



# Volunteer News

Summer 2006

## Happy Birthday!

### June

- 3 Sarina Fifer
- 9 Lori Jones
- 12 Thelma Butts Griggs
- 19 Larry Leiken
- 26 Nancy Tyson

### July

- 9 Joyce Liska
- 10 Bill Wood
- 27 Sandy McRae

### August

- 15 Barrie Herr
- 16 Karla Weeks
- 31 Jennifer de Laix

## Mediation Skills Come in Handy Everywhere

Our volunteers come to us from a variety of career fields including education, law, retail, real estate, nursing, social services, government, the sciences, and technology. Last month, we asked volunteers to share how they use their mediation skills in their personal or professional lives and what other types of mediation they practice outside of the Community Mediation Program. Many thanks to the volunteers who shared their experience with us. Here are their responses:

*Jan:* Finally, I am beginning to see mediation rub off on my personal life. I find myself listening and identifying feelings (which gives obvious satisfaction to the individual expressing them). I do some facilitation and use reflective listening skills so that the individual feels that he/she has been heard and—hopefully—understood. I do think I am a better listener because of my mediation training and experience. I hope that skill continues to grow and becomes an even more important part of my life.

*Karla:* As a retail store owner, I often need to deal with people who are distressed. I use skills learned in mediation to help these people. Most useful are the listening and “mirroring” skills, which allow me to understand exactly what the problem is and brainstorming, which helps me and my customer arrive at a solution.

*Tom:* Since my mediation experience and training has been in community and employee mediation and my career has been in transportation-related construction, I decided to try to put the two together and see what happens. I am now listed as a mediator with Construction Dispute Resolution Services. My ultimate goal is to be able to do mediation and arbitration on construction dispute cases.

I have also done group facilitations with the City of Tucson on employee issues and mediation coaching for the Arizona Department of Transportation. I did a community group facilitation through OUR TOWN with a client from a neighboring community in working with their citizens and their zoning and planning group.

I have been contacted by the City of Tucson’s EOE Office which is trying to resurrect the City’s Employee Mediation Program to handle discrimination and equal opportunity-related mediations. I was an active mediator in the original program for 3 or 4 years and look forward to doing those types of mediations again.

## Inside this issue:

NW Fire Training Update	2
In-service Update	3
Fall 40-Hour Training	3
Call to Volunteers	3
What Can Training Do...	4
Merger Update	7
Calendar of Events	8

Cont'd next page

## Mediation Skills (cont'd)

Since getting involved with mediation almost 10 years ago, I have been looking at conflict resolution not only as a career path, but as an avocation. I honestly believe in the value of peace-making from a spiritual, faith-based perspective. I see the human value of conflict resolution in every mediation I do and it's probably what keeps me going.

*Chris:* Mediation skills enriched my marriage and my relationships with my brother and parents and hugely reduced sibling fights among my 3 kids. The key was to practice the skills unilaterally. I didn't expect the other person to do it "the right way" (i.e., my way). It took a lot of tongue-biting and deep breaths and starting over after arguing. I had to force myself to listen carefully and restate neutrally and to focus on solving the problem, not on being right. I had to watch my "you messages." There were lots of times when I completely blew it and blew up. (I am Italian after all.) But over time, trust built up and things got easier. When the kids fought with each other I would help them talk it out. It took a lot of time to help them work out very insignificant conflicts, but it really reduced the problems down the line. I also found that a simple but honest "I'm sorry" truly was transformative. On a few occasions my husband and I solved spats so fast we felt a little dazed and confused—wait, aren't we still supposed to be angry or something?

*Bruce:* I think I was employing some mediation techniques in my job before I received training or volunteered. I am a purchasing agent and most of my time is spent dealing with matters at issue. Many people might think the issue is always cost, but that is not the case. Most of my time is spent trying to find a middle ground between my colleagues and our suppliers. Any successful commercial relationship in my environment is based on a balanced relationship, so to think the suppliers will do whatever we want is not the way it works.

