



# Forum

VOLUME 10, ISSUE 2

MAY 2006

## DRBF Manual Revisions Part 2: Minority Opinions and Disclosures

By William Baker, Peter Douglass, William Edgerton, and P.E. Sperry

The DRBF Manual Committee addressed several key questions related to DRB practices and procedures during a breakout session at the 2005 Annual Meeting. The November issue of the *Forum* presented discussions regarding the solicitation of DRB assignments, the “proactivity” of DRBs, and advisory opinions.

The two remaining topics of a controversial nature are the presentation of minority opinions and how extensive disclosures should be. A summary of those discussions follows. These issues and more will be explored in the upcoming update to the *DRBF Practices and Procedures* manual.

### (4) How should minority opinions be presented?

Discussion began with agreement that every DRB’s objective should be to issue a unanimous recommendation, since by so doing the parties are more encouraged to accept the recommendation and resolve the dispute.

However, in some cases DRB members are unable to reach agreement, and Board procedures do allow the issuance of a minority opinion. There has been disagreement as to whether the dissenter should be identified or unidentified: Some DRB recommendations have had a separate minority report, signed by the dissenter, and others have had both majority and minority opinions expressed in a single report, signed by all DRB members.

During discussions it was noted that if the dissenter was identified, it could result in a perception of bias, even to the extent that it could affect the future selection of DRB members and/or the willingness of the parties to refer future disputes to the Board. If the Board agrees that the dissenter will not be identified, anecdotal evidence indicates that it can be harder for the DRB to reach unanimity. However, non-identification sends a clearer message that the DRB is working as a group and may promote resolution of the dispute.

(continued on page 8)

“...every DRB’s objective should be to issue a unanimous recommendation, since by so doing the parties are more encouraged to accept the recommendation and resolve the dispute.”

In this issue of the Forum	
DRBF MANUAL REVISIONS PART 2: MINORITY OPINIONS AND DISCLOSURES	1
ETHICS IN TODAY’S WORLD OF DRBs	10
WORLD BANK, IDLO AND DRBF COLLABORATE ON DISPUTE BOARD POLICY DIALOG	12
DRB PRESENTATION TO THE FEDERATION NATIONAL DE TRAVAUX PUBLICS IN FRANCE	18
IN MEMORIUM: BRISON S. SHIPLEY	19

## President's Page



The DRBF was saddened by the death of our longtime colleague, friend and former director and president, Brison Shipley on Feb. 14, 2006. In addition to being a great supporter and advocate of the DRB process and the DRBF, Brison contributed a great deal of his time and energy to both, for which we all will be eternally grateful. Memorial remembrances published in this issue testify far more eloquently than I ever could to the impact Brison made on all of us.

On a much brighter note, on Feb. 1, the DRBF appointed Mr. Bernard Becq, Director Procurement Policy and Services of the World Bank, to fill the last vacant director's position. Mr. Becq has just assumed that position last held by Mr. Armando Araujo who retired from the World Bank last year. We look forward to Mr. Becq's expertise and contributions to the Foundation in the years to come.

We indicated in the February issue that steps have been taken to re-energize the regions and regional representatives. This will enable us all to have closer contact with each other and regional activities that could serve to benefit all in the long run. Mr. Gwyn Owen is taking similar steps to re-energize the country coordinators and country representatives. Contacts on the ground are a difference maker. Our Vietnam Country Representative, Mr. Francisco, has worked to have the DRBF designated as one of the Appointing Authorities for future DRBs in that country, subject to ratification by the parliament; and a member's call to me has lead us to a contact with an agency about to embark on a construction program of hundreds of millions of dollars and quite receptive to the inclusion of DRBs on much of the work.

The DRBF is establishing contacts with new organizations and re-establishing it with old friends. The DRBF will conduct a workshop in Chicago on June 10 in conjunction with the North American Tunneling Congress and the Construction Institute of the American Society of Civil Engineers (CI) Regional Conference the following week. CI has over 15,000 members. There will be additional announcements about joint CI / DRBF activity in the near future. At the end of March, Larry Delmore, Adrian Bastinelli and I made a presentation on the DRB process before the Construction Specification Institute (CSI) at its annual conference in Las Vegas. CSI has over 17,000 members in one hundred thirty chapters in the United States and its publications have become industry standards for organizing project manuals, contract administration and writing specifications. We will reprise the effort later this year at a regional CSI conference in Pennsylvania. This also may lead to further mutually beneficial joint activities down the road.

The last issue of the *Forum* set forth DRBF workshops for Caltrans that are open to people outside the agency. Shortly there also will be announcements of other workshops in venues in Connecticut, Rhode Island, Massachusetts and Ohio as well. Other possible ones are in Georgia and other venues in the Southeastern U.S. With an eye to the continuing education requirements for members adopted by the DRBF directors this year, the Multi National Training committee is taking the first steps in developing basic and continuing education courses for our members located around the world. Future venues for these courses could be in conjunction with our International Conference such as the 6<sup>th</sup> annual being held in Budapest, Hungary in early May. This year's focus is to introduce the latest concepts of dispute boards to the new Central European members of the EU, but the program also will include some actual experiences with DBs in that region. Those members who have aspirations to work on international boards should give serious consideration to attending the conference. For those who can attend, this promises to be a very interesting conference in a wonderful venue.

I have indicated how individual member involvement with the Foundation can open up opportunities for all of us. However, don't wait until you hear of something of interest to the DRBF before you get involved. Elsewhere in this issue is a listing of our active committees and an invitation to get involved in them. The Foundation is always looking for new people to step forward. Please do and be a force in shaping the future of the DRBF!

Sincerely,

A handwritten signature in cursive script, appearing to read "Howard V. McKittrick".

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# Committee Seeks Potential Candidates to Serve on the DRBF Board of Directors

The Nominations Committee is seeking recommendations of candidates to be considered for nomination to the DRBF Board of Directors. The committee anticipates at least three openings on the Board at the next election. Potential candidates should be committed to increasing the usage of DRBs and be an avid supporter of the DRBF. Candidates must be members in good standing at the time of their election at the Annual Meeting in October.

