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## Mediation Links

[Resolution Washington, Dispute Resolution Centers](#)

[Mediate.Com, news and mediation services](#)

## A Message from the WMA President

Dear Colleagues:

I hope you are enjoying the beginning of a beautiful Spring; it seems like it's been a long time coming! We've had an exciting last couple of months in the mediation community.

In February, the World Affairs Council sponsored an evening with William Ury. Mr. Ury is affiliated with the Harvard Negotiation Project and is an internationally known mediator. He spoke about his mediation experiences in Chechnya, Bosnia, Sudan and the Middle East.

In March, the WMA co-sponsored two events with Ken Cloke, nationally and internationally known mediator, author, and trainer. Ken provided two inspiring and enlightening presentations at Antioch University. The first presentation was about the new group he and his colleagues are starting, Mediators Without Borders. The idea is initially to become part of teams including Doctors Without Borders and Engineers Without Borders. Apparently, those two groups are encountering quite a bit of conflict in being able to provide their services to local populations. They believe that mediators are needed to smooth their way. The goal is for Mediators without Borders to become a freestanding organization, primarily focusing on war torn regions of the world.

Mr. Cloke's second all day presentation was based on his latest book called *The Crossroads of Conflict*. The day was spent learning skills that would allow us to take parties beyond settlement into forgiveness and reconciliation.

Also in March, the EEOC hosted Basic Mediation Training to the Tribal Employment Rights Organization. Attendees represented Tribes from all over the West, who are considering the creation of a Shared Neutrals Program.

Finally, we are all looking forward to seeing you at the Annual WMA Membership Meeting on May 4<sup>th</sup> at 10 am in Gates Hall on the UW campus. This annual meeting precedes the NW ADR Conference, which starts at 1 pm.

As always, if you have any questions, please contact your Regional WMA Representative or me.

Association for  
Conflict Resolution

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Mediation Quotes

Change means  
movement.  
Movement means  
friction. Only in the  
frictionless vacuum  
of a nonexistent  
abstract world can  
movement or  
change occur  
without that  
abrasive friction of  
conflict.  
Saul Alinsky

Chris Koser  
President

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## 15<sup>th</sup> Annual Northwest ADR Conference



The 15<sup>th</sup> Annual Northwest Alternative Dispute Resolution Conference will be held May 4-5 at the University of Washington Law School. Block these dates out on your calendar, as this conference will be the best ever. In particular, be sure to attend the Saturday lunch to hear an amazing story of murder and reconciliation.

The conference starts in the afternoon of Friday, May 4 and runs all day on Saturday, May 5. Don't miss it!

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## Collaborative Divorce?

Collaborative Divorce is a divorce procedure where two clients agree that they will not go to court, or threaten to do so. The parties strive to reach a fair settlement through a series of four-way meetings (two clients, two attorneys). This new approach to conflict resolution started in the early 1990s by a family attorney named Stu Webb, who had become aware that traditional litigation was not always helpful to families. The collaborative law movement has spread to over 26 states, Europe, Canada, and Australia. You can find the website for the national collaborative group at [collaborativepractice.com](http://collaborativepractice.com).

The key document in a collaborative case is the **participation agreement**, which is the agreement all parties agree to sign stating the rules for the process. They agree to such terms as: the lawyers withdraw if the process fails, neither will take advantage of mistakes by the other side, what is said in 4-way meetings remains confidential, everyone will act courteously and honestly.

When appropriate the group may bring in outside consultants to work in a team-style to help resolve the conflict. In family cases, this might include sharing a business evaluator, rather than each hiring his or her own expert.

Since its inception, collaborative law has spread to other fields of law outside of family law. Practitioners are now applying it to business, probate, employment and personal injury cases.

Early studies are just becoming completed as to its effectiveness. Typically, lawyers and clients are reporting that it can be quicker, cheaper and less painful than a typical divorce. One of the most important features of collaborative divorce is a pledge signed by each lawyer to withdraw if any or both of the parties decide to go to court. Since both of the lawyers will lose the case if an agreement is not reached, they have an extra incentive to help their clients to cooperate and find solutions that honor the concerns of both parties.