Since I have been affiliated with Our Family, I have developed a more refined way of approaching mediations I am involved in at work. I don't have the luxury of reading an intake folder and getting history. I feel that the time I have spent at Our Family has better prepared me to deal with situations in my job because I am not just working from a rote frame of mind. I am better able to put my actions and statements into a context.

*Bridget:* I have been mediating since June 1998 for the City of Tucson, Our Family, and the Attorney General's Office. The types of mediations I have done: neighborhood, family (my favorite), victim/offender, and employment. I use my mediation skills most of time. They are always handy with colleagues and family when I remember to *be* a mediator and not a reactor. The most useful skills: listening, not judging, detachment, *not* trying to fix and *not* running the show.

## Northwest Firefighters Learn Mediation

The Community Mediation Program conducted a 40-hour mediation training for a group of Northwest Fire District employees. Northwest Fire is developing an internal mediation program for peers to mediate internal disputes and conflicts. They are still in the process of developing their program but have a much better idea of what the actual mediations will look like and whether they will be able to do them.

The training was a challenge for them and us. Transformative and facilitative mediation approaches were very different from the problem-solving approach they had in mind. Every participant in the training, from firefighters to captains, was used to solving problems quickly and from a perspective of knowledge and their position in the hierarchal structure of their organization.

The training went well. They had a lot of feedback on their preferred style of learning which we incorporated as best as we could throughout the week of training. Most of them believed the training was very beneficial but continue to have questions about how they will structure their mediation program. They have a long way to go and will likely require more training but they have already taken great strides in acknowledging and planning for an alternate dispute resolution system that allows parties in dispute to work out their own disagreements.

## Volunteer In-service Update

We have made a few changes in our ongoing in-service trainings. We still need to require training but we have reduced it to four hours per year. Additionally, the requirement for a 4-hour skills refresher has been moved from once per year to once every two years. What this means is that each volunteer mediator must have at least four hours of in-service attendance at Our Family with a 4-hour refresher satisfying the requirement every other year.

Of course, we believe the roundtable discussions and presentations are valuable and hope that you attend as many as your schedules permit. Coaching for the 40-hour training satisfies part of the training requirement also.

All roundtables are from 6:00-8:00 p.m. and refreshers are from 8:30 a.m.-12:30 p.m. Topics will be announced with plenty of notice prior to each event. Please feel free to suggest topics and/or speakers.

### 2006-2007 In-Service Schedule

- Tuesday, July 25<sup>th</sup> – Volunteer Pizza Party
- Wednesday, August 23<sup>rd</sup> – roundtable
- Wednesday, September 20<sup>th</sup> – roundtable
- Wednesday, October 18<sup>th</sup> – roundtable
- Saturday, November 4<sup>th</sup> – 4-hour refresher course
- Tuesday, December 12<sup>th</sup> – roundtable
- Wednesday, January 24<sup>th</sup> – roundtable
- Saturday, April 28<sup>th</sup> – 4-hour refresher course
- Tuesday, May 15<sup>th</sup> – roundtable

## Fall 40-Hour Mediation Training

Well, we're trying it again. The last couple of years have seen a good spring class but not enough interest to fill a fall mediation class. We scheduled another 40-hour class for this fall and are making a stronger effort to recruit at least 12 people so we can hold the class. If you know of anyone who you believe would make a good mediator or has expressed interest to you, please refer them to us. The cost for the training is \$400. For trainees who apply and are accepted as Community Mediation Program volunteers prior to the training, the cost is \$200.

Thanks to all of you who responded with information about days and times you would like most if you had to do the class at this point. Most of you actually have a life and would like your Saturdays as free as possible. Based on your responses, we are keeping our 40-hour course on a twice per week schedule from 6:00-9:00 p.m. The fall training schedule begins Tuesday, September 19 and goes every Tuesday and Thursday, ending on Thursday, October 26.