Send the name and short bio of recommended candidates by email to Jack Woolf at [JJWoolfConstSol@aol.com](mailto:JJWoolfConstSol@aol.com) by June 15, 2006.

## DRBF Board of Directors Meeting Overview

The DRBF Board of Directors met by conference call on February 10 and March 24, 2006. A complete review of the discussions and actions taken can be downloaded from the DRBF website, [www.drbf.org](http://www.drbf.org). Following is a brief overview of the actions taken:

- A “DRBF Appointing Authority” was approved for Viet Nam, with a long term policy in the works for other opportunities.
- A Memorandum of Understanding between the DRBF and the Construction Institute of the American Society of Civil Engineers was approved. The primary focus is to offer joint training on DRBs.
- The importance of obtaining recent, accurate DRB information for the DRB Database was discussed, and a team appointed to address the problem and identify improvements to the system.

### How to Access the Board of Directors Meeting Minutes Summary:

- Go to **www.drbf.org**
- Login through the **Member Login** button
- Click on **DRBF Board of Directors**

All DRBF members are encouraged to read the summary minutes and submit any comments or suggestions to the president of the Board, Harold McKittrick. The Board’s meeting schedule is published in the *Forum*, and can be found on the Calendar of Events on the DRBF website.

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**Board of Directors Meeting Schedule:**  
**May 19-20 in Chicago, IL**  
**June 23 by conference call**  
**August 11 by conference call**

# Opinions and Ideas

*Editor's Note: The editorial mission of the Forum is to share opinions and ideas about the DRB process. Members are encouraged to submit articles or letters to the editor about issues presented in the Forum or challenges experienced within the work of dispute resolution.*

**A note from DRBF President Harold V. McKittrick:** The letter I received from the J. David Gladstone Institutes encapsulates everything that makes the DRB process so successful and the issue resolution process of choice for so many users. The project was highly complex, a state-of-the-art biomedical research laboratory and administrative facility delivered by a modified design/build system. The writer points out certain key elements that were responsible for the success: all parties were mutually bound to participate in the process; the parties agreed to meet periodically even if there was no dispute; the DRB was well qualified and fair in its proceedings; the DRB heard one issue and there was no feeling of winners or losers; and a consequence of the process was that it reduced the number of conflicts that might have escalated to it. The DRBF heartily agrees with the writer's conclusion of universal applicability in any construction project.

The J. David Gladstone Institutes is a tax-exempt charitable trust engaged in basic biomedical research to find cures and therapies for human disease. The Institutes had never constructed a building, but in 1999-2000 decided to purchase land, design and construct a nearly 200,000 square feet, six story, state-of-the-art laboratory and administrative facility for its own use at Mission Bay, San Francisco.

We hired a project manager to act as the owner's representative and selected a design team and a general contractor. We elected to use a modified design/build delivery system.

As the negotiations with the general contractor, Rudolph & Sletten, were nearing completion, a consultant to the Institutes who was a team member on the contract negotiation, Jack Chiaverini, suggested we consider a method of resolving disputes before they became hardened to the point

that mediation, arbitration or a lawsuit were the only remaining avenues of settlement.

We were interested so we set out to learn more about Dispute Resolution Boards and whether or not such an arrangement could work for us.

As owner and a novice, we felt an established, institutionalized method of obtaining a fair chance to tell our side of a story and to have the other side(s) in a dispute tell their side to a group of disinterested but knowledgeable men and women might be valuable to us. It would allow us to advocate our issues in ways that would be understandable in the frame of reference of those we were trying to persuade. It would also give us assurance that another party to the dispute would not obfuscate issues because of our lack of relevant vocabulary and experience.

The general contractor and we (as owner) agreed upon a way to share the expenses for the services of a Dispute Resolution Board (DRB). We agreed to function under the rules established by the Dispute Resolution Board Foundation. We asked the architect on the project, NBBJ, if they would participate in the process and they agreed. The architect, general contractor and owner, therefore, were mutually bound to participate in the DRB process.

In June of 2003, a DRB kick-off meeting was held at the site. The members reviewed documents, inspected the site, which was under construction, and discussed the DRB process. I don't know if all the DRB's have the quality of members ours enjoyed, but William Baker, John Nichols and Jack Feller, our members, were professional, competent and pretty funny guys too. They allowed anyone to speak who thought they had something to say. We decided we would meet periodically even if there was no dispute. This turned out to be a good decision because the DRB was continuously engaged with the progress of construction, the people involved and potential problems.

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The *Forum* is published quarterly by the Dispute Resolution Board Foundation (DRBF). Any opinions expressed are those of the authors and do not necessarily represent the opinions of the DRBF.

The *Forum* welcomes articles on all aspects of Dispute Resolution Boards, and members are encouraged to submit articles or topics to the DRBF, attn: Editor.

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In April of 2004, the Board heard its only dispute. The architect, general contractor and owner each had a fair chance to prepare, review the other parties' documents and at the hearing to present its case and ask questions. The hearing was managed by Chairman Baker with dignity and sophistication. A sincere effort was successfully made by the Board to be fair and respectful of all parties. Although the issues of the dispute were complex and the parties' positions were strongly held, in a week or so, the Board published its findings. There were no winners or losers, and as the owners, we thought some points could have been decided more favorably for our position. Maybe the others felt similarly.

The parties did agree to abide by the DRB's recommended resolution because it was fair enough and moved the parties on to future issues rather than grumbling about the past.

Apparently on some jobs, parties wait and put all disputes aside until the end of the job. For us, the method by which disputes were resolved as soon as possible was a very effective tool. I think it reduced the total number of disputes and we all learned more about how to work together and what our relative tolerances were for complaints.

