than thirty courses in dispute resolution in various departments at the University, faculty and administration are drawing the various departments together to collaborate in opening a Conflict Analysis Center. I have learned through extensive interviews with Dr. Thomas Fuitak that the Conflict Analysis Center will conduct research and be involved in curriculum development in the area of negotiation. While the final form of the Conflict Analysis Center is still being shaped, seminars and workshops



have already gotten underway.

### Public Organizations

#### Non-Court-Based Programs

Among the early non-court-based programs was the consumer dispute resolution provided by the Consumer Affairs Division of the Attorney General's Office. Other more recent non-court-based programs include the Federal Mediation and Conciliation Service, which provides both mediation and arbitration for labor/management disputes; the Minnesota Bureau of Mediation Services which provides services for labor/management disputes and for employer/employee disputes; and the city-attorney-based mediation program which handles neighborhood and domestic relations mediation. (MSBA, 1984)

In 1983 an Alternative Dispute Resolution Program was created in the State Planning office. (Byrne, 1984) Its purpose was to conduct research and to guide initial experimental pilot efforts to make ADR processes available for use both within the state government and in the state generally. Based on recommendations of Program staff members, legislation was passed in 1983 mandating a legislative commission to study the feasibility of making ADR processes available as alternatives to the sometimes lengthy and costly contested case hearings conducted by the Office of Administrative Hearings. Two state agencies were selected to

be pilot projects for the study, and training in mediation was conducted for those Administrative Law Judges who would serve as neutral mediators in the contested cases referred from those agencies. Efforts to encourage the use of negotiated rule-making by state agencies has also been initiated, with the goal of cutting down on the time that agencies spend in regulatory hearings. The ADR program in the State Planning Office has also brought together a task force comprised of leaders in the public and private sector, involved with environmental matters, to explore the use of ADR in environmental disputes and to make recommendations to the Governor.

The feasibility of developing a Statewide Office for Conflict Management is currently being explored. Funded by an appropriation of \$250,000, the program would be designed to generate and share information about alternative dispute resolution; to plan and make available dispute resolution processes to be used by state government and in disputes involving the state; and to develop the capacity to train third party neutrals. Partial funding for this project has already been provided by a grant from the National Institute for Dispute Resolution.

#### Court-Based Programs

A number of court-based programs are either in existence

or now being developed. Court-based programs are in a sense a foreshadowing of the original Multidoor Courthouse concept in that they are available directly in a courthouse or in a court annexed program.

Through interviews with state and county court administrators, I learned that legislation has been enacted in Minnesota which will enable the District, County, and Municipal Courts to set up arbitration programs. The Courts will be able to recommend rules of procedure, which will be submitted to the Supreme Court for approval. A mandatory nonbinding arbitration program has already been approved for funding in Hennepin County, and the proposed procedural rules have been ratified by the Supreme Court. All civil cases of up to \$50,000 will be referred to arbitration panels composed of lawyers with at least five years of experience. A similar program is being considered in Ramsey County.

Other court sponsored alternative dispute resolution programs include voluntary mediation in family court and a variety of referrals to mediation programs that fall loosely within the structure of the criminal justice system (and therefore might be considered court related).

#### 1984 ADR Legislation

The 1984 legislative session passed several bills having to do with ADR. (Byrne, 1984) First, legislation creating a

uniform Community Dispute Settlement Centers Program (modeled after New York's program) was passed. The program was put in the state court administrator's office where operational guidelines for community dispute resolution centers were created through a judicial planning committee. These guidelines contain certification standards with which centers must comply in order to be eligible for state appropriated funding. Included in the standards are training standards, reporting requirements, and limitations on what kind of conflicts can be mediated in community centers. A second part of this legislation is now being proposed, through which \$200,000 would be appropriated to provide up to 50% of the operating costs of certified programs.

Second, the Civil Mediation Act was also passed. It addresses the legal barriers to mediation, i.e., liability, confidentiality, use of subpoenas, etc. The Bar Association's Committee on Methods for Non-judicial Resolution of Disputes was actively involved in drafting and refining this legislation.

Third, in recognition of the need to help fund the growing number of community dispute settlement programs, the legislature amended the Legal Aid Funding formula so that qualified community ADR programs became eligible, along with other legal aid programs, for 15% of money generated from the increased fees on civil filings.

## II. The Political and Social Landscape

Because of this strong early effort at developing ADR in Minnesota, the design of the Multidoor Courthouse will need to reflect the needs and interests of many ADR programs. The design process will be heavily impacted by three aspects of the Minnesota political and social landscape:

- a political and social culture that values decentralization, public participation, and consensual decision-making
- the attitudes of local service providers about issues central to the development of a Multidoor Courthouse such as intake and referral.
- an existing base of community organizations with diverse interests and the political and economic resources to pursue them effectively.

