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The Massachusetts Council On Family Mediation is a nonprofit corporation established in 1982 by family mediators interested in sharing knowledge and setting guidelines for mediation. MCFM is the oldest professional organization in Massachusetts devoted exclusively to family mediation.

PRESIDENT'S PAGE

As the new president of MCFM, I want to thank the MCFM Board of Directors, our wonderful administrator Ramona, and especially some of the presidents who served before me (Kathy Townsend, Lynda Robbins, Les Wallerstein, Laurie Udell) for their help and support —they are part of the village that it takes to run MCFM.

These are exciting times—both inside MCFM and in the larger ADR community. In addition to our continuing Board members, there are several new folks on our Board; we welcome Kate Fanger, Fran Whyman, and Bill Leonard—and eagerly anticipate their future contributions (no pressure, folks!)

Several members of our Board, led by Laurie Israel, have been busily working on updating our website to offer more services and support to our members and the public. Stay tuned for more information in the fall.

Laurie Udell is coordinating our annual Institute, to be held on November 19, 2010. Be ready to sign up for what is always an educational, energizing, and delicious (the lunch is great) experience!

Les Wallerstein continues to edit this FMQ, producing the best mediation publication in my experience, and one big reason for joining MCFM.

John Fiske and Steve Nisenbaum are once again coming up with members' meetings that will continue to draw crowds (we need bigger meeting rooms!).

The new chair of the MCFM certification committee, S. Tracy Fischer, is working on ways to promote our certification process. Many people outside our organization are unaware that MCFM sponsors the only statewide certification process in which a divorce mediator's work is scrutinized and endorsed by a panel of previously certified peers.

MCFM is also exploring ways to reach out to other ADR organizations in harnessing the energies of the ADR community to promote ADR in every way possible for families with (or without) children divorcing in the Commonwealth of Massachusetts.

So join us—find community, enhance your skills, work with us to spread the word that mediation can bring peace to families and improve lives.

Have a great summer, and I look forward to seeing all of you in the fall.

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THE CARING MEDIATOR: ESSENTIAL VIRTUE OR ABSOLUTE HERESY

By Allan Barsky

Introduction The Massachusetts Council on Family Mediation (n.d.) defines a family mediator as "a *neutral*, trained individual who helps families create an agreement for their particular circumstances, understand the laws applicable to divorce and separation, and negotiate a fair and reasonable determination of parental responsibilities, financial, obligations, and division or property" (italics added). Like most definitions of mediation, the mediator is described as a neutral person. And like most definitions, in no way is the mediator defined as a "caring" person. Mediators stand out from helping professionals such as psychotherapists, social workers, educators, clergy, and nurses, who pride themselves in caring for the people they serve. For such helping professionals, caring is not merely a desirable characteristic, but an integral virtue for ethical practice (Beauchamp & Childress, 2009; Cohen & Cohen, 1999; Walker & Ivanhoe, 2007). In this article, I maintain that it is time for mediators to embrace *caring* as a professional virtue. Although some mediators might think that caring is the antithesis of the mediator as a neutral, perhaps a reframing of neutrality and caring will help these concepts find common ground as mediator virtues.

I maintain that it is time for mediators to embrace caring as a professional virtue.

Neutrality as Objectivity or Impartiality Various theorists have defined neutrality as objectivity or impartiality. For a mediator to maintain objectivity or impartiality, the mediator must guard against allying with one party or the other. If a mediator likes one party more than the other, the mediator might use this attitude – consciously or unconsciously – to provide favored treatment for that party (Beck, Sales, and Emery, 2004). Thus, to care for one party might be viewed as being biased. Even caring for both parties might be viewed as risky. According to the standard of objectivity, a mediator needs to maintain professional distance from both parties. Becoming too close to either or both parties is considered a violation of professional boundaries. The mediator may lose impartiality as a result of developing emotional connections or attachments to the parties. A caring mediator might be inclined, for instance, to persuade the parties to do what the mediator feels is best for them, rather than allow the parties to develop their own self-determined solutions.

Mediation derives some of its notions about mediator neutrality from the

legal profession, and particularly the role of a judge as an impartial decision maker. The value of judicial impartiality was brought into the limelight in 2009 when President Barak Obama mentioned that he wanted to appoint a Supreme Court justice, Sonya Sotomayor, who had empathy. Detractors argued that empathy was an undesirable trait as it would cloud judgment and cause the judge to make biased judgments. Although empathy refers to the capacity to understand (rather than sympathy or compassion), Obama's critics suggested that empathy was about caring, and that caring was a threat to the impartiality of the judiciary. After all, lady justice wears a blindfold so she can deliver the same justice to all. She does not care what they look like, and she does not consider their social circumstances when meting out justice. By analogy, impartial and objective mediators need to maintain a certain distance from clients in order to ensure their processes are fair, and perceived to be fair.

Neutrality as Equal Caring In defining what it means to be a caring mediator, I draw from ethics of care, a branch of ethics that focuses on the professional as a caring agent of change (Beauchamp & Childress, 2009). Whereas principle-based approaches to ethics suggest that professionals should act as logical, objective practitioners, ethics of care suggests that professionals should acknowledge their relationships and act out of care rather than objectivity or impartiality (Barsky, 2010). Caring professionals embrace six qualities or virtues:

- Attentiveness-noticing others, seeking awareness of their needs and perspectives; having compassion for the welfare of others.

- Responsibility-accepting the role of a helper as an intrinsic duty (rather than a rule or standard that one must follow).

- Competence-having the ability to provide the care which others need.

- Responsiveness-remaining alert and open to the needs of others, their reactions, and the possibility that the recipient of care might experience the care offered in a negative manner.

- Integrity of care-making decisions about conflicting needs and strategies by taking social context, power, and special needs into account.

- Discernment-sensitive insight, astute judgment, and the ability to apply wisdom by using an appropriate balance of reason, desire, and emotion. (Banks, 2006; Barsky, 2010; Vonk, 2000)

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When caring is defined according to these qualities, the mediator may be viewed as someone who is concerned and compassionate. The mediator expresses care for clients by providing services in an attentive, competent, and sensitive manner. The mediator acknowledges connections with clients rather than focusing on detachment. Thus, a caring mediator might say, "As a parent who has also gone through a divorce, I know some of the challenges that you may be facing and I want to help you make good decisions for yourselves and for your children." Caring does not mean mediators should impose views or decisions on their clients, but rather create an environment for clients to make good choices for themselves. Clients may be more willing to open up to someone who demonstrates caring rather than someone who comes across as cool or indifferent.

