

# JUST RESOLUTIONS



Vol. 9, No. 3 (Issue No. 26)

Newsletter of the American Bar Association Section of Dispute Resolution

June 2004

## Get Your Passport to Atlanta Programs

The Section of Dispute Resolution is offering passports to the CLE programs in Atlanta during the ABA Annual Meeting in August. With the DR Section passport, you will be able to attend all Section Sponsored CLE programs for \$150 – a mere \$25 per program. Government Lawyers, Judges and Young Lawyers can purchase the DR Section Passport for \$75. The Dispute Resolution Section programs will be held from August 6<sup>th</sup> through August 8<sup>th</sup>.

We will feature programs on the following topics: “How to Build an International ADR Practice”, “How to Select a Mediator and How to Get Selected as a Mediator,” “Improving Corporate Governance: Is there a Role for Dispute Resolution?,” “Negotiation, Ethics & Mandatory Disclosures,” “Hot, Hotter, and Sizzlin’ Topics in Mediation,” and “The Ultimate Arbitration Update.”

We have reciprocal agreements with the International Law and Public Contract Law Sections of the ABA. See page 8-9 for the Section program in Atlanta, and visit [www.abanet.org/dispute](http://www.abanet.org/dispute) for updates to the program.

The Annual Meeting will also feature the Lawyer as Problem Solver Luncheon on Friday, August 6<sup>th</sup> from Noon – 2 PM. At this Luncheon, the ABA will honor the recipient of the 2004 Lawyer as Problem Solver Award, which recognizes attorneys who exhibit innovation and problem-solving techniques in forging creative solutions.

Ordering information can be found on the ABA web site at [www.abanet.org/annual](http://www.abanet.org/annual) or from the Section of Dispute Resolution staff office by calling (202) 662-1680.



### UPCOMING EVENTS

**August 6-8 ~ ABA Annual Meeting**  
(Georgia World Congress Center)  
**DR Section Programs & Meetings**  
(Marriott Marquis)  
**Atlanta, Georgia**

**September 29-30 ~ Fourth Annual  
Indian Tribes, Natural Resource  
Conflicts and Dispute Resolution  
Conference**  
**Minneapolis, MN**

**October 14 -15 ~ Third Annual  
National Institute on Advanced  
Mediation and Advocacy Skills  
Training**  
**Chicago, IL**

**October 22 ~ Family Matters: A  
Symposium on Preventing and  
Resolving Family and Family-  
Business Disputes**  
(Sheraton Boston) **Boston, MA**

**November 4-5 ~ Build Better  
Corporate Boards: Better Decision  
Making Through Collaboration**  
**New York, NY**

Visit [www.abanet.org/dispute](http://www.abanet.org/dispute) for updated information, or contact (202) 662-1680, [dispute@abanet.org](mailto:dispute@abanet.org).

## Fall Calendar Full of Options

The Section of Dispute Resolution is sponsoring five programs across the country this fall on topics ranging from ADR and Corporate Governance to Family Business Disputes to Indian Tribes and Natural Resource Conflicts.

On September 29-30, the *Fourth Annual Conference on Indian Tribes, Natural Resources Conflicts and Alternative Dispute Resolution* will be held at the University of Minnesota Law School in Minneapolis, Minnesota. The program will include panels on water disputes, land use issues, turning land into trust, and tribal trust funds. This conference is presented in cooperation with the Native American Rights Fund, Patton Boggs LLP, the American Bar Association Commission on Racial & Ethnic Diversity in the Profession, and the American Bar Association Section of Environment, Energy, and Resources.

On October 14-15, the ABA will hold the *Third Annual National Institute on Advanced Mediation and Advocacy Skills Training* at the Hotel Intercontinental in Chicago, Illinois. Join some of America’s leading mediators and trainers in a two-day interactive course on Advanced Mediation and Advocacy Skills Training. From preparation for mediation to impasse-breaking tips, participants will learn successful strategies and techniques used by experienced mediators and advocates. By limiting attendance, this lively program offers an unparalleled opportunity—engaging presentations, no boring speeches, short to-the-point plenary sessions and interactive small-group discussions exploring each stage of

*Continued on Page 2.*

## Fall Programs

Continued from Page 1

the mediation process. This National Institute is sponsored by the ABA CLE Division and the Section. For more information see [www.abanet.org/cle/](http://www.abanet.org/cle/).

On October 22nd the Section will present a one-day conference, **Family Matters: A Symposium On Preventing And Resolving Family And Family-Business Disputes** at the Boston Sheraton in Boston, Massachusetts. The conference will include a plenary on Difficult Conversations, presented by Patrick McWhinney and Erica Fox of the Program on Negotiation at Harvard Law School, as well as six conference sessions presented by leaders in the field. See the agenda on page 15.

On November 4-5, the Section is sponsoring a conference on **Building Better Boards**. This program will explore the intersection between corporate governance and ADR and provide practical collaborative and interest-based skills to board members, general counsel, and other corporate stakeholders. The program will held at the Cardozo School of Law in New York City. See the Section's web site [www.abanet.org/dispute](http://www.abanet.org/dispute) for more information.

A training course entitled **Mediation for Judges** will be held in Phoenix, Arizona on November 29 – December 3rd. The course will provide a highly interactive learning environment where attendees can fine-tune their mediation and negotiation skills. See the Section's web site [www.abanet.org/dispute](http://www.abanet.org/dispute) for more information.

## Mark Your Calendar 2005 Spring Conference L.A., April 14-16 Conference Proposals Due August 29

The Dispute Resolution Section of the American Bar Association is soliciting proposals for its Seventh Annual Spring Conference to be held at the Biltmore Hotel in Los Angeles, April 14-16, 2005.

Proposals must be submitted no later than August 29, 2004 and sent to: Jannice Hodge-Bannerman, American Bar Association Section of Dispute Resolution, 740 15<sup>th</sup> Street NW, Washington, DC 20005, fax 202-662-1683. Please reference *Seventh Annual Conference* on your material.

Electronic submission is encouraged. You can e-mail to [dispute@abanet.org](mailto:dispute@abanet.org). Please use the proposal form available at [www.abanet.org/dispute](http://www.abanet.org/dispute).

## Vanishing Trial

Section Chair Richard Chernick has appointed a task force to research and report on the decline in the number of civil trials in federal courts. This decline, dubbed "vanishing trial" has been discussed in a recent issue of the ABA journal as well as ABA conferences, and other meetings. The task force will discuss whether jury trials are declining and, if so, why. Some have commented that dispute resolution is in part responsible for the decline in jury trials.

The task force is being chaired by Council Member Lela Love and former Section Chair Kimberlee Kovach. The Task Force includes Richard Chernick, Robert Dobbins, John Bickerman, Homer La Rue, Marc Antonetti, Ellen M. Miller, Jim McGuire, William Baten, John Lande, Terry Trantina, Steven Ware, and Reid Meyers.

## 2004-2005 Council and Officer Recommendations

The Nominating Committee (Chair David Hoffman) met on March 16 and April 10, 2004. This year the Committee members were Jim Alfini, Danielle Hargrove, Tim Hedeem, Kim Kovach, Dan Naranjo, Richard Reuben, Wayne Thorpe, and Nancy Welsh. Jack Hanna also participated in the Committee's discussions as a resource. The Committee had, as in years past, an over-abundance of qualified people whose names had been submitted to the Committee for consideration.

