



Amia Kitzmiller,
Baltimore

See others on
back page



BOOKMARKING Conflict Resolution Day

by Alecia Parker,
Budget and Grants Director

MACRO once again celebrated Conflict Resolution Day, the third Thursday in October, by holding a student art contest. This year's contest called for elementary-to middle-school students to create bookmarks depicting images of problem solving, collaboration, peace building, peer mediation, and other alternatives to fighting. More than 250 entries were received from kindergarten to 8th grade students from across Maryland.

Many fantastic entries were received, making it difficult to choose the winning entries. In the end, four entries in the kindergarten to 5th grade category and four entries from the 6th to 8th grade category were selected to receive winning prizes, which were presented to them personally by Chief Judge Robert M. Bell at a Conflict Resolution Day reception in the Robert C. Murphy Courts of Appeal Building in Annapolis. The winning bookmarks, along with all the entries, were displayed in the building's lobby for a month following the reception.

Pictured here and on the back page are the four first place winners. Each of these bookmarks has been printed and is available for distribution. To get your own set of these bookmarks, free of charge, contact MACRO, by phone at 410-260-3540 or by e-mail at macro@mdcourts.gov.



Jordan Cerna, Rockville

Uncommon Common Ground ...	6	MPMEonline	16
Youth/Police	8	ADR Awards	18
How to be a Good Mediator ..	12	Upcoming Events	19

Shadows and Light

Issue 11

2

June 2009

F. Scott Fitzgerald said, "The test of a first-rate intelligence is the ability to hold two opposed ideas in the mind at the same time and still retain the ability to function." At present, I find myself downbeat and upbeat at once (which could, of course, be a sign of schizophrenia rather than intelligence).

My ideas about Roger Wolf's impending well deserved retirement are full of light and shadows. Harry Fox has written a fine article about Roger in this newsletter that will help you understand that he's not your average Joe (although I bet he knows how to do some plumbing). Far from it, he's a remarkable human being in the best sense of that word. Roger's been a pillar in the conflict resolution community and has made important substantive contributions to advancing almost every aspect of the field. He is one of the rare birds who day by day, humbly and quietly, live their commitment to help repair the world.

Looking back, in 1997, Roger was one of a few people who encouraged me to move forward with the ADR Commission idea. Since that time, I have worked with him and relied on his judgment and skill so often that it never occurred to me he'd retire. He and Judy are talking about getting off the sheep farm, but I'm really hoping they don't leave the state. That would be a sad loss for Maryland and for the conflict resolution community. Although I'm feeling sorrowful and can't imagine going to the

Rules Committee without Roger, I really want to honor him. Congratulations Roger! You are a true *mench** in so many ways. Have a spectacular retirement (and stay in touch)!

On a different note, as everyone knows, this a difficult time, financially, for many people and programs in our field (and in just about every field). The rash of suicides and murders harshly illustrate the desperation that's overwhelmed some people, and many believe that it may get worse before it gets better. Many of us are using our skills and knowledge to help those in need and distress, and will continue looking for new ways to do so.

In the midst of this bleak landscape, positive developments abound in Maryland. We are excited that the Honorable Peter Krauser, Chief Judge of the Maryland Court of Special Appeals, is creating Maryland's first appellate mediation program. We're looking forward to seeing the pilot program launched and to supporting its growth. As they have in other states, we believe that the Maryland's appellate mediation program will provide a useful and creative alternative for many cases on appeal.

To our amazement, the Maryland Program for Mediator Excellence (MPME) now has over 500

* *mench* is a Yiddish word meaning a man who is good, reliable, responsible, thoughtful, kind, honorable and admirable.



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MACROSCOPE

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Rachel Wohl, Executive Director

members and is continuing to grow. We really shouldn't be amazed because Cheryl Jamison, who coordinates the MPME, is such an outstanding and dynamic leader that the program could not help but succeed. She has an article in this newsletter about the fabulous new MPME website. If you are a mediator, please go to www.mpmeonline.org and fill-in your profile for the online searchable mediator directory. We plan to publicize this directory and expect it to become a popular resource to help the public find and contact mediators.

In contrast to the serious economic and social concerns we face, it is enlivening to keep our thinking fresh about the ever evolving conflict resolution field. We have had great opportunities to do so through two relatively new programs. First is the "Evening With" series, which MACRO co-sponsors with the University of Baltimore's Negotiation and Conflict Management Program. This program brings national conflict resolution thought leaders to Maryland. We've had Evenings with Baruch Bush, co-founder of the transformative approach to mediation; Larry Susskind, founder of the Consensus Building Institute; Pauline Tessler, co-founder of the collaborative law movement and Bernie Mayer, presenting his new book, *Staying with Conflict*. Each one has given a fascinating and thought provoking presentation, followed by an active discussion with the audience.

Second is our lunchtime teleconference series with local conflict resolution stars. So far, we have had teleconferences with Louise Phipps Senft, ADR practitioner/trainer in the transformative approach and founder of Baltimore Mediation; John Bickerman, ADR practitioner and former Chair of the ABA Dispute Resolution Section; Marvin Johnson,

ADR practitioner/trainer and founder of the Center for ADR; and Professor Homer La Rue, ADR practitioner/educator and incoming chair of the ABA Dispute Resolution Section. During each teleconference, we have learned a lot from participating in a stimulating interactive conversation. Upcoming presentations in both series are detailed on page 19 of this newsletter.

