



# Forum

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AUGUST 2004

## Assessing 10 Years of Dispute Resolution Boards at BART

By Russel P. Rudden, P.E.



The San Francisco Bay Area Rapid Transit District (BART) undertook three major capital programs in the 1990s: trackway extensions in the East Bay and the West Bay, and rehabilitation of the core system. As part of these

major capital programs, BART not only updated its technical design to contemporary standards but also included contracting features intended to avoid litigation and work more effectively with contractors. The objectives were better schedules, fewer budget surprises and better quality performance. Among the techniques added to BART's family of contracting tools were: partnering, dispute resolution boards (DRBs), escrowed bid documents, delegation of authority to lower level staff and design-build contracting.

BART made provisions for DRBs in 17 of 63 construction and procurement contracts in

the capital programs. The contracts where DRBs were used ranged in bid construction value from approximately \$10,000,000 to \$525,000,000 and included conventional design-bid-build, design-build and design-furnish and install contracts.

On the 17 contracts where DRBs were allowed under the terms of the BART contracts, only 13 actually formed DRBs. In the four cases where there were no DRBs, BART and the contractor mutually agreed to waive the formation of the DRB after award of the contract. Further, three other contracts had DRBs formed, but the DRBs were deactivated shortly after formation as BART and the contractor agreed to suspend their use. One additional contract formed the DRB only at the end of the contract to resolve a global close out issue. Therefore, of the 17 contracts where DRBs were allowed only nine actually performed the functions of a DRB as described in the contract documents. A total of 15 hearings occurred between 1992 and 2003.

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**“Among the lessons learned, BART has found that careful choices of DRB members are vital to the effectiveness of the DRB and the selection process should be similar to the process of other professional services.”**

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# President's Page

## 'Sustaining' the DRBF

During my year of presidency, unbelievably nearing its close, I have often asked myself where the DRBF is heading. I have no doubts whatsoever about the future of dispute boards on larger contracts as there are many positive indicators that add to my long-held confidence that dispute boards will grow widely in popularity and application. My concern, and I do not wish to sound alarmist, is how the DRBF can assist this perceived growth and thereby continue to be a voice of influence in the world-wide dispute resolution community.

For several years the board of directors of the DRBF has discussed the possibility of the Foundation employing an executive director—an experienced dispute resolution practitioner who, without being self-serving, could promote DRBs throughout the world and undertake many of the numerous tasks currently discharged by the volunteers of the board and by our very hard-working administrative manager, Steve Fox. The hope is that the activities of the executive director would, in a short time, raise sufficient revenue for the DRBF to off-set the additional costs (salary, office accommodation, etc.). Clearly, the DRBF executive director will need be a person of high calibre and of significant experience. He or she would rightly command a remuneration package commensurate with such ability and qualifications. Hitherto, the DRBF's principal source of income comes from the subscriptions that you and I pay for our membership. At the current rate of DRBF membership growth, albeit steady and encouraging, it is impractical to anticipate that subscription revenue (as presently structured) will provide the necessary funding required to engage an executive director. The DRBF board is actively engaged in various fund raising initiatives and is also looking at the possibility of restructuring the dues payable by DRBF members (based on the service provided to the particular member). However, pending these initiatives being finalised and maturing there is one thing that the members of the Foundation, particularly those whose income is provided in whole or in part by service on DRBs, can do to assist our objectives. My appeal is that you up-grade your membership level from 'individual' to 'sustaining.' This step alone, if taken by all those individual members who have gained from their association on DRBs, will add substantially and significantly to the revenue of the DRBF and alone will give the board the confidence to actively commence recruitment for the DRBF executive director. Please give serious thought to changing your level of membership and thereby help the DRBF to progress to its next stage of development. All you need to do is e-mail Steve Fox at [info@drb.org](mailto:info@drb.org) and ask that next year's subscription request is amended to 'sustaining' - it is that simple and will do so much to help our objectives.

During the period since my last President's Page, there have been two publications of significance for those involved with dispute boards. First is the publication by the International Chamber of Commerce (ICC) of procedures and draft contract clauses for dispute boards associated with commercial contracts. The ICC dispute board task force who drafted these procedures included three members of the DRBF board of directors and several other DRBF members (one who acted as chair). The ICC has introduced three types of dispute board—one that results in a non-coercive recommendation, one that results in a coercive decision, and one that allow for either option. The DRBF hopes that it can work closely with the ICC in developing these new models.

The second publication is by the Institution of Civil Engineers in the UK which, on 5th

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# Committee Reports

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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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## Best Practice

Since the May 7, 2004 board of directors meeting Dan Meyer has joined the committee and additional drafts of the suite of Best Practices documents have been completed and distributed to the committee for comment. These drafts (USERS—5/28/04, MEMBERS—5/25/04 and HEARINGS 7/01/04) have incorporated committee comments on the documents that were distributed to the directors at that meeting.

Two points of conflict with the manual have surfaced and will be reconciled before the BPGs finally are presented to the DRBF board of directors. One is minor and should be easily addressed while the other will require some discussion.

Sections 2 and 3 of the manual which are to be issued for review soon will be examined to see how the Best Practices documents can best be incorporated therein.

Harold McKittrick

## International

The DRBF first International Committee has now been formed. It held it's first 'virtual meeting' by e-mail during the months of May and June and all members have now indicated how they wish the basis of the committee to be run.

The members are:

**Gwyn Owen (U.K.) Chairman**

**Romano Allione (Italy)**

**Fiorante Bares (U.S.)**

**Peter Caldwell (Hong Kong)**

**Richard Francisco (Viet Nam)**

**Andrew Griffiths (South Africa)**

**Helmut Koentges (Germany)**

**Nigel Lowe (U.K.)**

**Toshihiko Omoto (Japan)**

**Gilberto Vaz (Brazil)**

It is proposed that each committee member takes responsibility for a zone of the world to include a number of different countries.

Before long each country representative

will be contacted by the committee member responsible for that zone and a co-ordinated plan will be put in place to organise and support DRBF events and planning. It is hoped that committee members will initiate the establishment of new DRBF chapters in countries not currently represented.

The committee is also about to embark upon the establishment of a standardised global reporting system for DRBF activities. The reporting templates will be published in the next edition of the *Forum*.

For any further information regarding the activities of this committee please contact Gwyn Owen at gwyn@easynet.co.uk.