A perhaps unintended consequence of the process also reduced the number of conflicts that might have escalated to the DRB. That is, if we knew the DRB process was available for the asking, why not use our best efforts to avoid the rigors of the formal process, control our own destiny and make the necessary compromises and concessions amongst ourselves.

Legal proceedings, arbitration and mediation are important avenues for dispute resolution and I would not advocate giving up the right to use any of these more formal devices. As a lawyer, I believe they are essential elements in the tool kit of dispute resolution. My personal experience, however, with the DRB leads me to recommend this important and success-proven dispute resolution tool to be utilized in any construction project.

Sincerely,



Richard Hille  
Executive Director

## Other News

### Caltrans Announces New Construction Industry Online DRB Training

The California Department of Transportation (Caltrans) has used Dispute Review Boards for timely resolution of construction contract disputes for over ten years. Caltrans is working to encourage more effective participation in the DRB process resulting in greater acceptance of DRB recommendations and fewer construction claims.

An Internet-based "Contract Dispute Resolution" training course is newly available to explain basic DRB concepts, processes, operations, party roles, and benefits. Caltrans recommends this course be completed before making dispute presentations before a Caltrans DRB. Although this course has been tailored around Caltrans contracts, Caltrans states that arbitrators, mediators, DRB members, academics, general contractors, and other stakeholders interested in alternative dispute resolution will find this course enlightening.

To remove students from their traditional roles in the DRB process, the storyline of this course is based on an "old western" movie theme. Using a dispute about an old west cattle drive, students are walked through the DRB process, introduced to key DRB concepts, schooled on basic DRB administration, and asked to interact by answering questions that reinforce basic training concepts.

The course takes about two hours to complete and is free of charge. It can be accessed at:

[www.dot.ca.gov/hq/cpsd/DRB/](http://www.dot.ca.gov/hq/cpsd/DRB/)

For more information about online DRB training, contact Construction Claims Engineer Ronald Bacani, in Caltrans' Office of Contract Administration, HQ Division of Construction at 916-654-4452 or by email [Ronald\\_bacani@dot.ca.gov](mailto:Ronald_bacani@dot.ca.gov). □



# A MESSAGE FROM THE EXECUTIVE DIRECTOR...

*“I’ve never ‘networked’ in my entire career. How can you expect me to start now?”*

I get a lot of e-mail and letters across this desk. A large portion of that communications flow is directed at the fact that while members pay their dues they do not get a commensurate return on their investment with actual DRB jobs. There also is an often stated objection that the DRBF is an “ole boys club,” where just a certain few get the work over and over again. The DRBF does *not* place people in available DRB slots. The individuals are chosen by the owner and the contractor from among those that they know.

I attended the annual meeting of the Dispute Resolution section of the ABA last week. This is an interesting section in that they encourage membership for non-lawyers who specialize in dispute resolution. The fields range from coaching to mediation to arbitration to dispute resolution in religion, family, divorce, commercial, construction and employment. Significant contacts were developed that should result in DRBF opportunity successes in 2006.

One of the most widely applauded sessions was entitled, “Developing and Setting Up an ADR Practice.” This nuts and bolts approach to networking by John Bickerman, a mediator, and Natalie Armstrong, managing director of Golden Media of Santa Monica, CA ([www.golden-media.com.com](http://www.golden-media.com.com)) presented basic networking precepts that I would like to provide for your benefit here:

1. Successful networking – maximize the number of viable prospects you

meet and develop the kind of relationships with them that is likely to lead to business.

2. Networking – practice of meeting people and, in particular, establishing relationships with prospective clients and those likely to refer clients to you.
3. Effective networking – focus on the quantity and quality of professional relationships you develop.
4. Professional association’s networking events, such as Chamber of Commerce or trade association breakfasts or luncheons, can be an ideal opportunity to expand your circle of professional contacts.
5. If a meeting of strangers seems daunting, volunteer to man the sign-in table, thereby providing easy access to people you later can meet.
6. Set a goal for a manageable number of new people to meet and then follow-up with a phone call and/or letter or e-mail. Ask who they know you could be introduced to that will give you the exposure you need for your practice.
7. Three attributes you want to convey to people who might want to retain you:
  - a. Likeability – People want to give business to people they like and who genuinely interested in them. Ask open-ended questions and listen to what they say. Keep the conversation short but follow-up with more detailed conversations.
  - b. People like to do business with people they trust - becoming an active and visible member of professional associations is one of the best ways to build relationships in which you establish your credibility.

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- c. Usefulness – People forge professional relationships with those who fulfill one or more of their business needs. When establishing relationships, be mindful to “serve before you sell” – give something of value to them (e.g., relevant information, helpful advice, etc.) before suggesting they do business with you. Reciprocity is the key to effective networking.
- d. Ethics – always maintain an appropriate professional distance in your interactions with potential clients.
- e. Time Commitment – Building relationships that lead to business requires repeated interaction. Networking is, therefore, both a time-consuming activity and a long-term marketing strategy. Just being listed as a member of a professional organization will not yield new business. Constant involvement is what yields an increased number of known business contacts and the increased potential of new clients and referral sources.

That is networking in a nutshell. In future columns I will continue to share with you the networking wisdom of professionals in the field.

The DRBF is not an organization of ‘good ole boys’ who share the assignments only among themselves. It is an organization that is populated with some members who have figured out how to network and they succeed in being awarded assignments by owners and contractors.

The DRBF will continue to make available the names of its members to every DRB user through the website. New users ask for the names of those who have gone through the DRBF training. The choice always is made by the owners and contractors from among those they know.

Make yourself known to the industry.

*Larry Delmore*, Executive Director  
 T: 781-400-1024  
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## Workshop Calendar

**May 23**  
**DRBF Practices &  
 Procedures Proficiency  
 Training Workshop**  
**Location: Seattle, WA**

**October 5**  
**2006 Administration and  
 Practice Workshop**  
**Location: Orlando, FL**

**October 6**  
**2006 Advanced and  
 Chairing Workshop**  
**Location: Orlando, FL**

Registration fee includes lunch and workshop materials. Each participant will receive a Certificate of Completion from the DRBF. To register for a workshop or learn more about the new programs, contact the Dispute Resolution Board Foundation by phone at 206-248-6156 or e-mail [home@drb.org](mailto:home@drb.org).

