

ALTERNATIVE RESOLUTIONS



STATE BAR OF TEXAS ALTERNATIVE DISPUTE RESOLUTION SECTION

CELEBRATING 20 YEARS OF KEEPING THE PEACE UNDER THE TEXAS ADR ACT



CHAIR'S CORNER

By Cecilia H. Morgan, Chair, ADR Section

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Cecilia H. Morgan

This issue of *Alternative Resolutions* marks the twentieth anniversary of the Texas Alternative Dispute Resolution Procedures Act ("ADR Act"). Congratulations to those early risk-takers who shepherded in what has been termed the

most significant change in the practice of law in Texas in the last quarter century! Although arbitration has been active in the United States for over 100 years, the ADR Act introduced mediation, summary jury trials, and other dispute resolution processes to our litigation system. Now the parties have the choice of the "appropriate" dispute resolution process. Although the Texas population has exploded in the last twenty years, the volume of lawsuits has not increased at the same rate, as ADR has increased the efficiency of our courts and reduced many people's need to access them.

What were you doing in 1987? I remember being pregnant with my first child, who left for college this August. Not unlike my child,

the last twenty years have seen periods of dreams, gestation, birth, infancy, and adolescence for Texas ADR, which has had all the joys and tribulations of developing into the force in the legal profession it is today. In this expanded commemorative issue of our newsletter, you will find more in-depth articles about the history of Texas ADR and celebrating the people who made it possible.

Soon after the ADR Act was enacted in 1987, the State Bar of Texas formed the ADR Committee, which existed until 1992 and evolved into the State Bar of Texas ADR Section that sponsors this newsletter. From twenty committee members and various practitioners, primarily in urban centers with federal justice centers, the ADR Section has grown to 1300+ members today. We are the State Bar of Texas section with the most public members. Approximately twenty percent of our section members are non-attorneys. If you are not a current member, we look forward to your joining our section – there is a form enclosed!

Thank you to the State Bar of Texas (and particularly to Holly Wilkerson) for the June 21, 2007, birthday party at the Bar Leaders Luncheon during the State Bar of Texas Annual Meeting in San Antonio. Special thanks to Mike Schless and the members of the birthday celebration committee who provided delicious

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HISTORY OF THE TEXAS ADR ACT

By Lisa Weatherford*

*"Of all the things that have happened during my career as a trial lawyer (including tort reform), nothing has had so significant an impact on the trial practice as the passage of your ADR bill in 1987; at any time tomorrow afternoon, you could shoot a cannon in the courthouse and no one would be injured (except a few family lawyers)."*¹ —Sam Millsap, former Bexar County District Attorney

INTRODUCTION

Fortunately, no one has to haul out the heavy artillery to prove that the Alternative Dispute Resolution Procedures Act ("ADR Act")² "changed the face of Texas jurisprudence."³ Twenty years after its enactment, alternative dispute resolution ("ADR") is so thoroughly integrated into our justice system that scholars often substitute "appropriate" for "alternative."⁴ However, in 1987, ADR was "alternative" in the word's modern connotation: a little on the edge—not radical, but by no means traditional. The use of ADR processes to settle disputes increased after the ADR Act, but like any significant change—particularly when it occurs in the legal system—the paradigm shift was a gradual one. Although the legislation opened the door to change by encouraging the overburdened courts to refer cases to mediation and other ADR procedures, its passage did not mark the beginning of ADR in Texas. It was, in retrospect, more of a zenith than a starting point. Texas and other states had been studying ADR for many years—interest that was sparked by the Pound Conference in 1976,⁵ where Professor Frank Sander outlined a model of what came to be known as the "multi door courthouse."⁶ By the time the Texas ADR Act passed, the Texas House of Representatives had published several interim reports that recommended greater use of ADR in appropriate situations.⁷ Also, Texas, like many other states, already had an arbitration statute.⁸ Then, in 1983, the Texas legislature passed the ADR Systems and Financing Act of 1983, a law that allowed counties to set up dispute resolution systems, and provided for the collection of fees to support them.⁹ In the years following the Pound Conference, ADR advocates in Texas were not merely talking about it: they were settling disputes. Alternative dispute resolution centers (with an emphasis on mediation services) had been operating in Houston and Dallas since 1980, and after the 1983 legislation, other metropolitan areas established centers as well. Consequently, the Texas ADR Act of 1987 was not as much a validation of ADR as it was a confirmation of its significance.

Despite its eventual success, the ADR Act was not the kind of legislation that grabbed headlines. It was esoteric, and only

slightly controversial, so it did not enflame public passions. Even the bill's sponsor, former Texas Senator Cyndi Taylor Krier, mused that she had "passed a lot of bills [she] thought were (maybe) more important than [the ADR Act]."¹⁰ During the 70th legislative session, 4,179 bills were filed and 1,185 were passed, setting records in both categories.¹¹ Tort reform, education reform, deregulation, and a state budget that was unresolved at the end of the regular session, were only a few of the many issues that challenged legislators in 1987.¹² A bill that authorized the "peaceable resolution of disputes,"¹³ was relatively low priority.

A mere six months later, James W. Wilson, the senior vice president and general counsel of Brown & Root in Houston (at that time) proclaimed to the *Houston Chronicle* that ADR "is kind of taking the country by storm."¹⁴ The *Chronicle* reported that "[i]n Texas, ADR methods will be increasingly popular because of the new Alternative Dispute Resolution Act, in which the Texas Legislature encouraged judges to promote out-of-court settlements to lighten the load of the judiciary."¹⁵ Those words were prophetic, although it is unlikely that anyone could have predicted the scope of the ensuing tempest. ADR is now so firmly established in our society, it is easy to forget that only twenty years ago conflicts were resolved by trial more frequently than through mediation and other ADR procedures. Yet, we still celebrate the statute's unceremonious passage. When asked if she knows of any other legislation that has instilled such reverent respect and enthusiasm two decades after its enactment, Krier shook her head firmly "no," and added, "this one, people do, for some reason look back and commemorate . . . it's sort of a realization that they've really used this."¹⁶

This article is an informal legislative history of the ADR Act. Informal, because it incorporates the legislative successes and failures that contributed to the act's existence—an acknowledgement that the ADR Act's history must be examined in context, rather than in isolation. It is also informal because it is a narrative, rather than a mechanical recitation of facts gleaned from old bill files and audio tapes. Committee hearings, journal entries, and viva-voce votes tell only part of the story; the other part lives in the memories of those who made it happen. The facts are here, but so are the perspectives of three people who—because of their positions, their hard work, and their good fortune—were thrust into the foreground of the effort. It is not a history of ADR in Texas, nor is it a survey of Texas ADR law.¹⁷ It is also not a section-by-section analysis or interpretation of the statute.¹⁸ It does not address unsettled questions that persist twenty years after the act took effect, and finally, regrettably, it could not be about all of the people who were directly responsible for getting the bill introduced and passed. An attempt to include everyone in this relatively brief article would be inadequate. Cindy Krier said it best in 1997:

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Please know that every one of you who served on one of the Bar's ADR committees; who researched issues; who drafted, and redrafted bill language; who called or wrote a legislator asking for a vote on the bill; who testified in support of the legislation; who wrote articles about dispute resolution; who has taught an ADR course; who has conducted ADR sessions; has played a significant role, made a difference in our being where we are today.¹⁹

In other words, the statute certainly deserves its birthday party, but without the people who care about it, there would be nothing to celebrate.

BACKGROUND

*"[T]rying to remember all that transpired in the legislative process, I find it is almost as hard to retrace the history now as it was to project the future of ADR then."*²⁰

"To begin [its] life at the beginning of [its] life" is a much simpler proposition for a Charles Dickens character²¹ than it is for one who attempts to chronicle the ADR Act's precise moment of birth. Although the act was "born" on June 20, 1987, the day the governor signed it, the story of its conception began much earlier, long before S.B. 1436 was introduced. Like most legislation, the ADR Act was not conceived in a vacuum; rather, it was the culmination of prior legislative successes and failures, the product of cooperation and conflict, compromise and political karma. When she discussed S.B. 1436, Cyndi Krier commented that "so many areas of the law really evolve from session to session to session, so it's rare that you can go back [for example] and say there was not an ADR statute before 1987, and there was not one after . . . you can go back to the establishment of the ADR centers."²² In fact, some people might go back to the years before the establishment of the Neighborhood Justice Centers, all the way to the creation of the State Bar ADR Committee.

Frank Evans²³ was attending a Houston Bar Association meeting in 1978 when Joe Greenhill, who was then Chief Justice of the Texas Supreme Court, suggested to bar president Bob Dunn that the organization should "look into mediation as a way of alleviating its crowded court dockets."²⁴ Dunn agreed, and asked Judge Evans, who was standing nearby, to chair a committee to "look into it."²⁵ He did look into it, and in 1979, a "little group of lawyers went off to look at other dispute resolution centers."²⁶ When they returned, they filed a report with the Houston Bar, and persuaded it to support implementation of a Houston Neighborhood Justice Center, which opened in 1980.²⁷ The Dispute Mediation Service of Dallas opened a few months later.²⁸

Cyndi Krier commented during an address at the ADR statute's 10th anniversary celebration in 1997 that the "initial idea for ADR legislation did not come *from* the legislature, but *to* it."²⁹ If that is true, the state bar ADR committee was the first one to get there. In 1981, soon after the dispute resolution centers in Dallas and Houston opened, the committee urged the legisla-

ture to pass a bill that authorized counties to establish dispute resolutions systems. The bill also provided for funding through a slight increase in the civil case filing fee. Unfortunately, it did not pass. That bill was the first of many ADR bills (failures as well as successes) that led to the enactment of what is now called the Texas ADR Act, codified at Chapter 154, Civil Practice & Remedies Code.

67TH LEGISLATIVE SESSION: 1981:

*It's a nice idea . . . but it ain't never gonna happen!*³⁰

In 1979, Frank Evans presented his ADR vision to the editor of Houston's "biggest" newspaper,³¹ a man who was clearly skeptical of an idea that sounded okay, but had, from his point of view, dim prospects. When Evans asked him, "Why not?" the editor replied, "Because the judges and the lawyers won't let it happen!"³² He was right—it did not happen, not then. Nor did it happen during the 67th Legislative Session two years later, but the judges and lawyers could not be blamed.

At some point before the 1981 session, Evans talked to Ray Farabee, a Texas state senator from Wichita Falls, about introducing ADR legislation. Evans recalls that Farabee said, "Yeah, I'll help you. I think this would be good. I'll tell you what—you need a liberal on the other [House] side of this. Who do you know from Houston?"³³ Evans replied that he had worked with Craig Washington, who was a member of the Texas House of Representatives. Washington agreed to sponsor the bill.

Oscar Mauzy, a Texas state senator who later served on the Texas Supreme Court, authored S.B. 759,³⁴ a bracket bill³⁵ that originally targeted areas with large populations, like Harris County. In its introduced version, it authorized counties of 1,200,000 inhabitants or more to "establish alternative systems for the peaceable and expeditious resolution of . . . disputes" and to collect \$3.50 for each civil case filed in the county.³⁶ Only two counties fit into that bracket: Harris and Dallas. The Senate Committee on Intergovernmental Relations adopted a committee substitute that changed the bracket to 500,000 or more, and raised the fee to \$4.50.³⁷ This "lower" bracket would have applied to Harris, Dallas, Tarrant, and Bexar Counties.³⁸ The bill passed the Senate and was sent to the House of Representatives. The House Committee on Intergovernmental Affairs sent the bill to the Calendars Committee, where it was placed on the Local and Consent Calendar.³⁹

Everything was going well until three days before the end of the session, when the bill was inexplicably removed from the consent calendar, a move guaranteed to kill it that late in the session. The May 29, 1981 House Journal entry indicates that it was "withdrawn by objections,"⁴⁰ so the bill was almost certainly killed intentionally. On May 30, Governor William P. Clements relayed an emergency message to the House that read: "So that the House of Representatives may consider some important matters in the final three days of the Regular Session of the Sixty-seventh Legislature, and pursuant to Article III, Section 5, of the Constitution of Texas, I hereby submit as an emergency matter the following . . ."⁴¹ The governor's message listed seven bills that he considered emergency legislation, including S.B. 759.⁴² Speaker of the House Bill Clayton

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gave notice that a motion would be made to suspend the rules to take up S.B. 759.⁴³ The motion failed, and so did the bill.⁴⁴ Two years later, in a second attempt to pass the legislation, Justice Jim Wallace testified in favor of S.B. 10 (almost identical to S.B. 759) before the Senate Jurisprudence Committee in a public hearing on February 1, 1983.⁴⁵ He described S.B. 759's fatal shift in fortune during the waning days of the previous session, and explained that several House members had become angry with Craig Washington and knocked his bill off the Local and Consent Calendar, effectively ensuring its demise.⁴⁶

68TH LEGISLATIVE SESSION: 1983

*"More failures than successes, but some of the key ones came out nice."*⁴⁷

Undaunted, Frank Evans and other ADR supporters in Texas promoted the bill again in the 68th session. Oscar Mauzy co-authored it with Lloyd Doggett, and Anita Hill was the House sponsor, since Craig Washington had been elected a state senator during the interim and was serving his first term in that body. Since S.B. 759 was more a victim of political providence than strong opposition, there was good reason to be optimistic in 1983, and indeed, S.B. 10 encountered no apparent obstacle. When it was introduced, S.B. 10's bracket was at least 100,000 inhabitants, which increased the number of counties that were authorized to establish a dispute resolution system to 23 out of 254.⁴⁸ Judge Evans recalled that soon after its introduction, "Dallas wanted in on it, so it got extended to Dallas, and then somebody else, and somebody else, until it was across the board,"⁴⁹ so the bracket was eventually eliminated entirely. Apparently, that change worried some people. Nobody testified against the bill in committee hearings, but the house bill analysis reported that opponents were concerned that a judge might misinterpret the language and impose an ADR system on a county with a population too small to support the costs.⁵⁰ Still, S.B. 10 passed both houses almost unanimously, with only one "nay" vote each. (Curiously, the lone Senate vote of opposition came from Craig Washington, who had sponsored S.B. 759 in the House the previous session.)⁵¹ At that time, the State Bar ADR Committee was practically non-operational except for Frank Evans and five or six other people, and the bill did not have widespread interest.⁵² Evans remarked that when the bill finally passed the House, "I was the only person in the gallery to look at that."⁵³ Although the 1983 law authorized judges to refer cases to ADR processes on the motion of a party, that provision was rarely invoked.⁵⁴

69TH LEGISLATIVE SESSION: 1985

*Two Bad Bills*⁵⁵

Frank Evans laughed when he recalled how he first learned about the bills, and how his informant characterized them:

Someone said, 'Senator Krier's got these two bad bills,' and they were both related. I remember that Ed Sherman and someone else started talking with her. Then, as the talk got on [they] decided to try to give Cyndi a reason to move this into a broader scope and get away from

those "bad bills," instead of focusing on this one thing, family law.⁵⁶

The ADR Act may indirectly owe its existence, or at least its present form, to two bills that failed to pass in the 69th Legislative Session. Whether they were "bad" is subjective, but it is likely that the mediation landscape in Texas would have looked very different if these bills had become law. Cyndi Krier had been elected to the Texas Senate in November 1984, and was barely into her first legislative session when she was asked to sponsor two ADR bills:

Ray Farabee really was the one who handed off to me, because when I first got to the Senate, he was . . . one of the leading senators, who had hundreds of bills . . . and he said, "Here, you take this." At the time, I was really very flattered and thought, I know nothing about this, but became interested in it so I've always credited him . . . Actually, I think I was handed the report. I don't know if the bills had yet been drafted.⁵⁷

The two bills were related only in their general subject matter: court-annexed alternative dispute resolution. One bill was about family law mediation, and the other one was an arbitration bill. The mediation bill appeared to be a direct response to a December 1984 House committee interim report that studied divorce and family issues, and explored alternatives to the traditional adversarial system of settling those cases.⁵⁸ Senate Bill 949 related to "mediation of issues in a suit affecting the parent-child relationship and to the appointment and qualifications of mediators,"⁵⁹ so it focused on family law mediation by amending the Family Code. The mediator qualifications in the introduced version of the bill were quite restrictive, particularly in comparison with the family mediation training requirements that are part of the ADR Act.⁶⁰ This fact is worth noting, as family law qualifications would be a point of contention during the drafting of the ADR Act in the following session.

Senate Bill 1099 related to the "arbitration of civil suits," as a means to a "more efficient method of settling civil cases to lessen the delay and decrease the expense of the parties."⁶¹ It laid out the circumstances under which a court could order arbitration, defined the qualifications of arbitrators, and directed the supreme court to adopt rules.⁶²

Krier comments that "[it] is a proven and true legislative adage that most major legislative changes take more than one session to pass. The arbitration bill and the mediation bill, which had been so carefully drafted in explicit detail to make the new process clear had ended up raising questions about many of those details."⁶³ Both bills passed the Senate, but died in House committees. However, their fate generated an opportunity to draft legislation that captured the essence of Frank Sander's multi-door concept, and ensured that ADR would become a vital part of the Texas justice system.

70TH LEGISLATIVE SESSION: 1987

*The Draft: "They've gutted this bill!"*⁶⁴

Referring to a time when S. B. 1436 was still in the drafting

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stage, Frank Evans said he “would have been glad to just to get the policy statement that [said] we’re for this!”⁶⁵ Fortunately for Texas ADR, he got more than the policy statement. By the time it was clear that the ADR bills introduced in the 69th Legislature were destined to languish in committee, Ed Sherman was already talking to Cyndi Krier about a bill that would take a broader approach. Krier described the effort to come up with a draft that was “purged of the detail and controversy that had hampered passage [of the two failed ADR bills] in 1985.”⁶⁶

Led by Judge Evans and Ed Sherman, the State Bar’s ADR Committee with judges, attorneys, law school representatives, ADR and DRC professionals, and public members worked during the next interim listening to concerns, reexamining approaches in other jurisdictions, and redrafting (and redrafting and redrafting) the legislation. They came back in 1987 with a far more general, far more flexible single omnibus piece of legislation—simple and easier to understand....⁶⁷

The new ADR bill was only a “procedural outline,” Evans claims—an outline “that you could fill in later on.”⁶⁸ Krier also admits that the “strategy . . . was based on . . . [a] legislative truism: *It is easier to amend a statute than create a new one.* So the conventional wisdom was that if we could pass a simple, basic bill in 1987, we could come back and amend it in subsequent sessions.”⁶⁹ Still, Evans recalls that

Ed, like a good law professor, wrote and wrote and wrote and wrote, and had this long bill, and it all sounded okay with me . . . and then we got a policy, but who’s going to enforce it? We looked around, and said, well, nobody’s representing the courts—let’s put it on them. Then somebody said, okay, now we’ve mandated the courts, how do they do it? We’ve got to give them a referral. So we started writing that information, and all of a sudden, here was the outline of a bill coming up, and it sort of grew. Then someone [in a legislative office] took it and turned it around and frankly, when we looked at it, it was unrecognizable as far as what Ed had written! I mean, it was in a different form. I thought, they’ve gutted this bill!⁷⁰

Evans also noticed that Ed Sherman’s procedural details of the five ADR methods had been replaced with brief sections that described each process in concise, but abbreviated points.⁷¹ Sherman notes that the removal of those details

suggested that the processes were all essentially similar in operation and fungible, which is not true. I think the additions that are in the act clarified how each of the various processes would function . . . Further procedural details might have been helpful, but it would have increased the length of the act (and its conciseness has turned out to be a benefit) and probably

wouldn’t have greatly altered the choices that have been made.⁷²

Looking back, Sherman now considers the act’s conciseness and brevity an asset.⁷³ “[D]are I compare it to the constitution? . . . [the ADR Act] uses some general terms that allow for construction and expansion according to developing norms and needs [and] seems to have stood it in good stead. In contrast, the much more detailed Uniform Mediation Act has generated lots of controversy, and it is still to be seen how widely it will be adopted.”⁷⁴

Ed Sherman was a University of Texas law professor when he started talking to Cyndi Krier about drafting an omnibus ADR bill that could be introduced in the 70th Session. The demise of the two “bad” bills in the 69th Legislature presented Sherman and other ADR advocates with an opportunity to craft legislation destined to fundamentally change the way Texas courts handled litigation. Ostensibly, the bill was about relieving clogged court dockets, but the ADR movement clearly had at its core deeper philosophical yearnings, a discussion of which is beyond the scope of this article.

Sherman affirms that during the drafting of S.B. 1436, the “multi-door courthouse was a working model that accounts for the five different forms of ADR prescribed in the Act,”⁷⁵ and that “the experience in Houston had already validated the concept that cases should be evaluated upon filing to determine their suitability for ADR and any particular process.”⁷⁶ The broader scope of the omnibus bill encompassed all civil matters, and described five separate ADR “doors” to which courts could refer cases. The language, however, does not limit the court to those five processes. A subsection of the bill provides that a court may refer cases to “a nonjudicial and informally conducted forum for the voluntary settlement of citizens’ disputes through the intervention of an impartial third party, including those alternative dispute resolution procedures described under this subchapter.”⁷⁷

Sherman emphasizes that the Texas ADR Act is “heavily home-grown, that “[u]nlike a number of other Texas statutes relating to arbitration and ADR, this statute is not primarily derived from a uniform act or another state’s statute. Thus, this statute contains features distinctive to Texas, and its interpretation will often pose matters of first impression for Texas courts.”⁷⁸ One of those features, and one of the controversies that surfaced during the drafting process, was the issue of mandatory referral. Sherman felt strongly that mandatory referral should be part of the new statute:

Probably the key objective was to authorize judges to require use of an ADR process and thus to make ADR an integral part of litigation. This was a significant accomplishment. When I went to Louisiana to be Dean of Tulane in 1996, I helped draft a similar act, but the authority to order ADR was taken out in the legislature, and is still not part of the Louisiana Mediation Act. I believe the mandatory aspect of the Texas Act has been important to the widespread use of ADR in Texas.⁷⁹

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Another key issue was the confidentiality clause. Evans asserts that the clause was originally written as a “stand alone,” and was intended to apply to both civil and criminal cases, but somehow it ended up in the Civil Statutes. Regardless, the relatively broad confidentiality clause was “in retrospect, an act of genius,”⁸⁰ according to Evans. He agrees with those who claim the clause is ambiguous, but considers that ambiguity a strength, not a weakness. “If I had it to do over again, I would purposely make it ambiguous. If you can’t agree whether confidentiality applies, you have to go to court.”⁸¹ Sherman agrees: “[T]he advantage of the broad, seemingly absolute, confidentiality rule in the Act is that it has enabled the Texas courts gradually to develop exceptions in the context of actual cases. If we had the advantage of foresight in 1987, some express exceptions would have been good, but it would have been difficult to get a consensus on various ones.”⁸² Sherman also stresses that if the courts had not been allowed to develop those exceptions, the integrity of the ADR Act would be undermined.⁸³

The drafting process spanned the interim between the 69th and 70th Legislatures, and Cyndi Krier characterizes the negotiations as a mediation-like process, and credits the cooperative spirit for the bill’s success:

This one, I think, there was a concerted effort to say, this is a new approach. It’s not might makes right; it’s let’s come together and reason together, and come up with a solution that will work for everyone. That was kind of the guiding philosophy that led to the bill’s ultimately not having any opposition . . . The last issue we resolved was the training requirement for family law cases, and that had been a compromise, but there was a consensus by everybody involved to practice what we preached, and work out the details agreeably, before bringing this bill forward.⁸⁴

The family law training requirement was not the only issue that came up during the drafting of the bill. Krier explained that “[d]espite our best efforts, some controversial issues did emerge prior to passage of the bill, and had to be dealt with . . . several mediation sessions were needed to resolve the differences.”⁸⁵ Krier recalls that there was debate about whether ADR should be mandatory or voluntary, and about whether agreements reached in ADR sessions should be binding.⁸⁶ There were conflicts about who could serve as impartial third parties, and what their qualifications should be.⁸⁷ “These were the issues where the alliance of supporters of the legislation almost dissolved . . . Turf battles emerged. Some attorneys wanted only attorneys to be allowed to conduct ADR sessions.”⁸⁸ Dispute resolution centers had been handling disputes for many years, and some representatives from those entities felt threatened by the perceived trespass.⁸⁹ Social workers and family-law advocates initially could not agree on the way to handle family law cases.⁹⁰ Also, there was some discussion “where those that were leery of ADR threw up the roadblock of do you need a constitutional amendment to get around trial by

jury? They said, you can’t pass this law, or, if you could, it wouldn’t matter because you have to have a constitutional amendment.”⁹¹ Fortunately, that discussion was quickly dismissed because the ADR processes did not require parties to reach agreements. There was also opposition from some plaintiff’s attorneys, but once the act had been in place for a short time, most (not all) of them “were delighted with mandatory ADR . . . because it forced the insurance companies to . . . get serious about their offers.”⁹²

Once the bill was finally drafted, Krier remembers that when it came time for the Senate Jurisprudence Committee hearing, “we thought everybody was okay with it, but we weren’t 100% sure that there wouldn’t be people testifying against it.” As it turned out, the most difficult part of the process was behind them.

The Legislature: “*We are not going to cram this down people’s throats.*”⁹³

“I think [the idea] began in the 69th . . . there was this fear that if you just crammed it down everybody’s throat the first time, that there would be such resistance to its use that we would have never gotten to where we are today . . . especially in Texas!”⁹⁴ The wisdom of that philosophy was manifest when both the Senate and the House passed S.B. 1436 unanimously. The details of its bicameral journey are decidedly anticlimactic.

The ADR Act began its legislative life as a random-numbered Senate E & E (Engrossing and Enrolling) draft.⁹⁵ After the draft was filed during the 70th legislative session by then-Senator Cyndi Taylor Krier, it became S.B. 1436 and was introduced to the Texas Senate for the first time on April 15, 1987.⁹⁶ The House sponsor was Jim Hury, a strong advocate for the bill, who worked hard to get it through the House.⁹⁷ Nobody testified against the bill in the Senate Jurisprudence Committee hearing,⁹⁸ and the House Committee on Judicial Affairs adopted it without testimony or comment.⁹⁹ During the Senate hearing, Frank Evans, Ed Sherman, and Don Graul testified in favor of the bill. Eight others registered their support, but did not testify. It did not generate floor debate in either chamber, and legislative intent seemed unambiguous: to “allow our courts to operate more effectively and more efficiently,”¹⁰⁰ and to “save the state and the litigants money.”¹⁰¹ The fiscal note concluded there would be no financial impact on the state,¹⁰² and Governor Bill Clements signed it into law without ceremony on June 20, 1987, effective immediately.

Astonishingly, the statute has been amended only three times in twenty years: in 1993, 1999, and in 2001. The 1993 amendment added Section 154.055, which provides that a volunteer ADR facilitator is immune from civil liability unless the facilitator acts in “wanton and wilful [sic] disregard.”¹⁰³ The 1999 and 2001 amendments are conforming amendments: they brought the ADR Act in line with changes in other codes. One of the 1999 amendments reflects changes in the Family Code. Another 1999 amendment deals with confidentiality and disclosure by government entities, as provided in the Government Code. Finally, the 2001 amendment reflects changes in the Code of Criminal Procedure. The effect of these amendments to the Act’s substantive provisions has been minimal.

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The ADR Act has aged gracefully, its dignity intact, exceeding even the most optimistic of expectations. It is simple, flexible, and unique. When Frank Evans was asked what he would change about the act if he could go back and do it over, he replied that he might want to tweak the confidentiality provision a bit. Aside from that, he would take his fellow judges to task: "I am being a bit facetious here, but I would emphasize the words that direct the court to *confer with the parties* before making a referral. Also, I think if they're going to be a judge on a court, whether it's trial or appellate, they've got to recognize that they have the responsibility, not just the option, or on a whim, of deciding whether or not to encourage it."¹⁰⁴ With advocates like Judge Evans defending the ADR Act's integrity, we will always have a reason to party. See you in 2017!



***Lisa Weatherford holds M.A. degrees in English and Legal Studies, and is employed with the Texas Legislative Council-Legal Division. She is a volunteer mediator and arbitrator, and is on the Austin Association of Mediators board of directors.**

ENDNOTES

¹ E-mail from Sam Millsap, former Bexar County District Attorney, to Cyndi Taylor Krier, former Texas State Senator, San Antonio (Jul. 9, 2007, 11:01:41 CST) (on file with author).

² Alternative Dispute Resolution Procedures Act, 70th Leg., R.S., ch. 1121, § 1, 1987 Tex. Gen. Laws 3841 (current version at Tex. Civ. Prac. & Rem. Code Ann. §§ 154.001-154.073) (Vernon 2005).

³ Michael Schless, Presentation of the Frank G. Evans Award to Cyndi Taylor Krier at the State Bar of Texas ADR Section Annual Meeting (Jun. 21, 2007).

⁴ See, e.g., Carrie Menkel-Meadow, *The Silences of the Restatement of the Law Governing Lawyers: Lawyering as Only Adversary Practice*, 10 GEO. J. LEGAL ETHICS 631, 632 (1997); Linda A. Cincinnati, Senior Counsel for Alternative Dispute Resolution, Director, Office of Dispute Resolution, U.S. Dept. of Justice, *Alternative Dispute Resolution Comes of Age in the Federal Government, Remarks at the Nat'l Legal Center for the Public Interest: A Day With Justice* (Oct. 28, 2003), <http://www.usdoj.gov/odr/aatllegalcenter102803.htm>.

⁵ The official title of the Pound Conference is The National Conference of the Causes of Popular Dissatisfaction with the Administration of Justice. It was held on April 7-9, 1976 in Minneapolis, Minnesota.

⁶ See Frank E. A. Sander, *Varieties of Dispute Processing*, 70 F.R.D. 111 (1976). Sander did not use the term "multi-door courthouse," but it has long been used by others to describe Sander's vision. The concept refers to the idea that a courthouse could conceivably provide the public with many ways to resolve disputes, from traditional litigation, to the many ADR processes.

⁷ H. Comm. on the Judiciary, 66th Leg., Interim Report: Arbitration and Overcrowded Courts (Tex. 1978), available at <http://www.lrl.state.tx.us/scanned/interim/65/j898a.pdf>; H. Comm. on Judicial Affairs, 67th Leg., Interim Report to the 68th Tex. Leg. (Tex. 1982), available at <http://www.lrl.state.tx.us/scanned/interim/67/j897.pdf>; H. Comm. on Judiciary, 68th Leg., Interim Report to the 69th Tex. Leg. (Tex. 1984), available at <http://www.lrl.state.tx.us/scanned/interim/68/j898.pdf>; H. Comm. on Judiciary, 69th Leg., Interim Report to the 70th Tex. Leg. (Tex. 1986), available at <http://www.lrl.state.tx.us/scanned/interim/69/j898.pdf>.

⁸ Texas General Arbitration Act of 1965, 59th Leg., R.S., ch. 689, § 1, 1966 Tex. Gen. Laws 1593 (current version at Tex. Civ. Prac. & Rem. Code Ann. §§ 171.001-171.098) (Vernon 2005).

⁹ Texas Alternative Dispute Resolution Systems and Financing Act of 1983, 68th Leg., R.S., ch. 26, § 1, 1983 Tex. Gen. Laws 118 (current version at Tex. Civ. Prac. & Rem. Code Ann. § 152.001-152.006) (Vernon 2005).

¹⁰ Interview with Cyndi Taylor Krier, former Texas Senator, Austin, Tex. (July 11, 2007) [hereinafter Krier Interview].

¹¹ Texas Legislative Council, 70th Leg., Summary of Enactments 1 (1987), available at <http://www.lrl.state.tx.us/scanned/sessionOverviews/summary/soe70.pdf>.

¹² *Id.* at 2.

¹³ Tex. Civ. Prac. & Rem. Code Ann. § 154.002 (Vernon 2005).

¹⁴ Ralph Bivins, *Alternatives to Courtroom Battles Gaining Popularity*, HOUS. CHRON., Dec. 13, 1987, http://www.chron.com/CDA/archives/archive.mpl?id=1987_508945.

¹⁵ *Id.*

¹⁶ Krier Interview, *supra* note 10.

¹⁷ For a comprehensive discussion and analysis of Texas ADR legislation, see ALAN SCOTT RAU, EDWARD F. SHERMAN & BRIAN D. SHANNON, RAU, SHERMAN'S TEXAS ADR & ARBITRATION: STATUTES AND COMMENTARY, (2000 ed., West Group 2000).

¹⁸ See *id.* for a superlative treatise on ADR laws in Texas.

¹⁹ Cyndi Taylor Krier, A Perspective on the ADR Statute, Remarks at the Fall ADR Conference & Celebration of the 10th Anniversary of the Texas ADR Statute (Sept. 12, 1997), in ALTERNATIVE RESOLUTIONS, Nov. 1997 [hereinafter Krier Remarks], <http://www.texasadr.org/newsletters9711.html#Remarks>.

²⁰ *Id.*

²¹ CHARLES DICKENS, DAVID COPPERFIELD 49 (Trevor Blount ed., Penguin Books 1966) (1849-1850). "To begin my life at the beginning of my life, I record that I was born . . ."

²² Krier Interview, *supra* note 10.

²³ Frank G. Evans is a former Chief Justice of the First Court of Appeals in Houston.

²⁴ Frank G. Evans, *Problem Solving Progress: Peacemakers and the Law*, 11 TEX. WESLEYAN L. REV. 1 (2004).

²⁵ *Id.*

²⁶ Interview with Frank G. Evans, retired Chief Justice of the First Court of Appeals, in Austin, Tex. (July 2, 2007) [hereinafter Evans Interview].

²⁷ H. Comm. on Judicial Affairs, 67th Leg., Interim Report to the 68th Tex. Leg. 4 (Tex. 1982), available at <http://www.lrl.state.tx.us/scanned/interim/67/j897.pdf>.

²⁸ *Id.* at 3.

²⁹ Krier Remarks, *supra* note 19 (emphasis added).

³⁰ Evans Interview, *supra* note 26.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Tex. S.B. 759, 67th Leg., R.S. (1981).

³⁵ A bracket bill is legislation that is written to benefit a narrow classification of beneficiaries.

³⁶ Tex. S.B. 759.

³⁷ Tex. S.B. 759.

³⁸ U. S. Census Bureau, <http://www.census.gov/popest/archives/1980s/#county>, then follow 1980 to 1989 Population Estimates of the U.S., States, and Counties.

³⁹ The consent calendar is typically reserved for bills that are noncontroversial, or considered local as opposed to major state business.

⁴⁰ H.J. of Tex., 67th Leg., R.S. 3953 (1981).

⁴¹ *Id.* at 4156.

⁴² *Id.*

⁴³ *Id.* at 4157.

⁴⁴ *Id.* at 4192.

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HISTORY OF THE TEXAS ADR ACT

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⁴⁵ The Texas ADR Systems and Financing Act: Hearings on Tex. S.B. 10 Before the Senate Jurisprudence Committee, 68th Leg., R.S. (Feb. 1, 1983) (tape available at Texas State Library Reference).

⁴⁶ *Id.*

⁴⁷ Evans Interview, *supra* note 26.

⁴⁸ U. S. Census Bureau, *supra* note 38.

⁴⁹ Evans Interview, *supra* note 26.

⁵⁰ House Study Group, Bill Analysis, Tex. S.B. 10, 68th Leg., R.S. (1983).

⁵¹ *Id.*

⁵² Evans Interview, *supra* note 26.

⁵³ *Id.*

⁵⁴ ALAN SCOTT RAU, EDWARD F. SHERMAN & BRIAN D. SHANNON, RAU, SHERMAN'S TEXAS ADR & ARBITRATION: STATUTES AND COMMENTARY 8 (2000 ed., West Group 2000).

⁵⁵ Evans Interview, *supra* note 26.

⁵⁶ *Id.*

⁵⁷ Krier Interview, *supra* note 10.

⁵⁸ H. Comm. on Judiciary, 68th Leg., Interim Report to the 69th Tex. Leg., at 21-35 (Tex. 1984), available at <http://www.lrl.state.tx.us/scanned/interim/68/j898.pdf>.

⁵⁹ Tex. S.B. 949, 69th Leg., R.S. (1985).

⁶⁰ Tex. S.B. 949, 69th Leg., R.S. (1985). (c) Except as provided by subsection (d) of this section, to qualify for appointment as a mediator under this section, a person must be:

(1) an attorney licensed in this state to practice law who has at least two years' experience in the practice of family law, and who has had at least 24 classroom hours of mediation training; or

(2) a person with a master's degree or a doctorate of philosophy in a behavioral science substantially related to marriage and family interpersonal relationships who has had at least two years' experience in counseling or psychological therapy, has substantial knowledge of the Texas court system, legal procedures, and family law, and has had at least 24 classroom hours of mediation training.

(3) a person with a bachelor's degree associated with a alternate [sic] dispute resolution center established under Article 2372-aa, Vernon's Texas Civil Statutes, who has had at least three years' experience as a mediator; has substantial knowledge of the Texas court system, legal procedures, and family law; and has at least forty hours of training in divorce mediation.

⁶¹ Tex. S.B. 1099, 69th Leg., R.S. (1985).

⁶² *Id.*

⁶³ Krier Remarks, *supra* note 19.

⁶⁴ Evans Interview, *supra* note 26.

⁶⁵ *Id.*

⁶⁶ Krier Remarks, *supra* note 19.

⁶⁷ *Id.*

⁶⁸ Evans Interview, *supra* note 26.

⁶⁹ Krier Remarks, *supra* note 19.

⁷⁰ Evans Interview, *supra* note 26.

⁷¹ *Id.*

⁷² E-mail from Ed Sherman, Tulane Law School, to Lisa Weatherford (Jul. 19, 2007, 22:16:49 CDT) (on file with author) [hereinafter Sherman E-mail].

⁷³ *Id.*

⁷⁴ Sherman E-mail, *supra* note 76.

⁷⁵ Five ADR processes mentioned in the ADR statute are: mediation, mini-trial, moderated settlement conference, summary jury trial, and arbitration. Tex. Civ. Prac. & Rem. Code Ann. §§ 154.023-154.027 (Vernon 2005).

⁷⁶ Sherman E-mail, *supra* note 76.

⁷⁷ Tex. Civ. Prac. & Rem. Code Ann. § 154.021(a)(3).

⁷⁸ RAU ET AL., *supra* note 57, at

⁷⁹ Sherman E-mail, *supra* note 76.

⁸⁰ Evans Interview, *supra* note 26.

⁸¹ *Id.*

⁸² Sherman E-mail, *supra* note 76.

⁸³ *Id.*

⁸⁴ Krier Interview, *supra* note 10.

⁸⁵ Krier Remarks, *supra* note 19.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Krier Interview, *supra* note 10.

⁹² Sherman E-mail, *supra* note 76.

⁹³ Krier Interview, *supra* note 10.

⁹⁴ *Id.*

⁹⁵ The Office of Engrossing and Enrolling processes bills and resolutions for the Senate.

⁹⁶ S.J. of Tex., 70th Leg., R. S. 669 (1987).

⁹⁷ Krier Interview, *supra* note 10.

⁹⁸ The Alternative Dispute Resolution Procedures Act: Hearing on S.B. 1436 Before the Senate Jurisprudence Comm., 70th Leg., R.S. (May 5, 1987) (statement of Senator Cyndi Krier) (tape available at Texas State Library).

⁹⁹ Tex. House Comm. on Judicial Affairs Minutes 1, 70th Leg., R.S. (May 19, 1987).

¹⁰⁰ The Texas ADR Act: Hearings on Tex. S.B. 1436 Before the Senate Jurisprudence Committee, 70th Leg., R.S. (May 5, 1987) (statement of Tex. Senator Cyndi Krier) (tape available at Texas State Library Reference). *See also* H. Comm. on Judicial Affairs, 67th Leg., Interim Report to the 68th Tex. Leg. 1 (Tex. 1982), available at <http://www.lrl.state.tx.us/scanned/interim/67/j897.pdf>. "The Committee on Judicial Affairs has been particularly concerned this interim with finding ways to ease the burden on our state court system. To this end, we have sought methods by which the existing courts may work more efficiently. An increasing amount of court time has been tied up with matters that could best be handled in a non-adversary system." *Id.*

¹⁰¹ The Texas ADR Act: Hearings on Tex. S.B. 1436 Before the Senate Jurisprudence Committee, 70th Leg., R.S. (May 5, 1987) (statement of Tex. Senator Cyndi Krier) (tape available at Texas State Library Reference); *see also* H. Comm. on Judicial Affairs, 67th Leg., Interim Report to the 68th Tex. Leg. 1 (Tex. 1982), available at <http://www.lrl.state.tx.us/scanned/interim/67/j897.pdf>. "The Committee on Judicial Affairs has been particularly concerned this interim with finding ways to ease the burden on our state court system. To this end, we have sought methods by which the existing courts may work more efficiently. An increasing amount of court time has been tied up with matters that could best be handled in a non-adversary system." *Id.*

¹⁰² Fiscal Note, Tex. S.B. 1436, 70th Leg., R.S. (1987).

¹⁰³ Tex. Civ. Prac. & Rem. Code Ann. § 154.055(a) (Vernon 2005).

¹⁰⁴ Evans Interview, *supra* note 26.

THE HISTORY OF THE ALTERNATIVE DISPUTE RESOLUTION SECTION AS TOLD BY ITS FORMER CHAIRS

(Note from the Chair of the Newsletter Editorial Board: We asked each former Chair of the ADR Section to send us a short recollection of his or her term as Chair. Here is a history of the ADR Section through their eyes.)

Kimberlee K. Kovach and Lanelle Montgomery (the years preceding the ADR Section, as well as its first year—1992-1993—as told by Kim Kovach)

A. A Grassroots Initiative



In 1979, Judge Frank Evans responded to a call from the Chief Justice of the Texas Supreme Court to explore alternatives to litigation as a result of the Pound Conference. The initial exploration was that of mediation in the context of Neighborhood Justice Centers, which had been initiated in other jurisdictions. The Houston Bar Association formed a committee led by Judge Evans, which in 1980 opened the first community mediation center in the state of Texas, the Houston Neighborhood

Justice Center. In September 1980, the very first 40-hour mediation training was conducted at the South Texas College of Law. A variety of volunteers, including local attorneys, were trained. While Houston served as the location of the initial center, soon interest came from the north, specifically Dallas and Fort Worth, which opened centers shortly thereafter.

B. Statewide Expansion and a State Bar Committee

As additional centers opened around the state, leaders recognized that a method of coordination on a statewide basis would be beneficial to the movement. Not only would a statewide organization assist in coordinating information among the centers, it could also provide expertise to other jurisdictions interested in establishing new mediation programs. Many of the volunteer mediators were lawyers, and in most locations some of the local judges were supportive of the centers. In many instances, the centers were connected to some facet of the legal system, whether through referral of cases or the use of office space. It seemed logical that in 1981, the State Bar of Texas established the Committee on Alternative Dispute Resolution (the "Committee"). As a result, interest in mediation and ADR among Texas lawyers and judges continued to develop around the state.