We are also excited to be partnering with the Center for ADR and Community Mediation Maryland on our first national community mediation conference called, "The Joy of Mediation: Cooking It up and Serving Your Community." The conference will be held on Saturday June 20, following the Center for ADR's 22nd annual conference June 17 to 19, and it will showcase what's cooking in Maryland and beyond.

Finally, ADDRESS, the ADR Evaluation and Support System, is on the move. We are challenged and delighted by recent ADDRESS developments. You may remember it as CAPSAP or PQIS, but a rose by any other name . . . When completed, ADDRESS (which is the absolute final name for this program) will be an unparalleled quality improvement system for people running court and other ADR programs. MACRO will soon be conducting a multi-year pilot of ADDRESS in the Circuit Courts for Baltimore City, Baltimore County and Worcester County, and in the District Court. We are moving out of the multi-year planning process and into reality. It is exciting and we expect many ups and downs to follow.

Kudos to all of the wonderful Maryland practitioners and institutions whose awards and achievements are noted within. If we missed anyone, we apologize, and ask that you please contact us so that we can acknowledge you in the future.

Life with Roger

By Harry Fox

Roger Wolf, currently a professor of law at the University of Maryland Law School and the head of the law school's Center for Dispute Resolution, is retiring in May. Harry Fox, attorney, mediator, trainer and friend, has written this article in Roger's honor.

Let us say that you are head of the dinner committee of a well-known national ADR organization. Let us further say you have never met my friend, Roger Charles Wolf, but that the task of introducing him as principle speaker at the final dinner of the annual convention has fallen to you, as committee chair. What would you do?

It seems fair to assume that you would research his *curriculum vitae* for some salient information about his experience and qualifications. Obtaining this document should pose no problem at all, incidentally, in this age of virtual reality, warrantless wiretaps and all manner of data flying through the ether.

You sit down to review the resume and what do you find? There is page after page of the most impressive variety of achievements imaginable. Here follows a sampler of Roger's greatest hits. He graduated cum laude from Harvard College in 1962 (I think I've heard of that place). From 1962 to 1964, he served in the United States Peace Corps in Tunisia where he supervised construction projects. He was the interface between local officials and the Italian architects to insure that the work was properly completed. He took his Juris Doctorate from George Washington University in 1967. He supervised law students in the District of Columbia in court appearances from 1971 until 1978. Then, there appears the following entry in Roger's magnum opus: "1978 to the present; Farmer, Washington County, Maryland." Even today, Roger's countenance lights up with agrarian pride when he speaks of his years planning, directing and coordinating "farming operations, including the cultivation, harvesting and marketing of wine grapes and pine trees, and the breeding, raising and marketing of beef cattle and sheep."

Herewith, a few more highlights: From 1986 to 1992, he was a member of the board of directors of the Banner School. From 1985 to 1987, reporter of the Special Committee on

Alternative Methods of Settling Disputes of the Maryland State Bar Association. From 1988 to 1996, Roger served on the Baltimore City Circuit Court Child Custody Mediation Advisory Board. This, after having received his first forty hours of mediation training.

In the ensuing years, he received many more hours of mediation training and became a fixture of sorts in the growing world of ADR, receiving many more appointments, including a special appointment as an administrative law judge with the Maryland Office of Administrative Hearings.

By this point in his career, it was clear that no one state—or even nation—could contain Roger's energy and skill. And so in the summers of 1994, 1995 and 2002, he traveled to Kings College in Aberdeen, Scotland, where he taught comparative dispute resolution at Kings College Law School. Later, Roger served as a consultant through the Inter-American Development Bank to the Conflict Resolution Center of Trinidad/Tobago. You are beginning to get the idea that this is an extraordinary individual.

He was the first Chair of the Section on Dispute Resolution at the Maryland State Bar Association. He has conducted trainings for many years under the auspices of MICPEL, at the request of numerous Bar Associations and other organizations. The agencies for which he has conducted mediations and/or trainings have included the Maryland Commission on Human

continued on p. 17



courtesy of CDRUM



Maryland Mediators Convention

On Friday, December 5, 400 mediators converged on the Maryland Maritime Institute Conference Center in Linthicum for the Maryland Mediators Convention.

The day began with a dramatic rendition of a scene from “King Lear” by the Maryland Shakespeare Festival. The audience was asked to consider the scene from the point of view of a mediator.

The convention included 32 workshop sessions with two repeated at the end of the day, based on voting by the participants. As always, there were debates, including “Tell Me What You Think, Please—When Are Suggestions from the Mediator Appropriate?” and “We Just Can’t be in the Same Room Together—When Does Mediation End and Shuttle Diplomacy Begin?”

Two comments from the evaluation forms were, “This was a very creative conference; it kept my attention,” and “I liked the opportunity to interact with interesting people.”

The next Maryland Mediators Convention will be held in December 2011.



Homer La Rue and Richard Melnick



Small Group Discussion

photos courtesy of
Maureen Denihan



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A True Mediation Story -

Finding Uncommon

Issue 11

6

June 2009

When asked to recall a memorable mediation, I thought of the case I am about to describe. I asked myself why this case—one that I only observed, that happened almost a decade ago—readily resurfaced. I believe it is because it seems a near perfect example of how well mediation can work.

Here's what happened: For a time, I ran the City of Rockville Mediation Program and I was also responsible for taking complaints of alleged discrimination. One afternoon, an African American gentleman telephoned, irate, reporting that he was the victim of discrimination based on race. His story: The cashier in a store where he was buying a lottery ticket passed him over several times to wait on other Caucasian customers, when, he said, he was clearly first in line.

