

Bulletin of the Maine Association of Mediators September 2010



Professionals Committed to Cooperative Conflict Resolution

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The President's Message

By Peter J. Malia, Jr.

Mediation news and notes from your President's messy desk...If you are reading this and you have not yet registered to attend the October 4th keynote address at University of Southern Maine's Hannaford Lecture Hall by Harvard Law Professor Robert Mnookin, please consider going to www.mainemediators.org and doing so now. The cost is affordable: \$25.00 for members and \$35.00 for non-members. The evening begins with a social hour from 5:30 to 6:30 which will give us all an opportunity to reconnect with one another. This program has been approved for 1.5 CLE credits including .5 ethics credits. Professor Mnookin will speak from approximately 6:45pm to 8:15pm. Professor Mnookin is the author of a new book, "**Bargaining With the Devil: When to Negotiate and When to Fight.**" You can learn about the book by visiting www.bargainingwiththedevil.com. You may have heard Professor Mnookin on the Diane Rehm show in March. Professor Mnookin's book was described as follows by A. Jurek on blogcritics.org: "Mnookin is a colleague of Roger Fisher (he is Fisher's successor as chair of Harvard's Program on Negotiation), one of the author's of **Getting to Yes**, and his book certainly will be of interest to anyone who has studied Fisher's book. But the application of Mnookin's framework is much broader and will be of interest to those who want to improve their decision-making skills." Please see the full page flyer in this bulletin for more information. I look forward to seeing everyone there.

In other mediation news, we have a new Administrator of the Maine Residential Real Estate Mediation Program. We would like to thank Morrison Bonpasse for his excellent service over the past couple of years, and welcome Eliza Nichols to the job. Eliza, who lives in South Portland, is a 2000 graduate of Oberlin College and a 2005 graduate of UCLA Law School.

We are pleased to have Eliza managing our Real Estate Mediation Program.

The Board of Governors has scheduled the Association's Annual Meeting for November 4, 2010 at a date and place to be announced, but please save the date now if you are interested in attending. We are also pleased to announce that Kathryn Monahan Ainsworth has agreed to be our guest speaker at our Annual Meeting. Kathryn has a great deal of international experience in the field of ADR and I look forward to hearing more about her fascinating work. At the Annual Meeting, we will select a Board of Governors for 2011. Please contact either myself or Anita Jones, Secretary and Past President, if you are interested in getting more involved with the Association as a committee member or as a board member.

We are also in the process of planning a seminar on Non-Violent Communication, and we are currently trying to schedule a date that works for all of our panelists. Stay tuned for more information on this seminar. At this point, it looks as though the seminar will take place on January 6, 2011, so please save that date if you are interested in this topic.

I spoke with Eric Bryant, Senior Counsel for the Maine Public Advocates Office, regarding Central Maine Power's planned expansion in the State of Maine and the potential for mediation opportunities. At this point, the State of Maine Public Utilities Commission issued an order on August 4, 2010 providing for an ombudsman to be hired to oversee the program. It's too soon to tell whether any mediation opportunities will emerge, but I will keep you updated.

Nancy Markowitz of Community Mediation Services has announced a 40 hour mediation training program beginning Wednesday, October 6, 2010 in Topsham. You can contact Nancy at 441-3076 for more information.

I have heard that many mediators have a difficult time obtaining an affordable insurance policy. I have been working on this issue with our Administrative Assistant, Tracy Quadro, and I will be reporting more

MALIA, from page 1.

on this issue in the future as our research develops more information.

I recently received an email from David Plimpton, a Cape Elizabeth lawyer and mediator and a member of the CPR Institute Employment Committee together with material regarding a Model ADR Process/Act dealing with employment and consumer disputes. David said “although I believe that the material deals with and raises important and timely issues related to resolution of employment and consumer disputes, I am not advocating for the approach set forth.” If anyone is interested in the Model Act, please contact me and I will get a copy to you.

The Maine State Bar Association and ADR Section are sponsoring an afternoon seminar on September 23, 2010 at the Hilton Garden Inn in Freeport entitled “Select Mediation and Judicial Settlement Conference Issues, Including Ethical Obliga-

tions of Practitioners and Views from the Bench.” Log on to www.mainebar.org for more information.