A caring mediator takes the social context, power, and special needs of each client into account.

Whereas a truly objective mediator (if one really existed) would not have particular feelings each client, a caring mediator acknowledges feelings for each. Awareness of such feelings allows the mediator to use these feelings in a deliberate manner (Barsky, 2007). Thus, if a mediator feels sorry for a father who has had limited access to his children since the separation, the mediator tries to understand why she feels sorry. She then assesses how this feeling might influence the mediation process. The caring mediator does not use her sympathy to persuade the clients to provide the father with more time with the children; however, the mediator might use awareness of her sympathetic responses and decide to demonstrate understanding for both the father and mother's perspectives. "I've heard both of you say that you would like to have as much time as possible with your children. Frank, you've described how you feel your role as father has been diminished and you'd like to make sure the parenting plan is fair to both parents. Maria, you've talked about the children's need for a stable home and the importance of focusing on the children's best interests. I want to make sure that we can address all of your concerns, so please let me know if I am hearing your concerns accurately." The mediator uses her sympathy by placing herself in the situation, but develops a response that demonstrates concern for both parents.

A caring mediator takes the social context, power, and special needs of each client into account. Perhaps this point will create the greatest sense of unease for some mediators. How can the mediator take the social context, power, and special needs of each client into account without losing neutrality? Does this mean that the mediator becomes an advocate for the less powerful party? Some theorists have defined neutrality in

terms of equidistance (Rifkin, Millen, & Cobb, 1991). Under this notion, a mediator may align with or favor one client over the other at various points in the mediation process, provided that over the course of the mediation process, the mediator is fair and balanced.

Clients can trust a mediator who seems to align with the other party from time to time, as long as over the entire process, the mediator shows equal care and attention to both. Consider a situation in which the separating spouses have vastly different knowledge about finances – one spouse is an accountant who was responsible for managing the family's finances throughout the marriage; the other spouse has never participated in finances, not even balancing a checkbook or reviewing credit card statements. If the mediator ignores the differences in their financial knowledge and treats both spouses the same, the financially experienced spouse may be able to take unfair advantage of the other spouse. Thus, the mediator might call a caucus in order to work with the spouses separately and ensure that both have sufficient knowledge of the family's finances in order to negotiate fairly. The mediator might even announce his intentions as follows, "From time to time, I may meet with each of you separately because I want to ensure that each of you is well prepared for working through certain issues. One parent may want more help with some issues; the other parent may want more help with different issues."

Some mediators might contend that clients want mediators who are neutral and impartial, not caring. However, a client's expectations of neutrality are guided by how mediators define neutrality in their brochures, websites, and oral orientations to mediation (Beck, Sales, and Emery, 2004). Perhaps mediators could explain neutrality as *equal-caring*. Whereas the term *equidistant* suggests that mediators are equally detached from each party, equal-caring suggests that mediators have equal concern and compassion for both. One of the primary reasons that mediators have described themselves as neutral is to build trust with the parties.

Whereas a truly objective mediator (if one really existed) would not have particular feelings each client, a caring mediator acknowledges feelings for each.

Imagine how mediators could build even greater trust if they described themselves as caring neutrals rather than detached, third-party neutrals.

> "Thank you for considering mediation to help you and your children work through the transitions that arise during the separation process. A mediator

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is a neutral helping agent, meaning that I am concerned about everyone in the family, parents and children. My role is to help you communicate and make good decisions, as you define them. From time to time, you might see me helping one parent, and then the other parent. That is a natural part of the mediation process. Overall, my goal is to be fair, balanced, and concerned for both of you."

The role of a mediator goes beyond neutrality (Mayer, 2004), particularly when neutrality is used to mean detachment from the parties. Family mediators are often drawn into the profession out of a deep care and concern for families. Why not convey this care and concern to clients, build trust, and admit that we are connected with the clients we serve.

Allan Barsky, JD, MSW, PhD, is a certified family mediator and professor at Florida Atlantic University. His book credits include *Conflict Resolution for the Helping Professions* (Brooks/Cole) and *Ethics and Values in Social Work* (Oxford University Press). He also serves on the National Ethics Committee of the National Association of Social Workers, and can be contacted at abarsky@fau.edu

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DIVORCE, NO-FAULT STYLE

By Stephanie Coontz

Forty years after the first true no-fault divorce law went into effect in California, New York appears to be on the verge of finally joining the other 49 states in allowing people to end a marriage without having to establish that their spouse was at fault. Supporters argue that no-fault will reduce litigation and conflict between divorcing couples. Opponents claim it will raise New York's divorce rate and hurt women financially.

So who's right? The history of no-fault divorce may provide some answers as the New York State Assembly takes up its versions of the divorce legislation passed by the Senate on Tuesday. Before no-fault, most states required one spouse to provide evidence of the other spouse's wrongdoing (like adultery or cruelty) for a divorce to be granted, even if both partners wanted out. Legal precedent held that the party seeking divorce had to be free from any "suspicion that he has contributed to the injury of which he complains" — a pretty high bar for any marital dispute.

Contrary to conventional wisdom, it is more often the wife than the husband who is ready to leave.

In 1935, for example, reviewing the divorce suit of Louise and Louis Maurer, the Oregon State Supreme Court acknowledged that the husband was so domineering that his wife and children lived in fear. But, the court noted, the wife had also engaged in bad behavior (she was described as quarrelsome). Therefore, because neither party came to the court "with clean hands," neither deserved to be released from the marriage.

As the Maurer case suggests, such stringent standards of fault often made it easier for couples who got along relatively well to divorce than for people in mutually destructive relationships. Cooperating couples would routinely fabricate grounds for their divorce, picking one party as the wrongdoer.

This strategy was so common in the 1950s that divorce cases seemingly gave the lie to Tolstoy's famous observation that every unhappy family is unhappy in its own way. "Victim" after "victim" testified that the offending spouse had slapped him or her with exactly the same force and in exactly the same places that the wording of the law required. A primary motivation for introducing no-fault divorce was, in fact, to reduce perjury in the legal system.

Initially, some states limited no-fault divorce to cases in which both partners wanted to dissolve the marriage. In

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theory, limiting no-fault to mutual consent seemed fairer to spouses who wanted to save their marriages, but in practice it perpetuated the abuses of fault-based divorce, allowing one partner to stonewall or demand financial concessions in return for agreement, and encouraging the other to hire private investigators to uncover or fabricate grounds for the court. Expensive litigation strained court resources, while the couple remained vulnerable to subjective rulings based on a judge's particular opinion about what a spouse should put up with in a marriage.