**For the latest additions  
 to the training schedule,  
 visit [www.drb.org](http://www.drb.org).**

(continued from page 1)

Many attendees felt the dissenter should be identified, thus taking responsibility for their opinions. Using a show of hands, seventy percent of the attendees at the breakout group sessions felt the dissenter should be identified, and thirty percent felt they should not be.

Further discussions covered the suggestions that (a) a consistent dissenter, i.e., always the same person, may be evidence that the dissenting Board member is serving as an advocate for one of the parties; (b) it is frequently easier to reach unanimity if deliberations are held in person instead of via telephone conference calls; and (c) the Chair should establish deliberation dates in advance of the hearing in order to save the dates (which could later be cancelled if not needed).

One attendee advanced the opinion that minority opinions should simply not be allowed: I.e., that the Board members should work until they reach agreement. But others pointed out that in many cases this is impractical and therefore the Manual includes provisions for handling minority opinions.

**(5) How extensive should disclosures be?**

The Manual recommends disclosure of all relationships and financial ties that could potentially be perceived as conflicts of interest. However, it has been observed that the definition of what is a conflict or perceived conflict varies among prospective Board members. Thus this breakout session prepared a list of example relationships that should be disclosed:

- Past employers/consulting relationships: There were a variety of opinions as to how long one should go back in making such disclosures. It was generally agreed there should be no time limit.
- Relatives working for one of the parties: Should always be disclosed, if known. But it was noted that a prospective member should not have to do genealogical research to identify remote

relatives working for one of the parties in different cities, projects, etc. If known, without research, it should be disclosed.

- Financial ties:
  - Any direct stock ownership should be disclosed, no matter how small. With respect to mutual funds where ownership of individual stocks is very small and/or frequently changing, it is not necessary to do research into mutual fund holdings to identify potential conflicts.
  - Loans and/or debt between one of the parties and the prospective member should be disclosed – even if it has been retired.
  - Current and past partnership interests should be disclosed if they were between one of the parties and the prospective member.
- Close personal relationships: The question arises as to what is “close.” Any relationship that exists that could be perceived – by anyone – to influence future recommendations should be disclosed. The example case of the prospective DRB member’s spouse shopping at the same grocery store as the contractor’s superintendent’s spouse would not need to be disclosed, unless they talk about the project. In such a case, the rule of continuing disclosure would require the DRB member to disclose it at the next meeting.
- Professional relationships: It is not necessary to disclose membership in the same professional organizations, such as the DRBF. However, close working relationships, such as participation on committees, should be disclosed.

It was noted that work on other DRBs for one of the parties must be disclosed, as well as work with other prospective DRB members on DRBs or technical advisory panels for other projects.

The point was made that failure to disclose is one of the most common methods of

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Richard L. Francisco



vacating an arbitration award. The AAA has a detailed checklist for arbitrators to use in identifying possible conflicts. The DRBF Manual Committee plans to create a similar checklist to include in a future Manual update.

There was some discussion about how to handle the disclosure requirements of executives who have worked for large contracting and/or consulting firms within a relatively small industry, e.g., tunneling. It was generally agreed that attempting to identify each potential conflict would be very time-consuming, and could be dealt with in a general disclosure statement that identified the firm and their role on major projects.

At the conclusion of each break-out session, there was a general discussion of DRB Manual improvements. It was noted that the current plan is to make updates annually, in order to facilitate use in DRB training sessions. There will be notification of updates on the website ([www.drb.org](http://www.drb.org)) with all such revisions marked with the date of revision.

Attendees were also asked for their opinion as to what topics should be added to the Manual to improve it. The following topics will be addressed in future updates:

1. A chapter on "Lessons Learned," intended to describe particularly good and bad DRB experiences;
2. A discussion of when and how the DRB should permit rebuttals to submitted position papers before the hearing, and
3. A revision to the wording on the Joint Statement of Dispute submitted by the parties before a dispute hearing.

The Manual Committee received many good comments about the effectiveness of the breakout group. Future sessions at subsequent Annual Meetings will be considered.

To contact the Manual Committee, send an email to Committee Chair Joe Sperry at [sperry@usamedia.tv](mailto:sperry@usamedia.tv). □



## **Would you like to be a Country Representative for the DRBF?**

Help give the DRBF a voice in your country by becoming a Country Representative. You may be called upon to act as a spokesperson, and should be interested in raising the profile of DRBs and increasing membership. You may also be asked to help organize DRBF events within the country you represent.

To qualify, you must be a member of the DRBF and live in the country you represent (you need not be a national). Terms are for a three year renewable period.

If interested, contact the DRBF office today:

Phone: 206-248-6156

Fax: 206-248-6453

Email: [home@drb.org](mailto:home@drb.org)

## Ethics in Today's World of DRBs

The problem set out below represents the first of an ongoing series of scenarios offered to engender a discourse among the DRBF membership – a discourse of who we are, who we should become and how we get there, all shaped by the services we provide within today's construction industry.

The intent is to share responses to this problem by e-mail so that the discourse does not have to wait for the next issue of the *Forum*. However, some representative samples of your responses will be published in the next issue, and new challenges will be set forth. The present plans are for one of the break-out sessions at the Annual Meeting and Conference to be an interactive discourse regarding the ethical problems we face as DRB members. To that end, if you have experienced or heard of problems faced by DRBs, or the existence of problematic DRBs themselves, please send me an anonymous summary of the problem.

The Dispute Resolution Board Foundation is comprised of each of us. If there are DRB problems, each of us should contribute to its solution.

Lawrence F. Delmore  
DRBF Executive Director  
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Phone 781-400-1024

### **Problem No. 1**

The Western States Water District selected a DRB panel for its hydroelectric project being constructed at the western end of one of its primary reservoirs. The construction schedule is for 28 months.

