



Volume 8

Winter 2003

The UCCR News

Margaret Wheatley to Speak at UCCR Annual Symposium

By John Kesler

On Friday morning, May 16, Dr. Margaret Wheatley will address the attendees at the Fifth Annual Dispute Resolution Symposium. Dr. Wheatley is a world renowned scholar, author, speaker and organizational consultant who has now dedicated her life to helping people - especially young people - become life affirming leaders in over 30 countries through her foundation, the Berkana Institute. Among other things, the Berkana Institute trains large numbers of leaders to be in service of communities of place by developing globally interconnected communities of

learning and practice.

Although Meg - as she likes to be called - is particularly known for her work in the field of leadership, her perspectives are grounded even more fundamentally in a faith in human goodness and the importance of conversation in community. She stresses the simplicity and power of non-technical, non-mediated conversation.

As Meg puts it: "In simple, truthful conversation, each of us has a chance to speak. We each feel heard, and we each listen well. Conversation is a natural way we hu-

mans think together. We may have forgotten this or no longer have time for each other, but it is how good thinking grows into actions that create real change."

In her recent book 'Turning To One Another', Meg asserts that we can reclaim conversation as our route back to each other and as the path forward to a hopeful future. This requires imagination, courage and faith, which are qualities potentially possessed by everyone. Her message is that now is the time to exercise them to their fullest.

Continued on Page 3

Utah State Government Creates ADR Council by Palmer De Paulis

Acting on legislation passed in the 2001 State Legislative session, Utah Governor Michael Leavitt created a Council for Alternative Dispute Resolution in the executive branch of state government. The Council is comprised of a representative from each agency of government and is charged with the mission to change the culture of interaction between government and its citizens by reducing conflicts and disputes through the use of ADR techniques, specifically mediation. The Council also seeks to promote collaboration and consensus building among state policy makers to achieve efficiencies, reduce the cost of government, and promote better outcomes.

Currently, the Council has undertaken and completed an as-

essment of conflicts that state agencies face on a daily basis. These conflicts may result in disputes between agencies, agencies and the public, and between employees and their agencies. A software application has been created to allow agencies to evaluate this information. In the next several months, the council will select at least three agencies to initiate pilot mediation programs. Training in mediation, ethics and confidentiality issues will be con-

ducted and a case management system will be developed to track the progress of the pilot programs.

Finally, an advisory committee of ADR professionals has been established to help guide this process and to ensure a strong connection between government and the ADR community. As the Chair of the Council, I have already met with the UCCR Board to discuss how to work together for the benefit of the larger ADR community in Utah.

In This Issue

Margaret Wheatley to Speak at UCCR Symposium	Page 1, 3
Utah State Government Creates ADR Council	Page 1
Reflections of a Mediator	Page 2, 5
A Response to Michael	Page 3
Evolution of Mediation Practice	Page 4
UCCR Symposium: May 16-17	Page 5

Reflections of a Mediator: By Morgan Hixson

**** The names and other identifying information have been changed to protect the confidentiality of the parties.**

At a court session, I met John and Steve. John was suing Steve for the value of four computers, and Steve was countersuing John for the amount of a check on which he had stopped payment. They agreed to mediate their dispute and this is what unfolded.

John told his side of the story like this. He went to the ABC Computer Stores, a chain of seven stores, with four new computers. He had purchased the computers from a friend who had connections with an importer of computers who normally distributed them wholesale to suppliers who then loaded them with software and sold them to specialized users. These computers were entirely lacking in software. John claimed that with suitable software, these computers would have been worth at retail \$900 apiece. He spoke with an employee at the ABC Computer Store about trading one of the computers for the installation of software in the other three computers configured so that John could sell them. The employee agreed to the trade, and the four computers were left at the store. John expected the work to be com-

pleted in a couple of weeks. Time passed, and the work was not done.

Before the completion date arrived, the ABC Computer Stores closed. The company filed bankruptcy, and the assets were sold at auction. During this process, John tried to find out where his computers were. He was unable to get any of the owners to respond. He was told that there was no record of his computers or any exchange/trade agreement. John felt left out to dry and since the bankruptcy was completed, that he had few, if any, options left. The past owners were no longer returning or responding to his calls.

