CHILD PROTECTION MEDIATION: A 25-YEAR PERSPECTIVE

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This article reviews the creation, development, and growth of child protection mediation (CPM) in the United States. Starting with a few pilot projects in the 1970s, CPM has grown throughout the country. The article traces child protection's development through the publication of the *Resource Guidelines* and Model Courts and then discusses what the necessary ingredients for a mediation program are. Mediation is then discussed from a judicial perspective. Barriers to mediation are listed, followed by a discussion of special issues that arise when developing and maintaining CPM programs. The article concludes with the observation that CPM is now recognized as a best practice by most judges and court improvement professionals and that it continues to grow.

Keywords: *child protection mediation*; *mediation*; *history of mediation*; *alternative dispute resolution*

INTRODUCTION

She was the angriest woman I had ever seen in my courtroom. She walked into the court aggressively, looking around at everyone angrily with disgust. She refused to talk with the attorney who had been appointed to represent her and ignored the court assistant who tried to explain what the court proceedings were all about. When I greeted her, she just glared at me. When I tried to explain the nature of the court proceedings, her hostility flared up as she stated, "This is all a farce. I don't want anything to do with any of you." I quickly concluded that this was a situation that I could not manage in the formal courtroom setting so I said to the assembled parties, "This case is referred to mediation." She snapped back, "I'm not doing any mediation. I don't even know what that is." I told her that I was referring the case to mediation, that she had no choice in the matter, and that the mediation was going to take place a week from today in the room across the hall. After some more back and forth, she left the room in a huff.

Juvenile Dependency Court is a busy docket, with many cases and high emotions. When I next saw this woman a week later, I had almost forgotten the ten minutes I had spent with her the week before. Yet here she was, again without her court-appointed attorney, walking into court after the mediation session I had ordered her to attend. She was a different person. She even smiled when I greeted her. The deputy county counsel (the attorney representing the children's services agency) reported that the mediation was successful and that she would recite the agreement between the parties. I asked the mother if she understood and agreed with the terms of the agreement. She did, as did the attorney for the child.

Then she spoke up. "I want to thank you, Judge, for sending me to mediation. It was a positive experience—the only one I have had in this entire process." We talked for a few more minutes and that was the last I saw of her. The case had resolved with an agreement

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for informal services and a dismissal of the petition. During the mediation, the clash of personalities between the social worker and the mother had been overcome and a cooperative agreement reached. Mediation had worked its magic again, and I had the additional pleasure of hearing a "thank you," which is a rare occurrence in child protection proceedings. My belief that mediation was an indispensable part of the child protection process was reaffirmed.

HISTORY

Not long ago there was no mediation in child protection cases. Before 1980 and the passage of the Adoption Assistance and Child Welfare Act,[1] child protection cases were rare and constituted a tiny percentage of trial court work. There was little or no creative thinking in the child protection system. One of the earliest experiments with child protection mediation (CPM) was sponsored by the National Institute for Dispute Resolution with additional funding from the National Center of Child Abuse and Neglect and the District of Columbia Department of Social Services.[2] The results of the two pilot projects (Washington, DC and Denver) were mixed, probably because the programs were voluntary and dependent upon social worker referrals.[3] The first recorded effort to introduce CPM in the court process occurred in 1983 in Los Angeles when Julius Libow, a juvenile court referee, started meeting with the parties before court hearings and talking with them. He produced excellent results and Los Angeles formalized mediation in the late 1980s.[4]

While both Florida and Connecticut developed CPM programs in the late 1980s, the major developments in court-based CPM started in California. This was a logical progression, because in 1980 California became the first state to mandate mediation in child custody proceedings.[5] This mandate resulted in the creation of a mediation culture with mediators in every one of California's 58 counties. Frequent trainings brought mediators, attorneys, and judges together to discuss best practices. The California Administrative Office of the Courts developed court rules and forms and took the lead in collecting data and evaluating outcomes.

