NEW ENGLAND CHAPTER OF THE ASSOCIATION FOR CONFLICT RESOLUTION

NE-ACR News

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SAVE THAT DATE

January 15, 2008
5:30-7:30 pm
NE-ACR'S NEW YEAR'S RESOLUTION EVENT
With musical guests "The New Trolls"
at Suffolk Law School

Mediator fatigue

The traumatic effect of what we hear

By Jonathan W. Reitman

For the past 17 years I have worked and trained in international conflict situations, with workshop participants from South Africa, Bosnia, Serbia, Syria, Palestine, Israel, the Philippines, and Nepal, among other countries. So I am no stranger to chronic, seemingly intractable conflicts and the deep wounds and vulnerabilities they often produce, or to the strident, angry rhetoric that is often expressed in many conflict resolution trainings. It gets hot in the room. That's a given, and I have sometimes found it difficult to return from these foreign venues, to reintegrate into my domestic practice and life.

But nothing prepared me for what I experienced after teaching for seven weeks in Israel and Palestine during the summer of 2006, when I lived in a militarized zone during the active shooting war between Lebanon and Israel.

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In 2006, after warnings of an Israeli air strike, Palestinian women created a human shield on the roof of the Gaza Strip house of the militant Mohamad Barod.

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The power of the wrong -- and the right – words

By Jeanne Cleary

It was 1982, and I was a new family service officer at Suffolk Probate and Family Court in Boston. I was standing in the hallway where we often did mediations back then, talking with a young dad, a Vietnam vet working at the Post Office and trying (apparently unsuccessfully) to stay sober through his divorce and the disintegration of life as he knew it.

I will never forget the disbelief in that dad's voice as I spoke of a possible visitation plan for him and his two children.

"Visit? VISIT!? You think that's what a father does – VISIT his children? I'm their FATHER."

I left the court in 1986 and since then have offered mediation, guardian ad litem investigations, and parenting coordination services in private practice. I imagine that in these past 21 years of helping parents craft co-parenting plans, a number of divorce lawyers representing my mediation clients have been frustrated by the language I've used in the Memoranda of Understanding that I have written and sent to parents at the conclusion of our work. I have never referred to "physical custody" as something assigned to one parent or the other, and thanks to my Vietnam vet dad, no matter

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TERMS THAT HURT

"Custody" and "visitation"

By John A. Fiske and Jennifer Rivera-Ulwick

Words frame how we think. And they can hurt.

One of the first official Massachusetts uses of the word "custody" in reference to children may have been in 1806, when Supreme Judicial Court Justice Samuel Sewall wrote that "the mother of a bastard child is entitled to custody of it, and shall hold it against the putative father." That year, Andrew Jackson killed a man in a duel, Lewis and Clark were beginning their long journey home, and our great-great grandparents hadn't even been born.

Today most people agree that "bastard" is a hurtful label, and many states have decided that "custody" and "visitation" are equally inappropriate. It's time for Massachusetts to follow suit and find new words to frame how we think about children's rights and parents' responsibilities.

Recent decades have seen dramatic changes in state laws regarding children of divorce, as lawyers, judges, psychologists, and

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David Hoffman and his wife, Beth Andrews, at the recent wedding of two West Coast mediators, Dana Curtis and Daniel Bowling.

10 Questions *for* David Hoffman

David Hoffman is the founding partner of Boston Law Collaborative, LLC, where he serves as a mediator, arbitrator, and attorney. The former chair of the American Bar Association Section of Dispute Resolution, co-founder of the Massachusetts Collaborative Law Council, and past president of NE-ACR, he has served as an adjunct professor at Northeastern University School of Law, teaching ADR and negotiation, and lecturer on law at Harvard Law School, teaching advanced mediation and family law practice. He is the co-editor (with Daniel Bowling) of Bringing Peace into the Room: How the Personal Qualities of the Mediator Impact the Process of Conflict Resolution.

For more information, see www.BostonLawCollaborative.com.

How did you get started in ADR?

I was a litigator at an old-line Boston law firm - Hill & Barlow. I started there in 1985, and all I wanted to do was litigate. I thought litigation would make the world a better place. I mostly litigated commercial cases, but I also litigated public interest and pro bono cases.

I did several cases for the ACLU and the Volunteer Lawyers Project and represented an African-American man on death row in Louisiana. One of the things that I realized after a few years of litigating was that I couldn't tell my clients how long their case would take, what it would cost, or what the outcome would be. My paying clients were often business people who were deeply vexed by all of this uncertainty and lack of control. And I could see how sometimes – when you add up all the legal fees on both sides - it was more than the amount in controversy!! Doesn't that seem a little crazy?