Gwyn Owen

## Education & Training

After seven years of shouldering the load of not only providing DRB workshop services with Jim Donaldson as an organizer/trainer/instructor, but also that of articulating and promoting the use of training workshops by construction user organizations domestically in the United States and abroad, Larry Rogers is shedding part of that burden. A new Education and Training Committee consisting of Bart Bartholomew, Bill Baker, Jim Donaldson, and Dan Meyer has been established to formulate workshop policy for board of director's approval, oversee the content of workshop material in light of the revised DRB manual, and document in some permanent manner what the Foundation is currently presenting for reference and use as future workshops evolve.

Larry has advised the committee that he believes training for DRBF members has reached the saturation point and although he wishes to continue to push training with owner groups like CALTRANS, FDOT, etc., he suggest that future training needs be expanded in three ways: (1) through other well-known established institutions such as ASCE, PMI, APWA, The Saddle Island Institute, and others; (2) training

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Outside the U.S.; and (3) less than full day web-based training sessions that do not involve travel and which would be less expensive for the participants. The committee is presently giving consideration to Larry's proposals.

Larry further advises that he has found considerable interest in DRB training programs internationally. He has presented workshops in Amman, Jordan, has tentatively scheduled workshops in Trinidad in March 2005 and has discussed workshop sessions with entities in Australia and Vietnam. These workshops all involve modifying training materials to conform to the FIDIC Dispute Adjudication Board provisions, rather than to DRB practices prevailing in the U.S. Along this line, President Peter Chapman has drawn the committee's attention to an initiative involving the World Bank and the DRBF led by Gordon Jaynes, Armando Araujo, and John Bradshaw.

Remaining workshops in the U.S. this year include two scheduled for the DRBF Annual Meeting in October in San Francisco and two additional workshops in Orlando in November. Larry will soon be scheduling workshops for 2005 and needs help from individual DRBF members who might know of persons in the institutional organizationals mentioned earlier in this report that he could productively contact in his articulation and promotional efforts.

In addition to providing leads to help Larry penetrate institutional organizations, the Education and Training Committee solicits the suggestions of the DRBF membership to help define the direction of the future training effort described above. Member commentary in the form of letters to the *Forum* editor, or direct contact with any of the committee members would be welcomed.

Bart Bartholomew

**DRB Manual Committee**

Interference from client assignments and other bothersome delays have caused our

schedule to slip. Nevertheless we are making progress. Section 1, *Concept*, went on our web site in May. We encourage you to print this out and file it in a 3-ring binder with the cover inserts and tab sheets that you should have received from Steve in April. Let Steve know if you didn't receive the inserts and tabs or if you didn't receive an e-mail notification when Section 1 was posted on the web.

Over two-dozen reviews have been received on Section 2, the *User's Guide*. We are now considering and incorporating these suggestions and hope to have Section 2 on the web in late August. This section includes the guide specification and Three Party Agreement. Section 3, the *Member's Guide*, has been drafted and is currently being reviewed by the steering committee prior to wider review. Section 4, *Multi-National Practice*, has been rewritten and is being expanded.

Joe Sperry

**Information Technology**

Work on finalizing the new website is proceeding apace. It is planned that the change over to the new site will take place in August. A number of new features will be available at that time, including a password protected member's only section, and new content for prospective users of the DRB method. Be sure to log on to check out the site as it evolves, and send your comments and ideas to the committee.

John Bradshaw □

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If you've got news about DRBs, Foundation members, or an article to share, we'd like to hear about it.



**Deadline for the next issue is October 1, 2004**

# **8th Annual Meeting and Conference**

## **October 22-24, 2004**

### **San Francisco, California**

#### **Agenda**

##### Friday Oct. 22, 2004

Cruise around San Francisco Bay and view construction of new bridges. Bus leaves hotel at 7:15am, board at 8:45am at the BERKLEY DOUBLETREE GUEST DOCK. Continental breakfast on board, disembark at 1:00pm.

##### Saturday Oct. 23, 2004 Meeting and Conference

8:00am – 8:45am Welcome and DRBF Business and Reports

8:45am – 10:15pm Panel Discussion: “The DRB Process, a Report Card” H. McKittrick, J. Chiaverini, B. Edgerton

10:15am – 10:45am Coffee

10:45am – 11:30am Brief Reports of Foundation Activities

New Manual - Joe Sperry

National Forum on Conflict Resolution – Bob Rubin

Florida Association of Counties – Jim Lairscey

Training Update – Larry Rodgers

Website Update – John Bradshaw

International Activities – Gwyn Owen

11:30am – 12:00pm Guest Speaker – Andrew Fremier, Chief Deputy Director of District #4 for CALTRANS

12:00pm – 1:00pm Lunch

1:00pm – 1:30pm Guest Speaker – Ron Tutor, Owner and President of Tutor-Saliba Corp.

1:30pm – 2:45pm Break Out Session 1

(1) Foundations Role – Robert W. McLean and Peter Chapman

(2) Functional & Dysfunctional DRB’s – Bob Smith and William Baker

(3) Marketing the Foundation and DRB Process – Robert Rubin and Daniel Meyer

2:45pm – 3:15pm Break

3:15pm – 4:30pm Break out Session 2

4:30pm – 5:00pm Foundation Bylaws and Election of New Directors and President Elect

6:45pm Cocktails Followed by Dinner

##### Sunday Oct. 24, 2004 Meeting and Conference

7:30am – 8:15am Breakfast

8:15am – 9:15am Panel Discussion: "Everything Your Mother Never Taught You About Construction Law" Bob Rubin, Bob Smith

9:15am – 10:30am Break Out Session 3

10:30am – 10:45am Break

10:45am – 12:00pm Summations of Break Out Sessions

#### **Registration and Reservations**

Registration fees for members are \$220 in advance or \$250 after September 30, 2004. Non-member fees are \$250 in advance and \$280 after September 30, 2004. 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). Registration is required for the optional San Francisco Bay Cruise, and space is limited. Sign up today to insure your space.

The Annual Conference will be held at the Hyatt Regency Hotel in Berlingame, California. Room reservations can be made by calling 800-233-1234 toll free in the USA, or 650-347-1234. Be sure to request the DRB Foundation group rate of \$105.00 per night when you make your reservation. The deadline for the guaranteed group rate is October 1, 2004.



## Berlin Hosts 4th Annual International Conference

By Peter Chapman

Over 40 delegates attended the fourth International DRBF Conference held in Berlin in mid-June. Those who did not know Berlin were very pleasantly surprised by this clean and lively city which provided an excellent venue for an international conference that was decidedly different from those that had gone before. The theme for the Berlin conference was dispute resolution in German speaking countries – Germany, Switzerland and Austria in particular. It was the first time that simultaneous translation facilities were used.

