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Professionals Committed to Cooperative Conflict Resolution

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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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June 17, 2011

FMI: bulletin@mainemediators.org

The President's Message

By Peter J. Malia, Jr.

In the March President's Message, I provided the biographies of three of our five new board members. This Message shines the spotlight on our two other new board members.

Todd R. Ketcham graduated from Hampden-Sydney College (2000), *cum laude*, and the University of Maine School of Law (2007). Having begun mediation practice in 2008, Todd is on the Small Claims, FED, and Family Matters mediator rosters with Maine's Court Alternative Dispute Resolution Service. In addition, he is a mediator within Maine's new Foreclosure Diversion Program. He is the co-owner of Cooper & Bull, P.A., a four-member firm located in Westbrook, and his practice areas include family law and business law. Due to a lifelong passion for cooking and experience in many food-service positions, Todd is excited to work with restaurant and hospitality business clients throughout Maine. He has volunteered with the Maine Volunteer Lawyers Project Family Law Helpline over the last seven years and with the Youth Alternatives Ingraham Family Mediation Program for three years.

Janet Tockman participated in the USM Mediation Certificate Program in 1997. As a new mediator, Janet volunteered at both Youth Alternatives and Portland's Community Mediation Center. She then joined the CADRES program on both the Family Matters and Small Claims rosters. She continues to enjoy her work in Family Matters through CADRES and her private practice. Prior to that, she had been engaging in alternative dispute resolution without realizing that this was an actual field of study in which to train. Elected as a "reform candidate" to the Sanford School Committee, and serving five years as its chair, proved to be both a fly-by-the-seat-of-your-pants and trial-by-fire experience in conflict resolution. Janet expanded her public service experience by chairing Sanford's then board of selectmen and serving on three different building committees. Dedicated to honoring divergent points of view on controversial issues, she was honored as the JayCee's Woman of the Year and Nasson College's Citizen of the Year. She recently concluded a term on the Maine State Board of Education, where she led the Board's Certification and Special Education committees.

The Board of Governors is excited to have both Todd and Janet join us. I turn now to thank

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A Conversation with Ann Gosline

By Paula Craighead

*A graduate of Stanford University and Northeastern University School of Law, **Ann Gosline** has spent most of her professional life in Maine, initially as a lawyer and then as an ADR practitioner. During her career, she has counseled a union, consulted nationally on employment matters and served as an arbitrator. She currently enjoys facilitation work as a consultant with her partnership of Gosline & Reitman. Ann is a member of the National Academy of Arbitrators. She and spouse **Jerry Rodman** live in Litchfield, where they may be found spending pleasurable hours tending grape vines. **Paula Craighead**, a MAM board member, spoke with Ann recently about her life, mediation practice and Ann's participation on an American Bar Association (ABA) ADR section's panel on the future of mediation as a conflict-resolution innovation.*

MAM: Where did you grow up and what brought you to Maine?

AG: I grew up in Honolulu, went to school in California and moved here after a lot of travel. I spent time in Asia, and then tended to move east: to Seattle, then Boston, then Maine in 1980. My travels most significantly affected my life: in Asia, I felt as though I was changed forever by being in places where people have only one pot, barely enough shelter and are really scraping by; then, to come back to this country where we have so much! I'm struck that we still have an intact environment; in so many other places in the world, they don't.

MAM: How did you start your mediation practice?

AG: When I first came to Maine, I got a position as an attorney with the Maine State Employees Association. From there I moved into labor arbitration and mediation. My first mediation training was as an apprentice to a wonderful, experienced arbitrator-mediator, **Tim Bornstein**, and I tagged along as he mediated labor contracts. I got involved in the Society for Professional Dispute Resolution. I started going to their conferences and became more interested in multi-party facilitation and mediation, which became the next big focus of my practice.

MAM: Did you come to Maine for the union position or for some other reason?

AG: I came to Maine because my husband and I were interested in getting out of Boston and into a more rural environment. I found the position once I got here. I love Maine—it's spectacularly beautiful. I love the fact that it's fundamentally a community. A friend of mine once said, "you can really see your footprints in Maine." Another said, "What goes around comes around in Maine—real fast." That means that people, I think, try to listen to each other and get along. I continue to love it here for both reasons.

MAM: Let's talk a bit about your recent panel experience at the ABA's ADR conference in Denver last month. Tell us about that.