The word spread from judge to judge around the state that mediation was working well in child custody cases. It was therefore no surprise that the California legislature passed legislation funding pilot CPM programs in Los Angeles, Orange, Santa Clara, Sacramento, and Tulare counties. The funding came from a three-dollar fee added to the cost of duplicate birth certificates. After the project was underway San Francisco and Alameda counties began CPM programs. Some of the mediation services were funded from the birth certificate fees, while in nonpilot counties some juvenile court judges borrowed mediators from the domestic relations mediation staff and moved them over to juvenile dependency court to work on child protection cases. The California legislature responded to the successes of CPM by passing a statute in 1994 encouraging the creation of CPM programs in every county and, in that same statute, encouraging parties to engage in nonadversarial procedures, such as mediation, with a goal of ascertaining maximum cooperation from all parties.[6]

Many new programs were successful, but some struggled. One of the key factors leading to success was judicial leadership. Where judges both insisted that the parties attend mediation and championed the program within the court system, success was assured. Where judges were ambivalent, the stakeholders resisted mediation, and some of those programs foundered. After all, attorneys are trained in the adversarial process, and many

preferred the courtroom to the mediation room. Additionally, many social workers were nervous about appearing in discussions with attorneys and mediators.

The mediators had minimal difficulties learning about child protection cases, and they reported that the dynamics were not so different from what they had been doing in domestic relations cases, only with more parties and somewhat more complex issues. The work, however, was the same—sitting down with parties separately or together or sequentially, providing them with an opportunity to speak from their perspective and to share their concerns, and then moving toward consensus. All programs reported settlement rates of over 70%.[7]

THE *RESOURCE GUIDELINES*

Child protection mediation emerged nationally with the writing of the *Resource Guidelines*: *Improving Court Practice in Child Abuse & Neglect Cases*.[8] This publication was the most important document ever written regarding child protection cases in the courts. It remains a key guide for courts across the country because it describes in great detail what resources a child protection court must have in order to do its work well and what the judge must do in order to accomplish the legal mandates.

But getting CPM into the *Resource Guidelines* was no small task. Indeed, when Steve Baron, MFT, an experienced child protection mediator, and I appeared before the prestigious drafting committee assembled by the National Council of Juvenile and Family Court Judges (NCJFCJ) in 1994, we were barely acknowledged.[9] No one in the room (over seventy judges, court administrators, and experts in juvenile court practice) had ever heard of mediation in child protection cases, and many expressed their skepticism vocally. The *Resource Guidelines* drafting committee concluded that CPM did not belong in the main section of the book, but that they would permit an appendix to be added addressing alternative dispute resolution techniques.[10] Shortly thereafter, the *Family and Conciliation Courts Review* published the appendix.[11]

But it was not these articles that persuaded court systems to implement CPM. Mediation started growing because judges talked with one another about what was working in their courts, and many of these judges followed the lead of their colleagues. Dissemination of CPM picked up significantly with the creation of the Model Courts Project at the NCJFCJ. Officially entitled the Child Victims Act Model Courts Project, this nationwide effort to improve how courts handle child abuse and neglect cases has brought together selected jurisdictions around the country to exchange ideas. Each jurisdiction that joins the Model Court project promises to attempt to model their court activities on the *Resource Guidelines* and to commit time and energy to improving court practice.[12]

The courts involved in the Model Courts Project[13] soon determined that CPM was a valuable process that would reduce the adversarial nature of child protection legal proceedings; produce better, longer-lasting results; and reduce the time that children remained in foster care. CPM became an important component in court improvement efforts in court after court. Throughout this period, San Jose, the county seat of Santa Clara County, California, was acknowledged by many as the model for this practice. San Jose "created one of the first child welfare mediation and family group conferencing programs in the United States; the San Jose program is now a nationally recognized model and is an accepted part of best practices."[14] Almost all Model Court members sent teams to San Jose to observe CPM, and each adopted a form of mediation for their own jurisdiction.[15] Word of mediation successes traveled quickly. Often fueled by court improvement funds,

grants, or legislative funding, CPM spread to so many jurisdictions throughout the country that the American Bar Association Center on Children & the Law reported in 2003 that "[a] majority of jurisdictions have implemented various alternative dispute resolution models."[16]

WHAT IS MEDIATION?

