



# The UCCR News

Volume 6

Summer 2002

## ACR Resolution on the Uniform Mediation Act Passed

The Association for Conflict Resolution conditionally approved the Mediation Act (UMA) on April 20, 2002. The act is being promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 2001. The UMA is designed for states desiring to adopt the specific substantive law regarding mediation. ACR approved the Act, subject to specific modifications that it deemed necessary to improve it. The ACR Resolution suggesting changes in the Act reads as follows:

1. **CONFIDENTIALITY:** The Act should provide

broader protection for the confidentiality of mediation communications and extend confidentiality beyond the protections provided in the UMA for judicial, administrative, arbitral or other adjudicative processes. We recommend that Section 8 of the Act be expanded to provide that mediation communications are confidential and are not to be disclosed by mediation participants outside a mediation proceeding, unless otherwise agreed to by the parties. In addition, there should be appropriate exceptions to this general rule of confidentiality for such purposes as reporting threats of violence and complying with

hope meeting laws and existing mandatory reporting requirements (as may exist for reporting abuse, neglect, abandonment, exploitation or vulnerable persons).

2. **IMPARTIALITY:** The Act should insure that parties are entitled to have a mediation conducted by an impartial mediator. We recommend that states include the bracketed language set out as Section 9(g): "A mediator must be impartial, unless after disclosure of the facts required in subsections (a) and (b) to be disclosed the parties agree otherwise."

3. **CHILD PROTECTION MEDIATION PRIVILEGE:** The Act should provide a privilege for mediation communications as permitted in the UMA. We recommend that Section 6(7) should be modified to read, "sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a child or adult protective services agency is a party unless the child [or adult] protection case is referred by a court to a mediation and a public agency participates."

**(Cont. on Page 2)**

## Barbara Ashley Phillips: Drawing on a Deeper Awareness

Barbara Ashley Phillips, the keynote speaker at the UCCR 2002 Symposium, is an inspired teacher and writer in the field of mediation. She is known for her ability to bring a measure of harmony to high conflict situations. In an interview on NPR preceding the symposium, Ms. Phillips was asked why mediation has value. She replied, "Because it provides an opportunity for people with

different opinions to explore the common ground. The common ground is a space where heart can listen and we draw on a deeper awareness to resolve conflict."

Ms. Phillips is a founding director and trainer with the non-profit North American Institute for Conflict Resolution. She has 20 years experience in mediation and training, is a graduate of

Yale Law School and served as an Assistant United States Attorney. In her keynote address at the UCCR Symposium, Barbara brought her passion and commitment to the field of mediation as she shared her personal experiences, stories and sense of humor. She expressed her respect for both mediation and the law. However, she encouraged using the "mediator mind" when in

a mediation conference and leaving the "lawyer, educator, judge or therapist mind" outside the door. "Each discipline has its appropriate mindset. Mediator-mind is a way of referring to an essential foundation for the work that should be valued and developed", she explained.

A great proponent of mediating from

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## Upcoming

### Events

- *UCCR Peacekeeper Tree Dedication Ceremony. Friday, September 13. International Peace Gardens. Salt Lake City.*
- *Victim Offender Mediation Association's Annual Conference. September 23-27. Ft. Lauderdale, Fla.*
- *Community Builder Awards. Thursday, October 24, 5:30 pm. Jewett Center for the Performing Arts, Westminster College.*
- *Association for Conflict Resolution Annual Conference. August 21-24, 2002. San Diego, CA.*
- *Regional ABA Dispute Resolution Section Conference. November 8 & 9, 2002. Phoenix, AZ.*
- *ABA Section of Dispute Resolution Annual Conference. March 20-24, 2003. San Antonio, TX.*

## UMA Act (Continued)

The modifications as listed above, in the opinion of ACR, will enhance the utility of the UMA and not detract from the uniformity of the Act. ACR believes there are additional concerns with the Act and recommends that individual states carefully review the implications of UMA provisions when considering the UMA for adoption in a given state. For assistance in this process, ACR recommends that states review the eleven UMA Principles previously adopted by ACR.

AT this time, the Board of UCCR's position that at this time, it is not prepared to endorse the spe-

cific provisions of the Uniform Mediation Act as it has been approved by the Commissioners on Uniform State Laws. The Act is controversial within the mediation community nationally. The ACR resolution quoted above sets out some of that organization's concerns.