The proposed nominees for 2004-2005 are:

Chair-Elect: **Robyn Mitchell**  
 Vice Chair: **John Bickerman**  
 Secretary: **Lela Love**  
 Council (3 year term): **Jack Cooley, John Lande, Linda Toyo Obayashi**  
 Council seat currently held by Lela Love (2 years): **Judy Kaleta**

### Just Resolutions

*Just Resolutions*, the newsletter of the American Bar Association Section of Dispute Resolution, is published three times a year. Articles and reports reflect the views of the individuals or committees that prepared them and do not necessarily represent the position of the American Bar Association, the Section of Dispute Resolution, or the editors of *Just Resolutions*. This publication is not related to any other entity with similar name.  
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Chair (2003-04): Richard Chernick  
 Chair-Elect: David Hoffman  
 Vice-Chair: Robyn Mitchell

Editor: Gina Viola Brown (Acting Director)  
 Managing Editor: Kyo Suh

## The Section Gets CPR Special Recognition Award

The CPR Special Recognition Award for Achievements Over the Past Ten Years was given during the CPR Institute for Dispute Resolution meeting in NYC at the Plaza Hotel on January 29th. The involvement of the Section in the multiple activities, programs and projects was recognized. Our achievements have been enhanced this past year by a heightened level of cooperation and collaboration with other organizations in the dispute resolution field and with other ABA sections. The Section Annual Report demonstrates the depth of this Section's work in the field of dispute resolution. See [www.abanet.org/dispute/annualreport20022003.pdf](http://www.abanet.org/dispute/annualreport20022003.pdf)

## The Section Selected for the ABA Diversity Honor Roll

The Section was one of five ABA sections selected for the Honor Roll compiled by the ABA Commission on Racial and Ethnic Diversity in the Profession. The Section was selected based on three Diversity projects. The Forum on Expanding Opportunities for Minorities in Dispute Resolution was held at its Spring Conference in San Antonio which was followed by increased diversity activity by major dispute resolution providers (JAMS, AAA, and CPR). The Forum was a project of the Section Diversity Committee. The Section's Environment and Natural Resources Committee spearheaded its Native American Issues and the Environment Conference now in its fourth year. Finally, Project Access ADR is a follow up activity to the Section Opportunities Forum that will offer training, mentoring, and business development to selected experienced mediators from various racial and ethnic groups underrepresented as full time neutrals. Only five of 30 ABA Sections received the award. See the full ABA Goal IX report at [www.abanet.org/minorities/ftp/goal9report04.pdf](http://www.abanet.org/minorities/ftp/goal9report04.pdf)

## Hanna on the Move

The members and staff of the Section of Dispute Resolution would like to wish a fond farewell to our Section Director Jack Hanna as he leaves the ABA to take a position with JAMS in DC. Jack's last day as Section Director was May 6<sup>th</sup>.



Section Chair Richard Chernick with Jack Hanna (left) at the farewell party.

Jack served as the immensely capable Director of the Section for more than eight years. During this time, the Section's membership grew to 9,000 members. Under Jack's dedicated leadership the Section has developed a strong publications program. We have published ten books, at least one book a year. In addition, *Dispute Resolution Magazine* is published on a quarterly basis. Jack also initiated the Section's newsletter *Just Resolutions*.

Jack was the driving force behind the Section's first Spring Conference in Boston in 1999. We expected a few hundred attendees and were overwhelmed when 750 dispute professionals registered. The Spring Conference now attracts more than 1100 attendees annually and serves as a wonderful meeting place for attorneys,

mediators, arbitrators, judges, researchers, teachers, trainers, and more.

Jack walked the talk in collaborating with other organizations. The Section worked with the National Conference of Commissioners on Uniform State Laws to draft the Uniform Mediation Act. The Section worked with AAA, CPR and other ABA Sections to revise the Code of Ethics for Commercial Arbitrators. We are currently working with AAA and ACR to revise the Model Standards of Conduct for Mediators. It was also under Jack's thoughtful leadership that the Section Council in a resolution called for the inclusion of people from all backgrounds (regardless of whether they are lawyers) as neutrals in court connected arbitration and mediation programs. In 2002, the Council passed a resolution stating that mediation is not the practice of law.

Section Chair Richard Chernick summed up Jack's impact when he said "All of our major achievements would not have happened as successfully without Jack."

Through his diligence and initiative, Jack helped Section members and staff to constantly provide more and better services to the dispute resolution field. The Section will continue, stronger than ever, because Jack worked selflessly to make the Section a leading organization within the dispute resolution field.



The Dispute Resolution Section staff with Jack at the farewell party. From left, Kyo Suh, Gina Viola Brown, Maria Gutierrez, Regina Ashmon, Jack Hanna, Jannice Hodge-Bannerman, Daniel Taggart.

## New York, New York *Fantastic, Fantastic*

The ABA Section of Dispute Resolution Conference in New York, New York was so fantastic we have to say it twice. The conference set an all time attendance record drawing 1,350 participants and featured plenary sessions that set a new standard of excellence.

The opening plenary was the 15th Annual Frank E.A. Sander Lecture entitled *Reconciliation and Reparations*. The opening plenary featured former Deputy Secretary of U.S. Treasury Stuart Eizenstat in Part I who discussed efforts to achieve justice for Holocaust victims and families. In Part II, Alexander Boraine of New York City, Founder and President of the International Center for Transitional Justice and former Deputy Chair of the South African Truth Commission appointed by Nelson Mandela, discussed the work of the Commission. He engaged in a dialogue on the efficacy of Truth Commissions and Transitional Justice with Ambassador Eizenstat and human rights advocate Professor Ziyad Motala of Howard University School of Law and a native of South Africa. Plenary Planning Co-Chair Melanie Greenberg of Washington, D.C. moderated this presentation.

Hal Abramson, co-planner of the Plenary Session on Reconciliation and Reparations remarked that "I learned much from how the prominent speakers pointedly highlighted the practical opportunities and challenges to negotiating just solutions to the unimaginable atrocities of Nazi Germany and Apartheid in South Africa. Stuart Eizenstat, who negotiated reparations for Holocaust victims and

families, and Alexander Boraine, who served as the Deputy Chair of the South African Truth and Reconciliation Commission, demonstrated the hopeful possibilities of alternatives to adjudication. Professor Ziyad Motala of Howard University reminded us of their sobering limitations as well as suggested other approaches to achieving justice."

The second plenary session focused on *Maintaining a Healthy Corporate Body: A Dialogue on Major Corporate Disputes of the Last Decade*. ABA President-Elect Robert Grey moderated a distinguished Panel that addressed some of the highest profile business disputes of the last decade. The Panel included Neal Batson, Examiner for the Enron bankruptcy; Eric Green, the mediator in the Microsoft antitrust cases; William B. Lytton, Tyco Executive Vice President; and Professor

Lynn Stout of the UCLA School of Law. Discussions covered lessons in corporate governance for management, counsel and accountants, and the role of the neutral dispute resolution professional as examiner, mediator, and independent investigator.

Finally Ambassador Richard Holbrooke was the luncheon speaker and recipient of the D'Alemberte/Raven Award, delivered a riveting foreign policy speech covering his career from Vietnam to the Dayton Accords to the Iraq war.

Other conference highlights included the second annual *Forum on Creating Opportunities for Minorities in Dispute Resolution* at which corporate and government insiders delivered the scoop on getting selected as a neutral and Judge Juanita Bing-Newton delivered an inspired keynote, additional events included the third annual Mini-Conference on Court ADR and the Legal Educators Colloquium. Don't miss out on next year's conference in Los Angeles, April 14-16, 2005.



*Ambassador Richard Holbrooke receives a warm appreciation at the Awards Luncheon during the NYC spring conference.*

Check Updates of  
DR Section Activities on  
DR Section Web Site:

[www.abanet.org/dispute](http://www.abanet.org/dispute)

**Join Discussions and Get Prompt Updates:  
Subscribe to the Section's E-mail List Services**

Open List (ADR discussions, Event notices): [adr@mail.abanet.org](mailto:adr@mail.abanet.org)

Members List (Practice tips, Job postings):  
[drsection@mail.abanet.org](mailto:drsection@mail.abanet.org)

To subscribe: send requests, with full name, to [dispute@abanet.org](mailto:dispute@abanet.org)

## Court Mini-Conference

On April 15, 2004, the Section held the third annual Court ADR Mini-Conference in New York just prior to the annual conference of the ABA Section of Dispute Resolution. More than 160 participants attended. A breakfast plenary began the morning with provocative questions and a lively discussion about maintaining the core values of mediation in the face of pressures from the court to achieve settlement.

In break-out sessions, panelists examined whether the institutionalization of ADR serves or undermines the court's goal of promoting justice, and how to make initiatives in promoting quality in court-connected mediation. Two judges and a renowned professor exchanged opposing views about the appropriateness of having judges mediate their court cases. Attendees received information and advice about maintaining panels of neutrals, improving outreach and introducing innovations in court programs, and better serving self-represented clients. The mini-conference ended with a networking lunch where participants continued the morning's discussions, shared notes with old friends, and enjoyed making new connections.