John then found an ABC Computer Store that was still in business. Somehow it had not been tied to the chain that had closed. John went to the store and found three used computers for sale that belonged to an officer of the other stores and which had software installed. They were held by the store for sale on consignment. John bought the computers for \$2,100, paying with a check made out to the owner, not the store. Once home, John put the computers in storage and put a stop payment on the check. He then waited for the former company official who owned the computers to call, so he could find out where his missing computers were and what was going to be done to return them.

Steve contacted John about the cancelled check and his com-

puters. He told John that he had no information about the computers. John then filed a claim in small claims court against Steve, the only company officer he knew, and waited for his day in court.

Steve responded to John's story as follows: Steve said that the suit was not legal or fair. He was not and never had been an owner of the failed computer store. He wanted the three used computers back or the money for them. Steve said that he was sorry that John's computers had been sold with the other company assets, but there had been no record of the transaction.

Steve then spoke about how he needed the computers back or the money. He said that his life had fallen apart since the stores had closed. While he still had a job, he made a lot less money, and to complicate matters, his wife had died in an accident. Steve said that things in his life were so bad, that until the last couple of months, he could not think clearly.

John asked him about the employee that John had dealt with concerning the trade of one computer for the software for the remaining three.

Steve replied that the employee had left the store a few weeks before the chain closed and had moved to the East Coast. He acknowledged that the store re-

MEDIATOR STORIES!

This column is devoted to relating experiences of mediators. We want to hear from you and include your story. Help by sending in your narrative with changes made to protect confidentiality. We will edit for space and notify you when it will be printed. Please keep the article to 250 words or less and include your name, address, phone, email, fax and one sentence about your experience with conflict resolution.

Send your mediator story to The UCCR News, c/o Vivian Baldwin, vivbaldwin@msn.com.

In Response to Michael by Francine Mahak

Michael Zimmerman's quest to understand Muslim history and culture following 9/11 (book review in the last issue of *The UCCR News*) is most welcome. As an American who has lived among Muslims and loved them, I've yearned for more Americans to ask searching questions, about them and us, so we can understand some basics before we react—especially when the current US reactions can only inspire more terrorism.

Justice Zimmerman's review of *What Went Wrong* by Bernard Louis gives a compassionate view of Muslim frustration: "The failure of the ways of the West to take root and to produce significant improvements in the everyday lives of the people has left a deep sense of frustration." This is definitely true, but the statement reveals a slightly patronizing assumption: that the ways of the West should naturally produce improvements in other cultures. Many current opinion pieces also ignore the dignity, generosity, and wisdom characteristic of Muslim cultures—qualities that should be emulated, not "improved" on.

For a more integrated understanding, I would propose an equally relevant and fascinating book, *The Battle for God* by historian Karen Armstrong, which examines fundamentalism as a modern and growing phenomenon in all three monotheistic religions. Armstrong correctly shows the growing fundamentalist reaction among Jews, Christians, and Muslims to the modern secularization within their midst. 9/11 is simply an extreme form of a more explainable resentment towards modernization -

especially when it doesn't work and when it comes from another culture.

Whatever our intentions in "westernizing" others, something undesirable has happened in the implementation, and we'd be wise to look more closely at our actions, as they are obviously coming back to haunt us. I'd like to give an idea of how our culture actually comes across, from my experience living in Iran, a country that been subject to our "westernization." If we can see how we look to others, then we have some hope of resolving our differences with them.

Picture the "olden days" in our own country, perhaps a century ago. Then recall all the upheavals and transformations we've gone through in several generations (social, political, economic, religious, etc.) to become modern America. Now imagine trying to do all that in about half a generation instead, and you'll get an idea of how disorienting it is for a developing country. Even worse, the changes are not intrinsically theirs, but ours, and alien to all their traditions.

This is what I observed in Iran as a graduate student in the 1970s, though it applies rather broadly to modernization in many developing countries. I lived primarily among very traditional Iranians, but had (and still have) contacts with different social classes, ranging from wealthy westernized friends to families of clerics. During that time, I saw that the effects of western cultural influence were very disorienting. I

watched *Days of Our Lives* on prime-time television in Iran, and saw families grapple with the concept that this was now the ideal they were supposed to strive for (imagine even us striving for such ideals!). They admired American achievements and ideals, but felt threatened by the influence of our seemingly violent and depraved culture. (Our TV programming looks as bad to them as it does to us!) If this seems like an unfair portrayal of us, then take another look at the stereotypes we have of Arabs and Muslims! It all comes from a shared failure to seek true understanding and common ground. Now this failure has become dangerous.

