

Healing Practices in Law and Medicine

In this time of public debate about health care, sometimes hopeful and creative, sometimes acrimonious, I'm coming down here on the hopeful side. If we are going to achieve satisfactory outcomes for the stakeholders in the health care debate, satisfactory resolution is about not wishing to take advantage of the other stakeholders. At a more profound level, deeper resolution is about our shared humanity, and understanding and caring about each other. Consider the apology and settlement recently announced in the

FIRST IN A TWO PART SERIES

Warwick, R.I.

The Woods' brothers had been incredibly close throughout their lives. James was 10 years older than Michael and, in many ways, raised him. While James pursued a movie career, Michael ran for mayor of Warwick, R.I. twice and was active in civic affairs. Michael Woods died on a gurney in the emergency room at Kent Hospital after suffering a heart attack. Although his emergency room physician ordered a heart monitor, the order was never carried out. The emergency room physician informed both Michael's mother, at the hospital,



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and James, by phone, of Michael's death. Other than that abbreviated conversation, no one made any attempt to speak to or explain the events of Michael's death to Michael's children, mother, or brother.

As a result, a medical malpractice case was filed in July, 2006 on behalf of Michael's son, Peyton. James Woods was a plaintiff in his capacity as the executor of Michael Woods' estate. The Woods family argued that signs of Michael Woods' impending heart attack were missed by the hospital staff because he was left unattended on a hospital gurney in a hallway until he was stricken. Had he been attended to, that medical attention might have saved his life. The hospital argued that Woods would have died anyway, that a heart monitor wouldn't have changed the outcome.

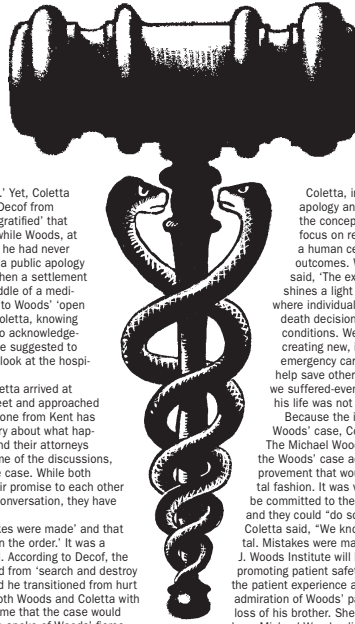
The case continued in litigation for three years, including early weeks of trial, before a collaborative, transformative settlement was reached. After talking to Sandy Coletta, the chief executive officer of Kent Hospital, as well as Mark Decof, the attorney for the Woods' family, it is clear to me that the case would not have settled without all three of these individuals being the people they are, and, in the most difficult of situations, doing what they did. It is a story of incredible creativity, courage, humanity, compassion and healing. Although the parties agreed that the settlement would remain confidential, both Decof and Coletta agreed to talk to me for this article, giving their permission to be quoted, which I greatly appreciate.

Because the case, including the trial proceedings, had been very bitter and acrimonious, and because the Woods family was looking for something that didn't seem to be achievable, Decof, a well-known and well-respected medical malpractice attorney, thought the case "unsettleable." What James Woods wanted was compensation for his brother's son, but, more than that, acknowledgement of responsibility and an apology. Yet, Decof explained, and Woods understood, that litigation would give the Woods' family only money, nothing more. James, totally devastated, wanted Kent Hospital and the physician to be held accountable. He grew even angrier and angrier by the day. In October, 2008, more than two years after the Woods' case was filed, Sandra Coletta became President and CEO of Kent Hospital. By then, the hospital defense had been set. As trial began, Coletta became more directly involved. Coletta told me that, as trial unfolded,

she'd been thinking that she needed to talk to Michael Woods. During the third week of trial, she told her attorneys what she wanted to do, that she "absolutely" had to talk to Woods. She knew that Woods was very angry and that, without a face-to-face conversation, there was no hope of resolution short of verdict. The hospital's attorneys, executing well their role as litigators, told Coletta that such a meeting "just doesn't happen, we don't put principals together in the same room." Yet, Coletta persisted. In response to the call to Decof from the hospital's attorneys, Decof was "gratified" that Coletta was reaching out to Woods, while Woods, at least at first, resisted. Decof told me he had never seen or heard of a situation in which a public apology and acknowledgement, particularly when a settlement was involved, had occurred in the middle of a medical malpractice trial. Decof, referring to Woods' "open wound," asked Woods to meet with Coletta, knowing that a meeting was the only avenue to acknowledgement of responsibility and apology. He suggested to Woods that "Woods might be able to look at the hospital differently through Coletta."

That is exactly what happened. Coletta arrived at the restaurant where they were to meet and approached Woods. She said, "I don't know if anyone from Kent has ever said this to you, but I am so sorry about what happened to your brother." The parties and their attorneys agreed that, regardless of the outcome of the discussions, anything said wouldn't be used in the case. While both Coletta and Woods have honored their promise to each other to not discuss the specifics of their conversation, they have discussed some elements publicly.

