



Bulletin of the Maine Association of Mediators



Maine Association of Mediators
Professionals Committed to Cooperative Conflict Resolution

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An Exciting Spring Conference

By Acting President, Anita B. Jones

MAM's Board of Governors has good reason to feel pleased and satisfied as this issue of the *Bulletin* goes to press. This week on Tuesday, May 6th, the Spring Conference was held at The Hilton Garden Inn in Freeport. Over eighty people came to take part in the day's activities, coming from North, South and West of Freeport; and from their various professions in mediation, arbitration, law and Guardian ad litem (GAL) work.

Dr. Daniel Shapiro from Harvard's Program on Negotiation and the psychology department there, was outstanding as the keynote speaker. His performance kept the audience spell-bound for three hours, as he acted out angry client behavior, told stories of his life with his children and wife, threw in a bit of roll playing with members of the group, and throughout it all kept bringing in cogent content, good ideas, great examples of his theories, and a useable structure for watching for and using emotions in negotiations or mediations.

The lunch break found people on the patio eating and relaxing – good networking, as some said in their evaluations of the day.

Then the afternoon workshops kept us all busy with three to choose from in each of two sessions. Professor Murray speaking on proposed changes to Rule 514 on confidentiality in mediation and Diane Kenty's offering on emerging case law were of interest to attorneys; GALs attended the panel discussion on GALs in mediation; others found Pam Plumb's workshop on planning and running good meetings to be helpful; or chose Jonathan Reitman's discussion of his work in the Middle East and its relation to mediation here in Maine. Still others enjoyed a discussion of the theory behind mediation and what makes it work. There seemed to be something for everyone, and all was very well received.

Sponsors for the event were Murray, Plumb and Murray; CTResolution and Jack Erler at Curtis Thaxter; Gosline and Reitman; Vafiadis, Broutas and Kominsky; and John C. Alfano, Arbitrator and Mediator. Our thanks go to them for ensuring the success of the event through their generous contributions.

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BEWARE HIDDEN FLOORS AND HIDDEN CEILINGS

By Jack Hunt

People are always logical, right? The common answer in our culture is that, no, people are not logical much of the time. As mediators, we seek to understand the parties better as we search for areas of agreement. But the assumption that people are acting illogically can obscure our understanding. Perhaps, a party is acting logically, but in response to a piece of information which we don't have.

Recently, I mediated a commercial dispute; my unexamined assumption that one party was posturing delayed my understanding of the full story and might have meant the difference between resolution and failure. Eventually, I discovered an undisclosed fact. A few months before the mediation, a third party had attempted to bring the parties to resolution. This third party had told the plaintiff that the defendant was prepared to pay \$ 13,000 to settle the dispute. The plaintiff accepted, only to be told later that the defendant had never made this offer.

That \$ 13,000 "offer" (I have no way of knowing if it was really made or not) became a "floor" below which the plaintiff would never venture. He felt tricked by the process into disclosing his own bottom line, while the defendant had avoided disclosure of his. I struggled with this case for hours before I learned of the abortive "offer." Before I knew of it, the actions of the plaintiff seemed illogical, he seemed bent on avoiding reasonable resolutions. After I knew of it, his actions appear quite logical – he was merely sticking by his bottom line.

I still don't know whether the earlier "offer" of \$ 13,000 was actually made (and retracted) or if the third party merely acted on wishful thinking. The point is, that the plaintiff's conviction that the "offer" had been made, was going to control his thinking, and the key to successfully resolving the dispute was to know of his belief.

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Mediation of Family Cases with a History of Domestic Violence: Helpful or Harmful?

By Doris Luther

Having been a mediator for 15 years, I have heard mediation practitioners argue full circle from: 'mediation in cases where there was domestic violence is never okay' to 'mediation after careful screening, can be a helpful process in resolving issues in a divorce or family case.'

If we accept Christopher Moore's definition of mediation, we view it as: "the intervention into a dispute or negotiation by an acceptable, impartial, and neutral third party who has no authoritative decision-making power to assist disputing parties in voluntarily reaching their own mutually acceptable settlement of issues in dispute." (Moore, 1986) Moore also refers to mediation as a voluntary process. "Voluntary refers to freely chosen participation and freely chosen settlement." (Moore, 1986) Two problems arise for me in that reference. First problem - when parties are court ordered to mediation to settle a family dispute, it is not a voluntary process. Second problem - are the parties able to participate at an equal level?