In order to understand better these conditions that underlie the development of alternative dispute resolution movement in Minnesota, I conducted informal interviews with a variety of people concerned with dispute resolution. These included interviews with directors of three community organizations, three court administrators, a state planner, private attorneys, educators, legal services representatives, and a representatives of the Minnesota Bar Association. From these interviews, I have drawn observations about ADR planning and design of a MDC in particular.

### Political Culture

People speak about Minnesota as having a unique political and social structure. "Minnesotans don't like centralized anything," was one of the first reactions I received to the idea of a Multidoor Courthouse. An urban policy analyst commented, "If the neighborhoods don't like it, it won't go." An article about Health Maintenance Organizations talked about the spirit of consensus in Minnesota being pervasive from the neighborhoods all the way up to the largest corporations. (Inglehart, 1984)

Minnesota is a diverse and complex environment for dispute resolution, with creativity and innovation equally flourishing in the community, public, and private sectors. It is an environment in which neighborhoods are politically active and in which community programs continue to evolve. It is an environment in which the state is planning an Office of Conflict Management, in which the legislature has funded and continues to consider funding programs and pilot projects, and in which the courts are actively involved in creating alternative programs. Private foundations extensively fund a wide variety of programs, private dispute resolution services are budding, and innovative funding alternatives are being created. In addition, the University is responding to the need for conflict analysis and research.

To the extent that this level of activity may signal creativity and innovation, it may also make coordination of

these efforts difficult, especially because, "Minnesotans don't like centralized anything." It also complicates the question of who might control a Multidoor Courthouse. There are enough competing interests in Minnesota's dispute resolution community that a number of serious questions need to be raised: What group is most capable of making changes within the court system? What is the most experienced dispute resolution group? Who best understands the social networks and how they operate for the benefit of citizens? Who has the most influence over funding sources?

In an ideal world, decisions about a Multidoor Court would be made after a consideration of all the interests and a search for a design that would serve the greatest variety of needs in the most equitable way. More likely, however, a prominent judge or a community innovator, or a bar association would step forward and say "We want a Multidoor Courthouse and we will develop it under the auspices of our own organization." If they are successful, control, at least initially, will have gone to the organization which has spoken most loudly, acted most quickly, and been most able to gather the resources to move ahead.

The critical question that faces Multidoor Courthouse planners in Minnesota, then, becomes one of accountability. By the time that a region has gone through the process of having one interest group take control, after powerful

financial backers have invested in the concept, after laws regulating the venture have been created and public funds allocated or not allocated, and after other interest groups oppose the existing power holders and try to gain influence over the institution, does the Multidoor Courthouse have anything to do with "effective" dispute processing?

The answer is that effective resolution of disputes in a Multidoor Courthouse is dependent upon a wide variety of options being available to a citizen with a problem, and a system of intake which is capable of matching the problem to the proper forum. Outside influences such as the ones mentioned above all have the potential to lead the Multidoor Courthouse away from "effective" dispute processing. For example, control by one interest group such as a bar association or mental health association may influence the decisions of intake workers toward professional rather than lay dispute resolution processes. Control by a court system may place too much emphasis on cost effectiveness and may be biased toward court-based programs. The danger that any of the outside influences will significantly impinge upon the effective resolution of disputes is what creates the argument for a planning process which comes as close as possible to "the ideal world" scenario described previously. In this planning process decisions of control would be made after a consideration of all of the interests and after an exploration



of the possible management systems that would best serve the mutually agreed upon interests of the parties involved. Such a planning process is described in Chapter Three.

One way of reducing the initial problems associated with administrative control would be to place the process of choosing an appropriate administrator in a mutually agreed-upon forum in which no one group has control. A variety of parties have expressed the view that the Conflict Analysis Center would act as such a neutral forum. I would therefore suggest that it be considered as an initial forum in which to draw together parties for a comprehensive planning process.

Once a mutually agreed-upon forum is selected for exploring the possibility of developing a Multidoor Courthouse, the work of identifying the community's dispute resolution needs can begin. Although those ends cannot be precisely predicted, there seem to be a variety of issues which would be of general importance to participants. These issues include intake, referral, centralization, funding, and regulation. Several of these are touched upon here to illustrate the diversity of views and the need for planning.

#### Issues of Intake, Referral and Centralization

The intake and referral process, an integral part of the Multidoor concept, is complex and a probable source of

confusion. In order for ADR programs to arrive at a common conceptualization of an intake and referral process, their differing needs will have to be considered, and then an intake and referral process designed to fit those needs. The views of a variety of dispute resolution programs on intake and referral are explored below.

The director of a prominent community dispute resolution center made the following observations: "We can't be efficient until we get out of the business of recruiting business." In his conceptualization of the MDC, intake would be centralized and sources of referral would be pursued by a central administration. His organization would then be freed to do work which he would consider to be more valuable.