In the years since no-fault divorce became well-nigh universal, the national divorce rate has fallen, from about 23 divorces per 1,000 married couples in 1979 to under 17 per 1,000 in 2005.

Eventually every state except New York moved to what is in effect unilateral no-fault, wherein if one party insisted that his or her commitment to the marriage had irretrievably ended, that person could end the union (albeit with different waiting periods). New York has been the holdout in insisting that a couple could get a no-fault divorce only if both partners agreed to secure a separation decree and then lived apart for one year. Otherwise, the party who wanted the divorce had to prove that the other was legally at fault.

In every state that adopted no-fault divorce, whether unilateral or by mutual consent, divorce rates increased for the next five years or so. But once the pent-up demand for divorces was met, divorce rates stabilized. Indeed, in the years since no-fault divorce became well-nigh universal, the national divorce rate has fallen, from about 23 divorces per 1,000 married couples in 1979 to under 17 per 1,000 in 2005.

Even during the initial period when divorce rates were increasing, several positive trends accompanied the transition to no-fault. The economists Betsey Stevenson and Justin Wolfers of the University of Pennsylvania report that states that adopted no-fault divorce experienced a decrease of 8 to 16 percent in wives' suicide rates and a 30 percent decline in domestic violence.

Social changes always involve trade-offs. Unilateral divorce increases the risk that a partner who invests in her (or more rarely, his) marriage rather than in her own earning power, and does not engage in "bad behavior," may suffer financially as well as emotionally if the other partner unilaterally ends the marriage. When courts have not taken this sacrifice into account in dividing property, homemakers have been especially disadvantaged.

Fairer division of marital assets can reduce the severity of this problem. And fault can certainly be taken into account in determining spousal support if

domestic violence or other serious marital misbehavior has reduced the other party's earning power. Related

Still, the ability of one partner to get a divorce over the objections of the other may create an atmosphere in which people think twice before making sacrifices that will be costly if the marriage ends. Professor Stevenson found that in states that allow unilateral divorce, individuals tend to be slightly less likely to invest in marriage-related capital, like putting the partner through school, and more likely to focus on building individual, portable capital, like pursuing their own education or job experience.

Unilateral divorce has decreased the bargaining power of the person who wants the marriage to last and has not engaged in behavior that meets the legal definition of fault. On the other hand, it has increased the bargaining power of the person who is willing to leave. So while some marriages end more quickly than they otherwise would, other couples enter marital counseling because one partner's threat of divorce convinces the other that it is time to work seriously on the relationship.

Contrary to conventional wisdom, it is more often the wife than the husband who is ready to leave. Approximately two-thirds of divorces — including those that come late in life — are initiated by wives. Paula England, a senior fellow at the Council on Contemporary Families, found that surveys that separately ask divorced wives and husbands which one wanted the divorce confirm that more often it was the woman who wanted out of the marriage. This jibes with research showing that women are physiologically and emotionally more sensitive to unsatisfactory relationships.

It's true that unilateral divorce leaves the spouse who thinks the other's desire to divorce is premature with little leverage to slow down the process or to pressure the other partner into accepting counseling. It allows some individuals to rupture relationships for reasons many would consider shallow and short-sighted.

But once you permit the courts to determine when a person's desire to leave is legitimate, you open the way to arbitrary decisions about what is or should be tolerable in a relationship, made by people who have no stake in the actual lives being lived. After all, there is growing evidence that marital counseling can repair some marriages even after infidelity, which New York has long accepted as a fault sufficient to end a marriage. But that does not mean New York should reduce its existing grounds for divorce even further.

A far better tack is to encourage couples to mediate their parting rather than litigate it, especially if children are involved.

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A far better tack is to encourage couples to mediate their parting rather than litigate it, especially if children are involved. In a 12-year study of divorcing couples randomly assigned to either mediation or litigation, the psychologist Robert Emery of the University of Virginia and his colleagues found that as little as five to six hours of mediation had powerful and long-term effects in reducing the kinds of parental conflict that produce the worst outcomes for children. Parents who took part in mediation settled their disputes in half the time of parents who used litigation; they were also much more likely to consult with each other after the divorce about children's discipline, moral training, school performance and vacation plans.

Paradoxically, people who went through mediation were also more likely to express regret over the divorce in the ensuing years than those who litigated. But New York legislators should face the hard truth that there are always trade-offs in the imperfect world of intimate relationships. To my mind it is better to have regrets about the good aspects of your former marriage because you were able to work past some of your accumulated resentments than to have no regrets because you had to ratchet up the hostility to get out in the first place.

Stephanie Coontz, a professor of history at Evergreen State College, is the author of "Marriage, a History: How Love Conquered Marriage" and the forthcoming history "A Strange Stirring: The Feminine Mystique and American Women at the Dawn of the 1960s."

"Love is an ideal thing, marriage a real thing; a confusion of the real with the ideal never goes unpunished."

Goethe

MEDIATION TO STAY MARRIED

By Vicki L. Shemin

When Jill and Don first contacted Boston Law Collaborative in early September, 2008, they wanted to explore alternative dispute divorce options as they believed that their 7-year marriage was irretrievably broken. Arriving at this painful decision was all the more poignant for this young couple since they had a one-year old son.

With my background and training as both a clinical social worker and family law attorney, I could not help but notice some atypical non-verbal cues Jill and Don exhibited. The manner in which clients choose to arrange their interpersonal physical proximity speaks volumes about their psychological state of mind. Not only did Jill and Don elect to sit on the same side of the conference room table, they sat so close to one another that their elbows were practically touching. They spoke in hushed and mutually respectful tones and gave the other partner ample time to articulate his and her feelings. Instead of looking at me, they most often spoke directly to one another. As to their communication, the theme most central to both their parallel and collective conversations was their deep love for their son, Alex.

As is typical in a first-time meeting with a couple seeking a Joint Petition for Divorce, we covered a lot of ground: we spoke about Jill and Don's respective current and future goals and interests; what they had done over the years to work on their marriage, and the various non-litigation alternatives to negotiating the terms of a divorce. We reviewed a detailed Family Law Notebook that the firm has compiled for prospective and new clients. It contains a treasure trove of articles, forms, templates and guidelines offering a realistic overview of what a client can expect as s/he goes through the divorce process. It was while reviewing the information contained in the Notebook that I sensed a distinctive sea change in the couple: perhaps overwhelmed by what actually getting divorced entails, perhaps striking at the heart of any ambivalence they may have felt coming into the process, by the end of the meeting, Jill and Don looked one another squarely in the eye and contemporaneously asked each other – "Is this what we really want to be doing?" I shared with Jill and Don some of the observations about their interactions that I had noted during the meeting and took a leap of faith by exploring with them the prospect that, if they were interested, we could discuss an alternative to divorce mediation – namely, mediation to stay married.