Mediation and arbitration were just getting a foothold in the world of commercial law in the late 1980s and early 1990s, and Hill & Barlow had a wonderful lawyer, Carl Sapers, who was one of the deans of the construction arbitration world. And he took me under his wing and gave me a great project - he and I co-authored an article on dispositive motions in arbitration - an idea that has gradually caught on in some arbitrations.

And then I talked with my former law school adviser, Frank Sander, who encouraged me to study mediation and form an ADR group at Hill & Barlow. Then I got my first mediation cases at the Community Dispute Settlement Center in Cambridge, where the spirit of peacemaking is totally infectious.

What kind of work do you do?

I am a generalist. I like mediating and arbitrating all kinds of disputes. My biggest and most complex case to date was a mega-arbitration involving hundreds of millions of dollars in re-insurance exposure, but I have also mediated minor home improvement squabbles and divorces involving people of modest means. I like helping people find a path to an honorable peace. And now we have collaborative law as our newest tool in the ADR toolbox.

What was your first case (keeping confidentiality in mind)?

It was a simple landlord-tenant case - I don't remember the details, but I do remember my co-mediator at the Community Dispute Settlement Center. It was Helen Ladd, who at the time was probably in her 70s and a terrific mediator - calm, focused, unflappable. The perfect person to help me get my feet wet.

What was your toughest case? Why was it so difficult?

I co-mediated an intra-family dispute with my colleague Dr. Richard Wolman – it involved about $10 million in claimed losses from a family trust. But the real issues - between an adult daughter and her father – went back to early childhood memories and a lack of connection that infected their entire relationship so deeply that rationality could not penetrate the stored-up anger and disappointment.

What do you like most about your work?

The enormous challenge of mediation. It's a discipline and, I might say, a form of spiritual practice in which mastery is never achieved but only approached from a great distance. I also love the endless variety of the cases. And my colleagues in the ADR field are among the finest people I have met anywhere. The goal of making the world a better place brings out the best in people.

What do you like least?

There are some people - such as people with borderline personality disorder and other characterological disorders - who know how to push my buttons and other people's buttons. I am fortunate in working in an office where two of my colleagues are mental health professionals, and they serve as personal trainers for all of us in the office when a client is getting under our skin.

What would your worst enemies (or your least close colleagues) say about you?

I think they would say that it's totally unfair for David Hoffman to be so tall and handsome and to also be such a good Scrabble player.

What about your best friends?

Probably the same. Except they know me better, and therefore probably know that I am only a so-so Scrabble player.

If you could change one thing about the way you work, what would it be?

I am still working on being more patient and more non-judgmental. My work as a lawyer calls for quick decisions and focused problem-solving. My work as an arbitrator often requires making snap judgments about evidentiary and procedural issues. But my work as a mediator often calls for a Zen-like reticence. And, as I said, I am working on it.

When you go to sleep at night, what do you think about?

My wife.

(Suggestions for subjects for "10 Questions" are welcome. Email them to news@neacr.org.)

From NE-ACR's president

In New Hampshire, it's beginning to look a lot like politics

By Scott Flegal

The holidays are going to look a bit different up here in New Hampshire this year, with the presidential primary only a few weeks away. Sleigh bells and sound bites will rule the day. Which candidate will show the most Christmas spirit? Whose menorah will be the brightest? Whose holiday tree will be environmentally correct?

Call me the Grinch, but these and other questions of great political import are shaping up as a serious lump of coal in my Christmas stocking, and the thought of having to endure more "debates" during the holiday season is about as appealing as spoiled eggnog. So I'm not going to sit here and take it. I'm going to do something about it.

This year I'm asking for only one gift. I don't think Santa can bring it, and I don't think any of the candidates will like it, but I'm going to ask for it anyway. I want a change in the debate format. I want the moderators in our presidential debates to be mediators.

Think about it. It would mean the end of the canned question. A good mediator would listen keenly to each answer and be ready with the perfect follow-up question to move the discussion forward with clarity. A good mediator would ask questions to make sure all of us really understand what's most important about the answers. A good mediator would hold the candidates' feet to the fire.

It would also mean the end of the sound bite. Right now, every candidate is searching for the most catchy, slogan-like response. But if candidates knew that their clever little answers would be skillfully reframed and that they would have to explain the interests underlying their positions, things would be different. We could have complete sentences. And substance!