The director of another prominent dispute resolution center, however, has a very different conceptualization of the intake and referral process. He expressed the following concern: "How can one reduce the possibility, with centralized intake, of a citizen making an uninformed choice about the most appropriate forum for his or her dispute?" He felt that it was because of his intake workers' great familiarity with tenant/landlord issues that they were able to educate a person about his or her options -- mediation, legal services, a private attorney, the possibility of getting advice from the tenants' union, or self-help. Intake at his center, he pointed out, was done by paid professional staff, not

volunteers. He expressed the concern that centralized intake workers could not be familiar with all the issues and resources in dispute resolution. He suggested that cases ought to start at the community centers that are already doing a good job of intake, and then be referred to a central intake worker only if the problem could not be handled at the community centers.

As was discussed in Chapter One, one of the features of the original Multidoor Courthouse concept was the kind of centralized intake service located in a courthouse that this Director fears will not be effective. Clearly this kind of centralization has advantages and disadvantages. The advantages include the ability to refer clients to a broad range of services which include but are not limited to ADR processes. A citizen coming to an individual ADR center might be offered only the particular process in which that center specializes without regard for whether legal advocacy, some public or private social service, or self-help might be more appropriate.

The disadvantages of centralized intake include the possibility that intake workers will not be able to distinguish appropriately between types of cases, because to do so would require knowledge of too many specialized areas of law and social work. Another problem is that centralized intake may have the effect of drawing people away from

neighborhood based programs.

## Issues of Importance to Neighborhood Organizations and Public Interest Groups

### 1. Neighborhood Organizations

For a project like the Hawthorne Area Neighborhood Dispute Settlement Program (HANDS) it is crucial that the neighborhood organization remain the central intake point. The program offers resolution of neighborhood disputes using a board of citizen mediators, which is sometimes referred to as a "Community Board." The Board is made up of four or five neighborhood members selected from a larger group of trained citizen mediators who meet together in order to mediate the problems of neighbors. The Board in the Hawthorne area is intentionally multiracial and serves not only to help the disputants resolve their particular problems, but also to act as a peer group and educational forum to help bring about neighborhood cohesiveness. There are currently two such programs using the Community Boards model (which was derived from the San Francisco Community Boards Program), and there are several more neighborhoods that are looking to develop similar programs. I spent a considerable amount of time interviewing in person the director of the HANDS program, an educator specializing in neighborhood politics, and the president of the San Francisco Community Boards program. It is the contention of these people that a centralized intake and referral process would draw people away from the

neighborhoods to a downtown office, a process they fear would be destructive of neighborhood cohesiveness.

A prominent dispute resolution innovator in Minnesota and the educator specializing in neighborhood politics both stressed that it is important for Multidoor Court planners to consider the interests of neighborhood groups. The consequences of not gaining neighborhood support may mean that representatives in government will perceive that proponents of ADR are not treating the neighborhoods fairly. This could lead to fewer votes for ADR funding in general and a labelling of ADR as "anti- neighborhood."

Neighborhood programs like HANDS, however, see themselves as being separate from the traditional justice system and may not want to participate in large scale ADR planning. I make the argument here that both their own survival and a responsibility to induce ADR planners to consider the significance of planning on the neighborhood level compel neighborhood programs to participate in Multidoor Courthouse planning. In the face of centralized intake and referral, neighborhood programs have the opportunity to design an intake and referral process that will increase neighborhood cohesiveness rather than having it destroyed by competition.

Even without a Multidoor Courthouse, there is incentive for neighborhood groups to become more involved in

decision-making that affects community dispute resolution centers. In Minnesota, for example, two or three non-neighborhood Community Dispute Resolution programs have been heavily funded by the Supreme Court, IOLTA and private funders. Publicity, prominence, and a large base of referrals may eventually turn these centers into large, court-associated intake centers, posing some of the same problems to neighborhood programs (i.e., competition for funding, referrals and publicity) as a centralized Multidoor Courthouse.

Another reason for neighborhood programs to participate in a larger planning process relates to their funding. One of the problems that programs like HANDS face is that funders have traditionally evaluated programs on the basis of quantities of case referrals. While this criterion may be relatively easy to determine, it may not be determinative of the kind of quality which is valuable to the users of neighborhood programs. It was suggested by Raymond Schonholtz that capacity, skill building, neighborhood cohesion, range and quality of case and hearing work, and diversity among trained volunteers are the appropriate standards for measuring the performance of community boards. (Shonholtz, 1984) Without participation in ADR planning, these standards are not likely to be adopted.

A final motivation for participation in decisions about

the Multidoor comes from the State. Proposed legislation in Minnesota would provide funding to dispute resolution centers that would comply with the state's operational guidelines. When the operational guidelines were being formed, neighborhood organizations were not represented, and these guidelines well may have a potentially harmful effect on neighborhood programs. Future decisions about regulation and funding will be of great importance to neighborhood programs and participation in a planning process is one way to insure their representation. The ultimate incentive for neighborhood programs to be involved in dispute resolution planning is that not to do so may eventually mean being legislated out of existence or having to compete with more highly funded or prominent programs.

