

# Bulletin of the Maine Association of Mediators December 2010



*Professionals Committed to Cooperative Conflict Resolution*

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December 2010

## THE PRESIDENT'S MESSAGE

By Peter J. Malia, Jr.

At this time of year, we begin to see the compilation of many lists of events and happenings which took place over the past twelve months. Likewise, at our Annual Meeting I delivered a Maine Association of Mediators "2010 Year in Review," and I highlighted the following items:

We began the year with our annual retreat on January 7, 2010 at Mediation and Facilitation Resources in Augusta. Our retreat was facilitated by Carole Martin and we plotted our course of action for the year. We created a program committee to plan informative programs for our members, and a committee to plan our annual conference. At our February 4 Board of Governors meeting we began discussing the possibility of bringing Harvard Law Professor Robert Mnookin to Maine as a keynote speaker.

Also at our February meeting we recognized one of our members, Ann Gosline, for doing an outstanding job leading the State of Maine Stakeholders Group meetings regarding amendments to Rules 408 and 514 of the Maine Rules of Evidence.

On March 4<sup>th</sup>, we offered a program regarding these new Rules of Evidence pertaining to mediation. The meeting was held at Verrill Dana and myself, Jim Cohen and Jonathan Reitman formed the panel. This program drew over 30 participants.

The program committee immediately began planning its next program, which took place on June 3<sup>rd</sup>, once again at Verrill Dana. The topic of this program was Elder Law Mediation, and the panel consisted of Probate Court Judge Joseph Maziotti, Attorney Bob Raftice, and Dennis Culley, Senior Staff Attorney for Maine Legal Services for the Elderly. This program also proved to be very popular.

In August we said goodbye to Morrison Bonpasse, who very capably administered our Maine Residential

Real Estate Mediation Program for a couple of years, and we welcomed Eliza Nichols as the new administrator of that program.

On October 4<sup>th</sup> we welcomed Robert Mnookin to the University of Southern Maine's Abramson Center. As most of you know by now, the evening turned out to be a great success with over 100 people in attendance.

At our November 4<sup>th</sup> Annual Meeting at the Mariner's Church Banquet Center in Portland we enjoyed our fourth live program of the year, featuring Maine's own Kathryn Monahan Ainsworth as our guest speaker. Kathryn's interesting talk took us overseas, and informed us of the challenges she faces establishing mediation programs on an international level.

On December 2<sup>nd</sup> the Board of Governors held a retreat to plan for 2011 at Youth Alternatives Ingraham in South Portland. We also welcomed our new Board of Governors members.

Finally, we produced five *Bulletins* this year. We're always looking for articles, so if any of you have a topic that you would like to write about, or a book to review, please submit those to me. We certainly had a busy year, and look forward to another exciting year in 2011.

I want to make note in this President's Message of a Maine Supreme Judicial Court decision decided on October 14, 2010, involving the field of mediation. In the case of Kristen L. Dewhurst v. Troy W. Dewhurst, the parties reached an agreement in a Judicial Settlement Conference, but failed to reduce their agreement to writing. Of course, a dispute later arose regarding the terms of the agreement. The Court noted that "although the resolution event here was a Judicial Settlement Conference rather than mediation, we see no reason to depart from the requirement that parties to a family matter case who wish to have the terms of their settlement accepted by the Court must create a record of that agreement." The Court ruled that the parties must create a record of their agreement in order for the

*Malia*, page 2.

**MALIA**, from page 1.

agreement to be enforceable. The record can be created either by “signing a written agreement or by placing their oral stipulation on the record in open Court.”

I also want to welcome several new Board members to the Maine Association of Mediators Board of Governors: Richard Romeo, Matt Caras, Stacey Mondschein-Katz, Jan Tockman and Todd Ketcham. I will have more to say about our Board and its new members in my next President’s Message. Finally, I want to extend my gratitude to our outgoing Board members, Eileen Maguire, Jim Cohen, Anita Jones (Past President), and John Alfano (Past President). Their wisdom and guidance over the past couple of years (and in the cases of Anita and John over the past decade or so!), cannot be overstated.