Diane Kenty has announced continuing education programs for this Fall, including a refresher program on child support for Family Matters mediators on the mornings of October 19th (Portland), October 20th (Augusta), and October 21st (Bangor). June Zellers will be the presenter.

Finally, to come full circle, Diane Kenty will be hosting a brown bag lunch and book discussion on Friday, October 1st in Portland in advance of Professor Mnookin’s key note address to be delivered on October 4th. Diane will be discussing the first chapter of the book (at the very least) and negotiation that takes place in the context of mediation. This is also available by conference call. I look forward to seeing many of you at USM’s Abromson Center for Professor Mnookin’s presentation on October 4th.

Peter can be reached at pmalia@hastings-law.com.

HELP! HELP! HELP!

WE NEED ARTICLES FOR THE BULLETIN!

Requests for original articles for the Bulletin have gone unanswered. The Bulletin is your opportunity to be published internationally! We have had to resort to reprints of articles from other publications too frequently to fill the space. This is least desirable since the *Bulletin*’s policy is to print members’ original work.

Your articles can be on any subject and any length. Longer articles may be serialized in two or more succeeding issues. The Bulletin reserves the right to edit or refuse articles that do not comply with the Mission of the Association.

Send your articles, thoughts or ideas to [Bulletin Editor](#).

Maine Association of Mediators Presents

Robert H. Mnookin

Chair of the Harvard Law School Program on Negotiation

speaking on his new book

Bargaining with the Devil

When to Negotiate. When to Fight.

Monday, October 4

Abromson Center, USM

Reception at 5:30; ends at 8:15pm

Cost: \$25 for members; \$35 for non-members

Should you bargain with the devil? Our national leaders face this sort of question every day. Should we negotiate with the Taliban? In private disputes you may face devils of your own. Your gut tells you to fight it out in Court. But when facing a devil – anyone you perceive as a harmful adversary – it may make more sense to negotiate rather than fight, says Robert Mnookin, the internationally renowned leader in the art of negotiation.

Professor Mnookin is Samuel Williston Professor of Law at Harvard, Chair of the Program on Negotiation at Harvard Law School, and Director of the Harvard Negotiation Research Project. Professor Mnookin has taught numerous workshops for corporations, government agencies, and law firms, and he has trained executives and professionals in mediation skills. His books include *Beyond Winning: Negotiating to Create Value in Deals and Disputes* (with Scott Pepper and Andrew Tulumello) and *Dividing the Child: Social and Legal Dilemmas of Custody* (with Eleanor Maccoby).

For reservations, go to mainemediators.org, email MAM at execdir@mainemediators.org,
or call 877-265-9712 or

mail checks to Maine Mediators, P.O. Box 8187, Portland ME 04104

Program approved for 1.5 CLEs; 0.5 for Ethics

Arguing as Medicine?

By Tracy Quadro, Esq.

As mediators, we help people to refrain from arguing over their conflicts and try to gently move them into a direction of common ground and better understanding – leading to a decrease in ‘fights’ and arguing. However, research may show that letting your feelings and emotions out, as long as it is done in the right way and for the right reasons, is actually good for you.

A recently widely-reported study by Kira Birditt, a researcher at the Institute for Social Research at the University of Michigan, showed that people who avoided an argument during a conflict showed more physical problems the next day than people who hashed it out.

Cortisol is known as the ‘stress hormone’ because it is secreted in higher levels during times of stress and causes marked physical changes known as the ‘fight or flight’ syndrome. These include both positive and negative physical responses: a quick burst of energy, lowered sensitivity to pain, increased heart rate and breathing pace (due to increased blood pressure), etc. Birditt’s study showed abnormal fluctuations in cortisol levels in people who avoided arguments. Scientists believe that abnormalities in cortisol patterns could prove to cause physical problems over time. For example, even a twenty minute episode of fight or flight stress response can suppress the immune system for up to three days.

Previous studies have shown that married couples who avoid arguments are more likely to die earlier than those who do not. In a 2007 study in Framingham, MA, women who didn’t speak their

minds during a fight (called ‘self-silencing’) with their spouse were four times more likely to die during the ten years of the study than women who always told their husbands how they felt. Studies at Western Washington University have linked the self-silencing trait to depression, eating disorders and heart disease.