The Board of UCCR encourages members to keep themselves informed about the Act and its evolution in states that consider it for enactment. Please contact members of the Board with your views so that the Board can evaluate the Act in light of member's concerns and can participate intelli-

## Barbara Ashley Phillips (Continued)

the heart, Barbara is quick to explain, "and that does not mean the heart as a pump". In her recent book *The Mediation Field Guide*, she emphasizes the use of reflective listening skills - those of the engaged heart. This approach allows clients far greater depth and breadth to do what they came there to do. She encouraged mediators to be true neutrals and come "empty" of preconceived answers and biases to a mediation conference. This open mind invites the "deeper awareness" necessary to help clients resolve conflict.

When Phillips commits to a project, she gives 100%. The UCCR Symposium was fortunate to hear Ms. Phillips at the opening keynote address, in a workshop "Vulnerability; Is it for You?" and as a facilitator for the early morning Mediators Round Table. (See box Mediator Round Table for additional information)

Ms. Phillips recently moved to Canada where she continues to teach and mediate through the North American Institute of Conflict Resolution. Her

unique series of TeleSeminars provide expert training by teleconference from your office. As founding Chair of the Spirituality Section of the ACR (Association of Conflict Resolution), she is fully engaged at the national level of the mediation field and will be a presenter at the ACR Conference in San Diego, California, August 2002.

Barbara graciously commended and applauded the UCCR for its leadership, educational program, and enthusiastic promotion of mediation in Utah. She welcomes your inquiries at the following;

Barbara Ashley Phillips

North American Institute for Conflict Resolution

10431 37th Avenue, Edmonton, AB, Canada T6J2H9

647 South First Street, Cottage Grove, Oregon 97424

Tel: (780) 465-1721 or (541) 742-6790 Fax: (780) 433-4163 or (208) 979-6756

Email: [events@crtraining.com](mailto:events@crtraining.com)

## Conflict Resolution: Stories, Identities, Memories & Traumas

By Leonard Hawes, Ph.D.

When we work as conflict resolvers, people come to us with stories of what happened to them and the conflicts that are pivotal to them. They are looking for ways to resolve these conflicts and move on with their lives. These stories inform us *and them* about their identities, who they know themselves to be. And these stories and identities, in turn, depend on memory, which we know to be both unique to each individual and variable over time. As memory changes, so does identity—our sense of self—as well as the stories we tell. As our stories change, so does our memory and our sense of self—our identity. The process works in both directions simultaneously. The fact that memories, stories and identities are not etched in stone for all time is what makes our work as conflict resolvers possible.

What makes our work challenging, and sometimes impossible, is when the people we work with are strongly committed to stories that position their identities as victims, usually because they have been victimized. It's important to remember at this point that what constitutes victimization is different for each of us. I experience a condition or set of circumstances as victimization whereas you might not. And when we experience ourselves—our identities—being treated unfairly, often that experience is remembered as victimization. If that experience of victimization is severe, whatever that is for each of us, it is traumatic.

Victimization and trauma are important for us to understand, appreciate and become relatively comfortable with because of how they influence many, if not most, of the conflict resolution processes for which we take responsibility. When people individually or collectively experience victimization as trauma, the past, present and future collapse into one other. The past becomes immediately present and the future becomes more of the same. For conflict resolvers, the work involves separating those tenses communicatively so the relations among them are mediatable rather than remaining im-

mediatable. In the process of creating even the slightest distance between past, present and future, stories and identities change, if ever so slightly.

Obviously, and in some instances not so obviously, immediatable conflicts belong in therapy processes rather than in conflict resolution processes. In many instances of trauma and victimization, therapeutic interventions other than communication processes are necessary. Keep in mind, however, that the United States is the most violent of developed nations on this planet. Given the rates and intensities of all sorts of violence—domestic, violence, rape, child abuse, emotional abuse, physical abuse, verbal abuse, to name only the most prominent faces of violence in the U.S.—most people living in this country, and in this state, and in our communities and neighborhoods, have experienced violence and its effects, either directly or indirectly.

Violence in any form is traumatic, to varying degrees and in different ways, for each of us. 9/11 is only the most collective and most recent of our most traumatic experiences with violence. So it makes sense to me that most of the people who come to us in our capacity as conflict resolvers have experienced terror, trauma and violence. And the shapes of those experiences become apparent in how they frame their identities in and through their stories of what brought them to work with us. Our task is to ask questions skillfully and listen ethically in ways that *encourage* them to create little distances between their present and the terrors of their past, and to commit to the possibilities of their future.