I asked the gentleman if he would be willing to mediate. Both he and the three store owners in this family-run business all agreed they'd try to find resolution before any investigation of discrimination ensued. At the City of Rockville, we had a co-mediation model. The day of the mediation, however, only one mediator was available, and I felt I shouldn't act as mediator since I might later have to treat the case as alleged discrimination. I didn't want to blur two roles that I believed should be separate so I decided to be present to observe the case, but not be one of the mediators.

We always tried to find mediators who closely mirrored the race and gender of the participants. The mediator in this case

was an African-American male. The store owners were Asian. One was male, two were female. Although Rockville included Asian mediators on its roster, none were available for that day. In fact, no one else on the roster was able to mediate that day. I had reservations about participants' perceptions, if any, of an imbalance in race and gender. However, as all participants were pressing to get the mediation done as quickly as possible, I felt we should move forward. I hoped the mediation process would work.



The mediation appeared to stall after the first five minutes. The complainant stated tersely that he'd been mistreated because of his race. The respondents quickly and vehemently denied any wrongdoing. The mediator asked about the store set-up. We all learned that there were two separate lines, one to buy store goods, one to buy lottery tickets. It didn't matter to the complainant. The cashier, he said, could have waited on him when she wanted.

He was convinced that she had ignored him.

After several rounds of the complainant stating his case and the respondents denying any wrongdoing, a heavy and considerably lengthy silence fell on the room. It seemed as though an investigation would be required.



Then one of the store owners began to speak. He told the complainant that he and his family had come to America from a war-torn country, where they had felt hunted, where they had few or no rights, and where they were in constant fear for their lives. He recounted watching

Common Ground

by Maile Beers-Arthur

some of his family being lined up and shot in front of his eyes. He told of how he and his remaining family had escaped. He said that he had come to the United States hoping that the promise of fair and equal treatment was real. He stressed that he had taken careful measures to make this a philosophy by which he lived.

This was the turning point. The complainant, who looked to be in his seventies, said he had also lived this way, feeling hunted. He had, as a young boy, seen his friend hung by his neck from a tree as he watched, helpless, from behind a stand of trees, so that the white men murdering his friend would not come for him next. The man said that he had lived his life hoping that all of the changes in laws and progress would mean that he would be treated equally and fairly, just as the store owners dreamed for themselves. And now, as an old man, he wasn't going to remain quiet. He was going to speak out against wrongs.

As the older gentleman finished speaking, I saw tears wetting his cheeks. The three store owners also began crying. They looked at the man and told him they were sorry. Sorry for not waiting on him sooner, sorry that he had lost his friend, sorry for the horrors he had had to endure in his life. He looked at them and said he too was sorry for all they had had to endure. Uncommon common ground.

After these participants, people born a world apart, shared their personal pain, the ensuing agreement was a bit uneventful. And all participants felt a verbal agreement would suffice.

The store owners invited the man to come back to their store with a promise that he would receive royal treatment. The man

declined, saying he just wanted to be treated like everyone else. The store owners then asked the man if he would let them know if he was feeling badly treated. They pressed their business cards on him, asking him to call if he was upset about anything happening at their store. The man, in turn, agreed to come back to the store and refrain from pursuing any charges of discrimination against the owners.

I felt privileged to observe this case. Not only was I able to witness the healing power of mediation, it affirmed to me that often mediation allows people the needed space to breathe, tell their stories and listen. In this case, the mediator, rightly, did not say much. He was more of a guide on the side, not a sage on the stage. The mediation brought people together who had once lived a world away. And it helped them uncover common ground between them, something I think the participants would not ever have guessed if not for the mediation session.

Maile Beers-Arthur has a mediation practice, working mainly in Frederick and Montgomery Counties for divorce, child in need of assistance and peace order mediations, and facilitating IEP meetings in schools. She also does training in conflict resolution and mediation and can be reached at maile@apmediation.com.



Youth - Police Relationships

Deconstructing Oppression Mentality

By Rebecca Yenawine

Issue 11

8

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Police officers see their work in keeping citizens safe as an important service they offer to society. City youth, on the other hand, often do not perceive police as their protectors, but rather, as the oppressors. “Kids on the Hill” is a project in Baltimore City which has worked with young people for the last five years on such issues as youth/police relationships. The program offers a variety of opportunities including art-making, media production, research, discussion-based learning, experiential education opportunities, workforce development and civic engagement.

For many young people, challenging the police is an important piece of their culture, often seen as a sign of manhood or street smarts. This is evidenced by the Baltimore-based homemade video, “Stop Snitching!” whose message spread rapidly through Baltimore’s streets. Though there are times when police can be the enemy of lower-income young people, the key to disentangling this dynamic is about inspiring a more powerful worldview and offering information about laws and rights that can help them.

We have met with officers who patrol the district that young people live in, interviewed officers on their experiences, been challenged by officers to think about the negative ways young people react to police, and have

learned about laws and rights that young people should know when dealing with the police. Through these experiences, young people have had the chance to understand multiple perspectives and to change their own beliefs and attitudes.

Our young people have come to understand the bigger system that is at play for police and for youth. They now understand that police are expected to enforce policy that they have no part in shaping and the young people also know that young people may chronically feel disempowered. As a result of this understanding, they have become powerful peer educators and have created a very useful training video and workshop for teens in schools.

