



**A MESSAGE FROM
 TAPM PRESIDENT,
 LEIGH ANN ROBERTS**



**NOVEMBER
 2009**

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Dear Members,

I hope this message finds you well and up to your eyeballs in conflict. Okay – that was a holdover comment from Halloween, but, seriously, I hope you all are finding lots of opportunities to put your conflict management skills to use. If you aren't, try looking a bit closer at how you are telling others about your work in this field. Whether you are mediating in your current professional position or are finding time to provide volunteer mediation services to our community, there are always opportunities to hone our conflict resolution skills if we let people and organizations know how we can help.

Personally, the mediation calls coming into my office these days seem to be related primarily to workplace conflicts, employment lawsuits and nonprofit disputes. As organizations and families have gotten "leaner," the added stress of new responsibilities, financial worries and a reduced volunteer/donor base or workforce has become a growing source of conflict. It's times like these where mediators can make a difference. I encourage each of you to boil down your "elevator speech" to what you can do for people, families and organizations in conflict. Many very educated people have no experience or understanding of the word "mediator" and, thus, may not believe you could be of service to them. Tell a story (minding your confidentiality P's & Q's, of course), but tell a story about a family or organization or business dispute that you have helped resolve. Your passion, skill and confidence will always come through in your message and, before you know it, you will have created an "educated sales force" out there in the world, telling people about what you do. Keep up the great work, TAPM members, and have a glorious fall!

Sincerely,
 Leigh Ann Roberts, Madame President



**A Time for
 Coming Together**



MEET THE MEDIATOR: DOUG BERRY

Doug is a partner in small law firm, **Hubbard, Berry & Harris, PLLC**, specializing in municipal, state regulatory and administrative law, land-use, eminent domain, commercial, insurance subrogation, and employment litigation. He was City Attorney for Franklin, Tennessee, from March 1989 through January 2007, handling all litigation and non-litigation matters, drafting of ordinances and resolutions, approval and negotiation of contracts, counseling and representation of officers, departments, boards, and commissions for fast-growing bedroom community of 55,000 just south of Metro Nashville. Mr. Berry has represented other Tennessee cities in zoning, employment, annexation, property tax and other matters: Smyrna (Interim Town Attorney since April 2009), Springfield, Cookeville, Murfreesboro (School Board), Pulaski, Orinda (Town Attorney since 2000), Franklin Building and Franklin Housing Authority, among others.

Doug has been first-chair in scores of trials and administrative hearings, including fifteen jury trials in a variety of areas--employment discrimination, annexation, land use, eminent domain, personal injury, lender liability, consumer fraud, and general commercial litigation and has handled all appeals in above cases, with significant decisions obtained in the areas of municipal law, zoning, sign regulation, and consumer law.

Doug has been a Rule 31 Mediator since 2001, having mediated over seventy employment, construction, real estate, governmental, and commercial disputes.

A Interview with Doug:

What is in your mediator tool kit? What is your favorite or most used tool?

Tool kit: Active listening, humor, and patience.

Favorite tool:

Using polite, but pointed questions to get at real reasons for a party's inability to see the other side's position or their resistance to settlement.

If you were a superhero/mediator what would be your name and slogan?

"Atticus"

"You never really understand a person until you consider things from his point of view - until you climb into his skin and walk around in it."

What is your pet peeve?

Lawyers or parties who don't set aside enough time for the mediation.

Close second: Lawyers who keep their clients pumped up about unreasonable positions or who push their clients too hard, too early, to settle, believing that they are assisting the mediator.

Are you married/do you have kids/pets etc?

I have been married for thirty years to Ray Smith Berry and we have three children, Hamilton (24), Claire (22) and Zan (19).

What are your hobbies?

Tennis, reading, working word puzzles—*New York Times* Crossword and *Atlantic Puzzler*.

Why did you become a mediator?

I became convinced of the wastefulness, acrimony, and unnecessary expense attendant to most civil litigation and wanted to find a way to make a more constructive and creative contribution to the legal system. (P.S. – I still represent clients in lawsuits.)

What is your favorite mediation read?

I don't have a favorite, but I did recently read and enjoy *High Conflict People in Legal Disputes*, by Bill Eddy.



Presenting the award are Margaret Behm, Chair of the Access to Justice Commission and The Honorable Robert Cooper, Attorney General of Tennessee, center is the Honorable Marietta Shipley

TAPM PAST PRESIDENT, MARIETTA SHIPLEY RECEIVES CMAT'S GRAYFRED GRAY AWARD!