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Jill and Don left our office that day very different individuals from the two who had walked in just an hour and a half before. About a week later – and notably it was on September 11th, Jill contacted me and said that she and Don had had long discussions about their future and decided they wanted to change course. While they were each able to be "in a place of calm and coming from a place of love," they wanted me to draft a document which would lay out the details of their co-parenting plan for their son if and when the marriage did end in separation or divorce one day. That is, they wanted to tackle and conquer their greatest fears about what would happen to their son - and between them - if divorce became a reality; if that day ever came, they did not want to be making decisions concerning Alex borne of spite, anger or vengeance.

Fall turned into Winter, and Winter melted into Spring. Over the months, Jill and Don worked hard on hammering out the details of a Custody and Parenting Agreement which addressed matters such as legal custody and a very detailed co-parenting schedule (including summer and holiday schedules), as well as a provision anticipating the use of a Parenting Coordinator as a mediator/arbitrator to facilitate the couple with parenting decisions in the years to come. The document was finalized, executed in triplicate in the presence of a notary, and tucked away for safekeeping just in case it was needed one day.

In mid-March, I heard from Jill. The email said: "Don and I are in a good place in our relationship right now, and I feel we will be in an even stronger now that this Parenting Agreement is behind us. We sincerely thank you in advance for your patience and understanding and for showing us there was another way to move forward in our lives." I could not help but notice the date on the email – it was Friday, March 13th, 2009.

It is more than a year later since that Friday the 13th email, and I am told by Jill that she, Don and 2-year-old Alex are all doing great.

September 11th… March 13th… this family to date has beaten the odds.

Here are actual quotes from the clients, one year later:

Jill: "Vicki was more interested in our well-being – and our son's – than in expensive litigation. Her compassion and warmth were an unexpected breath of fresh air, and she used her training as a licensed social worker to keep us calm and focused. Contemplating divorce and custody issues was the hardest thing I've faced in my life. I would walk into the waiting room of Vicki's office with butterflies in my stomach. But the minute I saw her reassuring smile, I felt better, knowing that, with her help, we would make the right decisions."

Don: "I second all that Jill said, and reading this case study did bring tears

to my eyes because you noticed things between Jill and me that were actually the things that made continuing in our marriage possible – the respect and concern for each other as well as our deeply shared love for our son. We've come a long way since then and I know our choice of mediation with you and Boston Law Collaborative played a part in us ultimately staying together. Thank you for that!"

Vicki L. Shemin, J.D., LICSW, ACSW, is a family law attorney who is "of counsel" to Boston Law Collaborative, LLC. As a LICSW, Vicki has a special interest in serving as guardian ad litem, parenting coordinator, mediator, and collaborative lawyer. Vicki serves on the Board of Directors of MAGAL (Massachusetts Association of Guardians ad Litem), and can be contacted at vshemin@bostonlawcollaborative.com

"What counts in making a happy marriage is not so much how compatible you are, but how you deal with incompatibility."

Tolstoy

ZEN MIND, BEGINNER'S MIND AND MEDIATION

By Laurie Israel

At the beginning of each mediation there is a moment of suspense. The mediator does not know the parties' stories. Yes, there are two stories, because each client has a separate and distinct version of reality. Then the stories begin to be told.

It is very helpful to retain what the Buddhists call "beginner's mind" at the start of a mediation, and even throughout the meetings. I have been thinking of "Zen Mind, Beginner's Mind," by Shunryu Suzuki, which I first read when it came out in 1971. The concept of "beginner's mind" has stayed with me all these years, and I am starting to strongly connect it to the art and practice of mediation and what I do as a mediator. In particular, I am struck by the connection with proceeding as a mediator with "beginner's mind" and its helpfulness in lessening or eliminating mediator bias.

A "beginner's mind" is innocent. It is not the mind of an expert.

"Beginner's mind" is open, limitless, and tries not to form conclusions. It tries not to make assumptions. Assumptions are based on your own life experience, not your clients', and may differ from yours. Assumptions will limit your interactions with your clients and prevent you from really hearing your clients and understanding them. When you speak, often you speak from your own point of view and not that of your clients. The danger of your words is that they may be an unwitting expression of bias, produced by your own assumptions, and may often cloud and not be consistent with what your mediation clients are saying that they have experienced.

A "beginner's mind" is innocent. It is not the mind of an expert. The "beginner's mind" is open and ready to accept. The expert's mind tends to form conclusions quickly and prejudge. Remember that the word "prejudice" comes from the word "prejudge". "Prejudice" is a close sibling to "bias." As we know and have learned, as experienced mediators, the existence of bias on the part of the mediator is the flaw that can most readily destroy the success of a mediation.

Keep your innocence and inquiring mind when you make your first comment to your mediation clients. In fact, delay as much and as often as you can in speaking during a mediation. You will find that when you finally do speak, what you say will be a more helpful comment to your clients.

Don't assume anything. Try to keep your innocence throughout the mediation. It is true (at least for some mediators) that we offer something

more than just a process. Our expertise on the subject matter of the mediation (e.g., divorce law if we are divorce mediators) is a resource that is helpful to the mediation clients. However, we should wait until the most appropriate moment before imparting information and not foreclose the process of fact-finding, inquiry, and new and clarifying communications between our clients.

When you sit quietly listening to your clients speak, many things will bubble up inside you. You will react to what you hear based on your own personal history. Your own thoughts and memories will be elicited. You may want to speak and express them to your clients. But be still, keep silent, and wait. You will find in most cases that your own story is not the best way to interact with your clients and move the process forward.

When you keep a "beginner's mind" in mediation, your reactions will be fresh, even if you have heard the same or similar stories many times before. If you retain your "beginner's mind," you will stay with the limitless and sometimes unforeseeable possibilities that may be contained in your mediation clients' words and not limit them by your own life experience or psychological history.

By keeping a "beginner's mind" you can avoid dualism (this is "right," this is "wrong") and judgment. It will help you to be present with your clients instead of being just partially present.

As Suzuki says, the beginner's mind is not a closed mind; it is an "original" mind, which contains everything in it. It is an "empty" mind and therefore is ready and available for your clients. Sitting quietly for 10 minutes before your clients arrive will help you gain the peace of mind that will be most helpful to the mediation.