C. Growth Through Program Implementation and a Financing Act

The community mediation centers continued to expand, and soon several existed throughout the state, ranging from Beaumont to El Paso, from Fort Worth to San Antonio and Corpus Christi. The Committee's work grew beyond a coordinating role and focused on expansion and education efforts. While the 1987 Texas ADR Procedures Act (Chapter 154 of the Texas Civil Practice and Remedies Code) is most often thought of when discussion centers on legislative efforts in the state, the first statewide statute impacting ADR was enacted in 1983. This statute (the ADR Systems and Financing Act) provided an ongoing method for these centers to be funded at the local level. Now found at Chapter 152 of the Texas Civil Practice and Remedies Code, the law provided that each county commissioners court could add to the filing fee for civil cases a surcharge to comprise that county's funding for the local dispute resolution centers. This effort resulted in the ability of local centers to be self-sufficient.

Education and experimentation continued, and in 1986, two Houston state district judges agreed to experiment with court-annexed ADR. They referred—even urged—litigants in pending cases to participate in the Moderated Settlement Conference process. While lawyers were still hesitant and reluctant, efforts continued, as the use of the process was certainly successful in resolving cases. From this experimental approach, the Committee began to consider the possible expansion of court-annexed ADR.

D. The Texas ADR Procedures Act ("ADR Act")

Recognizing the courts' reluctance to order—or in many cases, even suggest—that litigating parties use mediation or other ADR procedures to assist in settlement, the Committee, and in particular its legislative subcommittee, determined that the time might be appropriate for legislation to address the issue. The subcommittee began work on drafting a statute that would provide courts the impetus and authority for ADR use. In particular, two prominent members of that subcommittee—Judge Evans and Professor Ed Sherman—undertook the task of drafting a proposed statute.

Cyndi Krier, then a State Senator from San Antonio, was persuaded to sponsor the bill, which was subsequently passed

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without controversy. The consequences of the statute's enactment, however, took a few years to develop. The ADR Act, in part a product of the Committee's legislative subcommittee, at the time was the most comprehensive ADR statute in the country. This statute is viewed as the backbone of ADR practice throughout Texas, not only in state courts, but it also has served as the foundation for the rules and procedures that many Texas federal courts enacted. The Texas ADR Act was used as a model for other states as well.

Following enactment, the Committee responded to Judge Evans' contention that education was an important key to usage. The Committee then published the first handbook in 1988.

E. Education Efforts Result in Increased and Expanded Use

Although activity and interest in ADR appeared to be increasing throughout the state, knowledge among most lawyers and judges remained minimal. In fact, it appeared to take a few years for the idea of court-annexed ADR to gain hold. The publication of the 1988 handbook served as a tool to educate the judges and lawyers who were resistant to mandating or participating in ADR.

The Dispute Resolution Centers focused on general public education, using such activities as Dispute Resolution Day and—with the assistance of the TYLA—publishing comic books for peer mediators. The Committee continued to focus on increasing knowledge and awareness among judges and lawyers. Committee members also provided assistance to a variety of local courts in the creation and implementation of settlement week programs. With the help of the CLE Department of the State Bar, the Committee began to conduct CLE programs about ADR, and Committee members began speaking about ADR as part of other legal education programs. A new handbook, which outlined in detail all of the ADR processes provided in the ADR Act, was published with the financial support of the Texas Bar Foundation. This book was acknowledged nationwide as providing an impressive ADR overview.

F. Continued Growth

By 1990, the Committee had grown and undertaken a number of projects. While the Committee had not initiated the settlement week statute, it did contribute to its content and especially its implementation. As interest grew, so did the size of the Committee. Work efforts necessitated the establishment of many subcommittees, which were then assigned to address various issues and projects.

In 1991, State Bar President-Elect Bob Dunn recognized that the now-enlarged "Committee," with over 100 members, might benefit from the collaboration of two Co-Chairs, and Lanelle Montgomery and I assumed the roles. To assign and delegate among over 100 interested and energetic individuals proved to be somewhat challenging, but the interest and enthusiasm continued to grow. A survey was taken to determine if the time was ripe to transition into a full section of the State Bar.

G. The Birth of the ADR Section

The idea of "sectionhood" was being explored in a couple other states, as well as within the American Bar Association, where I was a member of the Standing Committee on Dispute Resolution. (In fact, the ABA's committee officially transitioned from committee to section in February 1993, a few months behind Texas.) Lanelle Montgomery and I drafted bylaws and a proposal that went before the State Bar Board of Directors. The Committee was especially mindful that the section should be open to all interested individuals, not just lawyers. In Spring 1992, the Board of Directors approved the section's creation. In June 1992, at the State Bar Annual Meeting in Corpus Christi, the State Bar of Texas ADR Section officially came into existence. The first general membership meeting was held on Friday, June 19, 1992, at which time the first Council and officers were elected.

H. The First Year: 1992-1993

During the ADR Section's first year, initial efforts involved making determinations about the structure of the Section in terms of its committees and subcommittees, as well as a prioritization of goals and objectives. The Council was particularly mindful of the need to utilize all of the talent that had expressed interest, as the Committee of 100 members was now a Section with hundreds of members. An important first step was the establishment of the foundation for Section work and projects. A primary Section goal was the continuing effort to educate the legal profession and the general public. Initiating interaction and coordinating efforts with other sections of the State Bar was another early objective. The Section also put into place a systematic method for the tracking of state legislation.

In terms of substantive issues, the topic of regulation continued to be at the forefront. In particular, a subcategory of regulation—ethical concerns—appeared to garner the most consideration. The Section created an ethics committee, which began work on a code that was officially enacted in 1994. Another substantive focus of the Section was on training of mediators, and a Section committee transitioned into a separate entity, the Texas Mediation Trainers' Roundtable. A concern with court referrals was another issue of concern, and the court committee created model orders of referral for dissemination among Texas judges. Finally, educational efforts continued with a comprehensive CLE program held in September 1992.

Charles Guittard (1993-1994)



I remember the Council meetings at the Texas Law Center very fondly and the overnights at the Doubletree next door. The primary thing I remember was the first code of ethics we passed for mediators. We had a form from a non-attorney organization, but it didn't seem to cover all the areas we thought should be addressed for attorneys. Although it might seem that a code of ethics for mediators would be non-controversial, in fact there were several tricky subjects that generated heated discussion. One was the practice of attorneys making campaign gifts to judges from whom they hoped to obtain mediation referrals, or serving on judges' campaign

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committees for the same purpose. With the support of Judge Evans, a provision was added to the code of ethics dealing with these practices. It was somewhat watered down later, although it still exists in the code and serves as an admonition to mediators not to bring disrepute upon mediation referrals—and mediation itself—through interactions with the judiciary that might generate criticism. The other thing I remember was the quality of the newsletter, which about that time had some interesting and progressive articles submitted by our members.

C. Bruce Stratton (1994-1995)



In July and August 1994, the Section conducted a survey on “credentialing of mediators” to ascertain how members felt about the issue. The response was excellent, the results were published in the winter issue of *Alternative Resolutions*, and copies were given to members of the Texas Legislature. A task force on quality of practice was formed to address the credentialing issue. A draft position paper (voluntary pledge for mediators) was distributed in December 1994 for comments. An editorial board was created to oversee the quantity and quality of articles in the newsletter.

The Section met on March 4, 1995 with committee meetings, reports, and a forum entitled “Credentialing, Legislation, and Ethics.” The Organization Coordinating Board was created to develop a network of ADR organizations. The Section sponsored a booth at the Society of Professionals in Dispute Resolution (SPIDR) annual conference in Dallas in October 2004 and received an excellent response. A legislative-action plan was prepared to respond to ADR legislation. An “arbitration et al. committee” was formed to research and develop ways to serve fields other than mediation. The Section, joined by SPIDR, addressed the issue of mediation confidentiality through an amicus curiae brief in a Virginia case on appeal.

David Cohen and E. Wendy Trachte-Huber (1995-1996) (as told by David Cohen)



Wendy Trachte-Huber and I served as Co-Chairs of the ADR Section in 1995-1996. (I steered, she navigated.) During our tenure, and spilling over from the years preceding and following while serving on the ADR Council, several important ADR initiatives were percolating: mediator ethical guidelines, credentialing issues, and confidentiality during mediation filled our monthly agendas, topped off by some wonderful annual CLE programs on negotiation and on mediation skills held in Santa Fe, New Orleans, and Houston. (Who can forget Carl Icon and the Monolith dispute?)

Perhaps most substantively during our tenure, the Section discussed filing an amicus brief in a Fifth Circuit Court of Appeals case, addressing the issue of confidentiality in mediation. The case arose out of an audit of delinquent federal farm loans

made by an agency of the U.S. Department of Agriculture. Mediations between the delinquent borrower and the lender were conducted under the auspices of Texas Tech University pursuant to a contract between the university and the USDA. The mediations were to be governed by the ADR Act, which treats mediations as confidential proceedings for most purposes. A criminal investigation of the delinquent loans led to the empanelling of a federal grand jury, and the loan files were subpoenaed, including all documents and communications generated during the mediations. The mediator, a Texas Tech faculty member and, incidentally, former ADR Section Chair, refused to produce the material generated during the mediations, relying on the confidentiality provisions of the Texas ADR Act.

The Section's amicus brief was, if I may say so, rather compelling. Regrettably, the Fifth Circuit saw matters otherwise. See *In re Grand Jury Subpoena*, 148 F.3d 487 (5th Cir. 1998).

In advancing the use of mediation by volunteer third-party neutrals, the Section had better luck with our legislature. We testified in behalf of and drafted an amendment to the Texas ADR Act, Section 154.055, which provides qualified immunity to volunteer third-party neutrals absent intentional misconduct or gross negligence.

During our tenure, we saw the continued growth in the use of ADR by courts at all levels. Arbitration and mediation became the rule, not the exception, with broad acceptance. It was a golden period.

Suzanne Mann Duvall (1996-1997)

“It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, we had everything before us”

Charles Dickens, *A Tale of Two Cities*



In 1996–1997, the Section was just four years old—going on five. It was the time of our youth—filled with enthusiasm, expectation, and excitement. ADR (particularly mediation) was *the* thing and was beginning to be embraced by practitioners, would-be practitioners, courts, and advocates alike.

The Section's membership rolls swelled with each new year. (If memory serves, membership was at the 1,300 and 1,400 level and growing.) The Council had recently adopted a set of Ethical Guidelines that has become the standard for the profession. The Texas Supreme Court, in response to a request by David Cohen and Wendy Trachte-Huber, 1995-1996 co-chairs of the Section, had convened an Advisory Committee on Court-Annexed Mediations. The second edition of *Dispute Resolution Texas Style* was in the works, and the Section had come up with a plan for credentialing mediators.

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In spite of the groundswell of enthusiasm and activity, or perhaps because of it—and in particular because of the Section's proposed plan for mediator credentialing—there developed a great deal of real or perceived acrimony among the mediation community with several groups of non-attorney mediators lining up on one side in opposition to the Section's plan. Thus began our "season of Darkness . . ."

I would like to think, however, that by my term's end we had entered into our "season of Light," with the beginnings of understanding, effective communication, and trust being built among the various factions and the Section. The concept of the "Roadshow" (wherein Section members would present continuing education programs to outlying areas of the state); an expanding and well-thought-out newsletter, and two continuing education programs—one at the State Bar Annual Meeting and the second a mid-year program in February—helped bring about such conciliation by bringing everyone together to discuss our differences and build on our similarities.

When I reflect on my year as Chair, however, the memories I most treasure are the deep and abiding friendships I made through my work with the Section. I hesitate to start naming names at the risk of leaving out a treasured friend or two. But you know who you are. Over the years, we have never failed to express our affection for each other, both personally and professionally. Look down the list of all of those who have served the Section so well over the past 15 years, and you will see a list of giants in the profession, all of whom I am proud to call "friend." And the best thing of all is that now, just like in 1996-1997, despite all of the changes since then, we—the Section, its members, and the alternative dispute resolution profession—still "have everything before us"!

John P. Palmer (1997-1998)



When setting the Section's goals and hopes for the 1997 – 1998 year, I stated at the annual meeting, "In order for the Section and the Council to be successful, we must understand the roots of our past while looking toward the future and keep in mind our purpose as stated in Article I, Section 2 of the Bylaws, which is 'to promote the use and quality of Alternative Dispute Resolution (ADR) in Texas.'"

We built on the past leadership of ADR visionaries and enriched the ADR community by first-class continuing education, disbursement of information on ADR, and improvement of communication to our membership. We were immersed in several issues addressing mediator quality.

Mediator Standards. The Council wrestled with the scope of mediator standards. The Texas Supreme Court Advisory Committee on Court-Annexed Mediations reached a consensus proposal and submitted its report to the Supreme Court on March 18, 1998. An Ad Hoc Committee of the ADR Section Council was created at the April 25, 1998 ADR Section Council meeting to address The Proposal for a Voluntary Program

for Mediators' Designation—"Credentialed by the Alternative Dispute Resolution Section of the State Bar of Texas"—as promulgated by the Quality of Task Force of the ADR Section ("ADR Task Force Proposal") and the Supreme Court Committee Report. The ADR Task Force Proposal was approved by the Council at the June 12, 1998 meeting. This approval proved to be the first step in the creation of what is now known as the Texas Mediators Credentialing Association.

Assure the Quality of Mediation. David Cohen, on behalf of the Section, filed an Amicus Brief in *In re Grand Jury Subpoena Dated December 17, 1996* before the United States Court of Appeals in the Fifth Circuit. This brief sought to protect the confidentiality of mediation proceedings in federal criminal grand jury investigations, unless a threshold test was met.

Continuing Education. On September 12-13, 1997, the Section hosted the "Mastering Mediation for the Third Millennium" seminar, and also celebrated 10 years of the ADR Act. Former Bexar County Judge Cyndi Taylor Krier, who had been instrumental in the passage of the ADR Act as Texas state senator, gave a historical perspective of the creation and passage of the ADR Act. Ross Stoddard organized this successful and imaginative seminar.

Paul Keeper continued the momentum of the "Roadshow Program" initiated by Suzanne Duvall. This program developed curriculum and allowed Section members to give ADR presentations throughout the state.

The mid-year meeting and annual continuing education program focused on arbitration. Over 100 people attended the mid-year meeting and program on arbitration, held on February 7, 1998 in Austin. Paul Keeper, Barbara Hannon, Helmut Wolff, Marty Leewright, and Tammy Hilboldt forged this excellent seminar on arbitration, a topic which our Section had rarely discussed before.

On June 12, 1998, the annual meeting luncheon featured Bruce Stratton, who reported on the Supreme Court Advisory Committee Report, and Kim Kovach and Robert Schuwerk, who spoke on the Texas Supreme Court Jurisdiction over Mediators and the Applicability of Texas Disciplinary Rules of Professional Conduct to Mediators and Arbitrators.

Promotion of ADR. For the very first time, the Section had its own home page and web site. Carl Forrester led the charge and almost single handedly developed this impressive webpage.

After 20,000 of the pamphlets, *Dispute Resolution, Texas Style* (second edition) were distributed, the Council approved a second printing of the pamphlet. Marty Leewright and his committee worked diligently on the re-printing and distribution of this valuable pamphlet.

Jim Gibson, who at the time was Criminal Justice Sub-Committee Chair, in association with the Texas Young Lawyers Association, gave one-day seminars on victim-offender mediation throughout the state. Liz Wally, Chair of the School and University Sub-Committee, in association with the University of Texas, promulgated newsletters to middle school students throughout the state on peaceful resolution of disputes.

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THE HISTORY OF THE ALTERNATIVE DISPUTE RESOLUTION SECTION AS TOLD BY ITS FORMER CHAIRS

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John A. Coselli, Jr. (1998-1999)

During 1998-1999, the Section continued to improve its newsletter and website, and it continued its support of the committee considering the voluntary credentialing of mediators.

Gary D. Condra (1999-2000)



During 1999-2000, the Section, in cooperation with the Corporate Counsel Section, presented an innovative CLE program entitled "New Answers for a New Age." The Section also developed an international arbitration training course, co-sponsored by the Chartered Institute of Arbitrators. The Section continued to improve its newsletter and website, and it continued its support of the Texas Mediator Credentialing Committee.

Certainly, when I look back on the opportunity that I had to serve as Chair, the Section's solid achievements give me great pride—not in the part I played, but in the fact that the Section, through its members, continued to provide leadership to the ADR profession. And on a personal note, I believe the period leading up to my tenure will be viewed by those who follow as the time when the ADR Section took a brave stand to defend the confidentiality of mediation—a standard which even today is recognized and respected throughout the nation.

Caliph Johnson (2000-2001)

During 2000-2001, the ADR Section's accomplishments were as dynamic and vibrant as the youthful field of ADR itself.

A. ADR Section Initiatives



First Annual Council Retreat. On August 25-26, 2000, the Council and several past Chairs held a retreat in San Antonio. The goal of the retreat was to determine what roles the Section would serve: to the State Bar, to the Section's membership, to other Sections of the State Bar, to other organizations, institutions and individuals, and to society generally. Once the direction was decided, the body then set out to re-shape the Council's committee structure and roles, and set goals and objectives for the coming year.

Fall 2000 Annual Conference: "I'll see you in Court". On September 22, 2000, the Section hosted its Fall Annual CLE Conference, "I'll See You in Court," at South Texas College of Law in Houston. The Section was joined by several cooperating organizations.

Mid-year Meeting. On February 10, 2001, the Section held a Mid-year Council and Section meeting, and presented a CLE conference entitled, "Mediating and Arbitrating Employment Lawsuits: What the Experts Want You to Know."

B. Other Collaborations and Joint Initiatives

During the year, the Section continued to join forces with the

State Bar, other Sections of the State Bar, and other national and international organizations, to address such mainstream issues as: Multi-Disciplinary Practice, Multi-Jurisdictional Practice, Unauthorized Practice of Law, and Uniform Mediation Act. In fact, at the 2000 Annual meeting of the Bar, the Section co-sponsored a panel discussion on Multi-Disciplinary Practice with the Corporate Counsel Section. New issues such as Collaborative Law arose during the 2001 legislative session, which required further joint efforts. Regulating and credentialing court-annexed mediation remained ongoing concerns addressed through the Council, along with the Texas Mediator Credentialing Association and the Supreme Court Advisory Committee.

Wayne I. Fagan (2001-2002)



The Section held its annual leadership retreat in August 2001. In response to September 11 events, the Council decided to implement a Pro Bono Community ADR Project.

The Section revised the website, www.texasadr.org, and added a members-only section. It undertook an initiative to educate both neutrals and consumers of mediation services on the Uniform Mediation Action, and in cooperation with Texas Wesleyan School of Law, organized the annual CLE in Fort Worth with keynote speaker Ambassador Nancy Ely-Raphel of the Office to Monitor and Combat Trafficking in Persons, U.S. State Department.

The Section completed an agreement for the publication of Rau, Sherman & Shannon's *Texas ADR & Arbitration Statutes Annotated*, to be added to the Section's publication of *Handbook of Alternative Dispute Resolution*.

The Section formed a Class Action & Mass Torts Subcommittee, helped launch the Texas Mediator Credentialing Association, and with the ABA Dispute Resolution Section, agreed to host an annual meeting in March 2003 in San Antonio.

Deborah Heaton McElvaney (2002-2003)



In every Chair's Corner of *Alternative Resolutions*, I reminded the Section's members of the Section's single, simple purpose: "to promote the use and quality of Alternative Dispute Resolution (ADR) in Texas." At the Council's retreat in September 2002, we focused on this charge, using it as the platform in planning programs and trainings, in modifying our committee structure, and revising our newsletter and website, all with the purpose of meeting our members' needs while contributing to the general promotion and use of ADR. The following is just a snapshot of the many projects in which the Section took a leadership role, and in so doing, made a difference.

Cross-Cultural ADR Project. At our first Council meeting following 9-11, the Council voted unanimously to be proactive in responding to the horror of 9-11. The Section's response was to form a task force, originally called the "9-11 Task Force," but later changed to "Cross-Cultural ADR Task Force," to coordinate with numerous governmental entities, DR Centers, religious groups and leaders, and many others to develop *pro*

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THE HISTORY OF THE ALTERNATIVE DISPUTE RESOLUTION SECTION AS TOLD BY ITS FORMER CHAIRS

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bono ADR services in Texas. The project focused on the need for better understanding between races and religions to thwart hate crimes, and to deliver services to our men and women in the military who experience conflict as a result of activation, deployment, or loss of employment. The first training by this group occurred on July 26, 2002: "Mediating Across Cultures." *Third Annual Institute for Responsible Dispute Resolution.* On October 11, 2002, the Section co-sponsored the Third Annual Institute for Responsible Dispute Resolution, "Integrity, Honesty and Effectiveness in Dispute Resolution," held at South Texas College of Law. This one-day institute addressed methodologies in handling difficult issues and individuals, new technology, and the rise of professional protocols in both arbitration and mediation processes.

March 20-22, 2003: The Fifth Annual Conference of the American Bar Association Section of Dispute Resolution. "Insight for Inspired Practice." The Section co-sponsored this conference in San Antonio and took a highly active role in its success. Our Section contributed \$2,500.00 as scholarship funds to be given to those who could not afford to attend the conference. Many of our Section members participated in planning and implementing the program. On Friday night, our Section co-hosted the gala, which commemorated 10 years of service to the dispute resolution field. On Saturday morning, our Section sponsored "Breakfast With The Texas Bunch." While eating a real Texas breakfast and listening to a panel discussion presented by the crafters and drafters of our State ADR legislation—Judge Frank Evans, Hon. Cyndi Krier, and Prof. Edward Sherman—the group was entertained by a mock, but successful, mediation of the quarrel between Colonel Travis and General Santa Ana.

Revamped Member Services. The singular question asked over and over at Council meetings, was "Will this enhance member services?"

A. At the September 2002 retreat, the Council took a long, hard look at past goals, objectives, and accomplishments. Many hours later, the Council agreed that one way to enhance member services was to revise our committee structure, which, over the years, had become cumbersome and inefficient. This was done, and the resulting structure more precisely defined the goals of the committees and the roles of their members.

B. A great deal of time and energy had gone into improving the form and substance of our Section's newsletter. The newsletter was, by then, published four times a year, as was the original intent. The newsletter had more substantive articles addressing particular areas of law and the nuances of ADR in those areas. The newsletter continued to have its standard articles: the Ethical Puzzler, Book Review, and Legislative/Case Law Update.

C. Probably the most obvious improvement to member services was the look and feel of the Section's website, www.texasadr.com. The Publications Committee had

worked hard to make sure information was posted in a timely manner, that it was easily retrieved, and that questions posted by visitors were answered expeditiously.

D. Our Legislative Committee monitored all proposed legislation dealing with ADR matters and reported to the Council when pertinent bills were proposed. The Council took a strong stand against adopting the Uniform Mediation Act ("UMA") in Texas. The Section was a great resource to others wishing to consult about our State's ADR legislation and the problems presented by the UMA in relation thereto.

E. The Section played an intricate role in developing and finalizing the goals and objectives of the TMCA. Credentialing soon would be available to those who fit the guidelines.

Michael J. Schless (2003-2004)



Three highlights of the 2003-2004 Council year come to mind. The first was the great experiment with independence from State Bar administration. For a few years, there had been a pervasive sense that the State Bar was not doing an adequate job of meeting the needs of Sections generally, and our Section in particular. We decided to retain our own salaried Executive Director. The experiment yielded two significant results. First, the State Bar got the message and undertook to significantly improve the nature and quality of their services to the Sections. Second, we got the message that coming back into the fold of the State Bar would be to our benefit. It has been a mutually rewarding relationship ever since.

Second, having just concluded the 78th Legislative session unscathed by the Uniform Mediation Act, we undertook to take the message to other states that the confidentiality provisions of the UMA were inadequate. Led primarily by the articulate and scholarly efforts of Brian Shannon, the beauty and elegant simplicity of the Texas ADR Act was exposed to the nation. And it seems to have worked. Since its introduction in 2001, the UMA has been adopted in only nine states.

Third, in the course of our work with the legislature, we learned that while the UMA was not even on the radar screen, arbitration was about to become a bright and clear target for attack, particularly in consumer and employment cases and in contracts of adhesion. We began a series of arbitration roundtables to which we invited all of the stakeholders: representatives of consumer groups, the Litigation, Consumer, and Employment Law Sections, the Better Business Bureau, the legislative and judicial branches, and national arbitration service providers. Thanks to the efforts of John Fleming, Michael Wilk, and Bill Lemons, that series of roundtables gave birth to the State Bar of Texas Fair Practice Guidelines, which are contained in the *Consumer Arbitration in Texas* pamphlet written by John Boyce and published by the Section in 2006.

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Texas Association of Mediators: Past, Present, and Future

*By Suzanne Mann Duvall**



On September 6, 1985—pre-dating the Texas Alternative Dispute Resolution Procedures Act by two years, the founding of the Association of Attorney-Mediators by five years, and the creation of the Alternative Dispute Resolution Section of the State Bar of Texas by seven years—a group of mediators drawn from several professions (including attorneys, therapists, and other related fields) came together to form what is now known as the Texas Association of Mediators (TAM). It was the first statewide organization in Texas of and for mediators and the mediation profession.

TAM began its existence as the Texas Association of Family Mediators. In a priceless letter dated May 20, 1994, Susanne C. Adams, one of its founders and a pioneer in the field, tells the story of the organization's humble beginnings:

Once upon a time a long time ago (in 1984), Gary Kirkpatrick.... (then the case manager for the Dallas Dispute Mediation Service), decided it might be time to think about mediators networking with each other around the state. With the invaluable help of Anne-Marie Norman (now Moreault) and others, he organized a meeting in Austin on a cold and rainy November 3, 1984, and about thirty family mediators showed up. Out of that meeting came the creation of the Texas Association of Family Mediators.

I've long believed that T.A.F.M. was really founded because there were not many of us in Texas at the time, and we were isolated in small groups in various parts of the state. I think we all wanted to network with each other and gain strength and knowledge from each other. Believe it or not, this was a very cohesive, friendly and cooperative group in those days. We did not fight with each other (though we did not always agree with each other, we disagreed agreeably), and we sought to support and help each other as much as we could. I think we all believed that if we stuck together, we could achieve great things.

This was a truly interdisciplinary group of people, about half lawyers, half therapists, and a few with other backgrounds, dedicated to furthering the cause and use of family mediation in Texas. Our stated purposes were: (a) to promote and encourage mediation; (b) to educate the public; (c) to engage in other public relations activities;

(d) to encourage worthwhile legislation; (e) to encourage communications among family mediators; (f) to set standards of good practice for family mediation; (g) to assure ethical behavior of mediators; and (h) to help family mediators obtain training.

The first monies paid to T.A.F.M. were collected informally at each meeting (usually \$5 per person) just to meet expenses of mailing, copying and so on. Numerous meetings were held in 1985 to establish membership criteria, ethical guidelines, organizational structure, corporate structure (T.A.F.M., now T.A.M., is a Texas Non Profit Corporation with an approved 501 (c) (3) designation from the I.R.S.) and other miscellany pertaining to the start-up of any new professional organization. All our skills, patience, perseverance, know-how and friendships were put to the test over this period as we wrangled with each other for what we each so strongly believed. Should we have more than 40 hours of training required? (There was no ADR statute in 1985, and most of us had taken a 40 hour basic or family mediation training.) Should we require an advanced degree, and if so, what kind? Should we have an experience requirement? Should we ascribe to this set of ethical guidelines or that, or should we write our own? Should we be able to lobby the legislature or not? (HB 1146 was pending in the 1985 legislature pertaining to court referrals to mediation in SAPCRs.) What would the bylaws contain and who would write them? How much should membership dues be? And so on until all of these were decided.

We organized the Board of Directors with a balance of attorneys, therapists and "others", so leadership would be shared among the various disciplines represented in the association. The first elected board of directors took office on March 9, 1985, as follows:

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THE ASSOCIATION OF ATTORNEY-MEDIATORS: STEVE BRUTSCHÉ'S INSPIRATION AND LEGACY

*By Mike Amis**

It is a privilege to tell the story of the Association of Attorney-Mediators for this special issue of *Alternative Resolutions*.

The Organization Today

The Association of Attorney-Mediators ("AAM") is a Texas non-profit trade association comprised of independent attorney-mediators bound together in a common purpose: "to support and promote professional and qualified attorney-mediators who are committed to the proposition that the existing system can fulfill its intended purpose through the use of voluntary and court-annexed mediation." AAM's home office is in Dallas, and Brenda Rachug serves as its Executive Director.

Qualified attorneys are invited to join AAM based on their experience levels as attorneys (currently a minimum of eight years for full membership or five years for associate membership), successful completion of a basic mediation training program approved by AAM (currently there are nineteen such programs), and recommendations from their peers.

AAM's 291 members are located in twenty-three states and report they have conducted more than 229,000 mediations. These members fulfill ongoing practice and education requirements, are subject to a grievance procedure, and join together in being insured in connection with their mediation practices. AAM is governed by a traditional Board of Directors, currently comprised of nine members plus the immediate past-president. Trey Bergman, of Houston, serves as the 2007-2008 President. Areas where ten or more members are located are eligible to form chapters, of which there are now six: Houston, San Antonio/Bexar County, Central Texas, North Texas, Oklahoma, and St. Louis.

In Texas, AAM has actively provided amicus curiae assistance to members and trial counsel on issues in the courts affecting the use of mediation. The organization also provides legislative guidance to the mediation community through its representative during Texas legislative sessions. Additional current information may be found at AAM's website: www.attorney-mediators.org.

Brutsché and Others Lay the Foundation for Great Work

The story of AAM begins with Steve Brutsché, a Dallas attorney who lived from 1944 to 1991. Every great work has behind it individuals who see the goal clearly, plan and think long

and hard about how to pull it off, passionately believe they are right, gain the support of necessary people, anticipate the obstacles, determine to pull it off at all costs, and simply will not be denied. Brutsché was such an individual. His (and his supporters') great work: to transform the civil justice system through the use of court-annexed mediation.

The potential for court-annexed mediation in Texas was in place when Steve formed AAM in the summer of 1989. By that time, Frank Evans, Ed Sherman, Senator Cindy Krier and others had worked for the successful passage of the 1987 ADR Act. In the years between 1987 and 1989, several people in Dallas traveled different paths that came together in the summer of 1989, when the Dallas Bar Association ("DBA") organized the first Basic Mediation Trainings. District Judge Gary Hall had observed Ft. Worth's successful Settlement Week and, with the help of others, conducted a successful Settlement Week in Dallas County. Grant Seabolt had been one of his key assistants. The DBA had two respected civil trial lawyers as chairs of its Business Litigation Section and ADR Committee, Charles Guittard and Jay Madrid, respectively. Heshia and Jeff Abrams were experienced mediators who operated a private mediation firm, and they provided training principles and techniques. And then there was Brutsché, a man who, by the summer of 1989, had been to several mediation training seminars, studied different mediation models like the ones used by the U.S. Department of Justice and the Mennonite Church, conducted perhaps fifty to 100 mediations himself, and served as Vice-Chair of the DBA's ADR Committee.

In the summer of 1989, these six lawyers and Judge Hall conducted a two-day mediation seminar, the first day being aimed at the Bar in general and the second day being a workshop for applicants who had been accepted based on their answers to written questionnaires eliciting their reasons for wanting to attend. The six lawyers combined to produce what rapidly would become known as the "Dallas Training" or the "Brutsché Training," which would continue under the auspices of the DBA through 1992 and would spawn three private training firms: Attorney-Mediators Institute ("AMI"), American Academy of Attorney-Mediators, Inc. ("The Academy"), and Learn from the Masters. Brutsché initially formed AAM as a private company to conduct trainings in advocacy for trial lawyers and

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to conduct mediation training for lawyers outside Dallas. He offered low-cost group malpractice insurance through SPIDR, and every AAM member in those early days was a member of SPIDR, which introduced them to the larger world of conflict resolution.

The problem with Brutsché's model for his operation of AAM, Inc. was that he couldn't shake his new trainees loose! As the mediation orders started arriving from the courts, and the results arrived showing mediation's overwhelming success, the new mediators wanted to eat, drink, talk mediation just like he did. Seasoned, crusty trial lawyers—now mediators—actually smiled and said things like, "It's the wave of the future! This is the first time I've ever been on the uptick of *anything*." Bear in mind that the training, carefully planned by Brutsché and his buddies, called for each trainee to take through mediation two of his or her *own* cases, so they would see the process from all angles. Within eighteen months, Brutsché wisely consented to the transfer of the AAM name to a non-profit corporation, the present Association of Attorney-Mediators.

Brutsché viewed mediation as a great movement: he aimed high. Supporting my belief that he aimed high, I quote Judge Hall, who recalls Brutsché coming into his Dallas chambers and saying he had received extensive mediation training and was "dedicating his life to mediation." Because Brutsché aimed high, he impacted many careers and lives, helped change the administration of justice, and saved and enhanced emotional and economic resources. Those accomplishments are real, even though insusceptible to precise measurement.

In the vernacular, Brutsché "pumped us up," and we followed. In my opinion, the extent to which we followed has determined the success of mediation of lawsuits and of those who serve as mediators. He shared all he knew. He wanted us to succeed as lawyers, mediators, and persons, and he knew how we could do that. The marvelous thing is that a bunch of folks have done it! One major difficulty in writing this article is the temptation to name everyone who implemented his gifts and successfully carried mediation's flag within the legal community as a direct result of his inspiration. If I were to succumb to the temptation, this article would be little more than a list of names—like naming all the soldiers in a battle—and it would be incomplete and unfair. All great movements have their unsung heroes, as does mediation.

Brutsché's Great Work: Training, Planting of Seed Groups, and Persuasion of Judges

By the summer of 1989, Brutsché (and those working with him) had the training program for the DBA figured out. For the workshop, there were thirty slots available to lawyers with eight or more years experience. The application process, by design, was somewhat of a hassle for busy lawyers conscious of missed billable hours. (If we couldn't be bothered to fill out the questionnaire, how could we be patient with the litigants—and lawyers—we were going to serve?) The program was to train us to be professional attorney-mediators, meaning that when we finished we would be available to the courts and suf-

ficiently competent to request compensation. The training was designed to see who would respond to a call to service, and the investment of time was a critical factor. It would take about sixty hours, consisting of two days of seminar work, two observations, two cases of our own we would take through mediation, and two pro-bono mediations we would perform at the Settlement Week in Fall 1989. All who completed those steps would be deemed to have completed the course and be placed on the DBA Roster to be provided to the Dallas courts for the judges' use as they deemed appropriate. The lawyers who completed this training would have worked for something they viewed as important, and they would succeed. Their efforts would determine if mediation would take hold institutionally.

All who attended that initial seminar at the Sheraton Park Central in Dallas remember it. If your body carried a pulse, you remember it! There was Brutsché, followed by others, who stood up during the first day of the seminar and exhorted a ballroom full of lawyers to renew a vocation of service to their clients, saying in-your-face things like, "You've sold out to winning and making money, and that's not enough to sustain a life! Your clients need you, they want you—not to draft interrogatories but to solve their problems! You are the premier problem-solvers of society!" He told the audience these things with a smile, under control, but he was obviously on fire, and we in the audience knew what he said was true. "This civil justice system we have is great—the best—but it is broken, it is failing to deliver on its stated purpose as set forth in Rule No. 1 in both the Federal and Texas Rules of Civil Procedure—the fair, prompt, cost-effective resolution of disputes." As the two days unfolded, Brutsché's enthusiasm was infectious, and the trainees were on their way to becoming the initial pool trained through this program. Other seasoned mediators, whose enthusiasm was as infectious as Brutsché's, imparted portions of the training: Richard Evarts, Heshia and Jeff Abrams, Al Alhadeff from Seattle, Madrid, Seabolt, Guittard, Judge Hall, and former Judge Dee Johnson.

Between June 1989 and September 1991, Brutsché conducted, I believe, a total of seven workshops—three basic and one advanced training in Dallas and two basic and one advanced training in Houston—before his physical condition deteriorated to a point where he could not participate.

In 1990, at the third DBA Basic Training, Brutsché told those present:

When I look at you, I see the cream of our profession . . . [I see] the privilege of having worked with these lawyers who have been speaking today to literally transform our legal system, . . . a privilege that is incomparable and indescribable. Because the truth is that our legal system has not been fulfilling its promise and its purpose—the prompt, fair, and cost-effective resolution of disputes—for some time. What those of us who have been *laboring in the vineyard of mediation* have discovered is that the existing system can fulfill its purpose. It is possible to do it here

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and now. Not some time in the future. . . . those of us that work in the law have the ability here and now to transform it into a system that, in fact, delivers on its purpose and its promise. That is a powerful piece of information.

It was powerful and, coming from most of us in the audience, would have sounded preposterous. But, if you're sitting there, and you've got this guy talking to you, sounding like he sincerely believes it, hey, *you start to believe it!* Why? Because, he had credibility, he was one of us, he had tried cases with the full range of success and disappointment that marks the experience of any mature trial attorney. As he put it, "Takes one to know one." He was a gifted teacher - teaching both advocates and prospective mediators, showing them that there was indeed a better way, and teaching those advocates who, by reason of their character, experience, and desire, self-selected themselves to be trained as mediators.

Well-planned in advance, at about the time we completed our pro-bono mediations at Settlement Week, Brutsché made a Judicial Week presentation to all thirteen Dallas Civil District Judges, handing each two brown "Bench Guides" containing articles about mediation, rules of mediation adapted from the American Arbitration Association, and a roster of those who had completed the course either as presenters or trainees (in obedience to an important principle of cooperation with those already "laboring in the vineyard"). Also included in each Bench Guide was a pre-printed pad of Orders for Referral to Mediation that the judges could issue *sua sponte*. Why two Bench Guides for each judge? Because Brutsché understood each judge's court administrator was an important cog in the administration of justice, to be involved in administering the mediation orders to the extent each judge would allow. Brutsché then called meetings for all the new mediators and handed them a set of forms they could use in administering the referral orders to come. The forms covered all steps, from receipt of the Order through a report back to the Court after mediation. Included was the Attorney Information Sheet, which called for counsel to provide information about the case and to agree to the Rules of Mediation that also appeared in the Order. There was a purpose for each step of the training process: to build a spirit of cooperation among the court, the court administrator, the advocates in the case, and the mediator, all working either to resolve the case as soon as practicable or to determine that it needed to be tried. The Dallas judges returned to their courtrooms and began issuing orders. Mediators reported their results to Brutsché, who maintained an accounting, and the results came in. Regardless of the mediator, provided the elements of the process were observed, the parties had an 80% chance of resolving their cases at mediation. By the end of 1989, 400 cases in Dallas had been reported with an 84% settlement rate, opponents were converted to supporters, court-annexed mediation had arrived in Dallas, and the world of litigation had changed.

Things moved very quickly in the succeeding months, surpris-

ingly unhindered by Brutsché's deteriorating health. He was now clearly the bell-cow for judges' and attorneys' pro-active use of mediation under Chapter 154. Closely behind—if not concurrently with—the Dallas training, Brutsché trained two small "seed groups" of experienced, well-regarded attorneys in Houston. A second Dallas training of thirty took place in November 1989, and Gary McGowan of Houston attended, as well as Joe Milner, who would take AAM to Austin. We learned Houston really is "bigger than Dallas!" Harris County carried twenty-four civil district courts, each handling a docket of 2,000 cases, with one court administrator for two judges. Dallas judges were carrying an average of 1,000-1,400 cases each at that time. Justice delayed truly was justice denied.

Brutsché was now expanding his AAM activity, conducting Saturday workshops for attorneys and promoting them with the slogan, "Mediation: It's Here - It Works - Let's Use It." Attorneys completing the Dallas and Houston trainings were invited to "join" AAM, pay dues, and receive free seminar attendance at all AAM seminars, as well as group malpractice coverage through SPIDR (now ACR). His article bearing the title of his slogan appeared in the June 1990 issue of the *Texas Bar Journal*, which answered questions lawyers would naturally have. This article became a standard enclosure to an AAM member's package sent to counsel and still holds up well.

In the Spring of 1990, Gary McGowan and Nancy Atlas (now a federal judge), accompanied by Houston colleagues Tommy Proctor, Mark Glasser, and Don Hawbaker, met with Houston judges and undertook a 100-case pilot project to introduce court-annexed mediation in Houston. In September 1990, Brutsché, following the same principles he used in Dallas, made a presentation to Houston civil district judges. Judges Sharolyn Wood, Lamar McCorkle, Mark Davidson, and Alice Oliver-Parrott were early judicial proponents of mediation. McGowan and Atlas and their Houston colleagues provided a roster of Houston attorneys who had completed the training and were AAM members. By then, the Houston colleagues included Nancy Huston, Michael Wilk, Michael Clann, and Alan Levin.

Summarizing what followed, mediation quickly took off in Houston, and the Dallas training was carried over to Brutsché's newly established training company, Attorney-Mediators Institute, Inc., which conducted basic training in Dallas. A greater pool of Houston members was quickly established. AAM was converted to a Texas non-profit corporation. Along the way, a newsletter was produced, which reported "Spreading the Word," activities by members taking the good news of mediation to bar groups across the state. Statistics were published in the newsletter, *The Caucus*, and Brutsché wrote a column called "The Neutral Corner." Through May 1991, AAM members reported 2,557 cases mediated with 2,092 settled, a settlement rate of 81.8%.

Court administrators wrote a column. One, entitled "The Lawyer from Hell," described a then-familiar tale of a veteran lawyer who went kicking and screaming to mediation. After his impossible-to-settle case settled, he returned to the court, re-

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questing that all his cases be sent to mediation. One court administrator, Debbie Andrews of Dallas, used her court's statistics as a project in her MBA program, categorized cases ordered by her judge through June 1992, and reported 981 cases mediated with an 83% settlement rate.

Brutsché encouraged sitting judges to attend basic mediation training to see how the process worked. All trainees were conscious that we were part of something bigger than ourselves, and we spent much effort helping each other to the extent permissible under our rules of confidentiality. The activities reported below all had their genesis in our awareness that Brutsché was giving away to all of us all he knew. There were no secrets. Yes, we were competitors, but "a high tide raises all the ships." In Steve Covey's terms, we were seeking to obey the abundance mentality vs. the scarcity mentality.

In January 1991, Brutsché underwent a successful heart transplant in Dallas; however, lung cancer developed, and Brutsché died in October 1991. In this period, he continued to do all he could to encourage and foster AAM and the use of mediation. In June 1991, he published to the membership an important letter, "Fees/Cancellation Policies" to guide us in that area. He spoke last at an advanced training in Houston on September 28, 1991, just days before he died. Brutsché had a gift of phrase, and many of the sayings he gave us have been incorporated into our trainings and our daily practices. He exhorted us not to have our epitaphs read, "He died well-rested." He truly obeyed his exhortation.