In a workshop taught recently at City College High School, participants were first asked to define “power.” All but one person identified power as an authority outside of himself or herself and not as a quality that they as young people possess. Teen facilitators asked the group if they tend to



Video taping “What’s Up Officer!?” that offers guidance to teens on how to handle themselves in difficult situations with police

ignore, accept, resist, or rebel against power. As one might predict, many young people felt resistance and rebellion in relation to power. Many of the young people in the workshops told stories of getting into arguments with the police. Some described arguments while they were trying to get on the bus or walking down the street, and one young woman described getting

“The police are pawns in a big game of chess”

Megan Sherman
Kids on the Hill participant

“When I was going home last night I saw four people being arrested on the street in front of a government building. Those guys are lucky because if they weren’t in front of that building the police would be beating them up.”

Sylvia Smith
Kids on the Hill participant



arrested and held in jail for mouthing off to a policeman.

In an attempt to create some critical thinking and provide new information, teens were asked to re-enact their stories—but with different endings. This activity allowed them to break down what behavior created the negative reactions they received. Youth facilitators then emphasized some facts about laws and rights that most affect young people, including truancy, curfew, Miranda rights and probable cause. Having this information made the young people see how they could have more power in each situation. This power is not the kind where you get to have the last word, but the longer lasting kind that leaves you with choices.

The learning that has taken place for our young people as they do this work has certainly helped them in tangible ways as well. Two of our young men were pulled over while driving a car. When the officer began searching one of the youth, he said that he “did not consent to being searched.” His tone was calm and without the “attitude” that many young people present to authority figures whom they feel are in the wrong. The police officer did not, in fact, have any probable cause and backed off.

These experiences have helped us to see that youth-created videos, information and dialogue, which represent multiple perspectives, do help teens think differently about their own identities. This, in turn, can shape their approach to the police and can reduce tension and conflict between the two groups. We hope that our work and these kinds of healing experiences can reduce the kinds of tensions that led to approximately 9,000 juvenile arrests in Baltimore last year.

Rebecca Yenawine is the founder and co-director of Kids on the Hill, a nonprofit organization offering young people an opportunity to make positive change in their community through various art forms. Kids on the Hill is a recipient of a MACRO grant to fund one of their projects.



Deputy Owens and students

photos courtesy of
Rebecca Yenawine

For many young people, challenging the police is an important piece of their culture, often seen as a sign of manhood or street smarts.

What an Attorney Can Learn *from Mediation*

By Michelle Barnes



Issue 11

10

June 2009

When I signed up for the weeklong basic mediation training program offered by Community Mediation Maryland through the Office of Administrative Hearings, I thought it would provide some interesting insight into what goes on in mediation. I did not think it could actually help me in my work—I've been a trial attorney practicing criminal law for nearly 20 years with hundreds of jury trials under my belt.

Mediation . . . the idea is to be a calming force, a facilitator of other people's ideas. Trial work, well, it's none of these things. The goal of a trial litigator is to convince the judge and jury, not always in a calming manner, and occasionally in an abrasive one, that our argument is right. So, is it possible for a seasoned trial attorney to learn anything from mediation? By the second day of the training, I knew it was possible, and it has been fascinating to discover just how much help mediation can bring to trial work.

The first step in mediation, which is to explain the mediation process in depth to the participants, seems like a very basic, uncomplicated idea. But that fundamental first step is often one we skim over as trial attorneys. If attorneys always took the time to be detailed in their initial meeting with witnesses, it would help to set the witness' mind at ease and provide him or her with the answers to many of the questions or misconceptions that come along later. What we need to remember is that witnesses are often lay-people not accustomed to the courtroom trial setting, and no, the fact that they are avid "Law and Order" fans does not

count.

During this initial phase of mediation, the participants are also advised that the mediators are neutral and non-judgmental,

and that they will be focused on understanding how the participants see the situation, rather than making any judgment or assessment of their own. Are you kidding me? Judgments and assessments are exactly what a trial attorney strives to do. However, upon reflection, I decided that this concept of holding off on judgments at first can be very helpful to a trial attorney at times, allowing us to step back and see the situation from each person's point of view before we decide on our approach.

Mediation, like trial work, is a dance of language. Part of the advantage of mediation training is that it emphasizes the skill of listening closely to the responses that a witness gives in the trial itself, as well as in the preparation. We've read the reports, interviewed the witnesses, made notes on what the response should be. Many times, I've seen attorneys, including myself, already looking at the next question while the witness is still answering the current question. At trial, we're in such a rush to get to a point that we miss many of the signposts along the way. By not listening closely, you may be missing a key word or phrase that can make the difference in your case.

Reflecting back what we hear is another skill taught in mediation. I'm a litigator and words are my medium, so this should have been a breeze for me, right? I was surprised at how difficult it was for me to be able to decipher and reflect back to the participants the actual feelings and values they were talking about. I learned that this mediation skill can be invaluable to me as a litigator.

The mediation step called "brainstorming" is also a skill that can provide litigators with assistance in their trial practice. When attorneys are preparing for trial, it would be helpful if they would use this same kind of imagination in considering ideas. The tendency is to stick to the logical and obvious ones. Going through the crazy mediation strategy of throwing out many ideas before settling on any one idea frees us to see expanding possibilities and approaches. As

continued

"I've seen attorneys, including myself, already looking at the next question while the witness is still answering the current question."