## Volunteers Invited to Help with Workshops & Trainings

The Community Mediation Program regularly schedules trainings, workshops, and presentations in the community and we encourage our volunteers to participate. We value our mediators' diverse backgrounds and experiences and hope you can share your perspective and insights with members of the community. If you are interested in helping us out as a presenter or coach, please let us know.

Our upcoming trainings/workshops include a 2-day "refresher" mediation training for the City of Tucson, a 4-hour conflict resolution skills workshop for New Beginnings, and two peer mediation trainings for Tortolita Middle School and Presidio High School. We will continue to keep you posted about upcoming trainings and workshops as we schedule them.

### Upcoming Trainings/Workshops

- |                        |  |
|------------------------|--|
| <b>July 25-26</b>      | Mediation Refresher for City of Tucson                 |
| <b>August 7-8</b>      | Peer Mediation Training at Tortolita Middle School     |
| <b>August 23</b>       | 4-Hour Conflict Resolution Workshop for New Beginnings |
| <b>Sept. 11-13</b>     | Peer Mediation Training at Presidio H.S.               |
| <b>Sept. 19-Oct 26</b> | Fall 40-Hour Mediation Training (Tues./Thurs.6-9 p.m.) |

## What Can Training Do for an Experienced Mediator?

By Dwight Golann

Training is almost certainly helpful for novices. But what can it do for a mediator who has years of experience?

Some answers may lie in the nature of our work. Unlike lawyers, mediators almost always work alone and so don't see their colleagues in action. The work is also very hard—involving a succession of people who are in deep conflict and often not at their best. Even a mediator who enters the field with a sense of mission risks falling into repetitive patterns, and may even become resentful of more difficult clients. When this happens, a key quality of a good mediator—personal presence in the room—may change.<sup>1</sup> The neutral begins to “mail it in,” and disputants sense it. Even when tangible measures of success don't suffer, the mediator's feeling of well-being is likely to decline.

I recently had some of those feelings and decided to try training as a cure, enrolling in a four-day seminar. The experience was intriguing in several ways. First, being trained is a bit of a luxury: You suddenly have time to listen, without the pressure to respond. You encounter a mix of new and familiar techniques and find yourself asking: Would this approach be helpful in what I do? Would I be comfortable using it? And how will my clients react if I do?

### Choosing the type of training

What you learn from training depends on the kind of program you choose. One key question is whether to enroll in an advanced seminar in the type of mediation you already practice or one based on a different approach. I decided to stretch my perspective rather than hone existing skills. Because I teach and practice caucus-based mediation, I sought out training in a no-caucus format in which the parties, rather than the lawyers, play the primary roles. No-caucus processes are closely identified with family mediation, and the idea of allowing clients to take the lead in a commercial case would probably strike most litigators as uncomfortable and risky. But the very strangeness of the technique, as well as the quality of the instructors—in this case, Gary Friedman and Jack Himmelstein—made the idea seem both challenging and attractive.

Whatever a program's philosophy, I look for supervised roleplaying. Without actually performing and being critiqued, it is very hard to improve skills or correct bad habits. Roleplaying seems easier to find in basic programs, probably because they can rely on recently-trained critiquers willing to volunteer to establish themselves in the field. My program began with limited roleplaying, but part way through, after asking for student feedback, the trainers added more opportunities.

### The results

Over four days of discussion and practice, I was reintroduced to skills such as reflective listening and option generation that I had once learned, but had come to de-emphasize in my practice. The training also encouraged me to push lawyers harder to remain in joint session and to let the clients take the lead in discussions. Finally, I realized that I often become overly committed to getting a settlement: One message of the training was to distinguish between working hard to assist parties, and feeling personally responsible for having them reach agreement.

