

Bulletin of the Maine Association of Mediators March 2009



Professionals Committed to Cooperative Conflict Resolution

Volume XII, Issue II

March 2009

THE PRESIDENT'S MESSAGE

By Anita Jones

It feels like the Maine Association of Mediators is really on a roll this spring with our **Special Meeting on March 20th** to discuss the Uniform Mediation Act and Maine Evidence Rule 514 as they relate to confidentiality in mediation; the **legislation** that our MAM member, colleague and legislator Rep. Richard Wagner has sponsored to establish the UMA in Maine; and the **annual Spring Conference** being held on May 13.

The Special Meeting on Confidentiality in Mediation was held Friday, March 20. It was attended by approximately thirty people in Portland, and about six in Augusta and three or four in Hampden by video-conference. All agreed it was a highly successful, thoughtful, respectful and thorough discussion of various points of view about the Uniform Mediation Act now being prepared for the legislature, and Maine Evidence Rule 514 currently stayed by the Supreme Judicial Court, both of which speak to confidentiality, admissibility, and/or privilege in mediation. Panelists including retired circuit Judge Michael Getty from Illinois, Craig McEwen, Bowdoin professor and mediator, Jonathan Reitman, mediator and author, Peter Murray, author of Rule 514 and law professor, and Don Briggs immediate past President of the Maine Trial Lawyers Association exchanged ideas and responded to members' questions, ably moderated by **Peter Malia**. We were informed that the Rule 514 has been changed to speak only to privilege for mediators, leaving out language about participants in caucus. In addition, it is being recommended that Rule 408 be altered to be more widely inclusive of mediations preformed in court. These are welcome changes, but in the minds of many do not do all that the UMA would do, in the words of Judge Getty to "put a bubble around" mediations, so they are a safe place to be candid with the other party, particularly in mediations outside of the courthouse.

The UMA legislation has yet to be assigned a number or a hearing date, so you will be hearing lots more about this later. **Jim Cohen**, new MAM Board of Governors member, has contributed importantly to our understanding of the legislature and is steering us through the shoals of that process in Augusta. We'll need the help of you, our members, as time goes by, so stay tuned.

Spring Conference planning is well under way under the strong leadership of **Maria Fox**, another new BOG member this year. Workshops presenters are being recruited, and the keynote speaker, Dr. Aaron Lazare has been signed up. The venue will be the same as last year's successful conference – we will hope for another warm spring day in Freeport!

For these efforts we have had the supportive contributions of **Dave Webb, Doug Lotane, and Will Van Twisk**, all three past BOG members, who have made major contributions to our planning and work for the legislation and the conference. Many thanks to all the above mentioned folks, as well as those unnamed BOG members who have attended meetings, made helpful suggestions and are taking on not so visible tasks for the organization.

There's lots of room for other volunteers, so if you think it would be fun (and it is!) to be involved, just let one of us know. You can reach me at abjones@maine.rr.com.

NOVEMBER ANNUAL MEETING SHOWS TECHNOLOGY TRENDS

by Will Van Twisk

Participants in the November 19 Annual Meeting were disappointed to learn that the keynote speaker, Tammy Lenski, was ill and unable to attend. But we heard a live presentation from the speaker, cleverly facilitated by several kinds of technology.

Vermont's Dr. Lenski is a mediator, conflict consultant and coach, and teaches college courses on the faculty of Woodbury College in their noted master's program in mediation. A business development consultant with special skills in technology, she was to join us this day with a talk titled "Making Mediation your Day Job: A Conversation about ADR Marketing and Leveraging the Internet". Lenski's website at <http://mediatortech.com/> gives one a good idea of her presentation. She talked live via a hastily-arranged and surprising good speakerphone and internet connection. Lenski's book has the subtitle 'How to Market your ADR Business Using Mediation Principles You Already Know'. Since Mediators facilitate conversations, they can market themselves with "marketing as dialogue". Quoting Shel Israel to say that "people respond better to lowered voices in respectful tones versus hyped-up shouting", she recommends doing less talking, and when we talk, then listen back.

In dialogue marketing, Lenski asks us to speak to the interests of our market, and imagine someone simply being interested in our services, by communicating that you have both the knowledge and techniques to meet clients' needs. Rather than selling mediation services, offer to solve problems. "When you're selling a shovel, you're really talking about digging a hole".

Lenski has always been ahead of the curve in technology. "I was blogging before anyone even knew what this was." Focus on Internet marketing, and reduce or eliminate print materials. Her website is her primary address, "It's where people find me!" Websites should be full of good content with a data bank and references for educational materials for present and past clients.

Other tools to use are virtual assistants, conference call technologies, including video-conferencing through providers such as Skype, business services like FreshBooks for invoicing and auto-responder and email marketing services from companies like AWeber.

[Annual Meeting, page 2.]



Morrison Bonpasse Appointed MRREMP Program Administrator!

