



The UCCR News

Volume 12

Spring 2004

2004 UCCR Symposium: Seeking Just Resolutions

This year's annual Symposium took place on May 4 & 5, 2004. It was a great success!

We asked a few of our members to write short articles based on their impressions of the Symposium. One article is by the Pickering sisters, EvaJean and AvaJane; the other article is by Clark Naylor. We would like to thank these members for taking the time to submit these articles.

Bravo, Bravo, Bravo.
by the Pickering Sisters

We (AvaJane and EvaJean) felt the UCCR's Symposium had a rhythm and an energy that was engaging and compelling. Personally, we felt more a sense of peace and belonging this year than at the previous UCCR symposiums we have attended—more a sense of being a peer and belonging to the ADR Community than just being a symposium attendee.

Kathy Elton, Brian Florence, Michelle Roybal, and the entire 2004 Symposium Committee are to be commended for their vision and willingness to make modifications in the Symposium's format; contracting three internationally renowned experts in their individual areas of study; and selecting a symposium theme, "Seeking Just Resolutions," that really spoke to the entire ADR community.

Each speaker was a dynamic, effective communicator able to deliver an important message. We felt that we also benefitted greatly from the three plenary sessions.

We appreciated Ronalda Murphy's charming and brilliant intellectual candor when she spoke her concept of justice, and the role of law in ADR activities. We appreciated her willingness to go speak to the audience at our level, but in the process bring us to a higher level and increase our understanding to a deeper and more refined level. Her eagerness to learn from Utah's ADR community was also evident. On a personal note, we heard in her voice not only knowledge of her topic, but the emotional awareness of a person who understands justice as it relates to individuals with disabilities. We were touched by her metaphor of justice considering her mother's dilemmas with one pound of hamburger and eleven children. We truly have a new appreciation for constitutional law.

Gerald Williams' session presentation, "Dealing Ethnically with Aggressive Lawyers in Negotiation and Mediation: Three Proposed Solutions," was a concise overview of his research and work. He is a gifted teacher and lecturer. Since we have never met Dr. Williams, it was a joy to be in his presence and learn from this master. We appreciated his understanding of cogni-

tive psychology. He is a teacher who comprehends the power that systematic reflective practice has in helping students cultivate exceptional skill in negotiation and mediation. We hope to have other opportunities in the future to partake of his knowledge.

We are grateful that the symposium committee also included presenter Mitchell Hammer, Ph.D. on the program. We enjoyed learning in person his theories of intercultural communication. We especially were interested in his discussion and examples of responding to cultural and ethnic differences when resolving disputes, and also in an individual's professional and personal activities. We have never had the opportunity for formal training in this area, but our curiosity has been piqued, and we hope to study it further.

A well planned symposium agenda and skilled volunteers were key components to the success of these meetings. We feel UCCR's 6th Annual Symposium Committee was wise in holding the symposium at the Utah Law and Justice Center. Since the facility has housed the symposium three previous years, attendees are familiar with the location, the floor plan, and parking, which helps facilitate all of the transitional periods throughout the day. Holding the conference mid-week was very convenient for us due to having a weekend schedule filled with a variety of other obligations.

The longer sessions (90 minutes to 2 ½ hours) resulted in an opportunity to study topics more in depth and reduced the number of sessions and transi-

tions throughout the day. The speakers for the plenary sessions were so excellent, that we would have enjoyed a full day presentation from each. We also liked the mix of the three plenary sessions and one breakout session because we believe that building community requires time to be and work together.

Presenting the 2004 Peace Keeper Award at the symposium was a wonderful highlight of this year's symposium. We were touched that Michelle Roybal chose to reflect on the 50th anniversary of the U.S. Supreme Court's decision on *Brown vs. The Board of Education of Topeka*.

We greatly appreciate the incredible personal and professional investment of each member of UCCR's Board of Trustees and the 2004 Symposium Committee. Thank you for providing this opportunity for us to ponder justice. We had a delightful, though provoking couple of days. We feel honored to be counted as members of Utah's ADR community.

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Legislature Gives Patients More Choices For Dispute Resolution in Medical Malpractice Cases

by Michael Zimmerman

As almost anyone who has read the newspapers or watched television during the last legislative session knows, a substantial issue arose this year as a result of Intermountain Health Care having broadly sent out notices to patients that they would be required to sign binding arbitration agreements that would cover any claims for health care malpractice claims that might arise in the future.

Since 1999, Utah statutes have permitted health care providers to require mandatory arbitration of such claims. See Utah Code Ann. 78-14-17. This statute, which was reportedly the result of a compromise between the Utah plaintiffs trial bar and the defense interests, requires arbitration be before a three arbitrator panel. Health care providers have been presenting patients with these binding arbitration agreements on a scattered basis since the act's passage, without widespread reaction. However, when IHC sent out its notices to thousands of customers shortly before the commencement of the 2004 legislative session, the consequence was a public relations disaster.