I'd also like to see what happened if the mediator-moderators really tried to flush out mutual interests and common ground. Wouldn't we learn something important? Wouldn't that information

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add clarity? Wouldn't it help voters understand their options? It might also make for great ratings. Do Hillary and Barack have the same recipe for an edible fruitcake?

If Tim Russert keeps moderating these things, we'll never know.

I'm probably hopelessly naïve, and I guess this will never happen. But I'll be wishing for it anyway. What the heck, it's the holidays. And if I happen to run into any of the candidates up here, you can rest assured that I'll be carrying the banner for mediators everywhere. I'll be reframing and uncovering interests like a madman. And if I hear of a good fruitcake recipe, I'll be sure to pass it on.

Happy holidays, everyone.

Scott Flegal is a lawyer and mediator who works in Nashua. He can be reached at scottflegal@flegal.com.

A first-- and last -- note from the newsletter's new editor

By Louisa Williams

Anniversaries are often worth trumpeting, so when I read an impressive pile of back issues of this newsletter, I was interested to see that the first edition, published under the banner of NE-SPIDR (Society of Professionals in Dispute Resolution), appeared in fall 1992, the same year a group of practitioners known as the "SPIDR "Irregulars" gained official recognition as New England's chapter.

The past decade and a half have brought big changes to our field and our region: the number of ADR practitioners around the globe has mushroomed, and the idea of settling conflicts constructively has worked its way into courts and popular culture. We like to think our approaches to resolving disputes are at last becoming Available (or Accessible?) rather than Alternative.

But even just a quick look at those back issues shows that we're still wrestling with many matters NE-SPIDR (and later, NE-ACR) identified as important early on, including the need for diversity, the question of credentialing, the lack of lucrative jobs, and even whether to adopt the Uniform Mediation Act, which has been passed by Vermont but remains a hot topic today in Massachusetts. We may not have settled those questions, but our chapter and this newsletter have long been forums where crucial issues can be discussed and debated.

The newsletter is a big reason I joined NE-ACR and now serve on the board; at its best, the newsletter has informed, educated, and engaged me, and I'm pleased to work on it now. With your help, I look forward to doing my best to continue a proud tradition.

Here, in short, is what I hope to do: Provide informative, well written, and clearly presented articles that deliver news, discuss controversial questions, or start debates important to ADR practitioners in New England. I want this newsletter to reflect the varied, smart, intriguing thoughts of people in all six states. I want it to be provocative, compelling, and even amusing – anything but boring.

This will be my first and last editor's note. From now on, you can judge me – and my colleagues Arline Kardasis and James McGuire, who have generously agreed to lend their talents to the newsletter's editorial board – by what you read here. We want to know what you think, so please send your ideas, news, and comments to news@neacr.org.

Louisa Williams is a mediator who lives on Martha's Vineyard. She can be reached at louisa@mvmediation.org or news@neacr.org.

ADR news in New England

MAINE: Marking 30 years of court mediation

This past fall, in a series of events organized by Diane E. Kenty, administrator of the Court Alternative Dispute Resolution Services, Maine residents and mediators celebrated the program's 30th anniversary. In October at the University of Southern Maine, Craig McEwen, a professor at Bowdoin College who has written extensively about mediation, spoke about "Delivering on the Promise of Mediation." In Portland in November, Kenty invited comments from five of the program's original mediators, who confirmed that some issues from three decades ago – such as what happens when lawyers are also mediators, why parties often benefit from resolving their own disputes, and how neutrals can help in that process – are still with us. Other events in Augusta and Bangor focused on landmarks in court mediation in the past two decades and the program's early years.

Submitted by Anita Jones

NEW HAMPSHIRE: Still evaluating Rule 170

The state Supreme Court is continuing its review and analysis of Rule 170, which uses volunteer mediators in Superior Court cases. A special committee had recommended scrapping the current system and using paid mediators who would be selected from a court-approved list. After hearing comments from the bar, however, the court is re-evaluating the committee's recommendation and considering revising the rule so that parties could use either a paid or volunteer mediator. A final decision is expected shortly.