Public Policy Fellows Program



By Toby Treem Guerin

(Excerpted, with permission, from the C-DRUM News)

For the second straight year, Maryland leaders participated in the Maryland Public Policy Conflict Resolution Fellows Program this past fall. This class of Fellows represented a wide variety of Maryland leaders, including representatives from the legislature, faith-based community, judiciary, executive, and non-profit sectors. The Fellows came together to learn from each other and from national leaders about interest-based negotiation, collaborative governance, and consensus building skills.

The Fellows Program is a partnership between the University of Maryland, the University of Maryland School of Law's Center for Dispute Resolution (CDRUM), and MACRO. Over three days, September 3 through 6, the Fellows met together at the Wye Conference Center on the eastern shore. They engaged in dialogue about existing and future public policy issues such as land use, community engagement, and policy reform.

The goal of the program is to enhance the skills of Maryland's leaders to achieve better and

sustainable solutions for the public policy problems we face.

The 2008 class members: Hon. Elizabeth Bobo, Maryland State Delegate; Hon. Benjamin Clyburn, Chief Judge, The District Court of Maryland; Hon. Brian E. Frosh, Maryland State Senator; Richard Hall, Secretary, Md Department of Planning; Pastor John J. Jenkins, Sr., First Baptist Church of Glenarden; Hon. Allan H. Kittleman, Maryland State Senator; Diane Bell McKoy, CEO, Associated Black Charities; Hon. Joseline Pena-Melnyk, Maryland State Delegate; Tyrone Powers, Institute Director, Anne Arundel Community College; Roger L. Richardson, Secretary, Md Department of Agriculture; J. William Satterfield, Executive Director, Delmarva Poultry Industry; Dru Schmidt-Perkins, Executive Director, 1000 Friends of Maryland; Charles Strong, Jr., State's Attorney, Washington County; Shari T. Wilson, Secretary, Md Department of the Environment.

Toby Treem Guerin is the Deputy Director of the Center for Dispute Resolution at the University of Maryland School of Law (CDRUM).

What an Attorney Can Learn, continued

litigators, we are often so buttoned up that we aren't allowing ourselves to get to that place of innovation that might really make the most sense in our case.

For all these reasons, I've come away from mediation training with a great respect for mediators and their ability to work their own magic with people and conflicts. Mediation training also gave me a greater appreciation and

recognition of the many different facets of language that are keys to our work. And, now, I bring a willingness to put these new mediator skills to the test.

Michelle Barnes is division chief of the Environmental Crimes Unit at the Maryland Office of the Attorney General.

Preparing to be a

Requirements for Court Roster Mediators: If not credentialing, how about differentiating?

By Amy Womaski

3 views

Issue 11

12

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Editor's Note:

Amy Womaski sent MACROScope an opinion piece outlining her views on requirements for mediators, particularly for court-referred cases.

Since this is an interesting issue with several viewpoints—we asked Patricia Ryan and J. Michael McWilliams to add their thoughts, and we've presented them together to provide you with a well-rounded in-print discussion.

MACRO is not taking a position on this issue at this time, and does not endorse any of these three views.

I would like to initiate a dialogue about the requirements for court roster mediators with regard to the connection between conflict resolution theory and practice.

Currently, having a bachelor's degree of any kind and showing up for a certain number of hours of mediation training are all that are required, in terms of education, for mediators to qualify to be listed on court mediation rosters. A mediator who not only satisfies this requirement, but has, in addition, completed a master's in this field, has had to demonstrate an understanding of the material as well as to demonstrate a working understanding of its application. There should be a way to differentiate between those who have accomplished certificate requirements and those who have accomplished this and more.

Some people think that a law degree is helpful for mediators. To me, though, holding a law degree and only a certificate of completion from mediation training is not comparable to holding a master's degree in the field of ADR. A degree in law or a master's in social work or other fields may include several classes in ADR or related topics, but a master's degree in ADR requires that each and every class be on the topic, and students also complete an internship which puts theory to practice. This fortifies a mediator with breadth and depth of theory knowledge and theory application. For example, theory explains how to identify underlying or latent issues from the spoken superficial statements and how facial and body gestures may communicate incongruence with what is being communicated. Theory application teaches what skills to use and how to use them to facilitate issue clarity. It is my position that conflict resolution is its own unique field, one

cont. p. 14

Good Mediator

It's Not the Degree

By Patricia Ryan

The debate in the field of conflict resolution over what is needed to be an effective mediator continues. Some advocate for a specific educational degree, some a particular professional background, some, myself included, advocate that it is the skill, not the education or profession, that makes a mediator effective.

To think about what makes someone an effective mediator, let's take a look at some of the definitions of mediation. The definition on the MACRO Web site is: "Mediation is a process in which a trained neutral person, a 'mediator,' helps people in a dispute to communicate with one another, to understand each other, and if possible, to reach agreements that satisfy everyone's needs."

The definition in the Circuit Court Rule, Title 17 is: "Mediation means a process in which the parties work with one or more impartial mediators who, without providing legal advice, assist the parties in reaching their own voluntary agreement for the resolution of the dispute or issues in the dispute. A mediator may identify issues and options, assist the parties or their attorneys in exploring the needs underlying their respective positions, and, upon request, record points of agreement reached by the parties. While acting as a mediator, the mediator does not engage in arbitration, neutral case evaluation, neutral fact-finding, or other alternative dispute resolution processes and does not recommend the terms of an agreement."

These definitions highlight communication, understanding, meeting everyone's needs, promoting self-determination, listening deeply in order to identify issues and underlying needs, and supporting participants to develop a list of options. To accomplish these things, mediators need specific listening, questioning, reflecting, and brainstorm facilitation skills. These are skills that come through training and experience (both life experience and mediation experience).

cont. p. 14

Mediator: To Be or Not to Be an Attorney?