Finally, there was another, much less tangible result. The training put me among a group of people who were genuinely excited about entering the field. Several were litigators burned out by the adversary system, especially as it operates in family conflicts. Others were lawyers from Europe, South America and Africa who hoped to introduce mediation into their legal systems. I was at first a bit cynical, dreading the moment when the students would ask how to find paying work as a mediator, but interestingly, this did not occur. I was surprised to find myself caught up in my classmates' moods, experiencing again some of the excitement I'd once felt as a beginning mediator.

### Practical applications

My first case after the training arose from a transaction in which a retired executive bought an antiques company, only to conclude a few months later that the seller had deceived him about its condition. I called each lawyer privately the day before the mediation to ask for a “heads up” about personal dynamics and other non-legal factors that might affect the process. I also recommended that the parties meet together at the outset, and told them that I would invite their clients to talk. In the past, I'd sometimes forgotten to mention client participation at all, but this time, probably due to the training, I made a point of it. “It's often helpful,” I said, “for a client to give his own perspective on the situation. I'll mention that you will be covering the legal issues, but that the parties should feel free to focus on

non-legal aspects that they think the other side should keep in mind as we set out to settle this. I'll make it clear, though, that it's entirely up to them whether or not to speak." The executive's lawyer said that he thought his client would welcome a chance to talk. Counsel for the seller, however, warned me that her client was an "engineer-type" who would not want to say much.

The purchaser showed up with a four-page, single-spaced text and described how he'd entered the deal in good faith, only to find himself betrayed by deceptions ranging from inflated inventory to a clientele outraged at the prior owner's unrealistic shipping dates. Trying out my new orientation, I did not simply listen and take notes but instead reflected back my understanding of what he said. After 30 minutes, the purchaser finished and the seller began to talk. Belying his counsel's prediction, he spoke articulately and at length. The lawyers said almost nothing. There was a back-and-forth discussion in which the attorneys participated, but which was dominated by the principals. When the discussion became heated and repetitive, I deferred to the lawyers' request that we go into caucusing. Still, the opening session went on for 2 ½ hours, more than twice as long as I would have expected.

My next mediation involved a joint venture between a management company and a hospital to operate an MRI imaging center. The center was losing money and the parties were at odds about why. Everyone seemed to agree, however, that a divorce was in order. Again I told each lawyer of my preference for joint sessions and client involvement. This time both counsel made it clear that they intended to give the primary statements—and they did. Afterward, however, the parties began to speak and a conversation developed. It came out that the management company's VP was bitter over what he saw as a bad faith move by the hospital a year before—something not mentioned in either party's mediation statement. Again the conversation became heated and the lawyers asked that we break into caucuses, but not before the parties had more than an hour of spirited discussion.

From time to time during the caucusing in both cases, I suggested that the parties get back together to discuss complex issues. As usual, however, these disputants expressed a strong preference for remaining apart. Except for a couple of short meetings, they spent the rest of the time in separate rooms. I wondered later whether my trainers could have convinced them to stay together. More likely, I suspect, they would have explored process preferences in advance—and if the disputants had insisted on caucusing, would have referred them to a different mediator.

In both cases, the longer opening session and opportunity for the parties to get grievances out into the open appeared to be helpful. At the end of their time together in joint session, the principals were more openly angry than they had been at the outset. My experience is that open expressions of feelings, which often involve accusations of fraud, harassment and other improper conduct, usually make cases harder to settle for a few hours. However, people often become calmer after they've "had it out"—a bit like the cleared air that sometimes follows a thunderstorm. People who have been through genuine displays of emotion, even coupled with accusations, usually are able to let go of at least some of their anger or grief, making it easier for them to settle later on. This is what happened in the antiques and MRI cases.

My recent training did not totally convert me to joint sessions, however. In another case, a dispute over insurance coverage for a pollution cleanup that would extend for decades, the participants—a group of sophisticated counsel, executives and adjusters—asked to skip the opening session entirely. They explained that the actual events had occurred in the 1960s and no one at either company felt that they were being personally blamed for them. Moreover, the facts and legal issues had been thoroughly developed in preliminary court proceedings. It was now the eve of trial, both sides knew the risks and they wanted to use old-fashioned bargaining to close a large money gap. The most difficult issue, as it turned out, was to work out a structure that met the financial priorities of each side's corporate parents. Eventually this was accomplished and everyone went away happy.