Submitted by Scott Flegal

VERMONT: Agricultural mediation program begins

The recently opened Environmental Mediation Center in Moretown is the home of the new Vermont Agricultural Mediation Program, which is certified by the US Department of Agriculture to provide mediation services to the state's agricultural community. The program, directed by Matt Strassberg, works on cases involving USDA decisions, farm and rural development loans, pesticide issues, environmental and forestry matters, food processing contracts, disputes between farm and nonfarm neighbors, conflicts within farm families, estate issues, wetland determinations, crop insurance, and other matters. For more information about the mediation program or the EMC, which designs and administers environmental dispute resolution programs for governmental and regulatory permitting bodies, contact matts@emcenter.org or check www.emcenter.org.

Submitted by Neal Rodar

MASSACHUSETTS : Committee moves to boost ADR

The Trial Court's Standing Committee on Dispute Resolution recently asked four Working Groups to focus on barriers to implementation of the Uniform Rules on Dispute Resolution in the areas of public awareness; court systems; training, mentoring, and evaluating neutrals; and enlisting support from judges, attorneys, and court personnel. After reviewing the groups' recommendations, the committee has forwarded to the Chief Justice for Administration and Management a recommendation for expanding ADR services in all court departments using a case management model in which ADR would become a routine element of all litigation. The committee has also purchased posters about mediation, both informative and humorous, from Maryland's Mediation and Conflict Resolution Office and is formulating a distribution plan for local courts and the offices of mediation programs that serve them. At the local level, the Standing Committee's Education Sub-Committee is working with Boston University business students to create a dispute resolution slogan and logo for use by the committee. Finally, through its work with the Massachusetts Office of Dispute Resolution, the committee has received an ADR Technical Assistance Grant from the State Justice Institute to develop an assessment mechanism that can be used to gauge the operation of mediator qualification standards.

Submitted by Judge Gail L. Perlman
Chair, Standing Committee on Dispute Resolution

RHODE ISLAND: Center gets new director

In March, after Kelly Thompson relocated to the New York City area with her husband and new son Milo John DeLuca, Abigail Jones-Herriott was named executive director of the Community Mediation Center of Rhode Island. The center's summer was a busy one, with the installation of new phone and computer systems, the hiring of two new staff members, peer mediation training at Pawtucket's Shea High School, conflict resolution training for 50 City Year Corps members, and a growing number of clients. For Conflict Resolution Day in October, CMCRI partnered with the Rhode Island Council of Community Mental Health Organizations and the Community Provider Network of Rhode Island to offer a training in Nonviolent Communication, at which Gregg Kendrick, a trainer from the Center for Nonviolent Communication and the founder of the Charlottesville (VA) Center for Compassionate Communication, conducted a community workshop followed by an all-day training on the basics of NVC. Herriott welcomes submissions for the training and events section of CMCRI's new website www.cmcri.org.

Submitted by Abigail Jones -Herriott

CONNECTICUT: Peer mediation study under way

At New Haven Community Mediation, which Brenda Cavanaugh joined in January as associate director, working with young people remains a focus: Community Mediation is collaborating with New Haven Family Alliance on a new Juvenile Review Board that includes victim offender mediation and is working with researchers from Yale-Griffin hospital to study the efficacy of the program's Youth Peer Mediation Training and Conflict Resolution Workshops in reducing youth violence. In Norwalk, the Dispute Settlement Center continues to handle a wide variety of court and community mediations including family, school, and property-related cases. Its Juvenile Mediation program has now expanded from Bridgeport to two other juvenile courts in western Connecticut. The center is teaming with fellow community mediation programs, others interested in the field, and the Quinnipiac University Law School Center on Dispute Resolution to find ways to spread the word on mediation throughout the state.

Submitted by Bill Logue

Mediator fatigue: The traumatic effect of what we hear

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On the surface, I was teaching a graduate course in Negotiation, Mediation, and Conflict Management to 125 Israelis and Palestinians. I was also training Israeli, Arab, Druze, and Christian community mediators.

Beneath the surface, I was having long conversations with my Haifa students who were sleeping in bomb shelters, I was living in an area that was constantly threatened with Katyusha rockets, I was visiting impromptu memorials where Israeli soldiers had been killed only days before, and I was witnessing the scarred earth left by wildfires incited by rocket attacks across the border.

When I came home I found myself withdrawing (my wife called it "distancing"). My friends told me my voice sounded hollow, unconnected to my feelings. I found myself minimizing the summer's events ("It wasn't so bad. Life goes on"), just so I could survive the onslaught to my system. I experienced a decrease in compassion for my "regular" parties ("They don't know what REAL conflict is like!"). I had violent dreams, and, for the first time in seven years working in the Middle East, I had a sense of hopelessness, believing that nothing will change, that nothing can help.