Mediation is not an exotic, complicated process. Mediation is about talking and exchanging ideas in an environment where the discussion is guided by a facilitator. *Webster's Dictionary* states that to mediate is "to settle a dispute as an intermediary; to bring about by serving as intermediary; to act between parties to effect an agreement; to reconcile disagreements."[17] The Santa Clara County Juvenile Dependency Court Mediation Program defines dependency mediation as

> . . . a confidential process in which specially-trained neutral persons, mediators who have no decision-making authority and make no recommendations to the court, help the family, social workers, attorneys, and others involved in the case discuss and resolve the disputes and problems sent to mediation.[18]

The goal is to develop a plan that is safe and best for the child and for all parties and that satisfies all parties.

WHAT IS NEEDED?

In order to conduct effective CPM, several fundamental resources and practices are necessary. First, skilled, trained, and culturally competent mediators must be available. The California Rules of Court (CRC) describe mediator qualifications in terms of education, experience, and training. The CRC mandate that child protection mediators possess a Master's or doctoral degree in "psychology, social work, marriage and family therapy, conflict resolution, or another behavioral science substantially related to family relationships, family violence, child development, or conflict resolution from an accredited college or university; or . . . a juris doctorate or bachelor of laws degree."[19] Their experience must include several years of work depending on their degree.[20] The CRC require completion of at least forty hours of initial dependency mediation training before or within twelve months of beginning practice as a dependency mediator.[21] The CRC also list a substantial number of topics that must be covered in the training, including the nature and dynamics of domestic violence.[22] Additionally, the CRC mandate continuing education of at least twelve hours per year.[23]

The quality of mediators is critical to the success of a mediation program for several reasons. The mediators must be skilled in facilitating discussion regarding the issues at hand. The mediators must have a sense of whether a proposed agreement is appropriate given the particular family's dynamics and available community resources. Finally, the parties must have confidence in the mediator's skills and judgment. Without that confidence, some parties and attorneys will resist referrals to mediation and will not engage fully in the process, preferring the more traditional adversarial process.

Second, mediation must be confidential.[24] The entire idea behind mediation assumes confidentiality. The participants must be able to express themselves fully in the context of their

problem-solving efforts without the fear that some of their statements will be used outside of the mediation for a different purpose. With the exception of new reports of child abuse or neglect and threats of harm to self or others which must be reported, mediation should offer the parties an environment where all ideas can be explored and all solutions can be tested with the knowledge that the only report that comes out of the mediation will be the terms of an agreement.

Third, mediation must be inclusive. Everyone with a legitimate interest in the issues addressed in the mediation should be able to participate—at least to the extent that his or her ideas are expressed. Group decision-making processes result in better, more nuanced results than when one person makes the decision.[25] Additionally, the more that family members can participate, including fathers and extended family members, the more that family strengths will be identified and the better the results will be.[26]

Fourth, the mediation process must provide sufficient time for the parties to be heard and for the problem solving to take place so that complete, detailed resolutions can be reached. My observations of CPM are that in some jurisdictions mediation is limited to an hour or even less. Given the often complex, emotionally charged nature of these cases, an hour is not enough time for the parties to tell what is on their minds, listen to what others have to say, exchange ideas, and then create safe, supportive plans that are in the best interest of children. Usually three hours is sufficient for that process to take place.[27] Often the parties will resolve the matter in less than three hours, but sometimes they will need a second session. The mediation service should have the capacity to permit an additional session.

Fifth, the mediation process must be safe for everyone. Child protection cases often involve substance abuse, domestic violence, mental health, child abuse, and similar issues. While mediators are trained to deal with interpersonal dynamics so that everyone's voice is heard in the mediation process, parties may be intimidated by other family members. These realities have led to the development of protocols and practices that enable mediation to take place even when there are issues of domestic violence or when one party has mental health challenges.[28] The court must ensure that such protocols and practices are in place when establishing a CPM program.