If you make a mistake, such as an off-base assumption you made (as you will immediately find out by your mediation clients' reactions), forgive yourself, learn from it, and move on. Be more vigilant, say less, and think more before a word tumbles out of your mouth. Less is better in mediation.

Don't assume anything. Try to keep your innocence throughout the mediation.

So continue to think about the concept of a "beginner's mind" and choose to work with it. Your efforts will be rewarded, and you will become a more effective mediator.

Laurie Israel is a mediator and lawyer practicing in Brookline, Massachusetts. She is engaged in divorce mediation and marital mediation (mediation to stay married). She is a frequent presenter at professional conferences. Her websites are www.ivkdlaw.com and www.mediationtostaymarried.com and www.yourfamilymatterslawblog.com.

A PROTOCOL FOR SCREENING INDIVIDUAL CLIENTS FOR ABUSE: Excerpts from the New Hampshire Marital Mediator Handbook

Editor's Note: *The excerpts below are intended to provide divorce mediators with an outline of questions to consider while screening a prospective client when there are concerns of abuse. It is excerpted from the New Hampshire Marital Mediator Handbook, Excerpts Relative to Screening for Abuse (1/2/2009 edition), Office of Mediation & Arbitration, Judicial Branch.* ***Caveat: Massachusetts mediators who are mandated reporters are required to report abuse.***

MEDIATOR INTRODUCTION TO SCREENING INTERVIEW

Preface to Screening Interview with Assurances to Reduce Awkwardness "The reason I meet with parties individually is to give you and the other party the opportunity to tell me about concerns you might have about mediation and your situation. I will also be asking you specific questions about how you and the other party got along, so that I can assess whether mediation is appropriate for you and how I might help you. Further, this meeting is an opportunity for me to discuss the process of mediation, so that you can decide whether mediation is appropriate for you."

Inform the Parties and their Attorneys of the Policy to Keep Screening Sessions Confidential and the Exceptions to that Policy. Mediation is confidential. Confidentiality means that the mediator cannot disclose any information that you provide unless:

- You and the other party agree that the information can be disclosed.
- The mediator informs you and you are in writing before mediation starts that the mediator may disclose other information such child abuse or threats of harm.
- You or the other party disclose child abuse or neglect, or threat of harm to another person, and the mediator has a statutory responsibility to report child abuse or neglect, or threat of harm.

Explain the Goals and Process of Mediation "The goal of mediation is for the two of you to reach an agreement on some or all of the issues in your case. All agreements are voluntary. My role during mediation would be to help you reach

agreement, not to make a decision or recommendation on the issues. I am neutral in the sense that I am not advocating for either one of you, or for a particular outcome. I would not give an opinion as to who is right or wrong, or as to what the agreements ought to look like. If we decide to mediate and use the usual process, I will meet with you and the other party, together. Another option would be to meet separately. I don't give legal advice. If you have counsel, I recommend that you keep your attorney informed about the mediation process, seek legal advice from your attorney and have anyof our materials reviewed by your attorney."

QUESTIONNAIRE (Ask all of the following. Feel free to take notes.)

Section 1: General

a) Is there anything you would like to ask me or tell me before we continue? Are there any special needs that you require to have this discussion (language interpretation or other special accommodations)?

b) Do you want to mediate? If so, why? If not, why not?

c) Why don't you tell me about your situation?

d) Could you tell me about how the decision to divorce and/or separate was reached?

Section 2: Control, Coercion, Intimidation, Fear

a) When you look back over time, how were decisions made in your marriage?

b) What happens when you speak your mind and express your point of view to [insertname]?

c) When you and [insert name] fight and/or are angry with each other, what happens?

d) Do you have any concerns about how the two of you will make decisions in mediation?

e) During mediation sessions, you and [insert name] may meet in the same room to talk about all the issues and problems that need to be resolved. Do you have any concerns about sitting in the same room with [insert name] or mediating with [insert name]? **If yes, ask the following questions:**

(i) What are your concerns?

Continued on next page

(ii) If your attorney was present with you during the mediation sessions, would you still have these concerns?

(iii) If you and [insert name] were in separate rooms during the mediation sessions, would you still have these concerns?

(iv) If you and [insert name] came at separate times, would you still have these concerns?

f) Has [insert name] ever prevented you from having contact with family or friends, or with your children? If so, what happened?

g) Has [insert name] ever denied you access to money for food, shelter, medical needs, clothing, etc.? If so, what happened?

h) Has [insert name] ever threatened to hurt or kill him/herself? If so, what happened?

i) Has your partner ever forced you to do something that made you uncomfortable? If so, what happened?

Section 3: Violence/Fear of Violence

a) Has there ever been any physical confrontation between you an [insert name]? If so, what happened?

b) Do you ever feel afraid of [insert name]? What are you afraid to tell me about the time you felt most afraid. Has [insert name] ever felt afraid of you? What is he/she afraid of?

c) Do you ever become afraid for yourself or others based on the look from [insert name] or actions of [insert name]? If so, tell me about it.

d) Has [insert name] ever pushed, shoved, hit, kicked, choked you or restrained you, or pulled your hair? If so, what happened?

e) Has [insert name] ever used or threatened to use a weapon to harm you? If so, what happened?

f) Has [insert name] ever threatened to kill or injure you? Has [insert name] ever threatened to kill or injure a family member, friend or coworker? If so, what happened?

g) Has [insert name] ever damaged or destroyed your property or harmed or threatened to harm your pets? Your children's property or pets? If so, what happened?

h) Have you or any family members ever sought medical treatment as a result of an injury caused by [insert name]? If so what happened?

i) Has [insert name] ever caused you to feel threatened or harassed by following you, interfering with your work or education, making repeated phone calls to you, or sending you many unwanted letters, emails, faxes or gifts? If so, what happened?

j) Have any of these events involved the children? If so, what happened?

k) Has there ever been an order that was meant to limit contact between the two of you, for example, a Personal Protection Order ("PPO" which in Massachusetts is known as a restraining order), or a no contact order that was a condition of bail? Please describe.

l) Have either of you ever had a PPO issued against you by anyone? If so, what happened?

m) Have either of you ever been found in contempt of court for violating, a PPO? If so, what happened?

n) Are you afraid that [insert name] will harm you during the mediation or after you leave because of what you say in mediation?

o) Are you in immediate danger? **If yes, discontinue use of screening questionnaire and proceed to safety planning and terminate the mediation.** "Since you are in immediate danger, let's arrange for you [and your children] to get to a safe place. I will not be mediating your case."