©Alon Ron/Reuters/Landov

At a funeral in 2006, Israelis mourned a fellow solider who was killed in Lebanon.

Through my own research, I came to understand that I was experiencing "Compassion Fatigue," or what the medical profession calls Secondary Post Traumatic Stress Disorder. This phenomenon, first officially diagnosed in 1995 (and studied much more intensively after 9/11), is a complex of symptoms resulting from working closely with and showing compassion for people whose suffering is ongoing and unresolvable. It can affect many life areas: cognitive, emotional, behavioral, spiritual, personal relationships, physical/somatic, and work performance. People's symptoms can be very diverse. They can be constant, come and go, or occur in clusters.

Compassion Fatigue has been studied in therapists, physicians, first responders, family caregivers, animal rescue workers, and chaplains who work with veterans. To date, however, no one has studied, or even hypothesized, that Compassion Fatigue may deeply affect mediators. Why not?

As I began my exploration of this topic, I thought about (and encourage readers to think about) how we are exposed to traumatic stories told by parties in mediation on a regular basis. Mediations as commonplace as divorce can trigger deep emotional wounds in the parties, and, if we've created a safe-enough environment, parties aren't shy about pouring out their hearts. Eviction cases, property issues, victim-offender mediations, labor-management situations, and even commercial disputes – all of these may provoke traumatic experiences for the parties. If we're doing our job and remaining "present," we mediators often feel deep feelings of empathy and sorrow for the parties' suffering.

In workshops at NE-ACR last spring and ACR this fall, I've been asking mediators what they experience when they are exposed day after day, mediation after mediation, to the trauma that parties experience. Most agree that it's not wrong to feel compassion, as long as they maintain sufficient detachment to do their work.

But there's the cutting edge. How can we mediators take care of ourselves, so that we don't retreat into cynicism or despair, despite the traumatic words we hear each day? Here are some of the things mediators do that they find helpful: writing about the experience (as I am doing here), exercising, using humor in appropriate ways, getting sufficient rest, talking with their significant other or peers about the case (while of course preserving confidentiality), or turning to prayer or other spiritual practice.

Most of all, it's important to realize that if you find yourself experiencing Mediator Fatigue, you're not crazy. If your reaction feels too strong to handle, seek professional help. Talk to your loved ones and your friends.

Jonathan Reitman is a mediator and lawyer who works throughout New England. He can be reached at jreitman@goslinereitman.com.

The power of the wrong -- and the right -- words in family mediation

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what amount of time a parent will be spending with his or her child, I do not use the term "visit."

Not being responsible for a court-ready, legally framed document, I have the luxury of working this way with parents. I gladly use this freedom from legalese to employ language that I hope will honor and respect the significance of their relationships with their children, as well as more accurately express both the rights and responsibilities of their parenting roles within the emerging reconfiguration of their family.

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To start the process of helping parents craft a co-parenting residential plan, I begin as many family mediators do. The parents and I talk about their children in general; about the children's developmental and temperamental strengths relative to the challenges involved in various possible plans; their and their children's schedules; their past parenting involvement (although this is not necessarily determinative of future involvements); their values and wishes relative to weekday and weekend time; and anything else they believe would be relevant to the task of creating a schedule for the children's time with each parent in separate residences. I orient my language and phrasing from the child's perspective, referring to Suzie's time with each parent as opposed to the parent's time with Suzie. Without referring to custody or visitation, we put together the puzzle pieces of a workable child access plan based on all the above factors.

Most of the folks I work with are able to share full responsibility for major decisions

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Helping families through transitions with the right words

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(in other words, joint legal custody). Talking together about their children and the details of what might make sense for everyone in the new picture of two homes is a very different discussion from "who gets custody."

For some parents, financial considerations are intertwined with the residential plan for the children – if the kids are with me more, won't the financial balance tilt my way? These can be sticky issues, especially if there just isn't enough money to go around. I always urge parents to consult with an attorney, whether regarding the issue of the relationship between residential plans for children and finances or for general legal guidance before signing any mediated agreement involving the children or division of assets. Most do, some don't.