As mediators, we often have to make decisions about the capacity of clients to participate. Can they speak for themselves? Can they make reasoned decisions? Are they voluntarily making decisions or agreements without coercion? In a case where there has been domestic violence, we can't just make assumptions about these capacities. (All the literature I am aware of is about men abusing women, so I am identifying the abusers in this article as male and the victims as females.) According to the Control Chart from the Domestic Abuse Intervention Project of Duluth, Minnesota, domestic violence against women takes many forms. He may have used economic abuse against her - "preventing her from getting or keeping a job, making her ask for money, giving her an allowance, taking her money, not letting her know about or have access to family income." The woman who is a victim of economic abuse is probably not going to be able to make informed decisions about financial issues.

If he has been using the children - "making her feel guilty about the children, using the children to relay messages, using visitation to harass her, threatening to take the children away" - how can she make reasonable decisions about the children with these threats hanging over her head?

Maybe he has been using isolation to keep her away from family and friends and controlling what she reads or her access to information, so that now she has no support system. Most certainly he has been emotionally abusing her - "putting her down, making her feel bad about herself, making her think she's crazy, humiliating her." After a few years of that, she would likely have her self-esteem whittled away, leaving her with decreased ability to deal with the issues of life.

Taking all of that into consideration - is this a woman who can stand up for herself in mediation? Let's look a little further into the batterer/victim relationship. According to Turner & Biderman, in a violent relationship a "traumatic bonding" will occur much as the famed "Stockholm Syndrome" where the prisoners

in a prisoner of war camp identified with their captors. In her mind her very life depends on the batterer - and in some cases this is entirely true. How many battered women are killed when they finally take the steps to leave? "Women are most likely to be murdered when attempting to report abuse or to leave an abusive relationship." (Sonkin, et.al. 1985 ; Browne, 1987) I have been told by abused women that even after they have been separated from the batterer, perhaps for years, they can still fall into the traumatic bonding when in the presence of the batterer. Where is the will and voluntariness if one of the parties is akin to a prisoner facing her jailer?

Bush and Folger (Bush and Folger, 1994) write about empowerment and recognition in mediation - "...empowerment means the restoration to individuals of a sense of their own value and strength and their own capacity to handle life's problems." "Recognition means the evocation in individuals of acknowledgment and empathy for the situation and problems of others."

I wince as I write and reread these last two sentences. This is the second of the two problems I had with Moore's definition of mediation. How empowered and capable to make decisions is a victim of traumatic bonding? And..... I find it absurd that mediators might be asking a victim of domestic violence to have acknowledgment and empathy for her batterer.

Now that I've given you the "never okay" scenario. Is it ever okay? I have successfully (success meaning that at the very least, the parties came out of the session having understood each other better and communicating better and having made some mutual decisions) mediated family and divorce cases where there was a history of domestic violence, but with some screening and scrutiny and clear guidelines, and the parties were both represented by legal counsel. I cannot emphasize the last part of that sentence enough!

Maine has very specific domestic abuse screening and assessment guidelines. I have had the opportunity to observe other domestic relations mediators and have found that the mandatory eight hours of training related to domestic abuse issues is not enough. I've seen a mediator (who knew there was a protection from abuse order in place) let the parties talk alone in the hall - the abuser standing over the woman, yelling at her. I've seen mediators conduct the mediation even when there is a "no contact" order. Some mediators do not adequately screen by not asking the following questions: Has there ever been a protection order? What is the temperature of your relationship right now? Are you ok about being in the same room? None of which alone comes close to giving the mediator enough information with which to make a reasoned decision about the parties' capacity or safety to participate.