AG: Before I talk about the panel, I want to say that the most exciting thing about the conference was that **Temple Grandin** spoke. She was spectacular. She spoke about problem solving and the different ways of thinking, including her way of thinking, which she views as both nonverbal and "bottom-up": starting from specific examples and then analyzing from that approach. She said that most people think in words, and many are "top-down" thinkers. She specifically addressed the way lawyers will write a very general statement, such as "Animals should be treated appropriately and not abused." To her, that doesn't make any sense unless you provide examples that define those terms.

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MAM: How did you find her comments to be relevant to your work and to mediation generally?

AG: [Her comments] spoke to me in my role of citizen—on how to try to solve the complicated problems our society faces! As an environmental facilitator, of course, that's what we try to do when we bring groups together. Yet, hers was a more subtle and interesting way of thinking about diversity in these groups than the way we usually think about it. In environmental and public policy facilitation, when we talk about getting stakeholders together, we usually talk about including different organizations or entities with *different interests*. Her discussion of the importance of including people with *different ways of thinking*—getting what she called engineer-type thinking along with legal-type thinking, *et cetera*, is something I won't forget.

MAM: How did the panel see mediation's future?

AG: The panelists didn't reach a consensus on the fate of mediation as a dispute-resolution innovation. In many ways, it comes down to application: are you talking about civil suit-related, court-annexed processes? Domestic relations? Environmental conflict resolution? Mediation's future is very much tied to larger questions. What will the courts look like in 20 years? Panelists who talked about mediation of civil law suits said that mediation might be required in all cases before going to court and that there may be "civil service mediators." They think that there will be continuing pressure to be evaluative rather than facilitative in mediation of legal disputes. Other panelists said (and I agreed) that in other practice areas, more mediation-type skills might be incorporated into society, generally, so that a profession as "mediator" may not exist.

MAM: Will there be a position called "lawyer" in twenty years?

AG: Well, what will the courts and litigation look like? Some said that we may not even need courts! Since this was an ABA conference, with mostly lawyers talking to lawyers, they focused on mediation in the legal context, with lawyers acting as the mediators. Lawyer-as-mediator is a trend in this country, since the traditional work of lawyers is shrinking and many lawyers are discovering that they like mediating. Many seek to make mediation the center of their practice.

MAM: At our fall board retreat, MAM affirmed its commitment to mediation and mediators in the therapeutic/psychology realm as well as those in the legal community. Was this necessary to do, then? Will lawyers swamp the field of mediation without a conscious inclusion of non-lawyers?

AG: The conscious inclusion of non-lawyers is critical. When lawyers mediate, especially lawyers without much mediation training, most tend toward the evaluative mode. I don't want to sound like I'm lawyer bashing; I'm not. There is a tendency for lawyers to choose mediators from among the lawyers they know. It's important to educate the bar and lawyer/mediators to understand that if mediators aren't doing lifelong learning on mediation, and learning from people from other backgrounds, they won't bring a full range of mediation skills to the table.

MAM: What's the future—is it facilitation? And is the difference that facilitation happens before something is in court and mediation happens after it's in the legal system?

AG: I think there is a future for both, but they will evolve. Part of the difference between mediation and facilitation is the way the parties think of it. Also, I think the emphasis in facilitation is usually different from the emphasis on settlement in

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the mediation of a legal dispute. The most important thing in facilitation is to keep the focus on planning, problem solving and partnership building. For example, the Long Creek Project was a facilitation process in which the stakeholders stayed focused on solving water pollution, although there were legal issues involved. **Diane Kenty, Jonathan Reitman** [my law partner] and I described our view of facilitation of public policy issues in an article in the Summer/Fall 2010 *Maine Policy Review*, which goes into this all in some detail. (Visit mcspolicycenter.umaine.edu to view or download the article.)

MAM: Before we end, would you like to mention anyone or any work that you find influences your practice?

AG: Jonathan is wonderful to work with. **Chris Carlson** is an ego-free, generous practitioner and thinker who has worked for decades to improve decision making about important problems. She is now working on how to incorporate collaborative governance in curriculum at colleges and universities. ~

Doing Lunch with F. Lee Bailey

Michelle Susan Twomey

Excerpted from *Portland Magazine's Summerguide 2010*; reprinted with permission.*

Twomey: Have you ever considered applying for a license to practice law in Maine?