Brutsché's Legacy: AAM's Members Help Transform Litigation Practice and Influence Other Aspects of Dispute Resolution

Since these early years, inspired by Brutsché—and with judges, fellow lawyers and, each other—AAM members have carried this torch to re-tool the legal profession. As Brutsché told us,

You have the opportunity to transform your profession and give something back to it by how you practice, not by being a mediator. It's wonderful to be a mediator; I'm thankful for the privilege of being a mediator, but that's not where the battle is. That's not where the significant difference will occur. The significant difference is going to occur in day-to-day practice, day-to-day advocacy. That is where the change has got to come. . . . The role of the advocate is not to be a litigator, but to be a problem solver. And to select the tool or tools that are appropriate to the objective of the client. To select the timing of that tool or tools and to select the combination of those tools. What I am really advocating is to re-think how we speak of ourselves. Because when we call ourselves a litigator, we limit ourselves to a one-trick pony. When we talk about ourselves as dispute-resolvers, we open possibilities.

Brutsché spoke those words on June 21, 1990 at the DBA Ba-

sic Mediation Training. Radical words then, and we see how time has brought his vision to fruition.

To summarize the remarkable zeal and service of AAM's members, let me just say that hundreds of lawyers and judges have been trained in the art of mediation. Following Judge Evans' lead, AAM trainees and members have expanded the use of mediation to appellate courts. Court-annexed mediation has taken root throughout the State. AAM members, following the formula Brutsché handed them, have conducted seed-group trainings in other states to spread the word, expanding our membership nationwide. Members have gone on to judicial positions on both state and federal benches at the trial and appellate levels. Members have formed mediation panels to assist clergy in resolving ecclesiastical disputes. Peer mediation programs within the public schools have been led by our members. Members have led local, state, and national bar groups in establishing and furthering ADR and Dispute Resolution committees and organizations, including this section of the State Bar of Texas. Members have taken our statute to receptive audiences to enable its adoption in other jurisdictions. Testifying before legislative committees in support of the use of mediation, authoring books, and writing amicus curiae briefs in specific cases have been the work of AAM members over the years. In the law schools (and undergraduate schools) courses in mediation and other ADR processes are now commonplace, and AAM members have been heavily involved in giving instruction, more often than not on a pro bono basis. AAM's members have led the installation of mediation clinics in our law schools. Drafting of ethical guidelines, working with the Greater Dallas Board of Realtors to include a mediation addendum in Texas' standard real estate sales contract, and serving and assisting local dispute resolution centers are additional activities led by AAM's members. All these activities have been in grateful service to the gift of mediation to our practices as lawyers and to our personal lives.

Yes, we do have a responsibility to earn a livelihood, be it as practicing lawyers or mediators. As Steve Brutsché told us,

Our purpose as a profession (meaning the legal profession) is not to make money. Our purpose is to serve the legitimate ends of our client and our legal system I suggest that, to the degree that you are aligned with that purpose, you will experience satisfaction in the practice of law. To the degree you're not aligned with that purpose, you will not and have not. . . . When I say it is not our purpose to make money, I mean that, but I also understand that it is our responsibility to earn a fair profit or a fair fee for what we do. There is a significant difference in that, and I want to repeat it. It is not our purpose to make money, it is our responsibility. If we are going to be able to continue to provide valuable service to protect the system to be available to people, we need to be able to pay our employees, pay our own bills, and provide an appropriate environment in which law can be practiced.

These same principles, Brutsché taught, apply to our service as mediators.

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ARBITRATION INSTITUTIONS IN TEXAS

Compiled By John K. Boyce, III

(Note from the Chair of the Newsletter Editorial Board: John K. Boyce, III, of San Antonio, contacted four prominent providers of arbitration services in Texas. Each provider sent us a brief summary of its history and its activities in Texas. Many thanks to John Boyce for his assistance in obtaining the summaries.)

American Arbitration Association



Founded in New York in 1926, the American Arbitration Association (AAA) has had a presence in Texas since the 1940s, opening its first Texas office in 1958 with one employee. Today, the AAA has a significant presence in Texas: three offices, 75 employees, and a roster of 300 neutrals handling a wide range of domestic and international mediation and arbitration cases covering commercial, construction, and employment issues. Since the AAA opened its doors in Texas, over 25,000 cases have been filed, and today the Houston and Dallas regional offices average over 1,500 international mediations and arbitrations per year.

The AAA and the International Centre for Dispute Resolution® (ICDR) provide dispute resolution services to individuals and organizations seeking out-of-court resolutions of conflicts in the U.S. and abroad. The AAA is a not-for-profit, public service organization committed to the resolution of disputes through the administration of arbitration, mediation, conciliation, negotiation, democratic elections, and other voluntary procedures. In 2006, more than 137,000 cases were filed with the AAA in a full range of matters, including commercial, construction, labor, employment, insurance, international and claims program disputes. Through 29 offices in the United States, Ireland and Mexico, the AAA provides a forum for the hearing of disputes, rules and procedures, and a roster of impartial experts to resolve cases.

As the leader in alternative dispute resolution, the AAA has also trained a significant amount of arbitrators and mediators, and has administered hundreds of private elections. Find more information online at www.adr.org.

JAMS, The Resolution Experts



Founded in 1979, JAMS, The Resolution Experts, is the nation's largest private provider of alternative dispute resolution services. With 11 highly skilled arbitrators and mediators on its Dallas panel and more than 200 full-time panelists nationwide, the JAMS Texas Resolution Center is located at 8401 North Central Expressway in the business district of the

Park Cities area of North Dallas. JAMS has had a presence in Texas since 1991, when Hon. Clarence Guittard (Former) and Hon. Harlan Martin (Former) founded the Dallas Resolution Center in April of that year, while Hon. G. Frank Evans started JAMS in Houston. Since 1991, the Texas panelists have resolved some of the state's most important cases.

The panelists provide a broad range of services, including arbitration, mediation, discovery referee, and settlement master work. Subject areas include business commercial, class actions, employment, engineering and construction, intellectual property, insurance, personal injury, products liability, and securities. JAMS panelists resolve disputes of all kinds and specialize in resolving multi-party, complex disputes.

The JAMS Dallas arbitrators and mediators are available in any of the 23 Resolution Centers nationwide to resolve disputes. They currently travel to mediate or arbitrate cases throughout the country. In addition, they are frequently called upon to speak to key audiences on issues related to ADR. The JAMS Dallas Panel includes the following distinguished panelists: Hon. Glen M. Ashworth; Hon. Bill H. Brister; Hon. P. Oswin Chrisman; Hon. Robert Faulkner; Jerry Grissom, Esq.; Bill J. Gunter, Esq.; Hon. Harlan A. Martin (Former); Cecilia H. Morgan, Esq.; Hon. Paul C. Murphy; Hon. Pamela A. Tynes (Former); and Hon. Karen Brown Willcutts (Former).

JAMS may be reached at 214-744-2567 or on the web at www.jamsadr.com.

National Arbitration Forum



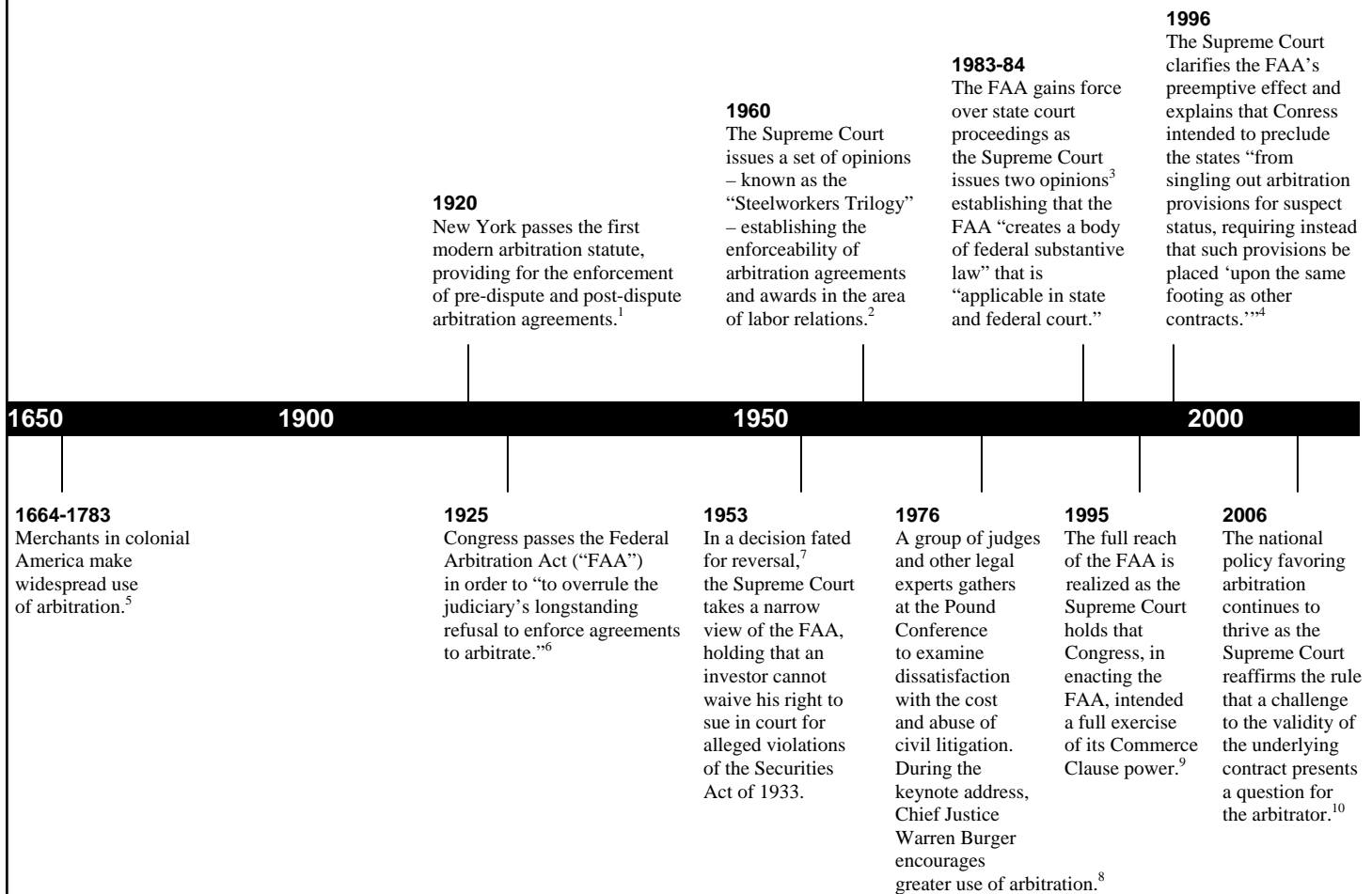
In 2006, the National Arbitration Forum (FORUM)

celebrated its 20th anniversary. Since its inception, the FORUM has become one of the world's largest providers of arbitration, mediation and other alternative dispute resolution services. The National Arbitration Forum maintains a distinguished panel of over 1,600 attorneys and former judges who apply the substantive law and follow the Code of Procedure rules when rendering legal decisions. Panelists subscribe to the highest standards of professional conduct, and they follow explicit rules to ensure that parties' rights are protected and all ethical principles are upheld. FORUM arbitrators and mediators are located throughout the United States and around the world in 35 countries. The National Arbitration Forum is based in Minneapolis, Minnesota, with offices in New Jersey for the No-Fault Personal Injury Protection arbitration program, and Southern

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Timeline for Arbitration in the United States

(Prepared by the National Arbitration Forum)



¹ See Roger S. Haydock & Jennifer D. Henderson, *Arbitration and Judicial Civil Justice: An American Historical Review and a Proposal for a Private/Arbitral and Public/Judicial Partnership*, 2 Pepp. Disp. Resol. L.J. 141, 147 (2002) (citing N.Y. C.P.L.R. §§ 7501-7514 (McKinney 2000)).

² See Haydock and Henderson, *supra* note 2, at 151-54 (citing *United Steelworkers v. Am. Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers v. Enter. Wheel & Car Corp.*, 363 U.S. 593 (1960)).

³ See *Southland Corp. v. Keating*, 465 U.S. 1 (1984); *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1 (1983).

⁴ *Doctor’s Associates, Inc. v. Casarotto*, 517 U.S. 681, 687 (1996).

⁵ See Bruce L. Benson, *An Exploration of the Impact of Modern Arbitration Statutes on the Development of Arbitration in the United States*, 11 J.L. Econ. & Org. 479, 481 (1995).

⁶ See *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 219-20 (1985) (citing H.R. Rep. No. 96, 68th Cong., 1st Sess., 1-2 (1924)).

⁷ *Wilko v. Swan*, 346 U.S. 427 (1953).

⁸ See Stephen N. Subrin, *Teaching Civil Procedure While You Watch It Disintegrate*, 59 Brook. L. Rev. 1155, 1157 (1993).

⁹ *Allied-Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 265, 273-277 (1995).

¹⁰ *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006).

THE DEVELOPMENT OF COLLABORATIVE LAW

By Lawrence R. Maxwell, Jr.*

This article will detail the history of the development of the collaborative dispute resolution process (referred to as collaborative law) from the birth of the process in 1990, and highlight significant events in Texas and worldwide that have given momentum to an exciting, revolutionary new process for resolving disputes. Victor Hugo, the nineteenth century French novelist, poet, statesman, and human-rights campaigner once said, "Nothing is more powerful than an idea whose time has come." In just a few years, the rapid worldwide development of collaborative law has borne out Victor Hugo's belief.

The Birth of Collaborative Law

In the late 1980s a Minnesota lawyer, after practicing traditional civil law for eight years and family law for seventeen years, was approaching burnout. Stuart "Stu" Webb disliked the adversarial nature of his practice. He was finding it harder and harder to tolerate the schizophrenic nature of trial work and the incivility that seemed to be increasing. Webb didn't like going to work in the morning. He was going to ditch his law practice unless he could come up with another way to continue his family practice.

Webb started thinking, and he came up with a model that would allow him to do the parts of his practice he liked and eliminate the rest. He worked with a lawyer he trusted in face-to-face meetings to achieve settlement for clients. But the model fell apart. The two lawyers had not thought about getting out when disputes were not resolved.

The best learning sometimes comes from disasters, so Webb looked at the shambles of the experience and concluded lawyers needed to withdraw if their cases turned adversarial. Collaborative law was conceived in the mind of Stu Webb. The requirement that lawyers withdraw if the case is not settled has come to be known as the "collaborative commitment."¹

Legal and ethical questions needed to be answered about the process. Webb contacted colleagues and a justice on the Minnesota Supreme Court who was an ardent supporter of the mediation process. Webb became satisfied that lawyers could legally and ethically engage in collaborative law as he envisioned it.

Realizing that it would "take two to tango," Webb started seeking other family lawyers in his hometown who would be willing to try the collaborative approach in appropriate cases. Needless to say, Webb and his peaceful, non-adversarial approach to resolving disputes did not receive universal acceptance.

Can't you just hear the comments: "It's the craziest idea I ever hear of - instead of going to court, opposing counsel should sit

in a circle with their clients, hold hands and sing *Kumbaya*." Or, "It will never work, and the courts won't like it."

Nevertheless, Webb persisted, and in 1990, he started a local "Institute" with four lawyers, which quickly grew to nine lawyers, and they were off and running. Word of the "Institute" in Minnesota began to spread, and it was not long until they started hearing from lawyers around the country. Stu Webb had created a new area of law practice that continues to grow worldwide.

International Academy of Collaborative Professionals

In the early 1990s, the Minnesota lawyers presented the new model for the first time to a national audience at a conference in Washington, D.C. Pauline Tesler and a group of lawyers in the San Francisco area attended the conference, and returned to California taking up the cause with zeal. Under the leadership of Pauline Tesler, they formed the Collaborative Law Group. Webb, Tesler, and others developed and conducted training programs for lawyers around the country and in Canada.

The interdisciplinary approach to divorce resolution was developing on a parallel track. California family psychologists Peggy Thompson and Rodney Nurse, along with a group of financial planners, were developing a model to work with divorcing couples. In the family arena, the *Team Model* employing collaborative lawyers and mental-health and financial professionals seemed to be an ideal fit to guide divorcing couples through troubling times in a supportive and constructive way.

As collaborative practice began to develop, it became clear that collaborative practitioners should work together to promote and improve the process, which was still in its infancy. In the mid 1990s, the California collaborative groups began to meet monthly. Out of their vision to form an umbrella networking organization to serve collaborative practice in its many forms, the American Institute of Collaborative Professionals (AICP) was born. The AICP began publishing a newsletter, and a forum for national networking was created. In May 1999, Stu Webb was the principal speaker at the first annual AICP networking forum held in Oakland, California.

By 2000, collaborative practice was developing exponentially across Canada, and to reflect its international reach, the name of the organization was changed to the International Academy of Collaborative Professionals (IACP). The IACP now counts over 3,000 members, and its quarterly publication, *The Collaborative Review*, is distributed worldwide to members in Canada, the United Kingdom, Switzerland, Austria, New Zea-

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land, and Australia. The historical development of IACP is chronicled on the IACP website, .

Norma Trusch of Houston, who served as president of IACP in 2004 and 2005, in her article in the Summer 2006 issue of *Alternative Resolutions*, said:

The greatest source of pride for me during my time at the helm of IACP, was seeing the leadership Texas brought to the organization. . . . The Collaborative Law Institute of Texas set the standard of service to its membership and the public that IACP was quick to recognize and emulate. Texas collaborative lawyers are recognized as the most creative, innovative and energetic practitioners in the world.²

Texas Leads the Way in Civil Collaborative Law

The year 2000 was a "tipping point" for collaborative law, especially in Texas. Dallas attorneys John McShane and Larry Hance attended a collaborative law presentation of Pauline Tesler's, and promptly asked her and Stu Webb to come to Dallas. The newly formed Collaborative Law Institute of Texas brought Stu Webb and Pauline Tesler to Dallas, and collaborative law was off and running in Texas.

In 2001, Houston family law attorney Harry Tindall and others, with the able assistance of Rep. Toby Goodman of Fort Worth, had great success in the Texas Legislature. Collaborative law was for the first time validated by statute, when the Family Code was amended to add collaborative law procedures (Sections 6.603 and 153.0072 of the Texas Family Code). Similar statutes have been enacted in North Carolina and California³, and collaborative law bills are pending in the legislatures of a number of states.

In 2004, Dallas family law attorney Janet Brumley published *Divorce without Disaster: Collaborative Law in Texas*.⁴ Endorsing the book, Stu Webb, the father of collaborative law, commented: "Wow! Texas has done it again - the first state to publish a comprehensive guide for lawyers and consumers on the practice of collaborative law in their state."

Although the roots of the collaborative dispute resolution process are in family law, many lawyers and other professionals believe the process is not for family law alone. The collaborative process is expanding in a variety of areas of law, and Texas is once again leading the way.

In the summer of 2004, with the blessings and invaluable support of the Collaborative Law Institute of Texas, a group of lawyers⁵ in Dallas organized a 501(c)(3) non-profit corporation, the Texas Collaborative Law Council, Inc. (TCLC). The mission of TCLC is to expand the use of the collaborative process for resolving civil disputes, to train lawyers and other professionals in the use of the process, to educate the public as to the benefits of the process, and to preserve the integrity of the process.

With the assistance of the Collaborative Law Institute of Texas, TCLC has developed Protocols of Practice for Civil Collabora-

tive Lawyers, a Participation Agreement and other documents for collaborative practitioners. The documents are available on the TCLC website: www.collaborativelaw.us

Sherrie R. Abney, TCLC's Vice-President for Training and CLE, has become an internationally recognized author and trainer in the civil collaborative process. In 2005, she authored the first book published on civil collaborative law, *Avoiding Litigation: A Guide to Civil Collaborative Law*.⁶ Enthusiastically endorsing the book, Rita Pollak of Boston, the current president of IACP and a strong supporter of the expansion of the collaborative process, commented, "Here it is. The definitive book on civil collaborative practice." Ms. Abney regularly conducts trainings for lawyers and other professionals around the country and has been invited to conduct a training in Australia in the civil collaborative process in Fall 2007.

In December 2005, TCLC Founding Directors Larry Maxwell and Robert Matlock joined Ms. Abney to introduce civil collaborative law in the United Kingdom. At the invitation of the ADR Group of the U.K.,⁷ the largest mediation network in the U.K., they were keynote speakers at the organization's annual conference held at Oxford University. Michael Lind, chief executive of the ADR Group, in his opening remarks to the conference attendees stated, "Despite the growing recognition of mediation as a more cost-effective alternative to litigation, and the ADR Group's many successes this year, we decided to focus firmly on the future rather than our past achievements."

As in the U.K. and around the world, the growth and widespread use of the mediation process has been nothing short of amazing. Many lawyers, once they become familiar with the collaborative process, believe the use of collaborative law will grow and expand in much the same manner as has occurred with mediation.

Following the success in amending the Family Code in the 2001 Session of the Texas Legislature, a group of dedicated Texas collaborative lawyers set about the task of expanding the statutory validation of the process by adding a similar collaborative law provision to the Texas Civil Practice and Remedies Code.⁸ Collaborative law bills were introduced in the 2005 (C.S.H.B. 205) and 2007 (S.B. 942) legislative sessions. In 2005, the ADR Section of the State Bar of Texas supported the bill, and in 2007 the Section included the Collaborative Law Procedures bill in its legislative proposals.

In each legislative session, the only opposition came from the Texas Trial Lawyers Association and the Texas Association of Defense Counsel. Even with the tenacity of Rep. Toby Goodman of Tarrant County in 2005, and Sen. John Carona of Dallas in 2007, the bills did not pass. On a positive note, collaborative law demonstrated its effectiveness in bringing people to common ground. Two organizations of trial lawyers that historically have not been able to agree on the time of day, *collaborated* in a common cause - to prevent passage of the collaborative law bill. One can only speculate as to their reasons.

The many trial and transaction lawyers, judges, associations, individuals, and businesses that support the collaborative law legislation will be back in 2009, and perhaps the third time will be a charm.

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The Houston and Dallas Bar Associations have established Collaborative Law Sections. The sections present outstanding speakers at regular monthly, well-attended luncheon meetings. Norma Trusch and her group of collaborative lawyers in Houston have expanded their collaborative training to include probate law.

For the past three years, TCLC and the Collaborative Law Section of the Dallas Bar Association have sponsored two-day programs to train lawyers and other professionals in the civil collaborative process. The backgrounds of those attending the programs demonstrate the breadth of interest in civil collaborative law: in-house litigation counsel, solo practitioners, partners in large international law firms, lawyers practicing in the areas of probate, real estate, employment, construction, securities, and intellectual property law, lawyers with plaintiff and defendant personal injury practices, business transaction lawyers, law school professors, sitting judges, full-time mediators and arbitrators.

In 2005, Anne Shuttee, in-house litigation attorney with Electronic Data Systems Corp., an international corporation with headquarters in Dallas, attended the initial TCLC training in civil collaborative law. She went away realizing the benefits of maintaining ongoing relations in the collaborative process, which are not possible in litigation, and the potential for reducing the enormous costs in the litigation process. EDS is presently in the process of determining how and in what context to incorporate a collaborative law process into its contracts. The support of EDS for the process was outlined in an article by Debra Branom, manager of their U.S. and Latin American Business Support, in the September 2006 issue of Martindale-Hubbell's *Counsel to Counsel*.⁹

In 2005, the IACP established a Civil Committee with the mission of expanding the organization beyond family law to various areas of civil law. Texas collaborative lawyers Sherrie Abney and Stacey Langenbahn serve on the committee. The committee, in its first face-to-face meeting in Chicago, established sub-committees and identified four areas in which a concerted effort is being made to expand the process: probate, employment, medical error, and faith-based communities.

At the request of the IACP's Civil Committee, several Texas collaborative lawyers have drafted Protocols of Practice for Civil Collaborative Lawyers. The Protocols, which are patterned after TCLC's Protocols, have been circulated among Board members for comments.

Collaborative Law is Gaining Traction Nationally and Worldwide

Nationally

Notwithstanding the slow pace of the Texas Legislature in the area of civil collaborative law, the concept is on the verge of taking a giant step toward national acceptance, and two Texans are again at the forefront.

This year, the National Conference of Commissioners on Uniform State Laws (NCCUSL) established a Drafting Committee

to draft an act on collaborative law. The committee is chaired by Commissioner Peter K. Munson (from Sherman, Texas), and Commissioner Harry Tindall (from Houston) is a voting member of the committee. The process will take two years, and Professor Andrew Schepard of Hofstra University School of Law, the Reporter for the Drafting Committee, will be responsible for translating the committee's deliberations into a proposed statute for submission to various state legislatures.

After the first meeting of the Drafting Committee, the Commissioners appear to be divided as to whether the proposed act should address all areas of civil law or only family law. Civil collaborative lawyers around the country believe it would be short-sighted and a setback to the worldwide collaborative law movement to limit the proposed uniform act to family law.¹⁰

In February 2007, the American Bar Association's Section on Dispute Resolution established a Collaborative Law Committee chaired by David Hoffman of Boston, former chair of the Section on Dispute Resolution. The section held its first in-person meeting in April 2007, at the Section's annual conference in Washington, D.C. Texas collaborative lawyers Ruth Rickard, Stacey Langenbahn, Sherrie Abney, and Larry Maxwell serve on the committee.¹¹ Collaborative law organizations from coast to coast, which were initially established as organizations of family law attorneys, are expanding their membership to include attorneys practicing in a variety of areas of law, including probate, employment, real estate, construction, business and commercial. The Massachusetts Collaborative Law Council (www.massclc.org), Washington Collaborative Law (www.washcl.org), and Collaborative Law Council of the Redwood Empire (www.collaborativecouncil.org) have active training programs and regularly publish articles on collaborative law.

Internationally

In March 2007, the First European Collaborative Law Conference sponsored by the IACP and other European collaborative law organizations was held in Vienna, Austria; and in October the IACP's Eighth Annual Networking Forum will be held in Toronto, Canada.

In the Province of Alberta, Canada the Family Law Act has recently been amended to add a section entitled "Duty of Lawyer," which provides that every lawyer who acts on behalf of a party in an application under the Act has a duty:

- (a) to discuss with the party alternative methods of resolving the matters that are the subject of the application, and
- (b) to inform the party of collaborative processes, mediation facilities and family justice services known to the lawyer that might assist the parties in resolving those matters.

Granted, it may be some time before we see black-letter law such as this in Texas or anywhere else in our country, but it is interesting to speculate as to when, and in what form, legisla-

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tion such as the Alberta statute will be enacted imposing a duty on lawyers to advise clients of the collaborative process and other *alternate* methods of resolving disputes. Perhaps some day, the word “*alternate*” will refer to litigation.

In Australia, IACP member Robert Lopich of New South Wales reports that collaborative law is moving ahead at a rapid pace in family and other areas of law. Family, civil, and commercial lawyers are being trained in the process throughout the country. Collaborative Law has been embraced by the Federal Government of Australia. Earlier this year, the federal Attorney General conducted the launch of collaborative law websites by groups in New South Wales (www.liv.asn.au), Victoria (www.liv.asn.au), Queensland (www.liv.asn.au), and other states and territories.

Academia's Interest in Collaborative Law

It is a sure sign that a new and revolutionary movement such as collaborative law is here to stay, when the academic world begins to take notice. In the past few years, a number of scholarly articles have been published on collaborative law.

In 2004, Larry Spain, currently a Professor of Law at Texas Tech University School of Law, reflected on ethical considerations in a collaborative law practice in an article entitled, *Collaborative Law: A Critical Reflection on Whether a Collaborative Orientation Can Be Ethically Incorporated into the Practice of Law*.¹² In 2005, Christopher Fairman, Associate Professor at the Ohio State University Moritz College of Law, published an article on ethical considerations in the collaborative process, and he believes a new model is needed for collaborative law.¹³ This year John Lande, Associate Professor and Director, LL.M Program in Dispute Resolution at the University of Missouri School of Law, published a thorough analysis and set of principles for policymaking about alternate dispute resolution.¹⁴ Professor Lande argues that a new rule regarding collaborative law is not necessary and that adopting such a rule prematurely may actually inhibit useful innovations in collaborative practice. The article further points out that many ethical rules already regulate collaborative lawyers' services, and five state bar associations have applied these rules to collaborative law.

ABA, Five Favorable State Ethics Opinions and One Maverick Opinion

Ethics opinions supporting collaborative law have been issued by state bar associations of five states: Minnesota (1997), North Carolina (2002), Pennsylvania (2004), Kentucky (2005) and New Jersey (2005) and the ABA (2007).

In February 2007, after Professor Lande's article was published, the Ethics Committee of the Colorado State Bar issued an *advisory opinion* - the first and only such opinion in the U.S. - stating that Colorado attorneys cannot sign a collaborative law participation agreement without violating Colorado Rules of Professional Conduct. Colorado is not among the majority of states, such as Texas, that have an “integrated” bar, which is a public organization, integrated with the judi-

cary. Ethics Opinions are issued for advisory purposes only, are not binding on the Colorado Supreme Court or any attorney regulatory and disciplinary committees of the state.

The IACP Ethics Task Force has published a response to the Colorado opinion: *The Ethics of the Collaborative Participation Agreement: A Critique of Colorado's Maverick Ethics Opinion*. The conclusions of the IACP's Task Force are (1) that the Colorado opinion is inconsistent with the fundamental principle of legal ethics that clients are entitled to make informed decisions about the scope of their representation; and (2) the potential impact of the Colorado opinion is quite limited because the opinion applies only in Colorado and relies heavily on a section of the Colorado Rules of Professional Conduct - Rule 1.7(c) describing circumstances in which “a client's consent cannot be validly obtained” that is unique to Colorado and is not present in the ABA Model Rules or the disciplinary rules of any other state.

Later this year, the Collaborative Law Committee of the ABA Section of Dispute Resolution will publish a position paper stating its point of view and analyzing the subjects that have been addressed in the ethics opinions to date.

The recent favorable ABA opinion, the IACP's critique of the Colorado opinion and all state opinions issued to date may be found on the webpage of the ABA Collaborative Law Committee.¹⁵

The Future of Collaborative Law is Bright

Conflict inevitably arises among individuals and in the business world. Business executives and professionals are starting to realize that costly and time-consuming litigation does not need to be the first option for resolving disputes. Light bulbs are starting to light up in law firms and corporate executive offices.

The collaborative process may be the business imperative of our time. Interest-based negotiation, as opposed to positional bargaining, really does capture the exponential power of cooperation. Working together in a non-adversarial manner to meet the goals and interests of the parties is a quick, inexpensive way to resolve a dispute. When conflict arises, parties want to resolve disputes quickly, control costs and scheduling, control outcomes, maintain relations, and avoid unnecessary publicity, which is rarely possible in litigation.

Interestingly, today the naysayers' objections to the collaborative process are almost a perfect echo of the objections to the mediation process when it was getting started in Texas in the late 1980s. Mediation has progressed quite nicely in the past twenty years.

We must be aware of Clark's Law of Revolutionary Ideas. Every revolutionary idea -- in Science, Politics, Art, Law or Whatever -- evokes three stages of reaction. They may be summed up in three phrases:

1. It is impossible, so don't waste my time with it.
2. It is possible, but it is not worth doing.
3. I said it was a good idea all along.

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TWENTY YEARS OF CONFIDENTIALITY UNDER THE TEXAS ADR ACT

By Brian Shannon*

One of the true cornerstones of the 1987 Texas ADR Procedures Act¹ is the statute's broad confidentiality protection. Dean Ed Sherman once described § 154.073 as "perhaps the broadest ADR confidentiality provision in the country."² Subsection 154.073(a) provides that aside from certain narrow exceptions,

a communication relating to the subject matter of any civil or criminal dispute made by a participant in an alternative dispute resolution procedure, whether before or after the institution of formal judicial proceedings, is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding.

In turn, § 154.073(b) provides that records made at an ADR procedure are confidential and that participants or the neutral "may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute."

These provisions are very broad. But, they are not the only confidentiality provisions located in the ADR Act. In addition to § 154.073, another provision – § 154.053(b) – explicitly provides that "[u]nless expressly authorized by the disclosing party, the impartial third party may not disclose to either party information given in confidence by the other and shall at all times maintain confidentiality with respect to communications relating to the subject matter of the dispute." Section 154.053(c) goes on to provide that "[u]nless the parties agree otherwise, all matters, including the conduct and demeanor of the parties and their counsel during the settlement process, are confidential and may never be disclosed to anyone, including the appointing court." Section 154.053 primarily relates to the mediator's duties, but there is certainly a degree of overlap with § 154.073.

Most Texas mediators are very familiar with these provisions, and we now have twenty years of case interpretations. This article will highlight some of the key decisions over the past two decades interpreting §§ 154.053 and 154.073. For more in-depth analysis, there are numerous other scholarly publications on the subject.³

Subsection 154.073(a) applies confidentiality protection to communications "relating to the subject matter of any civil or criminal dispute" that are made during an ADR procedure. Accordingly, the statute appears *not* to reach communications unrelated to the subject matter of pending disputes. There has been limited appellate review of this language. One court, how-

ever, addressed this phrase in *In re Daley*,⁴ in which a mediation was conducted relating to a lawsuit over a vehicle accident. At the mediation, the insurer's representative departed prior to the close of the mediation session; however, the insurer's attorney remained in attendance. The next day the plaintiff's attorney filed a notice to take Paul Daley's (the departing individual's) deposition. After a motion to quash, the trial court ordered that the deposition proceed, but limited its scope "to the sole issue of whether Paul Daley left the mediation session ... prior to its conclusion, and whether he did so with or without the mediator's permission."⁵ Daley objected and relied on both §§ 154.053 and 154.073. The court rejected Daley's § 154.073 argument, declaring that the statute does not afford "a blanket confidentiality rule for participants...."⁶ The court reasoned, "We do not find the questions whether Daley attended the mediation and whether he had the mediator's permission to leave when he did concern the subject matter of the underlying suit or the manner in which the participants negotiated."⁷ This holding authorized only a narrow scope of questioning during the deposition. Had there been an issue of whether Daley had departed in response to an offer or prior statement by another participant, the "walk-out" should be viewed as a "communication" relating to the dispute.

In re Daley is also one of only a very few cases that have examined § 154.053 separately from § 154.073. The court rejected Daley's argument premised on § 154.053(c), which makes confidential "all matters, including the conduct and demeanor of the parties and their counsel during the settlement process." The court instead determined that the "statute is restricted to those matters occurring during the 'settlement process.'" Whether Daley left the mediation prior to its conclusion without the permission of the mediator is not a matter related to the settlement process itself."⁸ At first blush, this is perhaps an unduly narrow reading of § 154.053. Arguably, the departure of a party's representative could be styled as "conduct and demeanor." On the other hand, the best justification for the court's ruling is the need to assure compliance with the court's orders relating to attendance at the mediation by a party with settlement authority.

In re Daley should be contrasted with *In re Acceptance Ins. Co.*,⁹ where mediations were ordered in a dispute relating to a construction accident and an ensuing insurance coverage dispute. The mediations did not result in settlement, and the case went to trial. After the trial, the judge held a sanctions hearing

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relating to the mediation. The trial court allowed repeated questions of an insurer's representative "regarding whether she possessed full policy-limit authority, her personal knowledge of matters in the company file, her knowledge of the case and preparation for the mediations, and communications with her supervisor by telephone and with counsel for real party in interest during the mediation."¹⁰ The court then imposed sanctions. The court of appeals determined the sanctions were an abuse of discretion, and that "the trial court also improperly allowed inquiry into matters that were confidential under the ADR Act ... [such as] whether [the participant] had possession of her cell phone at the mediations, whether and how many times she telephoned her supervisor, and what they discussed."¹¹

Section 154.073(a) protects communications "made by a participant in an" ADR procedure. This protection should extend to any participant in the ADR proceeding – whether a party, party representative, attorney, or third-party neutral. Arguably, it could also extend to an observer or person aiding in the arrangements (such as a Dispute Resolution Center staff member). Indeed, the Act's focus on providing broad confidentiality should favor covering anyone who is present, even as an observer, because otherwise confidentiality could be breached by non-participants.¹²

Section 154.073(a) also provides confidentiality to communications made by participants "whether before or after the institution of formal judicial proceedings." This language insures that confidentiality applies to ADR procedures that are held by agreement and not pursuant to a court referral; in fact, confidentiality applies even if no suit is pending. Although the bulk of the rest of the Act refers only to court-referred ADR, this provision is broader in scope. An early case endorsing this view was *Williams v. State*,¹³ a case in which the appellant challenged his theft conviction by asserting an insufficiency of evidence. Apparently, prior to his arrest, the appellant and the victim participated in some form of ADR, presumably victim-offender mediation. The state contended that the court should consider statements from the ADR procedure as part of the evidence upon which the conviction could be upheld on appeal, but the court disagreed.¹⁴ Instead, the court relied on § 154.073, declaring that "disclosures made in an ADR procedure are confidential, and not subject to disclosure."¹⁵ Although the *Williams* court offered scant analysis, the opinion is significant in that there was no indication that the ADR procedure was conducted while any judicial proceedings were pending, nor was there any court-ordered ADR. Thus, the *Williams* court recognized the legislature's intent to extend confidentiality protection to ADR procedures other than just those referred by court order.¹⁶

Section 154.073(b) makes confidential records "made" at an ADR procedure. In contrast, under § 154.073(c), "[a]n oral communication or written material used in or made a part of an" ADR "procedure is admissible or discoverable if it is admissible or discoverable independent of the procedure." The issue of when evidence might have an independent existence outside the mediation process was addressed in *In re Learjet*,

*Inc.*¹⁷ Learjet videotaped witness statements of three employees that were then edited and later played for the parties at mediation.¹⁸ After the mediation failed, the opposing side sought production of both the edited videotapes shown at the mediation and the "unedited core videotapes."¹⁹ The trial court ordered production, and the appellate court refused to issue a writ of mandamus.²⁰ Although the court acknowledged it was "clear the videotapes were prepared for mediation," the court determined that the ADR Act did not bar discovery.²¹ The court recognized that § 154.073(a) makes communications "made by a participant in an alternative dispute resolution procedure" confidential. Nonetheless, the court relied on § 154.073(c)'s proviso that "[a]n oral communication or written material used in or made a part of an alternative dispute resolution procedure is admissible or discoverable if it is admissible or discoverable independent of the procedure."²² Because the videotapes were created prior to the mediation session and were not covered by attorney-client privilege, the court held that the tapes were not covered by the ADR Act's confidentiality provisions.²³

The ADR Act is silent on whether the statute's confidentiality provisions have application to discussions relating to a mediation, but made prior to the actual mediation session(s). The statute does not define the beginning point of the ADR procedure. In addition, although § 154.053 places duties of non-disclosure on the neutral, those would appear logically to apply only once there has been a selection or appointment. Thus, unless covered by agreement or a court's local rule or order,²⁴ it is uncertain whether the broad confidentiality provisions of the ADR Act extend to pre-session communications. Arguably, "candor during these initial conversations is critical to insuring a thoughtful agreement to mediate."²⁵ For example, communications with a mediator or a mediation organization prior to the actual mediation session relating to an array of matters such as the parties' prior relationship or their ability to be in a room together should remain confidential.

The *Learjet* decision points out a problem with the uncertainty as to whether the ADR Act's confidentiality provisions protect relevant communications made prior to actual mediation sessions. One practical effect of *Learjet* will be to deter parties from preparing videotaped – or perhaps even written – submissions or other communications intended to be delivered to the mediator in advance of a mediation session or to be used at the mediation. The irony of the holding in *Learjet* is that had the representatives actually provided "testimony" at the mediation session, rather than having appeared by means of videotape, there would have been no question regarding the confidentiality of their communications. The *Learjet* videotapes were clearly made for the purpose of being used at mediation. Perhaps the legislature should "fine-tune" § 154.073 to make clear when a mediation commences so that communications prepared solely for use in a later mediation will be protected.

Over the last two decades, a few issues have also arisen regarding the confidentiality of agreements reached at mediation. Subsection 154.073(b) makes "any record made at an alternative dispute resolution procedure" confidential. By its terms, that section could arguably cover a written agreement reached

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at a mediation. However, if one of the parties to the mediated settlement agreement later brings suit to enforce the agreement, it would be anomalous to believe that the Act would prevent the agreement from being disclosed. Despite § 154.073's broad language, given the rule of legislative construction that various provisions within an enactment should be harmonized, § 154.071 (allowing enforcement of agreements reached at ADR) would be largely meaningless if confidentiality were to attach to an agreement in such an enforcement action. On this point, see *In the Interest of M.S.*,²⁶ which upheld admission of a Memorandum of Agreement reached at a court-ordered mediation in a termination of parental rights case. The court determined the document was "an agreement between the parties" and not a confidential "communication" under § 154.073. The legislature also added § 154.073(d) in 1999 to provide that a final written agreement to which a governmental body is a signatory, resulting from an ADR procedure, is subject to or excepted from required disclosure in accordance with Chapter 552, Government Code (the Public Information Act, formerly known as the Open Records Act). This provision makes mediation agreements involving public entities generally subject to disclosure. Additionally, the Family Code has been amended over the years to create a summary enforcement mechanism for written agreements reached at mediations of family law disputes.²⁷

One section of the ADR Act that has received considerable attention is § 154.073(e). That section provides that if § 154.073 conflicts with other legal requirements for disclosure, the issue of confidentiality may be presented to a court to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order or whether the communications, records, or materials are subject to disclosure. The subsection requires courts to consider arguments relating to other legal requirements for possible disclosure through an in camera hearing process. The statute does not, however, further identify these "legal requirements" that might require disclosure of ADR communications. The duty to report child abuse was long viewed as the prime example of another legal requirement mandating disclosure. In 1999, however, the legislature added § 154.073(f) to remove such disclosures altogether from the purview of § 154.073 – information about abuse is simply not considered confidential by law. The amendments provided that § 154.073 does not affect the duty to report information regarding abuse, neglect or exploitation of children, the elderly, and persons with disabilities. The 1999 legislation similarly amended § 154.053.