Sixth, once a judge has concluded that CPM should be available to the parties, educational and collaborative time must be spent with the stakeholders. Many if not all of the stakeholders, including social workers and attorneys, will resist a process with which they are not familiar. The judge needs to ensure that they are educated about the mediation process. Pre-mediation education for the family participants can also enhance the effectiveness of mediation.[29] Moreover, the judge must be the final decision maker about who participates in mediation. Until stakeholders participate in mediation and understand what can happen in the mediation room, they are likely to continue to resist the program. Often those who resist mediation the most strongly become its most ardent supporters. Finally, the more mediation is used and the more it is included in trainings, the more the stakeholders will gain confidence in the process and the more momentum will be built up within the court system. A mediation program that is used infrequently often runs the risk of becoming irrelevant to the child protection system.

EVALUATION FROM A JUDGE'S PERSPECTIVE

Judges talking to judges has been an effective means of spreading the word about CPM. Nevertheless, many judges and other professionals have wanted to know whether

CPM actually made a difference in court operations and in outcomes for children. Evaluations and judicial commentaries have provided a wealth of information.[30] In Mecklenburg County (Charlotte), North Carolina, Judge Louis A. Trosch, Jr. and his colleagues wrote how they instituted CPM and how it reduced court time and produced higher rates of satisfaction from participants.[31] Additionally, Judge Trosch presided over an evaluation process that demonstrated the superiority of mediation over the adversarial process, with higher rates of reunification after mediation occurred, significant costs savings for the court, earlier permanency for children when mediation occurred, and high praise from all professionals.[32]

In Cook County (Chicago), Illinois, Judge Patricia Martin led her court system to institute CPM in 2001. Mediation has now become an integral part of the Cook County Juvenile Dependency Court.[33] Both the description and successes of the Essex County, New Jersey, Child Welfare Mediation Program are described in a technical assistance bulletin written by the Permanency Planning for Children Department at the NCJFCJ.[34] The report stated that "the overwhelming majority of professionals believed that mediation was helpful to the family," and "the overwhelming majority of legal representatives believed that mediation was helpful to them by providing them a more effective opportunity to advocate for their clients."[35] In Santa Clara County (San Jose), California, not only the judges, but all participants in the child protection system wrote why mediation served each of their goals better than the adversarial process.[36]

The Washington, DC Family Court instituted CPM on a pilot basis in April of 1998. Since that time it has become embedded in local practice and has been evaluated by the Permanency Planning Department of the NCJFCJ. The evaluation concluded that "mediation in Washington, D.C. is effectively facilitating timely resolution of cases consistent with ASFA mandates."[37] The evaluation results included increased use of kin resources, generation of detailed case plans and services, reduction in length of time of case processing, satisfaction with the mediation process, increased proportion of cases that achieve reunification, reduced time to case closure, and permanency and maintenance of child safety.[38] Similarly, other jurisdictions have instituted CPM, evaluated its results, and concluded that it is a best practice, one that should be sustained and expanded.[39]

BARRIERS

CPM faces barriers to full implementation. The first barrier is financial. Dependency courts do not have streams of income to support their operations. Because child protection cases are state initiated, there are no filing fees to provide money for court-based services. Many mediation programs were established with court improvement money, and often the funding was only for a pilot project and only for a few years. When the three-dollar surcharge to birth certificates was removed by the California legislature, several CPM programs were unable to continue providing the service. Other courts have borrowed resources for mediators from the domestic relations sector of the court. That use of resources can work well only until the domestic relations division has so much work that it cannot afford to lend out its mediators. Until a reliable funding stream is identified, it may be difficult for many courts to institute or maintain CPM.[40]

Second, the legal culture is at odds with the mediation process. Legal training focuses on the adversarial process. In law school, lawyers and judges learn the rules of evidence,

the art of cross examination, and other adversarial tools—they rarely learn about how to settle cases and alternative dispute resolution techniques. It is no wonder that so many lawyers and judges have little interest in mediation, believing that the court process is superior to any alternative dispute resolution technique. Thus, some mediation programs have not succeeded because the lawyers refused to participate and judges did not refer cases.[41] The California legislature has attempted to address this attitude by passing a statute declaring that mediation is preferred to the adversarial process in child protection cases.[42]

