The Upaya Council was established in 1979 by Chogyam Trungpa, Rinpoche, to hear and help resolve interpersonal and organizational disputes in the Vajradhatu and Shambhala communities.

For its first ten years, the council was extremely busy, meeting every Thursday night, often in two separate panels. In the late eighties, as with many Vajradhatu sangha offices, the Upaya Council faded somewhat in people’s awareness, though it never disbanded or stopped hearing cases entirely. Now, with the re-organization of the Shambhala mandala, the Sakyong Mipham Rinpoche has suggested that it is time to remind people of the services of the council, which operates both in Halifax and Boulder, and with plans for the organization of a European council as well.

The Upaya Council was conceived as a social service within the judiciary of the Vajradhatu and Shambhala mandalas. The Vidyadhara saw it as an means of applying contemplative awareness to conflicts within the community. In the following interview, Boulder Upaya Council members Cindy Cunningham and Reed Bye spoke with John Roper, a lawyer by profession and one of the four inaugural members of the council, who helped establish its procedures about the Upaya Council’s view and method of dispute resolution:

As Mr. Roper says, of the over 200 mediations that have been carried out over the history of the Upaya Council, very few have needed to be taken into arbitration (in which a legally binding decision is reached by the council and agreed to by the disputants) and the majority of mediations have ended in a resolution satisfactory to and largely determined by the parties involved.

The usual procedure of the Upaya Council is to begin by talking to both parties in a dispute and determine if theirs is a case in which the council can help. A “dispute” in this sense requires particular points of practical disagreement that can be addressed and resolved through a series of formal and informal meetings of the council with the disputants. Differences in the understanding of particular business, marital, or parental agreements or
responsibilities are typical case examples. Upaya council members are committed to strict confidentiality in the handling of all disputes.

There is a minimal charge for a mediation by the council. Any member of the Upaya Council may be called for consultation regarding a dispute and the possibilities for a mediation.

The following interview with John Roper was conducted on April 4, May 30, and 1996. Mr. Roper was physically very weak and close to death at this time, but his memory and speech were remarkably sharp and thoughtful. Our final meeting, in which we read the interview back to him for corrections, took place four days before he died on June 16.

U.C./Sun: Can you describe the purpose and function of the Upaya Council?

JR: Well, the purpose of the Upaya Council is to resolve disputes that arise between sangha members or between members of the Shambhala community. A dispute in this sense is not just a disagreement between two people but there must be some practical interest attached which can be settled, like a fight over a landlord-tenant rental or a divorce with child care disagreements. A dispute involves a practical entanglement which is stopping the parties from carrying out their lives and so emotion builds up and the parties (We call them "parties," I don't know why; sometimes there is quite a lot of partying involved and sometimes not so much), the people involved in the dispute, can't go forward. They are stuck with this mess in their lives and they need help.

I suppose there are two ways to look at that. One is at the simple level, which corresponds to the Hinayana path in Buddhism. At this level we have a mess and it should be cleaned up, just as we say that each practitioner has an individual responsibility for his or her own sanity by following their own meditation and mindfulness practice. Similarly, practitioners should clean up the messes in their own lives that involve other people. This is simple, sometimes.

And then there is a second level, where the dispute is not actually regarded as a problem, but as a manifestation of wakefulness. The fact that it has arisen and has to be dealt with in some way or another means that there is
an opportunity for the people in the dispute to manifest their basic goodness
and larger vision.

UC: Tell us how the Upaya Council began.

JR: Well, the first step was a proclamation that Trungpa, Rinpoche issued
appointing four people to be members of the Council and describing what the
Upaya Council’s purpose would be, what it’s functions would be. It was just a two
page document and it was released to meditation instructors in the late spring
of 1978, as I recall. The first thing that Upaya Council was charged to do was to
develop a set of procedures as to how it would actually work. The first four
members were Jon Barbieri, Beverly Webster, Karl Usow, and myself. Mr.
barbieri was the comptroller as the Naropa Institute. Beverly Webster worked
in “A” suite with Trungpa, Rinpoche’s appointments, schedules, and
correspondence. Karl Usow was one the two co-sdirectors of the Karma Dzong
community, and I was director of Law and Commerce of Vajradhatu.

The procedures were developed mainly by Mr. Usow and myself. It was a
little rocky at first. In our forst case the disputants wanted to proper their
sense of emergency and panic and for us to move according to their schedule
toward resolution. It was a dispute between management and labor in a
business company. As it turned out, it wasn’t really the kind of case we could
resolve, but it helped define the procedures we could use.