Morrison Bonpasse has been appointed administrator of the Maine Residential Real Estate Mediation Program [MRREMP]. He is responsible for the day-to-day operations of the program, including accepting, assigning, and scheduling cases for mediation. In addition, he will make monthly reports to the Board of Governors [BOG] and maintain the roster of qualified active mediators. Trained as a lawyer at Boston University, Morrison worked for Digital Equipment Corporation in Massachusetts in the Human Resources and Purchasing organizations. He earned an MBA at Babson College and an MPA (Masters in Public Administration) at Northeastern University, where he taught part-time for two years. He moved to Maine and acquired and managed Maine Staffing Services before selling the company in 2003. Since then, he founded the Single Global Currency Association, and wrote three editions of the book, *The Single Global Currency - Common Cents for the World*. Also, he has worked on behalf of three convicted men, one in Maine and two in Massachusetts, alleging wrongful conviction. In 2008, Morrison began his training in mediation and has worked with Community Mediation Services and applied for the CADRES program; and is a member of the Board of Governors of the Maine Association of Mediators. He lives in Newcastle.

Association Spring Cleaning Time

by Eileen Maguire, Membership Chairperson

It is spring cleaning time here at Maine Association of Mediators. That means we are updating our website member listings. **If you have not renewed your membership, please consider doing so now.** There are many benefits to being a member of MAM. My favorite reason for membership is the ability to network with my fellow mediators at the high quality conferences and workshops that the Association sponsors. Maybe your reason for membership is this newsletter that keeps us up to date in areas of concern to mediators and the ADR community (Rule 514 for instance).

You can assist in our spring cleaning with your timely membership renewal, and by reviewing your personal information and making sure it is up to date and accurate.

See you at the annual conference on May 13th!

Annual Meeting , continued from page 1.

She became interested in mediation marketing consulting, when she saw that many other ADR professionals could use help here, too—and so the business was born to “help fellow mediators to build a thriving ADR practice.” She conducts seminars, works with mediators individually to design and

Magaw Resigns as MRREMP Program Administrator

Bambi Magaw resigned as MRREMP Program Administrator after more than three years of service. She is the second administrator since the inception of the program, and is credited with building it into the highly successful provider of mediators for the Maine Realtors Association.

Bambi is pursuing other professional interests and is looking forward to completing the construction on the addition to her house in Hampden. “It’s been interesting and challenging to work with the fledgling program when I became the administrator and see it grow. I’ll miss working with the mediators and Board of Governors.”

Bambi had been a member of the Association's Board of Governors until 2007, after serving more than six years. Thank you for your long and dedicated service to the Association.

create marketing and web strategies and elements, as well as systems for client management and communications for all stages of the client life cycle.

William Van Twisk can be reached at Will Van Mediations,
www.maine-mediator.com.

Using ADR Principles To Resolve Claims of Wrongful Conviction

By Morrison Bonpasse

This is the second installment continued from the January 2009 *Bulletin*.

First, there is the "Common Ground" that everyone is interested in justice, and that no one wants to see innocent people in prison, except perhaps for the real perpetrators. Seeking Common Ground is a classic ADR technique. During the investigation of a crime and arrests, prosecution and trials, the defendants square off against law enforcement and each side increasingly sees the other as evil and uninterested in justice. Such perceptions are magnified when the adversarial system tends to shut off normal communication between the sides.

Second, the fundamental ADR view that communication among people and stakeholders on opposing sides of an issue is vital in resolving questions holds true in matters of truth and justice. This view assumes that people involved in a dispute are capable of listening and thinking. Thus, the supporters of a wrongfully convicted person must seek to engage anyone who might be remotely interested in a particular case, including jurors and victims and their families. If those supporters don't reach out to the other side, they will never listen to what the other side is saying, and the other side will never have a chance to hear the truths presented by the inno-

cent.

Third, ADR professionals know that for the right decisions to be made and to be agreed upon, the discussions and negotiations must involve the necessary decision makers. Traditionally, lawyers have sought relief with appellate courts, but there are other potential decision makers, too. For example, prosecutors have the power to ask a court to vacate a judgment and if a current prosecutor is not persuadable, then s/he may be replaced with an election or new appointment in the future. Governors and elected officials can be asked to examine the facts of a case and they, in turn, can influence a prosecutor. Legislators and governors can change the laws which block a reasonable pursuit of the truth in a case. Legislators can conduct inquiries and hold hearings about general issues relating to a wrongful conviction.

In short, ADR principles and techniques are available at all levels in a democratic society to set right the wrongful convictions of innocent people by the judicial system. For Alfred Trenkler, those principles and techniques may lead to exoneration in 2009.

Morrison Bonpasse is an attorney practicing mediation at Bonpasse Resolution Service. He can be reached at: Morrison@bonpassedisputeresolution.com.

How to Build Trust at the Bargaining Table

Edited and reprinted with permission from Negotiation, published by the Program on Negotiation at the Harvard Law School. More information at www.pon.harvard.edu.

Most of us approach negotiations with the hope that we will share information, build a relationship, and be treated fairly by our counterparts. But once talks get started, most of us hold back information, view the other side with suspicion, and feel distrusted by them. How can you get negotiations with a new partner off to a trusting start? How can you turn around a relationship that has deteriorated into hostility and petty behavior? Here are five guidelines negotiators can use to build and sustain mutual trust at the bargaining table.