By J. Michael McWilliams

The question has been posed: Should the mediator be an attorney, at least in some cases? Before I answer, it must be made clear that my opinion is based on my experience in mediating commercial disputes.

There are two situations in which the mediator should be an attorney. The first is when the parties to the dispute require that the mediator be an attorney, perhaps for some of the reasons I indicate below. The second is if the provider institution or court wishes or requires the mediator to be an attorney.

However, it can be helpful in other instances for the mediator to be an attorney. In most mediations, there is a discussion of the risks of not settling the dispute, such as going forward with the underlying or potential litigation or arbitration. The mediator who is also an attorney can help the parties achieve a better understanding of what they may face. I have found that in many disputes, the parties have not realistically considered the cost and time required to go through pleading, discovery, motions practice, hearings, appeal, etc.

Another reason the mediator may need to be an attorney is that complex cases often have complex issues such as securities and transactional disputes. An attorney's experience in these areas can avoid time spent in familiarizing the mediator with such intricacies.

Another reason for the mediator to be an attorney is that some parties' attorneys in mediation can be quite intimidating. A mediator who is also an attorney might not be as easily intimidated as one who is not.

Sometimes, there are parties who want an attorney to mediate because they think he or she will perform some legal functions such as rendering legal opinions, or participating in drafting a settlement agreement. That could be

cont. p. 14

How about Differentiating, continued from 12

that requires specialized training and ADR specific education. If we as a society are serious about embracing and legitimizing the field of ADR, we need to acknowledge a basis from which the field is independently defined and then provide acknowledgment of it.

As litigants have the right to decline the court appointed mediator and select one of their own choosing, shouldn't it then follow that litigants be provided with enough information to make an informed choice? To this end, I propose that the Circuit Courts create two categories: the first category would list those who satisfy Title 17 requirements as certified mediators; the second category would list those

who have accomplished Title 17 requirements plus an ADR master's degree as certified master mediators. Self determination can only happen if the "self" is informed.

In the end, whether a litigant selects a certified mediator, a certified master mediator, a community mediator, or the neighbor up the street, I defend his or her right to do so. But consumers of mediation services should have some basis from which to make this choice. I think the categories I propose above would help.

Amy Womaski has a master's degree in education from Loyola College and a master's degree in negotiations and conflict management from the University Of Baltimore. She has a private mediation practice in Westminster.

Issue 11

14

June 2009

It's Not the Degree, continued from 13

By definition, an academic degree prepares people with reading and writing and test-taking, all of which may demonstrate an ability to understand and discuss a specific content area, but none of which demonstrates or measures any particular skill set related to mediation.

Requiring degrees would create barriers and make it harder to get into the field. Another problem is that these barriers would be likely to decrease the diversity of practitioners, which can only hurt the effectiveness of mediation. Another danger of academic degree requirements is that they may send a message to participants that the mediator is a content area expert. Such an

assumption might cause the participants to look to the mediator for an opinion and would not be empowering.

If we are putting the needs of the mediation participants first, rather than the needs of mediators seeking to promote their careers, then we would focus on what actually assures quality—and that would be training, life experience, mediation experience, and performance-based evaluation.

Patricia Ryan is director of the Carroll County Community Mediation Center and is completing her master's degree in negotiations and conflict management at the University of Baltimore.

Be or Not to Be, continued from 13

considered the unauthorized practice of law, depending on where the mediation takes place. Since my mediation takes me to many places in this country and abroad, I advise the parties in advance that I will not perform any legal functions, and I explain why.

It should be kept in mind that being a good attorney does not *ipso facto* mean that one will also be good as a mediator. I have known some excellent, highly regarded attorneys who are terrible mediators.

The most important consideration in the selection of a mediator is picking one who knows how to mediate and to mediate well. Then, one should consider whether the mediator should also be an attorney for any of the reasons briefly discussed above.

J. Michael McWilliams of McWilliams Dispute Resolution, Inc. in Baltimore is an attorney and mediator. He is a Distinguished Fellow of the International Academy of Mediators.

Maryland's Second Restorative Justice Conference Held at HCC

By Belinda Reed, President, Maryland Chapter of ACR

The Maryland Chapter of the Association for Conflict Resolution held its second Maryland Restorative Justice Conference Nov. 20-21 at Howard Community College in Columbia. The conference's focus, "Opportunities for Impact," provided a wide range of workshops and three plenary sessions.



Belinda Reed

The conference began the evening of Nov. 20 with an opening circle, facilitated by Kay Pranis, a trainer and consultant of the use of peacemaking circles, and Lauren Abramson, founder and executive director of the Community Conferencing Center.

The next morning, Paul Devore, secretary of the Maryland Department of Juvenile Services and Chief Judge Robert M. Bell of the Maryland Court of Appeals opened the conference with welcoming remarks. Anne Seymour, who has been an advocate and leader for victims' rights and services for 24 years, presented the morning plenary session, "Victim Focused Restorative Justice." The afternoon session was presented by David Weaver-Zercher, co-author of "Amish Grace: How Forgiveness Transcended Tragedy." Dr. Weaver-Zercher discussed the role of forgiveness in tragedy.