### UCCR 2002 Peacekeeper Awards Given to Len & Michelle Hawes

Dr. Leonard Hawes and Michelle Hawes each received the 2002 Peacekeeper Award on the merits of their individual contributions to the growth of mediation in Utah over the last ten years and for their joint contribution to the excellent teaching and training of many of Utah's most successful mediators through the U of U Conflict Resolution Certificate Program.

Len co-founded the U. of U. Conflict Resolution Certificate Program and has written extensively on the subject of conflict resolution theory. Michelle is currently responsible for directing the program and teaches the most of the curriculum. They both serve on the Board of Directors of UCCR. Michelle is a member of the Judicial Council Committee on ADR, and Len has served on the ADR committee of the Dept. of Professional Licensing since it beginning. Many thanks for your hard work & commitment to ADR in Utah.

## Kathy Elton

### Honored

We are very pleased to announce that Kathy Elton, Director of Alternative Dispute Resolution for the Utah State Courts has been selected as one of three individuals to receive a 2nd Annual Community Builder Award. Kathy has been a leader in bringing restorative justice principles to the Utah courts. She has designed and implemented many mediation programs that support the ability of those involved in crime to come together to seek resolution. She will be honored on Thursday, October 24, 2002, at the Jewett Center for Performing Arts, Westminster College, beginning at 5:30 PM. Kathy will be part of a panel discussion and will to share her stories of building community.

The panel discussion is free and open to the public. Light refreshments will be served prior to the event, and dinner will be served in the conservatory at a cost of \$20 in advance and \$25 at the door. Congratulations, Kathy.

**Whenever you  
have truth it  
must be given  
with love, or the  
message and  
the messenger  
will be rejected.**

**Ghandi**

## Michelle Hawes' Book Picks

Two of my favorite mediation books are:

**1. The Mediator's Handbook: Advanced Practice Guide for Civil Litigation by John W. Cooley.** Published in 2000 by the National Institute for Trial Advocacy at the Notre Dame Law School.

This book is directed to law professionals, and at the same time, it has valuable information for non-attorney mediators who want guidance in resolving complex disputes. Cooley covers both the legal details of mediation and some of the finer points of mediator technique. It is conservative and technical -- a careful and comprehensive look at mediation. This book is pricey (around \$65), but it is an excellent addition to a mediator's

professional education.

**2. Mediating Dangerously: The Frontiers of Conflict Resolution by Kenneth Cloke.** Published in 2000 by Jossey-Bass.

This book represents the opposite end of the mediation continuum from Cooley's book and is equally valuable. Rather than outlining the details of the process, Cloke is free-wheeling and broadly philosophical. He encourages mediators to be improvisational, creative and courageous in their approach to resolution. Cloke is considered to be a pioneer in broadening the current thinking about mediation. These books are wonderful to read together partly because they are such a contrast, and because they demonstrate how many ways there are to mediate, and to be a mediator.

## Collaborative Youth Project Successful

Tamara A. Fackrell

The Cooperative Communication and Alternatives to Violence for At-Risk Youth Project is a collaboration between the CCJJ, the Community Mediation Center, and the J. Reuben Clark Law School. The project sends volunteers into youth lock up facilities to teach the students communication skills and alternatives to violence.

When the project began, we wanted to teach the students six different conflict styles and skill sets for each conflict style. We expected the students to learn to handle conflict skillfully and identify which conflict resolution style is appropriate in different situations.

The program has been a success, and all of its objectives have been met or exceeded. But students and volunteers learned much more than just the conflict styles; they learned about trust, building relation-

ships, communicating in families, and making changes that allow them to be better individuals.

Sixteen law students from the J. Reuben Clark Law School volunteered over 1200 hours of service to the program. They have served as positive role models and mentors for the at-risk youth. Although at-risk students are typically difficult to work with, the volunteers found that they immediately connected with the students and were able to teach them.

At the Starbright Elementary Program, a teacher shared an experience of one student. He was having a hard time with two other students during group work. As his behavior began to escalate, he stopped himself and said, "Wait, I'm being demanding." The comment is a great example of how young students put the lessons into practice. This stu-

dent recognized what he was doing, stopped himself, and changed his method of conflict management.