## 2. Public Interest Groups

There are a variety of other community groups (referred to here as public interest groups) whose primary concern is not ADR, but who also should be encouraged to participate in a MDC planning process. Their involvement is important both because the issues they are involved with are important to ADR providers and because those organizations and the causes that they represent stand to be harmed if they are not involved.

One of the most politically significant groups is composed of women concerned about violence against women.



Advocates for the rights of battered women and women in general have been critical of mediation programs, because of their tendency to put women in a position in which they are bargaining with a power disadvantage. I learned from interviews with court administrators in both Washington, D.C. and Minnesota that where violence has been committed against women, there is a general consensus that their cases ought to go to the prosecutor rather than the mediator. The rights of low income women are also thought to be in jeopardy in mediation, where women's economic status and bargaining skills could put them at a disadvantage.

In Minnesota, women demonstrated their political influence during the creation of operational guidelines for a Community Dispute Resolution Centers, by limiting the kinds of disputes (e.g., cases involving physical violence) that can be resolved by mediation.

Despite deep concerns about the role of ADR in resolving problems of violence against women, women's groups have volunteered to work with neighborhood programs like HANDS in order to determine what kinds of cases should go to court and which might be appropriately mediated. This is a role that women's groups have been unwilling to play in the past with highly bureaucratic and hierarchial organizations. This willingness to establish working relationships between already existing community groups has important implications for an

ADR planning process. It demonstrates that, on the community level, where networks and alliances can be established between similarly situated programs, there is the potential for building the kind of neighborhood cohesiveness that is the goal of many community organizations. I believe that this also indicates that much of the work of determining what is an "effective" process for resolving a particular dispute will have to be worked out on a neighborhood level by the people who confront these issues every day.

This observation has been borne out by interviews with other groups as well. Legal Service agencies are another group that in general is more than cautious about the use of mediation for cases involving the rights of low income people. (Janes, 1984 and Minnesota Legal Services Coalition, 1984) Legal Service providers, like those who are concerned with the rights of women, also believe that insufficient resources and inadequate bargaining skills will have negative impact, on low income people who go into mediation without an advocate. In addition, legal services organizations see ADR as a threat because they are receiving pressure from the conservative Legal Services Corporation to increase their budgets for ADR, while decreasing their advocacy budgets.

While there are reasons for Legal Service organizations to be suspicious of ADR, an extensive interview with a director of a Legal Service agency revealed to me their

underlying dilemma. He and his colleagues feel that mediation would be appropriate in many cases, but what they want is power to decide what cases would be mediated. Such an arrangement was discussed in an interview with a mediation program director who had a close working relationship with a legal services office. She said that they had worked out a way of determining when a case needed advocacy, when mediation was appropriate, or when some combination was valuable.

This example once again confirms the observation that groups who are concerned about the abuse of ADR processes seem willing to coordinate with ADR programs, when their relationships arise out of carefully constructed networks rather than hierarchical bureaucracies. Other groups that appear to fit this model are those concerned with consumer issues, civil rights and environmental issues.

Whereas in the three Multidoor pilot projects either the courts or the bar associations have administered the projects, it is not clear that those are the best options in Minnesota. While control by one group may be effective in the short run, the costs in the long run to the community of not building a more representative and democratic administrative structure for a Multidoor Courthouse may be great.

In Minnesota, where consensual decision-making and public participation are an important part of the social culture, the

advocates of the neighborhoods, women, low income people, and consumers and environmentalists might naturally move toward a participatory planning process with the representatives of a full range of private and governmental groups. Such a process would likely result in a more diverse and innovative administrative structure than is being introduced in other locations. Part Three describes some of the characteristics of such a planning process.

## CHAPTER THREE: THE PLANNING PROCESS

As we have seen, the Multidoor Courthouse as conceived by Frank Sander is not a rigid model to be replicated in any setting. Rather, the concept is a flexible one that can be adapted to the individual needs and social and political structure of potential sites. In the paragraphs that follow I outline a planning process for designing a Multidoor Courthouse in one site -- Minnesota. The process reflects the fact that, in this case, there is a culture that values consensual decision making and public participation. Thus, the process tries to involve the full range of existing organizations concerned with dispute resolution -- including community groups, the private sector, and state and local government.

### I. Design of the Process

The process I will describe draws on the experience of several participatory community planning models. In particular, it builds on the experiences of the Negotiated Investment Strategy developed by the Kettering Foundation in the mid '70's. The Negotiated Investment Strategy (NIS) was developed in response to a need for fostering greater communication between levels of government through carefully structured bargaining sessions with the assistance of an impartial mediator. The outcome, or the "negotiated strategy"

is an implementation plan. (Warren, 1981)

The original NIS experiments took place in three cities: St. Paul, Minnesota; Columbus, Ohio; and Gary, Indiana. In St. Paul and Gary, the focus was on complex redevelopment projects requiring substantial resource commitments from federal, local and private interests. In Columbus, negotiations were focussed on improving day to day working relations among state, local, and federal agencies. The common focus of all three experiments was the coordination of public and private investments of money and workpower, with the hope of improving economic and social conditions in the cities.