I hope to see you all at our first meeting of 2011,

which will take place on February 3<sup>rd</sup>, at Youth Alternatives Ingraham in South Portland beginning at 10:00. The program is entitled “Building Bridges: Incorporating Principles of Transformative Mediation and Non Violent Communication in your ADR Practice.” This 90 minute program will offer a panel consisting of Karen Groat, Director of the Youth Alternatives Family Mediation program, Peggy Smith, Founder and Principal Trainer of Open Communication and co-founder of the Maine NVC Network located in Lincolnville, and David Webb, an attorney and mediator from Brunswick. Todd Ketcham, an attorney and mediator from Westbrook and a member of the MAM’s BOG, will moderate. The program will explore, through case studies, the practical impact of transformative mediation and non-violent communication upon the mediation process.

Peter can be reached at: [pmalia@hastings-law.com](mailto:pmalia@hastings-law.com).

## Robert Mnookin Wrestles with the Devil for MAM

by Tracy Quadro, Esq.

On October 4, 2010, the Maine Association of Mediators and Drummond Woodsum, along with Verrill Dana, presented Professor Robert Mnookin, Chair of the Harvard Law School Program on Negotiation and author of the book *Bargaining with the Devil: When to Negotiate and When to Fight*. Over 100 people attended the event, which was preceded by networking over hors d’oeuvres. The assembled audience included an eclectic mix of mediators, attorneys, students, firefighters, and at least one business owner, among others.

Professor Mnookin began his presentation with the definition of ‘The Devil.’ After all, we’re not actually talking about trying to reach common ground with a horned guy in red pajamas who carries a pitchfork to Halloween parties. The Devil is any person, group, organization or even nation that the negotiator sees as a force for evil. A very subjective determination, but critical to the discussion of whether to negotiate or fight. Some examples of people who negotiated with ‘The Devil’ with varying degrees of success were Winston Churchill (Hitler), Nelson Mandela (Apartheid) and Rudolf Kasztner (Nazis). Professor Mnookin also described situations in which ‘The Devil’ came in the form of a corporation, and, sadly, in the members of some very troubled families. Even when success is the result of the negotiation, the struggle takes its toll.

So should you bargain with ‘The Devil’? Professor Mnookin’s answer – not always, but more often than you feel like it. Professor Mnookin’s research has brought him to the conclusion that, when faced with the principled choice versus the pragmatic, the pragmatic is usually preferred in most cases. Why? Read the book!

The Maine Association of Mediators would like to thank all the generous sponsors at all levels who made this program possible. With support from our friends and members, it is possible to bring national-level talent to Maine to enlighten and enrich our membership.

Tracy is the MAM Administrator, a mediator and guardian *ad litem* in private practice.

She can be reached at: [medi8@maine.rr.com](mailto:medi8@maine.rr.com)

# Cushman Anthony

An interview by Paula Craighead, Esq.

Cushman Anthony has spent his professional life in Portland as a mediator and lawyer. He is a graduate of Amherst College and the University of Michigan Law School. During his career he worked in a large law firm, taught clinical practice at the University of Maine School of Law and started his own law practice. He also spent eight years as an advocate for social services, six years in the Maine House of Representatives and served five years as chair of the Maine Indian Tribal-State Commission. He has been recognized for his contributions to the Maine community from the Maine Judiciary (Advocate for Justice Award), Kids First Center (Special Recognition Award) and the National Association for Community Mediation (Volunteer Mediator of the Year). He and wife Karen currently live in North Yarmouth. Paula Craighead, a MAM member serving on its board of governors, spoke with Cush recently about his life, legal career and mediation practice.

*MAM:* You are one of the long time lights of mediation in Maine. Where did you grow up and how did that place influence you, do you think?

*CA:* I grew up in Newton Center, Massachusetts. We spent summers on Cape Cod where I still go, now the sixth generation to do so. I don't know that where I grew up influenced me so much as how I grew up. I grew up in an upper middle class family with all the advantages that go with that, and I feel really blessed... the fourth of four children. That [birth order] probably had something to do with my being a mediator. My father was an insurance executive, born with not much, was driven to succeed and he did. My mother was the softer side of life and I have much of her characteristics. I ended up, as the last one born, as a kind of peacemaker in the family in a way.

*MAM:* What brought you to Maine and why did you stay?

*CA:* I met my first wife at a Quaker meeting. My

beliefs are not traditional, but I have a strongly spiritual side. After a time as a Navy officer, then marriage and law school, we said "where are we going to live?" We wanted a smaller city, near water because I grew up sailing. Portland was one of the choices. I was offered a position at Bernstein Sawyer and Nelson and took it. That's what brought me to Maine.