The case of *Avary v. Bank of America, N.A.*²⁸ involved a review of confidentiality issues where the trial court employed the in camera process. Indeed, after conducting the in camera hearing, the court allowed a foray into mediation communications as part of a party's proof of an independent tort claim relating to a bank's alleged failure to disclose – at the mediation – material facts relating to the rights of an estate's beneficiaries. Initially, *Avary* was a wrongful death case brought by

survivors and the decedent's estate after a tractor rollover killed an individual.²⁹ The underlying lawsuit against the tractor manufacturer and other defendants was settled at mediation.³⁰ In the ensuing lawsuit brought by Rhonda Avary, the decedent's ex-wife and mother of two of his children, Avary contended that the bank breached its duties as executor of the estate by rejecting an earlier settlement offer at the mediation.³¹ She then sought discovery of mediation communications. The appellate court determined that given the bank's role as executor of the estate, the bank "had a legal duty to disclose material information to the beneficiaries."³² Accordingly, the court held that this legal obligation to the beneficiaries constituted a "legal requirement for disclosure" under § 154.073(e) that trumped mediation confidentiality. While recognizing the importance of confidentiality, the court concluded, "where a claim is based upon a new and independent tort committed in the course of the mediation proceedings, and that tort encompasses a duty to disclose, section 154.073 does not bar discovery of the claim"³³ The court pointed out that the case did not involve facts in which a mediation had failed and the parties were thereafter trying to introduce mediation communications, and it was not an attempt to elicit testimony or discovery from the mediator.³⁴ These distinctions are important and limit the extent by which *Avary* should be viewed as a broad erosion of confidentiality.³⁵

Following *Avary*, the Dallas Court of Appeals again allowed the introduction of mediation communications in *Alford v. Bryant*,³⁶ in which Bryant hired an attorney to represent her in a lawsuit brought by a roofing contractor alleging nonpayment.³⁷ That lawsuit was settled in part at mediation, but the parties left the question of attorney's fees up to the trial court, which thereafter denied them.³⁸ Bryant then sued her former attorney claiming that the attorney had not fully disclosed the risks of settling at mediation without resolving the question of attorney's fees.³⁹ In defending the suit, the attorney (Alford) contended that these discussions took place at a caucus during the mediation, and that the only people present were Bryant, Alford, and the mediator.⁴⁰ At trial, Alford "attempted to call the mediator to testify to the substance of the disclosure, presumably in order to take the controversy out of the context of a swearing match between the litigants."⁴¹ The trial court determined that the confidentiality provisions of the ADR Act precluded allowing the mediator to testify, and Alford appealed.⁴²

The Dallas court followed its decision in *Avary* by again allowing testimony about mediation communications in an ensuing, tangential lawsuit. Specifically, the court concluded that "Bryant has waived mediation confidentiality under both ADR confidentiality statutes due to her offensive use of the statutory confidentiality provisions."⁴³ The court appeared troubled that Bryant had filed a malpractice suit against her attorney, but then made "offensive use" of the confidentiality statutes to preclude the attorney from calling the mediator to defend against that very suit. The court attempted to narrow the scope of its decision: "Significant substantive and procedural rights ... are implicated, including the opportunity to develop evidence" to defend "the claim of legal malpractice In pursuing her defense, [the attorney] will not disturb the settlement in the underlying litigation."⁴⁴

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The decisions in *Avary* and *Alford* have caused concern among Texas mediators. Although the losing parties in each case filed petitions for review at the Texas Supreme Court, the petitions were denied. While those petitions were pending, the Association of Attorney-Mediators, through Professor Wayne Scott, filed amicus briefs opposing the results in both cases. Moreover, the ADR Section devoted a substantial portion of the November 2004 issue of *Alternative Resolutions* to articles by Professor Scott and the various counsel involved with the appeals. At one level, the two cases can be classified as narrow – even unusual exceptions – to mediation confidentiality. On the other hand, they can alternatively be viewed as an erosion of confidentiality. It will be interesting to see how far future litigants and courts attempt to extend the holdings.

Avary and *Alford* also serve to illustrate possible pitfalls inherent in not having carefully tailored exceptions to confidentiality delineated in the ADR Act. If judges find the existing exceptions to work an injustice, they have – in effect – added their own “manifest injustice” or “miscarriage of justice” exception to the existing statutory framework, albeit through ad hoc decision-making. For example, in an unreported case, *Randle v. Mid Gulf, Inc.*,⁴⁵ a participant in a mediation claimed that a settlement agreement reached at the mediation was void because he had signed it under duress. The party alleged that despite fatigue and chest pains, the mediator had announced that he could not leave the session “until a settlement was reached”; thus, he signed the agreement.⁴⁶ The *Randle* court summarily determined that a party may not “sue for specific performance of the mediation agreement” and simultaneously “argue that the mediation communications are confidential as to ... [the other party’s] duress defense.”⁴⁷ Thus, despite the lack of an exception to the state’s ADR confidentiality statute, the court’s sense of justice apparently led it to create an ad hoc exception.⁴⁸

Other courts have also discarded confidentiality when faced with situations involving departures from the court’s sense of fairness or justice. Consider *Guevara v. Sahoo*,⁴⁹ in which the court failed to find an abuse of discretion where the trial court sanctioned a lawyer for communications made at a court-ordered mediation. In *F.D.I.C. v. White*,⁵⁰ parties to a mediated settlement agreement asserted that participating federal officials threatened them with criminal prosecution throughout the mediation if they did not settle. Despite a local court rule that ADR communications are confidential, the court concluded that the mediation communications were not privileged under federal law.⁵¹ Similarly, in *Allen v. Leal*,⁵² the court “released all parties from the confidentiality requirements” of a local rule where a party alleged “that the mediator had ‘forced’ her and her husband into settling the case and had also misled them.” The court expressed “grave concern” over the plaintiffs’ “frontal attack on the mediation process,” but indicated that coercion or “bullying” was not acceptable conduct for a mediator.⁵³ Accordingly, the court proceeded to dispatch with confidentiality. Additionally, consider *In re Grand Jury Subpoena Dated December 17, 1996*.⁵⁴ In that case the Fifth Circuit re-

fused to quash a subpoena issued to the Texas Agricultural Mediation Program [“TAM”] seeking disclosure to a grand jury of all files relating to numerous program mediations. The court failed to quash the subpoena despite (1) enabling legislation requiring all program mediations to be confidential, (2) the federal agency’s certification of Texas Tech to operate TAM based on the program’s written commitment to employ the Texas Act’s confidentiality sections, (3) the parties’ agreement that mediation communications would be confidential and governed by the Texas Act, and (4) the confidentiality provisions of the federal Administrative Dispute Resolution Act.⁵⁵ Because of the court’s decision, “the mediation files and confidential communications from over 600 mediations were turned over to (1) the inspector general for the federal agency, (2) the U.S. Attorney, and (3) a federal grand jury.”⁵⁶

Consider also *Hur v. City of Mesquite*,⁵⁷ in which an injured party in an automobile-pedestrian accident sued the city for negligence. At a later mediation, although the city’s representative had declared that he had authority to settle, once an oral settlement agreement was reached, the city representative “announced that the verbal agreement would have to be approved by the Mesquite City Council or there [would be] no agreement.”⁵⁸ After the city did not pay the agreed sum, the opposing side pursued actions for breach of the oral settlement agreement and breach of the implied warranty of authority of the agent to settle the case.⁵⁹ The court allowed testimony on both theories even though the supporting contentions were largely based on mediation communications.⁶⁰ Not all reviewing courts, however, have been as willing to ignore § 154.073’s confidentiality provisions.⁶¹

Given these varied decisions, it appears that courts may, on occasion, decide they should engraft an exception to confidentiality for contract defenses (or in other compelling situations). This obviously could create a slippery slope and might easily eviscerate the policy reasons for confidentiality. Accordingly, if a court is so inclined, it should first conduct an in camera hearing as authorized by § 154.073(e), and then carefully limit any foray into confidential communications by taking into account only matters related to the alleged defense. Moreover, to avoid abuse, the court should be willing to sanction frivolous assertions of contract defenses. Because of the uncertainty associated with judge-made decision-making in this regard, however, a legislative solution might be superior.

Other than some efforts by the ADR Section to pursue amendments to the confidentiality provisions in 1993, there has not been serious consideration of modifying those sections since that time. Even the 1993 proposals were somewhat controversial within the section, and the State Bar declined to sponsor a bill. If, however, amendments to our Act should be considered in the future, a more recent Florida statute would be worthy of study. In 2004, Florida revamped its ADR legislation to provide, *inter alia*, carefully crafted exceptions to confidentiality.⁶² The Florida law created exceptions for mediation communications relating to professional malpractice or “[o]ffered for the limited purpose of establishing or refuting legally recognized grounds for voiding or reforming a settlement agreement reached during a mediation.”⁶³ The legislation also defines a

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“mediation communication” to include oral or written statements made “prior to mediation if made in furtherance of a mediation.”⁶⁴ Additionally, the legislation includes sanctions for violations of the confidentiality provisions – something lacking under Texas law.⁶⁵

Another statutory initiative over the last several years was not as attractive. The National Conference of Commissioners on Uniform State Laws and the American Bar Association developed the Uniform Mediation Act [“UMA”].⁶⁶ Much of the Texas mediation community opposed enactment of the UMA’s framework for our state. The ADR Section publicly stated its opposition,⁶⁷ and the Association of Attorney-Mediators and the Texas Association of Mediators registered their strong opposition.⁶⁸ The primary concerns related to two principal areas: (1) the UMA drafters’ approach to confidentiality in comparison to the long-established approach of the Texas ADR Act, and (2) the relative complexity of the UMA’s provisions. As stated by Wayne Fagan, a past chair of the ADR Section, “Whereas the Texas ... confidentiality provisions start with the general proposition that all ADR communications are confidential, save for several exceptions, the UMA focuses instead on privileges from discovery and admissibility in later proceedings.”⁶⁹ Indeed, the UMA’s drafters declined to include a general requirement of confidentiality. Moreover, the structure of the UMA is unduly complex.⁷⁰ Instead of providing a broad statement of confidentiality followed by narrow exceptions, the UMA purports to provide confidentiality through a complex and dizzying array of privileges, waivers, and exceptions. Because of the stiff resistance by the Texas mediation community, there has been no serious effort to introduce or enact the UMA in Texas.

In summary, although no statute is perfect, the broad approach to confidentiality set forth in the Texas ADR Act has well-served disputants and the courts of this state for two decades, and should provide a firm foundation for many years to come.



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ENDNOTES

¹ TEX. CIV. PRAC. & REM. CODE ANN. §§ 154.001-154.073 (Vernon 2005).

² Edward F. Sherman, *Confidentiality in ADR Proceedings: Policy Issues Arising From the Texas Experience*, 38 S. TEX. L.J. 541, 542 (1997).

³ See, e.g., Frank Elliott, *Mediation Confidentiality*, in ADR HANDBOOK 473 (K. Elliott & F. Elliott eds., 3d ed. 2003); L. Wayne Scott, *The Law of Mediation in Texas*, 37 ST. MARY’S L.J. 325, 393-409 (2006); Edward F. Sherman, *supra* note 2; Brian D. Shannon, *Confidentiality of Texas Mediations: Ruminations on Some Thorny Problems*, 32 TEX. TECH L. REV. 77 (2000), available at <http://www.texasadr.org/umacconfid.pdf>; Brian D. Shannon, *Dancing with the One that “Brung Us” – Why the Texas ADR Community Has Declined to Embrace the UMA*, 2003 J. DISP. RESOL. 197 (2003), available at <http://www.attorney-mediators.org/uma.pdf>.

⁴ 29 S.W.3d 915, 917-18 (Tex. App.—Beaumont 2000, orig. proceeding).

⁵ *Id.* at 918.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ 33 S.W.3d 443, 452-53 (Tex. App.—Fort Worth 2000, no pet.).

¹⁰ *Id.* at 447.

¹¹ *Id.* at 453.

¹² Cf. *In re Cartwright*, 104 S.W.3d 706, 714 (Tex.App.—Houston [1st Dist.] 2003, no pet.) (recognizing that because a mediator receives confidential information, that same neutral should not later be appointed as an arbitrator in a binding arbitration).

¹³ 770 S.W.2d 948, 949 (Tex. App. – Houston [1st Dist.] 1989, no pet.).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Cf. *In re Cartwright*, 104 S.W.3d 706, 713 (Tex.App.—Houston [1st Dist.] 2003, no pet.) (declaring, instead, that the ADR Act’s confidentiality provisions “are guidelines to be followed in private, contractual mediation”).

¹⁷ 59 S.W.3d 842 (Tex. App. – Texarkana 2001, no pet.).

¹⁸ *Id.* at 844.

¹⁹ *Id.*

²⁰ *Id.* at 844, 847.

²¹ *Id.* at 845.

²² *Id.*

²³ *Id.* at 845-47.

²⁴ Lubbock County has a local rule that applies the ADR Act’s confidentiality provisions from “a party’s first contact” with the local DRC.

²⁵ See National Conference of Commissioners on Uniform State Laws, Uniform Mediation Act (2001) [hereinafter “UMA”], at § 2, cmt., available at <http://www.law.upenn.edu/bll/ulc/mediat/uma2001.pdf>.

²⁶ 115 S.W.3d 534, 543 (Tex. 2003).

²⁷ TEX. FAM. CODE ANN. § 6.602 (Vernon 2006); *id.* § 153.0071 (Vernon 2002).

²⁸ 72 S.W.3d 779, 803 (Tex. App. – Dallas 2002, pet. denied).

²⁹ *Id.* at 784.

³⁰ *Id.* at 785.

³¹ *Id.*

³² *Id.* at 796.

³³ *Id.* at 803.

³⁴ *Id.*

³⁵ See *Allison v. Fire Ins. Exch.*, 98 S.W.3d 227, 260 (Tex.App.—Austin 2002, no pet.) (distinguishing *Avary* and rejecting party’s attempt to introduce evidence about conduct of other party at mediation and settlement offers made at mediation).

³⁶ 137 S.W.3d 916 (Tex. App.—Dallas 2004, pet. denied).

³⁷ *Id.* at 919.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 922.

⁴⁴ *Id.*

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An ADR Pioneer And Innovator Speaks Out On ADR's Progress

The Editor, Charles Guittard, interviews the Hon. Frank G. Evans, Founder of the Frank G. Evans Center for Conflict Resolution at South Texas College of Law.

(Note from the Chair of the Newsletter Editorial Board of *Alternative Resolutions*: The interview published below first appeared in the August 2007 issue of *The Metropolitan Corporate Counsel*. We at *Alternative Resolutions* are grateful for the opportunity to republish the interview. All references to the "Editor," below, are to Charles Guittard, who conducted the interview for *The Metropolitan Corporate Counsel*.)

Judge Frank G. Evans served nearly 20 years on the First Court of Appeals in Texas, serving as Chief Justice from 1981 until he retired in 1990. He served on the original American Bar Association Committee on Alternative Dispute Resolution and was the founding chair of both the Houston Bar Association Committee on ADR and the State Bar of Texas ADR Committee. Named one of Texas' 100 Legal Legends in the Texas Lawyer's 2000 Commemorative Issue: A Century of Texas Law and Lawyering, Judge Evans recently received special commendation from the State Bar of Texas Board of Directors "for his indispensable work on the front lines of our legal system, providing improved access to justice for tens of thousands of people." Judge Evans periodically sits by assignment as a visiting judge and performs private ADR services as a mediator, arbitrator, conflict resolution consultant, and Special Judge. He is widely regarded by the Texas legal community as the father of Alternative Dispute Resolution in Texas. The State Bar of Texas ADR Section has created the "Frank G Evans Award," which it periodically presents to a worthy recipient for conspicuously valuable service in the field of ADR.

Editor: Judge Evans, would you tell us how you became interested in ADR?

Evans: It happened largely because of a conversation Bob Dunn, then President of the Houston Bar Association, and I had with then Chief Justice Joe Greenhill of the Texas Supreme Court in the late 1970's. Judge Greenhill had attended a conference of judges and lawyers in another state, which was focused on finding new ways to reduce court backlogs and to make justice more readily accessible to the people. As a result of that conversation with Chief Justice Greenhill, Bob Dunn named me the chair of a Houston Bar Committee on ADR to investigate the possibility of establishing a dispute resolution center in Houston.

Editor: How did the Texas Dispute Resolution Center funding statute and the ADR Procedures Act come about and why were they important to the people of Texas?

Evans: The funding statute, which was enacted in 1983, was important because most of the dispute resolution centers we visited across the United States were having the same problem, a lack of monies for sustainable operation. Our first major challenge was to find some ongoing source of funding that would enable dispute resolution centers to keep their doors open and continue to serve a public function. The funding mechanism we arrived at was the same type which had been used to fund the costs of law libraries and juries, namely a small tax on each civil case filed. Enabling legislation authorizing County Commissioner Courts to impose this tax was passed and signed into law by Governor Mark White in 1983.

The second statute, the Texas Alternative Dispute Resolution Procedures Act, came about because of the need for a statutory mechanism to encourage the use of mediation and other ADR processes in civil litigation. It was designed to provide a procedural outline for the effective use of out-of-court settlement methods. Fortunately, we had the creative guidance and sponsorship of Senator Cyndi Taylor Krier of San Antonio, who is primarily responsible for the passage of this Act in 1987. In retrospect, I think this statute was an important milestone in Texas ADR, because in those days not many lawyers or judges were knowledgeable about the benefits clients could obtain from mediation or other ADR processes.

Editor: What were your expectations for ADR in Texas at the time the Act was passed?

Evans: Modest, really. I had no idea that mediation would become a professional career for many dedicated individuals conducting civil mediations, and I just assumed that future mediators would continue to be unpaid volunteers. I think we did have some general hope that the Texas ADR Act would encourage increased use of mediation and other ADR processes.

Editor: Texas seems to have been one of the early leaders in this area. Any thoughts as to why?

Evans: I think we Texans have always been a reckless, somewhat strange bunch; if something seems like a good idea, we just go after it. Also, we have been blessed with people like

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Chief Justice Greenhill and subsequent chief justices, as well as state bar presidents, boards of directors, local bar presidents and judges, who almost without exception have solidly supported the expanded use of ADR. It is that leadership which has made a difference and it is still making a difference.

Editor: In what ways has ADR developed in Texas and elsewhere that was not envisioned early on?

Evans: I don't think we had much vision in those days about the extended use of ADR. In those days we were concentrated on ways to use ADR to help people resolve their "small" disputes such as neighborhood disputes about barking dogs and other such problems. It wasn't long, however, before we began to realize that mediation could be effective in large disputes, and soon we found to our surprise that ADR would work in bankruptcy and intellectual property cases - even in tax disputes involving the I.R.S. Also, we found that ADR methods might be useful in resolving some kinds of issues in criminal proceedings and in helping parties settle cases on appeal. Over the years, we have found that ADR can be used in almost every category of civil dispute, although it may not always be the best process for a particular case.

Editor: What is online ADR (ODR) and how would one do it?

Evans: Before people had telephones and before they could fly around to see each other, they wrote letters to convey their feelings and ideas. I think we are rediscovering how effective the written word can be in resolving conflicts. So, our challenge is to develop good writing skills and to learn how to write in a persuasive manner. ODR, or Online Dispute Resolution, simply describes a means for conducting written communications over the Internet to negotiate the resolution of a dispute. In today's digital world this usually is done through some type of text messaging either alone or in combination with videoconferencing. In an ODR process, the mediator orchestrates the parties' settlement negotiations through confidential text messages that communicate their position statements, offers, responses, and explanations. It is usually possible in an ODR process for the parties, particular case.

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process for the parties, their attorneys, and the mediator to remain in their own office or home while participating in the online process. This feature obviously reduces the amount of time, cost, and stress involved in the process.

Editor: What has been your involvement with mediation in the schools? What has happened in this area?

Evans: It would be ideal, in my opinion, for schools to implement their mediation programs so that every student could participate in the program. This, in my opinion, would eventually result in a substantial reduction in the incidence of school violence and other unproductive behavior. Student mediators who have been trained to help other students resolve their interpersonal conflicts are better prepared to control their own anger and know how to resolve their own disputes without violence. Through their training and experience, the youth mediators gain a good understanding of effective conflict resolution practices that help them deal more effectively with problems arising after they become adults. Unfortunately, due to lack of funding or lack of understanding, many school administrators do not fully appreciate the real value of peer mediation programs. Our Center has worked with the Houston Bar, the State Bar, and with the Harris County Education Department to develop peer mediation programs in the schools including one alternative school and a juvenile probation institution

Editor: You have just come back from a trip to Panama. What is happening there with respect to ADR and what is your involvement?

Evans: Panama is entering a very exciting era. Because of the Panama Canal, Panama is at the center of a tremendous amount of maritime trade activity, including that which will result from the expansion of the Canal. Panama also has a beautiful ecosystem, bordered on the North and the South by two different oceans. Panama's people also have strong ties to the United States. Panama faces some serious problems that are common to most countries in Central America. These problems, however, are susceptible to resolution by alternative dispute resolution procedures, and our relationship with Panama offers a real opportunity to develop and test some new and unique ADR protocols. In this regard, we have been working with the Panama Supreme Court, the Panama Canal Authority, the Panama Solicitor General, the Panama Attorney General, and other governmental representatives to devise new ADR systems for dealing with these problems. We have found these representatives to be very open and receptive to new ideas, and we are optimistic that a cooperative plan for sustainable development will be developed, which can then serve as a model for other governments and private institutions in Latin America.

Editor: What do you see happening in ADR in the next 10-25 years, in Texas or elsewhere?

Evans: Ups and downs will occur but ADR will continue to expand. Some say that ADR and arbitration prevent young attorneys from getting trial experience as well as alleviating the need for courts to write opinions that provide guidance to the public. My experience leads me to believe that we will always have the need for judges and arbitrators and that we have an ample number of appellate opinions to provide guidance to the

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THE DEVELOPMENT OF ETHICAL GUIDELINES AND MEDIATOR CREDENTIALING IN TEXAS

By Lawrence R. Maxwell, Jr.*

This article documents the historical development of ethical guidelines for mediators and voluntary mediator credentialing in the State of Texas.

Mediation's Beginnings in Texas

Prior to the enactment of the Texas Alternative Dispute Resolution Procedures Act ("ADR Act") in 1987,¹ mediation was not widely used in Texas, most mediations were conducted at community dispute resolution centers or in the area of family law, and few mediators were attorneys.

A major step in the mediation movement among Texas attorneys began in the fall of 1988, when Judge Gary Hall of the 68th Judicial District Court of Dallas County and several Dallas attorneys ventured to Ft. Worth to observe a settlement week. The outstanding success of the settlement week prompted Judge Hall, aided by attorneys Les Weisbrod, Frank Giunta, Grant Seabolt and others, to introduce settlement week to Dallas, and to consider using professional attorney-mediators to assist in settling cases in his court.

Judge Hall and Steve Brutsché (1944-1991) soon collaborated on advancing mediation. Brutsché, a Dallas civil trial attorney, had been exposed to mediation while handling a case in California. With the encouragement and counsel of Judge Hall, in 1989, Brutsché and Dallas attorneys Heshia Abrams, Jeff Abrams, Charles Guittard, Grant Seabolt and Jay Madrid organized and conducted two mediation training sessions, sponsored by the Business Litigation Section and the newly created ADR Committee of the Dallas Bar Association.

Brutsché, along with newly trained attorney-mediators Mike Amis, Courtenay Bass, Ross Hostetter, Ross Stoddard, and Sid Stahl, made a presentation to the thirteen civil district judges of Dallas County at their annual retreat. Having seen the favorable results in Judge Hall's court and realizing the potential benefits of mediation, Judges Mark Whittington, Joe Morris and Anne Ashby joined Judge Hall in persuading all of the civil district judges to begin issuing a *sua sponte* Mediation Order. The Rules for Mediation, which were incorporated into the Order, set forth the legal and ethical obligations of the appointed mediator.²

Also in 1989, the State Bar of Texas ADR Committee (predecessor of the ADR Section) established a Task Force on Qualifications and Credentials to develop standards of practice for all ADR neutrals under the ADR Act.

An Ethics Subcommittee of the State Bar of Texas ADR Committee began drafting standards of practice for mediators. However, after meeting off and on over three years, the subcommittee produced a draft document, but had not come to a consensus on standards of practice. Mediation was spreading rapidly throughout the State. Attorneys and non-attorneys were conducting mediations, having received various types of training, but no ethical guidelines from the Bar were in place.

Dallas Bar Association's Standards of Practice for Mediators

In 1992, Orrin Harrison, President of the Dallas Bar Association, along with other Bar leaders, became concerned about the lack of ethical guidelines for mediators in Dallas, particularly for attorney-mediators. Harrison asked Sid Stahl, chair of the Dallas Bar Association's ADR Committee, to establish an Ethics Subcommittee to develop a code of ethics or standards of practice for mediators in the Dallas Bar Association. Maxel "Bud" Silverberg agreed to chair the Ethics Subcommittee (hereinafter, "Subcommittee").

The first task of the Subcommittee was to determine who would be covered by the ethical code or standards. It was apparent that to be effective, the ethical code or standards would have to apply to all individuals conducting mediations, whether they were attorneys or not. However, the Bar could only adopt an ethical code or standards for attorneys, and compliance by mediators who were not attorneys would have to be voluntary. Therefore, a diverse group of twenty-seven individuals was assembled, composed of five judges, twelve attorneys, one law professor, and nine individuals who were not attorneys.³

The next task of the Subcommittee was to determine the form and content of the ethical code or standards. Having been a member of the State Bar Task Force and having seen how little progress had been made in three years, Silverberg did not want to fall in the trap of having twenty-seven people draft the document from scratch. Drawing from key elements of the State Bar's draft document, the State of Hawaii's Standards for Mediators, SPIDR's Ethical Standards of Professional Responsibility, the Colorado Council of Mediators & Mediation Organizations, and the American Arbitration Association's Code of Ethics, Silverberg produced an initial draft. Wisely maintaining a manageable number of initial drafters, a "Committee of Six" was formed, comprised of Judges Gary Hall and Joe Morris,

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Helmut Wolfe (Regional Director of the American Arbitration Association), Don Canuteson, Robert Bliss, and Bud Silverberg.

The first meeting of the Committee of Six was in May 1992. Judge Morris suggested the document should be a living document—practical, short and direct—one that could and would be easily referenced, not placed in a desk drawer and forgotten. Following the wise advice from a wise judge, the Committee of Six agreed upon a simple format, with basic standards, followed by comments for clarification. To achieve broad coverage, the standards needed to apply to all attorney-mediators, as well as all individuals who were not attorneys, who mediated cases on referral from courts in Dallas County. It is important to note that judges on the Subcommittee opined that the Dallas Bar Association could properly promulgate ethical standards for all mediators—attorneys or not—conducting court-annexed mediations.

Between May and September 1992, the initial draft of the Committee of Six was discussed, revised again and again, line by line, in many meetings of the full Subcommittee. Later, meetings were held with representatives of the Dallas Bar Association's Board of Directors. In February and March 1993, the full ADR Committee considered the working draft. Sticky issues that had been discussed but not previously agreed upon were hashed out. For instance, should the standards be aspirational or mandatory? If mandatory, how would non-compliance be dealt with? Should the standards address mediation techniques such as facilitative vs. evaluative? What to name the document: Standards of Practice or Code of Ethics?

Approval of the full Subcommittee was finally reached on the twelfth draft, and ADR Committee subsequently approved the document. On June 24, 1993, the Board of Directors of the Dallas Bar Association unanimously approved the *Standards of Practice for Mediators*.⁴

Later in 1993, with a name change to *Ethical Guidelines for Mediators*, the Houston Bar Association and the Association of Attorney-Mediators adopted the Dallas Bar Association's *Standards of Practice for Mediators*.

On February 19, 1994, with a few minor modifications and the addition of a provision dealing with a mediator's relationship with the judiciary, the Council of the ADR Section of the State Bar of Texas unanimously adopted the *Ethical Guidelines for Mediators*.⁵

Supreme Court of Texas Advisory Committee on Court-Annexed Mediation

As mediation continued to grow rapidly throughout the state, public debate surrounded the need for oversight of the quality of mediation in Texas. In 1995, Wendy Trachte-Huber and David Cohen, then co-chairs of the ADR Section of the State Bar of Texas, requested the Supreme Court to establish a Supreme Court Advisory Committee to explore credentialing and ethical guidelines for mediators.

By Order dated May 7, 1995, the Supreme Court of Texas is-

sued its Order Creating Advisory Committee on Court-Annexed Mediation, Misc. Docket No. 96-9125.⁶ Bruce Stratton of Liberty and Bill Low of Grapevine co-chaired the Committee. The charge of the Committee was to formulate mediation ethics rules and to study whether further oversight (e.g., licensing, registration, or credentialing) was warranted.

The Supreme Court Advisory Committee gathered relevant materials from various organizations throughout the country, including organizations unrelated to the practice of law and the justice system. The committee, after meeting on numerous occasions for several years (1995-1998), found no consensus among the committee members, or within the mediation community in Texas, as to whether the Supreme Court of Texas should become involved in credentialing, registration, and/or licensing of mediators.

On March 18, 1998, the Supreme Court Advisory Committee submitted its report to the Texas Supreme Court, recommending the court establish minimum training qualifications for mediators, create a Commission on Training by appointment of the Supreme Court, and promulgate Texas Rules of Ethics for Mediations and Mediators, which were in the nature of, but did not mirror the *Ethical Guidelines for Mediators* that the ADR Section of the State Bar of Texas had adopted in 1994.

Mediator Credentialing: Mandatory or Voluntary

The indication was that the Supreme Court of Texas was going to follow the Supreme Court Advisory Committee's recommendation to promulgate rules of ethics for mediators. However, Justice Priscilla Owen, the court's liaison to the State Bar of Texas, recommended that a subcommittee be established to study the feasibility of **mandatory credentialing** for mediators under the court's rule-making authority. The subcommittee members were Suzanne Duvall, Rena Silverberg, Bud Silverberg, and Sid Stahl of Dallas, Michael Schless of Austin, and Bruce Stratton of Liberty.

In October 1998, sensing the apparent lack of interest within the mediation community for mandatory credentialing, John Palmer of Waco, then Chair of the ADR Section of the State Bar of Texas, called a meeting of representatives of leading mediator organizations in Texas to determine if the mediation community wanted to explore a **voluntary credentialing plan** for mediators in Texas. This group later became known as the Texas Mediator Credentialing Committee, forerunner of the Texas Mediator Credentialing Association (TMCA).

Over the next several years, the Supreme Court Advisory Committee and the Texas Mediator Credentialing Committee worked on developing mandatory and voluntary credentialing plans. From time to time, the Texas Legislature stuck its nose under the tent; however, it enacted no legislation. John Coselli of Houston served as a liaison between the two committees.

By 2003, it was time to stop the studying and chart a course for mediators in Texas. In October 2003, a meeting was held in John Estes' office in Dallas to resolve the issues. The choices were: (1) a court-mandated registration program; or (2) court-mandated mandatory credentialing, or (3) the voluntary credentialing program developed by TMCA; and (4) aspirational or

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mandatory ethical guidelines for mediators. The vote of the Supreme Court Advisory Committee was unanimous. Rather than establishing a court-mandated registration or a mandatory credentialing plan, the Supreme Court of Texas should adopt the ethical guidelines of the State Bar of Texas, which had been widely publicized and accepted within the mediation profession.

With a clear admonition to counsel representing parties in mediation of a pending case that they remain officers of the court in the same manner as if appearing in court, by Misc. Order No. 05-9107 dated June 13, 2005, the Supreme Court of Texas issued its Approval of Ethical Guidelines for Mediators,⁷ by adopting the *Ethical Guidelines for Mediators* that the ADR Section of the State Bar of Texas had adopted in 1994. It is interesting to note that the Supreme Court's Order states that "the rules (*Guidelines*) are *aspirational*, and that compliance depends primarily upon understanding and voluntary compliance, and secondarily upon reinforcement by peer pressure and public opinion, and **when necessary by enforcement by the courts through their inherent powers and rules already in existence . . .**"

As to the mandatory or voluntary credentialing issue, Justice Priscilla Owen, as the Texas Supreme Court's liaison to the Supreme Court Advisory Committee, instructed the committee to come up with a voluntary credentialing plan within six years, or the court would put in place a mandatory plan.

Texas Mediator Credentialing Association

Representatives of various mediator organizations and members of the judiciary had founded the Texas Mediator Credentialing Association⁸ in 2001. After many meetings, the organization decided to make mandatory the *Ethical Guidelines for Mediators* that the ADR Section of the State Bar of Texas had adopted in 1994, and establish and maintain a grievance process for TMCA credentialed mediators.

With the Texas Supreme Court's decision not to become involved in credentialing of mediators and the instruction to develop a voluntary credentialing plan, TMCA stepped to the forefront, and in January 2004, it issued its first mediator credentials to Suzanne Duvall.

At no cost to the public or the consumer of mediation services, TMCA established and continues to maintain the first statewide voluntary, multi-disciplinary mediator credentialing program in the country. The credentialing program promotes public confidence in the mediation process and mediators, and the grievance process protects consumers of mediation services and provides standards of accountability for mediators.

TMCA is truly a unique and innovative organization built on years of effort by the various mediator groups and individuals. As its membership continues to grow, the success of the organization will demonstrate that professional self-regulation is superior to governmental regulation.

Conclusion

With twenty years of good experience, it is clear that the public and ADR professionals have been well served by passage of the ADR Act. Among the tools in the ADR tool box, mediation has become the process of choice. The road to establishing ethical guidelines and a form of credentialing of mediators has been long, with bumps along the way. Nevertheless, thanks to the foresight and leadership of many individuals who devoted thousands of hours of volunteer time, mediators in Texas now have an ethical framework within which to practice their profession, and they enjoy the opportunity to participate in a voluntary credentialing program that benefits the public and the mediation profession.



**Lawrence R. Maxwell, Jr. is an attorney, mediator, arbitrator, and practitioner of collaborative law in Dallas. He is a charter member and past President of the Association of Attorney-Mediators, a Founding Director and President of the Texas Collaborative Law Council, a charter member of the Collaborative Law Committee of the American Bar Association*

Section on Dispute Resolution, the current Chair of the Collaborative Law Section, and past Chair of the ADR Section of the Dallas Bar Association.

The author wishes to thank Bud Silverberg, Bruce Stratton, Sid Stahl, Mike Amis, and Suzanne Duvall for their generous assistance in providing information for this article, without which it would not have been possible to document the history of these significant events.

ENDNOTES

¹ TEX. CIV. PRAC. & REM. CODE ANN. §§ 154.001-154.073 (Vernon 2005), available at <http://www.texasadr.org/adract.html>.

² Original Dallas County Mediation Order and Rules for Mediation (copy on file with the ADR Coordinator for the Dallas County Courts).

³ Members of the Dallas Bar Association Ethics Subcommittee were: Judges Gary Hall, Charles Guittard, Joe Morris, Dee Miller and Theo Bedard; Attorneys Mike Amis, Robert Bliss, David Carlock, Don Canuteson, Peter Chantillis, Jay Madrid, Larry Maxwell, Jay Patterson, Randy Pulitzer, Grant Seabolt, Bud Silverberg, and Ross Stoddard; SMU Law Professor Kenneth Penegar; and individuals who were not attorneys: Susanne Adams, Debbie Andrews, Herb Cooke, Richard Evarts, Linda Hahan, Virginia Talkington, Liz Walley and Helmut Wolfe.

⁴ *Standards of Practice for Mediators* adopted by the Board of Directors of the Dallas Bar Association on June 24, 1993 (copy on file with the Dallas Bar Association).

⁵ *Ethical Guidelines for Mediators* adopted by the Council of the ADR Section of the State Bar of Texas in February, 1994, <http://www.texasadr.org/ethicalguidelines.html>.

⁶ The members of the Supreme Court Advisory Committee on Court-Annexed Mediation were: Tony Alvarado, Karl Bayer, Gary Condra, Herb Cooke, Hon. Suzanne Covington, Claude Ducloux, Suzanne Duvall, John Estes, Hon. Frank Evans, Hon. Charles Gonzalez, Carol Hoffman, Dr. Lou Lasher, Bill Low, Hon. Tom McDonald, Hon. Margaret Mirabal, Lanelle Montgomery, William M. Morris, Hon. Jay Patterson, Ross Rommel, Michael J. Schless, Mixel ABud@ Silverberg, Rena Silverberg, Sid Stahl, Bruce Stratton, and Michael Wolf.

⁷ Supreme Court of Texas Misc. Order No. 05-9107: Standards: Mediator Guidelines, <http://www.supreme.courts.state.tx.us/rules/rules.asp>.

⁸ Website of the Texas Mediator Credentialing Association, <http://www.txmca.org>.

DISPUTE RESOLUTION CENTERS IN TEXAS COLLEGES AND UNIVERSITIES

*Susan B. Schultz**

(Note from the Chair of the Newsletter Editorial Board: The scope of this article is limited to centers in Texas universities that offer both training/education and services in dispute resolution. The article does not include universities that offer academic programs exclusively.)

Abilene Christian University Center for Conflict Resolution



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Due to the vision and generosity of Dr. Robert J. "Jerry" Strader and his wife, Patsy, the Center for Conflict Resolution was created in August 2000 with Joe L. Cope, J.D. selected as the Center's executive director. Since its inception, the Center has grown in visibility in secular and religious communities throughout the United States and the world. The Center's new facility, the Diane and John Duncum Center for Conflict Resolution, is currently under construction on property adjacent to ACU's main campus and is scheduled for completion in 2008. The mission of the Center for Conflict Resolution is to equip, encourage, and support individuals as peacemakers in their personal relationships, families, churches, schools, professions, and communities.

One Peace Conflict Resolution Service is the Center's in-house consulting group, which provides conflict analysis, training, and mediation services to individuals, churches, businesses, and schools. The Alternatives in Mediation (AIM) program is a free service to ACU students. The goals of the AIM program are to encourage students to resolve conflict productively, and to teach students the skills and spirit of peacemaking. The West Texas Mediation Center, formed through a partnership between the Center and the Better Business Bureau, is a low-cost dispute resolution service for businesses and customers to resolve commercial conflicts.

The Center offers a Master of Arts in Conflict Resolution and Reconciliation (36 hours) and a Graduate Certificate in Conflict Resolution (15 hours). To make the master's degree and graduate certificate accessible to more students, the Department of Conflict Resolution teams up with ACU World Wide to provide its courses online. With exposure to theory and skill-

development exercises, students complete the program with multiple perspectives on conflict and a creative foundation for problem solving. This depth of preparation is invaluable to those who are seeking a career in dispute resolution or who find themselves with significant peacemaking opportunities in their chosen career. It is all part of a serious commitment to bring ACU's world-class education to students in urban and global markets.

Southern Methodist University - SMU Center for Dispute Resolution & Conflict Management



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SMU's Center for Dispute Resolution & Conflict Management offers a Master of Arts in Dispute Resolution, a Graduate Certificate, and non-credit professional seminars. In 2006, as part of the new School of Education and Human Development, the Center began offering a Master of Arts degree in Dispute Resolution. The degree consists of 42 credit-hours, providing a comprehensive study of dispute resolution, numerous clinical and practicum opportunities, as well as ample options for further specialization in areas such as organizational conflict, domestic relations, or legal conflicts. A Graduate Certificate in Dispute Resolution has been available at SMU since 1998, when the program began. The Graduate Certificate is a 21 credit-hour program offering a solid foundation in dispute resolution and practical skill development. Students benefit from a nationally and internationally recognized faculty and learn in small, interactive classes that emphasize practical skills and techniques. Moreover, the faculty and curriculum integrate such diverse fields as psychology, law, sociology, public policy, and economics, offering more than thirty different courses in the field of dispute resolution. To provide further diversity to the curriculum, the center also offers study-abroad opportunities.

The Center offers numerous opportunities for both master's degree and certificate students to gain practical experience that at once allows them to hone their dispute resolution skills and serve the community. In particular, the Center operates an on-

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site mediation facility. The mediation facility offers services to disputing parties in civil, family and community disputes for a nominal fee. Students, alumni and faculty serve as volunteer mediators in this facility. The Center also maintains relationships with various state and federal agencies, courts systems, corporations, and private mediators with whom students can arrange for-credit externships. The Center operates under an academic quarter system, with a new quarter starting approximately every 12 weeks. Classes are offered evenings, weekends, and in week-long intensive formats.

South Texas College of Law - The Frank Evans Center for Conflict Resolution



Address: 1303 San Jacinto St., Houston, TX 77002

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Website: www.stcl.edu/feccr/

The Frank Evans Center for Conflict Resolution, established in 1994 upon the initiative of South Texas College of Law Board of Trustee Robert A. Mosbacher, is the product of years of work by its founding Director, Judge Frank G. Evans, and its Director, Professor R. Hanson Lawton. The Center is actively supported by its Advisory Board, comprised of members of the law school faculty and staff plus some 250 prominent lawyers, judges, physicians, scientists, and business leaders. The Center's goals are: to provide a comprehensive conflict resolution curriculum for law students at STCL; to offer both basic and advanced conflict resolution training to a broad range of constituencies; to promote professionalism in the field of conflict resolution; to advance knowledge of conflict resolution alternatives through scholarship, publications, and demonstrations; and to develop new and innovative ways to advance responsible conflict resolution processes and protocols. The Frank Evans Center is also engaged in a collaborative Cross-cultural Conflict Resolution project with business and governmental leaders in the Caribbean, Latin America and the United States to design, implement, and test: advanced conflict resolution systems that offer a wide range of fair, affordable, and effective conflict resolution processes; state-of-the-art communications, and risk-evaluation technologies that enable parties to resolve their disputes without regard to time, distance, or language barriers; and a system of plans and activities that encourage cultural awareness, stable business investments, economic growth, and productive job opportunities for people in Latin America and the United States.

The Center is engaged in a number of ongoing research and publication projects, including a History of Texas ADR, which traces the history of Spanish and Anglo-Saxon conflict resolution methods over the past two centuries. The Center also offers both classroom and skills training courses in mediation and arbitration concepts and practices. In advanced training provided by the mediation clinic, law students learn how to provide services as mediators or arbitrators and also how to represent clients as advocates in ADR procedures. In addition, law students in the mediation clinic learn the practical aspects of

Family Law practice, offering pro-bono coaching assistance to divorcing parents in the Online Parent Coaching Program. For law students engaged in the American Bar Association's competitions in negotiation, mediation, and client counseling, the Frank Evans Center offers special competition training and guidance to law students who have achieved the National Championship in the client counseling competition. Law students are taught how to evaluate the risks and costs involved in litigated cases, including the use of the CAN-WIN (Computed Assisted Negotiation – Web International Network) software. In this learning exercise, law students learn how to help clients evaluate the strengths and weaknesses of their positions and how to negotiate effectively online with their adversaries. Every year, the Frank Evans Center for Conflict Resolution, along with the State Bar ADR Section and other ADR-Related organizations, hosts an Annual Institute on Responsible Conflict Resolution, which provides a community-based forum for the exchange of information and ideas regarding the use of responsible conflict resolution protocols and processes.

The Directors and Staff of the Frank Evans Center for Conflict Resolution are assisted by leading professionals in the judicial, legal, medical, scientific, educational, business, and governmental sectors that have an interest in promoting the Center's goals. Through professional interaction and by means of an Online Bulletin Board, these Advisory Board members provide ongoing guidance, knowledge, and inspiration to the law students.



