Preserving the Project
Time and Budget
Why Project Advocates®?

• An asset for the project team that is contractually agreed to by all parties to a construction project.

• Team members consist of individuals who have legal, engineering and mediation (negotiation) skills. They are independent advocates whose client is the Project.

• The team has one goal – prevent and/or resolve disputes as they occur on the project so that construction continues unimpeded.

• Similar to UK Adjudication but better.
Why does the Project Need an Advocate?

• Who is looking out for the project itself?
• Can you make use of additional, objective and timely construction management project expertise?
• Have you gotten an invoice from your claims consultants/law firm lately? Would you like more?
• Reduce the percentage of problem projects!
What’s the Answer?

In order to understand an issue it’s necessary to first know enough to ask the right question?

How can we complete more projects on time and budget without delays resulting from costly and time consuming disputes over changes and their later resolution?
Project Advocate Approach

Project Advocates® must
• Adopt a Systems approach to Project Execution
• Understand COMPLEXITY
• Use the Best Attributes of
  – Teamwork
  – Partnering
  – Dispute Review Boards
  – Mediation
  – Alternate Dispute Resolution
  – Adjudication

Project Advocates® for the Construction Industry
What is a Systems Approach and How Does It Help?

Adopt an overall perspective of the project execution and the larger system that the project exists within.

Understand and critically examine the assumptions made at conception of the project idea.

- Business need and timing
- Economic model and forecasts
- Labor availability and skill
- Materials availability
Systems Thinking

- Scientific approach to understanding
- Used in organizational management studies
  - Dr. Russel L. Ackoff, University of Pennsylvania

- Example of approach to filling a need using systems thinking.
  - Automobile Procurement
    - Buy Parts and interface/assemble
    - Test Drive and select
Systemic Approach vs. Traditional CM

• Project Advocates® must apply its methods to be able to understand and solve problems.

• Builds on the concept that the whole is greater than the sum of its parts. Optimizing the parts does not optimize the whole.

• A system is the product of the interactions of the parts rather than the sum of the parts themselves. It’s the interactions that are the key!

• In a traditional project, each party tries to optimize its own outcome, often to the detriment of the project as a whole.
• A problem detection and resolution technique focused on the whole rather than an individual part.

• The PA Team works for the whole Project, not for one of the parts (Owner, A/E, Contractor).

• Because of this “project execution-focus,” the PA Team can be an enormous asset to the project.
Why Do We Encounter So Many Problems?

- **COMPLEXITY**
  - Planning is two dimensional
  - Activities are multi-dimensional
  - Structural
  - Interactive

- We have met the enemy and he is us!
  – POGO
Chisholms Ratio

For every person hired to accomplish something in an organization, nine others are hired to stop them from doing anything useful.

Who are these people?

- Legal
- Operations
- Regulatory Affairs
- Environmental Compliance
- Maintenance
- Financial/Accounting
- Resource Planning
- Manufacturing
- Marketing
Optimism and Religion

• Architects, Engineers and Contractors all believe in miracles:
  – Macho bid approach
  – Can do spirit
  – Desperation
  – It will never happen to my Project!
And then a **MIRACLE** occurs!
And the project finishes on time and within budget.

*Project Advocates® for the Construction Industry*
“Except in the middle of a BATTLEFIELD, nowhere must men coordinate the movement of other men and all materials in the MIDST OF SUCH CHAOS and with such limited certainty of present facts and future occurrences as in a huge CONSTRUCTION PROJECT….Even the most painstaking planning frequently turns out to be MERE CONJECTURE and ACCOMMODATION to CHANGES must necessarily be of the ROUGH, QUICK and AD HOC sort, analogous to ever-changing commands on the BATTLEFIELD.”

Application of Systems Thinking

Apply systems thinking to all phases of the project

- Conceptual Studies
- Team Selection
- Administration
- Construction
- Start-up/Testing
- Operations
Conceptual Design

• Critically Examine Assumptions and Make them Explicit
• Programming Phase Definition
• Review and Test
  – Scope definition
  – Schedule assumptions
  – Budget Data
Typical Project Assumptions

• Codes, Regulations and Standards
• Worker availability and skill levels
• Local materials availability and quality
• Lack of Existing Infrastructure, ports, roads, etc.
• Permits, Inspection services, etc
• Transportation
• Communications
• Living Conditions (eg building a camp may be necessary before construction)
• Economic Drivers
• Exchange Rates
• Commodity Prices
Team Selection

- Select Project Delivery Method
  - Design-Bid-Build
  - Design Build
  - Hybrids

- Select Team
  - CII Study:
  - Most important determinant to project success is the personnel assigned to the work
• Key Features for Recognition
• Metrics do not respond to changes
• No explanation for inefficiency
• General malaise
• Minor work items delays and confounds prime activities
• Hopelessness set in as background for project
Project Administration

Procedures

- Report Timing and Format
- Change Order System
- Problem Acknowledgement
- Reviews and meetings
- All Procedures Act as Constraints within the system
- Designed to focus on the success of the whole
Construction

Work Scope Definition

• Shop Drawing Administration
• Requests for Information
• Design Bulletins
Start-Up/Testing

- Special Equipment
- Test Procedures
- User Training
Operation

- User Expectations
- Nuts and Bolts
  - Operability
  - Maintainability
  - Reliability
Project Flash Points of Trouble

• Engineering Deliverables
• Long Lead Equipment
• Site Mobilization
• Construction Interfaces
• Start-up Testing/ Commissioning
• Initial Operation and Operator Training
How Does Project Advocacy® Fit into a Systemic View of Projects?