Certain plaintiffs' lawyers and self-described patient advo-

cates denounced IHC and the mandatory arbitration statute. Press reports of the protests, and the claims that the process was inherently unfair to plaintiffs because it deprived them of the opportunity to present their claims to a jury, gained traction. Legislators began making noises about revisiting the issue, and perhaps doing away with the mandatory arbitration statute altogether. Negotiations between the affected interest groups ensued. The outcome was a series of amendments to section 78-14-17 which broaden the ADR alternatives for patients, and which provide statutory opportunities to mediate these disputes.

Under the amended statute, a patient still may be asked to sign an agreement to arbitrate as a condition of receiving health care, other than emergency care, as before. However, the patient may require the health care provider to engage in mandatory mediation before arbitration is commenced, and if both parties agree, may have just one arbitrator, instead of the three of the original act. In addition, if the two parties cannot agree on the third arbitrator, that person shall be selected by the two party arbitrators "from a list of individuals approved as arbitrators by the state or federal court of Utah".

Utah Code Ann. 78-14-17(1)(b)(i)(C)(II). The amendments make it clear that a claimant may demand mandatory mediation at any time before the arbitration hearing commences.

The result of the amendments passed in this legislative session should be to increase the number of mediations in the health care malpractice area. It can be assumed that health care providers will continue to press patients to sign arbitration agreements; and anyone signing such an agreement will have to be informed of their right to demand mediation. The resultant increase in mediations should both make for more work for mediators, and, perhaps more importantly, make the public more aware of what mediation is and how it differs from arbitration. Readers of this newsletter may think that this elementary distinction is widely known. However, surprisingly often, I find that even sophisticated business people confuse the two. It is to be hoped that the more people learn of mediation, the more comfortable with it they will become, and the more it will be offered as an alternative to more formal and binding dispute resolution mechanisms.

MEDIATOR STORIES!

This column is typically 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 Barbara O'Brien, info@uccr.net

Anyone wishing to obtain a copy of the UCCR Annual Report that was distributed at the Symposium should contact Barbara O'Brien at (801) 685-UCCR (8227) or

Book Review by Michele Straube

Bringing Peace into the Room: How the Personal Qualities of the Mediator Impact the Process of Conflict Resolution, edited by Daniel Bowling and David Hoffman

This book practically jumped off the shelf into my hands and begged to be read. The title – Bringing Peace into the Room – promised to explore the more spiritual or idealistic aspects of mediation that are often not addressed or acknowledged in mediations or mediator training courses. One of the editors, Daniel Bowling (first CEO of the Association for Conflict Resolution), is one of the most peace-filled and insightful men I’ve ever met, and I was sure he had a lot to teach me. The book’s format – articles by a variety of authors from different disciplines, followed by reflective practice questions – was sure to facilitate deep thinking on my part about how I could be a better mediator. The book did not disappoint.

Taken in its totality, the book offers a holistic view of mediation. The individual authors, even those who come from a legal background, acknowledge the paradigm-shifting potential of mediation over litigation or other more law-based forms of

ADR, and analyze the experience of mediating from a deeper perspective than the usual skills-based focus (reframing, paraphrasing, etc.). With a strong emphasis on the relationships and emotions between the mediating parties, and the personal qualities a mediator can bring to explore these topics, this book goes into territory that will be intriguing and potentially unsettling for many mediators comfortable with evaluative and problem-solving mediation styles. Many of the articles give shape to the transformative potential of mediation, without getting stuck in the empowerment-and-recognition structure of “transformative mediation.”

Each article’s author brings a unique, and in some instances conflicting, perspective to the topic. Some articles confirmed my own views. Others were troubling. Some authors questioned the possibility or benefit of mediator neutrality. Robert Benjamin’s article entitled “Managing the Natural Energy of Conflict” analogized mediators to the folkloric “trickster” fig-

ure, suggesting that some of the best mediators knowingly and strategically use deception to move the parties toward settlement. Regardless of the author’s perspective, however, each article raised serious and thought-provoking questions about how we practice our craft.

In her article on “Mediation and the Culture of Healing,” Lois Gold suggests that “[p]eriodically, we ought to remind ourselves why we are doing what we are doing.” This book of diverse readings gives plenty of food for such thoughts.

Michele Straube is a mediator and facilitator/designer of collaborative processes to address public policy issues. She is currently working with the Utah ADR Council to expand ADR within state executive agencies.

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Excellent insights and specific strategies were provided.