UC: In what way did it do so, and did your view of what you could take on
narrow down at that point?

JR: We tried to figure out whether a situation brought to us was, first of all, a
dispute, and then whether or not it was part of our purpose as it had been
proclaimed. So we would ask ourselves, what can we do here? Is there
something we can achieve? In this first case, it was really something the
parties had to work out. We provided them with one or two forums in which
they could talk to each other, but we couldn’t be of much use to them beyone
that. The employees wanted us to rescue them from the general negligence of
the management. Looking back, however, I think it was good that the
meetings took place, because even though it was not the kind of dispute we
could resolve, the company was able to close its doors without creating further problems and pollution. What they were doing wasn’t working at all.

So, out of this we developed a procedure where we would talk to each of the disputants separately at first and then recess by ourselves to decide whether the dispute was one that we could take on.

UC: Did that remain a viable procedure for determining whether you could accept a case?

JR: Yes, we kept that form. It is important that there be some formal acceptance of a case, after which we could say, "We are working on this," rather than "We are just talking informally." You have to register a boundary where there is in or out regarding the taking of the case.

UC: Would you define "mediation" and “arbitration” as these terms apply to the work of Upaya Council?

JR: Mediation is helping people come up with a voluntary resolution to a practical problem. Arbitration involves a legally binding decision that can be enforced just as if it carried the decision of a trial court. The need for arbitration comes up when the disputants have tried mediation but cannot get anywhere with their problem. They just cannot agree, and so they turn it over to someone else to make a decision as to what to do.

UC: We are beginning to have people who are not in the Vajradhatu community or the Shambhala community as such, requesting mediation from the Upaya Council.

JR: Really?

UC: Was this part of the plan originally?

JR: No. We never had the time. All our available time and resources went into helping with disputes among sangha members. We met almost every Thursday night, often in separate panels. It continued this way, more or less, for ten years, through 1988. Then the work trickled down next to nothing.
UC: What was the role of humor, if any, in those Upaya Council mediations?

JR: The whole thing is applying the Buddhadharma and Shambhala teachings as we have learned them. One of the most important things about the Upaya Council’s work is that it is not based on some sort of secret psychological discipline. It is not based upon some professional training but upon the sense of freshness and discovery. That comes along with being open and having the connection to generosity, discipline, exertion, meditation, and so on. So it involves humor in this sense. It is a way to express the dharma. It is a way to express the power of the energetic joy of basic goodness. So it is not based upon a grind or struggle or any notion of imitating professionalism. The Upaya Council is a labor of love, more than anything.

People take things very seriously, especially in cases of dispute. We had our ways of reminding ourselves to relax, especially when we would recess and take a break in the middle of an evening of talking to people about their problems. We would discuss the case and what the possibilities were for resolving the dispute and how to approach bringing out the different sides of the story. Often a more exaggerated form of humor would come up then because at times the conflicts and the confrontations became emotionally very intense.

UC: How did involvement with the Upaya Council affect your own law practice?

JR: The court system we have in the United States is based on what is called the “adversary” system. When the leaders of the country adopted the constitution they also set up constitutions in each state. Each state generally adopted the common law of England wholesale. And it made sense at the time because they didn’t want to start over again thinking through “What is a contract,” “What is a trespass,” or “What is a theft.”

There are two kinds of law: there is civil law and there is criminal law. Criminal law deals in cases for which the state will prosecute you and put you in prison or impose a fine if found guilty, such as cases of theft or murder. Civil law has to do with relations between members of society, and with the rights of private citizens. It has to do with the obligations that come with
being a citizen. So, for the founding fathers of the United States it was easy to adopt British common law wholesale and there is a provision in each state constitution that does that.

Common law means universal law, universal within a society. It began to be codified in the reign of Alfred the Great in England as a means of consolidating the nation. Among the things that developed out of that was the right to a trial by jury in a criminal case. These rights became established through the courts in England. They did not involve acts of Parliament but were simply court decisions that everyone accepted and respected as precedents. They form the body of “case law” as it is called in the legal profession. This includes an amazing amount of decisions and a body of learning to do with how to handle things in society which has developed over centuries. For example, it includes everything about real estate, all the ins and outs of buying real estate or developing or holding real estate, and amazing sophistication about how to handle different types of contracts.

And then there is “tort” which relates to legally recognizably wrongs by which a member of society who is the victim of such a wrong can sue to receive redress from another person. Rather than just going to the sheriff and saying “Please put this person in jail because he injured me,” which might also take place, the victim can petition the court to award him monetary damages, or perhaps issue an injunction, for the wrong that he has suffered. And from there it becomes very complicated and there is a lot to it, but I feel that there is some background necessary here for how our legal system developed.