A key finding in these studies is that it isn’t how frequently couples fought or what they fought about that matters, but *how* they fight. In the study noted above, in which self-silencing women died more frequently, the key to healthy interaction was a safe environment where both spouses can equally communicate. Arguing style, whether warm or hostile, is also a powerful predictor of a spouse’s risk for underlying heart disease. In fact, a University of Utah study showed that the way a couple interacts during an argument is as important a heart ailment risk factor as whether they smoked or had high cholesterol.

The implications for mediators? Each mediator’s style is different, and some suppress arguing during sessions while others allow or even encourage it. Since so much of our work involves high emotions and intense feelings, knowing the facts about the physiological effects of stress on those involved in conflict can be another decision-making tool in our professional ‘medical bag.’

Tracy is a mediator, guardian ad litem and Executive Director of Maine Association of Mediators. She can be reached at tracy@medi8ter.com.

Mark Your Calendar

November 4, 2010

Annual Meeting of the Maine Association of Mediators

Time and place to be announced

2010 ACR National Conference Report

The 10th Annual Conference of the Association for Conflict Resolution, held in Chicago September 1-4 was a vibrant and informative event! In sum, the joint and breakout sessions showed the new strength of the association, which has struggled over the past year with staff issues, internal strife over the focus of the organization and how to serve members' different mediation models, as well as budgetary problems due to membership attrition.

This member (maybe the only attendee from Maine?) found the focus of many of the workshops to be too tempting to pass up, and I was faced with several difficult choices among the eight separate concurrent workshop sessions. When we attend conferences where any one of three possible workshops would be valuable (most slots had 15 to 20!), that's a sign of a good program.

Where the 2009 Annual Conference had a broader theme of holistic approaches to societal conflict around the world, this year's conference had the theme of "**Many Paths—One Destination**" and stated focus in several areas:

How do the players in our field interact, how do we or should do this with community leaders and policymakers and what needs to happen to improve those connections?

What are examples of innovative work that addresses the realities of the chaotic world we live in?

How is our diverse work at the same time similar and interconnected?

What research findings will inform and benefit practitioners? What are the connections between theory and practice?

In the mainstream practice areas such as **Workplace, Divorce and Commercial Mediation**, there may have been slightly less emphasis on traditional workshops on facets of this work and instead some branching out. In the Family realm, in addition to divorce topics (*The Children's Checkbook Method of Child Support*), several sessions discussed adding **Marital Mediation** or other specialties to family mediator's menu (*Family Arbitration: An Alternative Dispute Resolution Process for Family Practitioners*; *Co-Parenting Resolution Training for Mediators*; *Guardian ad Litem using Conflict Resolution—What a Great Idea*).

For **commercial cases and matters in litigation**, workshops suggested considering some "softer" methods of mediation as an alternative. Increasing recognition of the place of **emotions** in all sorts of conflict resolution appears evident.

Several workshops in this commercial realm that I attended showed this **goal for greater "success" or client satisfaction in commercial mediation**, with titles like: *The Relevance and Effective Application of Commercial Mediation for ADR Practitioners*. One person attending described himself as a former corporate lawyer who chose mediators to settle multi-million dollar interstate class-action lawsuits; he felt he needed a mediator who performed in a certain expected way and "could deliver a resolution". Now a graduate school instructor, he is very curious to know if there are other less directive models that may in fact be cost and time-effective and would like to know about actual case histories involving mediated resolutions using other styles.

Several workshops touched on the **role of the attorney in mediation** and the importance of collaboration in serving the client. How can attorneys best coach their clients beforehand? Should attorneys change expectations or know more about the **differences between Evaluative, Facilitative and Transformative Mediation**? (*Mediation and Collaborative Law: How CL Changed My Mediation Practice for the Better*; *Promoting Mediation Among Lawyers as an Important Aspect of Est. the Rule of Law*)

NCR Report (continued from page 5)

Another family-related area that saw a lot of activity at the conference was **Elder Mediation**, and this speaks to my personal niche. This newest ACR Section, with 200 members is now called “**Elder Decision-Making and Conflict Resolution**” but a name change may be in the making as this specialty further defines itself to include work facilitating family planning for elder care, residency and estate planning. Pertinent workshops were *Spheres of Capacity: Exploring the Concept of Capacity in EM; Pre-Mediation Conferences in Eldercare and Related Family Mediation; Providing a Fair and Effective Process; Remodeling Family Decision Making to Address Elder Care Issues* (where a community mediation center uses a “family group decision making process” model to facilitate family conferences on elder issues).