## Focus on the Family a Unique Success

Family and divorce practitioners had a unique opportunity to attend the "focus on family" sessions scheduled on Friday during the New York conference. The Family program was kicked off by Andrew Shepard, Peter Salem, David Hoffman, Paul Pearson, and Arline Rotman. These five stellar panelists provided context for the more skills oriented and individual topic workshops that followed. The opening session included an overview of trends in family dispute resolution since 1980, national family ADR court trends, changes in lawyer professional responsibility rules, and the judicial perspective on family dispute resolution.

The opening program was followed by sessions on high asset and complex spousal support issues, involving the child's voice in mediation, collaborative law, permanency planning mediation, the online family and youth coaching initiative, and mediation and domestic violence. All of the panelists provided experienced and helpful information to the sophisticated family practitioners in attendance.

## Best Materials Awarded to Mediating in the Shadow of a Different Law

The panelists for the New York Conference session entitled *Mediating in the Shadow of a Different Law* were recognized at the Friday Awards luncheon for submitting the best written materials for their session. The four panelists, Nadja Alexander (Australia), Lisa Bingham (U.S.), Julie Macfarlane (Canada) and Margaret Ross (Scotland), each prepared a paper, which represents a significant contribution towards understanding the dynamics of mediation as it intersects with the legal culture in their respective countries.



Julie MacFarland, Nadja Alexander, Margaret Ross, and Lisa B. Bingham are presented the award for the best original materials written for the conference. John Lande (center) presented the award.

## 2004 Representation in Mediation Competition

The National Champion of the Representation in Mediation Competition was the University of Cincinnati College of Law. Cincinnati team members Tracy Fowkes and Bryan Hawkins, coached by James Lawrence and Marjorie Aaron, captured the championship for Cincinnati for the second year in a row. The runner-up in a very close championship match was the team of Tonya MacBeth and Mikel Steinfeld from the Arizona State College of Law, coached by Ann Woodley. The semi-finalist teams were from University of California Hastings and Missouri-Columbia.



National Representation in Mediation Competition Champion Bryan Hawkins from the University of Cincinnati College of Law accepts the plaque from Competition Co-Chairs Paula Young and Ann Woodley. Not pictured is Cincinnati Team Member Tracy Fowkes who was unable to attend the awards ceremony.

Three sessions were also recognized with an honorable mention:

*Arbitral Power: Too Much, Too Little, Just Right?* By Richard Chernick, Bruce Meyerson and Sarah Cole.

*Whistle While You Work: The Neutral as Whistleblower?* By Steven Salch, Marjorie Aaron, Maxine Aaronson, Jerry Roscoe, Charles Carberry, Kathryn Keneally, and Jay Folberg

*Curing Conflict: Bridging the Divide Between Dispute Resolution and Health Care* By Virginia L. Morrison, Lorraine Sanchez Hayes, Dale Hetzler, Debra Gerardi.

## ADR Resources Available to Members Online

A great resource is available online to ABA Section of Dispute Resolution Members. The Division for Bar Services Library and Information Clearinghouse collects, maintains and disseminates information on issues of interest to the organized bar, its staff and volunteers. This searchable clearinghouse contains more than 14,000 individual documents in a variety of formats, and can provide access to an even greater number of materials by virtue of its affiliation with other libraries

The DBS Library and Clearinghouse charges no fees for its services and will send you materials free of charge unless the cost to copy your order exceeds \$20.00. Materials, such as the following examples, can be accessed online at <http://www.abanet.org/barserv/infoclr.html>

### Texas Bar Journal: Special issue: Alternative dispute resolution

Discusses the 1987 ADR procedures act, Family mediation, Mediation of claims involving insurance companies, Mini-trials, Moderated settlement conferences, the summary jury trial, contractual arbitration, and court-annexed arbitration.

### Mediation for the General Business Practitioner and Litigator

Between traditional negotiation and litigation fall ADR methods such as mediation, facilitation, conciliation and arbitration. Gottlieb explains types of

mediation common in business and reasons why mediation is often successful.

### The Role of Mediation and Conflict Resolution in Addressing Hate Speech & Gang Issues

This paper examines the issues surrounding conflicts arising over hate speech, and offers some conflict management approaches for dealing with the problem. It also addresses the issue of gangs and conflict management.

### Advanced Negotiation Techniques

This paper addresses the opportunities of negotiation for resolving conflicts and promotes the mutual pursuit of BATNA—the Best Alternative to a Negotiated Agreement—via the incorporation of the seven elements of negotiation success: alternatives, interests, options, legitimacy, commitments, communication, and relationship.

### Conflict Resolution and Peer Mediation Guides: Elementary, Middle, and High School

Materials developed by the New Jersey Bar Foundation Conflict Resolution Panel aimed at conflict resolution, developing listening skills, combating peer pressure, anger management and peer mediation.

### ADA Mediation Guidelines

Pamphlet developed by a work group consisting of 12 mediation practitioners, trainers and administrators, addressing issues in the areas of Program and Case Administration, Mediation Process, Mediator Training and Ethics.

Each year the ABA Section of Dispute Resolution recognizes one law school ADR organization as the Society of the Year. The Fordham University School of Law Dispute Resolution Society and Oregon Law School ADR Advocates are previous recipients of the award.

The Dickinson School of Law ADR Society was recognized for the large number of activities it engaged in over the course of the academic year, including two guest lectures, an ADR newsletter for the school, mentoring elementary schools students, and working with the school's career office to compile ADR-related job announcements.

## Resolution of Public Disputes Committee Looks for Section Members Willing to Work Outside of Their Comfort Zone

By Roger Conner and Bob Jones

Most ADR practitioners read the paper each morning and wonder: Why don't these people ever call us? They are using lousy process. No wonder the results are so bad! At a recent meeting, members of the Committee on Resolution of Public Disputes entertained the unpleasant possibility that the problem is *us*, not *them*. Maybe we aren't doing enough to let civic and governmental leaders know that we can help . . . and most of us might not know what to do if they were to call!

There are a handful of practitioners with a lot of experience, it turns out. The rest of us have none, and we need to get out of our comfort zone if we're really going to change this. To bridge these two worlds, we need a few good men and women:

We need three writers: We are looking for three people who have ADR experience that is primarily with private or intra-agency disputes, who also like to write. We will pair them with three veterans who have a good story to tell about how ADR works in settings that many of us could break into, such as local planning commissions and zoning boards, ad hoc task forces, strategic planning for local non-profits, and the like. The two will co-author an article to be published in our newsletter or magazine or elsewhere.

We need coaches: We are looking for six experienced professionals who have done many public policy interventions and are willing to talk on the phone or by e-mail for short "coaching" sessions. And we need "coachees" (OK, you come up with a better word). That is, we need six experienced professionals who are doing their first public policy gig and who are humble enough and wise enough to know that they need a coach. We'll match you up.

Anyone who is interested in one of these projects should send an email to Co-Chair Roger Conner, [rconner@sfcg.org](mailto:rconner@sfcg.org) or Co-Chair Bob Jones, [rmjones@mailier.fsu.edu](mailto:rmjones@mailier.fsu.edu).

## ABA Honors the Dickinson School of Law DR Society as Law School ADR Society of the Year

The American Bar Association Section of Dispute Resolution honored the Dickinson School of Law of the Pennsylvania State University Alternative Dispute Resolution Society as the "Law School Society of the Year" at the Awards Luncheon on April 16<sup>th</sup>. Professor Nancy Welsh, faculty advisor for the Society, accepted the award on behalf of the student members.

## Pro Bono Mini Grant Winners

The American Bar Association Section of Dispute Resolution awarded mini-grants to five pro bono and legal services programs. The grants, made possible by the JAMS Foundation, have been awarded to the Alabama Center for Dispute Resolution in Montgomery, Ala., the Eastern Virginia Legal Aid Society in Norfolk, Va., the Idaho Volunteer Lawyers Program in Boise, Idaho, the King County Bar Foundation in Seattle, and Legal Aid of East Tennessee of Knoxville, Tenn.