If there is a yes answer to any one of questions in Section 3a - Section 3n, this is an indication that you should advise the party that mediation is NOT appropriate. However, do not terminate until the entire questionnaire is completed. Information gathered in the following sections may be useful if the party wishes to mediate despite the mediator's advice. This will assist the mediator to make the decision whether or not to mediate.

Continued on next page

Section 4: Violence/Dangerousness Assessment
a) Have you or any one else ever called the police because of problems in your home? If so, what happened?

b) Have you or any one else ever called the police because of problems in your home? If so, what happened?

c) Are there any guns or other weapons in the home? What kind? How many?

Section 5: Attorney Awareness of Violence
(If lawyer is not present) Have you told your lawyer about these things (Sections 3 & 4)? It is important for your lawyer to know about these matters.

Section 6: Children
a) How are the children doing?

b) Do you have any concerns about the safety of the children? If so, please describe.

c) Has [insert name] ever threatened to take the children or threatened to stop you from seeing them, or stopped you from seeing them. Please describe.

d) Is there an open abuse or neglect case involving your children? Tell me about it.

Section 7: Other Considerations Regarding Ability to Negotiate
a) Do either of you have a problem with alcohol or drugs? (If yes, how recent? What isthe current status of treatment?) Is there a problem with alcohol or drugs in either of your families? If so, please describe.

b) Do either of you have a history of mental illness or emotional problems? Is there a history of mental illness or emotional problems in either of your families? (If yes, how recently? What is the current status of treatment?) Tell me about it.

c) Have either of you ever attempted or considered hurting or killing yourself? (If yes, how recently? What is the current status of treatment?) Please describe.

Section 8: Catch-All
a) Is there anything else you think I should know about you, [insert name] or your family?

The New Hampshire Office of Mediation & Arbitration, Judicial Branch can be contacted online at http://www.courts.state.nh.us/fdpp/about_mediation.htm.

HELL HATH NO FURY

An Internet Tale

She spent the first day packing her belongings into boxes, crates and suitcases.

On the second day, she had the movers come and collect her things.

On the third day, she sat down for the last time at their beautiful dining room table by candle-light, put on some soft background music, and feasted on a pound of shrimp, a jar of caviar, and a bottle of wine.

When she finished the wine she went into every room and deposited a few half-eaten shrimp tails dipped in caviar into the hollow of each curtain rod. She then cleaned up the kitchen and left. When the ex-husband returned with his new girlfriend, all was bliss for the first few days. Then slowly, the house began to smell.

They tried everything: cleaning, mopping and airing the place out. Vents were checked for dead rodents and carpets were steam cleaned. Air fresheners were hung everywhere. Exterminators were brought in to set off gas canisters, during which they had to move out for a few days and in the end they even paid to replace the expensive wool carpeting. Nothing worked. People stopped coming to visit. Repairmen refused to work in the house. The maid quit. Finally, they could not take the stench any longer and decided to move. A month later, even though they had cut their price in half, they couldn't find a buyer. Word got out and eventually even the local realtors refused to return their calls.

Finally, they had to borrow a huge sum of money from the bank to purchase a new place.

Eventually the ex-wife called her ex-husband and asked how things were going. He told her the saga of the rotting house. She listened politely and said that she missed her old home terribly and would be willing to spend some of her divorce settlement in exchange for getting the house back. Believing that his ex-wife had no idea about the stench, he agreed on a price that was about 1/10th of what the house had been worth… but only if she were to sign the papers that very day. She agreed and within the hour his lawyers delivered the paperwork.

A week later the ex-husband and his girlfriend stood smiling as they watched the moving company pack everything to take to their new home, including the curtain rods.

MASSACHUSETTS FAMILY LAW
A Periodic Review

By Jonathan E. Fields

Last-Minute Inheritance Still Counts In a case involving really bad timing, the Appeals Court found that the Probate and Family Court properly considered the husband's substantial inheritance that vested *after the final day of trial* but prior to the judgment of divorce nisi. The Husband argued that the marital estate should be identified at the close of trial. The Wife argued that the marital estate should be identified at the date of divorce. In upholding the lower court judgment, the Appeals Court noted the wide judicial discretion in the area of property division. *Nicholas v. Nicholas*, 2010 Mass App. Unpub. LEXIS 593 (May 28, 2010) (Unpublished)

Wife Entitled to Post-Divorce Pension Accruals A recent case provides yet another illustration of the importance of careful drafting. A separation agreement provided simply that the "Alternate Payee [the wife] is assigned 60% of the Participant's [the husband's] pension benefits." The agreement was incorporated into a divorce judgment and all provisions relating to the distribution of assets survived. The husband later prepared a QDRO which provided that the wife receive "60% of the Participant's Vested Accrued Benefit earned as of the date of the Judgment of Divorce Nisi." The Wife filed a complaint for contempt; she objected to the husband's QDRO because, contrary to the agreement, it did not permit her to share in *post-divorce* accruals to the husband's pension. Noting that the provision did not "limit her entitlement to that amount of the pension that was accrued during the marriage," the Probate and Family Court agreed with the wife's interpretation of the agreement and found the husband in contempt. The Appeals Court vacated the contempt but otherwise affirmed the judgment. (Editorial Comment: It seems clear that the language at issue here was the result of a drafting error or oversight – and that the wife exploited this. That said, I can't help but wonder whether the husband would have had any success had he filed a complaint in equity.) *Johnson v. Johnson*, 2010 Mass. App. Unpub. LEXIS 711 (June 2, 2010) (Unpublished).

"Mean" Provision Means Something According to the Appeals Court, it is unequivocally mean for an ex-husband to tell an ex-wife that her son wished she would die. A judgment (incorporating an agreement) prohibited interparty communications that were "negative or mean." The Probate and Family Court found the ex-husband in contempt for sending a letter alleging that his ex-wife suffered from a "mental illness" and claiming

that her son "wished [her] to die." The ex-husband appealed, presumably on the grounds that his action did not rise to a "clear and undoubted disobedience" of the judgment. After all, what does "mean" mean anyway? Distinguishing the "mean" prohibition here from the "customary nondisparagement provision," the Appeals Court affirmed, concluding that the ex-husband's language was so clearly "mean" and "well outside the range of possible ambiguity," that a contempt finding was appropriate. The lesson for mediators may be that the nondisparagement provisions the Appeals Court sought to distinguish here may not be as unenforceable as we might think. *Fawzi v. Elaskalani*, 2010 Mass. App. Unpub. LEXIS 602 (June 4, 2010) (Unpublished).