- Looking at the whole instead of parts
- Incorporate wisdom (higher level L & A aspects)
Ingredients for a Successful Project

- Proper Planning
- Project Definition
- Financial Stability
- Appropriate Design
- Fair Contracts
- Team Development
- Rapid and Fair problem resolution
Project Advocates® Team Development

• Selection
  – Private/Public

• Contract Award
  – Pricing
  – Schedule
  – Permitting
  – Supervision

• Pre-Project Meetings
  – Document Review
  – Partnering
Partnering Workshop

• Project Team
  – Goals
  – Issues/Concerns
  – Relationships

• Workshop Objectives
  – Awareness
  – Clarification/Definition
  – Agreement
  – Commitment
Workshop Results

- Win-Win Environment
- Trust/Cooperation Relationship
- Defined Expectations
- Commitment to Project (and each other)
- Code of Conduct/Charter
- Evaluation/Recommendations
Critical Follow-Up

- Ombudsman/Standing Neutral
- Maintenance
  - Benchmarking
  - Monthly Review
  - Partnering Survey (Anonymous)
  - Maintenance Workshop
  - Early Issue Identification and Resolution
  - Appropriate Recognition
Alternative Dispute Resolution Procedures

- Dispute Review Boards
- Mediation
- Arbitration
Dispute Review Boards

- Overview
- Procedures
- Characteristics
- Issues
Project Advocacy® vs. Dispute Review Boards

• Comparison/Relationship
  – PA Eliminates need for a DRB
  – DRB role encompassed by PA role
  – DRB only Serves as Neutral Body, not Team Members
  – Cost Comparison
Mediation

- The Process
- Why Mediate
- How to Initiate
- The Mediator
- The Mediation Session
- Advantages
- Concerns

Project Advocates® for the Construction Industry
Project Advocacy® vs. Mediation

- Combines All Advantages
  - Voluntary
  - Agreement
  - Resolves Issues
  - Cost Effective

- Greater Scope
  - Mediator-Team Members
  - All Potential Issues
Arbitration

• Contract Agreement
  – Conditions
    • Application
    • Selection of Arbitrators
    • Scope of Award

• Choice of Forums
  – American Arbitration Association
  – International Chamber of Commerce
  – Others
    • JAMS
    • Center for Public Resources
    • National Arbitration & Mediation
Project Advocacy® vs. Arbitration

- Arbitration not an alternative to PA
- Arbitration Comparable to Litigation, Alternative to Judicial Proceeding
- PA Eliminates need for Alternative, Litigation Procedures
Project Advocacy® Works Better than Other ADR methods?

- Establishes early common ground.
- Common fact set developed during project through real-time documentation.
- Recognize big problems sooner.
- Minimizes project delays/interruptions.
Construction Dispute Resolution Steps

- **Prevention**
  - Risk Allocation, Incentives for Cooperation, Partnering

- **Negotiation**
  - Direct Negotiations, Step Negotiations

- **Standing Neutral**
  - Architect’s Ruling, Dispute Review Board, Standing Arbitrator

- **Non-Binding Resolution**
  - Mediation, Minitrail, Advisory Opinion, Advisory Arbitration

- **Binding Resolution**
  - Binding Arbitration, Private Judge

- **Litigation**
  - Judge, Jury, Special Master, Court Annexed Dispute Resolution

- **War**
  - Project Advocacy®

Escalating hostility & cost
Adjudication: The UK Experience

• Appointment of the adjudicator within seven days notice of the dispute
• Decision by the adjudicator within 28 days of referral
• The adjudicator must act impartially
• The adjudicator’s decision is binding until final determination through litigation, arbitration or agreement of the dispute
“… Parliament has not abolished arbitration and litigation of construction disputes. It has merely introduced an intervening provisional stage on a dispute resolution process.”

(Dyson J in *Macob v Morrison*)

The Act is a “remarkable (and possibly unique) intervention in very carefully selected parts of the construction industry”.