The conference was held in the Haus der Deutschen Wirtschaft, a purpose-built conference centre in the heart of Berlin. Speakers on the first day (Messrs. Kontges, Chapman, Leto and Genton) outlined the concepts and fundamentals of dispute resolution using standing boards and explained the recent developments taking place in Europe (UK Adjudication, ICC dispute boards, use in concession projects, etc). This gave those for whom dispute boards were new an opportunity to understand better how boards operated and could best be utilised.

Later presentations were given by Dr. Czajka, Mrs. Trofaier and Dr. Koenig on dispute resolution in Germany, Austria and Switzerland. For many this was a first insight into how these jurisdictions dealt with dispute resolution.

The conference dinner was held on board a river boat. The weather was warm and the evening sunny and delegates and some partners enjoyed a champagne reception on deck as the river boat gently cruised downstream – giving an ideal opportunity for delegates to network in

relaxed circumstances. The buffet supper was superb and the groans when the boat eventually returned us to our point of embarkation stopped only when the party continued in the lobby bar of one of the city hotels. Earlier in the evening the DRBF president had been presented with a bottle of snake wine (a bottle of wine containing a cobra) by the DRBF Vietnam representative, and the rumours that this bottle had been enjoyed during the evening are entirely unfounded!

The next morning session covered dispute board opportunities in Germany, Austria and Switzerland (speakers Mr. Helm, Mrs. Trofaier and Dr. Koenig) and Mr. Jurowich then presented examples of several DRB/DABs in operation in the world.

The final session enabled Mr. Allione to discuss the expansion of DAB eastwards into such countries as Romania and Bulgaria. Lastly, Mr. Muns-Mang explained German public sector considerations and how the state judicial/administrative systems operates. Time for questions and discussion followed all the presentations.

The conference was interesting, thought-provoking and very enjoyable and gave many of us a chance to understand how other jurisdictions work and to gauge how the dispute board concept could be used in areas where it is has yet to be adopted. Thanks must be given to Dr. Helmut Koentges for the time and effort he put into all the arrangements and the excellent organisation of the conference.

Initial plans for the 2005 International Conference venue is Dubai in the United Arab Emirates. Dubai is a fascinating city with lots to offer quite apart from sun, sand and clear blue water. □

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A.A. Mathews  
R.J. Smith  
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July, announced new procedures for DRBs associated with domestic civil engineering projects. This new procedure is compliant with UK statutory adjudication and was drafted by three members of the DRBF, one a board member. (For more information, visit the ICE website at [www.ice.org.uk/law/](http://www.ice.org.uk/law/).) Two exciting developments in the dispute board arena.

As reported elsewhere in this issue of the *Forum*, the board of directors met in Chicago in May. This was a welcome departure from the usual conference call meetings and, over a two-day period, enabled the board to discuss numerous matters in good detail. I am pleased to report the new committees, established at the Annual Meeting last October, are becoming effective and moving DRBF matters forward at a greater pace than had been the case hitherto. We still have much to do but progress is good and we are taking strides in the right direction. The new edition of the *DRBF Practice and Procedures*, the reviews of the Bylaws, the development of the Best Practices Guidelines and the revamped web site all indicate the progress that has been made on DRBF matters during the last year. Our next push has to be on education and training and I am pleased to report Bart Bartholomew has agreed to chair this committee.

I normally report in this column on my own activities as your president. Most important in the last period has been the DRBF 4th International Conference held in Berlin. A report of this conference appears on page 6 in this newsletter, but I would like to thank all those who organized this very successful conference—a really excellent DRBF occasion. In addition, I have spoken at conferences in Paris and several in London. Plans are in process for DRBF speaking engagements in Bucharest, Vietnam, Cambodia and China. I also attended several receptions as DRBF president, mostly in the UK.

We must welcome two new country representatives: Maria Theresa Trofaier has agreed to act as country representative for Austria, James Perry has agreed to act as country representative for France, and

Hamish McDonald has agreed to act as country representative for the United Arab Emirates. I would like to thank Maria, Jim and Hamish for taking on their new roles without forgetting the outgoing country representatives (Pierre Genton—Austria and Jean Paul Goldsmith—France) who have our thanks for the work they have done for the DRBF.

October is an important month in the DRBF calendar as the Annual Meeting is traditionally held during that month. This year the meeting will be held in San Francisco and I strongly urge you to attend. The Annual Meeting is always enjoyable and informative. It gives you a chance to express your views on dispute boards and on the Foundation and provides a really excellent opportunity for networking and getting you on the ‘DRB circuit.’ San Francisco is a superb location for a conference and the programme for the meeting is sure to be as exciting and thought provoking as usual. We usually have about 80 attendees at the Annual Meeting but this year we are determined to reach over 100 delegates and thus make San Francisco 2004 the best Annual Meeting to date. Please reserve the 23 and 24 October in your diary and send in your application form to Steve Fox without delay. I sincerely hope to see you there—you will not regret it!

This will be my final President’s Page contribution. I hope that I have represented the DRBF well during my year in office. Of course there is more that I had hoped I would have achieved but I believe the seeds have been sown. I wish my successor, Robert Rubin, ever good wish for the year ahead—I am sure he will make a very good president. I would also like to thank my board of directors for their wise counsel and support, Ann McGough for her superb editing of the *Forum* and assistance with the new DRBF Procedures publication and last, but certainly not least, Steve Fox and Pete Douglas for keeping things under good control and in excellent order in Seattle.

Yours Sincerely,



# Spotlight on France's Country Representative

## Country Rep: James Perry



The DRB concept is relatively unknown in the French market. A great deal of effort will be necessary if their use is to see the light of day here and the perception is convincing users will be difficult.

One of the perceived barriers to the use of DRBs in France is that instituting DRBs would mean radically altering the way disputes are handled and such a change will meet stiff resistance. However, when you compare the French way of handling construction disputes with the DRB concept there are in fact a number of points in common. Like a DRB the courts here are comparatively efficient and inexpensive and, like a board, a French judge functions in a very different way from a common law judge or a typical arbitrator. The French system, being a civil law country, is based on granting judges inquisitorial powers as opposed to the adversarial system used in common law countries. In addition, construction cases are usually tried before judges who are assigned from various sectors of industry and serve for a limited time. In my experience these judges very quickly appoint an expert specialising in the matter under dispute who, with the authority of the court, then holds hearings on site and orders tests or even performs them himself. The expert will typically have the power to instruct the parties to produce documents as he proscribes and he may even be empowered to stop a site. The expert then issues his conclusions and a recommendation for award which is routinely endorsed by the judge. If the action is brought in a timely manner the expert's knowledge of the site will be contemporaneous. Many DRBF members may not advocate such an active lead compared to a

French expert when hearing their own referrals and would stick more closely to the adversarial system, traditional to common law practice, but the concept that the trier of fact should be a technically competent person, with the potential for access to direct knowledge of the site, are principles the system here shares with a DRB.