Jonathan E. Fields, Esq. is a partner at Fields and Dennis, LLP in Wellesley. Jon can be contacted at 781-489-6776, or at jfields@fieldsdennis.com

**"I chose my wife,
as she did her
wedding-gown,
not for a fine glossy surface,
but such qualities
as would wear well."**

Oliver Goldsmith (1728 - 1774)

CONFIDENTIALITY: MUD, FIDDLER CRABS & MEDIATION

An Email Exchange

Editors Note: All mediators are welcome to submit email exchanges for publication in the FMQ. The more ideas we share the more we learn from each other.

From: Les Wallerstein <wallerstein@socialaw.com>
To: John A. Fiske <jadamsfiske@yahoo.com>
Cc: Oran Kaufman <oran@orankaufman.com>
Subject: clear as mud...

Hi John:

In the midst of a conversation with Oran this afternoon we kicked around Leary vs. Geoghan, which I've quoted and highlighted below.

While Leary makes it perfectly clear that no party to a mediation can compel the mediator to testify, it is deafeningly silent as to whether all parties to a mediation can consent to the mediator's testimony.

If the parties cannot waive the confidentiality of mediation and request his/her testimony, it would seem to suggest that the mediator's right to confidentiality trumps the parties right to agree to disclose... which to me seems antithetical to the spirit of mediation as a client-centered process.

Your thoughts?

Les

> Leary vs. Geoghan "I conclude that whether or not the parties have chosen to maintain the confidentiality of the mediation, **G. L. c. 233, § 23C, does not permit a party to compel the mediator to testify, when to do so would require the mediator to reveal communications made in the course of and relating to the subject matter of the mediation**. Compelling such testimony, even if potentially helpful to the motion judge's decision on the merits of the parties' dispute, would conflict with the plain intent of the statute to protect the mediation process and to preserve mediator effectiveness and neutrality."

From: John Fiske
To: Les Wallerstein
Cc: Oran Kaufman
Subject: Re: clear as mud...

Dear Les and Oran:

If you're a fiddler crab, nothing can be clearer than mud.

Reading is fun because repetition can lead to new discoveries. You just called my attention to the first part of this oft-scrutinized sentence:

"I conclude that whether or not the parties have chosen to maintain the confidentiality of the mediation...." Doesn't that suggest that the parties have a right to choose NOT to maintain the confidentiality of the mediation? That is certainly more consistent with the concept of "self-determination" which ACR seems to be saying is the ultimate core of mediation.

Yikes, as my mother in law would say. That means Bill and Sally could say, "Sorry, John, we want you to testify as to what Bill said during our third meeting and you wrote it down in your notes and we want you to bring your notes to court too." Would one of you represent me (if) (the next time) that happens? If not, I could do my own fiddler crab imitation.

Cheers,

John

From: Oran Kaufman
To: John Fiske, Les Wallerstein
Subject: RE: clear as mud...

And people think this stuff is easy? Ethical issues abound! I have come down on the side of the confidentiality provsions being more like the evidentiary disqualification of husband and wife. Even if they waive it, the sessions are confidential. Otherwise, it is a very slippery slope- straight into the mud!

Oran

WHAT'S NEWS?
National & International Family News
Chronologically Compiled & Edited by Les Wallerstein

Obama Widens Medical Rights for Same-Sex Partners & Others President Obama has ordered the Department of Health and Human Services to issue new rules aimed at granting hospital visiting rights to same-sex partners, widows and widowers with no children, members of religious orders, and others for whom their loved ones are not always immediate relatives. The new rules will take time to draft and put in place. When the new rules are enacted, they will affect any hospital that participates in Medicare or Medicaid, the government programs to cover the elderly and the poor. (Sheryl Gay Stolberg, New York Times, 4/16/2010)

Landmark Anti-Bullying Law The governor of Massachusetts has signed a bill cracking down on school bullies. The law requires schools to draft and enforce an anti-bullying policy with specific requirements: that staff report all bullying to the school principal, that principals notify parents of both bully and victim when an incident occurs, and that schools train staff in how to prevent and respond to bullying. (Associated Press / CBS News, 5/3/2010)

Changes in US Birthrate Statistics An analysis of census and other data by the Pew Research Center found the percentage of babies born to non-Hispanic white women declined to 53 percent of all births in 2008 — only slightly more than half — compared with 65 percent in 1990. The percentage of American children born to single mothers reached a record 41 percent in 2008 — up from 28 percent in 1990. And there are now more births to women 35 and older than to teenagers, a reversal of the ratio in 1990. Births to women over 40 made up 3 percent of births by 2008, triple the rate of two decades ago. One in 10 births in the United States are to a mother younger than 20 years old. (Sam Roberts, New York Times, 5/5/2010)

Group Backs Ritual 'Nick' as Female Circumcision Option In a controversial change to a longstanding policy concerning the practice of female circumcision in some African and Asian cultures, the American Academy of Pediatrics is suggesting that American doctors be given permission to perform a ceremonial pinprick or "nick" on girls from these cultures if it would keep their families from sending them overseas for the full circumcision. Some opponents of female genital mutilation, or F.G.M., denounced the statement, including representative Joseph Crowley, Democrat of New York, who said "F.G.M. serves no medical purpose, and it is rightfully banned in the U.S." Currently, more than 130 million women and girls worldwide have undergone female genital cutting,

according to the American Congress of Obstetricians and Gynecologists. (Pam Belluck, New York Times, 5/6/2010

Ciao Amore The exhibitors at what was billed as Italy's first divorce trade fair were a predictable mishmash of lawyers, real estate agents, divorce planners, paternity testing centers and dating agencies. It was held in the basement of a large business hotel. In 2007, according to the most recent statistics available, there were more than 81,000 separations and 50,000 divorces among Italy's population of 59 million. Thirty years ago, divorces did not break the 12,000 mark. The growing divorce rate led one entrepeneur to open what she claims to be Italy's first divorce planning agency, Ciao Amore. ("Ciao means both hello and goodbye in Italian," she said, adding that she "wanted to give the idea of 'I never want to see you again,' and 'this isn't necessarily a goodbye.' ") (Elisabetta Povoledo, New York Times, 5/9/2010)

Global Death Rates Drop for Children 5 or Younger Death rates in children under 5 are dropping in many countries at a surprisingly fast pace, according to a new report based on data from 187 countries from 1970 to 2010. Worldwide, 7.7 million children are expected to die this year — still an enormous number, but a vast improvement over the 1990 figure of 11.9 million. A third of all deaths in children occur in south Asia, and half in sub-Saharan Africa. Newborns account for 41 percent of those who die. The lowest death rates, per 1,000 births, are in Singapore (2.5) and Iceland (2.6); the highest are in Equatorial Guinea (180.1) and Chad (168.7). In rich countries, some of the worst rates are in the United States (6.7) and Britain (5.3). (Denise Grady, New York Times, 5/24/2010)