One student who left the lock-up facility to return home to his parents, talked to the volunteer about his conflicts. He discussed his difficulty in avoiding arguments with them. Another student in the program advised him to use a cool down technique so that his relationship with his parents would improve.

One activity asks the kids to prioritize their lives and hypothetically give away everything but the three most precious things to them. Most students ranked their family, friends, and values like freedom, security, happiness, or religion as the three most precious things. A Slate Canyon volunteer remarked that "It was really good to see these kids struggle with giving up some of the important things in their lives. Sometimes they try and come across as very tough, but they showed they have heart and values. When asked if their actions reflected their priorities, they were able to recognize the difference between their true values and their actions.

One demonstration helps students to accept criticism. A volunteer reported that "one student played the part of the teenager in trouble during the demonstration on accepting criticism. He really got defensive during the role play, making it impossible for the parent to communicate with him. Because of the role play, he was able how in real life, he makes it equally impossible for his parents to talk to him." One volunteer reported a story of how a particular student seemed genuinely interested in learning and changing. "When we talked about asking questions, the student wrote in her journal about when she took up smoking. She said that she didn't know how bad it was for her, and that she wanted to ask her mom a lot of questions about it, but didn't dare. She

said that she later regretted her failure to ask questions, since she felt like she may have acted differently had she known more about the dangers of tobacco addiction." The student expressed a desire to work on openly communicating with her parents. It was humbling to see how earnest the student was and how eager she was to change.

The program is effective in preventing crime. The at-risk students at Slate Canyon have previously been convicted of crimes. The program works with these students to help reduce recidivism and teach them alternative behaviors. Further, the at-risk students are learning to better communicate. Many of them have difficult family lives and poor role models for dealing with conflict. This program provides volunteers who are positive role models.

Many of the students in the program are involved in the juvenile court process. Judge Kay Lindsay, a Fourth District Juvenile Court Judge, looks favorably upon the students receiving the conflict style classes. In a student hearing, Judge Lindsay asked a student to give an example of what he had learned from the Youth in Custody Program. At first, the boy gave a vague response and Judge Lindsay pushed for a specific example of learning. The boy then indicated that he learned it is important to resolve conflicts to communicate your feelings, rather than to explode, and to understand the other person's perspective. He said that he had been trying to use those skills with his mom in order to work through their conflicts. His mother, who was at the hearing, agreed that the boy had been sharing his feelings and trying to understand her perspective.

Working with these young people has been a very rewarding experience for the volunteers. The project will continue next year, and we look forward to making positive changes in the students' lives.

## **Jim Holbrook Receives Peter W. Billings Award**

James R. Holbrook, a trial attorney with the law firm of Callister, Nebeker and McCullough and a revered mediator in Utah, was honored at the Utah State Bar's Annual Meeting in Sun Valley in July. He was given the Peter W. Billings Award for his contribution to the field of Alternative Dispute Resolution.

Jim recognized the value of dispute resolution to the legal field long before ADR became widely accepted by the Utah Bar and Judiciary. He was one of the original voices that advocated for using more collaborative means to solving legal problems, and he earned the respect of lawyers and judges for his understanding and practice of mediation and arbitration. He served as a founding member of both the state and federal courts ADR committees which established the first mediation programs in the court systems.

He was a member of the Board of Directors of the American Arbitration Association, and he developed and taught the first ADR curriculum at the University of Utah Law School. He will be working full time as a Professor of Law at the UU College of Law this fall and will also teach negotiation in the University of Utah Graduate Program in Conflict Resolution. Thank you, Jim, for your foresight and advocacy for ADR.

## The Utah Council on Conflict Resolution

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*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.mediate.com](http://www.mediate.com) for a variety of substantive articles on dispute resolution.

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### The Utah Council on Conflict Resolution

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

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#### *2002 Peacekeeper Award Peace Tree Dedication*

*Please join UCCR members in honoring Dr. Leonard Hawes and Michelle Hawes by dedicating a tree in their name at the International Peace Gardens.*

**International Peace Gardens  
at Jordan Park**

**1060 South 900 West, Salt Lake City**

**Friday, September 13, 2002**

**4:00 p.m.**

*Light Refreshments will be served*

*Please R.S.V.P. to Michelle Roybal at 801-524-6128*