Third, some argue that mediation is inappropriate for child protection cases because child abuse cannot be mediated or marginalized. This argument has been dispelled by over twenty years of practice and consistent findings that child safety is not in jeopardy with properly conducted mediation. Several protections are built into the mediation process, including participation by a guardian ad litem and/or attorney for the child, the presence of the social worker, facilitation by trained mediators who are focused on the best interests of the child, and, finally, judicial review of all proposed agreements. More importantly, everyone in the mediation process understands that the issue of child abuse or neglect cannot be mediated or marginalized. All circumstances surrounding the allegations can, however, be discussed and heard, as can all issues related to the safety and best interest of the child and the safety of the family members. Steve Baron reminds us all that "talking about issues, listening, and being heard and understood are often helpful in focusing attention on the safety and best interest of the children and reducing overall acrimony and increasing cooperation between the participants whether or not an agreement is reached."[43] Indeed, that is the power of mediation.

Fourth, mediation staff may be called on to provide several services for clients in addition to mediation, including investigation and evaluation. When a service provider is part mediator, part investigator, and part evaluator along with other duties that court administration may assign, conflicts can arise. In some courts the multiplicity of roles has been expressed by a change in job title to a more generic term such as "Family Court Specialist" or "Mediator/Investigator." A hypothesis yet to be explored is whether time pressures may result in mediation being marginalized as the staff turns to quicker resolution methods. Mediation takes time; it takes patience for the family to work through its issues and to solve the problems presented. The mediator/investigator may react to those time pressures and shorten the decision-making process by resorting to evaluation and then making recommendations to the court.[44] That process, of course, is not mediation.

SPECIAL ISSUES

A number of special issues regarding CPM deserve brief mention.

1. Most commentators cited in this article agree that a CPM program cannot simply be copied from one jurisdiction to another. The fundamentals of each mediation program may be similar, but every local legal culture will develop CPM in a different way. For example, some programs may only use mediation when all parties agree to participate in the process or only when the judge orders it.
2. CPM can be useful at any stage of a dependency case from prior to the first hearing and throughout every stage until the case is dismissed from court jurisdiction. Many

court systems limit mediation to one event in the life of a case. For example, mediation may be limited to a case plan review, a contested termination of parental rights, or a dismissal. This limitation prevents mediation from being as useful as it can be. However, if the commentators have one suggestion concerning when mediation will have the greatest impact on the life of a case, it is at the beginning. Early use of mediation will influence all subsequent actions in the case, much to the benefit of all parties and to the court.

3. Several jurisdictions use co-mediators in the mediation process. There are a number of advantages to having two mediators (preferably one man and one woman) in the room. Some clients are more comfortable talking with a person of the same gender, particularly when the issues are as emotional and serious as they are in child protection cases. As Steve Baron pointed out, some clients may not advocate well for their position. When there are co-mediators, one of the mediators can serve as the voice for that client while the other manages the mediation process.[45]
4. Many dependency courts struggle with the question of whether children should be included in the court process. The Los Angeles County Juvenile Court has led the country in encouraging as much participation as possible for children in the juvenile dependency process, including providing specially designed rooms (by Disney, no less) for children to enjoy while they are waiting and by offering transportation. Having a child's input in the mediation process can also be valuable. First, the mediation is about the child so she has the greatest interest of anyone in the room about the outcome. Second, the child has information that no one else has, and that information may be lost without her participation. Third, concerns about safety and emotional reactions from the child can be overcome by paying attention to the child's needs, having a place where the child can be when some of the conversations take place, and using simple safety precautions to avoid inappropriate contact between the child and any previously abusive adult who may be a part of the mediation process.
5. The mediation service should be located near the juvenile court. This proximity makes it more convenient for the attorneys who can do other work, including making other court appearances, while the mediator is talking with family members. It is also more convenient when an agreement is reached. This co-location also makes it easier for court security to be available to monitor the mediation process. The close location can also reduce unnecessary delays. It permits the parties to write up the agreement immediately after the session, have the attorneys review it, and then bring it into court for recitation. The formal legal document can follow. This approach can save many hours/days of waiting for the attorneys to write up a formal order.
6. Mediation does not take the judge entirely out of the process. Judges must review and approve/disapprove of all proposed agreements. Although most of these agreements are approved by the judge, on occasion the judge will question the parties about an aspect of the agreement and discover that they forgot to discuss one or more issues.
7. Judges must take the lead if CPM is to become a part of local practice. Without judicial leadership, mediation will not be implemented. It is as simple as that. In all of the articles and commentaries cited in this article, nothing stands out more clearly. After all, the juvenile court judge is the leader of the complex dependency

system comprising many types of professionals, as well as families in crisis. For everyone to agree on anything of importance is difficult to imagine. Leadership is necessary to convene the parties, to set an agenda, to work through the multiple problems that arise whenever change occurs in a court process, and to monitor the progress of the mediation program on a regular basis.