Where were we?

UC: You were about to discuss the ways in which your involvement with the Upaya Council affected your own legal practice. But this history is fascinating. Can you tell us more?

JR: The adversary system can be traced back to the Icelandic sagas. Warriorship comes into the Western history of law in a different way than in the Shambhala approach. Basically, the Western history, as it may be seen beginning in the world if the Icelandic sagas, involves a tradition of resolving personal and family differences through the appointment of champions who fight for victory in a dispute. This approach to dispute
resolution continued into the British realm to about the time of King Arthur (in the sixth century or so C.E.) but at about that time you find it being modified into a more peaceful settlement where the champions were appointed to fight through words and pen and argument. And so legal argument began to replace the violence but there was still aggression in the fight among the champions who were appointed to work with the pen. And that continued up to the present. So what we are looking at with the Shambhala and Buddhadharma approach to resolving disputes is a way to settle disputes without aggression. That is the essential turning point we are faced with in Upaya Council. We work with mediation as a principle of non-aggression in the resolution of disputes between people.

Mediation saves time and money as well as emotional wear and tear. It can also be more fair—the outcome and the process can be more fair—and all of these things are important. Mediation and arbitration don’t have to be based on aggression, though of course it can enter in at any moment.

In my own practice of law, I became very resistant to the conventional system, even almost shy within it, because I loved being a mediator so much. It was a real struggle to go back and forth to the office and be a lawyer and represent clients in court disputes, where so much aggression is thrown back and forth by the opposite sides of a lawsuit and where there is an undertow bringing you down to that level.

UC: Would you recommend then an overhauling of the whole legal system at its base?

JR: The accumulated wisdom of centuries of how to handle disputes and how to resolve them needs to be transformed rather than thrown away. Why start all over again? The transformation needs to occur very slowly so that society is not left without what it needs to protect itself. You have to have the courthouse there. It is very meaningful that the courthouse is there. People don’t understand how important it is that those judges are down there, trained and able to handle what they encounter. It is a great aspect of the wealth of our society and one that people don’t count in their fingers for gross domestic product, but it is actually true wealth, that accumulated learning, and it needs to be reapplied in the mediation and arbitration approach.
The Upaya Council also spent time talking about the Chinese Inquisitorial approach. The role of a judge as an inquisitor as well as arbitrator is also found in certain European countries, and other countries throughout the world. Here the judge doesn't just sit and listen to the prosecution and then to the defense, or to the plaintiff and then to the defendant, but actually instigates an investigation himself and is much more hands-on, much more in charge. Like in the Van Gulik “Judge Dee” novels, although I suppose for Upaya Council we would call him Judge “Dhih” (seed syllable of Manjusri).

UC: Was this long-term view implicit from the beginning in the establishment of the Upaya Council, or was the council created strictly for the short-term handling of problems as they came up in the sangha?

JR: Well, I don’t think it was just about short-term handling of problems, no. I think it is actually about opening up the possibility of working with things more completely, although there were certainly a lot of “parties to the dispute” hanging around in the hallways of Dorje Dzong and upsetting the secretaries and causing a lot of emotional turmoil, and having that interfere with their relationship with the teacher as well.

UC: In those days when you were doing so many mediations, did many of them proceed to arbitration?

JR: Only four or five arbitrations have been done to my knowledge, out of about two hundred mediations.

UC: One hears about mediation a lot these days. It seems to be enjoying a boom in terms of various kinds of conflict resolution.

JR: That the western legal system could be reformed by bringing it around to a mediation and arbitration approach is a view widely held these days. That is actually spreading throughout our society at the present time. Some people regard it as connected to a psychological approach requiring specialized training. Our kind of training, on the other hand, based on meditative awareness, is not specialized in the sense of a person being on top of a small body of prescribed know-how. So there is a difference there, yes, but at the
moment the world is actually moving towards the direction of mediation and arbitration in dispute resolution.

UC: From the point of view of Shambhalian “enlightened society,” then, is it your view that this approach might actually be able to be integrated into a society’s legal system rather than just be useful as a social and community service?

JR: Definitely. This type of work is just one aspect of the total Shambhala vision of society. We must be pragmatic, but we cannot keep our views too much down on the ground. We have to open up and look at how we could transform social systems when they become used to further conflict instead of working to dispel it. In this sense, the Upaya Council a proclamation of non-aggression in the handling of differences between people.