The final address was presented by Dr Mitchell R.Hammer. Though Dr. Hammer is well known in many areas of ADR and negotiation, such that credits could fill a couple of pages, for our purposes, suffice it to say that he is very knowledgeable concerning intercultural ADR situations: and that’s what he discussed. The subject was so pertinent and interesting that many wished for 2 or 3 more days of discussion. Passing by other difference factors influencing human behavior in ADR situations, Dr. Hammer’s presentation enlightened all on the huge influence of cultural preferences of communication in ADR conflicts: demonstrating to us the absolute need for mediators to be tuned in when any cultural differences occur in ADR and how to recognize the particular tune. What a hearing aid was his presentation!

After the closing of the symposium, there was a Peace Tree Dedication at the International Peace Gardens in honor of Michelle Roybal, the 2004 Award recipient. Michelle’s experience is varied and impressive; her responsibilities speak well for her expertise. Michelle’s involvement in matters of peace and ADR are really extensive, and she wears well humility and a good heart—and she’s only 26 years old! Congratulations, again, to Michelle from all of UCCR for being who she is!

Did the Symposium event achieve the Committee’s objectives mentioned earlier? Did we examine our own current notions of “justice,” what they might be, what they might also include, or forget? Has the meaning changed for us? Are we apt to be better at what we do in ADR, to make more of a difference? YES! Are we better people having been there? I am.

PEACE TREE DEDICATION

International Peace Garden

Michelle M. Roybal, Esq. – Peacekeeper 2004

by Vivia Baldwin

The International Peace Gardens hosted the fourth annual UCCR Peace Tree Dedication, May 5, 2004. Friends and peacemakers gathered in the German garden under the Linden trees to honor the 2004 Peacekeeper, Michelle Roybal. This once a year event offers the opportunity to relax within the calm of the garden, to share in the allure of planting trees, to enjoy the company of friends and to show appreciation to one of our colleagues.

Francine Mahak, Chair of the event, cordially welcomed the large crowd that included past Peacekeepers Diane Hamilton, Michelle Hawes, Dr. Leonard Hawes, Sue Petty, Brian Florence and the distinguished Symposium speakers, Professor Ronald Murphy and Dr. Mitchell Hammer. The following are excerpts from Francine's remarks. *"Planting a tree is something done around the world for celebration, food, beauty, renewal, shade and stability. Trees are consecrated as prayer trees and trees are where heaven and earth touch. In some parts of the world, people believe certain trees call forth spirits to give us inspiration and calm. Today we are planting a tree in Michelle Roybal's name to celebrate her and to celebrate the best in all of us. I have been struck by Michelle's intelligence, her fine legal mind, her ability to get things done, her friendship and her remarkable sense of humor. Indeed, I was thrilled when Michelle was announced as the 2004 Peacekeeper. In planting a tree in Michelle's honor, we hope that she and others will return again and feel the renewal and the connection to peacemaking in this International Garden that includes gardens of countries from all over the world."*

The guests were then invited to join Michelle, Sue Petty and Brian Florence as they encircled the newly planted Maple tree along the Peace Tree path. Sue and Brian, the 2003 Peacekeepers, dedicated the Peace Tree. Sue told the story of visiting Mariposa Grove, home of the Giant Redwoods in California. The Redwoods are hundreds of years old and hundreds of feet tall and yet have a shallow root system that is close to the surface of the earth. These staggering giants intertwine their roots to provide strength and support to each other. It is the collective strength that keeps them standing. She acknowledged the four Peace Trees that line a path to honor distinguished individuals, which now includes our dearly loved Michelle Roybal. However, Sue believes that underneath the trees are a root system and a vital community that represents every valued person involved in the collective strength of peacemaking.

Brian described a tree as symbolic in many respects of mediation as a process and to Michelle as an individual. A tree provides shade from heat; protection from the Sun; shelter from a storm; beauty in its continued growth; changes with the seasons and circumstances, and is a refuge and a home for others. In planting the Peace Tree, Brian said, we recognize the comfort it will bring and we expect that it will continue to grow and develop, just as we recognize this same spirit in Michelle. Brian thanked the guests for attending and invited them at their pleasure to add a handful of earth and also their thoughts and hopes to the dedication of the Peace Tree. Michelle responded by accepting the honor given her with great appreciation and awe. She then scattered the first handful of earth over the tree.

Following the dedication, people gathered again under the Linden trees for a delightful luncheon buffet, conversation and relaxation. The garden crew that was renovating the Italian garden was invited by Francine to join the party, which brought delight to everyone.

This annual event is an exquisite opportunity to mingle with our UCCR associates in the beauty and calm of a garden sanctuary and to take the reflective occasion to appreciate one of our outstanding friends and colleagues. The Peace Tree Dedication continues to be a premier occasion that invites renewal and pleasure to the members of UCCR and their guests. We encourage all members of UCCR to join us again next year.

Submit Your Nominee for the UCCR Board !

There are two seats up for election this year. We urge our members to submit the names of those who would be an asset to our organization! Details are provided in the nomination form.

