

**NE-ACR Newsletters
and past issues of
ACR/SPIDR New England News and NE-ACR Updates**

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**NE-ACR Newsletter
Vol. XII No. 2 (Spring 2006)**

**FROM THE NEWSLETTER EDITOR
Cristin Martineau**



Welcome to the Spring edition of the NE-ACR newsletter! This edition's contributors have worked hard to bring you thought-provoking, informative, and useful articles. The newsletter would not be possible without them. As always, we are looking for new writers, so if you have a burning idea, or have recently attended a provocative talk, our readers want to hear about it. We are also still looking for a Regional New Coordinator, so please contact me if you know someone who might be interested. Finally, congratulations to the new Board members!

Cristin Martineau is the program coordinator at the Harvard Negotiation Insight Initiative (HNII). She can be reached at 617-495-7711 or by email at news@neacr.org or cmartin@law.harvard.edu.

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[Regional ADR News](#) contains news affecting the practice of ADR in New England - including updates on policies and legislation (pending or enacted), events and activities of state ADR agencies and organizations, grants, research and similar information of interest to practitioners.

[ADR Opportunities](#) lists job and panel openings in the field.

[The Regional ADR Calendar](#) provides a regularly updated listing of ADR meetings, trainings and other events throughout New England.

PRESIDENT'S MESSAGE



by Loraine Della Porta

Dear Friends and Colleagues:

It has truly been a privilege and an honor to be part of this wonderful organization for the past several years, and I am very much looking forward to serving as President in the coming year. I became involved with NE-ACR, then SPIDR, at the urging of my beloved friend and colleague, Kathy Birt. Just help out with the conference committee, she pleaded. Her plan worked...I was hooked! Wherever Kathy is right now, I'm sure she's giggling.

As one of my first official duties as President, I want to take a moment to give heartfelt thanks to our immediate past President, Melinda Gehris. During her term as President, Melinda worked tirelessly to improve our organization, both structurally and in terms of creating more value for our members. She has been an intrepid, graceful leader who has repeatedly risen up to meet whatever challenges came her way. Melinda, please know I will do my best to build upon your wonderful legacy. We are extremely fortunate that Melinda has graciously accepted another term on the Board as NE-ACR's Treasurer. I cannot begin to describe the joy and relief that brings me!

I would also like to recognize and give thanks to some incredibly generous and talented individuals who are leaving our Board this year, Fran Califiore (CT), Ericka Gray (MA), Blaire Tripp (MA), Steve Seeche (MA), and Ted Winokur (VT). Your contributions to our organization are deeply appreciated. I would like to say to those folks that even though you may be leaving the Board, please know that you can never really leave NE-ACR, just ask Jim McGuire.

Speaking of Jim McGuire, I would like to welcome him back to the NE-ACR Board, and also welcome our newest Board members, Tammy Lenski (NH), Kelly Thompson (RI) and Louisa Williams (MA). Each of our new Board members brings with them unique talents and perspectives that will serve to make our organization richer.

These are exciting times for the ADR field. Things are constantly changing and evolving, and my hope is that as an organization, NE-ACR will be a welcoming and inclusive place where people will come together to explore and learn more about the field, and to help sculpt its promising future. I hope you'll join us!

Peace,

Loraine

Loraine Della Porta is the Deputy Director of the Massachusetts Office of Dispute Resolution (MODR). She can be reached at Loraine.Dellaporta@umb.edu or (617) 287-4048.

Turbocharging Your ADR Practice: Top Tips for Success in Building Your Business, Winter Member Meeting Recap



By Rachel Eisenstat

“What have you done *today* to grow your ADR business?” For many participants at the NE-ACR Winter Member Meeting, the only response to this question, posed at the start of the session, was “I came to this meeting.” However, those fortunate enough to attend this quickly sold-out event were provided with a wealth of information on how to answer this question in the future.

Moshe Cohen, President of The Negotiating Table, kicked off the panel discussion by stressing the importance of recognizing that an ADR practice is a business. And, as with any business, it is critical to begin with a well-defined game plan that specifies what the practice will do and identifies the target market it will serve. Moshe urged participants to think long-term and not to get discouraged by the unpredicted surprises which are bound to arise. He explained that, as ADR is a relationship based enterprise, practitioners should not be shy about asking for new business; however, they should be upfront and honest when they do this.