Over the years, my gay and lesbian clients have been my greatest teachers, taking full ownership of designing, redefining, and naming the nature of their families. I have learned from them over and over about the creativity and courageous honesty that can be born of living outside normative societal expectations – and the challenge of finding the words to capture those family connections that don't fit into already established boxes. One couple, mindful that one day their daughter would probably read their co-parenting document, worked hard to choose words that would capture the tone and spirit of love and respect and their deep connection as her "forever-parents." Another couple stressed the importance of referring to the new configuration (two separate homes and the addition of a new adult) as their child's "family" – an effort at connection in the context of separation. Still another couple continues with "Family Night" on Fridays, when parents, new partners or spouses, and children all share a meal. Mamita, Mom, Mommy, Mama all name the powerful yet differentiated roles and relationships of parent to child.

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Words matter not just in family conflict cases, of course. In any mediation, our word choices can bring a new, helpful, forward-moving direction to a difficult discussion or reignite the fires of conflict. How we phrase something can elicit a sigh of recognition and connection or leave our clients feeling misunderstood and confused. As mediators, we know that misunderstanding and confusion are only opportunities for more dialogue and clarification, and we know that finding just the right word is far less important than our own presence and intention. But triggers like "who gets custody" and "visiting your children" cause unnecessary damage.

Those of us working to help ease the passage of families from one configuration to the next must take seriously the responsibility to think through the words we use to refer to their family relationships and work to update systems, such as the courts, to incorporate new and more helpful language that might serve our clients better by more accurately describing the lives and the relationships they are living.

Words are not the thing itself. They are only the tools, tools that provide us the chance to probe, test, explore and adjust, edit and redefine. Together with our clients, we work this way, getting it right and then not, then finding new ways again, all in hopes of gaining a clearer understanding of what's going on now and how to move forward.

Jeanne Cleary is a mediator and therapist based in Watertown. She can be reached at (617) 924-3211 or jecleary@comcast.net.

In Massachusetts, "custody" and "visitation" are terms that hurt

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others have realized how damaging it is for parents to fight over children much the same way they argue over property. As the Ohio State Bar Association notes in its booklet Sharing Responsibilities After Separation, "The courts and the legislature began to shift their focus from the rights of the parents to the rights of the children. Procedures for dividing parental rights and responsibilities now emphasize the rights of the child to be loved, protected and supported."

In 1996, the first recommendation of the US Commission on Child and Family Welfare, which gathered information and recommended actions on matters affecting children, was that courts and legislatures replace the words "custody" and "visitation" with terms that "more accurately describe parenting responsibilities and are less likely to foster conflict." Maine, Vermont, and Ohio had already taken this step, adopting "parental rights and responsibilities" in 1980, 1985, and 1990 respectively. New Hampshire followed in 2005; for the joy of discovery, we recommend you read that remarkable new law yourself. (Google "NH chapter 461-A." or follow this link to obtain the thorough New Hampshire Parenting Plan court form as an example of what we could do in Massachusetts to help pro se and other parents through the divorce or other court process: www.courts.state.nh.us/superior/selfhelp/divorceforms.htm).

More than 200 years after Justice Sewall wrote about that "bastard child," Massachusetts has come a long way in how we treat parents and children, such as requiring parent education as part of the divorce process. We believe Massachusetts should join states that have done away with the divisive words "custody" and "visitation" and focus on helping parents decide how to raise their children, using instead the phrase "parental rights and responsibilities." We are working closely with the Boston Bar Association Family Law Steering Committee and other organizations to amend G.L. c. 208 and related chapters of the General Laws, the Child Support Guidelines, and other court rules accordingly.

Members of the Massachusetts Council on Family Mediation, the Collaborative Law Council, and the Children and the Law Project of Massachusetts General Hospital, along with many family lawyers and Probate and Family Court judges, assistant judicial case managers, probation officers, and other court personnel, have already expressed enthusiasm for this change.

We know that such a bill takes time: Honey Hastings tells of the five years she and John Cameron spent creating and shepherding c. 461-A through the New Hampshire legislature. We are in our third year, and as we work to make Massachusetts language more supportive of parents and children, we welcome the participation, suggestions, and good karma of the members of NE-ACR.

John Fiske is a mediator and lawyer who practices in Cambridge. Jennifer Rivera-Ulwick is a lawyer and an assistant judicial case manager in the Middlesex County Probate and Family Court. They can be reached at jadamsfiske@yahoo.com and jennifer.rivera-ulwick@jud.state.ma.us.

Their proposed bill is at www.mediate.com/fiske link to "Parenting Plan bill."

What's up with the Uniform Mediation Act?