Coletta acknowledged that "mistakes were made" and that "the hospital did not follow through on the order." It was a very direct conversation, Coletta said. According to Decof, the apology shifted Woods' frame of mind from "search and destroy to a conciliatory attitude." Woods said he transitioned from hurt and anger to hope. Decof spoke of both Woods and Coletta with great admiration and respect, telling me that the case would not have resolved without Coletta. He spoke of Woods' "fierce



Coletta, in addition to acknowledgement, apology and settlement, discussed with Woods the concepts for an institute at Kent that would focus on redesigning healthcare systems using a human centered approach to improve clinical outcomes. Woods, in a conciliatory statement, said, "The experience of my brother Michael Woods shines a light on what can occur in any institution where individuals are called upon to make life and death decisions while facing the most challenging conditions. We are pleased to take an active role in creating new, innovative approaches to hospital and emergency care. We hope that this partnership can help save other families from suffering the loss that we suffered—even one precious life would ensure that his life was not lost in vain."

Because the idea arose out of the facts of the Woods' case, Coletta offered to name the institute The Michael Woods Institute. She made it clear that the Woods' case accentuated the need for systemic improvement that would not be achievable in an incremental fashion. It was very important to Coletta that Woods be committed to the institute, that "he would be with me" and they could "do something really substantial together." Coletta said, "We know we're not perfect at Kent Hospital. Mistakes were made. We can do better. The Michael J. Woods Institute will help establish a leadership role in promoting patient safety and developing new ways to improve the patient experience and clinical outcomes." She spoke with admiration of Woods' passion about patient safety after the loss of his brother. She told me that she and Woods could keep Michael Woods alive by doing this work together.

Hands-On Judge Brings His Approach to ADR

Continued from page 1

what mediations try to do is resolve cases, not solve them. In mathematics you can solve a formula, he said, but in human interactions, there are no solutions. Only resolutions.

"You just got banged up because someone went through a red light, and you've lost an arm," Gray said by way of example. "I'm sorry. There's no solution to that. I can give you money. There's a resolution. I can give you \$1 million. You'd still rather have your arm back, but that's just not in the cards."

"All we can do is resolve this, prop you up, dust you off, aim you in the right direction and get you to go on with your life. And people need to understand that."

In arbitrations, Gray said, his decisions are based strictly on the evidence. He does one unusual thing, in that after letting the attorneys question the witnesses, he will take over and ask questions, something he also did as a judge. He also will issue preliminary decisions, giving attorneys a chance to respond, which sometimes has changed his mind.

Milford W. Dahl Jr., a litigation partner at Rutan & Tucker in Costa Mesa, has appeared before Gray in

mediation, as well as in trials when he was on the bench. He described Gray as a thoughtful, deep thinker, who believes strongly in settling cases.

"He can be very strong without being a jerk," Dahl said. "He's very considerate and polite to witnesses and counsel. He's not afraid to take charge but does it in a very professional way. He is very much a believer in parties resolve conflicts."

Andrew J. Guilford, a former partner at Sheppard, Mullin, Richter & Hampton and now a federal judge, calls Gray "a talented man across the board in an array of experiences." While he disagrees with some of his opinions, Guilford said, he admires someone who has opinions. In fact, Gray devoted one of his columns in the Daily Pilot to Guilford's disagreements.

In mediations, Guilford said, he strongly favors "activist mediators," meaning someone who is going to work hard to settle a case, come to conclusions and express those conclusions. Gray, Guilford said, does that with compassion and understanding.

"Too many people today don't make decisions," Guilford said. "Judge Gray makes decisions but tempers that pushing hard with a

sense of fairness and with a sense of intelligence."

Gray is the son of William P. Gray, who was a federal judge in Los Angeles. He earned his law degree in 1971 from USC Gould School of Law. He served in the U.S. Navy's Judge Advocate General Corps in Guam and Lemore Naval Air Station in California. After his discharge, he spent three years as a federal prosecutor in Los Angeles and another five as a business litigator at Wyman, Bantzer, Rothman Kuchel & Silbert before Gov. George Deukmejian appointed him to the bench.

Gray has four children. His wife, Grace Walker Gray, a physical therapist, operates a physical therapy and pain center in Orange County.



James P. Gray
Age: 64
Affiliation: ADR Services Inc.
Location: Orange County
Areas of Specialty: personal injury, business and commercial contract disputes, probate, construction
Rate: \$400 per hour

Here are some of the lawyers who have used Gray's ADR services: Clifford E. Frieden, Rutan & Tucker, Costa Mesa; David S. McLane, Kaye, McLane & Bednarski; Steven R. Young, Costa Mesa; Kenny Kean Tan, Diamond Bar; Michael C. Chou, Hovey, Irvine, Milford W. Dahl Jr., Rutan & Tucker, Costa Mesa

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The New York Times Crossword

Convicted Spy To Get Espionage Sentence Monday

By Gillian Flaccus
Associated Press

SANTA ANA — An elderly Chinese-born engineer who has been convicted of espionage and other federal charges could face decades in prison.

Dongfan "Greg" Chung will be sentenced Monday in U.S. District Court in Santa Ana after being



convicted last summer of economic espionage, acting as a foreign agent, conspiracy and lying to federal agents.

The 74-year-old Chung has been in custody since the July verdict and prosecutors are asking a judge to sentence him to 20 years in prison.

The government accused the stress analyst of using his 30-year career at Boeing Co. and Rockwell International to hoard 300,000 pages of sensitive documents in his home, including information about the U.S. space shuttle and a booster rocket.

Prosecutors said they discovered Chung's activities while investigating another suspected Chinese spy.