CONCLUSION

CPM should be an integral part of every juvenile dependency court in the nation. From a judicial perspective it accomplishes a number of goals. Mediation saves court time; it produces better, more detailed, nuanced, and longer-lasting results than litigated cases; it creates a problem-solving atmosphere in the court environment (an atmosphere that better serves all parties); it engages the parents in the decision-making process, thus making it more likely that they will follow any plan that they have helped draft; it reduces the time children remain in temporary care; and, finally, it shortens the time to permanency.

So why hasn't it been established in more court systems around the country? The barriers to universal use of mediation include inadequate funding for juvenile dependency courts, judicial and attorney resistance to nonadversarial cases processes, a fear that mediation will not serve the best interests of children, and the confusion that arises when a mediator serves multiple roles in the court system, including that of investigator and evaluator. The last three concerns can and have been addressed by many participants and commentators within the court system who are committed to the mediation process and work hard to ensure that it is adequately resourced and supervised. To resolve the financial barrier, it will take strong acts of political will. Leaders within the court system must persuade the legislature of mediation's value or reallocate existing court resources to fund CPM programs. Each of these methods has been attempted and succeeded in a few courts, but more time and energy need to be devoted to new strategies in order for CPM to become what it should be—an integral part of the child protection process.

POSTSCRIPT

There have been many other measures of success for me, some small, some large. There were four contested sexual abuse petitions, all resolved prior to adjudication through mediation, which persuaded me early in my career that this process could be effective no matter what the issue or when in the proceedings mediation took place. There were the contested adoption proceedings when the biological parents upon meeting the proposed adoptive parents recognized that their children would be well cared for in their new home and consented to the termination of parental rights. There was the scheduled five-day trial that the judge ordered to mediation on the day of trial. After the protests and complaints had subsided and the parties went to mediation, there was the apology from all the attorneys. Apparently, each was operating under a different set of assumptions. The mediation facilitated communication that resulted in a full settlement. Systemically, there has been a consistent statistic: 81% of cases referred to mediation resolved all issues, 10% resolved some of the issues, and 9% resolved none of the issues.[46] Now more than fifteen years after CPM began, the most satisfying result has been the reduction of acrimony among the

attorneys and the confidence from all parties that mediation will produce better, more long-lasting results than the adversarial process.[47]

NOTES

* Retired Superior Court Judge from Santa Clara County. I wish to acknowledge the assistance of Steve Baron, MFT, Kristine Van Dorsten, Senior Court Services Analyst, and George Ferrick, MFT, in the preparation of this article.

1. Adoption Assistance and Child Welfare Act of 1980, Pub. L No 96-272, 94 Stat. 500 (1980) (codified as amended at 42 U.S.C. §§ 670 et.seq.)

2. Nancy Thoennes & Jessica Pearson, Center for Policy Research, Mediation in Five California Dependency Courts: A Cross-Site Comparison (1995).

3. *Id.*

4. Julius Libow, *The Need for Standardization and Expansion of Nonadversary Proceedings in Juvenile Dependency Court With Special Emphasis on Mediation and Role of Counsel*, 44 Juv. & Fam. Ct.J. 3 (1993); *see Court-Based Juvenile Dependency Mediation in California*, Judicial Council of California, Administrative Office of the courts, Research Update, Mar. 2003 (explaining the history of the twenty-one mediation programs in California).

5. Leonard P. Edwards, *The Mediation Miracle: Lessons Learned From 25 Years of Family Mediation in California Courts*, Cal. Cts. Rev. (Judicial Council of Cal.), Spring 2006, at 18.