The concept was expanded in Malden, Massachusetts in 1984. Rather than negotiating exclusively between government-related agencies, the Malden experiment involved bringing together city government, local businesses, and citizen representatives in order to address a wide variety of community issues. As in the other experiments, three teams were formed, but in Malden the teams were the city, businesses, and citizens. Each team was asked to form an agenda of community issues that they would like to see addressed. The three teams then met in a negotiation session with mediators who assisted them in deriving a single agenda. Each issue was then explored and addressed by a committee made up of at least one member from each team. These tripartite

committees were a key component of the planning process in that they brought together people from the three different teams and allowed each issue to be addressed from the perspective of local government, the private sector, and citizens' groups. (Glover, 1983)

What started out to be a dispute resolution process in the original Kettering experiments was in Malden formed into a creative planning process where new relationships were developed and joint projects designed. While the Malden model is an innovative application of participatory planning, it does fall short of the ideal in several respects. The model assumes that each team has equal bargaining power. Though the use of mediators does help to promote equality, there are still problems associated with bargaining power in a citizens' team. First, there is the problem of how to represent diverse interests. Representing too many interests may mean representing none of the citizens' interests well. Another associated problem is that the Malden model assumes that the citizens' groups have previously established organization. While other groups may have well defined structures, a citizens' group is likely to be relatively unorganized, and thus, they will likely have limited resources. Finally, there may be no ongoing structure by which the citizens' group can ensure that strategies developed in the planning process can be implemented.

The planning process I will design for Minnesota then, will be very similar to that used in Malden, but will take into account these problems of potential power imbalance. The elements of the Malden experience I will use are the following:

- the three teams of organizations
- the use of mediators or facilitators
- the use of committees to bring together members from different teams
- the use of joint planning sessions to arrive at a final implementation plan

The one new element I will recommend is that the team made up of community based dispute resolution programs should enter into a separate "pre-planning" process before any coordinated planning with the other two teams would take place. This addition seems to respond best to the thorny problems surrounding the ability of community groups to participate in this kind of process.

## II. The Planning Process

The process of planning for the multidoor courthouse in Minnesota could consist of five phases:

- an organizing phase
- a "pre-planning" process
- an issue development phase
- a joint goal setting phase
- the implementation plan

### Phase One: Organizing



The initial stage of the planning process should be the hiring of a project coordinator, who would be responsible for organizing teams, making rules, and generating funding. A major job of the coordinator would be to identify key stakeholders and to make certain that they are all represented when the teams are organized. The coordinator would work in conjunction with the Conflict Analysis Center at the University of Minnesota.

### Phase Two: The Pre-Planning Process

In Minnesota the pre-planning process must respond to the fact that within the community there are organizations with two very different sets of goals. The first group, which we will call Community Mediation Programs, has a formal relationship with the court system, from which they receive at least some of their referrals. In general, they provide a mediation service to individuals regardless of their relationship to a particular neighborhood. The Mediation Center and the St. Paul Dispute Resolution Center would be examples of this kind of "mediation" program.

The second group we will call Community Boards Programs, typified by the HANDS and West Bank Neighborhood programs. The general goal of these programs is to use a panel or "board" of community facilitators who can help neighborhood members learn the skills they need to resolve their disputes

in ways that build a stronger community. They differ from "mediator" programs in that they work within a community network which provides not just mediation but services such as healthcare, day care, legal services, and job training.

During my interviews with both kinds of groups, there was some agreement as to what a pre-planning process should accomplish. Members of the "mediation" and the "Boards" programs saw two goals as central:

1. To consolidate the interests of similarly situated community based programs.

2. To establish a group of representatives that can act as liaisons with other teams in the planning process.

In addition, the Boards programs saw two additional purposes for these initial meetings:

1. To establish a short-term financial resource base for the purposes of planning and to develop a long-range financial plan for the purposes of implementing new projects.

2. To coordinate interests with other community based groups that are not thought of traditionally as being part of the ADR movement, but who through the same networks participate in community building (legal services, tenant-landlord organizations, women's groups, etc.).

These goals are part of a larger plan, which is being created by Community Boards programs, which would lead to the development of a center for training and for helping new neighborhood programs get started.

The joint planning that would have to take place between these two types of community based programs, if they are to form a "team," does not mean integration of all of their goals.