These five programs submitted excellent proposals describing how they will use dispute resolution programs to expand indigent legal services. According to Marc Kalish, chair of the ABA Section of Dispute Resolution Pro Bono Committee, the grant review committee had a difficult time selecting five recipients from the 36 applications submitted. The applications demonstrated a need for integrating dispute resolution services into an overall access to justice plan. According to Marc Kalish "The ABA Section of Dispute Resolution Council has endorsed a pro bono policy and we look to mediators, arbitrators, and members of the bar to support the work of pro bono and legal services agencies that provide dispute resolution alternatives to underserved populations."

The Alabama Center for Dispute Resolution was awarded a mini-grant to pursue collaboration between the Alabama Center for Dispute Resolution, the Volunteer Lawyers Program, and the 14 legal services offices in Alabama. The goal of the project is to better educate lawyers serving the underserved population about the mediation and arbitration processes by providing them information on how to screen for mediation and arbitration, how to find an available mediator or arbitrator, and how to educate and represent their clients effectively at mediation and arbitration.

Eastern Virginia Legal Aid Society received a mini-grant to work with the Dispute Settlement Center. These organizations will

recruit certified mediators (both lawyer and non-lawyer) within the Tidewater area to participate in a pro-bono mediation project that will modify the intake process for regional legal aid to ascertain amenability of matters to mediation and refer those cases to pro bono and/or community mediation resources.

The Idaho Volunteer Lawyers Program (IVLP) will use its mini-grant to expand its existing mediation program to more effectively provide dispute resolution alternatives to low-income parties in Idaho—an underserved population—and will recruit and support a panel of volunteer lawyer-mediators. This project will make dispute resolution services available to those who can benefit from using mediation as an initial step in resolving legal disputes, as well as those who have been ordered to mediation or those recommended for mediation by family court services, court assistance offices, Idaho Legal Aid Services and Volunteer Lawyer Program attorneys.

The King County Bar Foundation was awarded a mini-grant for its Landlord/Tenant Mediation Project, which aims to reduce the incidents of eviction of low-income tenants living in affordable housing through the use of alternative dispute resolution and a holistic approach to the conflicts arising between these tenants and their landlords. The project will develop and conduct separate training modules for tenants, landlords, and social and health services providers, through which they would learn about the mediation process, community resources available to address various problems underlying landlord-tenant conflicts, and their rights and responsibilities to each other.

Legal Aid of East Tennessee was awarded a mini-grant to provide mediation for parties with children who are unsuccessfully attempting to represent themselves in divorce actions where disputes related to custody, support and/or visitation. The project will recruit

mediators specifically to provide mediation for this project, develop a model program for unrepresented parents who have minor children seeking a divorce, and will combine pro se assistance and mediation in an unbundled service system to assist low-income people who do not have access to the civil justice system for a legal divorce.

As a part of this project, the ABA has created a manual for dispute resolution projects within legal services and pro bono programs. The manual will soon be available from the Section of Dispute Resolution's web site.

### The ABA House Approves the Revised Code of Ethics for Arbitrators in Commercial Disputes

The ABA House of Delegates approved the Revised Code of Ethics for Arbitrators in Commercial Disputes on Feb. 9, 2004 at the ABA annual meeting in San Antonio. Since its promulgation by the ABA and the American Arbitration Association in 1977, the Code of Ethics for Arbitrators in Commercial Disputes has been the definitive statement of ethical principles for American arbitrators. Recognizing that the 1977 Code had become unresponsive to current concerns and provided inadequate guidance in numerous respects, the Arbitration Committee of the Dispute Resolution Section convened a committee including representatives of the Ethics Committee, AAA and CPR Institute for Dispute Resolution. The committee drafted a revised code. An ABA task force consisting of representatives from the DR Section, as well as the Section of International Law and Practice, the Senior Lawyers Division, the Torts and Insurance Practice Section, and the Litigation Section convened and has issued the 2003 revised code. For a copy of the revised code, see: [www.abanet.org/dispute/commercial\\_disputes.pdf](http://www.abanet.org/dispute/commercial_disputes.pdf)

## 2004 ABA Annual Meeting – Atlanta, Georgia Section of Dispute Resolution Schedule

All CLE Programs are at the Presidential CLE Center – Georgia World Congress Center (GWCC)  
Section of Dispute Resolution Meetings are at the Atlanta Marriott Marquis (DR Staff Office: *Calgary*)

### FRIDAY, August 6

<b>8:00 – 9:00 AM</b>	<b>Committee Meetings</b> ADR Advocacy in Litigation Practice Pro Bono Strategic Communications Plan International	<b>Atlanta Marriott Marquis</b> <b>Stockholm</b> <b>Amsterdam</b> <b>Copenhagen</b> <b>TBD</b>
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<b>9:30 – 11:30 AM</b>	<b>CLE: How to Build an International ADR Practice</b>	<b>GWCC Room A315</b>
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Panelists will detail the road to building a successful international ADR Practice. They will describe the obstacles to success and the methods they used to overcome them. They will discuss how to create your signature practice, plan strategically, identify your market, and manage your practice.

*Faculty: Mike McWilliams, Baltimore, MD (moderator); David Plant, New London, NH; Arthur L. Marriott, London, Great Britain*

<b>Noon - 2:00 PM</b>	<b>Lawyer as Problem Solver Award Luncheon</b>	<b>GWCC Room B401/402</b>
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<b>2:00 – 3:30 PM</b>	<b>CLE: The Art of Selecting and Persuading Your Mediator</b>	<b>GWCC Room A315</b>
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Matching the right mediator with the right case for the right client is more than an art form, it is a critical element in settling your case. Learn what experienced litigators look for in selecting the right mediator, and how to get the best results by picking the mediator who is best suited for the case. Then learn how they proceed to sway that mediator and attempt to win that mediator over to their side. Although mediators are professional neutrals, it is clearly advantageous for litigators to persuade mediators of the merits of their case.

*Faculty: Lee Jay Berman, Los Angeles, CA; Danielle Hargrove, Dallas, TX, Steven Comen, Boston, MA*

<b>3:45 – 5:15 PM</b>	<b>CLE: Improving Corporate Governance: Is there a Role for Dispute Resolution?</b>	<b>GWCC Room A315</b>
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Panelists will discuss lessons learned from recent corporate scandals and explore whether dispute resolution could improve the long-term health of the corporation. Could decisions of corporate boards, CEOs, and general counsels of large, publicly traded corporations be improved by the participation of DR professionals? Can dispute resolution processes assuage corporate conflicts with the community and government regulators? Could ADR manage difficult conversations and conflicts between the board and a senior executive and address ethical issues before the whistle blows?

*Faculty: Greg Ewald, McLean, VA (moderator); Robert Zuckerman, Charlotte, NC; Bruce Meyerson, Phoenix, AZ; Lynn Stout, Los Angeles, CA*

<b>3:00 – 5:00 PM</b>	<b>CLE and Meeting Planning Board Meeting</b>	<b>Atlanta Marriott Marquis</b> <b>Stockholm</b>
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### SATURDAY, August 7

<b>8:00 – 9:15 AM</b>	<b>Committee Meetings</b> IP & Online DR Diversity Mediation ADR & Construction Industry Advisory	<b>Atlanta Marriott Marquis</b> <b>Amsterdam</b> <b>Stockholm</b> <b>Copenhagen</b> <b>Calgary</b> <b>London</b>
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<b>9:30 – 11:30 AM</b>	<b>Membership Meeting</b>	<b>Atlanta Marriott Marquis</b> <b>Copenhagen</b>
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<b>11:45 AM – 3:00 PM</b>	<b>Council Meeting</b>	<b>Atlanta Marriott Marquis</b> <b>Copenhagen</b>
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<b>12:30 – 1:30 PM</b>	<b>Training Committee</b>	<b>Atlanta Marriott Marquis</b> <i>TBD</i>
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**2:00 – 3:30 PM****CLE: Negotiation, Ethics & Mandatory Disclosures****GWCC Room A315**

Changes to Model Rule of Professional Conduct 1.6 in August 2003 give attorneys discretion “to reveal information relating to the representation of a client in order to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer’s services.”