Dina Beach Lynch, founder of workwelltogether.com, focused on the importance of targeting a niche market. To do this, Dina suggested identifying a market that both recognizes that it has a problem and is willing to pay to have that problem resolved. Industry magazines, blogs and trade associations are all useful resources to help practitioners identify what conflicts exist in key markets. As an alternative to conventional advertising, Dina advocated the use of educational seminars, which help her attract clients through reputation rather than convenience.

Jonathan Reitman, partner at Gosline & Reitman Dispute Resolution Services, reassured the audience that “you can make a living doing this.” He suggested starting by building upon what you already know. For example, Jonathan’s background was as a labor and employment attorney, so he started his business by networking with individuals in that field and people he already knew. Ways to further enhance a network include writing articles, doing pro bono work and getting involved in network associations, such as NE-ACR.

Candace Dochstader, founder of Roundtable Mediation, spoke on being a “small fish in a small pond.” Her practice, located in New Hampshire, is big enough for her to make a living without overwhelming her life. Reiterating the sentiments of the other panelists, Candace urged participants to get known. She emphasized the importance of participating in training both as a networking opportunity and as a way to acquire skills that might lead to a job down the road. She experienced this firsthand when she landed a position in which she had less experience than other applicants, partly because she had attended a training session put on by the woman who designed the program for which she was applying.

Participants, such as Johanna Afshani, left the presentation excited to “start thinking about things” to get started with an ADR practice and recognizing that “if you wait until you think you are ready it is too late.” Participant Elizabeth Cunha found the presentation captivating and praised the panelists for “making starting your own business seem accessible.” So now ask yourself, what are you doing today to do to grow your ADR practice?

Rachel Eisenstat is a law student at Boston College Law School and a mediator with Mediation Works Incorporated. She can be reached at reisenstat@mwi.org.

ACR Family Section Conference to be held July 13 - 16, 2006 in Cape Cod

The ACR Family Section Conference, *"Making Waves – Breaking Barriers,"* will be held July 13 - 16, 2006 at the Sea Crest Oceanfront Resort and Conference Center in beautiful Old Silver Beach in Cape Cod, Massachusetts, scene of the AFM conference in 1997.

The keynote speaker will be David Hall, Provost and Senior Vice-President for Academic Affairs at Northeastern University Boston and author of the best selling book *"The Spiritual Revitalization of the Legal Profession: A Search for Sacred Rivers National Conference on Community and Justice Humanitarian Award."*

The conference will feature:

- 3 pre-conference workshops on Thursday afternoon with nationally known family mediators and trainers, Nina Meierding, Chip Rose and Woody Mosten.
- An opening plenary and reception Thursday evening featuring David Hall.
- 54 workshops from Friday morning through Sunday morning focusing on the process as well as the substantive aspects of family mediation
- A closing brunch and plenary where you can watch highly experienced mediators, each with a different style of mediation, work with very high conflict couples
- Opportunities for case consultation with experienced family mediators
- Continuing education credits for ACR Advanced Practitioner members in all workshops and plenaries.

The early registration deadline is June 16, 2006.

To register, download the pre-conference brochure complete with registration information and a full description of workshops at http://ACRnet.org/sections/family_section_conference_2006.htm

So you are thinking of becoming a full-time mediator?



By Oran Kaufman

In September 2004 I made what was for me a monumental decision. I made the break from being a divorce litigator and decided to focus all my energy on mediation and collaborative law. In other words, I stopped taking contested divorce cases. I am not by my nature a risk taker. Financially, this was risky. However, it was not as risky as it could have been. I did not make this decision overnight. I have been a divorce attorney since 1989. In 1994 I started mediating as well. For 10 years I juggled litigating and mediating. Notwithstanding the stress and other pitfalls of the profession, I enjoyed being a divorce attorney. However, the more mediation I did, the more I realized that I, by my very nature, felt more at ease and at home in my mediation role than in my litigation role. Professionally, I am more satisfied than I have ever been with my new direction. I think sometimes about whether I should have simply made the complete switch to mediation ten years ago. Would I have been happier? Ultimately, I have concluded that the path that led me here was a natural evolution and I would not change it.