Bailey: I've thought about it. I'm not really terribly motivated. What I want to do doesn't involve a license. What I want to do is to make litigation services available to people who can't afford it, which is about 95 percent of the people in Maine. And I'm talking civil cases, strictly.

I've spent the last ten years in mediation, consulting and dispute resolution, and I think I've found ways to structure a contract so that the resolution is built right in. It's simple. It's inexpensive. It's immediate. So the contract doesn't get interrupted while a bunch of lawyers try to figure out what to do to interrupt it further.

A lot of people could use this. Maine is certainly on its backside with unemployment, having trouble being pictured as being industry-friendly. It's often compared to New Hampshire next door, which seems paradise by comparison, in terms of tax structure. There are reasons the two shouldn't be compared. But when people *do* come to Maine, if they could be assured of getting their jobs done without being interrupted or bogged down with totally destructive legal costs, I think they'd find the state more palatable.

Legendary trial lawyer, now mediator, **F. Lee Bailey** is MAM's speaker on **June 9** at a Thursday evening program following a networking social hour.

Twomey: How could you pull this off?

Bailey: It doesn't take any action by anybody. It just takes a bunch of good retired judges to act as mediators, and people willing to agree that whatever the judge says is final—that's it, no appeals.

In Russia, I found—to my surprise—that if one of the parties breaches the contract, [that party] has to finish the contract and then sue. You cannot interrupt a work in progress. We'd walked off a job in protest that the guy who hired us was changing the rules. Even though it cost us heavily, I think that's a good idea. Don't interrupt the project; get your dispute on the table and have somebody decide [the legal issue concurrently] before it grows any bigger. That is the result of fifty-odd years of watching people litigate with one another. Nobody's ever happy. ~

*To read the full interview, visit portlandmonthly.com/portmag/2010/06/my-15-minutes-of-maine, and scroll down.

The President's Message (cont.)

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recently “retired” Superior Court Justice **Robert Crowley** and former Chief Justice **Daniel Wathen** for their engaging and informative panel presentation, which took place April 7 at Verrill Dana. I would also like to thank Verrill Dana for providing us with the conference room. It was interesting to hear about the work that these former judges are currently doing in the field of mediation. Judge Wathen has developed a successful niche, mediating cases in Puerto Rico. Judge Crowley is mediating a variety of civil cases through his new law firm, Kelly, Remmel & Zimmerman. We will continue to provide our membership with a wide variety of programs pertaining to the field of mediation, as evidenced not only by the April program at Verrill Dana, but also the February program at Youth Alternatives, *Building Bridges: Incorporating Principles of Transformative Mediation and Nonviolent Communication in your ADR Practice*. In keeping with this philosophy, our next program takes place on the evening of the 9th of June at the Portland Country Club. Following a social/networking hour, we are sure to be informed and entertained by **F. Lee Bailey**. Please visit our Web site, mainemediators.org, for registration information. I hope to see you all there! ~

What's Ahead, MAM?

MAY 12, Thursday, in *Freeport, ME*

Annual MCLU Scolnick Award Dinner; Honoree is MAM member Cushman Anthony
Sponsored by the Maine Civil Liberties Union
FMI: mclu.org

MAY 18–20, Wednesday–Friday, in *Topsham, ME*

Training for Mediation with VOANNE certificate (40 hours)
Sponsored by Volunteers of America, Northern New England (VOANNE)
FMI: [Nancy Markowitz, 207-373-1140, ext.229, mediate@voanne.org](mailto:Nancy.Markowitz@voanne.org)

JUNE 1, Wednesday, in *Augusta, ME*

Training for Maine's Foreclosure Diversion Program (FDP) mediators
Sponsored by the FDP, Administrative Office of the Courts, State of Maine
FMI: [Lauren Blake Weliver, 207-822-0706, FDMP@courts.maine.gov](mailto:Lauren.Blake.Weliver@courts.maine.gov)

JUNE 1–3, Wednesday–Friday, in *South Portland, ME*

Training for Transformative Mediation (40 hours)
Sponsored by Youth Alternatives Ingraham
FMI: [Karen Groat, 207-632-1111, kgroat@yimaine.org](mailto:Karen.Groat@yimaine.org)