DRB Chair Al and DRB Members Bob and Charlie have been selected according to the applicable DRB specifications and have held the DRB kick-off meeting and five regularly scheduled quarterly meetings. The DRB has received and read the plans and specs, the RFI log, the project change log and all progress reports.

A hearing was held eight months ago on the issue of delay and disruption to the contractor's efforts arising from the owner's actions with respect to: (a) the impact of changing the size of the rebar for the dam wall; (b) reducing the duration of the schedule by four months; (c) twenty-one changes in job-site access; and (d) the new requirement that the rebar be epoxy coated. The contractor's claim was for \$11.375 million. The DRB's recommendation was in favor of the contractor in the amount of \$10.573 million.

The owner rejected the DRB's recommendation. At the time of the contractual annual renewal for DRB members, the owner then refused to renew the contracts for the three DRB members, thereby terminating the DRB (First DRB). The First DRB asserted in writing to the owner and the contractor that it still was the DRB of record for all remaining issues that had been submitted by the contractor, which amounted to three issues worth \$21.268 million, in aggregate.

The owner filed suit in local court to disband the First DRB, an action opposed by the contractor. The court ruled in favor of the contractor. The owner refused to recognize the First DRB and submitted papers to establish a new DRB (Second DRB). In order to obtain some of the monies it felt it was owed by the owner; the contractor participated in the selection of the Second DRB, which eventually was seated, with an agreed scope solely of new issues that arose thereafter.

The First DRB scheduled a formal hearing at the request of the contractor for the next remaining contractor issue for which it had reserved jurisdiction. The owner sent out registered letters stating that it would not pay its share of any such DRB meetings, although it would pay for meetings of the Second DRB.

The First DRB, stating that it felt driven to serve its stated function, approached the contractor and asked the contractor if it would pay all of the First DRB's fees and expenses for the upcoming scheduled formal hearing on issue number two. The contractor agreed and the hearing was scheduled. Two days before the hearing, the owner issued a registered letter stating that:

- a. the upcoming hearing was illegal,
- b. the owner would not contribute to the funding of the First DRB,
- c. the owner would not participate in the hearing,
- d. any findings and recommendations would have no standing, and
- e. the fact that the contractor alone was paying for the First DRB's fees and expenses rendered this DRB conflicted and biased beyond recovery.

### Questions

1. Would you have done anything differently if you were a member of the First DRB?
2. If you were the lone voice of the three members who disagreed with this DRB action, what could you have done if you thought the chosen action was improper?
3. Are there any sections of the DRBF's Manual of *Practices and Procedures* that would be applicable to the stated facts?
4. Does the requirement to assure a prompt hearing and to work around parties who attempt to thwart the DRB process cause the DRB to be empowered to seek any means to ensure scheduled hearings go forward?
5. If the stated facts are found to be correct and ultimately are found to pose a problem to the integrity of the DRB process, what should the DRBF do? □

**If you have news about DRBs, DRBF members, or an article to share, we'd like to hear about it.**



***Deadline for the next issue is July 1, 2006***

## **World Bank, IDLO and DRBF Collaborate on Dispute Board Policy Dialogue**

### ***Satellite Link Connects Participants in U.S. and Asia on First Interactive Teleconference***

By Gordon Jaynes

Several DRBF members have participated in what is believed to be the first international interactive televised conference on successful use of Dispute Boards.

The DRBF collaborated with the World Bank Institute (WBI) in Washington DC, and the International Development Law Organization in Rome, Italy, (IDLO) to produce a four-way simultaneous satellite link among: Beijing, China; Hanoi, Viet Nam; Bangkok, Thailand; and Washington, DC. The session is one in a series of Policy Dialogues conducted by WBI and IDLO, aimed at high level officials in developing countries. The Dispute Board session was for three hours, on 09 December 2005. The satellite link was effected through the World Bank interactive television system, and the overall coordination and conduct of the Dialogue was carried out from Washington, DC by Dr. Yohannes Kassahun, director of the IDLO Distance Learning Center and Ms. Hannah Brejnhop, consultant to the WBI.

The Dialogue explored the existing systems of dispute resolution in the three countries, their advantages and disadvantages in respect of mixed nationality usage, and compared their operations with those of Dispute Boards. Special attention was given to the dispute provisions of the "Procurement of Works" documents of the Multilateral Development Banks, led by the World Bank, which involved examination also of the 1999 "suite" of FIDIC Conditions of Contract. In addition, there were discussions of the new International Chamber of Commerce Rules for Dispute Boards.

It is hoped that this Policy Dialogue will lead to future training on successful use of Dispute Boards in the three participating

Asian countries, for all participants in internationally funded construction contracts in those countries. This may include individual use of CDs and DVDs, as well as group interactive training in special "Workshops." Much of what can be done in the future depends on the governments of the three countries processing requests for funding for training through bilateral development assistance programs as well as the programs of the multilateral development banks and international financial institutions.

Participants from China included as speakers Mr. Cao Yingchao, chief economist, Yellow River Water and Hydropower Development Corporation, of the Ministry of Water Resources, and Ms. Wang Hongsong, Secretary-General, Beijing Arbitration Commission. The local moderator was Mr. Hongwei Zhao, assistant to the DRBF Country Representative for China. Fourteen others attended as participants including Mr. Peng Bingming, president of the Conciliation Centre of CCPIT/CCOIC, with whom the DRBF has a Memorandum of Cooperation, and two colleagues from the Center. Five representatives from Tsinghua University were present, including Prof. Wang, director of the Training Center operated by the University in collaboration with FIDIC and China National Association of Engineering Consultants, FIDIC's Chinese Member Association.

