



PROFESSIONALS COMMITTED TO COOPERATIVE CONFLICT RESOLUTION

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President Malia took time away in April. His column will appear next issue.

Our Mission

The Maine Association of Mediators is a nonprofit 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.

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mainemediators.org

Arm Chair Mediation Training

By Sabine Walsh

Spring is a time for new mediation programming and perhaps new training. The mediation blogosphere contains a variety of suggestions. The following resource suggestions come from Ireland-based mediation trainer Sabine Walsh, and re-printed with permission from the online Kluwer Mediation Blog. For Walsh's complete post, go to <http://kluwermediationblog.com/2013/04/05/the-mediation-trainers-toolbox/>. Although Walsh's tips are primarily for those who train, all mediators may take advantage of these suggestions for a little "arm chair" training! – editor

As openers for a course, and to ease students into the realm of mediation, I like humorous clips, often cartoons, such as the *Three Little Pigs Go To Mediation*, produced by the US Veteran's Association, which sees the well-known dispute between the three pigs and the Big Bad Wolf being mediated by the Wise Old Owl. See http://www.va.gov/orm/Mediation/Pigs_all_scenes.swf

Likewise, Zap Dramatic (www.zapdramatic.com) has also produced some excellent animated scenarios which allow interaction from the audience to direct how a mediation or negotiation progresses, with often amusing consequences.

For more in depth mediation skills training, my two favorite resources are the seven hours of mediation videos that accompany Frenkel and Stark's new edition of the *Practice of Mediation: A Video Integrated Text (2012)* and the mediation videos produced by the JAMS foundation and available free of charge to lecturers and trainers (www.jamsadr.org) The former is excellently laid out for the trainer, with three mediation scenarios being played out in full, using different mediators, which show different styled of mediation. Each mediation can be watched in its entirety, or a menu will allow the viewed to select different stages of the mediation, which are then discussed in the relevant chapters of the textbook. I have found these videos particularly useful for showing students different styles of mediation, from evaluative to transformative, for example. It can also be helpful to give students an idea of certain aspects of the process, such as the mediator's opening statement, before they attempt it themselves in a role-play scenario.

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I would not consider jettisoning role-plays in favor of videos by any means, the best way to learn is still by doing, but videos such as these can demystify the process for students, and can also show more realistic scenarios, particularly those involving high levels of emotion for example, than roles played out by the students can. A greater level of detail can also be demonstrated.

Videos can also be helpful in lectures or shorter teaching sessions, which do not allow for role-play or other interactive activities or for livening up what could otherwise be a potentially dull lecture. Just one example would be a YouTube clip of two kids from New Zealand describing their role as peer mediators “it makes me feel all warm and fuzzy inside” which I used in a lecture on mediation in schools. <http://www.youtube.com/watch?v=epqhqg1bt44>

Staying in the realm of technology, the challenge of often inadequate face to face time with trainees can be met to a degree by engaging some online learning tools. Webinars, for example, can be a useful way of getting some of the less exciting aspects of mediation across to students, in their own time, such as legal structures around mediation or more procedural aspects. This technology can also be used, as I have recently discovered, to make videos and other materials available to students in between face to face sessions, therefore maximizing the value of the latter. Some negotiation and conflict exercises are also now available online.

The *Kraybill Conflict Styles Inventory*, for example, is an accessible and cost effective way of introducing conflict styles to students. They can take the inventory online from their own homes, and (if so set up by the trainer) print out their own results and then bring them to the session for further discussion and exploration, again freeing up time that might otherwise have been used filling out the questionnaire. See www.riverhousepress.com

Turning then to other resources that can be useful for mediation trainers, I have only to look through the stacks of books on and around my desk to see that more traditional media still play a significant role. In training new mediators, particularly, it can be a challenge to find materials and resources that are sufficiently thorough but still comprehensible and accessible to students...

One book I regularly recommend to students is *The Mediator's Handbook*, the latest, updated and revised edition of which is now available. (Jennifer E. Beer, 2012.) Set out in a clear, logical fashion, it groups the wide variety of mediation skills discussed into people skills, problem skills and process skills. With the aid of diagrams and the odd cartoon, it breaks down the mediation process in a systematic but not overly prescriptive fashion. Similarly, Tony Whatling's *Mediation Skills and Strategies (2012)* sets out just that, with good use of examples and just enough detail to avoid over simplifying these skills and strategies. I find these books useful for myself as well as for the students, as they can assist in bringing a trainer back to basics and providing you with a reminder of key skills, skills that we are often using so much that we forget to (and how to) explain and teach them.

One final book that I only recently came across, but which deserves mention, particularly when it comes to more general training in conflict management and intervention is Gary T. Furlong's *Conflict Resolution Toolbox, (2006)* which sets out eight of the most well-known conflict mapping models, and applies all of them to individual scenarios, and then to the same scenario, in order to illustrate the different approaches very clearly. I have found great use in this one, in preparing worksheets and exercises in conflict mapping for students and for giving them access to a number of different approaches, so that they can choose which suits their own style.

V-Notch: A Prisoner's Dilemma

By Jim Acheson

MAM's Program Committee recently hosted a seminar on negotiation outcomes using Prisoner's Dilemma rules. The following excerpt from a paper on cooperative behavior in Maine's lobstering industry, traditionally a highly competitive occupation, reveals practical and beneficial results from shared responsibility and cooperative problem-solving—editor.

To augment the size of the breeding stock, [Maine marine wardens and] many fishermen cut notches in the tails of egged lobsters before returning them to the ocean. There are now hundreds of thousands of V-notched lobsters in Maine waters. . .