University of Houston Law Center A.A. White Dispute Resolution Center



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The Center is named for Dean A.A. White, the founding Dean of the University of Houston Law Center. The purposes of the A.A. White Dispute Resolution Center are charitable, educational, and civic. The Center was organized to foster public awareness and understanding of conflict resolution and the impact of interpersonal disputes on society. The Center also encourages the broader understanding, development, and use of alternative means of dispute resolution. One important mission of the Center is to study, analyze, and recommend dispute resolution procedures that will provide less costly and more expeditious access to justice. The Center provides assistance to the courts in encouraging the early settlement of pending litigation. The Center also provides assistance to educational institutions, including law schools, in the development and use of alternative dispute resolution concepts and procedures. The Center's by-laws specifically state that it was created in order to "strive to reduce delay in the resolution of legal disputes through Alternative Dispute Resolution (ADR); to reduce the cost of re-

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THE ADR SYSTEMS AND FINANCING ACT AND TEXAS DRCs¹

By Josefina M. Rendón²

I. The Vision and the Law

Four years before the Alternative Dispute Resolution Procedures Act of 1987³ established ADR in Texas as matter of public policy, the Texas legislature passed the Alternative Dispute Resolution Systems and Financing Act.⁴ This new law allowed a county's commissioners court to establish an alternative dispute resolution system "for the peaceable and expeditious resolution of citizen disputes."⁵ In its present form, the law authorizes judicial referrals to such a system⁶ and allows for the commissioners courts to do all necessary acts to make the system effective, including:

- (1) contracting with a private nonprofit corporation, a political subdivision, a public corporation, or a combination of these entities for the purpose of administering the system;
- (2) making reasonable rules relating to the system; and
- (3) vesting management of the system in a committee selected by the county bar association.⁷

The law also enables commissioners courts to set court costs on most civil cases filed in a county⁸ or district court in the county, as well as justice courts.⁹ These costs are to be deposited in a separate alternative dispute resolution system fund to be administered by the commissioners court and used exclusively to establish and maintain the system.¹⁰ Finally, the law allows certain Dispute Resolution Centers (hereinafter, "DRCs") to collect reasonable fees from recipients of their services.¹¹

This law's principal author the Honorable Frank Evans, former chief Justice of the First Court of Appeals in Houston. Justice Evans explained that in the late 1970s, many courts "were struggling under a heavy volume of citizens' complaints, asserted by individuals who had some relationship with one another."¹² Such complaints were processed as criminal matters, though most (about 90%) never resulted in criminal convictions. Because of the "civil" nature of these complaints (i.e., most were based on some interpersonal dispute), there was a great need for an alternative means of resolution, either by mediation, conciliation, or other ADR processes.¹³ Justice Evans added:

To assure maximum control & creativity in this ADR field, it seemed appropriate for county commissioners courts to be granted the authority to establish dispute resolution systems with the county and to locally fund the administration of these systems. Since

county commissioners courts had already established a fee system to support county law libraries and other such services, we thought that this same funding method would be a logical way to fund the county's dispute resolution center.¹⁴

Similar beliefs within the United States Justice Department supported the implementation of pilot programs in Atlanta, Kansas City, and Los Angeles. These centers were created under the urging of the American Bar Association to explore alternative ways, such as mediation or arbitration, to address the many disputes that could not be resolved through existing agencies without violating any party's due process or civil rights.¹⁵

In Texas in the late 1970s, Chief Justice Joe R. Greenhill of the Texas Supreme Court met with Justice Evans to discuss alternative means for reducing the congested dockets in Texas courts. The Houston Bar Association soon came on the ADR band wagon under the leadership of Bob Dunn, then president of the Houston Bar Association (HBA). Justice Evans, who was a member of the American Bar Association's Dispute Resolution Committee, chaired the new HBA exploratory committee. Joe M. Green joined these efforts by becoming Chair of the Board of Neighborhood Justice, Inc., as well as securing funding from the U.S. Department of Justice, the Cullen Foundation, and others.¹⁶

In October 1980, the Houston Neighborhood Justice Center opened its doors to become the first DRC in Texas. It was soon followed by centers in Dallas that same year and in Fort Worth a year later. Today, there are 17 DRCs and two non-DRC ADR systems. "Texas DRCs come in various shapes and sizes, and not all are created equal," says Michael Kopp, Executive Director, McLennan County DRC.¹⁷ As such, some operate as a department of their county government, others within Councils of Government, and at least two have operated under the auspices of a university. Most are 501(c)(3) non-profit corporations responding to boards of directors.

There are also "systems" such as those used in Galveston County and Denton County. These systems also provide services under the ADR Systems and Financing Act without the presence of a staffed center.

This article contains the story of these centers and systems.

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THE ADR SYSTEMS AND FINANCING ACT AND TEXAS DRCs

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II. The First Three: Houston, Dallas, and Fort Worth

A. Houston (Harris County)¹⁸

Mediations under the HBA's ADR project started in August 1980, before the program even had a center. These mediations occurred at night in the building that then served as Harris County's Criminal Courts Building. Two months later, the Neighborhood Justice Center opened its doors with Michael Thompson as its founding director. Soon after, the center trained its first group of volunteer mediators. The center later started to offer services in satellite offices and different court-houses throughout the county.

The implementation of the 1983 ADR Systems and Financing Act authorizing commissioners courts to charge court costs for ADR funding brought a needed monetary infusion to the Neighborhood Justice Center. Similar results occurred in 1984, when Houston, with Tulsa and Washington D.C., became one of three "Multi-Door Programs" sponsored by the American Bar Association.¹⁹

Under the Multi-Door Program, intake specialists were trained to become familiar with the multiple governmental and non-profit "doors" that provided services to the public so they could refer people involved in disputes to the most effective "entry doors." Intake specialists do not provide legal advice, but they are able to steer people in need to the right agencies for information or assistance. Often, the right door would be the DRC's ADR services. Other times, it would be referral to the police, the district attorney's office, or an agency providing services such as legal advice and representation.²⁰

In 1991, the Neighborhood Justice Center changed its name to the Dispute Resolution Center, Inc., and it continues to this day as a non-profit corporation under HBA sponsorship. It still offers multi-door services, as well as ADR services such as mediation, arbitration, and moderated settlement conferences. Since 1998, the DRC of Harris County has been under the leadership of Nicholas Hall.

For the first years, the Houston Neighborhood Justice Center averaged 146 mediations per month.²¹ In 2006, the DRC of Harris County handled over 52,000 telephone calls, with over 3,600 new intakes. It conducted over 2,500 mediations, with a settlement rate of 60% and a client satisfaction rate of over 95%. That year, DRC volunteers logged over 9,000 hours of mediation.

B. Dallas (Dallas County)²²

The Dispute Mediation Service Inc. ("DMS") was established in late 1980 under founding director W. Richard Evarts. Since opening for service, DMS has assisted over 167,896 parties and closed over 41,974 cases with a settlement rate of about 65% and a 93% satisfaction rate. There are about 1,700 DMS volunteer mediators, of which 200 to 400 are active any given year. Thirty-five mediators are bilingual.

On-site mediation is provided at the Family Courts, Justice of the Peace Courts, Dallas Housing Authority sites, Nexus Recovery Center for Women, and Dallas Police offices. Basic

mediation training and divorce mediation training are offered annually. A practicum is offered for newly trained mediators to gain experience. DMS also offers four advanced mediation trainings annually in order for mediators to meet the standards of Texas Mediator Credentialing Association (TMCA).

An ongoing public-information program is maintained, with public service announcements, radio and TV interviews, attendance at community fairs, and a call-in program called "Talk to a Mediator." DMS offers conflict resolution training through the Youth Conflict Resolution Center (YCRC) and the Dallas Recreation Centers.

Through much of DMS's history, Herbert Cooke was its executive Director. After his retirement in 2006, DMS has been under the leadership of LaCrisia ("Cris") Gilbert, who came to DMS after having served as ADR coordinator at the Dallas County Courthouse. Cris is currently president of the Texas Association of Mediators.

C. Fort Worth (Tarrant and Parker Counties)²³

The Dispute Resolution Service of North Texas ("DRS") was originally incorporated in November 1982 as Dispute Resolution Services of Tarrant County, Inc. Following the enactment of the ADR Systems and Financing Act in 1983, the DRS contracted with Tarrant County to provide ADR services to the county. At first, the DRS mostly handled cases prior to court filing; therefore, it handled fewer than 600 per year, of which only about half actually went to mediation.

In 1989, Bob Good became the executive director of the DRS. In the same year, the DRS started handling court-filed cases and soon began administering the county's settlement week. Also that year, DRS mediated 240 cases. Eighteen years later, in 2006, it administered over 15,000 cases. This increase is partly due to an increase in population in Tarrant County (to 1.45 million), making it the third largest Texas county in population.

On March 28, 2000, a tornado slammed into downtown Fort Worth at a speed of 115 to 135 miles per hour, destroying many buildings. Much of the DRS office was destroyed. It lost furniture, equipment, files, and all of its computers. Fortunately, hard drives and the filing cabinets survived and, with them, most of the DRS data. The dedicated DRS staff took all the work home. "The DRS staff worked late into the night, at home, seven days a week, until our court and attorney clientele understood we were still mediating their cases even in the aftermath of the disaster," wrote Bob Good a few years later.²⁴ The mediations were held at two local churches for the next two months. Because of the saved data and dedication of DRS staff, the center recovered quickly, especially after it moved into the Livestock Exchange Building in the Historic Fort Worth Stockyards.

In 2002, DRS expanded its services to Parker County and became the DRS of North Texas. In 2006, Bob Good retired from DRS, and Abby Mitchell took over the reigns of the North Texas Dispute Resolution Services.

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III. DRCs that Followed in the 1980s

A. Austin (Travis County)²⁵

The Travis County Dispute Resolution Center was founded in 1983 under the leadership of Michael Thompson, and it has been under Kris Donley's leadership since 1994. The center operates as an independent nonprofit corporation. It has a small paid staff, 100 volunteer mediators, a volunteer Board of Directors, and a volunteer Advisory Board. As in most Texas DRCs, Travis County mediators come from a wide variety of backgrounds; only about 20% are attorneys. This year, several mediators received awards, including Michael Schless and Michael Whelan for 15 years of volunteer service.

Approximately 50% percent of the center's revenue comes from Travis County. The rest comes from training services, grants, fund raising, and client fees. Like many other DRC directors, executive director Kris Donley believes, "Client fees are nominal, but help encourage the disputing parties to commit to the mediation process. These fees are never a barrier to services and are reduced or waived when appropriate."²⁶

B. San Antonio (Bexar County)²⁷

The Bexar County Dispute Resolution Center (BCDRC) opened its doors on February 15, 1984, under the auspices of Bexar County Commissioners Court. The first director was Joe Castillo (1984-1990), followed by John Moore, Sr., who served as director from June 1990 until his death in December 1991. Marlene Labenz-Hough, the current director, was appointed to the position in 1992. Prior to that time, Marlene had served as BCDRC's assistant director.

In 1990, the BCDRC moved into the new Bexar County Justice Center, later renamed the Cadena-Reeves Justice Center. The architect custom-designed the BCDRC office to serve as a dispute resolution facility, including separate waiting rooms for disputing parties. Each of the 6 large mediation rooms is furnished with a round table to equalize the parties in mediation. BCDRC has private intake rooms, a training room, and a small library, as well as interior restrooms and a coffee bar. Because the BCDRC maintains evening hours, the suite has a private, after-hours entrance. Two of the mediation rooms are equipped with speaker phones to accommodate the many phone mediations. BCDRC is in the process of installing state-of-the-art video-conferencing equipment that will allow for "face-to-face" conferencing with absent parties, with the initial focus being on incarcerated parents in child-abuse and neglect (CPS) mediations.

From the BCDRC's inception in 1984 through the end of 2006, it processed approximately 125,000 intakes and set nearly 31,000 cases for mediation. BCDRC currently processes an average of 6,000 intakes and 1,600 mediation settings per year, achieving a 78% settlement rate.

BCDRC is staffed by 10 employees and 150 volunteer mediators. As with most DRCs, volunteers are "the backbone of the BCDRC" and are diverse in both professional and ethnic back-

grounds. Unique to the BCDRC are the many military personnel who serve as volunteers. Seventy-two percent of BCDRC volunteers work full-time; the remaining 28% are either retired or work part-time. Thirty-five percent of the volunteers speak Spanish. Two percent are bilingual in other languages. Twenty-eight mediators have been active with BCDRC for 10 years or longer.

In addition to mediations held at BCDRC's office, mediations are also conducted on-site at the Justice of the Peace Courts and the San Antonio Police Department substations. Intake and mediation services in Spanish are readily available. Interpreters for other languages, including sign language, are also provided at no cost.

C. Lubbock (Lubbock County)²⁸

In 1984, Gene Valentini wrote a concept paper for a DRC in Lubbock County. The plan was approved by the board of the South Plains Association of Governments and by Lubbock County Commissioners Court in October 1985. Valentini serves the Lubbock system as the most-tenured Director of all DRCs. The Dispute Resolution Center became part of the South Plains Association of Governments (SPAG), with inter-governmental contracts with Lubbock, Terry, Yoakum, Hale, Garza and Dickens Counties. Valentini later wrote another concept paper for the USDA Agricultural Mediation program for Texas.

Beginning December 1, 2003, The South Plains Dispute Resolution Center became a department of Lubbock County and accountable to the County Board of Judges. Unique to the center is that funding is derived from non-appropriated funds of the county. The DRC has an annual budget of nearly \$1,000,000.00. The center prides itself in being "perhaps the most progressive and unique dispute resolution system in Texas and, in some respects, the nation."

D. Corpus Christi (Nueces County)²⁹

Located at the Nueces County Courthouse, the Nueces County Neighborhood Justice Center Inc., d/b/a Dispute Resolution Services ("DRS"), opened in November 1985 under the auspices of the Nueces Bar Association and the Nueces County Commissioners Court. It provides mediation services for Nueces, San Patricio, Bee and Live Oak Counties.

Since its founding in 1985, the Nueces County DRS has had nine executive directors, the first being Georgia Flint and the latest being Ruth Reid, who began in September 2007. Former Executive Director Nancy Sommers was director the longest time (1992 to 1999).

DRS's two staff members and over 50 dedicated and capable volunteer mediators function under the direction of a board of directors. DRS mediation fees range from \$30 to \$100, depending on the type of case. Moderated settlement conference fees are \$150 per party.

In 21 years of service, DRS has handled over 20,000 cases with a 70% settlement rate. Over one-third of its cases are family and interpersonal disputes, including pre- and post-divorce. Another one-third is composed of consumer cases. Other cases

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involve landlord /tenant, employment, and other types of disputes.

E. Beaumont (Jefferson County)³⁰

The Jefferson County DRC opened its doors in 1987 under founding director Peg Patterson. It has two offices, one at the Jefferson County Courthouse in Beaumont and another at the County Sub-Courthouse in Port Arthur. Together, they handle both litigated court cases and yet-to-be-filed cases, such as neighborhood disputes, consumer, landlord/tenant, employment, personal injury, divorce and child custody, and organizations. They also provide training in mediation, conflict resolution, communication, and negotiation.

Mike Bradford was one the original pioneers who introduced ADR to Jefferson County. Mike recently passed away and is now honored with a special award in his memory, "The Mike Bradford ADR Judicial Leadership Award." This award is presented to a member of the judiciary who best exemplifies Mike's vision for fairness and justice.

Cindy Bloodsworth, the current director, started as a volunteer mediator and parent advocate for New Beginnings, a group that supports children in need of special education. She has been the center's executive director since 1989. Cindy states that much of the success of the Jefferson County DRC "derives from a fundamental value for quality service that has been pursued since the organization's inception Quality would have to be aggressively pursued through sound policy, competent staff, superior training and skilled mediators."³¹ The center established evaluation processes for each of these components. As such, the center has client surveys, annual staff evaluations, program reviews, and mediator evaluations to monitor effectiveness and plan for the future.

Cindy states that "mediator performance, the front-line of service delivery, [is] . . . one of the most crucial elements in the formula for success."³² The Jefferson County DRC has, therefore, turned "the theory, process, advantages and challenges of mediator performance evaluation" into a working science. This includes a post-mediation, peer-evaluation process that helps co-mediators debrief and evaluate each other. Mediators who affiliate with the DRC sign a waiver that permits discussion and review of their performance via participation in this evaluation program.

F. El Paso (El Paso County)³³

The El Paso County Dispute Resolution Center is a project of El Paso County and the Rio Grande Council of Governments. The El Paso DRC was established by commissioners court in 1988. Many of the mediators from the first training still volunteer for the center.

Patricia Gross, El Paso's DCR director, wrote that in its court-annexed cases, mediations and moderated settlement conferences (MSCs) are the most requested services at the DRC. Often, the parties go to an MSC first and, after the panel renders its opinion, they go to mediation.

Referrals to their Neighborhood Justice Mediation program mostly come from Justice of the Peace Courts, law enforcement, the Texas Attorney General, and the City Prosecutor's offices. Mediators are assigned at the discretion of the DRC staff according to mediator availability, qualifications, and experience. If, however, the parties request a specific mediator, the center tries to oblige. Evaluation forms are provided to the parties to gauge the effectiveness of a mediator's approach to the session.

As with most Texas DRCs, the major source of funding for El Paso DRC comes from the county under the ADR Systems and Financing Act. The Center also charges fees that can be waived under special circumstances. For cases that have not been filed, complainants are charged a nominal non-refundable fee, but respondents are invited to come to the table at no charge. The parties at MSCs are charged a per-party fee, though fees are waived for those who to participate as panelists for other MSCs.

G. Amarillo (Texas Panhandle)³⁴

The Dispute Resolution Center in Amarillo was established in July 1989 at the urging of a group of Amarillo civic leaders. The original advisory board was a "who's who" of Amarillo: Elisha Demerson, Bill Thomas, Judge David Gleason, Judge Darrell Carety, Judge E. J. Hail, Judge Cliff Roberts, Danny Hill, Randall Sherrod, Charles Warford, Harold Hooks, Judge Janis Thorn, Richard Damron, Dr. George Miller, Nancy Garms, Linda Craven, and Rev. Jacinto Alderete. Representing numerous community interests, this board established working policies and procedures for the center, most of which are still in use today. Karen Cooley was the center's first director, and Pam Coffey has been director since 1993. She coordinates mediations and training for the program for the 26 counties of the Panhandle region. She has mediated over 800 cases and has implemented a variety of workshops and trainings for mediators and the public.

The center is a program of the Panhandle Regional Planning Commission (PRPC), a quasi-governmental organization dedicated to regional growth and enhancement. It is funded by filing fees from Potter and Randall Counties, along with case fees. It serves the entire Texas Panhandle. The DRC's mediators come from a variety of backgrounds, and each person brings a unique perspective to the table. Dave Kemp, Gaye Bennett, and Chuck Speed are examples of mediators who have helped the center.

In the first full year of operation (1990), the DRC mediated 69 cases; in 2006, that number was 291. More than 95 % of the DRC's cases are currently in the family area, involving issues such as divorce, post-divorce modifications, and visitation. Sixty-five percent of the cases settle. The center also provides mediations for cases involving consumer complaints, minor criminal offenses, and personal injury. Without labeling it so, the center offers multi-door services. The PRPC staff offers information and referrals to people in need of services by "finding the right place and the right solution for their dispute needs" wrote Pam Coffey.

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The DRC Advisory Board was restructured in 2005 to better reflect the center's services. The board now has 9 positions: 1 district judge from Potter or Randall Counties, 1 district judge from a Panhandle county other than Potter or Randall, Potter County Judge or someone appointed by the judge, Randall County Judge or his/her appointee, Potter County attorney, a Randall County justice of the peace, Potter County justice of the peace, a DRC-trained volunteer mediator, and one attorney.

In 1994, the DRC initiated an annual award, in memory of Nancy Garms, one of original DRC board members. This annual award has been given to Gwen Murphy, Alan Cox, H.G. Myers, Mildred Blake, Susan Cohen, Jimmy Northcutt, Hon. Sam Kiser, Chuck Speed, Dave Kemp, Charlie Ball, Judy Nunn, Joseph "Buddy" Schley, and Merrill Nunn.

H. Conroe (Montgomery County)³⁵

The Montgomery County DRC "opened its doors" in 1989 simply as a desk in a hallway. Now the DRC has a space on the third floor of the county courthouse. Decorated with local artifacts and a "country feel," the center was welcoming and friendly from the start.

A victim-offender mediation was the first case mediated at the Montgomery County DRC in November 1989. Two guys were fighting over a girl. As a result of mediation, they agreed the girl wasn't worth the fight. Years later, Kathy Bivings-Norris, the center's founding director, encountered one of the young men, who told her how he still remembered what he had learned in that mediation, and he and the other young man had become best friends since the night at mediation.

Montgomery County is an interesting, culturally and racially diverse place. It includes communities as different as The Woodlands and Cut N' Shoot (which, she says, "got its name legitimately and which is the home of a famed boxer and a Miss America"). Since the DRC started in 1989, the county's population of about 135,000 people has grown to almost 400,000. At its founding, it was the smallest county in Texas to have a free-standing DRC. Kathy gives the credit to "the vision and courage" of commissioners court, as well as the Montgomery County judiciary and bar.

The way Kathy runs the center says much about her dispute resolution philosophy. The center uses co-mediators "always - except maybe in flu season when availability of mediators is limited." Mediations are conducted in conference style, with parties face-to-face as much as possible, especially if the parties will have an ongoing relationship.

Only 20 cases were mediated that first year at the center, compared to 841 in 2006. The center still provides juvenile and minor victim-offender mediations and moderated settlement conferences. It offers conflict resolution training to businesses, and agencies, and law enforcement, as well as peer mediation training, teacher/administrator mediation training to school districts.

As with other DRCs, volunteers are the key to Montgomery

County's success. They come from all conceivable backgrounds, from opera singers to judges and ranchers. "The volunteer who has the clearest sense of how to get people to come together, using grace and humor, has had as her only job being a cook in a lumber camp," Kathy says. Jill Swift was in the DRC's first training in 1989 and still mediates. She also designed and maintains the DRC's web site.

IV. DRCs Founded in the 1990s

A. Richmond (Fort Bend County)³⁶

The Fort Bend County DRC was incorporated as an independent non-profit corporation in November 1993, and it began operation in February 1994 under founding director Deborah Henshaw Urbanski. In 1996, Shelly Hudson took over as executive director. The center is located in Richmond, about 30 miles southwest of Houston. Fort Bend County enjoys a combination of suburban and rural life.

In 1994, the center mediated 107 cases, compared to more than 700 mediations in 2006. Referrals come from the legal community and the parties, as well as churches, civic organizations and schools. The center handles all types of cases, such as domestic, consumer, business, and community disputes. The DRC also administers settlement week twice a year. The DRC also assists in clearing DWOP (Dismissal for Want of Prosecution) dockets for various courts. Staff and volunteers also serve as speakers for community groups, and they provide peer mediation training in area schools.

The DRC is overseen by a 10-member board of directors comprised mostly of mediators, no more than 40% of whom are attorneys. Most of the center's funding comes from the commissioners court's ADR Fund and a county subsidy. The center also charges user fees (on a sliding-scale basis), room rental fees, and mediation training fees. It also raises funds through the Fort Bend Bar Association and cash donations.

The Fort Bend DRC handles civil-litigation mediations based on an amount in controversy of \$25,000 or less and family mediations if the parties' gross annual income is \$90,000 or less. Qualifying parties pay a user fee of \$20 to \$100 based on annual income and type of case. Out-of-county residents pay an additional \$15. Upon request, the DRC may refer parties exceeding eligibility limits to one of the volunteers as a private case.

B. Waco (McLennan County)³⁷

The McLennan County DRC was created because the local legal, law-enforcement, education and religious communities perceived a need for a centralized organization to help resolve disputes. The center was formally incorporated in October 1996. In 1998, it hired its first and only executive director, Michael Kopp, and opened its office in the National Lloyds Building. Also in 1998, the DRC entered into its first collaborative service agreement with McLennan County to provide ADR services for court-annexed cases and to receive funds from McLennan County civil case filing fees. The first DRC mediation, a family law case, occurred on August 28, 1998.

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The McLennan County DRC is a non-profit, tax exempt 501(c)(3) organization located in Waco, Texas. The center's mission is "to provide the residents of McLennan County with education, training and access to quality, affordable and effective mediation, conciliation and arbitration services."

The DRC offers a variety of mediation services, ranging from personal injury cases to Child Protective Services. The DRC also trains students as peer mediators at various schools throughout McLennan County to learn peaceful problem solving and mediating skills so that they can mediate disputes involving fellow students.

C. Bryan (Central Brazos Valley)³⁸

The Dispute Resolution Center - Central Brazos Valley, Inc. was founded on September 13, 1997 as a private, non-profit, tax exempt 501(c)(3) corporation. The county's League of Women Voters was instrumental in bringing together local political, legal, and social-agency groups to form the center and elect its board of directors and advisory board.

On June 1, 2007, Howard Bleekman, became the Center's Executive Director. Howard has been very active with the center since 1998, when he became a mediator. He served as chair of the board of directors in 2005. Naomi P. Fackler, one of the founding members, is current chair of the board.

The Central Brazos Valley DRC is located in Bryan. It serves seven counties: Robertson, Leon, Madison, Brazos, Grimes, Burleson, and Washington. It handles all types of cases, such as consumer/commercial relations, domestic relations, litigation, employer/employee relations, juvenile/victim-offender, neighborhood relations, probate, tenant/landlord, and teacher/student. Most cases have fees of \$25 to \$175 on a sliding scale, depending on income and county of origin.

D. Kerrville (Hill Country)³⁹

The Hill Country ADR Center, a 501(c)(3) non-profit organization, was first established in 1993 but lay dormant until 2002, when members of the Kerr, Kendall, and Gillespie County Bar Associations resurrected it. Mimi Brinker was the executive director from 2002 to 2003, when the center operated in the law library of the Kerr County Courthouse. Scooter Brown took over as executive director for an 18-month period from 2003 to 2004, and he negotiated the center's lease in its current location to accommodate its expanding caseload. Ed Reaves has been the executive director since August 2004. The center's workload has expanded from 60 cases in 2002 to an estimated 160 cases in 2007.

Most of the cases mediated by the center are ordered by the courts they serve, but the center also mediates cases referred on a voluntary basis. The center mediates many types of disputes, which included 48 Child Protective Service cases in 2007, and occasionally includes misdemeanor victim-offender mediation, and mediation of juvenile cases.

In 2007, the Texas Bar Foundation awarded the Hill Country

ADR Center a \$9,000 grant to teach peer mediation skills in elementary schools in the 8 counties the center serves in the Texas Hill Country. That training is being conducted by Stacey Kramer, the center's coordinator.

Center mediators are trained volunteers and reside in virtually every county in the Hill Country, including Kerr, Bandera, Kendall, Gillespie, Kimble, Mason, Menard, and McCulloch Counties. As in most centers, the mediators come from a variety of backgrounds, including law, business, human relations, psychology, education, and government.

Though the center holds mediations in other counties throughout the Hill Country, most of its mediations are held in its offices in Kerrville across from the Kerr County Courthouse. As in many DRCs, the Hill Country center offers basic mediation and family mediation training in accordance with Texas Mediator Training Roundtable standards.

V. Born with the Millennium

D. Paris (Lamar County)⁴⁰

Though the Lamar County DRC trained its first mediators in late 1999, its first mediations were not conducted until January 2000. Lamar County began efforts to have a DRC under the urgings of Steve Walker, a local attorney and mediator, and with the support of District Judges Jim Lovett and Jim Thompson, County Judge Chuck Superville, and County Court-at-Law Judge Dean Loughmiller.

An article in *The Paris News* attracted 39 volunteers to the center's first free training in October 1999. Of these, 32 later took the family mediation training and 7 took CPS mediation classes. As is done at some other DRCs, each mediator agreed to mediate a number of cases for the center before receiving a certificate of completion.

The program is administered through the Paris Junior College Continuing Education Department under Director Carl Lucas. According to Lucas, mediations are conducted with male and female co-mediators because this practice gives more people more experience in a shorter period of time. The DRS tries to match experience to cases. For example, a retired paramedic was assigned to mediate a patient-care case at a nursing home. The DRS mediates a range of cases, from divorce cases with property and child visitation issues, to personal injury, business disputes and neighborhood disputes. Center mediators also give conflict resolution presentations to local service clubs and the Lamar County Bar Association. They also spread the word through direct mail and articles in local newspapers.

VI. The Non-DRC ADR Systems

A. Galveston County Subsidized Mediations Program⁴¹

Most counties that authorize the collection of court costs under the ADR Systems and Financing Act have physical centers with their own paid staff and rooms for mediations. Galveston County has a very different system that has been in effect since 1992. The Galveston system began because of the insight of Judge Susan Baker and mediators like Helen Lancaster and Katherine Lanan.

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The Galveston County Mediation Services Board Fund has been established to promote the use of mediation by providing all parties an opportunity to have an option to submit their disputes to mediation prior to trial.

When a court in Galveston County refers a case to mediation, parties are to pay the mediator unless they qualify for a subsidy. Parties receiving subsidized mediation fees have qualified for financial aid from the Galveston County Mediation Board and have been approved by the courts presiding over their cases.

Financially aided mediations are now being used for family, civil, probate, Justice of the Peace small-claims cases, and CPS mediations. The Mediation Service Plan provides that mediators can receive up to \$100.00 per hour based upon a party's ability to pay, the number of children within a family unit, and other criteria. Depending on income and number of family members, a party could qualify for some subsidy while earning up to \$42,500.00. The formula used applies to both family and civil mediations. Anyone making less than \$13,225.01 pays a flat fee of \$50.00, and the other party pays the mediator's regular disputant fee unless that party also qualifies for a subsidy. The remainder of the fee is paid by the mediation fund. A party must qualify for the subsidized fee and obtain an order before the mediation. The fees ordered to be paid must be paid to the mediator at the time of the mediation.

CPS mediations are also covered by the fund. Because the mediations occur before the 14-day hearing, however, all parents or conservators pay no fee for the mediation, and payment issues are included in the CPS Subsidized Order.

To be eligible to receive referrals under the financially aided mediation system, a mediator must have taken the basic 40-hour training and, when appropriate, the 24-hour family mediation training as provided by the ADR Act.⁴² A mediator must be a member of the Galveston Mediation Association, and must belong to the Galveston Bar Association if an attorney.

B. Denton (Denton County)⁴³

The Denton County ADR Program ("DCAP") originally started as a center under the University of North Texas and later reorganized under the Denton County Bar Association. The program is a non-profit organization partially funded by Denton County Commissioners Court under the Texas ADR Act. Mediators for DCAP are drawn from a pool of local attorneys who volunteer their time. The program is under the directorship of Michelle Houston.

The program offers family, civil, probate, and personal injury mediation. It matches cases with mediators based on the type of case. The court order to mediation includes 4 levels of mediations that depend on ability to pay and amount in controversy. Level 1 is for disputes involving indigent parties; level 2 for amount in controversy of less than \$100,000. Level 3 is for amounts between \$100,000 and \$500,000; and level 4 is for amounts over than \$500,000. The cost of mediation is determined by which level the case is assigned, ranging from free at

level 1 to \$1,500 per party at level 4.

VII. Services provided by Texas DRCs and ADR Systems

Texas DRCs and ADR systems provide many services to Texas communities. Harris County and Bexar County DRCs provide all services free of charge, while most Texas DRCs charge at least a nominal fee for some, if not all, of their services. Below are some of the services they have in common and some that are unique to each center.

A. Community/Small Claims Mediation Programs

The impetus behind the first DRCs in Texas was to provide access to dispute resolution services for neighborhood and small claims, whether filed in court or not. Most DRCs in Texas have followed this tradition. Many community mediations are done at DRC offices, while others are conducted at the sites of the Justice of the Peace courts, where they are referred by the judge minutes before the scheduled trial and the mediation outcome is presented to the court minutes after its conclusion.

Some DRCs have special variations of community mediation programs. For example, Dallas offers mediation assistance to the Dallas Housing Authority for residents' disputes and with Residents' Council elections. DMS also offers mediation services to the Nexus Recovery Center, an outpatient and short-term substance-abuse treatment center in Dallas.

B. Litigation/Civil Cases Programs

Most centers offer mediation in the whole gamut of civil disputes in district and county courts. Many centers also offer other ADR services, such as moderated settlement conferences and arbitration. Worth noting is that Lubbock County DRC automatically receives *all* court-ordered district and county court-at-law cases unless the parties mutually agree not to use the ADR system.

C. Family/Domestic Relations Mediation Programs

Most Texas DRCs provide mediation services for couples, parents, and grandparents in domestic issues, such as marriage dissolution, property division, and children. Texas DRCs also serve a vital role in helping families negotiate modifications that become necessary as children age and family dynamics change. For example, the Jefferson County DRC offers parent conferencing, a problem-solving method offered to restructured families dealing with the challenges of change.

D. Child Protection Mediation Programs

The juvenile and child protective mediation programs started in 6 Texas counties (El Paso, Lubbock, Galveston, Jefferson, Gregg, and Webb) through the Children's Justice Act (CJA).⁴⁴ CJA is a federally funded program formed with the goal of improving the investigation, prosecution, and judicial handling of child abuse and neglect cases. After the original 6 counties, the Harris County, Panhandle, Montgomery County, Lubbock County, and Hill Country DRCs began offering CPS mediations.

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The CPS cases deal with family reunification, termination of parental rights, available CPS services, and similar issues related to children who have been taken from their caretakers.

Marlene Labenz-Hough, Bexar County DRC Director, calculates that it takes at least \$5,000 to bring a CPS case to court. With 1,200 cases since the program's inception in 1998 and with an 85% agreement rate, she believes her center has saved its county millions of dollars.⁴⁵ Another benefit of CPS mediation programs may be that they often make the process less traumatic for families and children in the foster care system.⁴⁶

E. Victim-Offender Mediation Programs

Many Texas DRCs handle misdemeanors and less-serious criminal offenses as terms of their probation or community supervision. These cases are often referred to victim-offender mediation ("VOM") by the criminal courts or the county community supervision departments in a post-plea, community supervision condition. The VOMs allow the criminal defendants and their "victims" to meet face-to-face. Benefits of these mediations include psychological/emotional healing for the victims and enhanced offenders' awareness of the personal damage they may have caused.

Since 1986, Lubbock has had a VOM program. The center receives referrals from the Lubbock County and other county Criminal District Attorneys' offices. Victim complaints are diverted to the DRC as an institutionalized part of the District Attorneys' process. Other centers having VOM programs are Jefferson County, Montgomery County, and Hill Country.

F. Truancy, Parent/Child and Juvenile Mediation Programs (JUMP)

Similar to victim-offender mediation, Juvenile Mediation provides a dispute resolution forum for juveniles involved in minor offenses. Referrals to the DRCs often come from the courts, as well as juvenile probation, the school districts, counselors, and parents. Since the early 1990s, Nueces DRC and North Texas DRS have conducted juvenile mediations. Other centers having this type of programs are Montgomery County, Lubbock County, North Texas, and Hill Country.

G. Special Education Programs⁴⁷

Perhaps the most successful special education program has been through the Texas Education Agency (TEA), which offers a special education mediation program (in addition to due process hearings) to every school district in the state. El Paso and Lubbock Counties are two DRCs that have contracted with TEA in the past to provide these specialized mediations statewide.

Special education mediations handle disagreements between parents and school districts regarding their children with special needs. Referrals generally come from the schools or the parents. Some DRCs, such as Harris County and Jefferson County, have also done these types of mediations for their own counties' school districts.

H. Mediation and Conflict Resolution Training

To cover their needs for mediators, most Texas DRCs train mediators in basic or advanced/specialized mediations, and they offer practicum and hands-on experience. Some cover their geographical areas, while others, such as the Lubbock DRC, train statewide. Harris County has taught CPS mediations for centers statewide in locations such as Bexar and Montgomery Counties.

Other centers extend their training to the public by teaching them dispute resolution skills. For example, Pam Coffey in Amarillo has developed a course, "Harmony in the House," that teaches conflict resolution skills for the home. Other courses developed by Pam are "Dealing With Angry Clients," "Stop Drop & Roll Anger Management," "Ethical Dilemmas," and "Professionalism in the Workplace."

DMS in Dallas has an ongoing monthly training in conflict resolution skills at the Nexus Recovery Center for patients in treatment, as well as life-skills trainings at the Youth Conflict Resolution Center and the City of Dallas Recreation Centers that include anger-management skills. DMS also provides training to corporations and organizations in the area.

Besides the usual mediator trainings, Jefferson County promotes the concept of conflict avoidance through motivational workshops designed to raise awareness of how positive and negative perspectives play into outcomes. In addition, it offers Marriage Prevention and Relationship Enhancement Program (PREP) to help couples learn effective communication and conflict avoidance/resolution strategies to build stronger relationships. Jefferson County also regularly provides conflict management and communication workshops to local agencies and organizations.

El Paso's DRC has community service programs that give presentations on conflict resolution skills to organizations and schools, in addition to training for El Paso Police Department officers and police volunteer units. The Harris County DRC has trained dozens of police officers to become mediators. Montgomery County DRC similarly trains officers in the Conroe ISD police force in conflict resolution techniques, giving them skills that reflect the relationship-based nature of school policing.

The North Texas DRS also began conflict resolution programs in the public schools, training Fort Worth ISD administrators in conflict resolution skills.

I. Outreach

Most DRCs also do community outreach to inform their communities about their services. For example, Dallas County's DMS sends public service announcements and news releases several times per year, and its staff and mediators appear at various community fairs and radio and TV talk shows. The Hill Country ADR Center makes presentations to service clubs throughout the Hill Country. Bexar County DRC's very active speakers bureau is available seven days a week to make presentations to the community. Jefferson County sponsors "Mediation Day," a day-long phone bank call-in show at a local television station that provides an opportunity for citizens

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THE ADR SYSTEMS AND FINANCING ACT AND TEXAS DRCs

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to call and speak directly to mediators about their complaints.

G. Peer Mediation

Peer mediation programs involve both training and outreach. Centers with peer mediation programs recruit and train conflict resolution professionals to go to schools and teach chosen students to become mediators and mediate conflicts among students. In the early days, participating DRCs also had to work on convincing school administrators to implement these programs at their schools.

Some DRCs like Bexar County employ a peer mediation coordinator who coordinates contracts and services with the local independent school districts. Since 1999, Bexar County DRC has been very active in its Amigos in Mediation (AIM) peer mediation program under the coordination of Frank Rizzo. AIM training is offered free-of-charge to all public schools located within Bexar County. Since the AIM program started in Bexar County, over 120 schools have established active peer mediation programs, over 10,000 students have been trained as peer mediators, and over 1,600 school personnel have been trained as peer mediation trainers. More than 8,000 student mediations have been conducted with an agreement rate of 96%. Of students using mediation, 87% state that mediation prevented them from engaging in inappropriate action and 94% state they would use mediation again. Of schools reporting, 81% state their peer mediation program helped reduce the number of disciplinary actions and the time staff spent on them.

Jefferson County supports existing school programs with its Peer Mediation Mentor Project, where trained DRC mediators visit schools periodically to offer support and guidance to the student neutrals. McLennan County DRC also has a peer mediation program, and the Hill Country DRC is currently implementing such a program as a result of a recent grant from the Texas State Bar Foundation.

K. Other Programs

Many DRCs have other special programs to satisfy the needs of their local populations. For example, Lubbock has Texas Rural Mediation Services, which provides mediations and arbitrations for U.S. Department of Agriculture issues (such as farm loans) for all of Texas. Some issues handled in rural mediations are wetland determinations, compliance with farm programs (including conservation programs), agricultural credit, rural water loan programs, grazing on national forest system lands, and pesticides.

The Lubbock DRC also offers DRO services such as social studies, parenting coordinator and child support community supervision for violations to a child support order. A DRO designation is statutorily created by the Texas Family Code to provide services to families in the community.

Harris County DRC is currently involved with the University of Texas's School of Nursing Center on Aging to provide mediation services for residents of long-term care facilities. Similarly, El Paso DRC contracts with the El Paso Area Agency on

Aging to provide special services to the elderly.

Bexar County DRC volunteers serve as hearing officers for the San Antonio Housing Authority (SAHA) on appeals to denials of assistance. Bexar County also offers multiparty public dispute mediation to government, industry, neighborhood associations, and public interest groups. Types of public issues appropriate for mediation include zoning, air quality, education, waste management, health care, environmental protection, and other public concerns. Jefferson County is currently negotiating a similar arrangement with the Beaumont Housing Authority and is also available for public dispute mediation.

VIII. Conclusion Based on My Own and Others' Experiences

In their gracious collaboration with the author for this article, every DRC director expressed great gratitude and admiration for his/her center's mediators. The directors often described their mediators with words such as "the backbone," "the core," and "the heart and soul" of their operations.

True to the original vision and the original law, Texas DRCs provide services mostly in cases often deemed too small for attorneys to undertake representation or where the parties are indigent or unable to hire representation. These are cases the dispute resolution movement was expected to help resolve so they would not fall through the cracks of our legal system unsolved or fester into more conflict. A vivid example of this type of case was a neighbor dispute in Houston that was caught on tape a few years ago. The tape showed very graphic pictures of a man angrily assaulting his neighbor with a large shovel. This dispute was apparently a continuing one between neighbors that had been left unresolved and had festered into violence.

Kris Donley, Travis County DRC Director, relates a similar experience as mediator in a long-standing "Hatfield-McCoy" dispute in Bastrop County. With a long list of altercations between them, the parties were fighting this time over one family's pot-belly pig that had defecated in the other family's property. Because of the long history of fighting, the "victim" family believed that the other family had "machinelically" trained the pig to do this. It took several sessions involving three generations of family members, but all finally agreed to solve the pig problem and generate a plan of conduct and conflict management for the future. These are example of the types of cases for which the DRCs are especially helpful and at times miraculous in their results.

Years ago, as a judge referring to mediation a misdemeanor assault case involving neighbors, I had my first chance to read a mediated agreement reached by a defendant and his "victim." Each apologized to the other, and the "victim" promised not to throw trash into the defendant's yard. I was amazed by the result. A finding of guilt or innocence would have fallen short of this marvelous agreement made by the parties themselves with the help of our local DRC.

Texas DRCs have continued the vision of their founders of providing access to justice through accessible and affordable conflict resolution programs. They serve an important function in our society. They do not just help neighbors and others re-

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solve their own disputes. They train conflict resolution professionals. They educate the public on conflict management skills. They promote conflict resolution. Through this great public service, they are helping create peace—and a culture of peace—in our society.

ENDNOTES

¹ The author wishes to thank Ian Wright, a senior student at the University of St. Thomas, who so ably assisted in the research for this article. Many thanks to all the DRC Directors who shared their knowledge and experience. Special Thanks to Jeff Kilgore, former president of the Mediation Association of Galveston, for writing the section on the Galveston system.

² Josefina M. Rendón is a mediator and Associate Municipal Judge in Houston. A former President of the Texas Association of Mediators, she was previously the editor of its quarterly publication, *The Texas Mediator*. Between 1999 and 2004, she published the column "Texas DRCs" where DRC directors wrote about their centers. Rendón is currently a board member of the DRC of Harris County, where for over a decade she has volunteered hundreds of hours as trainer and mediator. Rendón has also worked for the DRC in Lubbock (USDA and TEA programs) and has provided CPS mediation training at the DRCs of Bexar and Montgomery Counties.

³ Tex. Civ. Prac. & Rem. Code § 154.002 [hereinafter "Texas ADR Act"].

⁴ *Id.* §§ 152.001-152.006 [hereinafter "Tex. ADR Systems and Financing Act"].

⁵ *Id.* § 152.002(a).

⁶ *Id.* § 152.003.

⁷ *Id.* § 152.002(b).

⁸ *Id.* § 152.004.

⁹ *Id.* § 152.005.

¹⁰ *Id.* § 152.004 (c).

¹¹ *Id.* § 152.006.