Also attending were representatives of Sino-hydro Corporation Ltd, China Life, and three foreign participants, all DRBF members: Mr. Peter Caldwell, former director of the Hong Kong International Arbitration Center, now a private consultant in dispute resolution; Mr. Jim Brady, South Carolina; Dr. Toshihiko Omoto (DRBF Country Representative for Japan); and Gordon Jaynes, UK, also a member of the Board of Directors of IDLO.

The Viet Nam group was organized and moderated by Mr. Dick Francisco, DRBF Regional Representative, resident in Viet Nam, and the participants comprised 16 attendees, headed by Mr. Hoang Hoa Than, representative of His Excellency Prime Minister Pham Van Khai, and including leaders from the World Bank Country Office, the Viet Nam Chamber of Commerce & Industry, the Ministry of Finance, the Ministry of Transport, the Ministry of Construction, Electricity of Viet Nam, Mr. Ngo Trung Hieu, attorney at law, Vision and Associates, and DRBF member Chris Flinn, with the Clifton Coney Group of Ho Chi Minh City.

Thailand had the largest number of participants, 31 including the session leaders Mr. Victor Smith, from Charndell Associates Co., Ltd, DRBF member and chartered arbitrator, and Mr. Roland Amoussou-Gueno, former Program Legal Counsel with IDLO and now lecturer, School of Management, Asian Institute of Technology. Other participants included men and women from Chulalongkorn University and several sectors of government: Ministry of Justice, State Railway of Thailand, Mass Rapid Transit Authority of Thailand, the National Economic and Social Development Board, the National Housing Authority, Expressway & Rapid Transit Authority of Thailand, PTT Public Co., Ltd., Ministry of Transport, Ministry of Defense, Thai Airways International Plc, and Italian Thai Development Public Company Ltd. Although he was unable to attend, DRBF member Dick Appuhn, Rome, Italy, assisted greatly in the pre-telecast arrangements.

Gordon Jaynes can be reached by email at [GLJ4law@aol.com](mailto:GLJ4law@aol.com). □

## DRBF Committees

If you have comments for any committee chairs or would like to get involved in their efforts, please contact the committee chair directly. Contact information is available on the DRBF website, [www.drbf.org](http://www.drbf.org).

### Annual Meeting and Awards

Robert Rubin

### Data Compilation

John Nichols

### Best Practices & Other Publications

Marianne Ramey

### DRBF Bylaw Revisions

Robert Smith

### DRBF Manual

Joe Sperry

### Education/Training USA

Kerry Lawrence

### Education/Training Multinational

TBA

### Executive Director Oversight

Harold McKittrick

### Finance and Administration

James Donaldson

### International

Gwyn Owen

### Membership

Harold McKittrick

### Nominations

Jack Woolf

### Professional Conduct

Robert Smith

### US Regional Chapter Coordination

John Nichols

### Web Site

Ann McGough

### World Bank Liaison

Gordon Jaynes and Armando Araujo

# **DRBF Northwest Regional Conference and Training Workshop May 23, 2006 Seattle, Washington**

The DRBF Northwest Conference and DRBF Practice & Procedures Proficiency Update Training will be held at the Radisson Gateway Airport Hotel, 18118 International Blvd. Seattle, WA. The program will run from 9:00 a.m. to 5:00 p.m. The morning will be devoted to the NW Conference with our popular users panel format. The afternoon session will be the first ever DRBF Practice & Procedures Proficiency Update Training. This prototype training program is going to become the model for our update training and can be used to fulfill the training requirement for certain DRBF membership grades that will begin in 2007.

## **Conference and Workshop Program**

9:00 A.M. - 9:45 A.M	Self introduction and regional report.
9:45 A.M. - 10:00 A.M	Coffee Break
10:00A.M. - 11:45 A.M	Owner/Contractor panel discussion on the current Dispute Resolution Board process, the good, the bad and how it can be improved, to better serve the parties in the early recognition and resolution of issues that arise on projects.  Question and answer session following the presentation.
11:45 A.M. - 1:00 P.M	Lunch Break
1:00 P.M. - 2:45 P.M	DRBF Practice & Procedures Proficiency Update Training: Topics covering Concept, User Guide, and Member Guide with the latest Manual updates. <u>Training attendees will receive a copy of the complete, recently updated Manual.</u>
2:45 P.M. - 3:00 P.M	Coffee Break
3:00 P.M. - 5:00 P.M	Training continuation, Summary, Q and A.

## **Registration**

Registration fees are: NW Conference (morning session) \$100  
DRBF Practice & Procedures Proficiency Update Training \$195  
(afternoon session)

Both NW Conference & Training (full day, save \$20) \$275

All conference and workshop materials are included with each session. Lunch is provided for all attendees at either session.

To register, go to [www.drb.org](http://www.drb.org) and download the registration form OR call 206-248-6156, e-mail [home7@mindspring.com](mailto:home7@mindspring.com), or fax 206-248-6453 and request a registration form.



# **10th Annual Meeting and Conference October 7-8, 2006 Orlando, Florida**

The DRBF Annual Meeting and Conference is open to anyone using or interested in furthering the use of the Dispute Resolution Board process. The event will offer educational presentations as well as interactive break-out sessions designed to expand and guide the future of the DRB process and the Foundation's activities. There will be cocktails and dinner Saturday night followed by presentation of the Al Matthews Award.

## **Workshops**

The DRBF will be offering the 2005 Administration and Practice Workshop on October 5 and the 2005 Advanced/Chairing Workshop on October 6. These are intensive one-day skill development sessions for those who are serving on or wanting to serve on Dispute Resolution Boards. These workshops are also excellent for owners or contractors who want to implement a DRB program. Contact the DRBF office for additional details.

## **Registration and Reservations**

Registration fees for members are \$220 in advance or \$250 after September 16, 2006. Non-member fees are \$250 in advance and \$280 after September 16, 2006. Additional registrations (up to four from the same company) are \$190 each. To register, fax, e-mail or mail a registration form which can be obtained from the DRBF office or downloaded at [www.drb.org](http://www.drb.org).