6. Cal. Welf. & Inst. Code § 350 (West 2008).

7. John Lande, National Center for State Courts, Mediation: Child Protection Mediation, (2000), http://www.ncsconline.org/WC/Publications/KIS_ADRMed_Trends99-00_Pub.pdf. In Santa Clara County, for example, CPM results have been recorded for over fifteen years. On average, 81% of all cases sent to mediation resolve in their entirety, 10% resolve in part, and 9% do not resolve. Moreover, only cases with significant contested issues are referred to mediation. (Santa Clara County mediation results are available from the author and from Lilly Grenz, Director, Santa Clara County Family Court Services, 191 North First Street, San Jose, CA 95113).

8. Nat'l Council of Juvenile & Fam. Ct. Judges, Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases, Reno, 1995.

9. We felt fortunate that food was not on the tables because some of it might have been thrown at us.

10. Nat'l Council of Juvenile & Fam. Ct. Judges, *supra* note 8, at 131–39.

11. Leonard P. Edwards & Steven Baron, *Alternatives to Contested Litigation in Child Abuse and Neglect Cases,* 33 Fam. & Conciliation Cts. Rev., 275, 275–85 (1995).

12. Mary Mentaberry, Office of Juvenile Justice & Delinquency Prevention, U.S. Dep't of Justice, OJJDP Fact Sheet No. 90: Model Courts Serve Abused and Neglected Children 1 (1999); NaT'l Council of Juvenile and Fam. Ct., Judges, Model Courts: Improving Outcomes for Abused and Neglected Children and Their Families (2006).

13. Initially, there were only a handful of courts involved in the Model Courts Project, but now there are over thirty-five courts engaged in this Project.

14. Nat'l Council of Juvenile and Fam. Ct. Judges, *supra* note 12 at 4.

15. *See*, *e.g.*, Louis A. Trosch et al., *Child Abuse, Neglect, and Dependency Mediation Pilot Project,* 53 Juv. & Fam. Ct. J. 67, 69 (2002); *see also* Sharon S. Townsend & Karen Carroll, *System Change through Collaboration . . . Eight Steps for Getting from There to Here*, 53 Juv. & Fam. Ct. J. 19, 24 (2002).

16. ABA Center on Children and the Law, Court Improvement Progress Report 2003 National Summary 25 (2003).

17. Webster's Universal College Dictionary 815 (2d ed. 1997).

18. Leonard P. Edwards et al., *Mediation in Juvenile Dependency Court: Multiple Perspectives,* 53 Juv. & Fam. Ct. J. 49, 49 (2002). The California Rules of Court describe child protection mediation as "a confidential process conducted by specially trained, neutral third-party mediators who have no decision-making power. Dependency mediation provides a nonadversarial setting in which a mediator assists the parties in reaching a fully informed and mutually acceptable resolution that focuses on the child's safety and best interest and the safety of all family members. Dependency mediation is concerned with any an all issues related to child protection." Cal. R. Ct. 5.518(b)(1).

19. *Id.* at 5.518(e)(1).

20. *Id.* at 5.518(e)(2) (stating at least two years of experience is required for an attorney, judicial officer, mediator, or child welfare worker in juvenile dependency court. At least three years of experience in counseling or mediation is required for other, preferably in a setting related to juvenile dependency or domestic relation).

21. *Id.* at 5.518(e)(3).

22. *Id.* at 5.518(e)(3)(A)-(K).

23. *Id.* at 5.518(g).

24. *See*, *e.g.*, Cal. Welf. & Inst. Code § 350(a)(2) (2008).

25. Leonard Edwards & Dean Inger Sagatun-Edwards, *The Transition to Group Decision Making in Child Protection Cases: Obtaining Better Results for Children and Families*, 58 Juv. & Fam. Ct. J. 1 (2007).

26. *Id.*; *see also* Nat'l Council of Juvenile & Fam. Ct. Judges, Diversion Project Matrix: A Report from Four Sites Examining the Court's Role in Diverting Families from Traditional Child Welfare Services into Community-Based Programs (1998).

27. *See* Edwards et al., *supra* note 18, at 52–55 (describing why mediation must take the time for parent's concerns to be acknowledged).