*MAM:* One online bio describes you as "a former lawyer who became a mediator." In your view, can a person with a law degree be both? Did you let your bar registration lapse?

*CA:* Yes, I was both. I was a lawyer. I didn't let my bar registration go until recently when I retired. I was a family law lawyer. That kind of evolved. I had no intention of that but I went through my own divorce. I had a sense that lawyers helped you protect your financial interests, but not your relationship with your kids. That's what I was interested in. So I began to practice it in that way, perhaps a softer-on-money-more-about-kids way. There were a number of men who sought custody. My style was a little bit different. This was 1980. The field of mediation then was labor law. [At the suggestion of a friend, I went to] a guy in Boston named Jerry Weinstein for training in mediation as a different approach [to divorce]. The training was not nearly as structured as it is today. It was so new. I realized I was doing a lot of it naturally and Jerry said as much to me. After practicing a while on my own, I took a leave from law practice in 1981 to become the Family Advocate for the Community Counseling Center. I probably did a total of ten mediations until 1984, not for work but outside what I was doing for the Center.

*MAM:* Around then is when you began your time in the legislature?

*CA:* Yes, I had appeared before the Judiciary Committee in Augusta on behalf of the Counseling Center. Merle Nelson was on the committee and I spoke to her afterwards. We knew each other because I hworked for her husband Lenny. I asked how she thought it went. She said, "who knows, we'll see

**Interview**, from page 3.

what happens. But you know, if you want to make change, you should run for office. You can be much

*MAM:* You were still with Community Counseling Center?

*CA:* I left part way through my time in the legislature. Funding for the position had run out and I left. I went back to what I knew how to do to make a living, being a lawyer. I remembered I had liked mediation so I took another course, a forty hour course.

*MAM:* The one at USM?

*CA:* No, before that was offered. This was in Vermont, a forty hour course. I just loved it. The interesting thing was , how much [the training] was different. In the meantime [since the Boston class], people had developed theory, there was a process and structure. The structure came from what a Quaker group [Friends Conflict Resolution Programs] was doing in Philadelphia. They had published a book [ The Mediator's Handbook by Beer & Stief], which has evolved and evolved. Theirs is still the classic approach: Opening statement, uninterrupted time and so on. All of that I learned in 1988. It hadn't existed before then. It was a huge change.

*MAM:* How would you describe the difference between, say, "win-win" negotiation and mediation?

*CA:* Everything that I have done I would describe as mediation. There is a certain commonality between win-win and mediation: first, you set ground rules, you give each person a full opportunity to state their story. You help the parties clarify, learn from each about what they don't know about the other. Ask questions and start to take it apart. You say, "OK, let's look at this piece and this piece. What are the possible options here?" You get the details about one aspect of the problem. That's certainly the classic community mediation approach that I learned.

*MAM:* Is it that once you isolate an area the parties will discuss, you find the thread that leads them to all aspects of their conflict?

*CA:* I wouldn't describe it as a thread. I typically looked for an easy part to solve so that they solve it and say "hey, we can do this." Sometimes, in the divorce area, "who are the kids going to live with?" is so central you have to start with it even if it's the most difficult problem of all, in terms of helping find a solution. Even then, you know, you change the language that they use and make it so they really focus on the kids. I frequently, for instance, would ask each party: "Tell me about your kids." And just get them to, to tell me. And then I'd ask the other and of course it's similar, which allowed me to say to them "Well, you certainly both agree that these are neat kids and I sense a lot of common approach..." and you build from there, out of some commonness.

*MAM:* What helped you prepare for a mediation, besides receiving the report in advance? Did you do something for yourself to enter into emotionally difficult settings?

*CA:* Hmm, yeah, I don't know... "Receiving the report?" Certainly some of the mediations I've done I've no idea what the problem's going to be until I walk into the room! Yeah, I try to prepare myself emotionally. Still myself. And remember--- certainly one thing I feel strongly --- you're not neutral, you're a partisan for each side. You have to open yourself to what this person is saying, really absorb it and feel it. And likewise for the other person because then, only then, will you be in a position to help the two parties understand each other and where they're coming from. So, yeah, I think there is some mental preparation for it, very definitely.

*MAM:* So, you're saying to yourself: be open, clear myself of my own concerns...is this also called "active listening?" Would you call it something other than active listening?