An analysis of studies of reports of settlements in negotiations showed that men negotiated significantly better outcomes than women. There are many reasons for that. According to Linda Stamato (Stamato 1992) poses that, "Women believe

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that men have greater credibility and will more likely prevail in a conflict.” - perhaps as a result of sex role stereotyping, but none the less, still a reality for some women. The desire on a woman’s part to avoid conflict and placate others plus the fear of violence all are factors in her ability to negotiate. If there is an existing power imbalance, as in an abusive relationship, and mediators are not prepared around the issues of domestic violence and power imbalance, we are almost ensuring continued abuse. Bush and Folger suggest an unintended outcome of mediation. “Because of the informality and consensuality of the process and hence the absence of both procedural and substantive rules, mediation can magnify power imbalances and open the door to coercion and manipulation by the stronger party.”

ADAPTING MEDIATION TO DV CASES: If we are going to mediate these types of cases, we need to treat them differently than our regular cases, Bernard Mayer in his book *Beyond Neutrality* (Mayer, 2004) writes about the debate also. He outlines some of the accepted principles that have come from this discussion:

- In domestic violence, mediation should always be voluntary.
- Effective screening mechanisms should be used to determine whether there has been a history of domestic violence.
- If mediation is used, victims (indeed all parties) need advocates, and the mediators should consider keeping the parties separate throughout mediation.
- Mediation should not be used if the victim is not immediately protected—, that is if the victim and perpetrator are still living together or if the victim will have to participate in an unprotected interaction before or after mediation.
- When the abuse has been serious and ongoing with substance abuse, mediation is not advisable even with protections.

I would add a few more tips of my own:

-If you are mediating when domestic violence has been present and the victim has agreed to be in the same room, position her closest to the door, and let her know that she can leave if she feels threatened or frightened. If that case, I would either end the mediation or separate them.

-Always let the victim leave first, while you keep the offender occupied to allow time for the victim to leave the building so that there is no chance they will interact after the mediation.

-In cases where DV has occurred, conduct the mediation more like a Victim-offender conference by taking precautions for the victim’s safety. Make sure she knows she can still opt out of the mediation. Find out what the victim needs in order to feel safe. Help her prepare in caucus for the joint meeting, and do this for as long as it takes until she is ready.

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WRITERS WANTED

The *Bulletin* needs your contributions. Here is your opportunity to share your thoughts, ideas and successes with your colleagues and get international exposure via the great world wide web. Generally, we are looking for articles of about 200 words, but longer is fine, as you can see from this month’s *Bulletin* articles by Doris Luther and Will Van Twisk. Write your article about any topic and email it to jalfano1@maine.rr.com.

The Association reserves the exclusive right to reject articles submitted.

Pricing Your Services: A Key Strategy for Every Business

-Listen to the market, but don't give up the farm!
by Will VanTwisk

According to a text titled Pricing¹, “pricing is the only managerial decision that directly affects revenue”. Businesses often drop the ball on pricing in several ways: by failing to review their current pricing structure, not offering options to meet consumer needs and not setting prices correctly in the first place.

In terms of a business’ cash flow, it is often possible to increase prices by small amounts (1-5%) and increase profits many times that. College Professor and Business Consultant Rafi Mohammed recently has published a book on this subject ² and I had the opportunity to join him in a tele-seminar in this past year sponsored by Dina Beach Lynch (now Dina Eisenberg), of ADR Practice Builder. He states that there are really four components to the pricing

decision, but that many leave out the last two: we usually consider 1) **cost structure**-the inherent costs of all kinds in creating and delivering the product or service, and 2) **competition** - what our competitors and others in the field are charging.

Mohammed suggests that we add other criteria including: 3) **customer value**-customers’ relative or perceived value, and 4) **marketing strategy** - our marketing program, over which we have great control. We have the power to increase awareness of our particular offerings and promote the benefits to general and/or target markets. Perceived value is enhanced by testimonials.

Mohammed outlined several other tips to help determine price among customers who value our services differently. Offer a

range of services, and allow them to self-select. Since we control the mix, we can cease to offer certain options.

Offer different hourly rates for different types of work, from simple clerical tasks to very professional tasks like mediating, court work or representing clients in negotiations.

But unless we describe our services in this way, this might be lost on the client and they would end up thinking that that our work was only mediocre. If we’re charging more than our competitors, we should be prepared to answer why, specifically. What is client’s next best alternative? It’s really all about value, and how you capture that value for your clients. Since each client will value your product differently, why not expand the menu and create marketing strategies to meet a range of services, prices and needs? This tends to promote a healthy balanced mix of clients and prices, and allows us to adjust to market slowdowns in any one sector.