28. *See*, *e.g.*, Cal. R. Ct. 5.518(d); *see also* Leonard P. Edwards, *Achieving Timely Permanency in Child Protection Courts: The Importance of Frontloading the Court Process,* 58 Juv. & Fam. Ct. J. 2 (2007) (discussing why mediation can be safely conducted even when there are issues of domestic violence).

29. "Many programs have found that advance work with families is critical (and many found that food was also extremely important)." Joan Kathol & Bernie Mayer, Conflict Resolution in Child Welfare: Collecting the Wisdom of 25 Years of Experience, A Think Tank on Child Protection Decision Making, Columbus, September 25–26, 2007, Think Tank Summary 3 (2007), http://www.afccnet.org/pdfs/Child%20Welfare%20Decision%20Mediation%20Think%20Tank%20Final%20Report.pdf.

30. *Court-Based Juvenile Dependency Mediation in California*, Research Update (Judicial Council of Cal., Administrative Office of the Courts, San Francisco, Cal.) Mar. 2003; Denver: Center for Policy Research, Dependency Mediation in the San Francisco Courts: Final Report to the State Justice Institute (1998); Nancy Thoennes, *An Evaluation of Child Protection Mediation in Five California Courts*, Fam. & Conciliation Cts. Rev. 184, 187 (1997).

31. Trosch et al., *supra* note 15, at 67–78.

32. Mecklenburg County Child Dependency Mediation Program, Evaluation Results for Child Dependency Mediation (2001, 2002, and 2003) (2004).

33. Letter from Susan Storcel, Director of Child Protection Mediation, Circuit Court of Cook County, Illinois, to Leonard P. Edwards (Nov. 13, 2003) (on file with the author) (stating "[T]he growth of our program is astonishing. In calendar year 2003, we will have received more than 300 referrals compared to 106 in 2002. The program has been embraced by judges, most attorneys in the building and our Department of Children and Family Services and private social service agencies.").

34. Nat'l Council of Juvenile & Fam. Ct. Judges, The Essex County Child Welfare Mediation Program: Evaluation Results and Recommendations (2001).

35. *Id.* at 71.

36. Edwards et al., *supra* note 18.

37. Nat'l Council of Juvenile & Fam. Ct. Judges, Mediation in Child Protection Cases: An Evaluation of the Washington, D.C. Family Court Mediation Program 6 (2005).

38. *Id.*, at 11.

39. Nat'l Council of Juvenile & Fam. Ct. Judges, Introducing Child Permanency Mediation in New York State: Planning and Implementing a Multi-State Pilot Project (2006).

40. Gregory Firestone, *Dependency Mediation: Where Do We Go From Here?*, 35 Fam. & Conciliation Cts. Rev. 223, 223–38 (1997). ". . . [A]lmost all programs struggled with funding and sustainability and felt that the key to successful programs lay in the degree of support from courts, agencies, and the legal professionals involved." Kathol & Mayer, *supra* note 29, at 2.

41. Office of the Executive Secretary of the Sup. Ct. of Virginia, Child Dependency Mediation Report (2002), at 10, *available at* http://www.courts.state.va.us/publications/child_dependency_mediation_report.pdf; Kelly B. Olsen, *Lessons Learned From a Child Protection Mediation Program: If at First You Succeed and Then You Don't* . . . , 41 Fam. Ct. Rev. 480, 480–96 (2003).

42. Cal. Welf. & Inst. Code § 350(2) (West 2008).

43. E-mail from Steve Baron, Mediator, Santa Clara County, California, to Leonard Edwards (Apr. 24, 2006) (on file with author).

44. Both George Ferrick, an experienced mediator and senior staff member at the California Administrative Office of the Courts, Center for Families, Children & the Courts, and I have observed this trend in some California jurisdictions.

45. Edwards et al., *supra* note 18, at 50.

46. *See supra* notes 30–39 and accompanying text.

47. *See* Edwards et al., *supra* note 18, at 57–58 & 63–64.

Judge Edwards served for twenty-six years in the Superior Court, Santa Clara County, California. He served in the Family Court (domestic relations) and in the Juvenile Court. He retired in 2006.