In other words I don't view the successful introduction of DRBs in France as requiring a sea change in attitudes - just approach. In many ways a DRB is only an improvement and refinement of the existing system. I believe moving to a DRB with three technically competent members instead of relying on a single expert will appeal to potential users, and while the courts in France are not slow, a DRB recommendation is typically quicker.

From my practice in France, I know that French firms working internationally know the DRB concept and the major French contractors are among the largest in the world. The reaction to DRBs in the international context has been very positive and I believe that contractors are often proponents of the system and at least some of them are proposing them in their offers. We will build on this base to broaden awareness in the domestic market. I have included a DRB section in the contracts training program I offer to French firms.

In addition many of the institutions that have integrated DRBs/DABs into their way of working have strong ties to France or are generally well respected. For example, FIDIC contracts, again for international projects, are well known, and the ICC and the World Bank all have a major presence here.

With regards to public owners/ employers, the European Union may be the most useful vehicle for introducing DRBs in the

### DRBF Country Representatives

- Austria**  
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- Australia and New Zealand**  
Norman Reich
- Bahamas**  
Colin Arthur Marshall
- Brazil**  
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## Would You Like to Be a Country Rep. 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, or e-mail [home@drb.org](mailto:home@drb.org)

public sector. France's infrastructure projects such as the TGV train lines are legendary and European procurement rules require open bidding that is drawing many non-French bidders today who will appreciate the inherent balance that a DRB brings to multinational projects. I also have to believe that the enhanced delivery times and budget statistics the DRBF has generated, which show the financial benefits of a DRB, will not be lost on the relevant ministries and banks.

The move towards DRBs is already being pushed at the European level. As those who met the Romanian delegation at the Berlin DRBF International Conference saw, projects sponsored by the European Union in the accession countries are required to use forms of contract that integrate DRBs. I was struck by the fact that the European Union is effectively requiring a DRB for projects in new member countries, or applicant countries, while not requiring them on projects in the established member countries. Obviously it is easier to introduce ideas in the new member countries because so many of their laws and systems are in the process of major reform anyway as they transition from a controlled economy. If the experience is a good one in countries like Romania, as I am sure it will be, there will be important opportunities to advance DRBs in Western Europe.

I would be surprised to see many DRBs in France as early as next year, but I think for the reasons I mentioned, factors are converging which should result in their introduction in France within five years. In the meantime we are working on translating DRBF materials and presentations into French. The initial focus will be on ministries and financial institutions and I hope to confirm a presentation to senior transportation officials by the fall. Another key player to persuade in the French market is the Groupe Caisse des Dépôts which is a public financial institution. Their role in France is complicated to describe, but most major projects here have at least some financing provided by the group and I hope a DRBF presentation can follow.

I am certainly looking forward to promoting what I believe to be a great idea in France where I have worked and lived for the better part of the last sixteen years. I continue to be impressed with the scope, skill and organization of the construction industry here and their presence internationally is renowned. Domestically the French government's vision and efficiency in making ground-breaking projects happen is perhaps unparalleled in Europe.

**Note:** James ("Jim") Perry's first working experience in France was as a student in 1976. He returned in 1988 with an American firm for the design and construction of EuroDisneyland. After five years working on contract administration and arbitration, he spent several years in Malaysia filling a similar role on the construction of Kula Lumpur City Centre. In 1995, Jim returned to Europe and worked as contracts manager for a French design-build contractor. In 1999, he worked as contracts director and laterally co-managing director of Disney's French design-build subsidiary for the construction of a second theme park. In the spring of 2003, Jim opened PS Consulting, a firm providing project management, dispute resolution and litigation support services, which specializes in helping French firms working overseas and inbound direct foreign investors building in France.

Jim has a Bachelor of Science degree in civil engineering from Colorado State University and a J.D. from Case Western Reserve University. He works with a British partner, Geoff Smith, who has equivalent UK qualifications and thirty years experience working in a French environment.

Jim is an American raised in Scotland, and his wife is Czech. They have a two year old boy and six month old daughter who they hope will be able to speak "some language other than the goulash their parents speak!"

Jim Perry can be reached at [jamesperry@noos.fr](mailto:jamesperry@noos.fr). □

# DRBF Board Meeting

## Summary Minutes

By Peter M. Douglass  
Secretary/Treasurer

### MAY 7 & 8, 2004 MEETING

A DRBF board of directors meeting was held at the Airport Hilton Hotel in Chicago on May 7 & 8, 2004 with 17 directors and officers participating.

#### Treasurer's Report:

The budget was reported as on target with some minor variations. Total revenues to date were reported as roughly 65% of budget with no income from corporate grants or sale of the manual. Total expenses were reported as roughly 31% of budget, with operations expenses comprising most of this amount (as should be expected at this time).

The possibility of increasing dues for next year was raised and discussed with the following comments/suggestions:

- Should increase by small % to keep up with inflation, as opposed to larger jump;
- Should increase benefits and publicize what the membership gets for the dues: new website expansion and the revised Manual coming out this year; local chapters help value received and could have their own subsite on our web; and sustaining members should have their name on the website and unlimited web access.
- We need to pursue publicity outside the DRBF.

In final summary it was agreed that:

- No change to the basic dues for the coming year;
- Pursue more sustaining members by: reducing the dues difference between Individual and Sustaining member dues; [rovide added incentives such as charging to place your CV on the website if not a Sustaining member.

#### Committee Reports:

**Executive Committee:** Bryson Shipley Hiring an executive director that could be expected to accomplish our objectives (raise funds and represent the DRBF throughout the world) would be expensive and we should have a 2 year reserve before retaining an executive director. Probably the best source of this magnitude of funding would be corporate sponsors. It was felt that a 3 year corporate commitment is probably doable with say 20 corporations. It was agreed that a consultant should probably be retained to help Dan Meyer (Fund Raising and Corporate Patronage chair) put together such a fund raising effort. A motion was passed for Dan Meyer to look into hiring a consultant in his area to work with him on this and report back as to the magnitude of the cost for such a consultant.