The decision about how and when to enter the mediation field is extremely important and also unique to each person. It is critical, however, to think about these issues and be proactive rather than

reactive. It is my hope that my journey towards becoming a full time mediator may help shed some light for budding mediators in deciding their path.

There were some clear benefits to my seventeen-year path to mediating full time:

1. From a financial standpoint, I was able to build up my mediation practice while paying the bills with my litigation practice. Let's not kid anyone; it is extremely difficult to start a full-time mediation practice straight out of law school, social work school etc. I don't know anyone who has done so. Most mediators I know have come to mediation after years of practice in another profession such as law, psychology etc.
2. Being a divorce litigator gave me experience and a firsthand understanding of the law and the complex issues that are involved when couples decide to divorce.
3. Being a divorce litigator gave me firsthand experience with the court system and the benefits that may result from using the courts, but also with the downsides of using the courts. When I now meet with mediation clients, I believe I can say with authority and conviction, "This is what litigation is going to look like. This is what it is going to cost you financially and emotionally." For me this is not theoretical. It is based on real experience with clients who have gone through it and my first hand observations about the impact of this system on my clients and their families.
4. My years of being involved in divorce litigation helped me be able to help my mediation clients better understand what will happen when they appear before a judge for their divorce hearing. What can they expect? Mediation clients are often terrified about what will happen at this hearing. Will the judge accept their agreement? Will the judge question them about their finances? Different judges have different approaches. One of the benefits of having practiced as a lawyer is that I can help allay some of my clients' fears about the process. I can also use my experience to my advantage when I have concerns about an agreement. I can say to clients, "I think the judge may have some concerns about your agreement. Let's talk about what your rationale is for this. What will you say to the judge if she/he asks you about this?"
5. My years as a divorce lawyer allowed me to establish relationships with other divorce lawyers, therapists, accountants and financial planners. As a result, I not only receive referrals from these colleagues but in turn I am confidently able to make referrals to these professionals with whom I have developed relationships.
6. Finally, my years as a divorce attorney gave me a baseline with which to compare my present practice. Having practiced as a divorce attorney allows me to conclude with a great degree of certainty that mediation is my preference. If I had never had the experience as an attorney, the comparison would only be theoretical and based on assumptions.

There are some things I miss about being a divorce attorney involved in divorce litigation:

1. Mediation is definitely not as sexy and exciting as litigation. Along with the stress of litigation came the thrill and excitement of trials and the thrill of receiving a decision in the mail that gives your client what he or she was seeking.
2. I miss the rapport and relationship I developed with my divorce clients. Particularly in divorce cases, as a lawyer you get to know your clients and their fears and stressors. It is a special kind of lawyer-client relationship. In mediation, almost by definition you cannot develop that kind of a relationship. You need to stay neutral and at arms length. I do not feel comfortable having individual conversations with one client for fear of appearing not neutral. I purposely put up a barrier. As such I never feel like I really get to know my mediation clients. Ethically, I do not feel like I should develop business relationships or friendships with them post- mediation.
3. Mediation is a lonely profession. I enjoyed the camaraderie of court. I miss seeing my colleagues and catching up with them in court. I miss chatting with the court officers and court personnel.

4. Mediation requires volume. To some extent this is made up for by lower overhead. However, whereas in litigation, a \$5,000.00 retainer is quickly used up with several trips to court on contested motions, in mediation, it is the rare mediation that has cost my clients \$5,000.00. Most of the divorce mediations I do cost less than \$2,500.00 total. This is a great service to my clients. From a business standpoint, do the math! You need volume.

5. I miss the intellectual aspect of litigation. I never thought I would say this but I miss the legal research and I miss the strategizing that goes on around complex legal issues. I miss trying to find novel approaches or attempts at making new law. This is not to say that mediation does not have its intellectual challenges. However, I find that many of the challenges in mediation tend to be in the area of best practices, ethical challenges and the direction of the profession.

6. When people ask me what I do, I still struggle with whether to answer that I am an attorney/mediator or a mediator/attorney. I like the idea of identifying as a mediator. I am still not comfortable, however, shedding my lawyer skin. I have not reached the level of being a recovering lawyer and I am not sure I ever will. The balance I have found is to be a full time mediator but also practice collaborative law, act as consulting attorney to clients engaged in mediation elsewhere and continue to practice in the area of elder law and guardianship law.