Included with this newsletter is a UCCR Board Nomination Ballot, or visit our website at www.uccr.net.

UCCR Engages Vanguard Media Group to Develop Plan

by Michelle Roybal

At the turn of the calendar year, the UCCR Board hired Vanguard Media Group to conduct a research study of its Board and to help us identify some key objectives for the coming year. We wanted to strategize how to best serve our key audiences in the ADR community and general public, focusing our efforts in order to be more effective. During the months of February and March, Vanguard interviewed 11 past and current Board members about their opinions regarding these questions. They collated the responses into a report, as well as helped draft the beginning of a communications plan for UCCR to use in the years to come.

Most individuals interviewed felt that the main priority of UCCR is to offer members more information, training, and educational opportunities.

Members need continual communication about UCCR, its Board, and the organization's involvement in ADR in Utah. One of the greatest benefits mentioned by the group about being involved in UCCR is to network and interact with the variety of individuals who belong to UCCR, and we want members from all "walks of ADR" to experience this synergy as well. Finally, as a result of this survey, we want to reach out to our new members and encourage others to increase their involvement with us.

The communications plan developed by Vanguard for UCCR takes a two-tiered approach highlighting that improvement can come from enhanced internal communications with our members and expanded external communications with the ADR community and general public. At our most recent Board

meeting, it was proposed and agreed that we would move to improve three aspects of UCCR's communication over the coming year: (1) identify key additions to the UCCR website and create an ADR calendar of events for the web, (2) explore hosting monthly UCCR meetings around the state of Utah, either involving our Southern Utah chapter, our Family Mediation Section, or another constituent ADR group, and (3) consider offering student membership opportunities. In July, Board members will bring specific suggestions for each of these improvements to begin implementing over the coming year.

We look forward to continuing to update you about our progress and to receiving your input.

RUSS OSGUTHORPE RECEIVES LIBERTY BELL AWARD

May 1 has been designated by joint resolution of the United States Congress as Law Day, the official date for national celebration of our freedoms and the role of law in protecting and preserving them. Each year the Utah State Bar sponsors Law Day activities concluding with the Law Day Dinner. This year the dinner was held on May 7, 2004 and during the dinner **Russ Osguthorpe** from Utah Dispute Resolution was named as the recipient of the **Liberty Bell Award**. The Liberty Bell Award is given to a non-attorney who has made a significant difference in the justice process in the state of Utah. Russ was honored for his work with the **Small Claims Mediation Program** in Salt Lake County.

Russ Osguthorpe is a Staff Mediator and Case Manager at Utah Dispute Resolution. Russ is also the Mediation Coordinator for the Small Claims Court Mediation Program in the Third District. Russ holds a BS in Anthropology from the University of Utah and has completed the postgraduate ADR certificate program at the University of Utah, 1995. He has specialized mediation training in employment, divorce, personal injury, labor, consumer/merchant, victim/offender, landlord/tenant, medical and civil rights disputes.

Russ has been a member of UCCR and a member of the dispute resolution community in Utah for many years. His work exemplifies his commitment to the community and to assisting those in conflict to resolve their differences in a non-adversarial manner.

2004 Election—Nomination Form

Criteria for Nomination :

- The candidate must be a member of UCCR in good standing.
- The candidate must be willing to serve on a committee that supports the mission statement of UCCR. (Approximately 2 hours of service each month, in addition to attendance at Board meetings)

Mission Statement :

The Utah Council on Conflict Resolution (UCCR) is a statewide umbrella organization for all persons interested in enhancing the network of professionals performing or promoting conflict resolution in the State of Utah. The UCCR is committed to serving the community by strengthening the professionalism and integrity of the practice of conflict resolution in Utah. This will be conducted through education and participating in related public policy making.

There are two seats coming up for election this year. UCCR wishes to promote the involvement of the general UCCR membership with the Board of Trustees and to facilitate the interaction of a diverse population with the leadership of ADR in Utah. The composition of the Board of Trustees is enhanced by including multiple levels of diversity: professional background, education, gender, race/ethnicity, age, geographic location, type of ADR practiced, etc. The Board of Trustees encourages all UCCR members nominating someone to consider these factors when making their nomination.

Nominee's Name _____

Address _____

Phone _____ Email _____

ENDORSEMENTS - (3 are required; if more than 3, use the back of form)

Member Name _____ Phone _____

Member Name _____ Phone _____

Member Name _____ Phone _____

Please attach to this nomination form a biography of the nominee consisting of 200 words or less for inclusion on the election ballot. RETURN COMPLETED FORM BY JUNE 30.

**In the absence of clearly defined goals,
we are forced to concentrate on activity,
and ultimately become enslaved by it.**

Charles Coonradt in The Game of Work

The Utah Council on Conflict Resolution

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

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*Please send your ideas or articles for the
UCCR newsletter to Barbara O'Brien via email:*

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