Mediators from across the state gathered in October to celebrate Governor Bredesen's Proclamation of Mediation Awareness Month. The Coalition for Mediation Awareness in Tennessee (CMAT) held the third annual presentation of the Grayfred Gray Public Service Mediation Award. A reception was held at the Baker, Donelson, Bearman, Caldwell & Berkowitz Office in Nashville to celebrate 2009's honoree, Judge Marietta Shipley. Marietta was recognized for her pioneering efforts, lasting contributions and continued leadership in the field of Alternative Dispute Resolution and Mediation in Tennessee.

(Doug Berry Continued from page 2)

What is your phobia?

It is not exactly a phobia, but, within the mediation process, the person that I dread the most is the deliberately manipulative person who does not participate in good faith.

What is your favorite vacation spot?

Berlin. (Long story)

Personal or professional accomplishments you are particularly proud of:

I served as chair of Nashville's Sister Cities organization from 1999 to 2008 and helped found the sister city with Magdeburg, Germany. Since 2004, I have been the Honorary German Consul for Tennessee.

Where are you from and how did you end up in Nashville?

I was born in Nashville and grew up in Franklin. After going out of state to attend college, I returned for law school at Vanderbilt and never considered living anywhere else. Fortunately, I also convinced my wife of this. My family has deep roots in Nashville and Middle Tennessee.

Please complete these sentences:

"I have a burning desire to see my children successful and happy.

"People tell me I look like my maternal grandfather and uncle, both named Hamilton Douglas." When I was younger, I had a friend who said I looked like Jim Courier, the professional tennis player.

"If I could have a 30 minute conversation with anyone (alive or otherwise, famous or not), I would want to speak with my Mother again."

What is your favorite TV show?

Seinfeld, even in re-runs.

What is your favorite food/restaurant?

I love Southern cooking in the summertime when everything is fresh--corn on the cob, fresh tomatoes, green beans and cornbread, and cherry cobbler. My favorite restaurant, lately, is Eastland Café.

What is your favorite flavor of ice cream?

It varies. "Breyer's" coffee is my current favorite.

Knowing what you now know about life etc., would you choose the same career path? If not, what would you like to do?

Probably. The alternatives I have thought about are the diplomatic service and writing.



New Avenues for Mediation

by

Regina Newson

“Mediating Life’s Loss of Capacity Moments: When Your Way of Life Changes Lanes” was presented by the Institute for Conflict Management at Lipscomb University in September. This seminar examined the role of mediators in conjunction with families, clergy, hospitals and hospital staff in helping people make decisions about end of life dilemmas.

This area is well-suited for mediation. The mediators would act as facilitators for all of the parties involved in the end of life decision. Their role would be to ascertain the stakeholders and convene them. Each party in the decision-making process for end of life decisions needs to be heard. By heard, I mean that someone other than stakeholders needs to be there to help them listen to and hear each other. The stakeholders at this point cannot effectively listen to the other stakeholders. They are all in so much pain. The pain that they are involved in is the pain of relationships. Long after decisions have been made, the parties making the decisions have to live with those decisions – good or bad. They have to deal with their emotions – fear, guilt, anger, love, personal beliefs, faith, doubt and all of the emotions of other family members and friends. Some of these stakeholders are family members – spouses, siblings, cousins, close friends and church family, not to mention doctors, hospitals (administration) and hospital staff - nurses.

All of the stakeholders in the end of life decisions are making decisions based on where they come from in terms of family, personal beliefs, experience, and faith.

Making decisions about loved ones at the end of their life is not an easy process. This seminar forced me to start thinking about what I want for the end of my life. Each of us is dying every moment of our lives. We will never get back the moment which has just passed. But what we can do is begin to look to our future, make decisions about how and what we want loved ones to do for us. We need to have this discussion with family and friends and whoever we deem necessary – a doctor who has treated you for years; someone you have given a durable power of attorney and trust to make health care decisions for you.

The question for mediators is who would pay us? The answer is the hospitals. We would have to let the hospital administrators know that we are available to help families facing this juncture. The hospital would have to contract with the mediator. When the hospitals call us, the mediator would have to disclose to the family that the hospital called us in to help them. We would disclose that the hospital is paying us and give the parties the option to let us work with them or not. It should be noted that the hospital is trying to help the families at this difficult time, but they have a vested interest in helping families settle these disputes, because these disputes lead to lawsuits against the hospital.