A significant focus on **Transformative Mediation** was seen, including a half-day pre-conference session on family preservation, 8 workshops including work in family, elder and litigated matters, and a Mini-Plenary entitled *Two Decades of Transformative Mediation Theory, Research and Practice*, which featured a panel including founders of the model, Baruch Bush and Joseph Folger, and was attended by a ‘standing-room only’ crowd! Panelists and others contributed to a just-published book on the subject entitled [Transformative Mediation: A Sourcebook](#). More info on all is available from the Institute for the Study of Conflict Transformation at www.transformativemediation.org

The use of **technology** was another topic of several workshops (*Be Not Afraid: Technology that Connects Us, Our Clients & Contributes to our Creativity & Growth*).

International sessions touched on the Mideast, Africa and work in Central and South America (*Mediators Beyond Borders—Working for a More Peace Able World; The Global Effects of the Nigerian Amnesty Experiment*). Several workshops were delivered in Spanish and in response to a changing America, and ACR leadership is making a commitment to more programs in this language.

ACR has an active **Spirituality Section** and while I was not able to look in on these sessions, we all received a good sense of how this is important to CR practitioners in listening to the words of outgoing ACR President Michael John Aloï, who is past Section Chair. Aloï projects a great sense of compassion and spirituality to the point where it is easy to see how he is successful in his mediation work including large business and commercial matters. His respectful and reverent demeanor helped me to appreciate the importance of the work we do and how we all, in our own way are better—and our work is easier--when our clients know that we are sincerely interested in outcomes which bring them peace and satisfaction.

Restorative Justice programs are expanding slowly (*What Does Systematic RJ Look Like? A RJ Model Examined*). And several workshops tended to the health and **personal growth of the mediator** (*Tending the Flame: Passion, Purpose and Play for Practitioners; How to YOU Handle Conflict; Tuning Up: Preparing Yourself for High Performance*).

CR psychology and research was nicely represented as many continue to be curious about the science and theory behind the practice (*What Happens When They Go Home: The Long Term Effects of Mediation; The Role of Adult Learning in Mediation: Explicit or Implicit*)

I was glad to see that we are continuing to ask ourselves some tough questions about the **state of the field**, seen in sessions titled *Back To The Future: A discussion of Some of the Tough Issues Facing Our Field* and *Is ADR a Passing Fad or Are We Building a Foundation for The Future?* The subtitle “*A Multi-State Perspective on Capacity Building*” highlights the significant differences in programs around the USA, and I like to think we can join with a short list of other states (like Michigan, Maryland, Wisconsin, Massachusetts and Hawaii to name a few) that have strong programs in the Courts and Government, in the Community, notable higher education programs and among private practitioners.

NCR Report (continued from page 6)

I will be happy to forward the complete Conference Schedule featuring workshops on **Ethics, Education, Youth and Community Mediation** upon request.

Incoming President Lou Gieszl (Baltimore, MD) plans a busy year with these initiatives in addition to the ongoing work of ACR:

- A focus on **Diversity**—in many ways, including diversity of practice
- Study of a **performance-based certification**—but not the certification per se, rather standards for others to create certification programs
- **Higher Education**: Standards for post-graduate CR education
- A focus on **Diversity**—in many ways, including diversity of practice
- Study of a **performance-based certification**—but not the certification *per se*, rather standards for others to create certification programs
- **Higher Education**: Standards for post-graduate CR education
- **Public Education**: beyond Conflict Resolution Day
- **International** work: more offerings in other languages

My first ACR National Conference was a valuable experience to see how the leaders in the field rise up not only because they are excellent practitioners—most all are also involved in training, ‘selling’ and expanding the field, and we are all the better for it.

This Article was written by Will Van Twisk , the owner of Will Van Mediations of Brunswick and works statewide in community, court and private practice mediations with specialties in areas of Home and Family. He is a former member of the MAM Board of Governors. Find Will at www.maine-mediator.com

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MAINE ASSOCIATION OF MEDIATORS

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.

October 4, 2010

Prof. Robt. Mnookin: *Bargaining With The Devil: When to Negotiate, When to Fight.*

*Abromson Center, USM
 5:30 to 8:15 PM*

2010 Calendar of Events

Board of Governors meets the first Thursday of the month.

Annual Meeting

November 4, 2010