

# International Institute for Conflict Prevention and Resolution

## Advisory Council

### Summary of Meeting of February 15, 2016

The Roosevelt Hotel, New Orleans, LA

The CPR Council met on the morning of February 15, 2016, both in person and via phone.

**Attending in person:** Steven Antunes, Andrew Behram (stand in for Robert Scheinfeld), Ariel Belen, George Bermann, Paul Bruno, David Burt, Mary Beth Cantrell, Charles Coleman, Barbara Daniele, Erin Gleanson Alvarez, Claire Gutekunst, Robert Haig, Kurt Hansson (presenting), Albert Hilber (I think in person), Ken Jacobs, Jack Levin, David McClean, Jean-Claude Najjar, Scott Partridge (and two colleagues from Monsanto), Charles Renfrew, Lillian Stenfeldt, Michael Timmons, Bill Webster and Richard Ziegler.

**Via Phone:** Nicole Alexander, John Bickerman, Todd Carver, Zela Claiborne, Debra Clements, Mark Cymrot, Timothy Donovan, Ethan Evans, Dwight Golann, Kirke Hasson, Michael Keating, Maurice Kuitems, John Lande, Janet Martinez, Stephen Marzen, Margot Metzger, Michael Nolan, Thomas Nathan, Alexander Oddy, Jeff Paquin, Charles Patrizia, Bennett Picker, Barbara Pollack, Keith Porapaiboon, Donald Rose, Jordan Rosenfeld, Jeff Senger, S.I. Strong, Karl Stern, Donald Trevarthen, Harry Trueheart, Nancy Vanderlip, Jay Waks, Felix Weinacht and Daniel Winslow.

CPR's Noah Hanft, Beth Corman, Helena Tavares Erickson, Beth Trent, Olivier Andre, Terri Bartlett, David Burt and Tania Zamorsky were also in attendance.

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**Noah Hanft** discussed how CPR is driving ADR in a number of ways--driving membership, improving the value proposition, growing and promoting neutrals and our "secret sauce," the fact that our membership includes some of the leading practitioners, both user and ADR pro side. This helps CPR innovate in any number of ways.

Noah stressed that the best example is our administered rules, taking hold both in US and around world. More companies are using them in their contracts (one attendee said they required the screened selection process in all of their contracts), which is important to drive more cases to our neutrals and to gain a better understanding about CPR.

Among other recent CPR activity, Noah discussed our newly formed transactional lawyers group and its applicability, via such things as standing neutrals, in the joint venture area.

## **Presentation by Monsanto's Scott Partridge**

Scott discussed the innovative thoughts and concepts that Monsanto brought to their industry, thereby making actionable what Noah and CPR set out, "constructing on a diagram that was already there."

After noting the Monsanto history of controversy, Scott stressed that, today, Monsanto has no litigation at all with any multi-national national competitors. Similarly, they have no litigation with any of their major customers. This didn't happen by accident. It was the result of programs put into place, via a "relationship-based" model, before they turned into problems.

*How did they create this new relationship based model?*

First, they considered legal versus business goals, the importance of getting endorsement from the top, and settlement as a viable option (not a weakness as historically understood).

With constant guidance from Antitrust counsel and being fully transparent with the DOJ, they began by drafting a relationship document, articulating that they would be civil competitors, dealing with each other in a non-contentious manner (e.g., in PR spheres) and avoiding litigation if possible. If not possible, they agreed not to elevate the stakes outside the corporation, not to use PR or media to achieve goals, and to pull groups together to focus on the relationship. These clauses go into every new contract.

They also agreed not to use third parties as regulators to do what they've agreed not to do to each other. If there are problems, each side agreed to tell the other. They agreed to hold quarterly face to face meetings, beginning at neutral site locations. It is also important that the CEO's have a relationship.

As time went on, during Monsanto's initial implementation, the locations of the meetings became less neutral, the lawyers peeled off and more business people and scientists were added, and things got more casual. Once trust was built and some guard was dropped, so many potential disputes that were based on a lack of communication or mere historical distrust went away.

Additionally, as disputes decreased, potential opportunities to collaborate (appropriately) increased. The scientists and business people kept competing like hell, but also creating efficiencies and greater innovation. It is a myth that, Scott stressed, that if there's a potential dispute, you really need to have a lawyer in the room. Actually, no you don't.

The result was a structure that creates a bridge between the business and law departments, and takes a broader approach than just winning one's case. The parties agree to sue if and only if they have done everything possible to exhaust settlement possibilities.

Scott also discussed how he used this innovative approach to handle legacy/inherited liabilities involving mass torts.

Someone asked whether Monsanto had tried this in Asia or other parts of the world. Scott replied that he had not, and that it would present some different challenges, but that it works and is exportable.

In closing, Scott encouraged everyone to go home and say “Here’s an idea I learned from CPR.” A separate contractual agreement to this effect will be part of the CPR tool kit. Noah summarized Scott’s presentation by saying it was really what CPR is all about.

**Beth Trent** reminded this group that one objective is to facilitate collaboration on the development of tools. She mentioned two topics that are timely:

- The development of a tool kit that the Council and CPR members could use to adapt the relationship-based approach inside their own industries. We should consider creating a subcommittee, and people from Monsanto will participate
- Work relating to development of a domestic mediation guide, being developed to provide assistance to in-house counsel.

**Erin Gleason Alvarez** described the guide as intended to address various hiccups that one experiences during mediation. Subjects include preparing for mediation, the actual process (how in-house counsel can remain engaged), and what happens afterwards.

Beth noted that a tool kit committee would be a true subcommittee of the Council. She asked for expressions of interest about participating so we could set up calls and begin. Scott Partridge encouraged everyone to help us build the tool kit.

In closing, Noah Hanft paid homage to our outgoing chair, David McLean, stressing what a wonderful job he had done leading the group.