In Massachusetts, the Joint Committee on Labor and Workforce Development is reviewing House Bill 1814, also known as the Uniform Mediation Act, which would provide mediators with protections and guidelines relating to confidentiality and privilege in mediation. The UMA, finalized in 2003 by the National Conference on Commissioners of Uniform State Laws, has passed in eight states – Iowa, Nebraska, Illinois, Ohio, New Jersey, Washington, Utah, and Vermont -- as well as Washington, DC, and has been introduced in Connecticut, Indiana, Massachusetts, Minnesota, Nevada and New York. (For details, see www.mwi.org/uma.)

For the past year, mediators from all over Massachusetts have been examining the UMA and exploring whether it would be a better alternative to our current confidentiality statute, G.L. c. 233 23c, which offers protection for mediators who enter into a written agreement with clients, have at least 30 hours of training, and meet certain practice requirements.

The Massachusetts UMA Working Group has seven committees (Process/Outreach, Confidentiality/Privilege, Public Policy, Training/Definition of Mediation/Mediator, Legislative Liaison, UMA in Practice, Marketing/Outreach), each of which has been charged with analyzing and identifying issues that warrant further discussion and decision-making by the Working Group as a whole. Committee reports, due just before publication of this newsletter, will inform the Working Group's discussions as members prepare to provide the Joint Committee with a version of the UMA tailored for and supported by the Massachusetts mediation community.

To understand and reflect the needs of all segments of Massachusetts' mediation community, the UMA Working Group needs to hear from you. Working Group members welcome your participation and encourage you to visit www.massuma.net for information about the next meeting and how you can get involved.

In Connecticut, during the 2006 legislative session the Alternative Dispute Resolution Section of the Connecticut Bar Association met and worked with interest groups and potential stakeholders, including trial lawyers, court personnel, and representatives of insurance company lobbies, to promote passage of the UMA. The trial lawyers' representatives expressed concern about the new evidentiary privilege provided for in the UMA, particularly how it would be applied. The insurance industry representatives resisted change in the methods of dispute resolution involving insurance claims, again uncertain as to how this would affect their interests. The prevailing reaction among others, including key legislators, was that there seemed to be no pressing need for the UMA because there was no sense that confidentiality in mediations did not have adequate protection under current law, CT General Statutes section 52-235d, which provides that mediation communications are confidential, except in specifically enumerated situations, including agreement of the parties, although the wording of the statute leaves some question as to whether the provision applies to mediation of disputes that are not in suit. As a result, the UMA did not get reported out of committee. The ADR Section concluded that Connecticut would not be in the vanguard of adopting the UMA and decided not to press for further action until other states have had more experience and success. Based upon the initial reaction, observers expect it will be some time before a consensus can be built and any opposition can be overcome to adopt the measure in Connecticut.

One of the states Connecticut may soon be able to look to is Vermont, which approved the UMA with modifications in May 2006. Before passage of the UMA, Vermont had little case law and few statutes covering privilege or confidentiality in mediation; mediators who once were forced to respond to subpoenas now enjoy the protection the UMA provides for both the process and the participants.

Chuck Doran of Mediation Works Incorporated in Boston contributed information about Massachusetts' UMA Working Group. Peter Benner reported from Connecticut, and Neal Rodar provided the UMA update from Vermont.

ACR annual conference in Phoenix "rethinks" the table

By Mindy Milberg

"Rethinking the Table," the theme of the Association for Conflict Resolution's seventh annual conference in Phoenix in October, invited innovation and renewal. As always, meeting other chapter leaders, new mediators, and old friends was one of the big benefits of attending. Some other highlights:

- Keynote speaker William Ury presented ideas from his latest book, "The Art of No: How to Say No and Still Get to Yes." Ury, who with Roger Fisher focused on "Getting to Yes" 25 years ago, today is singing the praises of the negative response. "No," he noted, can be used in positive ways, such as an answer to inappropriate medical treatment or injustice. Ury also spoke about a "No" coming from deepest conviction sandwiched between two "Yes"es, such as saying No to a boss's request that you work on a weekend because earlier you said Yes to family plans but ending with a Yes about getting the work done in other ways. He ended with a quote from Wallace Stevens: "After the final no, there comes a yes, and on that yes the future of the world depends."
- A beautiful quilt made by people in Ireland depicting the road to peace in Northern Ireland
- A roundtable with other chapters sharing ideas for programs
- Exercises and tools from improvisation to help suspend judgment and access intuition
- Lunchtime sessions on diversity and equity, including one on interfaith dialog suggesting several books, including "What's Right with Islam is What's Right with America," by Imam Feisal Abdul Rauf.
- A reception with all the ACR sections.