Instead, it should be an opportunity to explore what could be gained by entering into a Multidoor planning process and to explore what strategies can be taken to accomplish individual and joint goals. Participants in the community pre-planning process will be given a great deal of leeway to decide how the pre-planning process will be designed and carried out. They might do this by holding community hearings, by having a series of formal meetings at which issues are derived and committees are formed, or by a variety of other approaches. Whichever process is chosen or developed the coordinator of the MDC planning process will be available to act as a resource for information and as a facilitator (if they elect to have an outside facilitator). The major responsibility of the coordinator in this phase will be to see that the community groups emerge as a team with adequate bargaining power.

When this pre-planning process has been accomplished to the satisfaction of the two types of community based groups, the Community Team should be ready to enter into the Phase Three of the process, with the private team and the government team.

### Phase Three: Issue Development Phase

In this phase the three teams begin meeting with each other for a general introduction, setting of rules, and the development of a time table. At this stage, too, the teams need to select jointly a group of mediator/facilitators who would be available for each team to help with inter- and intra-team decision making. The teams will decide precisely what role the mediator/facilitator will play throughout the processes. Clearly, these mediators or facilitators should be people who do not have a direct stake in the outcome of the process. Since St. Paul was a site for the original NIS experiment, it may be that mediator/facilitators from that project would be logical candidates for these positions (or at least they might be involved as consultants to the Multidoor Planning Project).

Once these facilitators are chosen, each of the teams should begin to create its own set of issues which it would like to see discussed during the planning process. These lists might include issues about the Multidoor Court such as

intake and referral, ADR policy, funding, and administrative structure. After each team generates its own list of issues, a mediation session should take place in which representatives of all three teams present their issues and agree to a list of joint issues. This mediated session not only serves as a means to create an agenda of mutually agreed-upon issues, but also to begin to develop decision making skills within and among the teams.

#### Phase Four: Joint Goal Setting

In this phase each issue derived in Phase Three becomes a subject heading for a committee. The sample issues identified above would generate an "Intake and Referral Committee," and a "Financial Committee", among others. What is critical is that each committee be made up of representatives from all three teams. These committees, bringing together all three perspectives, can begin generating a set of objectives and recommendations. For the Financial Committee, such a set of objectives might include a detailed proposal for financing a Multidoor administrative staff for the first three years; a proposal to establish an ongoing committee for the development of new funding alternatives; and guidelines for the equitable distribution of legislated funding to community dispute resolution centers. During this process the team representatives would meet to discuss these committee proposals, both for making suggestions for modification of the

proposals and for sharing information so that committees are able to keep in touch with each others' progress.

#### Phase Five: The Implementaton Plan

In this final phase of the planning process, the recommendations of the individual committees are combined by consensus through a series of mediated planning sessions. It is during these critical sessions that final decisions would be made about whether the Multidoor Courthouse should be in one central location or in many locations, about whether administrative control should come from one group or should be jointly managed, and where the funding should come from. The outcome of this series of mediated sessions will be an implementation plan which could be handed over to whatever organizations, existing or newly created, that would be designated to carry out the plan.

#### III. A Possible Outcome

In this section, I have the opportunity to speculate about the kinds of Multidoor Courthouses that might grow out of this planning process. I do this partly to encourage readers and potential planners to think creatively. Having been in the unique position of interviewing a number of remarkable people currently concerned about dispute resolution and the Multidoor court, I feel that I also owe the reader some of their ideas and my interpretations of them.

Accepting for the purposes of this discussion the sense of my interviewees that "Minnesotans don't like centralized anything," I shy away from the idea that the courthouse should be centralized, but still retain the concept of "doors" and of comprehensive intake processes capable of referring clients to more than one kind of dispute resolution forum. Instead of visualizing one courthouse in the middle of a region in Minnesota, I imagine that a whole region is a "courthouse," and that citizens with a concern would enter the courthouse through a "door" in their neighborhood. What they are really entering is a community network, made accessible by a sophisticated intake process and capable of meeting their social and economic needs as well as their needs for dispute resolution.

Entering a neighborhood door in this model, then, implies more than gaining access to a dispute resolution process. The intake workers in this neighborhood network recognize that underlying many disputes are complex social and economic problems, which if dealt with one at a time and not in relation to one another, are likely to solve a person's dispute only temporarily.

For example, in a particular neighborhood a variety of disputes having to do with vandalism might come before a board of community mediators or facilitators. On a case-by-case basis the perpetrator and the victim may be dealt with

effectively -- perhaps through restitution. By confronting the same problem over and over again, however, the board and other community organizations may recognize that there is a need to deal more comprehensively with vandalism and to establish both a "crime watch" program and a youth work program.

Other situations are easy to imagine. Consider the kinds of disputes that arise involving parents with small children -- child abuse, complaints about noise, or nonpayment of child support. Collectively these disputes might signal the need for development of daycare centers and family counseling.

In a third example, a group of cases involving withholding rent to landlords because repairs are not being done may lead to a proposal for a tenant-owned maintenance company. Under this arrangement, rents might be reduced in exchange for maintenance work being done by the newly formed company.