(Lloyd J in *Outwing v Randell*)
Project Advocacy® Avoids Problems

- Project Interruption or Demise
- Litigation Costs
- Cost of continuing work vs. waiting for a decision
Ten Most Deadly Construction Sins

1. Lack of Focus Up Front, Prior planning prevents poor performance
2. Failure to Choose the Best Method of Project Delivery
3. Failure to Assemble the Right Project Team
4. Failure to Coordinate the Project Team & Work Scope
5. Failure to Provide a Workable Method of Changing the Scope, Price or Schedule

Project Advocates® for the Construction Industry
Ten Most Deadly Construction Sins

6. Failure to Truly Understand Local Conditions
7. Inaccurate Schedule, too Elaborate a Schedule or Lack of Accurate Updates
8. No Periodic Meetings; Failure to Keep Job Meeting Minutes
9. No Vision on Dispute Resolution
10. Failure to Recognize that Quality Wins the Day
Legal Aspects of Project Advocacy®

- Monitor
  - Progress, Quality, Financial Status
- Maintain Communications Among all Parties
- All Disputes Resolved by Project Advocacy® Team
  - Decisions, Communications, Advice
- Information & Record Keeping of Project Advocacy® Team Available to all Project Participants
- No Confidentiality
- No Privilege
- Resort to Mediation
- Resort to Court

Project Advocates® for the Construction Industry
Owner’s View of Project Advocacy®

- Provides Flexibility
- Achieves a Decision Instead of Impasse
- Creates a Baseline of Information
- Avoids Surprises
- Avoids Mistakes
- Telegraphs Basic Problems
- Creates a Parameter to Change Design/Technique
- Allows for Objective Evaluation of Project personnel/Replacement.
- Posturing/”Creating Spin” Minimized
- Team Mission is to Serve the Project
Who pays?

It’s in the Owner’s interest to pay the Project Advocacy® Team as a project cost, much the same as the cost of a surety bond.
Project Advocacy®

A Roundtable of Perspectives
• The Mediator’s Perspective
• The Owner’s Perspective
• The A/E’s Perspective
• The Contractor’s Perspective
• The Attorney’s Perspective
Lawyer’s View of Project Advocacy®

• The Project Often Suffers Because of People’s Agendas
• Finding the Objective Story Is Difficult
• Even Discovery Does Not Help Get to the Bottom of It
• The More Litigation Progresses, the Further Apart the Parties
• Project Advocacy® Is Welcome, Protracted Litigation is Frustrating for Attorney and Client.
# Project Advocacy®

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<thead>
<tr>
<th>Company</th>
<th>Address</th>
<th>Phone Number</th>
<th>Website</th>
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<tbody>
<tr>
<td><strong>MDCSystems®</strong></td>
<td>55 West Avenue</td>
<td>610-640-9600</td>
<td><a href="http://www.MDCSystems.com">www.MDCSystems.com</a></td>
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<tr>
<td></td>
<td>Wayne, PA 19087</td>
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<td></td>
<td>New York, NY 10016-6809</td>
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<tr>
<td>Metro Mediation Services, Ltd.</td>
<td>685 Third Avenue, Suite 2100</td>
<td>212-681-0873</td>
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<td>New York, NY 10017</td>
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<tr>
<td>Coughlin Consultant Services</td>
<td>P.O. Box 62</td>
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<td></td>
<td>North Scituate, MA 02060</td>
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*Project Advocates® for the Construction Industry*
Other slides that may or may not be used by the panel.
Project Failures and Disasters

- Examples of Project Failures
  - Process Failure, Late Completion, Poor Quality, Inefficient Operation, Minimum expectations not meet

- Examples of Disasters
  - Force Majeure, Natural Disasters, Unforeseen Environmental Impacts, Political Upheaval, Financial Impacts

- Project Assumptions not accurate
- Bad Management
- Technical Failures
- Controllable Disasters
- Uncontrollable Disasters – mitigation necessary
How does Project Advocacy® work?

• Builds upon and extends the proven concepts of Teamwork, Partnering, Dispute Resolution Boards and Adjudication
• PA Team’s Roles & Responsibilities
• Roadmap to success
True Cost of A/E & Construction Disputes

- Project Delay:
  - Delay damages are often far greater than the cost of resolving the dispute.
- Loss of Use
- Lost Revenue
- Reputation and future benefit
How can Project Advocacy® Assist in Success?

• Experienced Initial Evaluations
• Willingness to Participate in Problem Resolution
• Empowerment and Freedom for PMs and Administration
• Avoids other Problems
• Facilitate a New Spirit of Project Partnership
Hierarchy to Learning & Adaptation

• Data
• Information
  1 oz of Information is worth a pound of Data
• Knowledge
  1 oz of Knowledge is worth a pound of Information
• Understanding
  1 oz Understanding is worth a pound of Knowledge
• Wisdom
• 1 oz of Wisdom is worth a pound of Understanding
Steps to Organizational Wisdom

• Collection of Facts and Data
• Data and Fact collection with thought yields Analysis
• Review of Analysis yields Information
• A collection of Information yields Knowledge
• Knowledge leads to Understanding
• Understanding and Experience yields Wisdom
Observation

• Judgment

Define the Problem and Craft the Right Solution
A/E’s View of Project Advocacy®

• McCue
Mediator’s View of Project Advocacy®

• Muller
Construction Manager’s View of Project Advocacy®

• McCue
Conclusions