*CA:* [chuckles] Well, it's active listening at the top level. I mean, I don't have it with me, but there's a wonderful quote from William Stringfellow. Do you know him? He wrote a statement about opening yourself to another, making yourself totally vul-

*Interview*, page 5.

**Interview**, from page 4.

nerable to the word as the word is being said to you. Then he ends it by saying “In other words, listening is a primitive act of love.” I believe that.

*MAM:* Did you come to this insight early or late in your mediation career?

*CA:* I can’t really answer that except to say I think it grew as a realization. When I decided, in the late 80s, to return to both a law practice and to mediation, it was the mediation I loved. I decided to spend more and more of my time trying to do that aspect. I took training and held myself out as a public policy mediator and for environmental issues. Yet, people had me pegged as somebody who did family law. That’s what they came to me with. So, I thought, well I’m good at it, people come to me for this, so be it.

*MAM:* Have you written about that experience or your mediation experience?

*CA:* I haven’t.

*MAM:* If you did, what would you write that new mediators could learn from you?

*CA:* One thing I feel very strongly is that mediators control the process but the parties control the solutions. Solutions have to come from the individuals involved to be effective. First of all, there’s buy-in and secondly, they know more about what their needs are than the mediator will ever know. Your job as mediator is not to offer solutions but to listen and ask good questions so they will come up with solutions. I had a teacher early on, whom I just loved, who said “In an ideal mediation, you never make a statement, you only ask questions.” I’ve never been able to only do that, but it is the goal. In divorce mediation, I view myself as a resource. Someone with information that could help. I am willing to share solutions used by other couples over the years, things like that. But mostly, it’s asking questions. The same teacher said “I judge my questions by how long it takes for people to answer. The longer it takes before they start to answer, the better.”

*MAM:* How did you come to mediate in Africa? Why this new venue?

*CA:* I was retired. I was sitting at home one day reading a report on the Africa Great Lakes Initiative of the Friends Peace Teams. They are doing reconciliation work between Hutus and Tsutsus who find themselves living side by side after the conflict is over. It’s all about helping them to get beyond that and recognize the humanity in each other and get beyond that. I felt I was called to do the work. In divorce [work], your clients hire you because they care about the outcome, a divorce settlement. On the other hand, in Africa, I taught transformative mediation; there, it must be transformative. You aren’t just trying to help them settle a problem, you’re trying to help two individuals, first of all, learn how to listen to each other and, secondly, how to articulate their wants and needs in a way that can be heard because it’s not just that problem. You’re going to go away and they are going to have other problems that come up. You want them to learn to negotiate in a good way.

*MAM:* So you felt moved enough to act? To go to Africa for a month?

*CA:* I had read about a guy teaching mediation skills. The article said mediation training gave them the skills to solve problems in ways they couldn’t otherwise. Then I read “if we had more people doing this, we could do more of this.” This is what I mean when I say I felt I was called. I felt like “this is what I am supposed to do.” The Africa experience presented itself. It was not something I was looking to do, I’d never been to Africa, I didn’t have any particular desire to go there, but there it was. I believed I was supposed to do it and I did.

*MAM:* Can you name three people whose lives continue to influence yours?

*CA:* Gandhi, for the activism; my violin teacher Mrs. Estabrook, for the gift of music; and my mother, for her compassion and class as an original Cambridge lady. My life has been about peacemaking. I have been blessed in my life, in my marriage. My wife helps me. She says, “You spend too much time trying to save the world, you should savor it.” She’s helped me to do that more.

**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](#).*

**Editor's Note.** This is my last *Bulletin*. The demands of my practice and personal life require my full attention. I have enjoyed cajoling you for articles that have been professional, varied and interesting. The next issue will be published professionally, a welcomed and necessary change as MAM and the *Bulletin* continue to grown and evolve. Also, I want thank Peter and the BOG for their contributions to MAM, the only voice of the profession in Maine, and the members who contributed to the *Bulletin* for your help. The *Bulletin* provides new and seasoned mediators the opportunity to be published internationally that was unheard of in 1983 when I started my practice. Continue to contribute articles so that the ideas and opinions of Maine mediators can be heard around the world!

John Alfano

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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.

**Calendar of Events**

Board of Governors, monthly on the first Thursday

February 3, 2011—10:00 to 11:30 a.m  
 Youth Alternatives

**Building Bridges: Incorporating Principles of Transformative Mediation and Non Violent Communication in your ADR Practice**

Free to members and students  
 Non-members— \$15.00