Collaborative divorce may not be a good option in certain situations. If there is abuse, threats or violence in the home, drug or alcohol addiction, mental

There are three principles in a man's being and life, the principle of thought, the principle of speech, and the principle of action. The origin of all conflict between me and my fellow-men is that I do not say what I mean and I don't do what I say.

Martin Buber

Peace is not the absence of conflict but the presence of creative alternatives for responding to conflict - alternatives to passive or aggressive responses, alternatives to violence.

Dorothy Thompson

The ongoing conflict between us has caused heavy suffering to both peoples. The future can and must be different. Both our peoples are destined to live together side by side, on this small piece of land. This reality we cannot change.

Ariel Sharon

health disorders, dishonesty, traditional litigation may be more appropriate.

Source: Mediation Week, April 6, 2007.

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## Texas Proposes Mandatory Health Plan Dispute Mediation

Recently introduced legislation in Texas would permit HMOs and Preferred Provider plans to seek mandatory mediation with physician groups in contract disputes, and avoid administrative penalties for not having contacts in place by mediating in good faith. The draft mediation provisions are quite regulatory, preventing mediation until sixty days after giving notice and requiring a "consensus panel" of three mediators (one appointed by each party and a third mediator to chair the panel selected by the party mediators, or the state's health commissioner if necessary), along with other requirements. The costs would be paid by the health plan initiating the mediation. The mediators would be required to report "bad faith" mediation to state authorities leading to significant administrative penalties. Bad faith is specified as failure to send a person with "full authority" who could reach agreement at the mediation, failure to provide information needed by the mediation panel, or insisting on a contract of adhesion.

Source: Mediate.com

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## Katrina Insurance Mediations Largely Successful

On the first anniversary of the Mississippi mediation program for homeowner insurance claims resulting from Hurricane Katrina, the Department of Insurance shows an 83% success rate with more than 3,000 mediations conducted. Even when the parties chose to litigate, but were directed to a federal mediation program, 53% of more than a hundred lawsuits were resolved. The Mississippi Insurance Commissioner states the mediation program is one example of success in the disaster recovery process, with informal feedback indicating that mediating parties are satisfied. While the program has been limited to homeowners insurance, Mississippi is exploring whether the mediation program can be expanded to other types of insurance.

Source: U.S. State News (February 13, 2007)

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## Mediation Could "Save Money"

Ernest Mabuza, Legal Affairs Correspondent

Companies should seriously consider mediation in resolving contractual disputes in order to avoid litigation costs and to ensure that relationships were not ruined, the Institute of Directors said yesterday.

"In the day-to-day conduct of business and as soon as a dispute arises, a director can break that relationship by taking an adversarial route. Can that

**To make your enemy your friend, you must work alongside your enemy, and your enemy becomes your partner.**  
**Nelson Mandela**

**The practice of peace and reconciliation is one of the most vital and artistic of human actions.**  
**Nhat Hanh**

**Man must evolve for all human conflict a method which rejects revenge, aggression, and retaliation.**  
**Martin Luther King, Jr.**

**The hottest place in Hell is reserved for those who remain neutral in times of great moral conflict.**  
**Martin Luther King, Jr.**

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really be in the interest of the company?" said the institute's vice-president, Mervyn King.

The institute — which represents directors, professionals and business leaders in their individual capacities — established a centre for mediation last year to catch up with a worldwide trend towards mediation of commercial disputes.

"There is no advantage in having a good governance in a company if, when a dispute arises, you don't have a good method to resolve it," King said. "If it takes several years to bring a dispute to trial, it is vital that mediation mechanisms exist to achieve a resolution in the kind of time-frames business can live with."

King said courts in several countries, including England, Canada and US, had moved to compel parties to undergo mediation as a first step towards dispute resolution.

"A director has a duty to act in the best interests of the company. Mediation will avoid unnecessary delays and reduce costs substantially, which clearly would be in a company's best interests."

He said South Africans would embrace mediation, given the backlog in courts. The justice department's 2005 statistics showed a backlog of 130000 cases.

King said the focus on mediation was on the needs of both parties and not on their rights.

Source: Business Day South Africa, March 30, 2007

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## **Girl in Photo Becomes Woman of Peace**

Among the indelible images of the Vietnam War is the 1972 Pulitzer Prize-winning photograph of a 9-year-old girl running naked down a road, her skin on fire from napalm.