Also, we could offer this type of mediation to the Probate Courts. If the Probate Courts used the mediator, then the mediator would bill the estate for his or her fees.

At the end of the day, mediators are trying to help families continue to communicate with one another after this difficult time passes. Mediation allows for the beginning of healing for these families.

It should be noted that this type of mediation is hard. It is hard on the families and the mediators. It requires listening, understanding, and empathy from the mediators. Not all mediators can or should do this type of mediation.



Reconciling the Reconcilers: Mediating Conflict in Communities of Faith

BY [Larry Bridgsmith](#)

Virtually every major world religion maintains a core belief that peace is a superior value to conflict. However, between and among people of faith, conflict seems more pitched and escalates more quickly than in most other arenas of human endeavor. Why would peace-loving people have such difficulty in peacemaking? This anomaly appears to be attributable to the culture which pervades our thinking and the skills we seem to lack.

An overriding trait of Western culture is the competitive win vs. lose approach to “matters that matter.” The more important the issue, the less important relationship becomes. In a binary, either/or worldview, you either agree with me or you are my enemy. This false dichotomy serves our communities of faith no better than our general society. However, in churches, synagogues, temples and mosques, the issues of great consequence are those that carry transcendent and often eternal consequences.

Because what we believe motivates our actions, our values are the beliefs we will “take a bullet for.” The last vestige of our thought process that is subject to change is our belief system. As Peter Senge illustrates with the “ladder of inference” analogy, our data, inferences, assumptions and conclusions may be flawed, but the beliefs they shape are not likely to change until we are willing to dig more deeply into the observable data and reshape the ladders that lead to our beliefs.

At the Institute for Conflict Management, rarely a week passes that Steve Joiner or I are not asked to assist a church in conflict. Although greatly rewarding work, it is the work we find most difficult because faith communities are accustomed to thinking in “either/or” terms. Very few of these calls come from churches in conflict over theological concerns (although often the conflict is framed in this fashion). Most often the conflict can be stated more accurately as “who is in control?”.

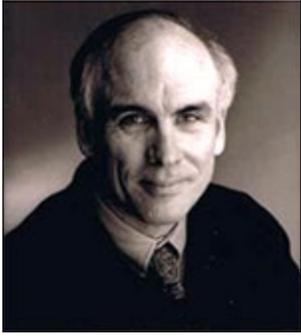
This is the point at which skills are critical to managing conflict in faith communities. Mediators should be especially equipped to assist people entrenched in conflict to examine the conclusions on which their actions have been built. Through non-threatening “one down” questioning, appreciative inquiry, reality testing and reframing techniques, facilitative problem solving can bring people to new understanding about the value of relationships and the consequences of unresolved conflict. Evaluative mediation serves little purpose in faith-based conflict because the issues are largely driven by unconscious motives and the power or pain of relationships.

Mediators who wish to work in facilitating the conflict in faith communities must have the patience of Job, the wisdom of Paul and the compassion of Mother Teresa. This is not work for the faint of heart or the “Type A” personality. A commercial dispute between people with a profit motive can be mediated to a successful and sustainable resolution in a day or less. The same issues between people who share a common faith could require many multiples of that time. If the faith organization itself is in conflict, the time to reach a healthy resolution can take many months to manage successfully.

Earlier this year, ICM hosted a “Reconcilers’ Summit” at which about 30 religious leaders from Middle Tennessee convened to explore this perplexing problem. Our time together confirmed the view that churches are not naturally conflict competent. Leaders in faith settings can improve the conflict competence of their community by educating their congregants on the values of managing conflict and the skills needed for respectful dialogue. These traits can lead to peaceful coexistence despite inevitable disagreements over governance, polity and finances.

Mediators who would like to be helpful in these difficult circumstances must be able to understand the nuances of the faith setting and the skills of consensus-building, collaboration and problem-solving. Moving from majority vote (another form of win-lose outcomes) to facilitating faith communities engaged in transformative dialogue requires mediators to become as much a coach as a problem-solver. If ever there was a time for these skills to be valued, the current era of declining membership in churches, synagogues, temples and mosques highlights the need for peacemakers now more than ever before.

Jesus said it well: “Blessed are the peacemakers, for they will be known as children of God.” Matthew 9:5



View from the Couch - A Psychologist's Experience at a Collaborative Law Seminar.

By [David W. McMillan, Ph.D.](#)

One rainy Friday morning in August I found I was going to a CLE for attorneys and allied professions. That's me. I'm a psychologist that is often consulting on court related matters. My wife (Marietta Shipley) convinced me to go. She was one of several organizers for this seminar on Collaborative Law. She had invited me and Murphy Thomas of Murfreesboro. I so dreaded the next two days. I expected them to be deadly, boring days.