#### **Annual Meeting:** Jimmy Lairscey

A tentative program agenda for the 2004 Annual Meeting that will be held at the Hyatt Regency Hotel at the San Francisco airport on October 22, 23 and 24, 2004 was distributed. A boat trip around San Francisco Bay boarding at the Berkeley Doubletree Guest Dock at 8:45am on Friday 10/22/04 with a continental breakfast included.

A logistical problem remains in that it is some distance from the airport hotel to the Berkeley dock. Group transportation has not been scheduled due to the high cost of a bus and individual vans supplied by the DRBF present an insurance problem.

Confirmation of 30 participants on the boat trip (at \$100 per head) is required by June 20, 2004 in order to avoid a penalty if the boat trip were to be canceled. Discussions indicated strong support by the Board members at the meeting and this

**Board of Directors Meeting Schedule**

The board has scheduled meetings for the following dates:

September 10, 2004  
October 22, 2004

If you have something you would like the board to discuss or consider, notify Peter Chapman or one of the directors.

led to the board committing to pay any differential required to make up the minimum number, if at least 30 persons do not go on the boat trip.

Suggestions regarding the proposed agenda included:

- 2 drink tickets for Saturday night's cocktails to be handed out at registration to be included in the cost of the Saturday night dinner;
- Note that Awards will be given out following dinner on Saturday night.

**DRB Best Practices:** Hal McKittrick  
The current status of the committee's work was reported as follows:

- The Best Practices Guidelines (BPG) are intended as a stand alone document
- Three drafts have been prepared to date and are included in the handouts to the board members
- The BPG must comport with the revised Manual and the drafts have been submitted to the Manual steering committee for review
- The BPG are targeted to go on the web site in October 2004

**DRBF Bylaw Revisions:** Sammie Guy  
Sammie noted that the Sustaining Membership requirement for all persons serving on the board of directors needs to be added to the bylaws.

Discussion regarding how to best identify and elect new Directors led to the following suggestions:

- Vote by mail like some other organizations, however it was generally felt that this resulted in a poor return of the ballots;
- Allow time for write-ins at the Annual Meeting;
- Provide nominees names plus a brief blurb on each of those prior to the vote at the Annual Meeting;
- Allow nominees supported by a petition with a minimum number of member signatures in order to be nominated;

- Nominate key individuals from outside the DRBF organization in order to get new ideas and expand the general breadth of the board.

The committee will draft revised wording on the director's position and how they are elected, with the new procedures (once approved) to take effect starting next year and not at the upcoming Annual meeting.

For this year, the president will appoint a nominating committee that will put together a slate of nominees to be voted on at the October 2004 Annual Meeting.

**Revised DRB Manual:** Joe Sperry  
The steering committee was reported to be making good progress as outlined in the report to the directors.

Binder options were discussed and it was agreed that size, etc. should be left up to each person downloading the manual.

**Finance and Administration:** Pete Douglass  
It was reported that Pete and Steve Fox are still the only members of this committee, although Jim Donaldson is pulled in on occasion.

The current objectives of this committee include:

- Drafting the budget for each year
- Monitoring the progress (revenues and expenses) relative to the final budget
- Supporting the organization activities
- Responding to questions about the organization and its financing

The committee would welcome suggestions for other needed duties that it should perform, as well as other committee members that would like to get involved.

**Fund Raising and Corporate Patronage:** Dan Meyer

Dan reported that he had found a professional fund raising group – The Alfred Group based in Chicago – to help him with this effort. Most fund raising, however, is

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a one shot deal and this group is used to working with very large budget organizations (>\$10,000,000). Hence, their budget typically runs in the \$100,000 to \$150,000 per year. For the DRBF project, the group is willing to work at hourly rates and Dan will put together a scope sheet for them to bid on.

Several other comments and suggestions were offered as follows:

- Should the DRBF pursue a one shot fund raiser or a continuous year to year effort?
- Who should make the “sales calls”? Several board members felt that this should be done by the directors and DRBF members and not consultants. Others felt the consultant should make the approaches. It was pointed out that if our members try to solicit the funds, then this could be a possible conflict of interest with respect to serving on Boards down the line.
- Are “endowment chairs” a possibility?
- Where do we want our budget to be in 3-4 years? The consultant needs this information. (Steve Fox will provide Dan with the DRBF budgets for the past 5 years.)
- It was noted if the DRBF hopes to retain an executive director over the next several years, \$300,000 for 2 years minimum may be needed.

Bill Baker, Hal McKittrick and Pete Douglass (DRBF budget tie) agreed to serve on the committee.

**International:** Peter Chapman for Gwyn Owens

The following plans on the International front were noted:

- A trip to China in August 2004 – Peter Chapman and Gordon Jaynes will attend;
- A planned trip to Vietnam also in August 2004 – Peter Chapman and Gordon Jaynes will be joined by Country Representative Dick Francisco and one other;
- A conference in Paris to be attended by Peter Chapman, Gordon Jaynes and Bob Rubin;
- The New Zealand chapter wants \$5,000 to assist in a “kick-off” effort. In the past, the board agreed to a one time sharing of

½ the dues collected for a total of \$7,500.

It was suggested that the DRBF should develop stronger ties with the US Council for International Business (USCIB) headquartered in New York city. This organization is coming out with a publication on DRBs and other ADR methods. The DRBF should be on their introduction program for the upcoming meeting. Peter Chapman, Gordon Jaynes and Bob Smith are members of this organization.

**Marketing and Membership:** Bob Rubin Bill Edgerton set off the marketing side last year but thinks there should probably be two sides to the marketing effort: marketing the “process” (directed at the owner’s decision makers); and seeking new members.

Steve Fox typically sends a standard package to each potential new member, including an application. It was suggested that additional boxes be included on the application to provide insight into how new members learned about the DRBF.

Bob Rubin noted that AAA has asked him to chair a panel at their November 2004 meeting and he has also been asked to make a presentation in Florida on October 22, 2004 (which appears to conflict with our board of director’s meeting).

The board authorized purchase of a Velcro style display set up to be used by the Florida Chapter next month and then available for other DRBF booths around the country. The Florida Chapter will coordinate with Steve Fox on where to store the display and how to go about shipping it to the next site when that is identified.

**Strategic Plan:** Dan Meyer  
Members on this committee will include Brison Shipley and 1 or 2 others. It was considered that our existing Strategic Plan should be good for another year or so.

**US Regional Chapter Coordinator:** John Nichols  
John was absent due to his wife’s illness.

The board ask Steve Fox to send John a note indicating that we all missed him at the meeting and requesting a status report on his committee's activities.