What I love about being a full-time mediator is:

1. I am not subject to court schedules and other lawyers' schedules.
2. My days are much more flexible.
3. Because there are generally no emergencies, I am able to space out my appointments in ways that work for me and my family;
4. Going on vacation is much easier. I generally do not have to worry about emergencies coming up such as emergency motions and court dates.
5. My overhead costs are a fraction of what they used to be. Unlike with litigation, I do not need paralegals, secretaries and all the trappings and necessities of litigation firms. With a nice conference room office, computer and some good software I can be a one man show.
6. I love the feeling of coming home at night and not feeling like all I did all day was fight with people.
7. My stress level has greatly diminished. With the exception of cases here and there that raise complex and thorny issues, and with the exception of the ever-present fear that clients will stop calling and my practice will dry up and shrivel, I have none of the stressors that came with litigation.
8. I love the fact that I am offering my clients an alternative to litigation. I particularly love that I am offering them something that I believe in strongly and that I feel offers them a sane and inexpensive alternative.
9. The mediation community is a unique one. I know of many lawyers who are dissatisfied with their professional life. One rarely hears that in the mediation community. It is unique profession in that most people coming into it have been something else in a previous life such as lawyer, therapist etc. That conscious decision to become a mediator creates a vibrant and generally very professionally happy group of people.

The decision of how to go about opening a mediation practice (whether doing it slowly over the course of time, all at once, or some combination) is a personal decision that to a great degree depends on many factors including risk tolerance, a market analysis of the services available in your area, and your experience. There are some definite benefits to going all out and becoming a full time mediator rather than splitting time between mediation and another profession. The downside is that unless you are a master marketer or already have a built-in client base, developing a full time practice will take time. If you are considering a career in mediation, carefully consider these and other factors in making your decision rather than reacting to forces around you.

Oran Kaufman has a solo law and mediation practice in Amherst, MA. Oran is former President of the Massachusetts Council on Family Mediation (MCFM), is a MCFM certified mediator and an Advanced Practitioner with ACR. He is co-founder of ConflictWorks which conducts conflict resolution training workshops for organizations and businesses. Oran has written numerous articles on family mediation, participated on various panels of continuing legal education seminars and has taught workshops at conferences on topics in the area of family mediation. He can be reached at oran@orankaufman.com.

The Good Enough Mediator



By Daisy Broudy

At a seminar on February 24, 2006 hosted by The Consensus Building Institute, in Cambridge, MA. Ran Kuttner delivered a paper entitled, "Mediation as a Response to Some of the Maladies of our Time." Kuttner is a PhD candidate and lecturer at Bar-Ilan University, Israel, and currently a visiting scholar at the Program on Negotiation at Harvard Law School. He is a philosophy major currently working on a dissertation on the philosophical aspects of mediation and negotiation. The seminar explored and developed the idea that mediation has grown in popularity of late as a response to the sense of powerlessness pervading our society today. Kuttner is planning to publish the ideas he discussed in the seminar in a paper later this year.

Kuttner further suggested that this powerlessness indicates an immaturity in our society. That is, a society that increasingly resorts to using outside authority, like the use of lawyers and courts, escapes and avoids its freedom to handle complex situations. This is immaturity of character in the same way a child or young teen might use his/her father as an authoritarian figure (traditional male authority) to make a decision; whereas a mature adult would be able to resolve conflict and complexity through dialogue with the another.

Then, using a Hegelian dialectical model, Kuttner theorized that contemporary societal alienation (and the confusion of postmodernism) represents a swing to the opposite pole from totalitarianism in the early 20th century. Totalitarianism, the power of external authority, manifested itself in the dictatorships of Stalin and Hitler. However, though totalitarianism is no longer an option in the modern western world, we still seek the use of authoritarian institutes. Kuttner noted that both ends of the dialectical poles – totalitarianism and alienation - result in the same condition: the powerlessness of the individual to manage and resolve conflict.

Thus, said Kuttner, mediation offers the individual an opportunity to take power, specifically, by creating dialogue as a way of resolving conflict. It is what we want to do now, he suggested, what we are drawn to do: thus, the increasing rise in popularity of mediation. Mediation offers a new and empowering maturity for us, as people and as societies. Mediation restores to the first order of importance the individual and his/her power and ability to deal with conflict. The courts, then, move to the second order of authority, as a fall-back only when individuals cannot solve the conflict for themselves.