In my experience, people in the Middle East don't hate us, but they do resent our superpower politics and our lack of respect and even-handedness in the region. We could certainly use a better approach than we use now, asking basic conflict-resolution questions, such as "What is your experience of the situation?" "This is how it looks to me; how does it look to you?" or "Who owns what part of this problem?"

The two books mentioned help with understanding and common ground. Most valuable of all are the questions raised by Justice Zimmerman and his real effort to find answers. Perhaps there are other good books - or good groups, or good movements out there to engage us so we can move towards resolving conflicts, instead of worsening them.

(Cont'd from front page) Margaret Wheatley to Speak

One of the great gifts of mediation is to enable people to be more fully empowered and to take greater responsibility for working through issues of mutual concern. Meg essentially takes this one step further by

explaining how to apply some basic protocols, which enable people to make a real difference by learning how to listen to one another in simple, honest, human conversation. In a sense this involves the art of medi-

ated non-mediation, which will be the topic of her comments at the Symposium.

Upcoming Events & Trainings

- *2003 UDR Basic Mediation Training. (801) 532-4841.*
 - *May 1, 2, 5, & 6. \$600 registration fee by April 18.*
 - *Sept. 4, 5, 8, & 9. \$600 registration by Aug. 22.*
- *ABA Section of Dispute Resolution Annual Conference. March 20-24, 2003. San Antonio, Texas.*
- *ACR Environmental/Public Policy Conference. April 24-26, 2003. Washington, DC*
- *2003 UCCR Symposium. May 16-17, 2003.*
- *ACR Family Section Conference. July 10-12, 2003. Denver, Colorado.*
- *UCCR Peace Tree Forum. Friday, September 12, 2003.*

UCCR BOARD ELECTIONS!

Board membership will rotate this spring, making two at-large member seats available. Please consider serving on the UCCR board. These are three-year terms with an option to run again. Nomination ballots will be mailed to all UCCR members this spring.

Evolution of Mediation Practice

by Marcella Keck

"Mediation is a process of assisted negotiation in which a neutral person or persons assists two or more parties in negotiating with each other in an attempt to reach a resolution to the conflict or issue pending between them." This statement, or something akin to it, is accepted by most, if not all, mediation practitioners. However, this seems to be where consensus ends.

Since its inception, the process of mediation has evolved to include different "styles" of mediation and an ever broader definition of the role of the mediator. The "hot topic" a few years ago was whether the role of mediator included an evaluative component - blending neutral evaluation with facilitative mediation. A more recent "hot topic" is the extent to which the mediator should or should not draft binding legal documents for the parties. The issues of mediator competency, certification, and professional qualifications continue to provide lively, if not fiery, topics of conversation at conferences and point-counterpoint articles in the literature. Sometimes, the nature of these conversations is not something we, as a community, should be particularly proud of. They are somewhat reminiscent of the conversations we observe during our "mediations from hell."

Mediation, although predating litigation by hundreds, if not thousands of years as a process, is relatively new as a professional service. The current professional practice arose from, among other things, the sense that the litigation process was not meeting the needs of the clients. It was not an uncommon feeling that the legal profession and the court system had become not a service to the clients, the "employers," but rather a self-perpetuating bureaucracy that was designed to meet the needs of the judges, the lawyers, the court administration, and the government in general, the "employees." The legal system had evolved to meet the needs of the professionals involved and not the clients. Without debating the ultimate accuracy of this perception, it is true that court systems have often initially established mediation programs primarily to address the needs of the system - to address overcrowded court dockets, to avoid imposition of programs by legislative bodies, to deal with "distasteful" cases.

The professional mediation community is now presented with the opportunity to learn from other professions both what to do and what not to do as we develop. As we debate the "hot topics" before us, let us be mindful of the paths that lead us toward processes and roles that serve the "mediators" and not the "mediated." While I don't presuppose to know the appropriate direction of the profession on the issues before us I believe that the challenge will be for us to practice within our own community the principles we try to role-model for our clients—those of self-determination and informed decision making. Our challenge will be to define what the profession includes and what it doesn't include. The establishment of our boundaries and defining who we aren't will be important to defining who we are. If there is a need, is it the mediator's role to fill it?