Enacted in the wake of the Enron scandal and its progeny, the rule change presents a host of open questions with respect to issues of confidentiality and professional ethics. What are the possible challenges lawyers may face with respect to negotiating on behalf of their clients in light of the rule change? Does the rule change materially affect the lawyer’s ability to advance her client’s interests in settlement or deal-making negotiations? If so, does the change advance the goal of encouraging equitable, efficient, and wise agreements between negotiating parties?

These questions will be the focus of our panel where we will endeavor to discuss these matters using several hypothetical fact patterns. We will also discuss negotiator ethics more broadly to the degree they touch upon issues of confidentiality and truthfulness.

*Faculty: Robert C. Bordone, Boston, MA (moderator); Lawrence J. Fox, Philadelphia, PA; Stanley Keller, Boston, MA; Carrie Menkel-Meadow, Washington, DC*

**3:45 – 5:15 PM****CLE: Hot, Hotter, and Sizzlin’ Topics in Mediation****GWCC Room A315**

If you like to keep abreast of the latest developments in mediation, this is the panel presentation for you. An array of top experts on cutting-edge mediation topics will comment and answer your questions on the hottest and most controversial topics confronting mediation practitioners and mediation advocates today. Panelists will discuss Revision of the Model Rules of Professional Conduct for Mediators, Good Faith Participation in Court-mandated Mediation Programs, and a potpourri of other sizzlin’ mediation topics including: Mediator Credentialing, Mediation and the Unauthorized Practice of Law, Collaborative Law, and Multidisciplinary Practice. This is an amazing lineup of topics and speakers that you cannot afford to miss.

*Faculty: Lela P. Love, New York, NY (moderator); Wayne Thorpe, Atlanta, GA; Homer C. La Rue, Columbia, MD; David A. Hoffman, Boston, MA*

**5:30 – 7:30 PM****Section Reception****GWCC Room B308****SUNDAY, August 8****8:00 AM – 9:00 AM****Committee Meetings  
Arbitration  
ADR & Family Function****Atlanta Marriott Marquis  
Stockholm  
Copenhagen****9:30 AM – 12:30 PM****CLE: Ultimate Arbitration Update****GWCC Room A315**

Arbitration clauses: Enforcement, Reformation and Remedies — the devil is in the details. This program will discuss several issues at the forefront of arbitration law including primary defenses to enforcement of arbitration clauses, such as unconscionability. The panel will also consider the debate over judicial blue-penciling of arbitration clauses, judicial standards for enforcement of arbitration awards, agreements to expand judicial review of arbitration awards and the scope of arbitrator’s authority to resolve these issues.

*Faculty: Eric Tuchmann, New York, NY; Bob Davidson, New York, NY; Richard Williams, St. Paul, MN; Carlton J. Snow, Salem, OR; Calvin L. Keith, Portland, OR; John Kagel, Palo Alto, CA*

**2:00 – 3:30 PM****CLE: The Use of ADR to Resolve Civil False Claims****GWCC Room A315**

The panel will address the increasing use of alternate dispute resolution procedures to resolve Civil False Claims Act suits and investigations of fraud against the United States. The Justice Department announced last year that recoveries in such cases totaled a record \$2.1 billion for the fiscal year ending September 20, 2003, a 75 percent increase over the prior year’s recoveries. Health care fraud accounts for the lion’s share of False Claims Act recoveries, although defense procurement fraud and fraud associated with government leasing programs have also resulted in substantial recoveries over the years. The members of the panel have substantial experience in resolving Civil False Claim Act cases through ADR and they will address issues relating to the terms of the ADR Agreement, choosing a moderator, involvement of so-called Qui Tam relators, parallel processing issues, and strategies for settlement.

*Faculty: James J. McCullough, Washington, DC (moderator); John T. Boese, Washington, DC; Deborah Kant, Washington, DC; Richard W. Dana, Denver, CO; Carol N. Park-Conroy, Falls Church, VA*

*(Check for changes to the schedule at the DR Section website at [www.abanet.org/dispute](http://www.abanet.org/dispute) or obtain the final agenda from the DR Staff office at the Atlanta Marriott Marquis, Calgary room, beginning Thursday, Aug. 5, 2004.)*

## Committee Reports

### ADR and Tax Matters

The ADR and Tax Committee is continuing its efforts to encourage the use of ADR at the Internal Revenue Service and among the tax bar. Committee members have contributed a chapter on using the Internal Revenue Code to expand the pie and create value for the Section's forthcoming book on creative problem solving mediation techniques. A web page for the committee with a list of available resources is planned for the near future.

### Arbitration

The subcommittee assigned to develop a national standard for disclosure by arbitrators has not yet completed its report but it did provide an interim report to the Committee at the April meeting. The subcommittee will be focusing on five issues: when to disclose, what to disclose, duty to investigate, disclosure of prior arbitration awards, and ability of parties to waive disclosure requirements.

The subcommittee organized in response to the Council's request that it examine the issue of "creeping litigation" in arbitration completed its work and submitted its report to the Council. The subcommittee concluded that this problem can be controlled by an effective arbitrator and provided a list of eleven suggestions for an arbitrator dealing with parties who want to litigate, not arbitrate.

The subcommittee developing a standard curriculum for the teaching of arbitration in law school hopes to have a report ready by the time of the Atlanta meeting.

We will begin a program to utilize the listserv to report new arbitration cases of interest to committee members.

The Council has asked the committee to examine the issue of whether parties can seek interim relief from an arbitrator *ex parte*. This topic is under discussion in the area of international arbitration and the Council wishes to determine whether such

a policy should be adopted in the United States as well. We will be working with the Business Law and International Law Sections. The report is due by the time of the Atlanta meeting.

### Court Annexed Programs

The Court ADR Committee celebrates its progress in the projects it launched last August with funding from the William and Flora Hewlett Foundation. The Court Related ADR Materials and Resources subcommittee has made advances in conjunction with CAADRS and CRInfo to improve data and identify court ADR resources available on-line. The subcommittee is also working to explore whether or not the mediation Information Disk developed by the Virginia Mediation Network could be adapted for broader use by other court ADR programs nationally.

With invaluable consultation from PCI and the Federal Judicial Center, the subcommittee on Technical Assistance and Mentoring announced that in June it expects to kick off a project providing technical assistance via telephone, videoconferencing and on-site visits by volunteer "expert" consultants to programs who request it. Collaborating with the Section's Research and Statistics Task Force, which is compiling and analyzing the results of a survey sent to ADR court administrators, the Evaluation subcommittee plans to prepare sample instruments or other tools to increase efficiency, breadth and depth in evaluations of court ADR programs.

The subcommittees on Funding, Program Models and White Papers continue to formulate or refine their goals. Every other month, the Committee produces a review of its accomplishments and objectives. The co-chairs and members of the various subcommittees deserve praise for the advances they have made since the work began, and the Committee looks forward to the further progress in information exchange, resource enhancement, and community building that the projects promise to produce.

### Education

**Representation in Mediation Competition:** This year marks the fifth year

of the national representation in mediation competition. Led by Ann Woodley, Paula Young, and Gina Brown, the competition had 44 different schools send a total of 82 teams to 10 regional competitions, which were held in February and March, 2004. The law schools hosting the Regional Competitions were: Quinnipiac, State University of New York-Buffalo, Georgetown Law Center, William and Mary College of Law, Loyola New Orleans School of Law, University of Cincinnati, Hamline University, Pepperdine College of Law, South Texas College of Law, and the University of Idaho College of Law. The national rounds was held in April 2004 in conjunction with the Section's annual meeting in New York City (see page 5).

**Legal Educator's Colloquium:** The Fifth Annual Legal Educator's Colloquium was held in conjunction with the annual meeting of the Section on the Saturday morning of the conference. The colloquium was co-sponsored with the American Association of Law Schools and an impressive array of presenters are slated for six separate sessions.