In this idea-crammed hour and a half (which could easily have been a semester-long course), Kuttner discussed Kant, Nietzsche, Erich Fromm, D. W. Winnicott and John Stuart Mill, among others, to enhance

his analysis of how our present society developed the “neurosis of authoritarianism.” Building on to the work of contemporary writers on mediation – Riskin, Mnookin & Kronhauser, Fuller and Folberg and Taylor, Kuttner presented his idea of a new framework of authority: a “relational authority.” In “relational authority,” power is taken by individual people rather than by courts, lawyers or dictators. People want to find and make their own authority in relation to the other.

Enter the mediator. It is the mediator who creates this new framework of relational authority within which individuals can “Sapere aude! Have courage to use your own understanding,” as Immanuel Kant wrote in 1784. Enabling this process, this framework, is the mediator, and, as Kuttner reflected, the mediator is much like the “good enough mother.” This marvelous term was developed by D. W. Winnicott when, as a psychoanalyst and pediatrician during WWII, he was treating traumatized children displaced and orphaned by the war.

Kuttner did not have enough time to fully develop his ideas, but I thought further about “the good enough mother” and wished to explore this psychological term a little more in relation to the mediation field. Sometimes the understanding of one field is enhanced by borrowing from another.

About the “good enough mother:” imagine a mother of a small child who watches over but does not control what her child does and how he or she plays near her, unless the child’s play is dangerous or the child goes too far out beyond the boundaries of what is safe for him, relative to his or her age.

Winnicott termed this play and discovery space the “holding environment,” a space where the child can safely develop, create and explore under the guidance and protection of the mother. She overlooks his forays into autonomy and task-making and helps only when necessary. She neither impinges on the child’s authority (unless there is danger) nor abandons him solely to his own devices in territory which he cannot yet master. Over time, the child internalizes the model of the mother nearby – her confidence in him and her encouragement, her boundaries and her praise. Each time the child has mastered another step, he is able to separate more from the mother and move on to the next stage of development, building confidence in his own authority as he goes. The mother, like the mediator, is facilitator of the child’s potential within the protected space, the holding environment. She is only “good enough,” and should only be “good enough,” because she allows for just enough stress in the child’s play, stress that will encourage him to reach, to cope with frustration and to achieve mastery.

We are “good enough mediators” in that we create the play/work space and holding environment for people to find their potential, their ability to solve problems and struggle with the frustrations of disputes. Maybe in time, the rising interest in mediation will truly help our society to mature so that the resolution of most of our conflicts is accomplished by us, not by lawyers, dictators, courts or kings.

Daisy Broudy, LICSW, is a mediator in small claims court and a psychotherapist in private practice. She can be reached at 401-682-1690, or by email at, daisy128@earthlink.net. If you email, please announce yourself as an NE-ACR reader, or some such, since I am a rapid trasher of unfamiliar email.

Looking for Justice



By Daisy Broudy

“They come here looking for justice,” the judge had told me so often in his frustration, sometimes shaking his head sorrowfully, sometimes beating the air with his fists. “They don’t understand that all I can do is rule on procedures. Laws are procedures, for the many, and from the history of the many. They don’t understand that the kind of justice they’re looking for is not here.”

The sheriff put it differently. “In front of the judge, someone’s gonna lose.”

This particular court, like many others, values mediation for the kind of justice people can find together, or on their own, without a judge telling them what is just. Sometimes I wonder if this judge wishes he were in our shoes, so he can wade in the stream of justice-making, putting things together as he goes, instead of ruling according to laws and procedures already established by others.

Simon Weisenweber came looking for justice. I had noticed him when I gave the court mediation speech – an elderly man, in his mid-eighties, alert, well-dressed in a grey suit, holding a cracked and worn leather briefcase on his lap. He was the plaintiff. He and the defendant agreed to mediate. I brought Mr. Weisenweber and Mr. Pacheco, the defendant, into the small room we use for mediation, a tiny office with a huge desk and high windows. “You can call me Mike,” said Mr. Pacheco. Mike crowded the room, a large, strong-looking man in his mid-forties wearing a green nylon jacket fraying at the cuffs and neck. He had unruly red-graying hair and large hands with calluses and broken nails.