As the field of mediation continues to evolve, definition of who a mediator is and what a mediator does will continue to change. Whether that is a good thing or bad thing, who can say? In any event, I hope the discussion will be lively, productive, and respectful.

UCCR 5th Annual Symposium Set for May 16 & 17, 2003

The Utah Council on Conflict Resolution is pleased to announce that the 5th Annual Symposium, *An Invitation to Dialogue*, will be held May 16-17, 2003 at the Law and Justice Center in Salt Lake City.

Dr. Margaret Wheatley, an internationally recognized organizational consultant, will present this year's keynote address. The program will also include sessions on collaborative lawyering, valuation in mediation, and building an ADR practice. Chris Carlson from the Policy Consensus Initiative in Santa Fe, New Mexico will speak about implementing alternative dispute resolution in organizations and governmental agencies.

This year's program will feature the Hon. William Bohling of the Third District Court and Palmer de

Paulis from the Governor's Office, as well as a panel comprised of juvenile, state, and federal judges on how the use of ADR is affecting the judiciary now.

UCCR will announce the third UCCR Peacekeeper Award and will host the Peacekeeper Plenary, a session devoted to last year's award recipients. Michelle Hawes and Dr. Leonard Hawes, Peacekeeper honorees in 2002, will design and facilitate a session for all conference attendees on a subject of importance to them and their work as mediators.

We hope that this year's program is dynamic, informative, and provides all our members with the opportunity to network and learn from each other. Please mark your calendars and expect to receive registration materials in the mail in com-

ing weeks.

We would also like to encourage you to complete the nomination form for the 2003 Peacekeeper Award included in this newsletter. It is an immediate way to recognize the work performed by your fellow mediators each year.

After completing the nomination, mail it to Diane Hamilton, 1375 Military Way, Salt Lake City, Utah 84103. The deadline for submission is March 21, 2003.

(cont'd. from page 2) Reflections of a Mediator

cords had been poor, and many things were missing from the store inventory. Steve then admitted that he had tracked down the four computers left with the store. He knew the people who had bought them. He went on to say that they owed him some money, and so he had acquired the four computers in exchange for the debt.

I asked Steve where the computers were. He replied that they were in his car trunk.

I asked John where the three computers he had purchased were. He said that they were in storage at his home and that he had never used them. He also said that he lived only a few miles away and that it would take about eight minutes to get there.

At that moment, I restated what John and Steve's goals were

and asked if they wanted to exchange the four computers without software that Steve had in his car trunk for the three that John had at his home?

This is exactly what they wanted to do. They agreed to drop the original suit and the counter suit. They wrote the agreement for the exchange and the judge signed it. This was a dispute in which both parties received what they wanted and needed through mediation.

John and Steve walked out of court together to complete the exchange of the bike and the frames.

Contact Information

Morgan L, Hixson
800 Northcrest Drive
Salt Lake City, Utah 84103
Phone: (801) 364-3084
Email: mediator@rmci.net

Morgan graduated from the University of Utah with a degree in Organizational Psychology and mediates in business, construction, employment, and divorce, and has he has a strong corporate background

Please complete your UCCR Peacekeeper Award nomination by March 21, 2003. Send it to Diane Hamilton, 1375 Military Way, Salt Lake City, Utah 84103

The Utah Council on Conflict Resolution

THIS SANE IDEA

Let your
Intelligence begin to rule
Whenever you sit with others

Using this sane idea:

Leave all your cocked guns in a field
Far from us;

One of those damned things
Might go
Off.

Hafiz, Persian (1320 –1389)

The Utah Council on Conflict Resolution

P.O. Box 521656
Salt Lake City, UT 84152-1656

UCCR Board of Trustees

Michael Zimmerman, Chair
Michelle Hawes, Vice Chair
Carl A. Steffen, Treasurer
Michelle M. Roybal, Secretary

Jeri Allphin	Diane Hamilton
Vivia Baldwin	Dr. Leonard C. Hawes
William W. Downes Jr.	Richard McKeown
Kathy Elton	Adele Pinnock
Tamara Fackrell	Kent Scott
Brian R. Florence	Gerald Williams

*Please send your ideas or articles for the
UCCR newsletter to Diane Hamilton via email:*

dianehamilton@sisna.com

If you would like to join UCCR, please
contact Michelle Roybal
at (801) 524-6128

Visit www.uccr.net for a variety of sub-
stantive articles on dispute resolution.