The image by Associated Press photographer Nick Ut became a symbol of how any war tramples the innocent.

Few people figured that the girl could have survived.

But she did: Kim Phuc was hospitalized for 14 months and struggled to overcome the third degree burns that covered half her body. She underwent 17 operations and many years of rehabilitation; she endured exploitation by Vietnamese propagandists before her defection to Canada with her husband in 1992.

As a UNESCO goodwill ambassador for peace, the mother of two will tell her story tonight at Denison University in Granville.

She answered questions last week from the nonprofit organization named after her: the Kim Foundation, which supports programs to heal children in war-torn areas.

Q: After so many years, has your body healed well enough that you live without pain?

A: Oh, even now, after 35 years, . . . I have a lot of scars, and I'm still dealing with severe pain. But I thank God my attitude is different. The pain makes me humble. I can learn from another pain. I'm not angry with my pain. I don't ask why anymore. I just ask God to help me, to give me strength every day to help my sons, my husband and the children around the world.

But I don't focus on the pain. I focus on what I do about it, not what happened to me. It's a good thing to move on.

Q: How long after the photo was taken did you realize the effect of it?

A: The first time I saw it was when I was coming back home from the hospital. My dad gave it to me. It was a black-and-white picture in a newspaper that he had cut out. I couldn't believe it was me, but I saw my brother in there and my cousin, so I knew that it had happened. But, honestly, I didn't know the big impact at that time. It was 10 years later when I realized it.

When I see that picture now, it doesn't matter how long ago it was taken; I can feel the smoke, how hot it was the moment that I saw the fire on my body, how terrified I was. I still feel like "Oh, my goodness, it's over." If I look at it, I live it over and over.

When I travel around, I want to remind people how terrible war can be, . . . and I want to bring a new picture to people. I offer them a second picture. The first picture is the one they know, a symbol of a war that I had no choice in when I was 9 years old. The second picture is the picture of my life. I try to live with love, hope, forgiveness.

The fact is that I couldn't change the past ? but I could change the meaning of it.

Q: Have many people asked you whether you see parallels between the Vietnam War and the Iraq war?

A: Yeah, I get a lot of questions about it. I was really an innocent victim



Kim Phuc



FILE PHOTO

In a photo shot during the Vietnam War, 9-year-old Kim Phuc, her naked body burning with napalm, flees along a highway with brother Phan The Ngoc, left. The image by Associated Press photographer Nick Ut won a Pulitzer Prize in 1972.

(during the Vietnam War); I didn't understand war at all. Now I'm learning, and I keep learning. The fact that war is happening again really makes me sad. I wish that there be no more war.

I really want to let people know how horrible war can be. We don't need war at all. I urge people to live with love, hope and forgiveness. I want them to see the beautiful picture. I want them to see we can do something. I want them to see that, if that little girl can do it, everyone can do it. You don't have to wait until you're someone and can do something.

Q: Your finding God has had a major influence on your life, hasn't it?

A: I wasn't raised in a Christian home, but in Christmas 1982 I heard that message in church. . . . It was a real turning point when I accepted Jesus Christ as my personal savior. My heart was right with God, and I started to pray. The more I prayed, the more I had peace. From that point I prayed for wisdom, for everything, and God answered my prayers.

The most difficult lesson I learned was when I asked God about forgiveness. Oh, I had to learn about that. From the time I was 9 until I was 19, those things that had happened to me built up inside of me with hatred as high as a mountain. I hated everyone who was normal. I wanted to die. I hated my life, but, thank God, he changed my life.

I wrote down all the names of the people who caused my suffering ? even those I didn't know their names, like the pilot who dropped the bomb that hit me. I prayed for all the people who caused my suffering.

Even if nobody came to ask for forgiveness, in my heart I forgive them.

Q: You were 9 when your life was changed by war. How old are your sons?

A: Thomas is 12, and Stephen is 9. It was such a blessing for me when my children passed 9 years old. I am so happy to see them enjoy every day going to school ? and nothing happens. Oh, how much we have to do to protect the children.

Now I understand how my mom and dad looked at me at that time. I appreciate every moment they lived.

Tuesday, March 20, 2007  
Tim Feran  
THE COLUMBUS DISPATCH