Mr. Weisenweber did not seem the least bit intimidated by Mr. Pacheco’s large size and powerful presence. Not even standing as high as Mr. Pacheco’s shoulders, Mr. Weisenweber took a chair and sat down next to him. He opened his briefcase on the desk and began to organize the papers within. Mr. Pacheco dropped into his chair with a huff of annoyance, and looked closely at me, fists balled up in his jacket pockets.

Mr. Weisenweber, with echoes of German in his speech, began to tell his story, about how the defendant had improperly put in new windows in his house. They leaked after the job was done, and Mr. Weisenweber said he should have known this would happen because Mr. Pacheco had failed him before. Ten years ago Mr. Pacheco had contracted for a job and had never shown up. Mr. Weisenweber was a retired podiatrist, had been living in the neighborhood for years, knew Mr. Pacheco and his family, and therefore wanted to give Mr. Pacheco another chance.

He should have known better, he said, because Mr. Pacheco’s family had stopped coming to see him after awhile, which he believed had to do with how he, Mr. Weisenweber, had been treated ever since he had moved into the neighborhood. People had thrown rotten tomatoes at his window and pulled up his flowers. “Flower Jew, Flower Jew,” kids used to taunt him when he was planting his garden. He rambled on, preoccupied, talking with his eyes looking inward. He told how they’d ride by on their bikes and hurl curses at him and bang on his windows at night. It had always been thus. Even the woman next door called him “rotten Jew.” They were all anti-Semitic, and Mr. Pacheco was too. Mr. Weisenweber’s speech poured out, picking up speed, less and less conscious of his audience, caught up in his own story.

Mr. Pacheco was interrupting now, raising his voice, pushing his chair back, protesting, and arguing. Mr. Weisenweber kept talking. “He hates Jews, like all the rest of them,” he said, with a dismissive wave of his hand, not noticing Mr. Pacheco shoving his chair to the wall behind him, standing up, hands out of his pockets and curled into tight fists. “I don’t need this! I’m an honest man!” Mr. Pacheco declared loudly.

“That’s enough, now, Mr. Weisenweber, thank you,” I said. He added some more details pertinent to his case and then became silent.

“It’s okay, Mr. Pacheco,” I said. “It’s your turn now.” It took a few words from me to help calm him and let him know that he could tell his story. Fortunately, Mr. Weisenweber was willing to be silent.

Reluctantly, Mr. Pacheco sat down and told a cogent, credible story, clearly taking pride in his recounting of history and fact. Out of his pockets he pulled receipts, letters, delivery dates of the windows, copies of Mr. Weisenweber's checks to him for work completed, and a copy of the contract he had made with Mr. Weisenweber. He said that he had happened to pass by Mr. Weisenweber's house some months after the windows had been installed and had come to help him find what caused a different problem: the wall leak in his kitchen. Mr. Weisenweber had never told him that the windows had leaked, not before or after the original job.

Mr. Pacheco said he felt guilty for not showing up ten years ago, and Mr. Weisenweber was right that he should have. Mr. Pacheco meant to repair that infraction by doing a good job with the windows and, later, by repairing Mr. Weisenweber's wall leak for free. He had discovered the wall leak was from an aluminum gutter that tipped the water into the back of an old kitchen wall. He repaired that for Mr. Weisenweber because he respected him. As he respects all his elders, he stated, looking directly, sternly, in front of him.

Mr. Pacheco spoke in rough English. His story made sense and his record-keeping, though the papers were rolled up in a wad in his pocket and bound by a rubber band, was meticulous. He gave evidence against Mr. Weisenweber's confusing and contradictory account of the story. Mr. Pacheco's telling of his own story had calmed him. Mr. Weisenweber sat silently as Mr. Pacheco talked.

The two men began talking to each other and it soon became clear that that the parties had to work with me in separate caucuses. Mr. Pacheco's feelings were strong, while Mr. Weisenweber, in his intense focus on telling me his story, had lost sight of its impact on Mr. Pacheco.

When we were alone, Mr. Weisenweber said he was 88. I quickly calculated that he had been born in 1918, and wondered in what country he had grown up, where he had been in 1938, and what had happened to his family later. He said that he had come to this country and set up a practice in the neighborhood where he still lived. He also said he had been besieged with anti-Semitism since his arrival long ago. All the other Jews had gradually moved out of the neighborhood, and he found himself left behind, lonely and isolated.