In all these cases, disputes that would in a traditional court or mediation program be treated as individualized problems, become the concerns of a community network. What I am suggesting then, is that a Multidoor Dispute Resolution and Planning Center in every neighborhood could link individual disputants with others who have similar problems and with the appropriate institutional resources. The "doors" in this



neighborhood Multidoor Dispute Resolution and Planning Center might contain labels like Mediator, community board, legal services, community planning, community business development, and community development bank. This kind of center would also include a computer resource center and community meeting space.

The structure and goals of such an organization should address some of the concerns about justice discussed in Chapter One. Those critics who are concerned with access to justice (Nader, 1980) would support the processing of group claims and the joint decision making between legal service providers and ADR providers, made possible by this model. This community Multidoor Center should also satisfy those concerned with "community building," (Shonholtz, 1984) since it does translate social problems into development projects, and those who are concerned about developing separate justice systems since it promotes neighborhood control. (Danzig, 1973) However, it is not clear that this model adequately responds to Sander's question of how to provide "effective" dispute resolution. In particular can it address the problem of the "all-knowing intake worker," of disputes that extend beyond neighborhood boundaries, or of problems that are too complex or specialized for neighborhoods to handle?

The problem of how to manage intake effectively in this kind of neighborhood center could be partially resolved by

linkages between alternative dispute resolution techniques, legal aid agencies, and other community oriented organizations. Intake training could focus specifically on community issues, taking advantage of the resources of all the groups to develop a comprehensive protocol for intake workers -- one that would help them determine the full range of processes that might be appropriate for a particular situation.

The second problem -- that of cases that extend over neighborhood boundaries or that are too complex or specialized for neighborhoods to handle -- could be addressed by the creation of "Back-up Centers." These would be intake and referral centers serving a number of neighborhoods as well as private and governmental dispute resolution organizations. The Back-up centers could provide training in mediation and other related processes and ongoing training for intake specialists, helping them for example, to recognize the problems associated with special areas such as consumer problems, the problems of women and the low income people, and opportunities for group claims.

Instead of being administered only by the courts or bar associations, Back-up Centers could be jointly owned and operated by the dispute resolution organizations they would serve. This auspice might include not only neighborhood organizations but also governmental and private

organizations. A management structure which was consciously designed to reflect the interests of a variety of dispute resolution organizations (the management structure could be made up of a tripartite government, private, community team just like the planning committees) would have a number of advantages, including the encouragement of autonomy and innovation in existing groups.

Several theorists, for example, have argued that the traditional organization is a "circle" with management in the middle and all of the rest of the groups that make up the organization in the periphery of the circle. (Schön, 1971, Graybow and Heskin, 1976) This is called by Donald Schön the "center-periphery model." Some innovative management models try to reduce the role of the "center" by having groups from around the periphery take on management functions. This structure has the effect of encouraging and supporting the real innovations which frequently lie in the peripheral groups, rather than depending merely on the center to make policy without direct knowledge of their needs and ideas of the periphery.

A joint management structure for an intake and referral process, in addition to encouraging the innovative potential of individual organizations, would have other important advantages. In particular, it has the potential to become an educational forum, to conduct research, and to formulate

public policy.

First, the center might undertake a series of workshops to establish flexible protocols for issue specific intake problems. Through this type of educational process people could be brought together who are interested in a particular issue -- such as violence against women, tenant landlord problems, or consumer issues. From their discussions, the complex social, psychological, and legal problems that underlies these issues might then be sorted into flexible protocols that individual programs would be free to adopt.

Together, these two ideas -- Neighborhood Multidoor Dispute Resolution and Planning Centers and Back-up Centers -- address a number of the concerns about the ADR Movement suggested throughout this paper -- concerns of access, effectiveness, and equitable control. The purpose of this paper, however, is not to design concrete models for Minnesotans, but to stimulate communities to design their own models. These ideas are offered only as theoretical frameworks for a Multidoor planning process - a process with the goal of encouraging individuals and groups in Minnesota to develop a mutually agreeable notion of justice and to work toward accomplishing the goals inspired by that notion.

## CHAPTER FOUR: CONCLUSION

In concept the central goal of the Multidoor Courthouse is to match citizens' claims with the most "effective" forum for resolving their disputes. The formation of a Multidoor Courthouse, however, is a complex social and political process during which important decisions are made about administrative control, allocation of funding, and jurisdiction of disputes. These decisions are likely to have a direct or indirect impact on how problems are matched with forums, with the results sometimes being political or economic decisions rather than being based on concerns of "effectiveness."