¹² Letter from Frank G. Evans to Kevin Casey, Executive Director, Travis County DRC, Aug. 31, 1993, at 1-2. Cited in Alan Scott Rau, Edward F. Sherman & Brian D. Shannon, ADR & ARBITRATION: STATUTES AND COMMENTARY 66-73 (2000).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Justice Center of Atlanta: 30 years of Success and Growth, <http://www.justicecenter.org/> (last visited Sept. 2, 2007)

¹⁶ Tara Shockley, *Two Decades of Justice: The Dispute Resolution Center and the Houston Volunteer Lawyers Program have been Serving the Houston Community for Over 20 Years*, 39 HOUSTON LAWYER 18 (2002)

¹⁷ Michael Kopp, *Resolving Disputes "Texas Style" – A View from a Dispute Resolution Center Director*, ADVOCATE at 32 (Summer 2003).

¹⁸ See Nicholas Hall, *The Volunteer Spirit is Alive and Well at the Dispute Resolution Center*, 36 HOUSTON LAWYER 28 (1999); Josefina Rendón, *Volunteering in Acronyms: HBA Members Doing ADR for the DRC*, 35 HOUSTON LAWYER 18 (1998); Sharon Cammack, *Dispute Resolution Center: 25 Years of Service*, 43 HOUSTON LAWYER 47 (2006); Kevin S. Casey, *ADR at the DRC: An Overview of the Dispute Resolution Center of Harris County, Texas* (1991) (unpublished report); Melinda Ostermeyer, *Dispute Resolution Centers: A Comprehensive Approach to Resolving Citizen Disputes*, 24 HOUSTON LAWYER 2; Nicholas Hall, *Alternative Dispute Resolution 2020*, 38 HOUSTON LAWYER 36 (2000); Josefina Rendón, *The Harris County Dispute Resolution Center*, 13 TEXAS MEDIATOR 4; Shockley, *supra* note 16.

¹⁹ Shockley, *supra* note 16; Kathy Bivings-Norris, *Community Dispute Resolution Centers*, in ALTERNATIVE DISPUTE RESOLUTION HANDBOOK 413-24 (Kay Elkins Elliot & Frank W. Elliot eds., 2003).

²⁰ Casey, *supra* note 18.

²¹ Shockley, *supra* note 16.

²² See Herbert Cooke and Claudia Dixon, *Dallas: The DMS Story*, www.txmediator.org/bios/drcs/dallasdrc.htm (last visited Sept. 2, 2007); DMS: Dispute Mediation Service, Inc. <http://www.dms-adr.org/> (last visited Sept. 2,

2007).

²³ See Bob Good, *DRS of Tarrant County*, TEXAS MEDIATOR at 2 (Summer 2001); Bob Good, *DRS of Tarrant County is Now DRS of North Texas*, TEXAS MEDIATOR at 2 (Fall 2002).

²⁴ Good (2001), *supra* note 23.

²⁵ See *DRC Resolving Conflict Through Mediation*, www.austindrc.org/company/aboutdrc.htm (last visited Sept. 2, 2007); Kris Donley, *History of the Dispute Resolution Center Travis County*, TEXAS MEDIATOR at 4 (Summer 2000).

²⁶ Donley, *supra* note 25.

²⁷ Marlene Labenz-Hough, *Bexar County Dispute Resolution Center*, www.txmediator.org/bios/drcs/bexardrc.htm (last visited Sept. 2, 2007); http://www.co.bexar.tx.us/drc_home.htm (last visited Sept. 2, 2007).

²⁸ See *Lubbock County Dispute Resolution Center*, <http://www.co.lubbock.tx.us/drc/about.htm> (last visited Sept. 2, 2007); D. Gene Valentini, *The South Plains – Achieving Legislative Purpose*, TEXAS MEDIATOR at 2 (Fall 2000); Beverly Moseley, *USDA Offers Dispute Resolution LAND & LIVESTOCK POST* http://www.landandlivestockpost.com/stories/120506/news_20061205005.php (Last visited Sept. 2, 2007); Joe Gulick, *AVALANCHE-JOURNAL* http://lubbockonline.com/stories/080706/loc_080706026.shtml (last visited Sept. 2, 2007).

²⁹ See Nueces County Dispute Resolution Services, <http://www.co.nueces.tx.us/drs/history.asp> (Last visited Sept. 2, 2007); letter from Ruth Reid, Executive Director of Nueces County DRS, to Josefina Rendón, Aug. 7, 2007.

³⁰ See: Jefferson County, TX – Mediation Center, http://co.jefferson.tx.us/med_cntr/med.htm (Last visited Sept. 2, 2007); Shayla Fleshman, *Keeping Counties Out of their Own Courthouses: Mediation Gains Respect*, www.county.org/resources/library/county_mag/county/132/keepcounties.html (last visited Sept. 2, 2007).

³¹ Cindy Bloodsworth, *Mediator Performance Evaluation at the Jefferson County DRC*, TEXAS MEDIATOR at 2 (Summer 2002).

³² *Id.*

³³ See El Paso Dispute Resolution Center, <http://www.riocog.org/EnvSvc/DRC/drc.htm> (Last visited Sept. 2, 2007); Patricia Gross, *El Paso County Dispute Resolution Center*, TEXAS MEDIATOR at 4 (Winter 2001).

³⁴ See Letter from Pam Coffey, Director of the Dispute Resolution Center, Amarillo, Texas to Josefina Rendón, *ADR in the Texas Panhandle, Bar District 13*, August 7, 2007.

³⁵ See Kathy Bivings-Norris, *Dispute Resolution Center of Montgomery County*, TEXAS MEDIATOR at ____ (Fall 2001).

³⁶ See Shelly Hudson, *The Fort Bend County DRC*, TEXAS MEDIATOR at 4 (Fall 2002).

³⁷ Dispute Resolution Center: McLennan County, <http://www.disputeresolutioncenterwaco.org/aboutus.htm> (last visited Sept. 2, 2007).

³⁸ See Dispute Resolution Center – Central Brazos Valley, <http://bvdrc.org/Contact+Information> (Last visited May 23, 2007); letter from Howard Bleekman, Director of Brazos Valley Dispute Resolution Center to Josefina Rendón, July 23, 2007; Mark Evans, *We Can Work it Out*, INSITE (January 1999).

³⁹ See Hill Country ADRC, <http://www.hillcountryadrc.org/index.html> (last visited Sept. 2, 2007)

⁴⁰ See Linda Wolfe, *DRS of Lamar County*, TEXAS MEDIATOR at 4

⁴¹ Written by Jeff Kilgore (see note 1, *supra*).

⁴² Tex. Civ. Prac. & Rem Code § 154.052.

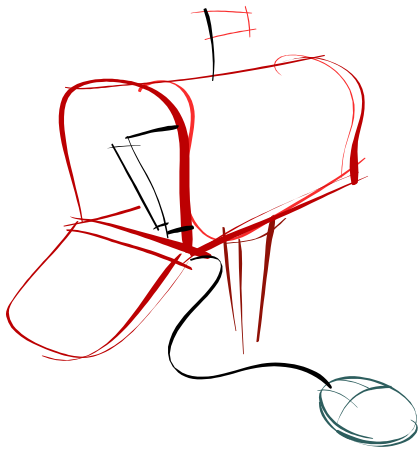
⁴³ See David S. Bouschor, II, *The Medicine Hat of Texas: Denton County and its Commitment to Changing the Dispute Resolution Culture*, *Mediation the DCAP Way* 4 (April 2004); 115:11 DENTON COUNTY LAWYER; David S. Bouschor, II, *What's New at DCAP*, DENTON COUNTY LAWYER 1 (July 2006).

⁴⁴ Children's Justice Act, CHILD PROTECTIVE SERVICES MEDIATION TRAINING MANUAL (1999); Children's Justice Act, Child Protective Services Mediation Training Manual (1999); Josefina Rendón, *Children First: A Collaborative Mediation Program*, 37 HOUSTON LAWYER 22 (2000).

⁴⁵ Labenz-Hough, *supra* note 27.

⁴⁶ Children's Justice Act Manual (1999), *supra* note 44.

⁴⁷ Josefina Rendón, *Partners in Peer Mediation*, 34 HOUSTON LAWYER 38 (1997).



ADR on the Web

By Mary Thompson*

TEXAS ADR WEB SITES

One of the notable changes in the Texas ADR field in the last twenty years has been the increasing availability of information on the internet. Today we can find an arbitrator, schedule a mediation, find relevant case law, register for a conference, conduct a settlement conference, and trade ideas with colleagues – all electronically.

Several of the key ADR organizations in Texas have well-established web sites containing a wealth of information.

Texas Association of Mediators

<http://www.txmediator.org>

TAM is our statewide interdisciplinary association focused specifically on mediators. The site offers a variety of resources, including:

- A “mediator locator” feature that allows the user to search by name, company, county, or level and length of membership with TAM
- A calendar of mediation and conflict resolution training events
- Back issues of the Texas Mediator, TAM’s very comprehensive newsletter containing articles, commentary, book reviews and articles on ethics

State Bar of Texas ADR Section

<http://www.texasadr.org>

The ADR Section is one of the few sections of the State Bar open to members of all professional backgrounds. This diversity is reflected in its web site, which focuses on all aspects of alternative dispute resolution, including mediation, arbitration, and collaborative law.

Web site features include:

- One of the most comprehensive lists of “ADR Links” of any of our Texas web sites
- Past newsletters, containing, among other topics, an impressive collection of writings on ADR case law
- A “Resources” section that contains key pieces of mediation and arbitration legislation
- The third edition of Dispute Resolution, Texas Style, a comprehensive overview of the basics of ADR in Texas

Texas Mediator Credentialing Association

<http://www.txmca.org>

As described in its website, the TMCA is “the first statewide, voluntary, multi-disciplinary credentialing program in the country.” The web site is a resource for both mediators and consumers. Among the sections of the web site are:

- Credentialing standards and applications
- A list of credentialed mediators and a search function to locate credentialed mediators
- A description of the TMCA grievance procedures
- Announcements for TMCA’s annual symposium (This year: November 17, in Austin)

Texas Mediation Trainers Roundtable

<http://www.tmtr.org>

The Texas Mediation Trainers Roundtable, founded in 1992, was the first statewide association of mediation trainers in the U.S. For the past fifteen years, the TMTR has served as a “think tank” for developing standards and encouraging high-quality mediation training programs in Texas.

The web site contains information for trainers, as well as for consumers of mediation training programs:

- TMTR standards for training programs in basic mediation, family mediation, mediation continuing education, and mediation ethics
- Notices for upcoming TMTR meetings
- Notices for the annual workshop for mediation trainers
- A new section that provides a variety of ethical dilemmas which can be used in mediation training programs.

Association of Attorney-Mediators

<http://www.attorney-mediators.org>

Founded in Texas in 1989, the Association of Attorney-Mediators has moved beyond its Texas borders to several other states. Still, the web site has a decidedly Texas feel, with many of the AAM members and events based in the Lone Star State. The site includes:

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Texas Association of Mediators: Past, Present, and Future *continued from page 15*

President:	Gary Kirkpatrick, M.A.
Vice Pres.:	Maureen O'Shea (Peltier), J.D.
Treasurer:	Florence Kusnetz, J.D.
Secretary:	Anne-Marie Norman (Moreault), A.C.S.W.
Director:	Susanne Adams, M.A.
Director:	Judy Kurth Dougherty, J.D.
Director:	Herb Evans, J.D.
Director:	John Graml, J.D.
Director:	Marie Mullineaux, M.S.W.
Non-Voting:	Sue Pelzer (Student Representative)

In the late 1980s and early 1990s, the Board had many discussions about the new wave of mediators brought about by the enactment of the ADR Act and the great impact it was having in the Courts of Dallas, Harris, and Travis Counties. In April 1990, it was decided that it was time to have an association that would encompass all mediators regardless of their primary profession and, by unanimous vote of the Board, decided to change both the focus of the organization to include non-family mediators as well as the name of the organization to the Texas Association of Mediators. This new chapter in TAM's history – one of growth, expansion, and excitement under the banner boldly pointing to TAM as “an interdisciplinary association because one viewpoint is not enough” - continues today.

With a membership comprised almost equally of attorneys and other professions, TAM's criteria for membership, while inclusive, are high, as are the requirements to maintain such membership. TAM is justly proud of its member services: its quarterly newsletter (The Texas Mediator), its website, and most notably its annual multi-day conferences, which bring together mediators from all over the state to share their knowledge and experiences with each as well as to “sit at the feet” of such national luminaries in the field as Christopher Moore, William Ury, and Roger Fisher. Each year, TAM presents the

Susanne C. Adams Award, named in honor of its late founder and mediation pioneer, to a mediator who exhibits outstanding dedication and commitment to the mediation profession. Since 1998, TAM has taken a leadership position in the effort to further promote quality mediation in Texas through the voluntary credentialing of mediators. Its appointed representative to the Texas Mediator Credentialing Association (TMCA) occupies one of the permanent seats on the Board of Directors and, because of the tireless work of this representative, along with others on the Board, the first statewide voluntary credentialing organization in the nation has become a reality, setting a standard for the country.

In 2007, as in 1985, the Texas Association of Mediators continues to exhibit the leadership that has secured its durability as the premier interdisciplinary association for mediators in Texas; demonstrating by its existence that Susanne C. Adams was prophetic when she said, “...we all believed that if we stuck together, we could achieve great things.”



** Suzanne M. Duvall is an attorney-mediator in Dallas. With over 800 hours of basic and advanced training in mediation, arbitration, and negotiation, she has mediated over 1,500 cases to resolution. She is a faculty member, lecturer, and trainer for numerous dispute resolution and educational organizations. She has received an Association of Attorney-Mediators*

Pro Bono Service Award, Louis Weber Outstanding Mediator of the Year Award, and the Susanne C. Adams and Frank G. Evans Awards for outstanding leadership in the field of ADR. Currently, she is President and a Credentialed Distinguished Mediator of the Texas Mediator Credentialing Association. She is a former Chair of the ADR Section of the State Bar of Texas.

CHAIR'S CORNER

continued from front page

birthday cakes for 1,500 people at the luncheon, plus root beer floats, balloons, party favors and noise makers at our section meeting/celebration.

In future Chair's Corner articles this year, we will look at the present state of ADR in Texas and then contemplate what the future might hold for this dynamic endeavor. I invite all clairvoyant members to e-mail me at cmorgan@jamsadr.com with their crystal-ball predictions!

Texas is the center of much national ADR activity. The ABA Section of Dispute Resolution Program, Advanced Mediation and Advocacy Skills Training, will take place October 11-12, 2007 at the Hyatt Regency in San Antonio. Many of the experienced mediators and advocates from Texas will be

participating in this national conference. You can get more information and download a registration form at www.abanet.org/dispute.

Please join us as the birthday celebration continues with “Alternative Dispute Resolution Texas Style: Twentieth Anniversary and Beyond,” our Texas Bar CLE program, Monday, October 15, 2007, at Cityplace Conference Center, 2711 North Haskell in Dallas. The speakers will concentrate on topics including ADR case updates, legislative changes, ethical guidelines, and a mock mediation, just to name a few. You can register online at www.texasbarcle.com, or by fax at 512-427-4111, or call the State Bar of Texas at 800-204-2222 (ext. 1574). We look forward to seeing you in Dallas.

Until then, Peace. CHM



THE DEVELOPMENT OF COLLABORATIVE LAW *continued from page 25*

Many dedicated lawyers and other professionals around the country and the world believe the collaborative process is good for their clients, and that belief gives us assurance that the future of collaborative law is bright.

Worldwide, successful businesses and professional organizations maintain relations over the long run by resolving conflicts promptly and economically. Rarely can such be accomplished in the litigation "arms race." Granted, the collaborative process is not for every dispute, or every party, or every lawyer. However, when parties and lawyers fully understand the process and its benefits, more times than not, the collaborative process will likely be used as the first option for resolving the dispute.



** Lawrence R. Maxwell, Jr. is an attorney, mediator, arbitrator, and practitioner of collaborative law in Dallas. He is a Founding Director and President of the Texas Collaborative Law Council, current Chair of the Collaborative Law Section, past Chair of the ADR Section of the Dallas Bar Association, and a charter member and past President of the Association of Attorney-Mediators.*

ENDNOTES

¹ The "collaborative commitment" is also known as the disqualification or withdrawal provision. This requirement focuses the parties and the lawyers one hundred percent on the settlement process.

² Norma Levine Trusch, *Texas Leads the Way in Collaborative Law*, "ALTER-NATIVE RESOL." at 22 (Summer 2006).

³ The Texas, North Carolina and California statutes may be found at the web page of the ABA Section on Dispute Resolution Collaborative Law Committee: www.tinyurl.com/yrog77.

⁴ Janet P. Brumley, *Divorce without Disaster: Collaborative Law in Texas* (Lori Fairchild ed. 2004).

⁵ The founding directors of the Texas Collaborative Law Council are Sherrie R. Abney, Hon. Ted Akin, Robert J. Matlock, Lawrence R. Maxwell, Jr., Michelle Leek Sutton, and Travis E. Vanderpool.

⁶ The book is available at the author's website, www.fourcornerssolutions.com or at the publisher's website, www.trafford.com.

⁷ www.adrgroup.co.uk

⁸ Texas Legislature Online: www.capitol.state.tx.us "Search Legislation - 2007 - SB 942."

⁹ The EDS article may be found on the website of the Texas Collaborative Law Council: www.collaborativelaw.us - "Articles and Papers."

¹⁰ Those who have views on the issue may express their opinions to Professor Schepard at lawazs@hofstra.edu (Subject: NCCUSL Collaborative Law Drafting Committee).

¹¹ Information concerning the Collaborative Law Committee may be found on the committee's web page. See ABA Section on Dispute Resolution Collaborative Law Committee: www.tinyurl.com/yrog77.

¹² 56 Baylor L. Rev. 141 (2004). In 2005, Professor Spain's article was recognized by the Texas Bar Foundation as the most outstanding article published in a Texas law review in the previous year.

¹³ Christopher Fairman, *A Proposed Model Rule for Collaborative Law*, 21 OHIO STATE J. ON DISP. RESOL. 73 (2005).

¹⁴ John Lande, *Principles for Policymaking about Collaborative Law and Other ADR Processes*, 22 OHIO STATE J. ON DISP. RESOL. 619 (2007).

¹⁵ www.tinyurl.com/yrog77

THE ASSOCIATION OF ATTORNEY-MEDIATORS: STEVE BRUTSCHÉ'S INSPIRATION AND LEGACY *continued from page 19*

Mediation for our membership—and, I submit, for the State of Texas and elsewhere—took off because we had a statute that permitted courts to order litigants, over objection within reasonable discretion, to conduct a mediation session and pay a reasonable fee to a committed mediator knowledgeable in the context of the dispute. As a result, an institutional change in the manner in which litigation is conducted has been possible, all at no expense to the public. AAM's mission remains to support and promote professional and qualified attorney-mediators who are committed to the proposition that the existing system can fulfill its intended purpose through the use of voluntary and court-annexed mediation.

Conclusion

To conclude, it seems only right to grant Steve Brutsché's wish, which he mentioned as he closed his last presentation, his terminal condition then being well-known. He said,

Many of you have asked what you can do for me. I'm going to tell you what you can do for me: you can take what you have been given and use it well. And share it, and spread it, and be sources of good in your community. And share it with others, and get them to be aware of it. You can make

our system come closer to fulfilling its purpose than it was before you got involved. That's what you can do for me. It's take what you have been given and make it grow.

Henry Simpson, one of our long-time members from Dallas who has continued his practice of law while mediating, told me recently, "Brutsché, whom I didn't know well—never even had a case with him—came up to me in 1990, and said, 'Simpson, you need to check this out. It's for you.'" It's been good for Simpson, good for me, good for the Bar, the courts, and—most importantly—the clients we serve. The world of mediation is very large, and hearts beat to other drummers, but Steve Brutsché was *our* drummer.



** Mike Amis was trained in the initial Dallas Bar training class in 1989, and has been a full-time attorney-mediator since 1990. Board certified in civil trial law since 1983, Mike has built a mediation practice that has paralleled his variety of civil cases as a trial advocate. Since 1989, Mike has been active in promoting the use of mediation through the Association of Attorney-Mediators and the American Academy of Attorney-Mediators, Inc. He serves as one of the mediators of Burdin Mediations of Dallas.*

THE HISTORY OF THE ALTERNATIVE DISPUTE RESOLUTION SECTION AS TOLD BY ITS FORMER CHAIRS

continued from page 14

William H. Lemons III (2004-2005)



The Section established three goals for the 2004-2005 term: a) to advance the field of arbitration by ensuring fairness and educating consumers and practitioners in the use of the process; b) to increase the use of ADR for conflict management outside the courtroom; and c) to increase membership diversity, input, and benefits.

The Section co-sponsored a two-day CLE program, "Advocacy Skills for Resolving Disputes." The Arbitration Task Force participated as a resource to the Texas Senate Jurisprudence

Committee and drafted its *Best Practices Guidelines for Consumer Arbitration*. It revised the SBOT pamphlet, *Alternative Dispute Resolution – Texas Style*, and drafted *Consumer Arbitration in Texas*.

A subcommittee headed by Kathy Fragnoli worked to bring the Section's message and knowledge to other states or governmental subdivisions. She envisioned a "speakers panel" to travel outside Texas to address bar associations or other groups and tell them our ADR story.

A subcommittee headed by Leo Salzman envisioned a similar panel for small towns or remote locations within Texas. Part of this could be done by videotaping seminars and presentations. Walter Wright worked on the same concept for the Mexican state of Nuevo León, which had recently adopted a form of ADR legislation.

The Section appointed a Long-range Financial Planning Committee to address how the Section could use its resources to promote ADR in Texas and elsewhere. The committee was formed to examine how the Section can, through grants or contributions, utilize its financial resources to promote and encourage use of ADR, yet maintain financial stability. The Council decided to use technology more effectively and make the Section's webpage more useful.

Michael S. Wilk (2005-2006)



During 2005-2006, the Section's activities included the following:

A. Jay A. Cantrell and Claudia Dixon spearheaded an effort to improve the Section's website.

B. The Section maintained and enhanced the

quality of the newsletter. Walter Wright agreed to continue as Chair of the Newsletter Editorial Board, notwithstanding the expiration of his term on the Council

C. With the Frank Evans Center for Conflict Resolution, the Section co-hosted "The Cutting Edge in ADR," a one-day seminar at South Texas College of Law. Rob Kelly chaired this CLE presentation.

D. The Section contributed grants to several organizations, including the Texas Equal Access to Justice Commission to assist people in the wake of Hurricane Katrina and Hurricane Rita; the Graduate Portfolio Program in Dispute Resolution at the University of Texas School of Law to help sponsor its Spring 2006 Symposium; and the University of Texas at Arlington to assist four students' participation in the VIS Arbitration Moot Court in Vienna, Austria.

E. The section published two pamphlets, *Dispute Resolution Texas Style* (third edition) and the first edition of *Consumer Arbitration in Texas*. John Boyce chaired this effort, and he was responsible for the distribution of 30,000 pamphlets to members of the Texas judiciary and to Dispute Resolution Centers throughout Texas.

F. A panel composed of Bill Lemons, Mike Schless, John Fleming, and Michael Wilk presented a Texas-BarCLE webcast, "Fundamentals of Arbitration."

G. Finally, the Section thanked the Supreme Court of Texas for its order approving the ethical guidelines for mediators.

John Charles Fleming (2006-2007)



The Section initiated several multi-year initiatives in 2006-2007. A committee headed by Mike Patterson of Tyler began reviewing the mediator ethical guidelines and best practices to determine if changes should be made in light of the extensive experience we have had with mediation. Former Section Chair Bill Lemons of San Antonio began heading a committee to develop procedural rules for *ad hoc* arbitrations. A third initiative was headed by Cecilia Morgan to use local bench-bar conferences and other roundtables to get feedback from the users of mediation on their perceptions, likes, and dislikes in order to aid the Section in its efforts to improve ADR. Finally, the Section initiated efforts to pass legislation to eliminate the need to file both a mandamus proceeding and an interlocutory appeal in cases brought in state court dealing with issues covered by both the federal and state arbitration statutes. Senate Bill 1167, authored by Senator Robert Duncan, passed the Senate but died in the House.

Congratulations!

An ADR Pioneer And Innovator Speaks Out On ADR's Progress

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public. Additionally, I understand that statistical evidence indicates no substantial increase in the number of settlements since the advent of ADR and that the only difference between then and now is that cases today are being settled earlier in the life of the litigation. I really can't say where ADR will be in 25 years but I do believe that ADR facilitators and trial advocates are becoming more knowledgeable about how to make effective use of ADR processes. I do not believe ODR will ever fully replace face-to-face ADR, but I believe it will eventually be used in a great many more cases, particularly those where time and distance make a difference.

Editor: What is your view of the emergence of collaborative or cooperative law procedures?

Evans: I have supported both concepts but still have some questions about their respective protocols. Collaborative law now has many supporters, including many family law attorneys and a number of civil practitioners. It also enjoys statutory recognition. Cooperative law is quite similar, but its protocol does not have some of the constraints involved in collaborative law. Both concepts involve a commitment by the attorneys and their clients to conduct their negotiations in a responsible manner during their ongoing settlement negotiations. I think the major difference between the two concepts and mediation is that in the mediation process the mediator orchestrates the process, not the lawyers. I am encouraged by the general acceptance of these new processes and I think it is possible we can develop a new ADR process that incorporates the best elements of the different protocols. Both processes have the backing of enthu-

siastic lawyers and satisfied clients.

Editor: What is the work of the Frank Evans Center for Conflict Resolution here at South Texas College of Law in Houston?

Evans: We try to design and implement projects in a number of different areas with the basic goal of developing an understanding in law students of the lawyer's professional responsibility to the client - not just to win in litigation but to help the client resolve the dispute in a cost-effective manner. Our intent is to involve the students in projects with attorneys and business mentors so the students gain first hand knowledge about different ways to resolve disputes through effective settlement negotiations.

Editor: Are there any other projects working at the Center you could tell us about?

Evans: One of the projects I am most interested in currently is how to better define, expand, and integrate into one flexible protocol the best elements of mediation, arbitration and other ADR processes. What we are looking for is a voluntary process that will ultimately lead the parties, as a practical matter, into an assured final result. We have experimented with some ideas and have received encouragement from a growing number of trial lawyers, mediators, and judges about the project. So, we are optimistic but still have a great deal of work to do.

Please email the interviewee at fgevans@earthlink.net with questions about this interview.

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ARBITRATION INSTITUTIONS IN TEXAS

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California for the mediation headquarters FORUM Dispute Management. The FORUM also serves as one of three primary providers of the ICANN domain name dispute resolution program, resolving issues involving disputed trademarks. For more information, visit the main website, <http://www.adrforum.com/>.

CPR Institute



CPR Institute is a Manhattan-based non-profit organization founded in 1979. Its mission is to spearhead innovation and promote excellence in public and private dispute resolution.

CPR Institute provides thought leadership and innovation as the global resource for conflict management and resolution of complex business-related disputes.

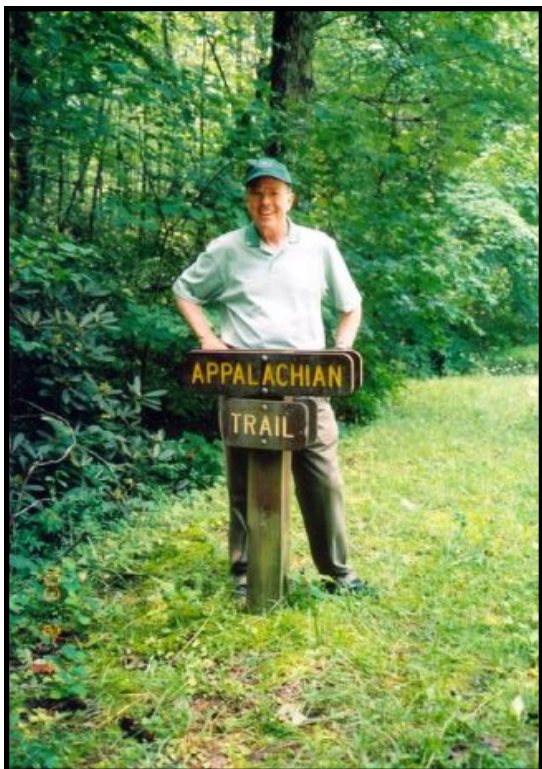
As a pioneer in the field of alternative dispute resolution (ADR), the CPR Institute is uniquely positioned to regularly convene a sophisticated, executive-level community of leading practitioners and thought leaders – all dedicated to advancing ADR in their particular industries. It offers a networking and professional development platform providing an unparalleled

opportunity to support and advance the use of mediation, arbitration, and other ADR strategies. Texas members of CPR Institute's panels include John Allen Chalk, Sr., John L. Estes, Eric R. Galton, James Greenwood III, Hugh E. Hackney, William H. Lemons III, and Hon. Susan S. Soussan.

CPR Institute's membership is comprised of general counsel and senior lawyers of Fortune 1,000 organizations, partners in the top law firms around the world, as well as leading judges, government officials, neutrals, and academicians. Notable members include ConocoPhillips, ExxonMobil Corporation, Fulbright & Jaworski LLP, General Electric, Halliburton, Northrop Grumman Corporation, Shell Group, Texas Instruments, and Vinson & Elkins L.L.P.

Through its distinguished committees of practitioners, academics, and neutrals, the CPR Institute has crafted detailed ADR clauses, rules, codes, and procedures for business agreements and practices. In addition, its wealth of intellectual property and published material has educated and motivated General Counsel and their law firms around the globe.

CPR Institute's proprietary panel of esteemed arbitrators and mediators has provided resolutions in thousands of cases, with billions of dollars at issue, worldwide. For more information or to become a member, visit www.cpradr.org.



WALKING THE EXTRA MILE

"I am enthralled by the Appalachian Trail, though I've only read one book about it (A Walk in the Woods, by Bill Bryson), and hiked a couple of miles of it near Damascus VA. In Rocky Mountain National Park, I have climbed Long's Peak (14,255 ft), Flat Top, Fairchild (13,502 ft.), Twin Sisters and hiked to Lawn Lake (14 mile overnight backpacking) and Black Lake (a ten mile round trip). I've done three marathons and aspire to hike more of the 2,000+ mile Appalachian Trail if I don't run out of time. I really like the AT green cap."

**Jim Greenwood
Houston Mediator**

TWENTY YEARS OF CONFIDENTIALITY UNDER THE TEXAS ADR ACT

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⁴⁵ 1996 WL 447954, at *1 (Tex. App.—Houston [14th Dist.], Aug. 8, 1996, writ denied).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Compare *Randle* with another unreported decision, *Lype v. Watkins*, 1998 Tex. App. LEXIS 6626, at *7-*8 (Tex. App.—Houston [1st Dist.] 1998, no pet.) (rejecting duress defense to a mediated settlement agreement where the alleged duress emanated from the party's own lawyer).

⁴⁹ 2001 WL 700517 at *1 (Tex. App. – Dallas June 22, 2001, no pet.).

⁵⁰ 76 F.Supp.2d 736, 737 (N.D. Tex. 1999).

⁵¹ *Id.* at 738.

⁵² 27 F.Supp.2d 945 (S.D. Tex. 1998).

⁵³ *Id.* at 947-49.

⁵⁴ 148 F.3d 487, 489 (5th Cir. 1998), *cert. denied*, 526 U.S. 1040 (1999).

⁵⁵ *Id.* at 491 (interpreting 7 U.S.C. § 574).

⁵⁶ Gary Condra, *Chair's Corner, Alternative Resolutions*, Nov. 1999, at 1. Mr. Condra is a past chair of the ADR Section and former director of TAM. For additional discussion and criticism, see Charles Pou, Jr., *Gandhi Meets Elliot Ness: 5th Circuit Ruling Raises Concerns about Confidentiality in Federal Agency ADR*, DISPUTE RESOL. MAG., Winter 1998, at 9-11; Shannon, *Ruminations*, *supra* note 3, at 94-98.

⁵⁷ 893 S.W.2d 227, 229-30 (Tex. App. – Amarillo 1995, writ denied).

⁵⁸ *Id.* at 232.

⁵⁹ *Id.* at 232-33.

⁶⁰ *Cf. Holmes v. Concord Homes, Ltd.*, 115 S.W.3d 310, 318 (Tex.App.—Texarkana 2003, no pet.) ("considerable evidence about mediation and settlement offers ... came before the jury without objection"; after an objection was finally made, trial court instructed "the jury at some length about the mediation process and the confidentiality involved there, and then instructed counsel to avoid asking questions that invaded the mediation process").

⁶¹ See, e.g., *Rabe v. Dillard's, Inc.*, 214 S.W.3d 767, 769 (Tex.App.—Dallas 2007, n.p.h.) (refusing to recognize as competent summary judgment evidence threats allegedly made by counsel during mediation in a later duress challenge to a mediated settlement agreement); *Gaskin v. Gaskin*, 2006 Tex. App. LEXIS 7689, at *10-12 (Tex.App.—Fort Worth Aug. 31, 2006, pet. denied) (upholding the trial court's quashing of a subpoena for the mediator to testify about mediation communications after an in camera hearing); *Allison v. Fire Ins. Exch.*, 98 S.W.3d 227, 260 (Tex.App.—Austin 2002, no pet.) (rejecting party's attempt to introduce evidence about conduct and settlement offers by other party at mediation where mediation did not result in a settlement); *In re T.T.*, 39 S.W.3d 355, 360 (Tex. App.—Houston [1st Dist.], no pet.) (ruling inadmissible a mediator's report in a parental rights termination case); *Vick v. Waits*, 2002 WL 1163842, at *3 (Tex. App.—Dallas, June 4, 2002, pet. denied) (not designated for publication) (disallowing introduction of mediation communications that were intended to demonstrate fraud in the inducement of a mediation agreement); *In re Acceptance Ins. Co.*, 33 S.W.3d 443, 452-53 (Tex. App. – Fort Worth 2000, no pet.) (reversing trial court's allowance of inquiries about mediation communications relating to the negotiations and settlement authority); *Smith v. Smith*, 154 F.R.D. 661, 664 (N.D. Tex. 1994), *aff'd*, 132 F.3d 1454 (5th Cir. 1997) (quashing a subpoena for the mediator to testify about alleged misrepresentations by a party at a mediation).

⁶² See S.B. 1970, Enrolled, Fla. Leg. (2004), available at <http://www.flsenate.gov/data/session/2004/Senate/bills/billtext/pdf/s1970er.pdf>.

⁶³ Fla. St. §§ 44.405(4)(a)(4) & (6).

⁶⁴ *Id.* § 44.403(1).

⁶⁵ *Id.* §§ 44.405(1) & .406.

⁶⁶ See UMA, *supra* note 25.

⁶⁷ Wayne I. Fagan & Brian D. Shannon, *A Potential Threat to Texas ADR*, 65 Tex. B. J. 27 (2002). Mr. Fagan is a past chair of the ADR Section.

⁶⁸ Letter from the President, AAM NEWSLETTER (Assoc. of Attorney-Mediators, Dallas, Tex.), Sept. 2002, at 1-2, available at <http://www.attorney-mediators.org/news200209.pdf>; Texas Association of Mediators, Minutes of Board of Directors Meeting, at 2 (May 18, 2002) (unanimous board opposition).

⁶⁹ Letter from Wayne Fagan to Texas members of ABA House of Delegates 1 (Nov. 14, 2001), available at <http://www.texasadr.org/umaletter.pdf>.

⁷⁰ For a detailed criticism of the UMA in contrast to the Texas Act, see Shannon, *Dancing with the One that "Brung Us"*, *supra* note 3.

DISPUTE RESOLUTION CENTERS IN TEXAS COLLEGES AND UNIVERSITIES

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solving legal disputes through ADR; to encourage the teaching of ADR procedures in schools." In addition, the Center will assist other organizations whose activities further, accomplish, foster, or attain any of these purposes.

The Center's trainings offer a 40-Hour Basic Mediation that introduces participants to mediation as a method to resolve conflict as well as a 30-Hour Advanced Family Mediation that covers family dynamics, child development, and law. Through the use of simulations, lecture and demonstration, participants are taught both basic and family mediation skills. Students also have the opportunity to become involved in pro bono mediations at various Municipal Courts in Harris County. International Commercial Arbitration and Commercial Arbitration have been added to our program schedule and are both taught by Ben H. Sheppard, Jr., recently retired from Vince & Elkins and current Director of A.A. White Dispute Resolution Center.



University of Texas School of Law - Center for Public Policy Dispute Resolution

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Phone: 512-471-3507

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Website: www.utexas.edu/law/cppdr

The Center for Public Policy Dispute Resolution promotes the appropriate use of alternative dispute resolution (ADR) by Texas governmental and public interest entities. For those seeking new ways to resolve conflicts, the Center is a statewide resource focusing on public policy dispute resolution. The Center opened its doors in 1993 and is located at The University of Texas School of Law.

The Center provides direct dispute resolution and consensus assistance, as well as consultation and conflict analysis for governmental entities and public interest groups involved in spe-

cific disputes. The Center has also helped agencies develop dispute resolution programs and systems in areas involving repetitive disputes, including employee grievance. The Center combines ADR training, consultation, research, and third-party services (i.e. mediators and facilitators) for comprehensive public policy dispute resolution assistance to government and other public entities.

One of the Center's hallmark programs since 1993, the CPPDR Fellows Program, brings together executive-level Texas government officials, members of the Legislature, leaders of public interest organizations, judges, and experienced dispute resolution professionals every other year. The Center Fellows receive training in the use of ADR and consensus processes in public policy, government, and the courts.

The Center also offers dispute resolution training to the general public, including basic mediation, advanced mediation, ethics, negotiation, and facilitation. These public trainings bring national figures to the campus and allow participants to receive CLE credit when appropriate. Through these programs, the Center has trained numerous Texans in the use of various dispute resolution processes.

The Center is also committed to educating Texas' future leaders in the use of ADR processes. The Graduate Portfolio Program in Dispute Resolution, administered by CPPDR, is an interdisciplinary certificate program open to master's degree and doctoral students from participating schools and colleges: Law, LBJ School of Public Affairs, College of Communications, School of Architecture, College of Engineering, School of Social Work, School of Nursing, and College of Liberal Arts. Members of the Center professional staff teach ADR courses in the Law School, and the Center employs graduate student interns from the University of Texas School of Law and LBJ School of Public Affairs.



* **Susan B. Schultz**, Program Manager with the Center for Public Policy Dispute Resolution at the University of Texas School of Law, is an attorney, mediator, and facilitator. She serves on the Council of the State Bar ADR Section, currently as secretary. She is a lecturer with the UT School of Law, teaching public policy dispute resolution.

ADR ON THE WEB *continued from page 48*

- A directory of AAM mediators
- Articles, a number of which are authored by Texas mediators
- Notices of upcoming training programs

Center for Public Policy Dispute Resolution

<http://www.utexas.edu/law/cppdr>

The Center for Public Policy Dispute Resolution was created in 1993 to promote the appropriate use of ADR in Texas government. The Center provides a number of ADR services to governmental entities, policymakers, and others involved in public disputes. The website contains the following information:

- Notices for upcoming trainings and workshops open to the public
- Information on mediation and facilitation services provided by the Center
- Case studies on resolving public policy disputes and establishing ADR systems
- Written publications produced by the Center, including Texas ADR Legislative Reports and the Public Resource Series



* **Mary Thompson**, Corder/Thompson & Associates, is a mediator, facilitator, and trainer in Austin. If you are interested in writing a review of an ADR-related web site for Alternative Resolutions, contact Mary at emmond@aol.com

WHO'S WHO IN TEXAS ALTERNATIVE DISPUTE RESOLUTION

Compiled by Walter A. Wright and Robyn Pietsch

To commemorate the 20th anniversary of the Texas Alternative Dispute Resolution Procedures Act, we compiled photographs and short biographies of people who made significant contributions to ADR in Texas during the last twenty years. This article contains brief information about 170 Texas ADR professionals and volunteers from all kinds of professional backgrounds. We understand a list of only 170 people does not include everyone who deserves to be recognized, but we believe it does represent the different kinds of people who contributed to ADR's past growth and who will contribute to its future success.

We asked people to send us biographies of 75 words or less, but we soon realized the Texas ADR profession does not con-

tain many 75-word egos. It was Walter Wright's unfortunate task to reduce lengthy biographies to something approximating 75 words. Walter hopes he has not offended anyone with his exercise of editorial discretion. If he has offended anyone, he apologizes. To help reduce the biographies' length, Walter created a list of Texas ADR acronyms, which the reader will find on page 73 of this newsletter. If you do not know the meaning of an acronym in a biography, we hope you will find it in the list of acronyms.

We believe you will enjoy reading the biographies that follow. Taken together, they document an impressive level of accomplishment among our ADR colleagues over the past 20 years.



Sherrie R. Abney is a collaborative lawyer, mediator, arbitrator and collaborative trainer. She has served as chair of the ADR and Collaborative Law Sections of the Dallas Bar Association and is a founding director of the Texas Collaborative Law Council.

Sherrie is member and past secretary of the Association of Attorney-Mediators, presenter and trainer for the International Academy of Collaborative Professionals, and a member of the Civil Committee of the DR Section of the ABA.



Hesha Abrams (f/k/a Lila). In 1986, Hesha convinced Dallas Judges Fish and Hall to let her mediate several business cases. When all cases settled, she was hooked. She helped write the ADR Act, established the first DBA training, U.S. Bankruptcy Court, SDNY mediation and NASD mediation programs. Hesha, who

specializes in IP and complex or intense cases, has successfully mediated for thousands of parties and crafts highly creative settlements. She enjoys big egos and intense personalities.

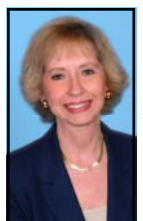
www.abramsmediation.com



Jeff Abrams, of Dallas, is a respected attorney-mediator, arbitrator, and trainer in the field of mediation and conflict resolution. He was instrumental in writing the landmark 1987 Texas ADR legislation, and training the first mediators for the Dallas Bar, the NASDR mediation program, and the U.S. Bankruptcy Court (SDNY). He is married to an attorney-mediator (27 years of mediation skills at home) and is the proud father of two grown children.



Jeffrey S. Abrams has mediated over 3100 cases in 18 years as a mediator. He previously served as President of the Association of Attorney-Mediators national organization and its Houston Chapter, as Chair of the Houston Bar Association Alternative Dispute Resolution Section, and on the Board of Directors of the Harris County Dispute Resolution Center. Jeff is A/V rated, has been selected as a Texas Super Lawyer for 2006, 2007 and has made mediation presentations on 5 continents.



Laury Adams is a mediator with a history of "firsts." While serving as the 1991 TAM president, she arranged for the first commercially printed newsletter and invited Bill Ury to be the first nationally recognized conference presenter. During the 1980s, she was the first to develop computer programs for divorce clients, now sold on the Internet as *DivorceSavvySavesMoney*.

In July 2007, she was the first person to be featured on public television discussing the unusual effects of Social Security on divorcing parties.



Susanne C. Adams was a pioneer Texas mediator. Believing there had to be a better way of resolving disputes than through litigation, Susanne began mediating in the late 1970s. In 1985 she, along with others, founded the organization now known as the Texas Association of Mediators. She is credited with bringing about conciliation among mediators of all professions, and she remained an innovative leader in the field until her untimely death in 1996. A major award is named in her honor.