He leaned forward across the desk and stared at me with pale blue eyes that seemed not to see me, looking through my eyes to his own past, to scenes that I couldn't see, didn't dare to imagine. He talked about stones thrown at his windows, his newspapers burning on his walk, his mailbox knocked over, flowers pulled out of his garden, the cries at night, "Jew! Jew! Dirty Jew!" He leaned back into his chair and shook his head. "He's anti-Semitic," he said of Mr. Pacheco, "like the rest of them."

We talked about his options, what he could do in mediation, and I knew that Mr. Weisenweber couldn't hear a word of it. I finished my session with Mr. Weisenweber and called in Mr. Pacheco. Mr. Pacheco was clearly still angry. He told me the story of his immigration from Portugal when he was nineteen, the death of his father at a young age, and about starting a business in his early 20's to support his mother and siblings. He apologized for not learning English better, because he hadn't had the time. "It's been rough," he said, "but one thing I got, one thing I know, is I got good business. I have honesty, and if I'm not liking different people in this town I have no business. I know what it's like to be in a new country."

As with Mr. Weisenweber, I wanted to know more about Mr. Pacheco's immigration, how he came to this town, what it was like to live here, what his father did for a living, and so much more, none of which I could appropriately ask. I did ask him if he was anti-Semitic, and got a strong reaction to that question. He told me he knew full well what it was like to be at the "bottom of the ladder," where everyone "steps on you because you're at bottom." His voice rose as he spoke about this. I asked him then if he thought he could tell this to Mr. Weisenweber, to see if it would help him understand that perhaps Mr. Pacheco wasn't an enemy.

Mr. Pacheco had been so insulted by Mr. Weisenweber that he refused to talk to him again. I told him to think about it, and I returned to talk more, unprofitably, with Mr. Weisenweber. I came back to find that Mr.

Pacheco had thought about it and was willing to try to empathize with Mr. Weisenweber, and to share some of his experiences.

"Can you say it without blaming him or accusing him of anything?" I asked Mr. Pacheco.

"Sure," he said. "It's true, what I have to say."

I didn't expect Mr. Pacheco to put his feelings aside, but he did indeed. He told Mr. Weisenweber he knew what it was like to be discriminated against, because it had been the same for him. "Bottom fish," he said, "We were bottom fish, for others to feed on." I nodded to Mr. Pacheco with approval, and his face relaxed, just as Mr. Weisenweber charged again, "He's anti-Semitic!"

That was it. The case went back to the magistrate.

The magistrate heard the case in less than ten minutes, cutting to facts and evidence in efficiently. She did not issue the judgment but told me later it would be against Mr. Weisenweber because he could not prove his case.

As the parties left the court room, Mr. Weisenweber's farewell to me was not unexpected. "Thank you so much," he said, "you are a reasonable person. It's so good to talk to a reasonable person. You can understand what things have been like for me. You have been educated. You have read history."

What was unexpected was the farewell from Mr. Pacheco: a long warm hug from a big, tough guy. I wondered later if he had ever had a chance to tell his immigrant story. It had been hard for him, and he was proud. Both Mike and Mr. Weisenweber had built lives and businesses from nothing. Mr. Weisenweber didn't care much about the small claims amount he was suing for; he just needed to tell his story. Mr. Pacheco told me that if it was fair, he would have paid Mr. Weisenweber because he would have deserved it. But it was not fair.

What was mostly unfair, I thought later, was the experience of the suffering Jew and the hard-working Portuguese. Mediation did not settle the case, didn't even come close. But it aired the personal histories, and gave witness to the private suffering of two more people, victims of time and place.

That's a justice the court could not have given, the judge might have said to me.

Note: Names and details have been changed to protect the identities of the parties.

Daisy Broudy, LICSW, is a mediator in small claims court and a psychotherapist in private practice. She can be reached at 401-682-1690, or by email at daisy128@earthlink.net. If you email, please announce yourself as an NE-ACR reader, or some such, since I am a rapid trasher of unfamiliar email.

REGIONAL ADR NEWS

News affecting the practice of ADR in New England - including updates on policies and legislation (pending or enacted), events and activities of state ADR agencies and organizations, grants, research and similar information of interest to practitioners.