### Lessons in interest-based bargaining

Thinking back on the training, other lessons occur. The seminar focused strongly on helping principals identify interests and develop options to meet them. My experience with this, both before and after the course, is mixed. Through an empirical study, I have found that when respected mediators work with commercial disputes arising from a relationship, most of their settlements involve at least one significant integrative term. That said, however, in most commercial and employment disputes parties who enter mediation have already severed their relationship, and in such cases the discussion usually revolves around money.<sup>2</sup>

In the case arising from the purchase of the antiques business, interest-based options were easy to identify: The seller, as the former manager of the business, had a wealth of knowledge about its operation, while the buyer had none. The sales contract also gave the seller the option to select three

expensive pieces from the company's products, which he had not done. But I was not able to make any headway. Having become convinced that the seller had defrauded him, the buyer wanted nothing more to do him and the seller no longer wanted his pieces. By contrast, in the dispute arising from the operation of the MRI imaging center, both the management company and the hospital recognized from the outset that there were several business issues to resolve—ranging from the terms on which the management company would buy the hospital's MRI license, to the hospital's concern that treatment plans for its cancer patients not be disrupted. In retrospect, I probably pushed a bit harder to identify interests in these cases than in the past.

### Admitting weakness

The training had one other effect. After 12 hours of discussions in the MRI case, I hit a blank: In the midst of talking with the hospital team, I suddenly realized that I couldn't remember who was getting the money. I decided to be candid rather than finesse it, despite the fact that I was facing a phalanx of big-firm lawyers. I shook my head and said, "You know, I realize I'm just fried. I can't for the life of me remember who's paying whom the eight hundred!" The others in the room smiled. "We're the ones getting it—and it's nine, not eight," they replied. "You've been working a lot harder than we have."

They were right, I had—and it was a relief to admit it, rather than pretend to be the all-competent professional. I think I'll do that more often.

### Responsibility for settlement

The training also encouraged me to remind myself to draw a crucial distinction—between working hard and taking responsibility for producing a settlement. Lawyers tell me that I'm known for doing follow-up and using unorthodox techniques—assuming, for example, that visiting a party's spouse at her workplace and driving her to join in a mediation session strikes you as unorthodox. I intend to continue to work hard in my mediations. Moreover, in a structure in which parties are separated and the mediator is talking with one after the other, it is very likely that the neutral will be working more steadily than the disputants.

But there is an important difference between working to facilitate settlement and taking responsibility for whether one occurs. The latter can be a prescription for frustration. At the end of the MRI case, for example, I told the parties that I had to rely on them to find a new approach to the remaining bone of contention. Although I facilitated the discussion, they were the ones who tweaked the package to find terms that both sides could recommend to their managements. And they thanked me for my work.

### An alternative: Shadowing

As another form of training, I arranged through Pepperdine Law School to shadow two well-known Los Angeles mediators. Shadowing was some ways the opposite of my other program, because both mediators used caucusing aggressively—there was no joint session in either case. Shadowing someone with a similar style to your own, I found, allows you to re-examine familiar techniques. There are both macro and micro lessons to be learned.

At the micro level, the shadower sees the mediator making a continuing series of decisions and, relieved of pressure to make a decision, can ask: What would I do here? Focus on a party or on the lawyer? In response to a question "What move should we make now," respond with a recommendation or deflect the query? Being an observer also allows you to see the impact of the mediator's choices.