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James J. Alfini is President and Dean of South Texas College of Law. He previously served as Dean of Northern Illinois University College of Law and was a member of the law faculty at Florida State University. He served as Chair of the American Bar Association Section of Dispute Resolution and Chair of the Association of American Law Schools ADR Section. Among his publications is the co-authored *Mediation Theory and Practice*, published by LexisNexis.



Mike Amis has been a full-time attorney-mediator since 1990. Board certified in civil trial law since 1983, Mike's mediation practice has paralleled the variety of civil cases he handled as a trial advocate. Active since 1989 in promoting the use of mediation through the Association of Attorney-Mediators and the American Academy of Attorney-Mediators, Inc., Mike serves as one of the mediators of Burdin Mediations of Dallas.



Hon. Glen M. Ashworth (Ret.) presided over hundreds of settlements and bench and jury trials during his distinguished 22 years serving on the 86th Judicial District Court (Kaufman County). He is known for his ability to quickly grasp key issues and develop creative solutions for the resolution of the most complex matters. Widely recognized for his dedication and persistence in the most contentious disputes, Judge Ashworth, currently a JAMS arbitrator, has earned a reputation for fairness and independence.



U.S. District Judge Nancy Atlas, an early leader in ADR in Texas, played a pivotal role in bringing mediation to state and federal courts in Houston in the early 1990's. Before judicial service, she co-founded the Association of Attorney-Mediators, Houston Chapter, and mediated 500+ cases. She chaired and served on various ABA and State Bar ADR Committees, leading creation of Mediator Ethical Guidelines. Judge Atlas created the Southern District's ADR Program, which she currently administers.



Anthony Atwell, Dallas native, received a B.A. from Williams College and a J.D. from Harvard Law School. He clerked for U.S. District Judge Joe E. Estes, then practiced law in Dallas, where he is an AV-rated lawyer and a Life Senior Fellow of the Dallas Bar Foundation. He has been a member of the Association of Life Insurance Counsel. He became involved with mediation in the 1990s and has been Chair of DBA's ADR Section and President of AAM.



Courtenay L. Bass, a 1982 cum laude graduate of Baylor University School of Law, left her commercial litigation practice in 1989 to become one of Dallas' first full-time mediators. Since then, Courtenay has mediated approximately 3,000 cases, focusing on complex personal injury, labor and employment, construction and professional malpractice. Courtenay has also trained over 1,000 attorneys and judges in basic and advanced mediation courses and has taught nationally and internationally in the areas of trial advocacy, mediation, and mediation advocacy.



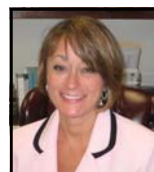
Jan Berger is a mediation and facilitation specialist with JBerger & Associates. She received her M.S. in Organizational Leadership and Ethics, her B.A. in Journalism, and is a TMCA Credentialed Mediator. Jan is a volunteer mediator at the Dispute Resolution Center in Austin and a mediation training coach. She is a member of Austin Association of Mediators, Texas Association of Mediators, and editor of TAM's Texas Mediator newsletter. (jberger1@austin.tx.com; 512/327-6084)



Trey Bergman, of Houston, is a Credentialed Distinguished Mediator. He has mediated and arbitrated more than 1,100 cases and trained thousands of attorneys and judges in mediation. An adjunct professor at South Texas College of Law who teaches mediation and negotiation classes, he currently serves as AAM's national president. He has served as Chair of HBA's ADR Section and Litigation Section, is Martindale-Hubbell AV rated, and has been named "Texas Super Lawyer" by *Texas Monthly Magazine* from 2003-2007.



Kathy Bivings-Norris, founding Executive Director of the Dispute Resolution Center of Montgomery County, Inc. (1989 - present), has completed 50 hours of graduate study in conflict resolution at Antioch University. TMTR has been the most fun of her collegial adventures. Over the years, she has participated in all available Texas ADR organizations, as well as NAFCM and ACR. She has become one of the keepers of Texas ADR history. Her current interest is in restorative justice, especially as it relates to juveniles.



Cindy Bloodworth has been Executive Director of the Dispute Resolution Center of Jefferson County since 1989. She has been an active member of the Texas ADR Community through her service in a wide variety of groups, including the Texas Dispute Resolution Center Directors' Council, the Council of the ADR Section, TAM, TMCA, and TMTR. She is a communications and conflict resolution trainer and lectures frequently at Lamar University and other agencies in Jefferson County.

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WHO'S WHO IN TEXAS ADR
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Greg Bourgeois began his mediation career in 1996, and by the year 2000, he co-founded the Lakeside Mediation Center in Austin, Texas (www.lakesidemediation.com). Greg works with parties throughout Texas and the United States, providing a range of dispute resolution services, including mediations, arbitrations, educational seminars, lecturing/writing and consulting services. Having served as President of AAM's Central Texas Chapter, Greg remains an active member of AAM. Greg was also on TMCA's founding board.



John Boyce has practiced law for 28 years and has conducted arbitrations extensively since the early nineties. Among other panels, Mr. Boyce sits on the commercial panel, large and complex case (LCC) of the American Arbitration Association. He also sits on the panels of the International Institute for Conflict Prevention and Resolution (CPR Institute) and American Health Lawyers Association (AHLA). He is Chair-Elect of the State Bar of Texas Section on Alternative Dispute Resolution.



Steve Brutsché (1944-1991), Dallas attorney-mediator, was a pioneer who trained many of the first attorney-mediators in Texas and encouraged Texas judges to refer their pending cases to mediation. See Mike Amis's related article in this newsletter, "The Association of Attorney-Mediators: Steve Brutsché's Inspiration and Legacy."



Kevin S. Casey, J.D., employee relations officer for the Texas Department of Public Safety, designed and manages the agency's dispute resolution program. Kevin is also an adjunct professor teaching at Texas State University's Graduate School of Public Administration and St. Edward's University's Master of Human Services program. A former executive director of both the Houston and Austin Dispute Resolution Centers, he received his mediation training from the Houston DRC and the American Academy of Attorney-Mediators.



John Allen Chalk, Sr., Treasurer of the ADR Section Council (2007-2008), is in his second year as a Council member. A partner in the Fort Worth law firm of Whitaker, Chalk, Swindle & Sawyer, LLP, Chalk is a commercial litigator and a business transactions lawyer. A mediator and arbitrator since 1992, he is a TMCA Credentialed Advanced Mediator (2007) and is a Fellow and Chartered Arbitrator of The Chartered Institute of Arbitrators (London).



Peter Chantilis (1934-1999) helped lead the mediation movement in Dallas. An active AAM member, Peter was co-founder of The Academy training group and an innovator of mediation of Texas criminal cases. He was an adjunct ADR instructor at S.M.U. Law School, author, philanthropist, and civic leader. In 1999, the Auxiliary of the Dallas Bar Association recognized Peter's outstanding career by awarding him its prestigious Justinian Award. Peter's unique contribution was his combination of enthusiasm, sincerity, and perseverance in pursuing peaceful outcomes for disputes.



Michael K. Clann became a full-time mediator and arbitrator in 1991. Born in New Orleans and graduated from Tulane University School of Law, he was an Adjunct Lecturer of Commercial Negotiation in the EMBA program at UH School of Business and an Adjunct Professor at UH Law School, teaching Legal Negotiation, International Litigation and Arbitration, and Practice Management. Prior to becoming a mediator, he litigated for 22 years, specializing in Maritime Law and Insurance Law. He has mediated and arbitrated over 2,500 cases.



Bryan Coleman has mediated over 6,000 cases and has served as an arbitrator over 2,000 times. Two nationally recognized ADR organizations chose him as regional head neutral, and he has trained over 1,000 attorneys, claims representatives, and other professionals in mediation and arbitration. He taught at UofH, Houston's mayor and city council commended him for public service, and he was selected multiple times as one of Houston's Top Lawyers. He holds advanced certification from AAM and is a TMCA Credentialed Distinguished Mediator.



David Cohen is a past Co-Chair of the ADR Section. He received his Ph.D. in linguistics (1971) and law degree (1978) from UT. Currently Of Counsel with the Houston firm of Abrams, Scott & Bickley, he maintains a civil litigation and business counseling practice in Austin. David has also served as a mediator, an arbitrator (AAA Panel Member), and an Adjunct Professor at UT Law School, teaching courses on mediation and negotiation. He is a TMCA Credentialed Mediator and a member of AAM.



Gary Condra, born and reared on a West Texas ranch that has been in his family for over a century, has served on the faculties of Texas Tech University and Texas A&M University. While on the faculty at Texas Tech, Gary founded the Texas Agricultural Loan Mediation Program to assist farmers and ranchers in resolving disputes with the U.S. Department of Agriculture (USDA). Currently in private law practice, he represents farmers and ranchers in disputes with USDA.

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Herbert V. (Herb) Cooke Jr. had the good fortune of spending 22 years (1984-2006) as the Executive Director of the Dispute Mediation Service (DMS) in Dallas, which was founded in 1980. The agency's early years were precarious. Not many people knew about mediation. Education of the public, seeking referral sources, and training of mediators were priorities. Slowly, with great team effort, DMS's work grew, and it established itself as a vital part of the community.



Judy Corder, Ph.D. has taught at the University of Texas and St. Edward's University. With Mary Thompson, she has conducted over 100 mediation trainings. She is a former president of the board of the Austin Dispute Resolution Center, a past president of the Advisory Board for the masters's degree program in Conflict Resolution at St. Edward's University, a Fellow of the Texas Public Policy Dispute Resolution Center, a past president of TAM, and she was a member of the founding board of the TMCA.



John Coselli, Judge of the 125th District Court of Harris County, was appointed to the court in 1999 and elected to the court in 2000 and 2004. From 1977 until appointed to the bench, he was in private practice with the law firm of Carl, Lee & Coselli, and his experience included general civil litigation and transactional legal work, legal negotiation, mediation, arbitration, and case facilitation and evaluation. He has served on TMCA's board of directors and as Chair of the ADR Section.



Ben Cunningham, of Austin, has served on TAM's Board of Directors, and he currently serves on the Advisory Board for Texas State University's graduate legal studies/ADR programs. In 1987, with Eric Galton (his current partner at Lakeside Mediation Center), Ben created one of the first—if not the first—mediation sections in a major Texas law firm. During the past 20 years as a mediator and litigator, Ben has successfully mediated 1000+ cases.



Glenn Currier is Director of Conflict Resolution Studies at El Centro College (Dallas, Texas), where he teaches mediation and conflict dynamics courses. He is involved in numerous professional organizations, including the Association for Conflict Resolution Training Section (Communications Chair), Texas Mediation Trainers Roundtable (Secretary and Web Master), the Texas Bar (Family and ADR Sections), and the Texas Mediator Credentialing Association. He specializes in family and divorce mediation and lives with his wife in DeSoto, Texas.



Michael Curry, a mediator since 1994, has mediated over 2,000 cases. He has served as a Texas Supreme Court briefing attorney, an Adjunct Professor at UT School of Law, and President of AAM's Central Texas Chapter. Michael has taught a graduate-level course on ADR at Texas State University and has written and lectured on mediator ethics and mediation advocacy. He is a Fellow at the CPPDR.



Mark Davidson, an early and strong supporter of ADR, is the presiding judge of the 11th District Court of Harris County. Since becoming a judge in 1989, he has tried over 450 jury trials and cut the backlog in his court by 70 percent. In 1993, the Texas Association of Civil Trial and Appellate Specialists named him "Trial Judge of the Year." He is also the Administrative Judge of Harris County.



Ben DeVries has a J.D. from the University of Houston and is a mediator/arbitrator for several organizations, including NAF, CAS, NCDS, USPS and Decidere' Mediations in Conroe. He is also a volunteer mediator at the DRC of Montgomery County. A member of TAM and AAM, he holds the CPCU and AMIM designations and is an adjunct professor at North Harris and Montgomery Colleges.



Kris Donley, Executive Director of the Dispute Resolution Center in Austin, serves as Practicum Instructor in the Master of Mediation Program at the University of the Principality of Liechtenstein. Since coming to the DRC in 1994, Kris has provided mediation, training, and consultation services at the local, state, national, and international levels. She is a fellow of the UT Center for Public Policy Dispute Resolution and a trainer for NAFCM in Washington, D.C. She currently serves on the ADR Section's Council.



Judy Dougherty. Pioneer in mediation since 1980; recipient, Susanne Adams Award; founder/director of TAM; service on AAA, U.S. Postal Service, World Bank, and federal mediation panels; former adjunct professor at UH School of Law; former President Family Mediation Network (Houston), Director AAM, Advanced Practitioner/officer ACR, Director HBA ADR Section, Trainer & Consultant DRC; mediator, arbitrator, and practitioner of Collaborative Family Law. B.A. and M.S.W. from University of Texas, J.D. from University of Houston.

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John V. Dowdy, a 1968 graduate of Baylor Law School, tried cases at all levels during his first 20 years of law practice, but his practice eventually focused on probate law. In 1992, he took his first mediation training. By 1994, he had tried his last case; the mediation practice replaced trial practice. He is past president of AAM, and he is a senior lecturer in business law at the UT-Arlington College of Business.



Bob Dunn, of counsel to Godwin Pappas Ronquillo LLP in Houston, graduated from Texas A&M University (B.S. Geological Engineering) and STCL. He has served as President of SBOT, President of HBA, and Commissioner for the Texas Commission on Judicial Conduct. As HBA President, he appointed Texas's first Committee on ADR and led the effort to create Texas's first DRC. Currently, he serves on the Executive Committee of the Advisory Board of the Evans Center. He received the Evans Award in 2007.



Suzanne Mann Duvall, recognized leader and pioneer in the modern mediation movement, served in leadership capacities on every significant committee, task force, board, and professional organization involved in the formation and development of the methods, practices, procedures, and ethical guidelines for mediation and the formal credentialing of mediators. She is the recipient of all of the highest awards given for service to, and achievement in, the mediation profession, including the Frank Evans and Suzanne Adams awards.



Frank Elliott, professor, mediator, and law school dean, has 40 years in academia at the University of Texas, Texas Tech, and Texas Wesleyan, where he institutionalized ADR courses in 1990. He co-edited the SBOT-ADR Handbook in 2003 and contributes to many ADR publications and conferences. He is the namesake of Elliott Inn of Phi Delta Phi, a Life Member of the American Law Institute, and appears in the NMMI Alumni Hall of Fame.



Kay Elliott, JD, LL.M., has arbitrated and mediated over 1,800 cases since 1980. She has taught in and coordinated ADR graduate programs at Texas Woman's University and Texas Wesleyan School of Law since 1990, where she has coached championship negotiation and mediation advocacy teams. She is ACR Dallas President, Council Member of TMTR, Board Member of TMCA, a frequent contributor to ADR publications and seminars. Kay co-edited the SBOT- ADR Handbook (2003) with Frank Elliott.



Frank G. Evans, commonly known as the "Father of ADR in Texas," has received too many accolades to summarize in 75 words. No one has done more than Judge Evans to promote ADR in Texas. Please see the numerous references to him throughout this newsletter.



Wayne I. Fagan, of San Antonio, is a former Chair of the ADR Section (2001-2002). He has been a Council Member of the ABA's Dispute Resolution Section and its Latin America and Caribbean Law Initiative. He is actively involved in international dispute resolution, particularly international arbitration, and is a member of several international arbitration panels. He is also actively involved in the U.S.-Mexico Bar Association, and he has been that organization's U.S. Chair since 2005.



A. Joe Fish, Chief Judge of the U.S. District Court for the Northern District of Texas (2002-present), has been a federal district judge in Dallas since 1983. From 1980-1981, he was judge of the 95th District Court in Dallas County, and he was a Justice on the Dallas Court of Appeals from 1981-1983. In the mid-1980s, as a federal judge, he was a pioneer in referring civil cases from his court to mediation.



Tad Fowler, Attorney, is a long-term volunteer mediator for the Dispute Resolution Center of the Panhandle Regional Planning Commission in Amarillo. "My first mediations, and some of my best learning experiences, were in the early 90's as a volunteer with the DRC. It has been wonderful to see the DRC grow and become a part of our community."



Kathy Fragnoli received her B.A. from Boston College and her J.D. from Gonzaga University. She is the founder of The Resolution Group, a company specializing in ADR training. Kathy has mediated over 2,000 cases. Her new book, "Creating Peace at Work: When Work Isn't Working" is available on www.amazon.com. Kathy is a frequently requested speaker on the topic of understanding personality types, and is a panel member at Burdin Mediations in Dallas.

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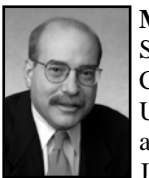
Eric Galton, a full-time mediator for over 20 years, has mediated over 4,300 cases and arbitrated over 200 disputes. A founder of Lakeside Mediation Center in Austin, Galton has served as an adjunct faculty member at the University of Texas and Pepperdine law schools. He has authored four books about mediation, and his writings have been translated into French and Italian. A member of the board of the International Academy of Mediators, he has also helped train over 800 mediators in the United States, Italy, and Germany.



Dr. James W. Gibson received the Susanne Adams Award in 2007 for his contributions to the advancement of mediation. He is Secretary of the Texas Mediators Credentialing Association, and formerly on the Boards of Texas Association of Mediators and Texas Mediation Trainers Roundtable. He has been honored for outstanding service to the ADR Section of the Texas Bar. He published Texas's first criminal mediation manual, and co-authored the highly acclaimed book, *Capitalizing on Conflict*.



LaCrisia "Cris" Gilbert is the Executive Director of Dispute Mediation Service, Inc. in Dallas. She is the former Alternative Dispute Resolution Coordinator for Dallas County. She holds an appointed position on the TMCA and is a Distinguished Credentialed mediator. She is an adjunct professor at El Centro Community College in Dallas and Collin County Community College. She has 20 years of experience as an ADR professional and is a graduate of Pepperdine University School of Law's Dispute Resolution Master's program.



Mark K. Glasser, a senior trial partner in King & Spalding's Houston office, received a B.A. from Columbia University, *with honors*, and a J.D. from UT. Upon graduation from law school, he served as a law clerk to the Honorable William Wayne Justice, Chief Judge for the U.S. District Court, Eastern District of Texas. In the early 1990s, he helped persuade judges in Harris County to refer cases to mediation.



Clara I. Gomez, a bilingual mediator, consultant, and trainer, has been a mediator for 15 years and has conducted over 1,500 mediations. Clara has a J.D., a master's degree in Liberal Arts, and a master's degree in microbiology. She is an Advisory Board member and former President of ACR's Houston Chapter; former Board member and Chair of TAM's bilingual issues committee; and Advisory Board member for the Evans Center. She is a frequent lecturer, trainer, and writer in Texas and Latin America.



Lynne M. Gomez became a full-time neutral in early 2001, after 24 years of civil litigation practice. She serves on AAA, FMCS, and several other arbitration panels. Lynne obtained her J.D. from the University of Texas in 1977 and entered private practice in 1983, after working as staff attorney for the Southern District of Texas and clerking for the Honorable Woodrow Seals. Lynne, who grew up in Mexico City, is fluent in Spanish.



Charles Gonzalez is in his fifth term serving Texas's 20th Congressional District in the U.S. House of Representatives. When he was judge of the 57th State Judicial District Court from 1989 to 1997, he helped institute a formal ADR process in the Bexar County courts. With the assistance of the trial bar and fellow judges, he developed an ADR process that has been hailed as one of the most effective and efficient programs in the state.



Don West Graul is a 1966 graduate of UH College of Law. He was one of the first Texas lawyers to be trained in divorce mediation in 1981, and he has been mediating ever since. Don was a founding director of TAM. He is a Practitioner Member of ACR (National) and past president of ACR's Houston Chapter. In 2006, Don received the Susanne C. Adams Award for his service to the mediation profession in Texas.



Joe Greenhill's stellar law career includes 25 years on the Supreme Court of Texas, the last 10 of those as Chief Justice. He authored landmark opinions that are still cited by Texas courts. Beginning in the 1980s, Judge Greenhill worked to change restrictive statutes that discouraged the use of ADR in lieu of litigation. Thanks to these efforts, many low-income people now have access to the justice system and ADR outside of the courts, and the case backlog in Texas courts has been significantly reduced.



James (Jim) Greenwood III, a licensed attorney for 46+ years, has served as president of three bar associations and as Houston City Council member for twelve years. An active mediator and arbitrator since 1994, he has taught mediation at Rice University and business law at the University of Houston College of Business Administration. He has served as vice-president of the Houston AAM chapter, and serves on the Houston Bar Association's ADR Section council.

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Melanie E. Grimes is blessed with a family and civil law mediation practice in Dallas. As a TMCA Cred entialed Distinguished Mediator, her mediation experience includes 500+ mediations enhanced by 400+ hours of mediation training. Melanie is also an ACR Family Section Advanced Practitioner Member and has received the Louis Weber Award for "Outstanding Mediator of the Year." Melanie serves on the Board of Directors for the Texas Association of Mediators and Dispute Mediation Service, Dallas.



John Guerra was a founding member and served on the Governing Council of the SBOT ADR Section. He also served on the Interdisciplinary Task Force on the Quality of ADR Practice in Texas and as President of the Texas Association of Mediators. John developed one of the first 40-hour mediation training courses in Texas, as well as other mediation and negotiation courses. Board Certified in Family Law since 1990, John and his wife currently live in Carrollton, and you can contact him at big-johnguerra@yahoo.com.



Norma S. Guerra, Ph.D., is an assistant professor of Educational Psychology at The University of Texas at San Antonio. Her research interests include mediation, social cognitive problem-solving, self-regulation, and engagement styles. As the developer of the LIBRE Model and LIBRE Stick Figure, her goals include facilitated communication in processing challenge. She is a former member of TAM's board of directors.



Charles Guittard was the second Chair of the ADR Section. He practiced in Dallas as a litigator, trial specialist, then mediator and arbitrator, and founded the Dallas Bar's Business Litigation Section. In 2002, he moved to Houston and worked as a litigation management attorney for Farmers Insurance. He taught SMU Law School's negotiation course for eight years with Christopher Nolland. He currently coaches the negotiation and mediation advocacy teams for South Texas College of Law.



AlmaLee "Lisa" Guttshall, working as a neutral since 1996, is an EEOC mediator. She became a dedicated neutral in 2001. She is an arbitrator on the following panels: AAA Labor; USPS/APWU; National Mediation & Conciliation Board; and National Mediation Board. She is a Railroad Referee for the Norfolk Southern Railroad and the UTU. A graduate of Tulane Law School, Lisa was a trial and appellate attorney for 20 years.



Gary Hall, retired judge of the 68th Judicial District Court, along with Steve Brutsché, helped create today's court-annexed mediation system. Hall, Brutsché, Jay Madrid, Hesha Abrams, Charles Guittard, and the Dallas Bar Association initiated and implemented the first successful court-annexed mediation program in the United States. The vision shared by Hall and Brutsché enabled attorneys to receive mediation training and the opportunity to mediate civil lawsuits. Hall is actively engaged as a mediator, arbitrator, special master, and insurance umpire.



Nicholas Hall has been Executive Director of the Dispute Resolution Center of Harris County since February 1998 and is responsible for the DRC's fiscal management, contract writing and negotiation, and training design and implementation. He directs a staff of twelve employees and 350 volunteers. He served on the Harris County Children's Protective Services (CPS) Mediation Task Force that designed and implemented a mediation program now administered through the DR



William Hardie, has been a civil trial lawyer for over 30 years, qualifying as an Advocate of the American Board of Trial Advocates. He was accredited in mediation by the Conflict Resolution Training Institute, Texas Tech University, and is a member of the Association of Attorney-Mediators. Mr. Hardie was selected "Mediator of the Year" by the El Paso Bar Association in 2001 and 2006 and currently serves as President of the El Paso Association of Mediators.



Joseph H. Hart (J.D., University of Texas) has been a full-time arbitrator, mediator, and private judge in major civil disputes for nine years. Judge Hart was the top-rated judge in every Judicial Evaluation Poll during his 17-year tenure as a Travis County civil district judge. Judge Hart conducts hearings and mediations at Lakeside Mediation Center while in Austin, and he frequently travels to other parts of the country for arbitrations and mediations.



Merrill Hartman helped initiate mandatory mediation for child-custody cases when he was a family district judge in Dallas. Among family mediators, he is known for his prominent role in "Don't Forget the Children," a video thousands of parents have seen before mediating their child-custody cases. Now used throughout the country, the video received the American Bar Endowment's award for "Best Public Service Project" in 1989. Hartman received the Adams Award in 2005

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Will Hartsfield, a 1976 Harvard Law School graduate, was trained by Steve Brutsché and began his ADR practice in 1989. In 1991, he served as President of the North Texas Chapter of AAM and has served as a trainer for AAA and other groups. He serves on ADR panels for AAA, NASD, and NYSE and is a member of AAM, ACR, TAM, TMCA, TMTR, and the SBOT and Dallas ADR sections. In addition, he authored *Investigating Employee Conduct* (West).



Diane Harvey gained an extensive background in conflict resolution and mental health as a social worker and former union activist. Prior to beginning her private therapy/mediation practice in 1994, she worked as a social worker for New York State and then directed the Social Services Department at CPC Capital Hospital in Austin. She currently serves on the boards of the Austin Association of Mediators and the Texas Mediators Credentialing Association. (www.therapistmediator.com, dmharvey@austin.rr.com, 512-448-5895)



Ralph Hasson, of Austin, while serving as Vice President of Chorda Conflict Management, Inc., assisted in the design and implementation of comprehensive conflict management systems for a number of major American companies, and co-authored *Controlling the Costs of Conflict* (San Francisco: Jossey-Bass, 1998). He has also been a leading advocate for an ombudsman shield law. His articles on ethics oversight and corporate governance have appeared in *Harvard Business Review*, *Sloan Management Review*, and *Directors Monthly*.



Carol Hoffman, CPA/Mediator, joined Mediation Associates of Houston, a multi-disciplinary organization providing a full range of mediation services to families using co-mediation, in 1987. Carol served as President of TAM (1996-1997). She was a member of the Supreme Court of Texas Advisory Council on Court-Annexed Mediation. Carol has served as treasurer of ACR's Houston Chapter since 2005. She attained the Practitioner level of membership in AFM and has continued that level of membership after AFM merged with ACR.



Ross Hostetter, in the late 1980s, abandoned a successful trial practice in Dallas to become a full-time mediator. A direct protégé of Steve Brutsche, he taught alongside Steve at the Attorney-Mediator Institute. A founding member of the Association of Attorney-Mediators, he conducted over 3,000 mediations during a 17-year career. Ross was a co-founder of the American Academy of Attorney-Mediators, and assisted in the training of over 1,000 lawyers in the art and practice of conflict resolution.



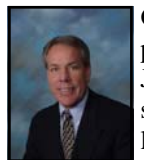
Michelle Houston is the Executive Director of the Denton County Alternative Dispute Resolution Program (DCAP). She helped open the non-profit program on October 1, 2004. While attending the University of North Texas, from which earned a B.S. degree, she received her 40-hour Mediation / Facilitator training. She has 20 years' experience managing people in a variety of fields and feels that her work at DCAP has been one of her most rewarding experiences.



John W. Hughes, of Fort Worth, graduated from TCU (B.B.A.-Acct. 1965) and Baylor Law School (J.D. 1967). Mr. Hughes received his training as a mediator in 1992, when he began his mediation practice. Having mediated over 3,200 civil disputes of every kind, he now focuses on complicated, multiparty, business, oil and gas, construction, intellectual property, and death/severe personal injury cases.



Paula James, an Austin mediator, taught English, restored old homes, made skateboards, and raised shelties before she became a lawyer. She began practicing family law in 1981 and mediating in 1988. She has published several books in her field, the most recent being *The Divorce Mediation Handbook* (Jossey Bass 1997). She hopes to leave the practice of family law a less-painful and less-expensive process than it was 20 years ago.



Gary W. Javore is a principal of Johnson, Christopher, Javore & Cochran, Inc. in San Antonio. Mr. Javore's law practice consists primarily of representation of clients in construction and commercial litigation, providing services as a mediator and arbitrator for the resolution of disputes, and performing transactional work. He sits on the American Arbitration Association panels for Consumer, Construction, and Commercial Law. He is also certified as a Residential Construction Arbitrator by the Texas Residential Construction Commission.



Caliph Johnson is a law professor (retired) at Texas Southern University, since 1975. He was Associate Dean, Interim Dean, and General Counsel. He served on the first ADR Committee of the Texas State Bar in 1980, and the Law Professor Taskforce that met with it. He was in the first mediator class trained by the Houston Neighborhood Justice Center in 1980, and on its first Board of Directors. He chaired the ADR Section from 2000 to 2001.

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Wanda F. Johnson, an employee of the EEOC's Houston District Office for 25 years, holds a Bachelor of Business Marketing from Grambling State University (1977). She obtained her basic and family mediation training at the University of Houston-Clear Lake (1999). Since May 2006, she has successfully facilitated and negotiated settlements of hundreds of employment disputes. At the WeSolve Program, Wanda mediates disputes among students, teachers, parents, and administrators. A TMCA Credentialed Advanced Mediator, Wanda also belongs to TAM.



Joyce Jones is the Assistant Executive Director of Dispute Mediation Service in Dallas, Texas. She is a veteran mediator and one of the most respected figures in conflict resolution in the Dallas area. She teaches Conflict Resolution and Mediation Practicum courses at El Centro College and Texas Wesleyan University Law School. Ms. Jones received her bachelor's degree in Criminal Justice from Dallas Baptist University and a master's degree in Conflict Resolution from Southern Methodist University.



Charles M. Jordan, of Clear Lake City between Houston and Galveston, has been a mediator since 1991. He served as a founding member of the Galveston County Bar Association Committee on Mediation and was president of the Mediation Association of Galveston County in 1996. He has a long record of public service and has received numerous awards recognizing that service.



Ron Joy is a captain with the Texas Department of Public Safety's Highway Patrol Service in Midland, Texas. Ron has been mediating and facilitating employment disputes since 2001. He is actively involved in various training programs throughout the state, including interest-based problem solving and mediation. In 2006, Ron was recognized for his services as a volunteer mediator by the Texas Association of Mediators.



Jeffrey R. Jury is a partner in the Austin law firm of Burns Anderson Jury & Brenner, LLP. A TMCA Credentialed Distinguished Mediator, he writes and speaks frequently on mediation and is something of an expert on dispute resolution techniques of Vikings (ask him for a demonstration). He has taught courses in Alternative Dispute Resolution as an adjunct professor for Texas State University.



Dave Kemp is a long-term volunteer mediator for the Dispute Resolution Center of the Panhandle Regional Planning Commission in Amarillo. "My time mediating is my contribution to the community. I help people solve their problems outside the courtroom, which benefits them, but also frees the legal system to do other things. I also believe that in a small way, mediation encourages peaceful dialogue and resolution of conflicts, which is much needed in the world today."



Craig R. Kempf has served as an ADR Mediator with the U.S. Equal Employment Opportunity Commission since April 1999. Mr. Kempf, who earned his BBA in Management from Texas Tech University, began his career with the Commission as an Investigator. Prior to joining the EEOC, he worked for several years in the private sector as a Human Resources Specialist. During his tenure with the EEOC, Mr. Kempf as mediated over 800 charges of employment discrimination.



Raymond C. Kerr was involved in the creation and funding of Houston's DRC in 1983. While serving on the SBOT Board of Directors, he was the Board liaison to the ADR task force and was instrumental in the establishment of the SBOT's ADR Section. He has been an active mediation and arbitration practitioner since 1991, having mediated over 900 cases and arbitrated 125 cases. He has also served the Bar as President of the HBA and as Trustee and Chairman of the State Bar Foundation.



Jeff Kilgore helps train new mediators and teaches advanced courses at UH Law Center and the Texas A&M campus in Galveston. Jeff has mediated 700+ cases and is designated by TMCA as a Credentialed Distinguished Mediator. He serves as a UT Medical Branch hearing officer, NASD arbitrator and mediator, and an *ad hoc* arbitrator in civil, construction, contracts, family, and insurance disputes. The Texas State Comptroller's Office appointed him an arbitrator in CAD offices and property owners' disputes.

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Jim Knowles has over forty years' legal experience, the last twelve as a full-time mediator, currently with emphasis on federal cases, including intellectual property. He is President-Elect of AAM, has served as Council member of the ADR and Oil and Gas Sections of SBOT, and as past President of the Smith County Bar Association. For the past three years, Jim has received peer recognition as a Texas Super Lawyer in the area of ADR from *Texas Monthly*.



Michael J. Kopp, Executive Director of the McLennan County Dispute Resolution Center, is a TMCA Credentialed Mediator. He served on the Council of the ADR Section of the State Bar of Texas from 2002 to 2005. Currently, he serves on the Directors' Council of the Texas Dispute Resolution Centers and TAM's board of directors. He is an adjunct professor at Baylor University and a frequent lecturer at McLennan Community College.



Kimberlee K. Kovach is a Past Chair of the ABA Section of Dispute Resolution, a former Co-Chair of the State Bar of Texas Committee on ADR, and a founding Co-Chair of the ADR Section. She received the 1995 Frank G. Evans award, has taught a variety of ADR courses in legal education, and was a Founding Director of TMTR. Kovach has published two books, numerous law review articles, and book chapters. Having lectured extensively throughout the United States and abroad, she currently serves as Distinguished Lecturer in Dispute Resolution at South Texas College of Law.



Stacey Kramer is the Coordinator of the Hill Country Alternative Dispute Resolution Center in Kerrville, which provides mediation services to eight counties in the Texas Hill Country. She is also a trained mediator (both basic and family law). She is a graduate in Communications of Texas A&M.



Cyndi Taylor Krier authored the Texas Alternative Dispute Resolution Procedures Act when she was a Texas State Senator (R-San Antonio) and a member of the Senate Jurisprudence Committee. She served two terms in the Texas Senate (1985-1992) before serving as the Bexar County Judge from 1992-2001. Since 2001, she has served on the University of Texas Board of Regents and as Vice President of Texas Government Relations for USAA, a diversified financial services company.



Walt Krudop is a mediator, trainer, and consultant in the conflict resolution field. Before retiring from Shell Oil, he worked as an ombudsman in the Shell RESOLVE employee conflict resolution program. He is a past-president of the Houston chapter of ACR and was awarded the ACR national Presidential Award twice, in 2000 and 2002. A former president of the Fort Bend County Dispute Resolution Center, Walt currently serves on TMCA's board.



Florence M. Kusnetz practiced family law in Harris County for 20 years. She started the first divorce mediation practice in Houston in 1981 in order to protect her clients from the destructive effects of the family court system. After retirement, she created CourtWatch, a political action committee, whose goal was to reform the family courts and make them a place where law is tempered with reason and common sense and is "mediation friendly."



Marlene Labenz-Hough has served as the Director of the Bexar County Dispute Resolution Center in San Antonio for the past 16 years. Prior to her appointment as Director, she served as the Assistant Director for one year. Before joining the BCDRC, Marlene administered the City of San Antonio's Victims of Crime Program for 10 years. Among other recognitions, Marlene was awarded the prestigious Liberty Bell Award from the San Antonio Young Lawyers Association.



R. Hanson Lawton (1941-2007) was an active member in the early work of the State Bar of Texas ADR Committee, leading efforts in both legal and judicial education. Professor Lawton helped introduce ADR courses in law schools, teaching both negotiation and ADR at South Texas College of Law. He was Executive Director of the Frank Evans Center for Conflict Resolution, a distinguished author, and participated in the handbook subcommittee that published the first SBOT Handbook on ADR.



Margaret Leeds has been active in conflict management since initiating Peer Mediation at Beverly Hills High School in 1992. She holds a Masters Degree in Dispute Resolution from Pepperdine University Law School and is certified as a Distinguished Mediator by TMCA. In addition to private practice in conflict management, Margaret volunteers as lead trainer and mediator for Bexar County DRC. Ms. Leeds is a member of ACR, AAMA, and is President-elect of Texas Association of Mediators.

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Bill Lemons is an experienced Neutral on the Employment, Commercial, and Large Complex Case Panels of the AAA, the Commercial Panel of CPR, the ADR Panels for AHILA, and he is admitted to the Chartered Institute of Arbitrators, London. He teaches Arbitration Advocacy for the AAA and others. Bill is former Chair of the ADR Section, serves as President of the local chapter of the Association of Attorney-Mediators, and is on several national ADR panels.



Jacqueline Levermore is a mediator for the EEOC in Dallas. A graduate of the University of Miami and the University of Iowa College of Law, Jacqueline, instead of pursuing a law practice, felt called to work as a peacemaker and become a mediator. Jacqueline is thankful for the opportunity to work in the field of civil rights. She has conducted hundreds of mediations and believes her greatest skill is her ability to listen.



Reed Leverton, a full-time mediator and arbitrator, is also a part-time instructor at the University of Texas at El Paso. He currently serves on the Council of the ADR Section. His areas of ADR practice include personal injury, professional negligence, divorce and conservatorship, employment, commercial, real estate, and contract disputes. Reed is a graduate of Wake Forest University (B.A.), University of Texas School of Law (J.D.), and Pepperdine University (LL. M. in Dispute Resolution).



David T. López, an active litigator whom the Texas Bar Foundation named Outstanding Trial Lawyer in 2007, is also active in ADR. A past chair of the Houston Bar Association's ADR section, he is on the AAA list of neutrals, a member of the International Commercial Dispute Resolution Committee steering group of the ABA Section of International Law, and a coordinator of ACR's Mexico Network. He participates in the Frank Evans Center for Conflict Resolution.



Carl E. Lucas is Director of the Lamar County Dispute Resolution Center administered by Paris Junior College, Paris, Texas. An Alternative Dispute Resolution professional since 1999, he currently serves on the Director's Council of the Texas Dispute Resolution Centers. A former Vice President and Board Member of the state award-winning Lamar County Crime Stoppers, he is a Lamar County Bar Association "Liberty Award" recipient for contributions to the justice system.



Eranía Ebron Martin, EEOC mediator, helps parties resolve employment disputes. She enjoys her job, and it shows! A Texas Credentialed Mediator and a member of TAM, she graduated magna cum laude from Xavier University in Louisiana and received a J.D. from Tulane University School of Law. A native New Orleanian who began her career with the EEOC ten years ago as a Senior Trial Attorney, she relocated to Houston as a result of the devastating effects of Hurricane Katrina and now considers Houston her home.



Robert J. Matlock's early years of law practice included all types of civil, criminal, and appellate cases. During the early 1980s, he narrowed his practice to family law litigation. When mediation appeared in Texas, he supplemented the litigation work with a family law mediation practice. He assisted in the formation of the first collaborative practice group in Texas and has acted as an adjunct professor for several scholastic institutions, where he has taught mediation and collaborative law.



Lawrence R. Maxwell, Jr., an attorney, mediator, arbitrator, and practitioner of collaborative law in Dallas, participated in the 1989 Mediation Training Seminar sponsored by the Dallas Bar Association. He is a co-founder and past chair of the ADR Section of the Dallas Bar Association; a charter member and past president of the Association of Attorney-Mediators; a co-founder and current chair of the DBA's Collaborative Law Section, and a founding director and president of the Texas Collaborative Law Council.



Tom McDonald served 12 year as District Judge of the 85th Judicial District of Texas after his initial election in 1978; he is now a Senior District Judge. For 6 years, he served as a JAMS/Endispute Judicial Panelist before opening his own ADR practice. He has served on the ADR Section Council, the Task Force on Quality of ADR Practice in Texas, and the Texas Supreme Court's Advisory Committee on Court-Annexed Mediations. TMCA Credentialed Distinguished Mediator since 2004.

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Deborah Heaton McElvaney is a partner with the Houston firm Dillard, McElvaney & Kovach, L.L.P. Prior to her partnership, Debbie served as briefing attorney for Justice Pressler, 14th Court of Appeals; research attorney for Chief Justice Frank Evans, 1st Court of Appeals; and associate attorney and participating attorney with two Houston law firms. A Special Education Hearing Officer and Mediator for TEA and a commercial arbitrator for AAA, Debbie served as Chair and Secretary of SBOT's ADR Section and Chair of HBA's ADR Section.



Gary McGowan, of Houston, helped persuade Harris County judges to begin referring cases to mediation. He has mediated over 2,000 cases and has a long history of service to the ADR profession. For further references to McGowan, see Mike Amis's article in this newsletter.



Dale Messerle completed both the 40-hour mediation course and the advanced family mediation training at the Austin DRC in 2003. He took additional training with the Texas Department of Family and Protective Services for family group conferencing, as well as CPS mediation. Dale, who works as a paralegal and investigator for a law firm, mediates within a 75-mile radius of Bexar County. A TAM director, he co-organized TAM's 2007 annual conference in San Antonio.



Joseph H. Mitchell graduated from Columbia University School of Law in 1972 and served the EEOC as an attorney in Chicago, Detroit, and Dallas from January 1973 through August 1985. He entered private law practice in September 1985, where he remained until January 1997, when he rejoined the EEOC as the last Regional Attorney of the Denver District Office. He joined the ADR Unit in the Dallas District Office in August 2007.



Lanelle Montgomery. SBOT ADR Section, Co-Chair; SBOT ADR Committee, Co-Chair; AA White Dispute Resolution Institute Advisory Board Member; Center for Public Policy Dispute Resolution, Board of Advisors; Travis County Bar Association Alternative Dispute Resolution Committee, Settlement Week Co-Chair; Austin Association of Mediators, Board of Directors, President; Austin DRC, Mediator; Texas Mediator Trainers' Roundtable; Supreme Court Advisory Committee on Court-Annexed Mediations; established Parent/Adolescent Mediation Project, Austin DRC; established Migrant Workers/Growers Dispute Resolution Project, Texas Valley.



Charlsie Moore, a volunteer mediator at the DRC in Montgomery County, was named a Super Mediation Volunteer at TAM's 2006 annual conference in Austin. Says Charlsie, "In 1995, I moved to Conroe and took a mediation class from Kathy Bivings-Norris. During the last eight years of mediating, I've seen so many problems solved, met so many wonderful people, and learned so much. I feel very privileged to be included in the process."



Cecilia H. Morgan, associated with JAMS since March 1994, has mediated, arbitrated, and/or facilitated over 2,000 cases. A Life Fellow for the State Bar of Texas and the Dallas Bar Association, Cecilia has served as an officer and director of the Association of Attorney-Mediators, is a former national chair for the Legislation Committee of the American Bar Association Section of Dispute Resolution, is a TMCA Credentialed Distinguished Mediator, and currently serves as Chair of the State Bar of Texas ADR Section Council.



La Verne Morrison has been employed with the EEOC-Houston District Office for 28 years. She worked as an Investigator for many years prior to becoming an internal ADR Mediator. She has successfully facilitated and negotiated settlement of hundreds of cases during her tenure with EEOC. La Verne served with the U.S. Army as a Finance Specialist in Augsburg, Germany. She holds a B.B.A. degree from Texas Southern University and a J.D. from Thurgood Marshall School of Law.