Even the brief history of the ADR movement sketched in Chapter One, tells us that each of the movement's goals -- access, efficiency and community building are not merely theoretical concepts, but they are theories of justice, based in social and political movements and on economic foundations. Cost effectiveness and efficiency, for example, are part of the business philosophy and practice of court administrators. This means that if a court system dominated the design and operation of a Multidoor Courthouse, "effectiveness" in dispute resolution might mean "cost effectiveness." On the other hand, if those who are concerned with access to justice are administering a MDC project, "effectiveness" is likely to mean the "effective" pressing of

group claims or the prevention of claims involving low income people and women from going to mediation, where their rights may be bargained away. These contradictory notions of "effectiveness" indicate that the matching of problems to dispute resolution forums is a political and economic process and will be highly influenced by who administers or controls a Multidoor Courthouse and how that control shapes the intake and referral process.

The extent to which these forces shape the Multidoor concept is evident in the particular structure of each of the Multidoor pilot projects. Each is different, even in name. Some are Multidoor Courthouses, others are Multidoor Dispute Resolution Centers. To what extent are the differences among these projects a reflection of the needs of the local dispute resolution environment and to what extent are they due to political and economic forces exerting control over the formation and implementation of the MDC for ends unrelated to community needs?

It can be said that the playing out of political and economic forces is a natural part of how needs are met in a democratic society. But, we cannot be certain that needs will shape the development of a Multidoor Courthouse, as naturally as political and economic forces. It was with this concern that I went to Minnesota.

While studying the Minnesota dispute resolution environment in more political and social detail than the Multidoor pilot projects, I found it useful to ask people in the State what they thought would happen if a Multidoor Courthouse were developed in Minnesota in the present environment. The perceptions of the people I interviewed were very similar and were confirmed by my own observations. The scenario they describe is the following.

The state and private professional organizations concerned with dispute resolution have been productive both in inventing and implementing ADR programs and in creating funding mechanisms. As in other sites where the courts or bar associations have been able to gain support and leverage funding, each of these institutions appears to have the ability and influence to administer a MDC.

Within the government, there seem to be two main actors that are influential in ADR decision making. One is made up of the group of court administrators in state, county and municipal courts, and the other main actor is the State Planning Office. Government control of a MDC would mean either vesting authority in one of these groups or developing a high level of cooperation between them.

In addition, there are innovators in the community that would likely play a role in the development of a Multidoor

Courthouse. The Mediation Center would be an obvious actor in light of its status and backing in the professional community, and the interest of its director in the Multidoor Courthouse concept.

Control over development and administration of a MDC could go to any of the above groups or some combination of them. However, if this were to occur it is unlikely that the development of a MDC would reflect the needs and interests of the many community organizations and social networks that make up the neighborhoods. This could mean that claims of low income people, minorities, women, tenants, and consumers would be shunted into alternative dispute resolution processes, when they may be more appropriately addressed in a class action suit or by individual legal representation. It may also mean that competition with the Multidoor Courthouse may prevent communities from identifying problems that can better be addressed in community building forums, such as community boards programs. Neither of these are desirable outcomes in a community that values public participation, consensus decision making and decentralization.

In order to insure that the needs of community organizations and the neighborhoods are met, I have developed the participatory planning process described in Chapter Three. While the planning process is an opportunity to discover and encourage diverse interests, it is also a format



for getting the political and economic agendas of the key stakeholders out on the table. The goal of this process is to come up with an outcome that serves the interests of as many groups as possible, minimizing the harm to any individual group.

While the above concerns persuaded me that a participatory planning process should be designed, an equally compelling argument is that participatory decision making is central to the idea of "effective" dispute resolution. The determination of what is an effective dispute resolution process may be dependent upon understanding the experience and perspective of those who both provide and receive the variety of services that surround the prevention and resolution of disputes. In the community, this means tapping the network of people who on a day-to-day basis are involved with services like legal assistance, shelter for battered women, family services, healthcare, and job training. Only by debate and planning between these groups of people will the realities of "effective" dispute resolution processing be discovered. These are the people who know from a working perspective what the dangers and advantages of mediation are; what the tradeoffs are of a group claim versus an individual claim; or what the significance is of sending a physical abuse claim to a prosecutor.

There are, of course, both strengths and weaknesses to

the planning process I have proposed. On one hand, the inclusiveness and openness of the planning structure creates flexibility. On the other hand, they open the door to co-optation and the undue influence of individuals. In Minnesota, however, it appears that there are several factors that reduce the likelihood of these problems occurring. First, there is a relative balance of power between the three participating groups. Second, there is a well respected forum perceived as neutral - the Conflict Analysis Center. Finally, there is the experience and resources of the St. Paul NIS experiment to draw upon.

The possibility that these or similar factors would not be present in other regions where a MDC is being considered makes me extremely cautious about transplanting this planning model to cities other than Minnesota. What I would like to see is this experimentation in planning take place in Minnesota, and the models created there be studied by other regions that are less inclined toward participatory planning. An example of one such model would be the jointly owned and managed "Back-up center" described in Chapter Three. The Back-up center is a forum for education, training, determining criteria for "effective" dispute resolution, and policy planning. This center has the advantage of protection of the public interest without the necessity for large scale community planning.

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