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SPRING CONFERENCE



Jonathan Reitman sharing his formula for success



Participating in a group activity..



Dr. Shapiro holds the audience in his hand.



Sharing secrets to their success?



Another serious discussion.

Administrative Assistant Needed

MAM is seeking part-time administrative assistance. Duties include collecting and handling phone calls and email, managing web site changes and announcements, updating the membership database, handling membership renewals, and assisting with setting up event sites and registration. Bookkeeping skills such as filing tax forms, paying bills and making financial reports is desirable. The position reports to the Board of Governors, and would make monthly reports to that body, but not attend its meetings.

Applicants should have demonstrated experience with office procedures and technology; excellent communication and collaboration skills; and good self-starting and motivating ability. This work is anticipated to take 12 to 15 hours a month at \$18 per hour.

Send resume to Maine Association of Mediators, P.O. Box 8187, Portland ME 04104.



PRICING - Continued from page 3

Knowing your market is another key strategy. Research your niche and speak to the problems your clients are dealing with and the advantages of working with you. A dialog might be: "How are you handling these now? How's it working?"

Another option is 'versioning', similar to the Sears model of 'good, better, best' product ranges. Maybe some do not need the "full package". You may be able to save on your costs, time and overhead and be able to offer a lower rate.

Another way to offer more basic level services is to offer publications or public workshops as a way to fill in your services. Offering an inexpensive e-book to a prospect might be better than spending half an hour on the phone discussing how you could help. We could offer public-service discounting and pro-bono work to likely

organizations.

Dina Eisenberg suggests a *flat rate pricing scheme* that her clients favor. She charges a fixed fee for a 'round of mediation', including intake, preparation and setup and a certain amount of mediation time, up to two hours. An additional conference hour is available at extra cost. Her workplace and family matters clients value knowing the cost more than the absolute lowest price. Similarly, charging a retainer for being on call for a fixed time or project may work. This arrangement needs an maximum hours over an agreed time.

Any plan needs to recognize that your services have real value, and that if a particular prospect does not realize that, the answer is probably not to just cut your fees in half. Part of our hurdle is cultural, and our own natural conservatism or modesty tends to cause us to undervalue our work. It's been mentioned that we might benefit

from taking in a couple of Suze Orman's hot personal finance books to turn around our acquired dysfunctional attitudes about money!

Finally, having a pricing structure is always important—not just when you are in direct competition. It creates your standard, defines who you are and how you work. It's a part of your identity, your brand.

1) Winer, Russell S., Pricing, Cambridge, Mass., Marketing Science Inst., 2005
 2) Mohammed, Rafi, The Art of Pricing: How to Find Hidden Profits to Grow Your Business, New York, Crown Publishing Group, 2005

Will Van Twisk d/b/a Will Van Mediations of Brunswick specializing in mediating family and estates, land use, real estate and commercial. He serves on the MAM Board of Governors. willvan@suscom-maine.net willvan@suscom-maine.net

—Introduction to Mediation—

Facilitation & Mediation Resources is offering a mediation training program limited to 12 participants to ensure individual attention and quality group interaction. It is a combination of reading, lecture, experiential learning, and simulation, with in role plays, observation, self-reflection, summary reports, evaluations, and small group exploration. The day long program will be at the MFR's training facility on June 5, 6, 12, 13, & 16. **Cost:** \$750 per participant, or \$695 if registered by May 16, 2008. A non-refundable deposit of \$100 is required. Contact: Mediation & Facilitation Resources, 11 King Street, Augusta, ME 04330 207-622-1429 mediate@mediateresources.com

CEUs and CLEs from many professions are awarded for this program.

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MISSION

The Association is a non-profit organization of diverse professional interests seeking to broaden public understanding and acceptance of alternative forms of dispute resolution. The Association strives to enhance professional skills and qualifications of mediators, arbitrators, and other neutrals through training, educational development and promotion of standards of professional conduct.

Maine Association of Mediators
2008 Calendar of Events

- April 2** BOG meeting 9:00-11:00 a.m.
- May 6** CONFERENCE
- June 4** BOG meeting 9:00-11:00 a.m.