**World Bank Liaison Committee:** Gordon Jaynes/Armando Araujo  
The World Bank Institute Distance Learning Centers are now up and running. This provides real time audio-visual connection for training.

The International Distance Learning Operations (IDLO) Center in Rome provides interactive (with a slight lag time in audio) opportunities with the aim to have training with World Bank representatives in developing countries. It is hoped that this system will provide an opportunity to make presentations to owners in developing countries.

A second direction is to develop a computer disc that can be used by individuals for self learning. If the DRBF prepares the written material, the World Bank will prepare the animated disc and send it around. The World Bank is interested in 6 one hour programs that would be used to sell the DRB process. A disc that provides an Introduction to the Process (such as Sections 1 and 2 of the revised Manual) would be very useful, but would not be a training disc.

Armando is trying to get the European Banks and the World Bank to use the same contract provisions. The World Bank is also trying to avoid some of the dysfunctional Boards that have popped up in the past. Other banks and developing countries look at the DRB provisions as a World Bank mandate that must be met to get funding, instead of a "value added" provision.

**Web-Site:** John Bradshaw  
Handouts provided to the directors included the committee's long term objectives and achievements to date, as well as a few items where the committee needs some guidance from the board. A short video supported presentation illustrated what is currently available on the new web-site under development ([www.drb.org/dev](http://www.drb.org/dev)).

The DRBF could provide regional chapters

or committees their own "chat room" if that would be of value.

Charging for putting a member's CV on the web-site (an earlier suggestion) would require a separate password. Following concern expressed over possible credibility of material that might then be placed on our web-site, Steve Fox recapped the following items that he checks under the current resume program:

- Confirms they are a paid member
- Confirms their stated attendance at DRBF workshops
- Limits the size of the resume to something small, with contacts provided to enable the reader to request further information directly.

The committee will look into whether we can link to other personal websites.

**Education:** currently there is no chair  
There appears to be a 2 year cycle of workshop attendance with high attendance one year, then only a few in the off year.

Larry Rogers provided a training report that was included in each director's packet indicating a number of proposals to other organizations (such as the Saddle Island Institute, the American Public Works Association and the Project Management Institute) have been made to offer training outside the Foundation.

Several tasks were identified for the Education committee once a chair is in place:

- "Bird-dogging" the training courses and the trainers;
- Overseeing the production of updated training materials; and
- There is a need for training on multi-national work but there is no appropriate training or training materials available.

Bart Bartholomew has since agreed to serve as chair of the Education Committee. Other committee members include Dan Meyer, Bill Baker and Jim Donaldson.

**Membership Chapter Policies**

The board discussed the topic of the DRBF relationship with subgroups, both domestic

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and international. The premise is that the DRBF is not adequately serving the needs of these groups and there is not a clear definition of the relationship between chapters and the parent DRBF.

**Domestic Chapters**

A handout provided by Sammie Guy contained some suggestions for domestic chapters loosely modeled after the ASCE and a number of questions for discussion and input from the board. One central question was what benefits do the chapter members gain by being members of the DRBF at a cost of \$150 per year? Some of the answers were:

- A possible section of the *Forum* dedicated to the chapters;
- Input to DRBF policies and promotions
- A break on the cost of workshops and the Annual Meeting
- Section 3 (for board members) of the revised Manual at no charge
- Getting their resume on the DRBF web-site, a chat room, and other web-site benefits
- Special treatment in the DRBF directory
- Distribution center for information
- Purchase and source for seldom used items, such as the Velcro display used by the Florida Chapter

The stated purpose for having DRBF chapters included:

- Engage the membership in DRBF activities
- Marketing on a local basis, including the DRB process, membership, workshops, etc.

Concerns expressed over having DRBF chapters included the following:

- Don't want the DRBF to be cannibalized by the chapters
- Needs to be a critical mass to start a chapter
- There already are chapters and therefore DRBF membership needs to be encouraged or these chapters will break off on their own.

Other comments:

- Chapters could prepare additional guidelines that are more specific than the general DRBF guidelines contained in the manual (i.e. Florida's guidelines are more specific than the model rules (national) that we encourage the chapters to adopt)
- Need to have a win-win approach
- Florida state, or even county, organizations have to be chartered in order to collect and spend money

**International Chapters**

Another handout from Sammie Guy provided two alternatives to be considered as the DRBF organizes to better serve their international members.

Other comments:

- Lots of potential for chapters
- Do we need separate chapters that subscribe to different practices?
- Should we set the bylaws for chapters and then let the chapters form?
- The board agreed not to give funds to the chapters but otherwise encourage them

The Bylaws Committee will attempt to draft bylaws for chapters generally slanted toward those chapters found in North America.

**DRB Project Tabulations**

After several years of dedicated service, Dick Downs has resigned as chair of this committee and currently no replacement has been identified.

It was suggested that the projects should be "coordinated" by state and/or country and by work category. It was further suggested that the whole listing should be put on the web site, at which point it could be easily sorted by various categories. It was noted that some code numbering system is needed so that any given project can be located and to indicate roughly when it was active.

The DRBF currently has coordinators for Caltrans, WSDOT and Fla. DRB projects.

**4<sup>th</sup> International Conference**

Peter Chapman re-iterated some of the upcoming conference: the conference is to be held in Berlin on June 17 & 18, 2004; Dr. Helmut Koentges (Germany's Country Representative) is organizing the conference; for the first time the conference will be bilingual, and Friday night there will be a cruise on one of the local rivers.

**Other Business**

**2005 Annual DRBF Meeting:**

Where do we think it should be held? it was expressed that it should be in a center of construction activity. New York City offers a number of opportunities: NY city's East-side Access project is reportedly now going to have a DRB; MTA reportedly says that DRBs are back in on NY subway projects, currently estimated at roughly \$20 billion; USCIB (headquartered in NYC) could be a source of speakers at the Annual Meeting. Other possible locations mentioned included Texas, Toronto and St. Louis. October 7-9, 2005 were tentatively selected as the dates.

**Frequency of "Face to Face" Board of Directors Meetings:**

"Face to face" board meetings are considered very desirable, but travel and lodging costs for such meetings are born by the individual board members and officers and can be quite a burden. Although 3 "face to face" meetings per year were discussed, it was agreed that the board would stick with 2 "face to face" meetings for 2005.

Bill Baker reported that the **Institute for Conflict Management** strongly advocates the use of ADRs. The Hospitality Developers Organization Issue Board wants to become a provider for this service. DRBF members would be able to put their names in to serve on such Boards.