The Annual Conference will be held at the Radisson Worldgate Hotel in Kissimmee, Florida. Room reservations may be made by calling 866-705-7676 toll free in the US, or 407-396-1400. Be sure to request the DRB Foundation group rate of \$99.00 per night when you make your reservation.

Cancellation Policy: Before September 16, 2006 a \$30 processing fee will be assessed and registration fees refunded. No refunds will be issued after September 16, 2006. Each individual is responsible for canceling hotel reservations.

**Visit the Meetings & Conference page of the DRBF  
website for updated information regarding the  
conference and program agenda.**

# Committee Reports

## Manual Committee

Your committee started revising the Manual right after the Annual Meeting. The complete revision should be on the web site soon. A special edition of Sections 1 and 2 was rushed to completion for the Caltrans trainings in April. Almost all chapters will be revised.

Chapters not revised are:

- Section 1 – Chapters 1 and 3,
- Section 2 – Chapter 9,
- Section 3 – Chapter 8 and
- Section 4 – Chapters 1, 3 and 4.

In general the revisions place greater emphasis on the importance of DRB member total impartiality without even a perception of bias, and the DRB function of encouraging the parties to resolve issues before they become disputes.

Discussion of the DRB Code of Ethics has been moved from Section 3 to Section 2 so it's available to everyone. The actual Code of Ethics is repeated in separate chapters in Sections 1 and 3.

Chapter 3 of Section 1, "Benefits of DRBs," was not revised because almost no data was submitted for the Database last year. The bar chart (see our web site: Manual, Section 1, Appendix 1A, "Summary of DRBs") is most helpful to convince owners to try DRBs. Data for every single DRB is important – every project is needed to present the best picture. Very little data from outside North America has ever been received – there are only 26 projects in our database.

A new Chapter 11, "Implementation," has been added to Section 2. This combines the material formerly in text boxes in the Guide Specification and TPA with the previous Section 1, Chapter 5, "Variations." Chapter 11, along with the Guide Specification and the TPA, is now a complete guide for owners adding DRBs to their contract documents.

Two versions of the revised Manual will be on the website. A "clean" version, designed for persons who are printing out a new or first copy, will be available for 1-click printing of each section. A "changes" version, for persons who have a copy of the printed Manual, will show significant changes in bold italics to allow quick review of the latest changes and selective printing of individual chapters.

If anyone has suggestions on how to convince DRB members to submit data for the Database, please let us know. Recent discussions with the Website and Database Committees suggest that the Database should be separated from the Manual on the web site and have a separate drop-down menu, including data reporting forms, to make access to reporting forms easier.

Joe Sperry

*See page 13 for a complete list of DRBF committees and committee chairs.*

## World Bank Liasion

The International Federation of Consulting Engineers (generally known as "FIDIC," the acronym for its name in French) has published a March 2006 version of the "Multilateral Development Banks (MDB) Harmonised Conditions of Contract for Construction." The MDB Harmonised Conditions were based on the 1999 edition of FIDIC's "Conditions of Contract for Construction," or "Red Book," named after the color of its cover. They are for use in contracts for construction where the design of the works is done by others. The "MDB Harmonised Conditions" were published first in May 2005, as announced at the DRBF 2005 International Conference in Dubai.

The "MDB Harmonised Conditions" are of particular interest to DRBF members as they require the use of Dispute Boards for all such contracts financed by any of the World Bank, the Asian Development Bank, the Inter-American Development Bank, the European Bank for Reconstruction and



# WELCOME TO NEW DRBF MEMBERS

## MEMBER ADDITIONS FEBRUARY THROUGH APRIL 2006

Bernard Becq  
World Bank  
Washington, DC USA

David Beardsly  
Fremont, CA

Megan D. Blackford  
Ohio Dept. of Transportation  
Columbus, OH USA

Jeffrey J. Cooper  
CPM Services, Inc.  
San Francisco, CA

John Daly  
Koch/Skanska  
Colts Neck, NY USA

Giovanni Di Folco  
Techno Engineering & Associates SRL  
Bucharest, ROMANIA

Ryszard Dubno  
Sulejowek, POLAND

Eugenia Dunca  
Techno Engineering & Associates SRL  
Bucharest, ROMANIA

Steven J. Farrell  
Farrell Consulting Group, Inc.  
Duxbury, MA USA

Niculescu Florin  
SC Starconsult SRL  
Bucharest, ROMANIA

Clifford Gold, P.E.  
Fort Lee, NJ USA

Douglas Isbell  
San Diego, CA

Bernard Langan  
BF Langan Consultants  
Elmwood Park, NJ USA

Feniosky Pena Mora  
University of Illinois at Urbana Champaign  
Urbana, IL USA

Keith Morton  
Kuala Lumpur, MALAYSIA

Edmundo A. Puchi  
MCM Construction  
N. Highlands, CA

Lakshmy Mulavana  
N. Sydney, NSW AUSTRALIA

David Richards  
Pickavance Consulting  
London, UK

Marcello Viglino  
Iglesias, ITALY

William E. Waddell  
Quincy, FL USA

Alexander B. Vollmer, P.E.  
Vollmer Construction Consultancy  
San Rafael, CA □

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Development, the Islamic Bank for Development Bank, the African Development Bank, the Caribbean Development Bank, the Black Sea Trade and Development Bank, and the Nordic Development Fund. Copies of the new “MDB Conditions,” in both electronic and hard copy, can be obtained from the FIDIC Bookshop, email [fidic.pub@fidic.org](mailto:fidic.pub@fidic.org); website [www.fidic.org/bookshop](http://www.fidic.org/bookshop).

Although it is outside their normal activities, the committee also reports the DRBF is in discussions with FIDIC regarding an agreement for cooperation in sponsoring various kinds of training in successful use of Dispute Boards. Some DRBF members already engage in seminars jointly promoted by two commercial companies owned by DRBF members, ECV and Cornerstone Seminars. The DRBF is exploring a broader range of cooperation with FIDIC than these seminars. If an agreement is reached, the cooperation is expected to offer many opportunities to DRBF members to participate, including those now assisting ECV and Cornerstone Seminars.