**Boskey Essay Contest:** Awards to winners of the Boskey Essay Contest, co-sponsored with the Association for Conflict Resolution (ACR), were given to winners of the best law student work and one to the best graduate school work. Nancy Welsh oversaw this contest on behalf of the Section.

**Adjunct Committee:** A session on Resources for Adjuncts was presented at the Legal Educator's Colloquium, including presentations by Dwight Golann, Kelly Browe Olson, Jane Juliano, and Kathryn Scanlon

**Law School Chapters:** An award for Law School Chapter of the Year was presented at the Section meeting in April (see page 6).

### International

On April 17, 2004, the International Committee held its annual networking session and meeting at the Section's New York Conference hosted by Committee Chair Betty Southard Murphy and Vice Chair Marc Antonetti. The Committee

Meeting featured a discussion by Jack Toner and Eileen Hoffman, of the Federal Mediation and Conciliation Service, regarding the FMCS's efforts in the area of international dispute resolution. The Committee also heard from Michael Sher about the International Arbitration Moot with 42 law school teams in the competition in Vienna, and Sally Harpole about the "Moot East" to be held in Asia. Avi Schneebalg of Brussels, Belgium, discussed recent developments in Europe. Other longstanding committee members and new friends of the committee were heard from at the meeting. The Committee also acknowledged and expressed its gratitude to Section Director Jack Hanna for the successes he has brought to the Section over the years.

Following the networking session, Mrs. Murphy moderated a panel discussion entitled "Globalization—Pro or Con: Will dispute resolution make a difference?" Featured speakers Jerome Henry, of the Paris Bar, and Robert Baugh, of the AFL-CIO Industrial Union Council, provided lively and insightful comments on this front-page issue.

## Mediation

**Publication of *The Creative Problem Solver's Handbook for Negotiators and Mediators*:** This book will be published jointly by the ABA Section of DR and the Association for Conflict Resolution this summer. Presently the Mediation Committee has compiled more than two hundred creative techniques, submitted by practitioners of the two dispute resolution organizations or adapted from books and articles describing generic techniques for creative problem solving. The Handbook will be authored and edited by the current Mediation Committee Chair, John W. (Jack) Cooley. The Handbook is intended to serve as an idea generator that can be used before, during, and/or after a mediation or negotiation session to enhance interest satisfaction, to break or circumvent impasses, and/or to help foster issue resolution and overall agreement.

**Good Faith Requirements for Mediators and Mediation Advocates:** Vice Chair Suzanne Taylor's subcommittee prepared

a lengthy report with extensive supporting material on the subject of "good faith requirements for mediators and mediation advocates" and prepared a draft Section resolution and supporting "white paper." A panel discussion on the topic was held at the Section Conference in New York City in April 2004. The Section Council hopes to consider a Draft Resolution on the matter at the Annual ABA Meeting in Atlanta, Georgia in August 2004.

**Promotion of the ABA National Institute - Advanced Mediation and Mediation Advocacy Training:** These training programs are geared towards mediators and advocates who have been through numerous mediation sessions already, but are hoping to enhance their skill levels either as mediators or through attorney advocacy. The seminars offer a low participants-to-instructor ratio, ensuring that everyone who is interested has the opportunity of spending quality one-on-one time with experienced and successful mediators. Vice Chairs Cliff Hendler and Janet Fields are guiding the work of this project. The project sponsored the 2nd ABA National Institute on Mediation Training the Fall of 2003 in Philadelphia. The 2003 program was an extraordinary success and huge kudos go particularly to Bruce Meyerson and Peter Steenland who did the bulk of work in organizing the event. Another similar training program is scheduled for October 15 and 16, 2004 in Chicago, Illinois.

**Model Standards of Conduct for Mediators:** A Joint Committee of ABA Section of Dispute Resolution, the American Arbitration Association (AAA), and the Association for Conflict Resolution (ACR) is working on a revision to the Model Standards of Conduct for Mediators, originally adopted by the same organizations in 1994. The Joint Committee has made substantial efforts, through the website and other means to elicit input from the dispute resolution community on this project, and encourages members to continue to do. Please see the website at <http://moritzlaw.osu.edu/dr/phorum/list.php?f=5>. Public comment will continue until October 2004. Proposed revisions

may be introduced for action to the sponsors in early 2005.

## Pro Bono

Working with Section staff, the committee selected the recipients of the 2003 Pro Bono and Legal Services Dispute Resolution Mini-grants (see page 7).

## Public Contract

Over the past several months, the Public Contract Committee has jointly sponsored a number of ADR training programs with the Public Contract Law Section's Special Committee on Alternative Dispute Resolution. On November 17, 2003, the Committee co-sponsored a program entitled "Structuring, Justifying and Funding ADR Settlements." The program was chaired by Joseph M. McDade, the U.S. Air Force Deputy General Counsel for Dispute Resolution, and included panelists from Government, industry, and private law firms. This program focused on the critical steps necessary to finalizing an ADR settlement and the many things that can go wrong in this process. On February 24, 2004, the Committee co-sponsored a second ADR training program entitled "Mediation Advocacy." This program was chaired by Peter Steenland and panelists included a number of Board of Contract Appeals judges, as well as representatives from industry and law firms. This program addressed the role of the advocate throughout the mediation process and focused on the best and most effective advocacy practices in mediation. The Committee is also co-sponsoring an ADR program entitled "The Use of ADR to Resolve Civil False Claims" on Sunday, August 8, 2004, at the upcoming ABA annual meeting in Atlanta, Georgia.

## The Lawyer as Problem Solver

The Lawyer as Problem Solver Committee presented another round of teaching theory and skills to law school teachers at the Legal Educators Colloquium, part of the ABA Dispute Resolution Section Spring Conference in New York City. This year at the Lawyer as Problem Solver session, Professor Julie Macfarlane of the University of Windsor School of Law presented a syllabus and exercise designed to explore the role of the lawyer

as problem solver. Professor Robert Seibel of CUNY School of Law engaged participants in an exercise designed to explore and build value-creating collaboration. And Professor Lynn Cohn of Northwestern University School of Law reviewed various providers of exercises and simulations to promote the Lawyer as Problem Solver. Simulations and exercises chosen for publication at the Legal Educators Colloquium will be available for educational use and can be downloaded from the Section of Dispute Resolution website.

The Lawyer as Problem Solver Committee is reviewing the nominations for the annual Lawyer as Problem Solver Award to be presented at the ABA Annual Meeting in Atlanta in August.

## Training

**Nationwide Master ADR Training List:** The Training Committee, with help from several local volunteers and members of ACR, has assembled the first ever Nationwide Master ADR Training List, listing all of the ADR trainings offered throughout the entire country. This list is soon to grow to include ADR trainings all over the world. The committee built this list by setting up a network of volunteers to act as “point people” in their respective state, region, or country, each of whom assembled the list of local ADR trainings. Vice Chair Melanie Bragg worked closely with Chair Lee Jay Berman and coordinated 80 plus volunteers and their data. To see the new Master Training List, please visit the Section website at [www.abanet.org/dispute/mastertraining.xls](http://www.abanet.org/dispute/mastertraining.xls)

**Arbitration Training Institute:** This joint effort was spearheaded by Chair Lee Jay Berman and Karen Smith, Vice Chair of Arbitration Training Programs, working with Section Chair Richard Chernick, Paul Dubow and others from the Arbitration Committee to offer the First Annual Arbitration Training Institute. This National Institute, a comprehensive training in commercial and employment arbitration for newer arbitrators and arbitration advocates, was a four-day training on May 19-22 at Golden Gate University in San Francisco. The faculty included top arbitrators and educators

from all parts of the country. The training provided hands-on, practical skills that graduates can use immediately in their arbitration practice.