**July 9, 2004 MEETING**

A DRBF board of directors conference call was held on July 9, 2004 with 12 directors and officers participating.

**Treasurer's Report:**

Revenues and expenses were reported as on target with some minor variations. Membership revenue is slightly greater than 92% of budget with 592 members registered of the 640 budgeted. The income from workshops is projected to be slightly less than budgeted as we expect 1 less workshop than budgeted. Annual Meeting is currently at roughly 50% of budget but we expect the final numbers to exceed budget by approximately 30% due to the boat trip. Main revenue shortfalls are in the areas of corporate grants and the new DRB manual. Offsetting reductions in expenses should result in the DRBF meeting or exceeding the estimated reserve fund additions anticipated in the 2004 budget.

**2004 Annual Meeting:**

The agenda is pretty well firmed up and will be included in the upcoming *Forum*.

Transportation for the boat trip is dependent on who desires this but use of a small minibus or shuttle bus from the hotel is anticipated with the users of this service paying extra. Private cars and rental cars will be exempted from this charge and there is parking at the quay.

3 Breakout Sessions are currently planned for the meeting as follows:

- The role that the DRB Foundation should play;
- Functional and dysfunctional DRBs and why;
- Marketing and why the DRB process is working.

A copy of the breakout session topics and leaders will be sent to the board of directors and to Ann for the *Forum*.

**Best Practice Guidelines (BPG) and other publications:**

It is still looking positive to have 3 sets of BPGs completed in October for the "Users," "Members" and "Hearings." Certainly one set will be ready for consideration and approval by the BOD at the Annual Meeting, and possibly 2 or 3 sets.

With respect to the revised manual, it was

*(continued on page 16)*

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agreed that: 1- there should be no disagreements between the two documents, and 2- BPGs should be stand alone documents so that they can be handouts at DRBs, talks, etc. In addition, the board felt that the BPGs should be included in the revised DRB Manual as Appendices.

**Revised DRB Manual:**

The steering committee plans to put out Section 2 in the near future.

**Fund Raising and Corporate Grants:**

Gordon Jaynes reported that Thomas Bianchi from Seattle is not available to serve as a consultant to the committee.

**Data Acquisition:**

Dick Downs confirmed that he would not be available next year to continue as chairman of this committee. After some discussion, it was agreed that Steve Fox, Jim Donaldson and Pete Douglass should look into a paid person to fill this role.

**International Conference:**

The conference was very successful with a decided European flavor that went over very well. The meeting will likely generate some increased members to the DRBF. Peter Chapman also reported that Maria Trofaier (a British lawyer) will take over as the Country Representative for Austria and that James Perry (an American living in Paris) will become the new Country Representative for France. Next year's site is undetermined, but it might be desirable to move it away from Europe, possibly Dubai. This could be a topic for the September 10 conference call.

**2005 Annual Meeting:**

Steve Fox collected the costs for various hotels in New York City and distributed them to the Board. The costs of NYC are much higher than either Washington DC (last years site) or San Francisco (the 2004 site). The costs would be 2 to 3 times what we are used to and the Board consensus was that NYC should not be considered further due to the high costs. Potential sites under consideration in order of preference: Dallas – near the airport; Denver – downtown; and

Philadelphia. Pittsburgh was also mentioned but without much enthusiastic support.

**New BOD and Officer Nominees:**

Possible BOD candidates were identified with a need to replace a minimum of two directors and possibly as many as four.

**Other:**

Larry Delmar (a lawyer who was with the Boston Central Artery) may be willing to serve as a part time executive director for the DRBF. The president and president-elect will try to meet with Larry sometime in August to discuss the duties, the time allowance that he has in mind and the dollars. □



**DRB Project  
Info Needed  
for Tabulation**

It's time to update the tabulation again. This information is vital to promote use of the DRB process. We need your help!

Please look at the tabulation on the web site (click on Manual—Table of Contents—1. Concept, Appendix 1A, Tabulation of DRBs) for the information needed and to check if we have all the DRBs of which you have knowledge. Note the date of the latest update in the right column—some of our info is quite old—these should be '03 or '04.

Please send the info to Steve Fox before September. If needed, Steve can provide forms. Thanks!

# WELCOME TO NEW FOUNDATION MEMBERS

## MEMBER ADDITIONS APRIL THROUGH JULY 2004

Amjad Agha  
Pakistan Hydro Consultants  
Lahore, PAKISTAN

Jimmy D. Allison  
Orlando, FL USA

Douglas Stuart Beckwith  
Ipswich, Suffolk UK

Anders Beitnes  
SINTEF  
Trondheim, NORWAY

Tom Blackburn  
Blackburn Consulting, Inc.  
Auburn, CA USA

Ernest W. Blee  
Alamo, CA USA

Joseph Byce, P.E.  
Byce Construction Consulting  
Alpharetta, GA USA

Philip B. Copare  
Construction Services Enterprise  
Tavares, FL USA

Simon Delves  
Shadbolt & Co.  
Reigate, Surrey UK

Robert DiRubbo  
Union Switch & Signal  
Pittsburgh, PA USA

Clarissa Easton  
King County Government  
Seattle, WA USA

E. Harvey Elwin  
MWH  
Bellevue, WA USA

Orrin F. Finch  
Arbitration/Mediation Services  
Sacramento, CA USA

James W. Foley, P.E.  
Saratoga, CA USA

Andrew Golden  
Institute For Conflict  
Management, LLC  
Santa Monica, CA USA

Donald G. Humphrey  
Lithia, FL USA

David Jameson  
Lakeland, FL USA

Christopher Koch  
Georgana & Koch  
Athens, Greece

Walter F. Lange  
Washington Group Int'l  
Lake Worth, FL USA

David J.E. (Ted) Malan  
Parsons Brinckerhoff  
International  
Singapore, SINGAPORE

R. Sean McDonald  
Law Office of R. Sean McDonald  
Colleyville, TX USA

Kuena Mophethe  
Lesotho Highlands Development  
Authority  
Maseru, LESOTHO

Webster J. Owen Jr.  
Owen Engineering & Manage-  
ment Consultants, Inc.  
Cameron Park, CA USA

Charles Parisi  
Bergen County Special Services  
Paramus, NJ USA

Mark E. Puckett  
DRMP  
Orlando, FL USA

Dennis Wogan  
Queensland Dept. of Main Roads  
Capability & Delivery Division  
Brisbane, QLD AUSTRALIA