Understanding the genesis of the V-notch is particularly difficult because it can best be considered a prisoner's dilemma game, a type of non-zero-sum game with a payoff structure that makes cooperation difficult. In a prisoner's dilemma, all players have a dominant strategy to defect, even though the equilibrium outcome is worse than if they had played their dominated strategy. That is, if both players cooperate in V-notching, both get good rewards. If both defect, the result is low payoffs for both. Unfortunately, if one defects and the other does not, the defector gets a large reward and the other gets a low payoff. The high reward for defection motivates both players to defect, with the result that they get the worst of all possible payoffs. Defection dominates cooperation even though cooperation by both would bring higher payoffs, and a more efficient Nash equilibrium (Gardner 2003). This is the problem inherent in all collective action dilemmas (Elster 1989, Taylor 1990).

In the case of the V-notch, individuals incur a cost in terms of the time it takes to cut the notch and put the lobster back in the water. However, they can be certain of no personal payoff. Under these circumstances, it is only rational to refuse to V-notch. Fortunately, however, many fishermen V-notch lobsters despite the logic of the prisoner's dilemma. Why they engage in this cooperative behavior can only be understood by considering the costs and benefits involved.

Reprinted with permission: Acheson, J., and R. Gardner. 2011. *The evolution of the Maine lobster V-notch practice: cooperation in a prisoner's dilemma game*. *Ecology and Society* 16(1): 41. Support for the research reported here in excerpt form was provided by the National Science Foundation (Grant No. BCS-0821968, project title: 'Evolution of Norms and Conservation Rules in Two Fisheries'). [online] URL: <http://www.ecologyandsociety.org/vol16/iss1/art41/>

Debtor/Creditor Bar Meets To Discuss Foreclosure Best Practices

By Andrea Bopp Stark with Paula Craighead

In early 2013, a group of borrower/creditor counsel who work in Maine foreclosure matters met twice at the invitation of Andrea Bopp Stark of the Molleur Law Office to discuss ideas and concerns in a forum free from the details of specific case. The first meeting in February concerned foreclosure practice issue identification as well as goals and concerns of counsel and their client. The second meeting in early spring explored ideas mutually beneficial to improving the foreclosure process.

In April, attorneys gathered to propose specific foreclosure best practices and areas to explore. One example was a plaintiff firm that provides the investor's identity in cure letters and attaches the loan documents to the complaint. Others agreed to talk to their firms about doing the same. Borrowers' attorneys explained that the need for the information is to form an initial determination of whether or not the borrower should try to get a loan modification or should look at making a graceful exit.

Bankruptcy attorneys proposed to create a mechanism for Chapter 7 clients who are out of the homes to surrender properties and consent to judgment at the Motion for Relief from Stay (MRS) stage. Bopp Stark offered to meet with those interested to brainstorm solutions to this issue.

Those present devoted significant time discussing the "tone" of mediations and how foreclosure mediations differ greatly from traditional mediations. There was concern on the creditors' side that mediation has become a means to collect support for litigation by borrowers' attorneys rather than a place to speak openly and candidly to resolve the foreclosure. Borrowers' attorneys expressed continued frustration with the lack of responses from creditors' and their attorneys and explained that if they do not get the results and response they believe their clients are entitled to, they will advocate for that and bring it to the Judge if necessary. After much back and forth for about an hour, there was little common ground on anything to "resolve" but the report was that it seemed to alleviate unnecessary animus to listen to the other perspective. One attorney talked about what "boils our blood" and most were able to address some of the issues that seem to be at the forefront of preventing effective communications between borrowers and creditors and between counsel. Those in attendance agreed that roadblocks on a case on either side often require direct communication between the attorneys to promote progress.

The borrower/creditor bar working with foreclosed properties plan to meet quarterly with a focus on open discussion about issues related to foreclosures. Those attending the sessions agreed it is good practice to keep communication open to try and resolve disagreements in a civil manner.

For more information or to contribute to the discussions, please contact Andrea Bopp Stark at andrea@molleurlaw.com or call Molleur Law at 207-283-3777.

What's ahead, MAM?

- **MAY 2 , Thursday, in Portland, ME**
 Board of Governors monthly meeting
 Maine Association of Mediators
 Meeting **CANCELLED**
- **MAY 2 – 9, Thursday start date, in Topsham, ME**
 40 hour Mediation Certificate Training
 Maine Association of Mediators
 FMI: elaine.bourne@voanne.org
 or **207.373.1140, ext. 238** at VOANNE
- **MAY 13, Monday, in Topsham, ME**
 Advanced Consumer Law Training by Peter Fessenden,
 Chapter 13 Trustee
 FMI: elaine.bourne@voanne.org
 or **207.373.1140, ext. 238** at VOANNE
- **MAY 16, Thursday, in Augusta, ME**
 Humor in Mediation, MAM workshop
 FMI: administrator@mainemediators.org
 or call Maria Fox at **699-1367**
- **JUNE 6 , Thursday, in Portland, ME**
 Board of Governors monthly meeting
 Maine Association of Mediators
 FMI: pmalia@hastings-law.com



**Stay Calm
and
Mediate On**

MAINE ASSOCIATION OF MEDIATORS
 PROFESSIONALS COMMITTED TO
 COOPERATIVE CONFLICT RESOLUTION



You're Invited!
Calling all interested persons
to a MAM workshop

“Mediation Humor: the Fun and the Flops”

DATE: Thursday, May 16, 2013

PLACE: 11 King St, Augusta, Maine

TIME: Program 1:30 - 3:00 p.m.

Networking lunch from 12:30 - 1:30 p.m.

Fee: \$10 for MAM members, \$25 for non-members

FMI: administrator@mainemediators.org or call

Program Chair Maria Fox at 699-1367

www.mainemediators.org

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