**3<sup>rd</sup> Annual Mediation National Institute:** The 2003 Institute held in Philadelphia offered unique opportunities for neutrals, advocates and corporate counsel to interact and share perspectives on the various issues encountered in mediation. The training included plenary sessions led by national leaders (neutral, corporate and advocate representatives), followed by discussion sections that allowed for smaller group facilitated discussions on the topics presented. The 2004 Institute will be held in Chicago on October 14-15. For more information, please visit [www.abanet.org/cle/programs/n04mst1.html](http://www.abanet.org/cle/programs/n04mst1.html)

**Maximize Your Mediations!:** Last June, the committee held “Maximize Your Mediations!” program (“Meet The Mediators” program) for the litigators in Philadelphia. Co-sponsored by the Pennsylvania Bar Institute, the Pennsylvania Bar Association and the Philadelphia Bar Association, the presentation was very well received, and gave the local neutrals and judges great exposure to the litigation community. The location was especially timely, as Pennsylvania is just launching its first ever court-annexed mediation program in an attempt to get a handle on its medical malpractice issues. This year, the Training Committee is planning to host two such programs, one in Seattle and the other in either Chicago or Detroit. If you are interested in assisting with these programs, please contact Lee Jay at [leejay@mediationtools.com](mailto:leejay@mediationtools.com).

**The Art of Selecting and Persuading a Mediator:** The Training Committee, along with the Section’s Diversity Committee and its Chair, Danielle Hargrove have put together a panel presentation for the ABA Annual Meeting at the Georgia World Congress Center in Atlanta on August 7, 2004. The panel includes mediators Hargrove and Berman, and two top litigators, Steven Comen of Boston’s Goodwin Procter for the defense perspective, and Randy Freking of

Cincinnati’s Freking & Betz for the plaintiff’s side. It will explore the ways in which litigators influence, persuade, sway, spin and cajole that mediator in an attempt to maximize their clients’ outcomes.

**International Training Sub-Committee:** The Training Committee is proud to announce the formation of a new sub-committee for International Training. To join, please contact Lee Jay at [leejay@mediationtools.com](mailto:leejay@mediationtools.com). We already have several new members from the Annual Conference in New York, and look forward to creating opportunities to train people in ADR internationally.

**Order form for Free Section Materials:** Attention ADR Speakers and Trainers: please remember that the order form for ordering ABA DR Section materials for distribution to your students or attendees is still online at the Section web site at [www.abanet.org/dispute/orderformforsectionmaterials.doc](http://www.abanet.org/dispute/orderformforsectionmaterials.doc). When you are going on a speaking engagement or training in a course, please plan ahead by visiting this page and completing the order form for your supply of free brochures, event flyers, publications, and Dispute Resolution Magazines for your distribution.

## Join the Section Committees

Section committees provide the best ways for members to get actively involved in Section activities. For information on specific committees, please contact the Section office, 202-662-1680. A list of committees can be viewed at [www.abanet.org/dispute/committees.html](http://www.abanet.org/dispute/committees.html)

## Did you renew your membership?

If you have not done so yet, please renew your DR Section membership to avoid interruption in member services. Call ABA Service Center at 800-285-2221.

## **Mediator Practice Tip: Experiment with New Ground Rules**

By John W. (Jack) Cooley

### Practice Tips

Experienced mediators have made their opening statement so many times, they can practically recite it in their sleep. After awhile the whole drill of explaining the mediation process, the mediator's style, and the expectations of participation become routine. Add some spice to your opening statement to make the mediation more stimulating for yourself and the participants by experimenting with new ground rules from time to time. Acquired from other experienced mediators, such ground rules may encourage communication between counsel and the parties and aid problem solving. A few of these special ground rules are described below.

**Creativity.** A growing number of mediators in their opening statements tell the parties and their counsel that they have "the freedom to be creative." This statement can have a liberating and empowering effect on all the participants in the mediation. It allows them to break free from the client-muting bondage of litigation and to think of ways to resolve the dispute that satisfy their respective true interests and needs. Many people who attend mediation sessions have never been told this statement before – not by a lawyer anyway. In some situations, you may have to give examples of what you mean about being creative. Sometimes it helps to explain how disputants have reached win-win solutions in other cases that you have mediated. The success of disputants in other cases gives the disputants in your case the confidence to try to think and problem solve in new ways. In many mediations that I have conducted, this simple statement has produced amazingly creative results. In one complex patent matter, the parties and their counsel began the session in an extremely competitive manner. After I told them that they had the "freedom to be creative" and gave them examples, in caucuses, of how they could do business together with respect to products that did not compete in the marketplace, they agreed to meet in a joint session and discuss the prospect of a world-wide distributorship agreement. A few million dollars were at issue in the patent litigation, but with the prospect of this new business arrangement, both parties had the potential to make tens of millions of dollars in succeeding years. It was the kernel of a super-optimal solution. In about ten minutes, the party representatives asked their litigation counsel to leave and the corporate counsel stayed to work out a possible creative business solution. After about ten more minutes, the discussion was proceeding so amicably, I asked whether they needed my services any longer, to which they replied that they didn't. I was very pleased with their progress, and left.

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*John W. (Jack) Cooley is the current Chair of the Mediation Committee of the ABA Section of Dispute Resolution and a founding member of Judicial Dispute Resolution, Inc. in Chicago, Illinois.*

**Questioning and responding to questions.** Some mediators also tell the parties in their opening statements that any party or counsel can ask any question that they wish of any party or counsel, but that no party or counsel has to answer any question or give a reason for not doing so. The ground rule also applies to any question posed by the mediator either in the joint session or in caucus. The purpose of this ground rule is to encourage the participants to seek and provide information that will be helpful to them in jointly formulating a solution to the dispute. By the same token the ground rule permits participants to whom questions are directed not to answer, thereby protecting any privileged information or information related to negotiation or litigation tactics or strategies. The ground rule encourages maximum free exchange of information while preserving overriding needs of certain parties for confidentiality. It also implicitly guarantees that they are the owners of the process and that the process should not be allowed to harm them should they decide to continue to litigate the dispute.

In many mediations that I conduct, parties and counsel take advantage of this opportunity to acquire new information about the dispute – especially in cases where there has been minimal formal discovery. The key, though, is that a party or lawyer, does not have to provide any information requested, nor give reasons for declining. Very often parties decline to provide information because they want to discuss the matter with me in caucus. In some instances after discussing the matter with me privately, they decide that the information will ultimately have to be disclosed in formal discovery, and therefore authorize me to disclose the information.

**Flexible communication formats.** Some mediators emphasize that the participants should suggest to the mediator communication formats as they sense a specific need for them. For example, certain participants, at particular times, may sense a need to caucus with certain other participants. Counsel may see a need to caucus with their respective clients. They may sense, a need to have a counsel-only caucus or a caucus with only all counsel and the mediator present, or a caucus with the only all parties and the mediator present. Some mediators encourage these suggestions, and then implement such communication formats with the concurrence of all parties. In one mediation of an international business dispute, the parties on one side of the case could not speak English. Each side gave lengthy and laborious opening statements that were, frankly, not helpful to resolution. Eventually, before we were about to proceed to caucusing, the American lawyer representing the European clients wisely suggested a different communication format. He thought it would be more efficient and advantageous if the parties and the interpreter met together by themselves without the lawyers. Everyone agreed, and within about an hour, the parties and the interpreter emerged from the conference room smiling and the attorneys and I knew what that meant. The attorneys discussed some details about the settlement agreement and the disputing parties went to dinner together. Often it is the ground rules of the mediation process that produces successful outcomes.


 ADR NEWS

### Consultations for Legislatures

The National Conference of State Legislators and the Policy Consensus Initiative are offering consultations with legislatures and conducting workshops on ways to use deliberative processes with citizens. The consultations and workshops also focus on how to hold meaningful consensus-building meetings. Contact Bruce Feustel at NCSL (303-856-1399) or PCI Executive Director Chris Carlson (503-725-9096).

### Virginia Mediator Competence

Three major mediation organizations in Virginia are promoting Mediator Peer Consultation (MPC), a project that gets mediators together in small groups to reflect on critical moments in their cases. Contact Jeannette P. Twomey, (703) 757-7364.

### Community Mediation Grants

The National Association for Community Mediation (NAFCM) awarded mini-grants to 32 community mediation centers in 2003. The mini-grants were awarded in seven different focus areas. Contact: (202) 667-9700, [jgalindo@nafcm.org](mailto:jgalindo@nafcm.org).