Wayne J. Reiter  
Reiter Companies  
Richardson, TX USA

Horst Roettgen  
Hochtief Construction AG  
Essen, GERMANY

Dr. Derek Ross  
Layng Ross  
Weybridge, Surrey ENGLAND

George Rosenberg  
Shadbolt & Co.  
Reigate, Surrey UK

J. Robert Shoff  
Chagrin Falls, OH USA

Willard Mac Smith Jr.  
Dallas Area Rapid Transit  
Dallas, TX USA

Dr. Issaka Ndekugri  
University of Wolverhampton  
Wolverhampton, UK □

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## **LESSONS LEARNED**

When a DRB program was first considered in 1990, BART intended to adopt a process that would avoid the use of litigation to resolve commercial matters for construction and procurement contracts. Looking back over the last decade, BART has been successful in that objective as there has been no litigation on construction and procurement contracts. DRBs have clearly contributed to such success; however, they were not the only element in achieving this objective. BART widely embraced partnering which facilitated communication between the BART and contractor principals, and BART management adopted an attitude of resolution rather than confrontation which was reciprocated by the contractors. BART has also included partnering provisions in most of its contracts. Together these items, plus traditional good design practice and active BART support of contracts, has led to the litigation free result.

It does not appear, however, that BART is fully enamored with its past DRB experience. A view often voiced is that much of the hard work spent crafting together a contract document to fairly allocate risk between the contractor and BART was undermined by DRB recommendations that appear to seek out any plausible path to support the contractor's view. In essence, this appears to lead BART to question whether the DRB is considering the contract in its entirety or from the perspective that if the contractor has any reasonable interpretation it must be the prevailing view. It may be that BART's expectation that a DRB will strictly enforce a contract is unrealistic and fails to consider that a DRB weighs heavily the risks a contractor takes in preparing its bid. The past experience suggests that the DRB thus gives the contractor wide latitude to demonstrate reasonable interpretations of contracts. However, if DRBs weave together a tenuous thread of logic to come to a conclusion favoring the contractor, BART may well conclude that the process is biased in the contractor's favor and does not serve the public's interest.

Among the lessons learned, BART has found that careful choices of DRB members are vital to the effectiveness of the DRB and the selection process should be similar to the process of other professional services. DRBs should be formed early in the contract to be most useful. On mid sized contracts (i.e. \$20 million) DRB costs on the order of 0.05% of the contract amount should be expected. Regular status meetings should be held quarterly. In preparing for a hearing, a well-crafted position paper is essential and a thoroughly rehearsed, clear, convincing presentation is vital to communicate views.

## **FUTURE DIRECTIONS**

With a decade of DRB experience, where is BART headed? DRBs have not been a panacea for resolving contract issues, but they have served a purpose in avoiding litigation and forcing parties to come to grips with issues. BART has provided for mediation in its smaller contracts and that is one method that could be expanded to larger undertakings. The use of DRBs on future contracts has not been ruled out. The DRB process will be reviewed on a case-by-case basis comparing it to other alternative forms of dispute resolution for particular contracting situations.

One of the emerging issues is the range of topics to be considered by a DRB. Many of the problems, if not all, are very complicated determinations of what the contract says about an item. In some cases this is determined by the plans and technical specifications; however, in most situations, the general conditions, the supplementary conditions and other contractual content are the focus of the problem. These types of questions are more of a legal nature and one question is whether the DRB should be asked to consider such matters. The Disputes Resolution Board Foundation addressed this very issue in their 2002 Annual Meeting. There does not appear to be any clear way to separate the technical from the contractual elements of a problem, so it is hard to imagine how one could make such a demarcation and limit the DRB's scope of review. One of the concerns is that in making rulings on complex issues, the DRB is at times asked to review matters of law based on case precedent and other rulings of courts in developing their recommendations. Is this asking a DRB composed of practicing construction and design professionals to go outside their areas of expertise? The question of participation by attorneys in the DRB process

then emerges. Should one of the members of the DRB be a practicing attorney or a similarly qualified legal expert to supplement the experience of the construction professionals on the DRB? Is it desirable to have an outside legal advisor to the DRB, independent of either BART or the contractor, to consult on matters where the DRB is uncertain regarding the law in some matters?

In forming DRBs, should there be more restrictions regarding members' prior working relationships with one or both of the parties? In addition to having no working relationship with either party the DRB members should also not have provided any DRB services to either party for a period of some years. Do we want DRB members to be completely free of prior relationships to bring that sort of objectivity? On the other hand, where there are multiple contracts constituting a single program it may be advantageous to have one DRB hear all such matters. In such a case, the DRB will have a commonality of understanding between the various pieces of a program that might lead to more equitable decisions.

The future direction of DRBs at BART is unclear. BART has not ruled out the use of DRBs on future contracts but will likely review on a case-by-case basis whether other methods will be used. Revisions to the criteria for member selection are likely and the role of attorneys and legal advisors may be revisited. BART may also consider advisory options rather than hearing recommendations as an alternative way to tap the expertise of DRB members to resolve issue.

**Note:** This article is a summary of a paper Rus Rudden presented in June 2003 to the the American Public Transportation Association (APTA). Rus was seconded to BART from URS as BART's manager for the construction of the Line, Trackwork and Systems contract for the SFO Extension from 1998-2003. During the course of this work and prior BART consulting CM assignments from 1992-1998, he represented BART in regular DRB meetings and presented BART's case before DRBs in nearly half the DRB hearings that occurred over the last 10 years. He can be reached by e-mail at [rus\\_rudden@urscorp.com](mailto:rus_rudden@urscorp.com). □



**The Millbrae BART Station, part of the SFO Extension completed and put into operation in June of 2003.**



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## FOUNDATION FORUM

Dispute Resolution Board Foundation  
6100 Southcenter Blvd., Suite 115  
Seattle, WA 98188-2441

### FOUNDATION FORUM

## WORKSHOP CALENDAR

October 25 - Administration and Practice Workshop  
October 26 - Chairing Workshop  
San Francisco, California

November 10 - Administration and Practice Workshop  
November 11 - Chairing Workshop  
Orlando, Florida

Attendees should take the Administration and Practice workshop prior to the Chairing workshop. Registration for the workshops is \$445 for Foundation members and \$495 for non-members, and includes all workshop materials and lunch. All workshops can also be provided on an "in-house" basis for a fixed daily rate. Each participant will receive a DRBF Certificate of Completion.

To register for a workshop, contact the Dispute Resolution Board Foundation. For the latest additions to the training schedule, visit [www.drb.org](http://www.drb.org).