Gordon Jaynes □

# Dispute Resolution Board Presentation to the Federation National de Travaux Publics<sup>1</sup>

By Jim Perry and Geoff Smith

On February 9, 2006, the DRBF country representative for France, Jim Perry, and fellow DRBF member Geoff Smith gave an evening presentation regarding the DRBF concept of dispute boards for thirty five international attendees at headquarters of the Fédération National de Travaux Publics (FNTP). The presentation was followed by a cocktail reception. The opportunity to co-host the evening arose from an initiative, launched by the UK Institute of Civil Engineers (ICE), to promote cross-cultural educational opportunities with French institutions associated with the construction and engineering industry. Many thanks to Mr. Robert Broatch, secretary of the ICE (France) chapter. It is worth noting that the ICE is yet another important organization that has recognized the value of dispute boards in reducing construction disputes and their associated costs. In 2005, the ICE released their own model for dispute board procedures and became a nominating body for board members.

The evening's other co-host was of course the FNTP who publicized the event on their general calendar and the presentation was held at their elegant national headquarters at 3, rue Berri, Paris just off the Champs Elysées. The FNTP represents over 8,000 firms dealing with public works who are responsible for the design and construction of France's exceptional infrastructure including such major developments as the TGV rail network, the road viaduct at Millau not to mention the Eurotunnel as well as numerous showcase projects around the world. The presentation was also attended by representatives of several law firms, the ICC Paris service for dispute boards, ICE members working in France and major French contractors and owners.

While French firms operating in the international arena are becoming familiar with dispute boards on their overseas projects, the concept remains largely unknown in the French domestic market and opportunities to present the DRBF, in French, to national bodies such as the FNTP represent a valuable opportunity to plant the seed in the francophone civil law world where the concept has not yet taken root. Admittedly we have a long road ahead of us to achieve acceptance. We were very pleased however that a representative of the Ecole Nationale des Ponts et Chaussées<sup>2</sup> (an important civil engineering university) was in attendance and we will be pursuing opportunities to present the DRBF program to their students. The future of dispute boards in countries like France lies in demonstrating the benefits to the next generation of decision makers. The task is however getting easier and there is strength in numbers. Working jointly with well known, and like minded, European institutions such as FIDIC, ICE and the ICC is important for the DRBF to maintain its role as the leader in the dispute board field in countries where our members are otherwise still scarce on the ground. □

<sup>1</sup>French National Federation of Public Works

<sup>2</sup>National School of Bridges and Highways, founded in 1716 and granted a royal charter by Louis XV in 1747



## In Memorium Brison S. Shipley 1947-2006

I cannot recall exactly how or when I met Brison. It may have been at a DRBF meeting in the late 90's, or it may have been earlier at a Boston CA/T forum with Peter Zuk. Subsequently, living in adjacent towns on Boston's South Shore, we met regularly for breakfast to discuss our evolving later life careers, various projects, contracting firms, the DRB, or whatever subject was hot on the griddle that morning. Occasionally, our conversation would branch into personal matters such as family illnesses, home renovations, civic endeavors, or even views on Massachusetts politics. I always had a sense of respect for Brison's candor, humor, but sadly never shared some of his inner pleasures so common to us. Little did I know that Brison too was a later life pianist and a model railroad enthusiast in addition to being a husband, father, lawyer, and scholar.

When asked to write these words about Brison, I was honored. With the help of his wife of 26 years, Jo Loughnane, his son Kirk, and Glen Stevens, Jack Woolf, Steve Farrell, and Larry Delmore among others, I observed a very consistent theme in their notes and comments. Brison was a natural consensus builder, a gentlemen, and an "expert's expert" to quote one person, not fluttered by the dizziness of facts or the moment. He was also a humorist.

Brison's professional background was many faceted. He was born on Long Island, New York, and after graduating from George Washington Law School he worked for the Southern California Gas Company. Subsequently, he became Assistant Attorney General for the Commonwealth of Massachusetts. Next came his contract management role at "the Big Dig." Not satisfied to end his professional career there, Brison then achieved a Masters in Business degree from Suffolk University during which time he was associated with one of Boston's premier building contractors as a management consultant. Then came his role as a problem solving independent consultant and his various responsibilities with the DRBF. I recall him saying many times "we need a long range plan." Ask and you shall receive. Brison led the development of the DRBF strategic plan and subsequently became president of the Board of Directors for our association in 2003. What a "leader and shaper" as another DRB member said so well.

Through all of his activities for the past decade or so, Brison experienced throat cancer. But one had to dig this information from him. He never complained, made light of his condition, and worked diligently until just a few months ago.

We are all better for having Brison enter our lives.

Blasdel A. Reardon



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Seattle, WA 98188-2441

FOUNDATION FORUM



## CALL FOR NOMINATIONS FOR THE AL MATTHEWS AWARD

The Dispute Resolution Board Foundation presents the Al Matthews Award each year to one or more DRBF members who have given exemplary service in advancing the use of the dispute resolution board concepts and the DRBF.

Nominations are solicited from the membership and by the president from the board of directors. A framed proclamation and trophy will be presented to the recipient at the Dispute Resolution Board Foundation Annual Meeting and Conference in October.

**Send your nomination, including an explanation of why the nominee is deserving of the award, to:**  
**Award Nominations/DRBF**  
**6100 Southcenter Blvd., Suite 115**  
**Seattle, Washington 98188-2441**  
**Or by e-mail to [home@drb.org](mailto:home@drb.org), subject: Al Matthews Award Nomination**  
**Entries should be postmarked no later than 7/15/06**

The distinguished list of past winners includes:

**Al Matthews, Robert Matyas, Robert Smith, Joe Sperry, Jimmy Lairscey,  
Carlos Ospina, Pete Douglass, Jim Donaldson, Steve Fox and Gordon L. Jaynes.**