Please submit news from your state to news@neacr.org.

NOTE: The Newsletter Committee still seeks Regional News Coordinator. If you are interested, please contact Cristin at 617-495-7711 or news@neacr.org.

NEWS FROM CONNECTICUT

No news submitted.

NEWS FROM MAINE

The Maine Association of Dispute Resolution Professionals (MADRP) held its annual Spring Conference on May 17 at Maple Hill Farm Conference Center, in Hallowell, Maine. The Theme of the Conference was "Building Competence and Confidence for your ADR Practice: Tools, Marketing and Credentials." Along with a luncheon address by Maine Attorney General Steven Rowe, there were three sessions:

Session 1 with James McGuire: "Innovative Tools for the Mediator's Toolbox: Working with Impasse, Money Disputes and Risk Analysis".

Session 2 with Diane Kenty and David Webb: "Credentialing and Certification of ADR Practitioners: What is it, and is this necessary for our professional success?"

Session 3 with Connie Gemmer, Dianna Fletcher, Lucy Weiss and John Flumerfelt: Marketing Your Services: Businesses, Entrepreneurs and Non-Profits, An Essential Part of Any ADR Practice".

In other news, MADRP recently held another training for its Maine Residential Real Estate Mediation Program (MRREMP) roster. Nine mediators were trained in real estate laws and procedures. Contact Coordinator Bambi Magaw at bammo2@earthlink.net for more information, or go to www.madrp.org for a list of qualifications and requirements. Incidentally, the MRREMP programs and its success over the past two years will be the focus of the July MADRP membership meeting.

Save the date! August 13, 2006 will be the first Peace in the Park celebration! Sponsored by Community Mediation Services, the event will be held at the Buker Community Center on Armory Street in Augusta, Maine from 10AM – 3 PM. It will feature music, food, activities and games as well as informational booths with local non-profits interested in peace and family and community health. Contact CMS at (207) 621-6848 for more information.

Submitted by Tracy Quadro, Esq., Executive Director, Community Mediation Services, Augusta, Maine (207) 621-6848, medi8@maine.rr.com.

NEWS FROM MASSACHUSETTS

No news submitted.

NEWS FROM NEW HAMPSHIRE

The New Hampshire Conflict Resolution Association (NHCRA) held its annual meeting and dinner on May 17, 2006: at the Common Man Restaurant in Concord, NH.

The Annual Meeting included a brief business meeting, a social hour, two presentations on family court mediation and NH legislative processes followed by dinner and dessert. Gina Apicelli, a Family Division Administrator, was the featured speaker.

Save the dates and visit www.NHCRA.org for more information on these upcoming events:

* June 2, 2006 Non-Violent Communication Workshop

* October 13, 2006 Annual Conference

Elizabeth Christensen, President of NHCRA, is the founder of Mosaic Mediation in Windham, NH. Ms. Christensen is a New Hampshire state certified marital mediator, a court appointed mediator and Justice of the Peace. She holds an MBA, a BS in Mathematics and provides a variety of mediation services integrating twenty years of engineering / business management experience with extensive mediation training and casework. Elizabeth can be reached at eac@mosaicmediation.com or 603-434-2464.

NEWS FROM RHODE ISLAND

No news submitted.

NEWS FROM VERMONT

The mediation community in Vermont is excited to report that the Vermont legislature passed the Uniform Mediation Act in April. Governor Douglas is expected to sign the bill soon.

Vermont will become only the ninth state in the nation, and the only New England state, to adopt the UMA. The effort to introduce this legislation was spearheaded by the ADR Committee of the Vermont Bar Association, with the support of the Vermont Mediators Association and Woodbury College.

The passage of the UMA is a wonderful example of teamwork among Vermont mediators. From organizing and strategizing, to providing outreach and education, to testifying at House and Senate hearings, these dedicated people collaborated to see the UMA bill through the complexities of the legislative process. Their success will provide mediators and Vermonters with the kind of confidentiality protection for mediation that is not currently provided by Vermont law."

Submitted by Ted Winokur, Director, Master of Mediation and Applied Conflict Studies Program, Woodbury College, Montpelier, Vermont. He can be reached at TedW@woodbury-college.edu.