Joe Nagy, of Lubbock, was President of the State Bar of Texas when the Texas ADR Procedures Act became law in 1987. He actively traveled the state in 1987 and 1988, urging local bars to become educated about this new tool called ADR. In the January 1988 *Texas Bar Journal*, he wrote, "A lawyer's first calling is that of a problem solver. One way to solve a client's problem is to keep him away from the courthouse."



Dan A. Naranjo, a mediator/arbitrator since 1989, has assisted in resolving hundreds of disputes in areas such as business, civil, construction, Olympic Sports, professional malpractice, real estate, and international commercial transactions. He has a distinguished record of service as a former U.S. Magistrate (Western District of Texas), San Antonio Bar Association president, co-founder and Chairman of the Board of the San Antonio Bar Foundation, and member of the State Bar of Texas board of directors.

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Thomas C. Newhouse, BA, Notre Dame (1957); JD, University of Tulsa College of Law (1962); L.L.M., New York University (1966). Joined faculty at UH Law Center (1966), where he taught Civil Procedure, Labor Law, Family Law, Alternative Dispute Resolution, Mediation Clinic. Member ADR Section, HBA, SBOT, ABA, TAM, ACR, TMTR. Teaches Mediation Clinic and is Trainer, A. A. White Dispute Resolution Center at UH Law Center.



Chris Nolland, of Dallas, mediates and arbitrates about 50% of the time, but in the balance of his practice, he acts as special settlement and negotiation counsel, in a non-neutral capacity, representing parties in major litigation. Chris takes responsibility for settlement negotiations while the litigators press the case to trial. He has been an Adjunct Professor of Law at SMU Law School for many years, teaching Negotiation to second- and third-year law students.



Nancy Stein Nowak has been a Magistrate Judge for the Western District of Texas since 1989. She was previously Assistant U.S. Trustee and Assistant U.S. Attorney in bankruptcy matters. She began her career as a solo general practitioner in Washington, D.C., and is licensed to practice law in Washington, D.C., Iowa, and Texas. Judge Nowak completed basic and advanced mediator training in 1991, has been ADR coordinator for the San Antonio Division of the WDTX.



Melinda Ostermeyer, currently an organizational consultant and executive coach in Washington, D.C., served as director of the Dispute Resolution Center in Harris County from 1984-1989. She has consulted with foreign justice systems to create national mediation programs. Melinda has worked in Bolivia, Costa Rica, Croatia, El Salvador, Mexico, Nicaragua, Nigeria, Philippines, Tanzania and Zambia. (<http://www.melindaostermeyer.com/>)



Laura Otey, M. Ed. LPC, LMFT, is the Director of Employee Relations for Austin Independent School District. She teaches conflict-resolution courses at Abilene Christian University, University of Arkansas in Little Rock, and St. Edward's University in Austin. She was one of the founders of the Intergovernmental Conflict Resolution Program in Austin and is a co-chair for TMTR. She and her husband founded Otey Associates, which trains and consults in the field of conflict resolution.



Robert Otey, M. Ed., Ph.D., is Director of the Educational Administration Program at Concordia University-Texas in Austin. Active in training, consulting, and teaching in the area of conflict resolution since the early 1990s, he now teaches conflict-resolution courses at Abilene Christian University, University of Arkansas in Little Rock, and St. Edward's University in Austin. He and his wife founded Otey Associates, which trains and consults in the area of conflict resolution for private enterprise, school districts, religious groups, and individuals.



Austin M. O'Toole was trained as a mediator in 1981 in the second class offered by Houston's Neighborhood Justice Center (now the Dispute Resolution Center). He has mediated hundreds of cases, primarily as a volunteer mediator in Houston and Galveston. A TMCA Credentialed Distinguished mediator, he is currently the Chair of the Houston Bar Association's ADR Section and Co-Chair of TAM's annual conference to be held in Galveston on February 29 and March 1, 2008.



Mark Packard, Attorney, has been a volunteer for the Dispute Resolution Center of the Panhandle Regional Planning Commission in Amarillo since 1995. "When I mediate a court case, I think about the citizens who might be called away from home or work for jury duty in that case. For working people in our community, even a day or two off the job can be a major financial hardship. We owe it to them to make a good-faith effort to settle our own disputes."



John P. Palmer, a former briefing attorney for federal Judge Walter S. Smith, Jr., is a partner with the Waco firm of Naman, Howell, Smith & Lee, L.L.P. He serves as an arbitrator and mediator in a variety of civil disputes. A past President of the McLennan County Dispute Resolution Center (1996-1997), past Chair of the ADR Section (1997-1998), and past President of TAM (2001-2002), he received the Frank Evans Award in 2001. He is a TMCA credentialed mediator.



Walter E. (Rip) Parker is a 1963 graduate of Southern Methodist University School of Law. He is licensed to practice law in the State of Texas, the Northern District of Texas, and the Fifth Circuit Court of Appeals. While litigating, Rip handled cases on both sides of the docket. Rip has been a full-time mediator since 1990, and he has conducted over 4,500 mediations in divergent areas of civil disputes.

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WHO'S WHO IN TEXAS ADR

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Jay Patterson was the first mediator elected judge in Dallas. Retired January 1, 2007, after serving 12 years as judge of the 101st District Court. Past president of AAM. Recruited by Steve Brutsche' (about 1991) to train attorneys and judges as mediators. Served on Texas Supreme Court Advisory Committee on Court-Annexed Mediation that drafted Ethical Guidelines for Mediators approved by the Supreme Court on June 13, 2005. Co-Chair, Founders Board, UNT College of Law.



Mike Patterson, of Tyler, serves on the ADR Section's Council. He has almost 20 years of experience as a trial lawyer in state and federal courts, plus more than 10 years of experience as a full-time mediator, having conducted over 1,400 mediations. A member of TAM and AAM, he has been president of the East Texas Trial Lawyers Association (1993-1994) and the Smith County Bar Association (1987). He received a J.D. from Southern Methodist University in 1977.



Maureen Peltier, M.Ed., J.D., a board-certified specialist in family law, embarked early in her legal career to become the best mediator and negotiator she could be. In 1982, she studied mediation under John Haynes, Ph.D., recognized as the father of family mediation. In 1993, she enrolled in the Harvard Negotiation Project and learned negotiation skills under Roger Fisher, the widely recognized expert on principled negotiation. She is a founder of TAM. Maureen is now a leader and teacher of collaborative law.



Katherine S. Perez, Regional ADR Coordinator for the EEOC, oversees the agency's mediation programs in the Dallas District Office, San Antonio Field Office, and El Paso Area Office, which mediate employment-discrimination cases throughout Northern, Western, and Southern Texas, as well as, Southern New Mexico. Ms. Perez, who graduated with honors from St. Mary's University (BBA) in San Antonio, has been with the Commission for over thirteen years.



Susan G. Perin is an attorney-mediator and arbitrator in Houston, Texas, with over 16 years of experience. She has been an educator in dispute resolution, training over 800 attorneys in mediation and serving for 6 years as an Adjunct Professor in Mediation at the University of Houston Law Center. She has been nationally recognized for her volunteer mediations between employers and members of the armed forces. Susan is a frequent speaker and author on dispute resolution topics.



Andrew Jackson (Jack) Pope, Jr. served as Associate Justice of the Supreme Court of Texas from 1964 to 1982 and as Chief Justice of the same court from 1982 to 1985. He supported Judge Frank Evans in his efforts to establish ADR in Texas. He also supported legislative ADR efforts, including the ADR Systems and Financing Act of 1983.



W. Thomas (Tommy) Proctor, currently President of the Houston Bar Association, has been a full-time mediator and arbitrator since 1990. A pioneer of court-annexed mediation, he served as national President of AAM in 1992-1993, and was honored with its Steve Brutsche Award in 2000. A Fellow of the International Academy of Mediators, Tommy served as a council member for the SBOT ADR Section from 1993-1996. Texas Monthly has three times named him a Texas Super Lawyer.



Brenda Rachuig, Executive Director of the Association of Attorney-Mediators, works in its National Office in Dallas. Brenda joined the organization in 1999, and she has aggressively marketed the group in order to achieve its current visibility in 23 states. Brenda coplans and co-markets the AAM Advanced Attorney-Mediator Trainings, held twice each year, and she enjoys making these trainings a powerful aid for people in the ADR arena. (See www.attorney-mediators.org)



Alan Scott Rau, Burg Family Professor of Law at UT School of Law, received his B.A. and LL.B. from Harvard University. Rau is the co-author of *Processes of Dispute Resolution: The Role of Lawyers* (4th ed. 2006) and of *Rau, Sherman & Shannon's Texas ADR & Arbitration* (West 2000), and is also the author of numerous law review articles dealing with ADR and arbitration. He has taught ADR and Contracts as a visiting professor at distinguished universities in Canada, China, Switzerland, and France.



Ed Reaves is the Executive Director of the Hill Country Alternative Dispute Resolution Center in Kerrville, which provides mediation services to eight counties in the Texas Hill Country. He is a TMCA Credentialed Advanced Mediator. He graduated from UT School of Law in 1970, and is licensed by SBOT.

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WHO'S WHO IN TEXAS ADR
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Josefina Muñiz Rendón, third-party neutral since 1980; mediator since 1993; former President, Texas Association of Mediators; Houston Municipal Judge (1983-present); former editor of *The Texas Mediator*; former Vice-chair, Houston Civil Service Commission (1980-1983); graduate, University of Houston Law Center (1976); frequent author/speaker on ADR; former chair, publications committee of the State Bar ADR section; former council/board member, SBOT-ADR Section, Houston Bar-ADR Section, and Association for Conflict Resolution (Houston Chapter).



Ann Ryan Robertson, J.D., LL.M., is an attorney with Ajamie LLP in Houston, where her practice focuses on domestic and international arbitration and litigation. She is one of 20 U.S. delegates to the ICC Commission on International Arbitration, a Fellow of the Chartered Institute of Arbitrators (the only woman in Texas to hold this distinction), a founding member of ArbitralWomen, and a coach for the University of Houston Law Center's Vis International Commercial Moot team.



Luciano Adrian Rodriguez, a lawyer for 32 years, has practiced in Laredo since 1980, and he has been a mediator and arbitrator since 1987. He concentrates on mediation and arbitration of high-dollar personal injury court-annexed matters. Frequently writing on mediation topics, Luciano is a past President of TAM, former member of the ADR Section Council, and past President of the Laredo-Webb County Bar Association. He is currently working to publish a mediation guide for attorneys.



James W. (Jim) Rosborough provides mediation, negotiation coaching, training, and facilitation services. He has been mediating for 18 years and teaching negotiation skills for 30 years. His primary clients are the EEOC, U.S. Postal Service, and the Houston Police Department's Citizen Mediation Program. He is a Lecturer and Adjunct Associate Professor, Jones Graduate School of Administration, Rice University, having taught Negotiation Seminars for 1,000 executives over the past 26 years.



Naomi Rosborough, MA, LPC, LMFT, LCDC, became a mediator in 1989 and mediated family and special education disputes. She was recognized as Volunteer of the Year by the Harris County DRC. In addition, she is a Licensed Professional Counselor and a Licensed Marriage and Family Therapist. She has received intensive training in psychological trauma, and is co-founder of the Houston-Galveston Trauma Institute, offering psychological trauma training to health professionals. Naomi now devotes her energies to working in the field of trauma.



Leo C. Salzman is a board-certified attorney in both personal injury and civil trial law. He was director for the Texas Association of Defense Counsel and the ADR Section. He has served as president of the Cameron County Bar Association and panel chair for the 12B Grievance Committee. He has practiced law for over 30 years and has arbitrated and mediated over 3,000 matters.



Michael J. Schless was Founding Co-Chair, ADR Section, Austin Bar Association (1992-93); President, Texas Association of Mediators (1995-96); Member, Supreme Court Advisory Committee on Court-Annexed Mediation (1996-2005); Chair, State Bar ADR Section (2003-04). He has been a Fellow of the Center for Public Policy Dispute Resolution since 1994 and AA-M's representative on the TMCA Board of Directors since 2004. He received TAM's Suzanne Adams Award in 2003 and the ADR Section's Justice Frank Evans Award in 2006.



Susan B. Schultz, Program Manager with the Center for Public Policy Dispute Resolution at the University of Texas School of Law, is an attorney, mediator, and facilitator. She serves on the Council of the State Bar ADR Section, currently as secretary. She is a lecturer with the UT School of Law, teaching public policy dispute resolution.



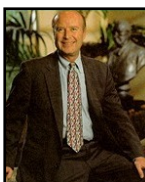
L. Wayne Scott, Professor of Law and Director of Conflict Resolution Studies, St. Mary's University, and Senior Editor of the State Bar of Texas Civil Digest, is also a mediator, a negotiation consultant, and a consultant on appeals. Professor Scott is certified by the Texas Board of Legal Specialization in Civil Appellate, Civil Trial, and Personal Injury law.

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WHO'S WHO IN TEXAS ADR
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Brian Shannon is a law professor at Texas Tech Law School, where he has taught since 1988. He served on the old State Bar ADR Committee beginning that year and later served on the ADR Section Council. He has published, taught, and lectured on ADR topics, and serves on the Lubbock DRC Advisory Board. He helped Texas fight adoption or consideration of the UMA, and is a past winner of the Justice Frank Evans Award.



Edward F. Sherman is the Moise F. Steeg, Jr. Professor of Negotiations at Tulane University. Before teaching at Tulane, he served on the faculty of UT School of Law for 19 years, where he was the Edward Clark Centennial Professor of Law. He played a major role in drafting the ADR Act and shepherding it through the Texas Legislature. See Lisa Weatherford's article in this newsletter for further details of his efforts.



Maxel (Bud) Silverberg, BBA, MBA, JD, has mediated and arbitrated over 3,000 cases. He chaired the committee that created the Ethical Guidelines for Mediators, later adopted by the Texas Supreme Court. An adjunct professor at SMU Law School, past president of Association of Attorney-Mediators, member of the Texas Supreme Court Advisory Committee on Court-Annexed Mediations, and member of the SBOT ADR Council, Bud received the American Arbitration Association's Steve Brutsche Award, and with his wife, Rena, the Justice Frank Evans Award.



Rena Silverberg, MSW, an experienced family mediator and mediator trainer, designed courses and trained family mediators for the Attorney-Mediators Institute, Dispute Mediation Service (Dallas), and other groups. A former member of the SBOT ADR Council, the Texas Mediation Trainers' Roundtable, and the Texas Association of Mediators, Rena was appointed to the Texas Supreme Court Advisory Committee on Court-Annexed Mediations. Rena and her husband, Bud, were co-recipients of the 2005 Justice Frank Evans Award.



Karl A. Slaikou, Ph.D., is founder and CEO of CHORDA Conflict Management, Inc. Trained as a psychologist, Karl is the author of *When Push Comes to Shove: A Practical Guide to Mediating Disputes*, as well as other books and articles on crisis and conflict resolution. Since 1987, he has partnered with CHORDA colleagues and client teams in the design, implementation, and evaluation of "early resolution" systems for companies such as General Electric, Halliburton, Shell, and Coca-Cola Enterprises, as well as healthcare, religious, and non-profit organizations.



Thomas J. Smith, who received B.A. and LL.B. degrees from UT, has mediated over 1,000 cases. He is a past national director of AAM, past President of the San Antonio Chapter of AAM, and a member of TAM. He is currently Chairman of SABA's ADR Section. He has been named a "Super Lawyer" by *Texas Monthly* every year since 2003 and listed as one of San Antonio's best lawyers in *Scene in SA Monthly*. Woodward/White Publishers named him one of the Best Lawyers in America.



Susan S. Soussan, from 1977-1994, was an attorney/partner in a Houston, Texas law firm concentrating in business litigation. Thereafter, former Governor Ann Richards appointed her as Judge of the 270th District Court, Harris County, Texas. She became a mediator in 1990. Since 1995, as a full-time mediator and arbitrator, she has mediated over 5,000 matters and arbitrated over 75 disputes. Susan's mediation and arbitration practice has included multi-million/ billion dollar complex commercial litigation, intellectual property litigation, and class actions.



Chuck Speed, citizen mediator since 2000, is a volunteer for the Dispute Resolution Center of the Panhandle Regional Planning Commission in Amarillo. "Mediation is one of the most rewarding volunteer services one can perform. If we're successful, it is because we resolve difficult issues between parties. You just don't get that with other volunteer opportunities."



Sid Stahl has been recognized as one of the original and more prominent mediators in Texas. *Texas Lawyer* has referred to him as the "Dean of the Dallas Mediators." Since 1989, he has mediated over 1,750 cases throughout the country and has trained over 2,000 attorneys to be mediators. He received undergraduate and law degrees from SMU, where he has been a member of the Adjunct Faculty, teaching Dispute Resolution. In 1991, he received SMU Law School's Distinguished Alumni Award.



Ross W. Stoddard, III, full-time mediator in Las Colinas (Irving); practiced law for 15 years; trained as a mediator in 1989; conducted 3,500+ mediations involving \$20+ billion in aggregate claims; teaches Effective Negotiations in the SMU EMBA Program; conducts mediation trainings; authored a chapter in ABA's *The Litigator's Handbook*; married to his first wife, June, for the past 15 years; has two stepsons and a rescued Golden Retriever.

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WHO'S WHO IN TEXAS ADR

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Bruce Stratton, of Liberty, was admitted to SBOT in September 1968 and has mediated since 1987. ADR Section Council Charter Director (1992), Chair (1994-1995). SPIDR Regional V. P. (1995-1996). TAM Director (1997-2002), President (2001-2002). Co-Chair, Texas Supreme Court Advisory Committee on Court-Annexed Mediations (1996-2002). Evans Award (1999). Adams Award (2004). President, Liberty-Dayton Area Chamber of Commerce (1994-1995). President, Liberty Rotary Club (1995-1996). Liberty Citizen of Year (2000). President, Liberty County



Jan Summer is Executive Director and originator (1993) of the Center for Public Policy Dispute Resolution (CPPDR) at the University of Texas School of Law (UT). CPPDR provides statewide assistance to governmental agencies, public interest groups, and courts for the design and implementation of alternative dispute resolution processes. After receiving her J.D. in 1976 from UT, Summer was Briefing Attorney for Chief Justice Joe Greenhill. From June 1989 to May 1991, she chaired the SBOT Standing Committee on Alternative Methods of Dispute Resolution.



Tracy Tarver is a dispute resolution officer at The University of Texas at Austin, Human Resource Services, Employee and Management Services. She combines her mediation and facilitation experience with her professional training to provide dispute resolution processes and training to employees in workplace conflict. Ms. Tarver was formerly with Center for Public Policy Dispute Resolution at The University of Texas School of Law, where she particularly enjoyed assessing and providing third-party services to governmental multiparty conflicts.



Mary Thompson, a facilitator, mediator, and trainer with Corder/Thompson & Associates in Austin, received her initial mediation training in the 1980s while working at the Austin DRC. She has since been involved in various state and national mediation initiatives, including the convening processes for the Texas Mediation Trainers Roundtable, the Texas Mediator Credentialing Committee, and the Center for Public Policy Dispute Resolution. With Judy Corder, she currently specializes in dialogue, problem solving, and conflict management for groups and communities.



E. Wendy Trachte-Huber is a private consultant and trainer in negotiation, mediation, and conflict resolution. She provides training and consulting to corporations and law firms. She has served as Claims Administrator for the Settlement Facility – Dow Corning Trust, Vice President of AAA, Director of the A.A. White Dispute Resolution Institute at the University of Houston College of Business Administration, co-chair of the ADR Section, and President of TAM. She has authored numerous books and articles in the ADR field.



Deborah Henshaw Urbanski is the Supervisory Attorney-ADR Coordinator for the Houston and New Orleans offices of the EEOC. Prior to EEOC, she founded a successful ADR corporation in Houston, Texas. She was the founding Executive Director of the Fort Bend County DRC. She directed special projects for the A. A. White Dispute Resolution Institute. A graduate of the University of Texas and South Texas College of Law, Deborah is licensed by the State Bar of Texas.



Meg Walker found her calling in 1994 after graduating from UH Law Center. Her mediation career has been driven by a passion for helping people resolve conflict in difficult settings such as schools, juvenile justice facilities, the USPS and CPS. She has dedicated much of her time to the advancement of the profession through service to ACR, Texas AFCC, HBA and particularly TAM. Today, she lives in Galveston, where she mediates CPS and family cases.



Rosemary Rodgers Walker has been a federal employee for twenty years. She is a Program Assistant in the Alternative Dispute Resolution Mediation Unit of the Dallas District Office of the EEOC. She receives cases for mediation and assigns them to in-house mediators as well as outside contract mediators. She also calls parties to find out if they are interested in mediation. She enjoys mediation because she strongly believes in the peaceful resolution of conflicts.



George A. Walton, Jr., of San Antonio, is founder and owner of AMetamorphosis, a mediating, training, and personal management consulting agency. He received his B.S. degree in Occupational Education from Southern Illinois University at Carbondale, Illinois. George retired as a Chief Master Sergeant from the United States Air Force after serving over thirty years. A TMCA Credentialed Distinguished Mediator, he was honored as a Super Mediation Volunteer at TAM's 2006 annual conference.

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WHO'S WHO IN TEXAS ADR

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Tracy H. Watson, an urban planner/director in three major urban areas for 20 years, started his focus on ADR in 1994, becoming a Fellow of the U. T. Center for Public Policy Dispute Resolution. After further ADR training, he established the City of Austin's Dispute Resolution Office for mediation of public policy, land use/zoning issues. Since 2003, he has a private practice focusing on the public policy arena. Member TAM, TMCA, ACR, USIECR. Website: www.WatsonADR.com.



Mark Whittington helped Steve Brutsché and Judge Gary Hall begin a mediation program for the civil district courts in Dallas County in 1987. In 1989, as local administrative judge, he worked with the Dallas County Commissioners Court to obtain funding for an administrative position to oversee a mediation program for the civil district courts and county courts at law. When elected to the 5th District Court of Appeals in 1993, he developed an appellate ADR program for that court, which remains in effect.



Michael S. Wilk has mediated and arbitrated complex commercial disputes for over 20 years. He has promoted ADR by actively participating in the leadership of ADR organizations. He served as Chair of the ADR Section of the State Bar (2005-2006), National President of Association of Attorney-Mediators (1995-1996), and Chair of the Peer Mediation in Schools Task Force in Harris County (1993-1994). He continues to write and lecture extensively on arbitration and mediation.



Helmut Wolff, who worked over 37 years for the AAA, pioneered the use of commercial arbitration in Texas and elsewhere. Instrumental in the passage of the Texas General Arbitration Act, he also served on the SBOT Committee on ADR and was co-chair of the ADR Practice Committee. He actively worked with the Committee in the adoption of the ADR Act. Although he retired in 1999 as Vice President of AAA's Dallas Regional Office and Case Management Center, he remains active in ADR in various capacities.



Sharolyn Wood is the Presiding Judge of the 127th Judicial District Court and the senior civil judge in Harris County. Judge Wood, an early and strong supporter of ADR in Harris County, was first appointed to the bench in 1981 and has received many honors, including Trial Judge of the Year. She currently serves on the Texas Judicial Council. Judge Wood is a graduate of Rice University (1970) and the University of Texas School of Law (1973).



Justice Carolyn Wright, Fifth District Court of Appeals, is a trailblazer in Texas ADR. She was one of three Texas judges to first order mandatory mediation in child custody litigation in 1987. Her service in the judiciary spans over almost 25 years, during which she has served on national, state, and local ADR boards. She is the recipient of awards and acknowledgments for her assistance in efforts to formulate and draft national standards for court-annexed mediation and state credentialing.



Susan Z. Wright promoted ADR throughout Collin, Rockwall, and Kaufman Counties. She procured a grant to provide sliding-scale mediation services for low-income families through Legal Aid and coalesced the support of CPS, CASA, district attorneys, and judges to establish CPS mediations in the same counties, also obtaining a grant to train attorneys as CPS mediators. She was co-founder/chair of the ADR section of the Collin County bar and initiated Settlement Week in Rockwall County.



Alvin L. Zimmerman serves on the ADR Section's Council. A former municipal court and district court judge, Zimmerman is one of the most active mediators in Harris County. He has received the Frank G. Evans Mediator of the Year Award given by South Texas College of Law's Center for Legal Responsibility (1998) and the Karen Susman ADL Jurisprudence Award as the outstanding attorney in the community (2000). A Fellow in the International Academy of Mediators, he serves as its president for the 2007-2008 term.

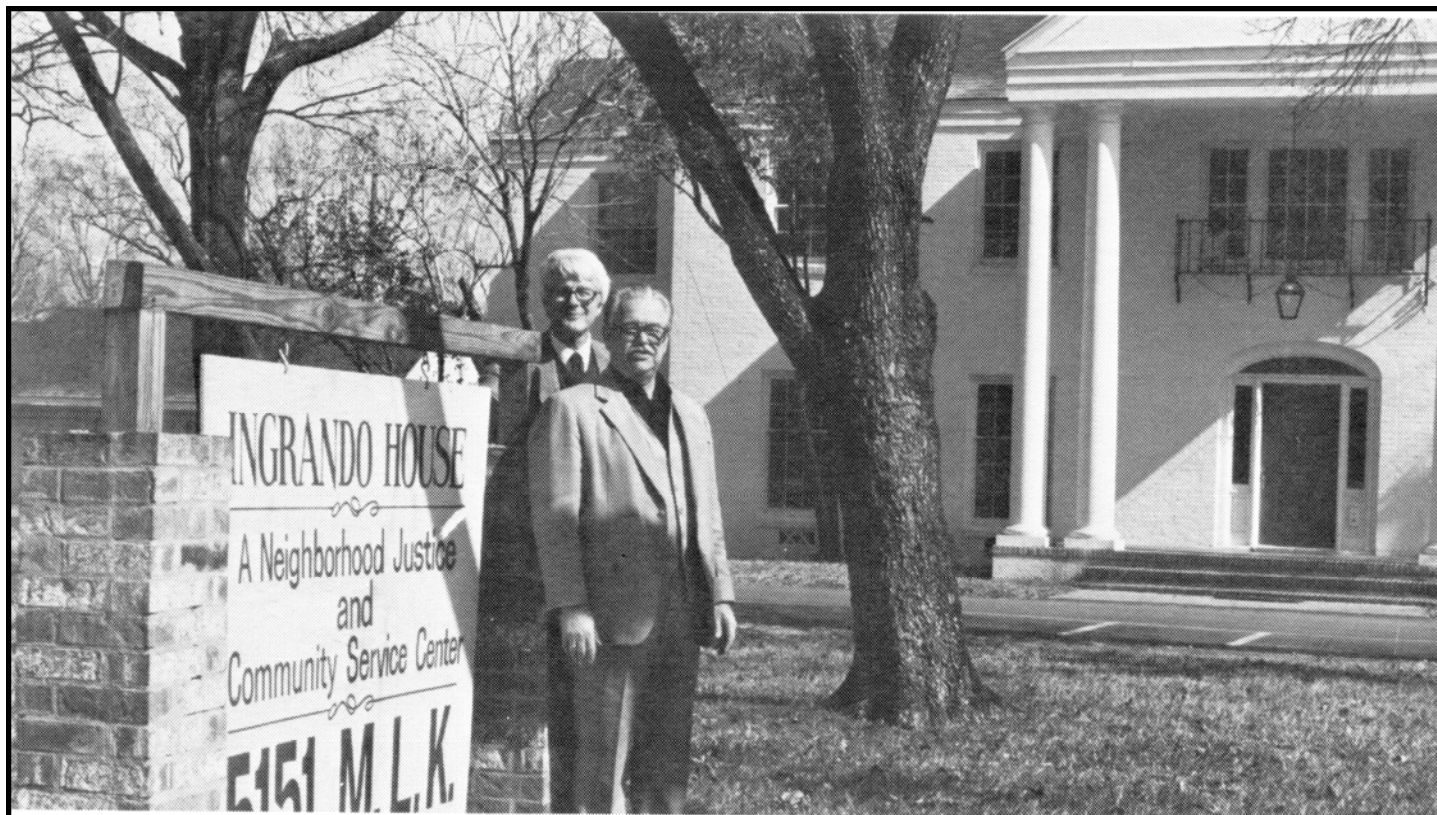


ALTERNATIVE DISPUTE RESOLUTION ACRONYMS USED IN TEXAS

AAA	American Arbitration Association	JD	Doctor of Jurisprudence degree
AAM or AA-M	Association of Attorney-Mediators	LCDC	Licensed Chemical Dependency Counselor
ABA	American Bar Association	LL.M.	Master of Laws degree
ACR	Association for Conflict Resolution	LLP	Limited Liability Partnership
ADR	Alternative Dispute Resolution	LLC	Limited Liability Company
ADR Act	Alternative Dispute Resolution Procedures Act (Chapter 154 of the Texas Civil Practice and Remedies Code)	LMFT	Licensed Marriage and Family Therapist
ADR Section	Alternative Dispute Resolution Section of SBOT	LP	Limited Partnership
AFM	Academy of Family Mediators (now merged into ACR)	LPC	Licensed Professional Counselor
Adams Award	Susanne Adams Award of TAM	MA	Master of Arts degree
BA	Bachelor of Arts degree	M. Ed.	Master of Education degree
BCDRC	Bexar County Dispute Resolution Center	MS	Master of Science degree
CAD	County Appraisal District	MSW	Master of Social Work degree
CPA	Certified Public Accountant	NAFCM	National Association for Community Mediation
CPPDR	The Center for Public Policy Dispute Resolution (UT School of Law)	NASD	National Association of Securities Dealers
CPS	Child Protective Services	NASDR	National Association of Securities Dealers Regulation
CREnet	Conflict Resolution Education Network (now merged into ACR)	NYSE	New York Stock Exchange
DBA	Dallas Bar Association	PC	Professional Corporation
DCAP	Denton County Alternative Dispute Resolution Program	Ph.D.	Doctor of Philosophy degree
DMS	Dispute Mediation Service (Dallas, Texas)	PI	Personal Injury
DR	Dispute Resolution	SABA	San Antonio Bar Association
DRC	Dispute Resolution Center	SMU	Southern Methodist University
EEOC	U.S. Equal Employment Opportunity Commission	SBOT	State Bar of Texas
Evans Award	Frank G. Evans Award of the ADR Section	SPIDR	Society of Professionals in Dispute Resolution (now merged into ACR)
Evans Center	Frank G. Evans Center for Conflict Resolution at STCL	STCL	South Texas College of Law
FMCS	Federal Mediation and Conciliation Service	TAM	Texas Association of Mediators
HBA	Houston Bar Association	TEA	Texas Education Agency
IP	Intellectual Property	TMCA	Texas Mediator Credentialing Association
		TMTR	Texas Mediation Trainers Roundtable
		TSU	Texas Southern University
		UH	The University of Houston
		USIECR	U.S. Institute for Environmental Conflict Resolution
		UT	The University of Texas

THE FATHER OF ADR: JUDGE FRANK EVANS

THE BEGINNING OF THINGS TO COME...



Judge Evans is pictured here, with Joe Bart, in front of Ingrando House, an early intake center for what is now the Dispute Resolution Center in Harris County.



**Early logo for what is now the
Dispute Resolution Center
in Harris County**



TEXAS MEDIATOR CREDENTIALING ASSOCIATION

Announces Credential Holders for 2007

QUALIFICATIONS AND CREDENTIALS MATTER

Insist on mediators who are credentialed by the Texas Mediator Credentialing Association

CREDENTIALLED DISTINGUISHED MEDIATORS

Hon. Ted M. Akin
Nancy E. Algert
Mike Amis
Sharon Bayus
Edward Trey Bergman III
Jacqueline Blankenship
Will Cannon
Coye Conner, Jr.
Diana C. Dale
Suzanne Mann Duvall
Kay Elkins Elliott
N.J. Jim Farrell
La Crisia Gilbert
Kip Glascock
Melanie E. Grimes
M.S. "Frost" Haenchen
Susan G. Herzfeld
Brodrick W. Hill
J.L. Larry Hinojosa
Sheikha S. Hobeiche
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Promoting Quality Mediation Throughout Texas
www.txmca.org

VOLUNTEER APPRECIATION CELEBRATION 2007

On Thursday, April 26, 2007, sixty-one volunteer Travis County DRC mediators and their guests on board the Lone Star Riverboat during an evening cruise down Town Lake.



Harris County DRC



2005 Harris County DRC Luncheon



**Judges John Coselli and Frank Evans
converse at the Harris County DRC
Luncheon.**



**Early 1990 Basic mediation Training at the
Harris County DRC.**

ADR PROFESSIONALS AT PLAY



Chris Nolland on the town. "The car is a 1962 Jaguar Mark II which I restored in 1988 and again this year. The dog's name was "Bubby", an English Bulldog. He passed away last year at the age of 10. His successor Bulldogs are Sam and Charlie."



Jeff Kilgore cruising out on Galveston Bay to engage in a little bird watching.

Michael Clann, an admiralty lawyer who mediates admiralty cases, can't stay away from boats or water.



Charlsie Moore enjoying some natural beauty.



Former SBOT ADR Section Chair, Former TAM President E. Wendy Trachte-Huber turns into Trout Tramp and shows her proud catch on the Madison River in Montana. This beautiful fish was returned to the river to catch another day. Trachte-Huber has found her passion in fly-fishing and works to fish.



Allen Scott Rau in gay Paris!



**Barbara Vickers &
Howard Bleekman
Central Brazos
Valley DRC**



**Herb Cooke and
Chris Gilbert
Dallas DMS**



**Bexar County DRC's
Information Booth**



**Annual Holiday Celebration
Honoring Volunteer Mediators
Bexar County DRC**



**Pam Coffey & Mediator
Wade Byrd
Panhandle DRC**



**Early 1990 Training at the
Harris County DRC**

Texas' Dispute Resolution Centers



**Marlene Labenz-Hough presents
an award to Norma Guerra
Bexar County DRC**



**State Rep. Elliott Nashtat-D, as
keynote speaker at the 2003 Peace
Maker Awards Ceremony
Travis County DRC**



**Joe Longley, Karl Spock & Susan B. Schultz
Travis County DRC**



Nueces County DRC

FUTURE TEXAS MEDIATORS



Tynan Elementary Peer Mediators
AISD, Austin, TX

Peer Mediator and Sponsors
Harris Middle School
Austin, TX



Outstanding Peer Mediation Program
Heritage Elementary School

2007 CALENDAR OF EVENTS

Transformative Mediation Training ★ Dallas ★ Dispute Mediation Service ★ October 17, 18, 19, 2007. ★ For more information, contact Nancy K. Ferrell at 214-526-4525 or nkferrell@sbcglobal.net. or www.dms-adr.org

ACR 7th Annual Conference ★ Phoenix, AZ ★ Association for Conflict Resolution ★ October 24-27, 2007 ★ For more information Call 703-685-4130 or email ACRconf@aol.com Web Site <http://www.acrnet.org/>

Mediation-At-Sea Cruise: Bermuda ★(from New York) ★ Mediation Training Institute International ★ November 4-11, 2007 ★ For more information email info@mediationworks.com or call 888-222-3271 <http://www.mediationworks.com/mti/cruise>

40-Hour Basic Mediation ★ Dallas ★ Dispute Mediation Service Nov. 8,9,15,16,17, 2007 ★ For more information, contact Nancy K. Ferrell at 214-526-4525 or nkferrell@sbcglobal.net. or www.dms-adr.org or DMS at 214-754-0022

Family and Divorce Mediation Training ★ Houston Worklife Institute ★ November 14-17, 2007 ★ Trainers: Diana C. Dale, TMCA Credentialed Distinguished Mediator, D.Min., LMFT, AAC; Elizabeth F. Burleigh, J.D. ★ For more information, contact www.worklifeinstitute.com or 713-266-2456

TAM Annual Convention ★ Galveston Texas Association of Mediators ★ February 29-March 1, 2008 ★ For more information go to www.txmediator.org.

40-Hour Basic Mediation Houston ★ AA White Dispute Resolution Center ★ January 11-13 continuing 18-20, 2008 ★ For more information contact Robyn Pietsch at 713.743.2066 or rpietsch@central.uh.edu ★ Website: www.law.uh.edu/blakely/aawhite

30-Hour Advanced Family Mediation ★ Houston ★ ★ University of Houston AA White Dispute Resolution Center ★ October 19-20 continuing 26-27, 2007 ★ For more information contact Robyn Pietsch at 713.743.2066 or rpietsch@central.uh.edu ★ Website: www.law.uh.edu/blakely/aawhite

SUBMISSION DATES FOR UPCOMING ISSUES OF *ALTERNATIVE RESOLUTIONS*



Issue

Winter
Spring
Summer
Fall

Submission Date

December 15, 2007
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October 15, 2008

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December 15, 2008

SEE PUBLICATION POLICIES ON PAGE 82 AND SEND ARTICLES TO:

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Phone: 713.743.2066 FAX: 713.743.2097 or rpietsch@central.uh.edu



ENCOURAGE COLLEAGUES TO JOIN ADR SECTION

This is a personal challenge to all members of the ADR Section. Think of a colleague or associate who has shown interest in mediation or ADR and invite him or her to join the ADR Section of the State Bar

of Texas. Photocopy the membership application below and mail or fax it to someone you believe will benefit from involvement in the ADR Section. He or she will appreciate your personal note and thoughtfulness.

BENEFITS OF MEMBERSHIP

✓ Section Newsletter, *Alternative Resolutions* is published several times each year. Regular features include discussions of ethical dilemmas in ADR, mediation

and arbitration law updates, ADR book reviews, and a calendar of upcoming ADR events and trainings around the State.

✓ Valuable information on the latest developments in ADR is provided to both ADR practitioners and those who represent clients in mediation and arbitration processes.

✓ Continuing Legal Education is provided at affordable basic, intermediate, and advanced levels through announced conferences, interactive seminars.

✓ Truly interdisciplinary in nature, the ADR Section is the only Section of the State Bar of Texas with non-attorney members.

✓ Many benefits are provided for the low cost of only \$25.00 per year!

STATE BAR OF TEXAS ALTERNATIVE DISPUTE RESOLUTION SECTION MEMBERSHIP APPLICATION

MAIL APPLICATION TO:

State Bar of Texas
ADR Section
P.O. Box 12487
Capitol Station
Austin, Texas 78711

I am enclosing \$25.00 for membership in the **Alternative Dispute Resolution Section** of the State Bar of Texas from June 2007 to June 2008. The membership includes subscription to *Alternative Resolutions*, the Section's Newsletter. (If you are paying your section dues at the same time you pay your other fees as a member of the State Bar of Texas, you need **not** return this form.) Please make check payable to: ADR Section, State Bar of Texas.

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Public Member _____

Attorney _____

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Bar Card Number _____

City _____ State _____ Zip _____

Business Telephone _____ Fax _____ Cell _____

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ALTERNATIVE RESOLUTIONS

Publication Policies

Requirements for Articles

1. An author who wishes an article to appear in a specific issue of the newsletter should submit the article by the deadline set in the preceding issue of the newsletter.
2. The article should address some aspect of negotiation, mediation, arbitration, another alternative dispute resolution procedure, conflict transformation, or conflict management. Promotional pieces are not appropriate for the newsletter.
3. The length of the article is flexible. Articles of 1,500-3,500 words are recommended, but shorter and longer articles are acceptable. Lengthy articles may be serialized upon an author's approval.
4. All quotations, titles, names, and dates should be double-checked for accuracy.
5. All citations should be prepared in accordance with the 18th Edition of *The Bluebook: A Uniform System of Citation*. Citations should appear in endnotes, not in the body of the article or footnotes.
6. The preferred software format for articles is Microsoft Word, but Word-Perfect is also acceptable.
7. If possible, the writer should submit an article via e-mail attachment addressed to Walter Wright at ww05@txstate.edu or Robyn Pietsch at rpietsch@central.uh.edu. If the author does not have access to e-mail, the author may send a diskette containing the article to Walter Wright, c/o Department of Political Science, Texas State University, 601 University Drive, San Marcos, Texas 78666.

8. Each author should send his or her photo (in jpeg format) with the article.
9. The article may have been published previously or submitted to other publications, provided the author has the right to submit the article to *Alternative Resolutions* for publication.

Selection of Article

1. The newsletter editor reserves the right to accept or reject articles for publication.
2. If the editor decides not to publish an article, materials received will not be returned.

Preparation for Publishing

1. The editor reserves the right, without consulting the author, to edit articles for spelling, grammar, punctuation, proper citation, and format.
2. Any changes that affect the content, intent, or point of view of an article will be made only with the author's approval.

Future Publishing Right

Authors reserve all their rights with respect to their articles in the newsletter, except that the Alternative Dispute Resolution Section ("ADR Section") of the State Bar of Texas ("SBOT") reserves the right to publish the articles in the newsletter, on the ADR Section's website, and in any SBOT publication.

ALTERNATIVE RESOLUTIONS

Policy for Listing of Training Programs

It is the policy of the ADR Section to post on its website and in its Alternative Resolution Newsletter, website, e-mail or other addresses or links to any ADR training that meets the following criteria:

1. That any training provider for which a website address or link is provided, display a statement on its website in the place where the training is described, and which the training provider must keep updated and current, that includes the following:

- a. That the provider of the training has or has not applied to the State Bar of Texas for MCLE credit approval for ____ hours of training, and that the application, if made, has been granted for ____ hours or denied by the State Bar, or is pending approval by the State Bar. The State Bar of Texas website address is www.texasbar.com, and the Texas Bar may be contacted at (800)204-2222.

- b. That the training does or does not meet The Texas Mediation Trainers Roundtable training standards that are applicable to the training. The Texas Mediation Trainers Roundtable website is www.TMTR.ORG. The Roundtable may be contacted by contacting Cindy Bloodsworth at cebworth@co.jefferson.tx.us and Laura Otey at lotey@austin.rr.com.

- c. That the training does or does not meet the Texas Mediator Credentialing Association training requirements that are applicable to the training. The Texas Mediator Credentialing Association website is www.TXMCA.org. The Association may be contacted by contacting any one of the TXMCA Roster of Representatives listed under the "Contact Us" link on the TXMCA website.

2. That any training provider for which an e-mail or other link or address is provided at the ADR Section website, include in any response by the training provider to any inquiry to the provider's link or address concerning its ADR training a statement containing the information provided in paragraphs 1a, 1b, and 1c above.

The foregoing statement does not apply to any ADR training that has been approved by the State Bar of Texas for MCLE credit and listed at the State Bar's Website.

All e-mail or other addresses or links to ADR trainings are provided by the ADR training provider. The ADR Section has not reviewed and does not recommend or approve any of the linked trainings. The ADR Section does not certify or in any way represent that an ADR training for which a link is provided meets the standards or criteria represented by the ADR training provider. Those persons who use or rely of the standards, criteria, quality and qualifications represented by a training provider should confirm and verify what is being represented. The ADR Section is only providing the links to ADR training in an effort to provide information to ADR Section members and the public."

SAMPLE TRAINING LISTING:

40-Hour Mediation Training, Austin, Texas, July 17-21, 2008, Mediate With Us, Inc., SBOT MCLE Approved—40 Hours, 4 Ethics. Meets the Texas Mediation Trainers Roundtable and Texas Mediator Credentialing Association training requirements. Contact Information: 555-555-5555, bigtxmediator@mediation.com, www.mediationintx.com

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