- 1. Make maximum use of your network.** Choose new counterparts wisely. When you can choose whom you negotiate with, seek out referrals and recommendations from those you trust. When it does make sense to reach out to strangers, be sure to check their references carefully and verify their claims with independent sources.
- 2. Build rapport before negotiating.** People tend to respond to others' actions with similar actions. If others cooperate with us and treat us with respect, we tend to respond in kind. If they seem guarded and competitive, we are likely to behave that way ourselves. What's more, such exchanges can spiral into vicious cycles (those characterized by contention and suspicion) or virtuous cycles (those in which cooperation and goodwill prevail), according to negotiation expert Keith Allred. The reciprocal nature of trust reinforces the value of taking time to get to know the other party and build rapport *before* you begin to negotiate. Try to forge a personal connection by meeting for an informal lunch or two. Even just a few minutes of small talk can go a long way. According to research, negotiators who spent just five minutes chatting on the phone—*without* discussing issues related to the upcoming

[continued on next page]

negotiation—felt more cooperative toward their counterparts, shared more information, made fewer threats, and developed more trust than did pairs of negotiators who skipped the telephone small talk.

3. Set an appropriate trust default. It would be a mistake to assume that after having built rapport that you can trust your negotiating partner implicitly. Negotiators often make the mistake of assuming a fully trusting relationship with the other party. When things go wrong, they are left feeling shocked, hurt, and perhaps lighter in the wallet. Keep in mind that negotiators can feel trust has been broken even when neither side has behaved with deliberate deception. Conflicts of interest, the common tendency to over claim credit for one’s contributions, and other widespread cognitive biases can lead us to view the same events differently and jump to the false conclusion that trust has been irreparably broken. One way to reduce the odds of trust betrayal is to change the “trust default” that negotiators hold when talks begin, recommend Harvard Kennedy School Professor Iris Bohnet and Stephan Meier, senior economist at the Federal Reserve Bank of Boston. As substantive talks begin, take time to discuss ground rules, including your basic beliefs about trust. Explain that you are a conservative risk taker, who would like to build trust slowly, over time. By establishing a cautious approach to trust from the start you may be able to avoid contention when difficulties arise.

4. Win their trust. When it comes to establishing a trusting relationship with another negotiator, gaining her trust is just as important as calibrating how much to trust her. Begin by preparing thoroughly for the negotiation by researching the other party’s history, culture, and interests. This can be especially important when you’re negotiating with those from other industries or countries. Harvard Business School professor Deepak Malhotra has told the story of a technology consulting firm that embarrassed itself during bidding negotiations with an airline by being unfamiliar with

the term *lifts*. The airline’s executives immediately lost trust in the consultants, who with a little advance research would have learned that paper tickets are called lifts in the airline industry. The lesson: Take time to learn the other side’s vocabulary. By doing so, you’ll inspire your counterpart’s trust and appreciation. Another way to win trust in negotiation is to clearly label your most important concessions, says Malhotra. Consider that most of us have a natural tendency to discount the value of the other side’s concessions. To make matters worse, negotiators often lay concessions on the table without explaining how much these “gifts” cost them. The result: Concessions go unappreciated and unreciprocated, leading to resentment, distrust, and rivalry. Whenever you make a noteworthy concession, tell the other party how much you are sacrificing and what this sacrifice means to you, advises Malhotra.

5. Build trust by listening and acknowledging. The more fairly negotiators feel they’ve been treated, the more likely they are to trust and cooperate with each other. Our perceptions of the fairness can have a stronger impact on our overall satisfaction than our objective outcomes. To make sure your counterpart feels fairly treated and reciprocates with trust, be modest about your own gains at the table and express admiration for his quick thinking and achievements. This can be especially important when you have more power than your counterpart—if you’re his boss, for example, or if you have many other negotiating partners to choose from. In addition, keep in mind that the other party is likely to judge your fairness (and trust or distrust you accordingly) by comparing her progress to that of her peers, her competitors, and others who aren’t at the table. If you’re giving an employee a smaller raise than usual this year, be sure to tell her that everyone on her team is facing the same disappointing outcome due to belt-tightening throughout the company. Finally, give your counterpart ample time to express his point of view, including any frustration or hard feelings he may have. When you listen closely to someone and make an effort to understand his perspective, not only will you educate yourself, but you will likely encourage him to feel more trusting of you and more positive about the negotiation in general.

2009 Board of Governors

President	Anita B. Jones	Board Member	James I. Cohen
Vice Pres.	Peter Malia	Board Member	Maria Fox
Treasurer	Sheila Mayberry	Board Member	Ann Martin
Secretary	Mary Beth Paquette	Board Member	Sheila Mayberry
Board Member	John C. Alfano	Board Member	Eileen McGuire

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

2009 CALENDAR OF EVENTS

April 1	BOG Meeting	9:00-11:00 a.m.
May 13	Spring Conference	8:30- 4:00 p.m.
	Hilton Garden Inn, Freeport, Maine	
June 3	BOG Meeting	9:00-11:00 a.m.
July 1	BOG Meeting	9:00-11:00 am.