More than 20 workshops were offered on a variety of ways to incorporate restorative practices and principles. These included:

- Pat and Warren Lupson's encore appearance with their powerful presentation "Bringing the Victim into the Equation"
- Two workshops that highlighted the use of restorative dialogue and peacemaking circles in domestic violence cases: "Peacemaking Circles: A Restorative Option for Some Domestic Violence Cases;" and "Domestic Violence Surrogate Dialogue"

- Workshops on victim-offender conferencing, serious crime dialogues, the use of circles, and community conferencing
- Woodbourne presentations that focused on using restorative practices in juvenile facilities: "Closing the Educational Gap of Children in out of Home Placement" and "Residential Treatment and the Restorative Healing Model"
- Presenters from Eastern Mennonite University's presentation "Coming to the Table: Historical Injustice through a Restorative Lens"
- Workshops discussing the use of restorative practices in an international arena of peacemaking

The 140 attendees included practitioners and professionals in corrections, police, mediation, faith-based organizations, ex-offenders, victims, social work, education, courts, attorneys, prosecutors, and students from Howard Community College, Towson University, and University of Maryland School of Law.

The conference was a success in large part due to the tireless work of the committee members who represented a cross-section of public and private agencies committed to the overall growth of restorative practices and principles. Sponsors included MACRO, the Department of Juvenile Services, Woodbourne, the Department of Corrections, Criminal Injuries Compensation Board, Community Conferencing, Howard Community College, Towson University, Maryland Council for Dispute Resolution, and ZSR Consulting Services.

For information on the conference, restorative justice initiatives in Maryland, or on becoming a member of the Maryland Chapter, Association for Conflict Resolution (ACR), send an e-mail to aboutResolution@yahoo.com

In addition to her work with ACR, Barbara Reed is an assistant state's attorney in Prince George's County and adjunct professor at Howard Community College, where she teaches introductory courses on conflict resolution and restorative justice.



The New Mediator Resource

By Cheryl Jamison,
MACRO Quality Assistance Director

On Dec. 9, 2008, the Maryland Program for Mediator Excellence (MPME) reached a major milestone. After two years of planning, meetings, more planning, more meetings, some testing, and even more meetings, MPMEonline.org was launched.

MPMEonline.org is an interactive resource center designed for both mediators and consumers of mediation services. For mediators, the system provides a number of tools to help them develop, enhance, and promote their mediation practices.

Features for Mediators

MPME Program Information Each part of the program has an area where mediators can find the goals and objectives of the program, and the projects under development. For example, if an MPME mediator wanted to

for mediators



find out what the Self-Awareness Task Group is doing, they can get information about projects under development, see the date for the next meeting, read meeting summaries, and see who is on the task

group. (Non-members can access only general information about each task group.)

Events Calendar

There are a lot of events scheduled throughout the year to help mediators enhance or improve some aspect of their mediation practice. MPME members make a commitment to complete at least

four continuing skills activities and two hours of ethics training annually. The challenge is keeping track of them—knowing about the various trainings, workshops, discussion groups and conferences taking place in Maryland and across the country. Using the online Events Calendar on MPMEonline.org, mediators are able to find the mediation activities that best fit their needs and schedule.

Online Registration

In some instances, MPME members are able to register for events with one click of a button, a valuable time-saver.

Keep Track of Training

MPME members can make online records at MPMEonline.org of the workshops they've completed, efficiently tracking and filing all their training from year to year.

Bulletin Board Service (BBS)

MPME members can communicate with each other using the Bulletin Board System (BBS) to post questions, responses, and other information for members.

Mediator Online Directory

Calling all trainers, court and mediation programs, practitioner organizations: If you have a mediation activity, here is a calendar for you. MPMEonline.org has an integrated, user-friendly online mediator directory. The directory allows

consumers to find mediators by name, number of total cases mediated or number of cases mediated in a particular issue area and by county. Members can easily enter and edit their profile information at any time, just by using their login and password. MPME members are identified as such

for consumers



in the directory. (Non-members can also be listed on the directory by completing a paper form and sending it to the MPME system administrator.)

Features for Consumers

MPMEonline.org's online resource center also has a section for consumers that provides information about mediation, mediation programs and access to the Mediator Online Directory, complete with instructions on how to use it. The system has been designed to make it easy for anyone to conduct a search.

Create Your Account, Become a Member

There is so much more to MPMEonline—you just have to see it for yourself. So, go to www.MPMEonline.org and take a test drive. If you are a card-carrying member of the MPME, and you have not created your account, go to the site and click on “Join MPME” and follow the directions. (You do not have to send your training documents.) If you are not a member, go to the site and click on “Join MPME” to get information membership requirements and an application. Membership in the MPME is free.

The Web site address is easy to remember:

- MPME (that's the acronym of the program)
- online (where the site is located) and
- .org (Internet suffix)

Put it all together and you have MPMEonline.org

Roger, from 4

Relations, the EEOC, the U.S. Postal Service's REDRESS and REDRESS II programs, the U.S. Department of Justice's Washington office, the U.S. Attorney's Office in Maryland and the Maryland Department of Agriculture's mediation program (Farm Sense). His clinical work for most of the last decade at the University of Maryland's School of Law is widely hailed for its excellence and success.

You lay down the pages of Roger's C.V., a record now seemingly much weightier than when you picked it up and sigh deeply. You sense that, notwithstanding the voluminous factual material you have perused, you still do not have a sense of Roger as a person. One might conclude from reading his professional notes that he is a cross between John Houseman and Robert Mondavi. But you would be wrong. I have concluded, after years of having the honor and privilege of working side by side with Roger at countless mediation trainings, that he is an extraordinarily amiable individual. He manifests what I have described to our students as a kind of “aw shucks affability,” and he has raised imperturbability to an art form. This is not to say that he does not disagree with others. And yet, I have never seen him raise his voice in anger nor speak to others or of others with anything but respect and civility.