The 2008 conference will be in Austin, Texas, at the end of September.

Mindy Milberg, president-elect of NE-ACR, is a lawyer and mediator who works in the Boston area. She can be reached at milberg@milbergmediation.org.

Bookmark: *Steven Pinker's* The Stuff of Thought

By James E. McGuire

Are you ready to stretch your mind?

Mediators work magic. Sometimes we do so by reaching into our toolbox for something new, sometimes just by using what's tried and true. If you haven't spent time recently thinking about words and how we use them, how they influence our thinking and how they shape our view of the world, add to your 2008 reading list "The Stuff of Thought: Language as a Window Into Human Nature," by Steven Pinker (Viking/Penguin Press 2007).

I'll focus on just one part of this wonderfully rich book. In chapter five, "The Metaphor Metaphor," professor Pinker starts exploring the use of metaphor in our language with a wonderful dissection of the preamble to the Declaration of Independence. I won't spoil this by trying to summarize it; instead I'll ask you to reread the opening paragraphs of this "Bookmark." How many metaphors do you find? Can we think without using metaphor? Is metaphor itself a metaphor for all thought except the most concrete of color, sound, and light?

In mediation, we know that part of our task is to help the parties reframe: facts, issues, perceptions, and process. We're all familiar with various graphic, negative metaphors litigators use every day to describe their cases, their clients, the other side, and the options available. "If they don't settle today, it will mean war.... They'll get killed if they try to make that argument in court.... In discovery we'll find where all the bodies are buried.... Settle for that? Over my dead body!" We try to be alert to loaded metaphors and find more positive ways to reframe the conversation and perhaps even how the parties "see" the issues or think about the problem.

But we can do better. Professor Pinker gives the reader a deeper understanding of how and why metaphor works. And this can cause us to reflect on how to apply that theory to our practice.

Even if you just borrow the book to read one chapter, you'll have plenty to think about. And if you have the book in your hand, I bet you won't stop with just that chapter. Aren't you curious to know what he has to say about swearing? ("The Seven Words You Can't Say on Television," chapter seven) or why we name our children as we do? You chose your child's "unique" name out of the blue; on the first day of school, then, how could four other kids possibly have it, too? ("What's in a Name," chapter six).

Looking for a new book for a new year? Try this. I think you'll like it.

James E. McGuire is a mediator and arbitrator with JAMS, the Resolution Experts. He is also a member of the NE-ACR board. He can be reached at jmcguire@jamsadr.com.

Bookmark will be a regular feature in NE-ACR's newsletter. If you have a suggestion for the next issue, due in Spring 2008, email news@neacr.org.

What's new at NE-ACR?

By Scott Flegal

At a recent daylong retreat, members of the chapter's Board of Directors mapped out plans to keep our organization strong and healthy.

This redesigned newsletter, discussed and refined at that retreat, is just one of many benefits that membership in ACR's largest chapter brings: regular meetings with featured speakers, a regional conference and master class, and opportunities to catch up with colleagues at every stage of their careers.

If you're not a member, we urge you to sign up at www.neacr.org. If you're already a member, please consider joining one of our committees or putting your name in nomination to serve as a director. We especially need help with our regional conference, scheduled for fall 2008.

Our committees are education and events; regional conference; membership and diversity; public awareness; and mentoring.

This newsletter issue will be available on our website for only three months. After that, to see all future and past newsletters, you'll need to join our organization.

To volunteer, join, or get more information, visit www.neacr.org.

Once again, SAVE THAT DATE

January 15, 2008 5:30-7:30 pm

NE-ACR'S
NEW YEAR'S RESOLUTION EVENT
With musical guests
"The New Trolls"
at Suffolk Law School

Help Wanted

Are you web-savvy?

Got two or three hours a week to spare?

Want to help a great organization dedicated to helping people solve conflicts constructively?

NE-ACR is looking for a web master who can look after our organization's online image. The payoff: membership in NE-ACR and admission to all meetings and programs as long as you're working with us. For more information, email news@neacr.org.

You've got to be joking

Q. What's the difference between an extra-large pizza and a mediator?

A. An extra-large pizza can feed a family of four.

Lawyers, physicians, and psychiatrists would probably agree: being the butt of jokes is one sign that a profession has achieved some sort of status.

We're collecting jokes about ADR and its practitioners. Please send your favorite one to news@neacr.org, noting where you found it or whether you made it up.

If it's funny, you could win a prize awarded by the three members of this newsletter's esteemed editorial board.