### Arbitration Workshop in Nigeria

The Nigerian Attorney General and Minister of Justice, as well as the Chartered Institute of Arbitration and the Regional Center for International Commercial Arbitration are sponsoring a Workshop on Alternative Dispute Resolution in Africa on July 5-6, 2004. Contact: 234-[0]9-3143000.

### UpToParents.org Expands

Charles Asher, the 2003 recipient of the ABA's "Lawyer as Problem-Solver Award," was recognized for developing [www.UpToParents.org](http://www.UpToParents.org), a free and uniquely interactive website for divorcing and divorced parents to focus on their children's needs as a road out of conflict. A parallel site, [www.ProudToParent.org](http://www.ProudToParent.org), offers a similar free resource to never-married parents in paternity disputes.

Professionals wanting a better understanding of the websites can visit the introductory memo on the Professionals' Corner link on any of the websites. The memo includes sample court orders and attorney and mediator correspondence referring parents to the websites. They can also contact Asher at [Charlie@Freedom22.org](mailto:Charlie@Freedom22.org) to request free copies of a short introductory CD as well as brochures about the websites.

### NAF's New Jersey Contract

The National Arbitration Forum has been appointed to the No-Fault Insurance Dispute Contract for the State of New Jersey. Under this contract, NAF will administer approximately 2,000 cases per year. Contact: (651) 631-1105.

### New How Arbitration Works

BNA Books has released the sixth edition of *Elkouri & Elkouri: How Arbitration Works*. The book explores the workings of labor arbitration and the range of issues that confront parties and arbitrators. Contact (800) 960-1220.

## Member News

### Award for Harry Mazadoorian

Harry N. Mazadoorian is the 2004 recipient of the Connecticut Law Tribune's Service to the Profession Award recognizing "many years of accomplishments and Contributions." The award was presented at an awards ceremony on May 19<sup>th</sup>.

### New Position for Berman

Lee Jay Berman has been appointed the new Director of the Mediating the Litigated Case program at Pepperdine Law School's Straus Institute for Dispute Resolution.

### Award for Kenneth Gack

Kenneth D. Gack, a Northern California mediator and arbitrator with JAMS, was awarded the "Distinguished Mediator of the Year Award," one of the most prestigious Bay Area ADR awards, on April 21, 2004, at the San Francisco Trial Lawyers Association's (SFTLA) Annual Trial Lawyer of the Year Award Dinner.

### Award for Jeff Senger Book

Jeff Senger's book, *Federal Dispute Resolution: Using ADR With the United States Government* (Wiley 2003), won a Best Book of the Year award from the CPR Institute.

### Hal Abramson's New Book

The National Institute for Trial Advocacy has published "Mediation Representation," a book by Hal Abramson. The book offers a methodology for problem-solving advocacy. See [www.bnabooks.com](http://www.bnabooks.com).

### Appointment for Steve Gonzales

Steve Gonzales has been appointed as an Official Representative to the United Nations Permanent Forum on Indigenous Issues.

### New Position for Wayne Fagan

Wayne Fagan has become a member of Glast,Phillips & Murray,P.C. with offices in Dallas, Houston and San Antonio.

### Jay Folberg's New Book

Jay Folberg, Ann L. Milne and Peter Salem are the co-authors of a new book on mediation. The book, published in May 2004, is titled *Divorce and Family Mediation: Models, Techniques, and Applications*. The publisher is Guilford Press, (800) 365-7006.

### Award for Gerald Phillips

The Los Angeles County Bar Association Dispute Resolution Services, Inc., presented the Griffin Bell Volunteer Service Award to Gerald F. Phillips at the LACBA DRS Awards Dinner on May 6th.

### New Book by Arlene Grant

Arlene J.M. Grant penned her first book, *The Employment Mediator's Little Black Book*. This book is the product of more than 16 years of international dispute resolution experience and training. See [www.poweroftalk.com](http://www.poweroftalk.com).

**Correction:** (page 17 of the Jan. 2004 issue) It was former judge Griffin Bell who received the ADR Visionary Award, along with Frank Sander, at the 10<sup>th</sup> Annual Conference of Georgia Neutrals.

**FAMILY MATTERS: A Symposium on Preventing and  
Resolving Family and Family-Business Disputes  
October 22, 2004, Sheraton Boston**

7:30 am – 8:30 am

**Registration**

8:30 am – 8:45 am

**Welcome**, David Hoffman, Boston, MA; Chair-Elect, ABA Section of Dispute Resolution

8:45 am – 9:00 am

**Difficult Conversations**, A presentation by Patrick McWhinney and Erica Fox of the Program on Negotiation at Harvard Law School

10:00 am – 11:45 am

**Concurrent Sessions****Using ADR in Trust and Estate Planning and Dispute Resolution**

Prof. Ray Madoff, Newton, MA; David Gage, Arlington, VA; John Gromala, Eureka, CA

**Triaging Family and Family Business Disputes: Do They Need Collaborative Law, Mediation, or Other Processes**

Marjorie Aaron, Cincinnati, OH (moderator); Chip Rose, Santa Cruz, CA; Julie Macfarlane, Windsor, Ontario; David Hoffman, Boston, MA

11:45am – 1:15 pm

**Box Lunch and Table Top Discussions/Networking**

1:15 pm- 3:00 pm

**Concurrent Sessions****Using Parenting Coordinators to Resolve High-Conflict Family Cases**

Peter Salem, Madison, WI (moderator); Hon. Arline Rotman (ret.), Norwich, VT;

Robin Deutsch, Wellesley, MA; Oran Kaufman, Amherst, MA

**ADR Systems to Prevent and Resolve Disputes in Family-Owned Businesses**

Jack Wofford, Cambridge, MA; Thomas Davidow, Needham, MA; Richard Narva,

Needham, MA; Carrie Seligman, Boston, MA

3:15 – 5:00 pm

**Concurrent Sessions****Mental Illness and Substance Abuse: Their Impact on Conflict Resolution**

Paul Pearson, Buffalo, NY; Richard Wolman, Boston, MA; Beryl Minkle, Cambridge, MA (invited)

**Conflicts of Interest and Confidentiality: Lawyer Roles and Ethics in Working with Members of a Family-Owned Business**

Fredda Herz Brown, Cresskill, NJ

**Sponsored by the ABA Section of Dispute Resolution****Cosponsored by the ABA Section of Real Property, Probate and Trust**

Cooperating Organizations: The Association of Family and Conciliation Courts, Attorneys for Family-Held Enterprises, The Family Firm Institute

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**REGISTRATION: FAMILY MATTERS SYMPOSIUM**

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## Member Profile

### LYNN P. COHN



Lynn P. Cohn is the Director of the Program on Negotiations and Mediation at Northwestern Law School. She has trained lawyers, real estate professionals, management and union representatives, government employees, community groups and corporate employees in effective negotiation, mediation, conflict management, and arbitration techniques.

She has also served as an arbitrator or mediator in over 1500 cases with an emphasis on employment, personal injury and commercial disputes. Her practice is national and international in scope and includes projects in London, Paris, Milan, Central America, Ireland and Puerto Rico. Representative matters include settlement of a class action lawsuit alleging gender discrimination against a national food supplier, disposition of over 400 claims related to the settlement of a class action against a pharmaceutical company, and appointment to serve as

one of three neutrals to resolve claims of national origin discrimination brought against a utilities company.

Ms. Cohn currently serves as the Executive Director for the Merrill Lynch Claims Resolution Process, housed at Northwestern Law School. In this capacity, she is responsible for overseeing the mediation and arbitration of claims brought pursuant to the

settlement of a class action lawsuit alleging gender discrimination.

Ms. Cohn received her Bachelor's degree from the University of Illinois in Political Science and Spanish and Juris Doctor from Northwestern University School of Law. Additionally, she received a Fellowship in a Spanish Master's Degree Program from the University of Illinois and a Fellowship from the Intensive Foreign Language Institute from the University of California at Berkeley.

About the Section of Dispute Resolution, she says: "The ABA Section of Dispute Resolution's Annual Conference is outstanding. As both an educator and a neutral, I am amazed at the number of offerings of interest to me. In particular, the Legal Educators' Colloquium is a must on my yearly calendar. The opportunity to talk with other teachers about sharing this information with future dispute resolvers is invaluable."



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