Finally, there is this. In the interest of proportion and out of a desire to render this piece fair and balanced, allow me to close with a story that shows Roger as all too human. When Roger, our friend and colleague, Melanie A. Vaughn, and I conduct mediation trainings, the days are usually long and taxing. It became my custom to leave the house early in order to stop at my neighborhood Seven-eleven and pick up a copy of that day's *Washington Post* to peruse during lunch or breaks. Arriving at the training site, I would typically place the newspaper on the desk in front of me, then leave the auditorium in search of breakfast fare. I shortly came to notice that my newspaper tended to disappear fairly quickly. What, I wondered, could possibly explain this annoying development? Then one day, after we had been training for several years and many “Posts” had disappeared into the void, I happened to catch a glance of what appeared to be newsprint under a sheaf of Roger's notes. Upon further investigation, I discovered that it was my friend who was taking liberties with my newspaper. I am happy to add, however, that this is a story with a happy ending. We mediated the dispute to a successful resolution and thereafter we began rotating the sections of the paper to great success and our mutual enlightenment.



Recent Maryland ADR AWARDS AND ACHIEVEMENTS

Ramona Buck of MACRO received the Robert M. Bell Award from the Maryland State Bar Association's ADR Section on December 5, 2008, at the BWI Hilton, following the Maryland Mediators Convention. The award is given each year to honor recipients for outstanding contributions to alternative dispute resolution in Maryland.

VirtualCourthouse.com was awarded the Louis M. Brown Award at the American Bar Association's meeting in Boston in early February. Awards are given to programs and projects that have made substantial or creative contributions to the delivery of legal services. VirtualCourthouse.com is an Internet-based service that enables parties to submit disputed claims in digital form for resolution with a neutral provider of alternative dispute resolution services: arbitration, mediation, neutral case evaluation or a settlement conference. Hon. Arthur M. (Monty) Ahalt, CEO and president of the VirtualCourthouse.com, accepted the award for the organization.

Martin Kranitz received the Sharon M. Pickett Award for the Promotion of Excellence in Mediation from the Maryland Council for Dispute Resolution on April 3 in Annapolis. Martin has contributed to the ADR field in Maryland for 25 years as a mediator, trainer, and writer. The award was given in commemoration of Sharon M. Pickett, a mediator/trainer who died recently, and who was committed to excellence in mediation. Carl Schneider, Sharon Pickett's husband, gave a free workshop as part of the award event on the topic, "Sponsoring the Conversation; the Missing Art."

Maryland's Secretary of Labor, Licensing and Regulation Thomas Perez, who is also a former member of the Montgomery County Council, was tapped by President Barack Obama for a top Civil Rights Division post at the United State's Department of Justice. Tom was one of MACRO's twelve inaugural ADR Policy Fellows in 2007 and worked closely with MACRO to infuse the use of collaborative processes throughout the Department of Labor, Licensing and Regulation's operations.

Louise Phipps Senft, President and CEO of Louise Phipps Senft & Associates/Baltimore Mediation, has been named one of Maryland's Top 100 Women and selected as an inductee into the 2009 Circle of Excellence for sustained achievement. This is the third time Senft has been chosen as one of Maryland's Top 100 Women. Senft was honored at an awards ceremony at the Meyerhoff on May 11th, 2009.

ADR Events

Upcoming

June-December

Maryland Council for Dispute Resolution. Master Classes for Mediators (a series of six four-hour classes)

More information: www.mcdr.org.

June 17-19

The Center for Alternative Dispute Resolution 2009 Annual Conference: "Managing Conflict and Removing the Barriers to Collaborative Decision Making"

More information: (301) 313-0800 or www.natlctr4adr.org.

June 20

Maryland's National Conference for Community Mediation. "The Joy of Mediation: Cooking It Up and Serving Your Community"

Martin's Crosswinds, 7400 Greenway Center Drive, Greenbelt. More information: 410-260-3540 or www.marylandmacro.org.

July 22

MACRO ADR Practitioners Lunchtime Teleconference Series. "The Impact of Passage of the Fairness in Arbitration Act on Resolution of Disputes Involving Employment, Consumer, Franchise and Residential Construction" with P. Jean Baker, Esq., district vice president, American Arbitration Association

Noon-1:30 p.m., 1-888-453-4221 followed by participant pass code 838404 # when prompted. More information: MACRO, 410-260-3540

July 23

MACRO "Evening With" Series. "Hot Topics in Family Mediation" with Zena Zumeta, J.D.

6:30 to 9 p.m., location to be determined
More information: MACRO, 410-260-3540

October 14

MACRO ADR Practitioners Lunchtime Teleconference Series. "Why Community Mediation Matters, and Why the Maryland Model Matters" with Lorig Charkoudian, Ph.D., executive director, Community Mediation Maryland

Noon-1:30 p.m., 1-888-453-4221 followed by participant pass code 838404 # when prompted. More information: MACRO, 410-260-3540

November 17

MACRO ADR Practitioners Lunchtime Teleconference Series. "Apology & Mediation. When and Where are Opportunities Present for Apology in Mediation" with Carl D. Schneider, Ph.D., director, Mediation Matters

Noon-1:30 p.m., 1-888-453-4221 followed by participant pass code 838404 # when prompted. More information: MACRO, 410-260-3540



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