I couldn't imagine attorneys really having much interest in working together as a team, each representing their client, learning how to contain a client's urge for battle, rather than inflaming it, and accepting advice on how to manage the process of negotiation and collaboration from a psychologist.

Frankly, I was surprised that 30 persons had signed up. I sort of expected the young faces, such as Kristin Amonette, Susan Castle, Latonya Todd. I did not expect battle ready attorneys like Helen Rogers, Grant Glassford, Phillip Robinson, Marlene Moses and Larry Hayes. "Well, I said to myself, "It's a cheap CLE. They can't really be interested.

The older more experienced attorneys seemed to already have a good sense of collegueship. They seemed to have learned how to work together in their many marathon mediations. All of them were used to working with consulting mental health professionals. They all seemed to be interested in a kinder, gentler way of practicing law that was the promise of collaborative law.

The foundation of collaborative law is an agreement between the attorneys that they will not represent the parties in court in litigation. They agree only to represent parties in settlement negotiations and or mediation. They use one expert for asset valuation and one expert for parenting plan recommendations. They insist each party consult a mental health professional, called a coach. Some models use a single coach. Others use two. The attorneys and other team members either meet together for planning and/or negotiation meetings. The goal of the professionals is to make negotiation sessions between the parties a sacred space. The parties will be expected to bring their best selves to each session. The coach(s) prepare them by teaching them how to express themselves constructively and assertively. If necessary the coaches are there to moderate the meeting and protect the communication process, in the same way that a mediator does.

The instructors taught communication skills familiar to psychologists. Surprisingly to attorneys all parties get more from cooperation than through competition. They taught us that when there is fear and anger, that parties cannot constructively negotiate and thus reduces the number of options. We all know what fear has done can do to wealth. In a trusting relationship, power and information creates more power and information for everybody. Everybody wins.

Collaborative Law is a process that uses trust to build more trust. All parties are expected to fully disclose. As trust emerges from the pain of a failed marriage, options for how to cooperate become more obvious. Children become shared responsibilities, rather than objects to hoard. Financial solutions move beyond what is required by law. A blended family's collective well-being becomes the object rather than winning.

While I was at the workshop, Helen Rogers said to me that Nashville's legal community has done a good job of adapting mediation into its practice. As I watched the attorneys at the meeting, it was clear that some attorneys have inadvertently worked, in part, as collaborative lawyers in the community through their end of case mediations. The friendships of these attorneys has created a good beginning of a trust building collaboration. All that is needed are some coaches and a protected collaborative process.

The training ended with various work groups moving forward with assignments to create the structure in Tennessee for the practice of collaborative law. Already there are some fifty plus trained attorneys ready to join in a case with another trained collaborative lawyer. The work groups plan to create a structure for education, marketing and continuing learning and training.

Though this training was a bit looser than most legal trainings, it helped all participants expand their vision of what the practice of law could become. It helped remind all of us that we can accomplish more as a collaborative team than we can alone.

I came away proud to know that lawyers could indeed learn to work with each other and that psychologists and other mental health professionals could assist that process for the benefit of the family.



TAPM MISSION STATEMENT:

The Tennessee Association of Professional Mediators exists to promote mediation as a valuable and effective process empowering people in resolving disputes.

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TAPM CALENDAR OF EVENTS

December 10, 2009, 11:30 a.m.

Howard Vogel presents:
"Mediation: Practice and Ethics Issues."

The program will be a discussion of appellate opinions from around the country and which identify practical issues confronting mediation participants and mediators.

\$15.00 TAPM Members
\$20.00 NON TAPM Members
Click Here to [Register Online](#)
(Lunch included)

Harper's Restaurant
2610 Jefferson Ave.
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Approved 1 hr Dual (Ethics & Mediation) CLE Credit;
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TAPM CIVIL PEER GROUP will meet again in January 2010. Time and place to be announced.

TAPM FAMILY PEER GROUP will meet Thursday, January 21, 2010, Noon.

TAPM Mediation News will be published on the following dates:

- January 15, 2010
- March 15, 2010
- May 15, 2010
- July 15, 2010
- September 15, 2010
- November 15, 2010

If you would like to submit an article or be featured as the Mediator of the Month, please let TAPM know by emailing tapm@tennmediators.org.

Lisa W. Smith
TAPM Executive Director
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