JUNE 9, Thursday, 4:00–7:00 p.m. in *Falmouth, ME*

Program: *A Conversation with Attorney F. Lee Bailey*
Sponsored by Maine Association of Mediators
FMI: mainemediators.org

JUNE 17–18, Friday–Saturday, in *Waltham, MA*

Regional Conference
Sponsored by Northeast region of the Association for Conflict Resolution (NE-ACR)
FMI: neacr.org

Contact MAM

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Mediating in the Shadow of the Court: a Conversation with Chief Justice Daniel Wathen and Justice Robert Crowley

Excerpted from a transcription of the April MAM program

Wathen: [T]he best thing I learned from [mediation trainers] **Linda and Michael Singer:** “Interests before options.” Find out what people are really interested in before you start talking about options, and then it has to be *their* options. I mean, you can lay it out, “we can do this or this or this.” It’s better if they give the options because you talk about which one serves their purposes better. Often, some of the most important things—well, I have to tell you that in the courtroom, this [very important thing is] never going to be part of any judgment and if it is, it’s the chainsaw approach.

...In the more complicated business transaction, it really is important to understand the conventions of the parties—where the parties have been. Five or six concise pages to say what’s involved are helpful. It does trigger the ol’ lawyer’s instinct of, “OK, I’m going to start solving this.” It doesn’t take long to learn that you’re least effective when you go in and tell people, “[I know about] this, I’ve been a judge for 25 years and you’re going to lose.” That doesn’t work.

Crowley: The core discussion in [judicial settlement and mediation] is the same. Some of the atmospherics are different. I was a stickler [as a judge] on the Superior Court. I had a three-page order on who attends, what authority they have to have and so forth. There weren’t modifications of rules when I was judging. ...Now that I’m mediating privately, I’m warm and fuzzy—I’m flexible.... [That’s because] my ability to control the agenda is substantially different. Timing is different as well: more often than not, mediations are occurring (due to Rule 16B) reasonably early in the process or when parties determine it’s necessary. Judicial settlement conferences are often on the eve of trial. So there is some coercion or duress of circumstances that attends judicial settlement conferences that doesn’t attend the mediation. And just being in a judge’s chambers with a judicial robe on a coat rack adds to the notion of “you’d better get this done.”

Audience: **Do you do anything differently when one of the parties is unrepresented? When there is tremendous imbalance, only addressed if you intervene, how do you avoid becoming an advocate for unrepresented party?**

Crowley: In private mediation, I’ve had three or four. One of the differences at the end of the process is to allow some kind of a rescission period—to put into the memorandum of agreement that the unrepresented party should consult with counsel to review the terms and have a fixed period of time within which to do so and to rescind—it’s a worthwhile thing to do, just to deal with that issue. Clearly you need to explain and document that you are not representing or providing legal advice to the unrepresented party... and you need to deal with imbalance issues, to the extent that they exist. I didn’t find, in ones I was doing with *pro ses*, that there was an effort to create an imbalance, so I didn’t think there was much required on my part to restore balance. I think the rescission period is an important part of it, just to, at least, provide the opportunity for counsel to be involved.

Wathen: I’ve never had [unrepresented parties]. But to chip in, imbalance [of power] can arise, as well, in cases where people are represented. In cases where there is a really sharp attorney on one side and someone who needs help on the other side. Functionally, it’s the same. The other feature is that I do a lot of mediations with multiple parties—I may have nothing but attorneys.... There was a case in Puerto Rico with 30, no, 40 lawyers in the room. It was a construction case—30 [were] subs. I didn’t know what to do. Where do you start? I said, “uh, I’m going to send you [subs] home....” A day and half later, they came back, and I said, “I think we’ve just about made it if you take 85 cents on the dollar.” They took 85 cents on the dollar... and that took care of that thirty.

Where I’ve seen a real imbalance [of power] is with the lawyers—like with the subs in the construction case. I paid attention to the imbalance. It just wasn’t going to settle [with subs in the room]. I tried to help a little bit, but you can’t really get involved. You can’t do it. I think Bob’s idea, “look, let’s make it clear we’re going to try and do this, but nothing is final until you’ve had a chance to read it [with counsel],” may be a good idea. You know, the Constitution was drafted that way: they agreed, “OK, we’re going to start on this,” then they’d put something away and say, “you know, it’s just temporary.” ~