The bigger lesson was the effect of each mediator's persona: The image, or feeling, that he projected in the process. The first, Jeffrey Krivis, played the role of wise person in a personal injury case, sometimes as acting as counselor and sometimes as director of an improvisational drama, giving the attorneys cues and working to adjust the clients' expectations so as to make the outcome feel like a win for both. The second mediator, Ralph Williams, dealing with an insurance bad faith dispute, took advantage of his resemblance to the late actor Jimmy Stewart. Most of the time he presented a very informal, facilitative demeanor, but at one point unveiled a complex decision tree to convince a reluctant lawyer. I left determined to monitor more closely the image I project, both when I am fresh in the morning and in the closing hours of the process.

## Anticipating others' reactions

Lawyers select mediators based in part on what they know about their style. After taking a hard look at my style through the lens available in the recent training, I began to wonder what will happen if I change my approach significantly. Will clients react like one lawyer who, when I recommended a distinguished mediator associated with collaborative law, said, "Well, I think he's a little touchie-feelie for this case." Or could I present two different options, a bit like a restaurant offering both standard and vegetarian menus? That remains an unresolved question of marketing.

1. The concept of a mediator's "presence in the room" is explored in Daniel Bowling & David Hoffman, *Bringing Peace Into the Room*, Jossey-Bass (2003).
2. Dwight Golann, "Is Legal Mediation a Process of Reconciliation—Or Separation? An Empirical Study, and Its Implications," 7 HARV. NEG. L. REV. 301 (2002).

**Author Biography:** Dwight Golann is a professor at Suffolk University Law School in Boston and a co-author of *Resolving Disputes: Theory, Practice, and Law* (Aspen Publishers). He has trained mediators for the CPR Institute, federal courts and the European Union, and recently presented the inaugural training for the U.S.-China Business Mediation Center in Beijing. He can be reached at [dgolann@suffolk.edu](mailto:dgolann@suffolk.edu).

**"What Can Training Do For an Experienced Mediator?"** by Dwight Golann, published in Dispute Resolution Magazine, Volume 12, No. 1, Fall 2005. © 2005 by the American Bar Association. Reprinted with Permission.

## Our Family Merger Update

The beginning of this fiscal year marks new changes to the Education and Prevention Department and the Community Mediation Program. Two programs have been added to the Education and Prevention Department that Andrea is supervising. The first is the Judicial Supervision Program, which offers supervised visits and exchanges to custodial and non-custodial parents who are court-ordered to receive services. The second addition is the Divorce Recovery Program. Like the Community Mediation Program, Divorce Recovery is volunteer driven, offering a variety of groups for people experiencing the loss of a significant relationship and for children experiencing divorce within their families. Andrea is in the process of learning these programs and would be happy to speak with you if you are interested in learning more.

With the expansion of the department, Victor has moved into a Coordinator position for a few of the Education and Prevention Programs, including School Mediation, Parenting, School-Based Prevention and Teen Theatre. The majority of his responsibilities will still be in the Community Mediation Program where he will take on more of a leadership role with reports, funding sources, and continued development of the program.

As Victor moves into the coordinator role, we welcome Catalina Cañez as a nearly full-time staff member in the Community Mediation Program. Many of you have already met Catalina as she spent a third of her time this past year in the Mediation Office. She has decided this year to take on this position with the Community Mediation Program coming full circle to one of her first positions at Our Town many years ago as a Mediation Specialist.

We are excited about these changes and would be happy to talk to you more about them along with any questions or concerns.



**Community Mediation  
Program**

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**July 2006**

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**August 2006**

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**Dates to Remember**

- July 25** Volunteer Pizza Party (5:30-7:30 p.m.)
- July 25-26** Mediation Refresher for City of Tucson (8:30 a.m.-4:30 p.m.)
- August 7-8** Peer Mediation Training at Tortolita M.S.
- August 23** 4-Hour Conflict Resolution Workshop for New Beginnings (morning)
- August 23** Roundtable discussion (6-8 p.m.)
- Sept. 11-13** Peer Mediation Training at Presidio H.S.
- Sept. 19** Fall 40-Hour Mediation Training begins
- Sept. 20** Roundtable discussion (6-8 p.m.)