With This Ring, I Thee What? When her divorce was nearly final three years ago, the ex-wife asked a jeweler to transform her wedding ring into a divorce ring. After 13 years of marriage she had been "very attached" to her wedding ring and hoped that reconfiguring it could "be kind of a buffer into her independence again and help facilitate healing." Her jeweler severed the gold band and refashioned it into a ring with a gap, across which strands of silver are stitched. Those strands represent her son, "because although the bonds have been broken, the stitches still keep that unity together." Meanwhile, the resale market for used engagement and wedding rings is booming, with popular online auction sites like IDoNowIDont.com, and ExBoyfriendJewelry.com. For those who prefer not to part with wedding rings, the Wedding Ring Coffin is a casket-shaped box for decommissioned rings. According to the company that sells them, customers have ordered personalized engraved messages for the coffins like, "He broke my heart but I broke the bank" and "The end of an error!" (Andrew Adam Newman, New York Times, 5/27/2010)

Interracial Marriages in America Reach Record Highs A study by the Pew Research Center found that intermarriage among Asian, black, Hispanic and white people now accounts for a record 1 in 6 new marriages in the United States. Tellingly, blacks and whites remain the least-common variety of interracial pairing. Still, black-white unions make up 1 in 60 new marriages today, compared with fewer than 1 in 1,000 back when Barack Obama's parents wed a half-century ago. Among all people currently married, 8 percent of marriages were mixed in 2008, compared with 6.8 percent in 2000 and 4.5 percent in 1990. Of all 3.8 million adults who married in 2008, 31 percent of Asians, 26 percent of Hispanic people, 16 percent of blacks and 9 percent of whites married a person whose race or ethnicity was different from their own. Those were all record highs. (Sam Roberts, New York Times, 6/4/2010)

Hawaii Governor Vetoes Same-Sex Unions Linda Lingle vetoed legislation Tuesday that would have permitted same-sex civil unions, which the Legislature approved in April. The measure would have granted to gay couples the same rights and benefits that the state provides to married couples. Gov. Lingle's veto is expected to be the last word on the proposal this year because House leaders have said they will not try to override it. (New York Times, Associated Press, 7/7/2010)

Judge Topples U.S. Rejection of Same-Sex Unions In two separate cases, a federal judge in Massachusetts found that a law barring the federal government from recognizing same-sex marriage is unconstitutional, ruling that gay and lesbian couples deserve the same federal benefits as heterosexual couples. In the case brought by Attorney General Martha Coakley, Judge Tauro found that the 1996 law, known as the Defense of Marriage Act, or DOMA, compels Massachusetts to discriminate against its own citizens in order to receive federal money for certain programs. The other case, brought by Gay and Lesbian Advocates and Defenders, focused on equal protection as applied to a handful of federal benefits. The judge agreed that the federal law violated the equal protection clause of the Constitution by denying benefits to one class of married couples — gay men and lesbians — but not others. If the rulings find their way to the Supreme Court and are upheld there, they will put same-sex marriage within the constitutional realm of protection, just as interracial marriage has been for decades. (Abby Goodnough and John Schwartz, New York Times, 7/9/2010)

Les Wallerstein is a family mediator and collaborative lawyer in Lexington. He can be contacted at (781) 862-1099, or at wallerstein@socialaw.com

Editor's Note: *Below is an excerpt from the recent Federal District Court decision (briefly summarized on the opposite page) finding key provisions of the Federal Defense of Marriage Act ("DOMA") unconstitutional, with citations omitted.*

Gill v. Office of Personnel Management
United States District Court, D. Massachusetts
Judge Joseph L. Tauro, July 8, 2010

MEMORANDUM

"... This court can readily dispose of the notion that denying federal recognition to same-sex marriages might encourage responsible procreation, because the government concedes that this objective bears no rational relationship to the operation of DOMA. Since the enactment of DOMA, a consensus has developed among the medical, psychological, and social welfare communities that children raised by gay and lesbian parents are just as likely to be well-adjusted as those raised by heterosexual parents. But even if Congress believed at the time of DOMA's passage that children had the best chance at success if raised jointly by their biological mothers and fathers, a desire to encourage heterosexual couples to procreate and rear their own children more responsibly would not provide a rational basis for denying federal recognition to same-sex marriages. Such denial does nothing to promote stability in heterosexual parenting. Rather, it "prevent[s] children of same-sex couples from enjoying the immeasurable advantages that flow from the assurance of a stable family structure," when afforded equal recognition under federal law.

Moreover, an interest in encouraging responsible procreation plainly cannot provide a rational basis upon which to exclude same-sex marriages from federal recognition because, as Justice Scalia pointed out in his dissent to Lawrence v. Texas, the ability to procreate is not now, nor has it ever been, a precondition to marriage in any state in the country. Indeed, "the sterile and the elderly" have never been denied the right to marry by any of the fifty states. And the federal government has never considered denying recognition to marriage based on an ability or inability to procreate.

Similarly, Congress' asserted interest in defending and nurturing heterosexual marriage is not "grounded in sufficient factual context [for this court] to ascertain some relation" between it and the classification DOMA effects. To begin with, this court notes that DOMA cannot possibly encourage Plaintiffs to marry members of the opposite sex because Plaintiffs are already married to members of the same sex. But more generally, this court cannot discern a means by which the federal government's denial of benefits to same-sex spouses might encourage homosexual people to marry members of the opposite sex. And denying marriage-based benefits to same-sex spouses certainly bears no reasonable relation to any interest the government might have in making heterosexual marriages more secure...."

MCFM NEWS

2010-2011 ELECTION RESULTS

Based on the results of MCFM's annual elections, we are pleased to announce that the following people will serve as MCFM Officers and Directors.

MCFM Officers:

President: Lynn K. Cooper
Vice President: Laurie S. Udell
Vice President: Rebecca J. Gagné
Clerk: Jonathan E. Fields
Past President &
Treasurer: Kathleen A. Townsend

MCFM Directors:

Kate Fanger, S. Tracy Fischer, Tanya Gurevich, Laurie Israel, William C. Leonard, Steven Nisenbaum, Lynda J. Robbins, Mary A. Samberg, Mary A. Socha, Diane W. Spears, Les Wallerstein, Marion Lee Wasserman & Fran L. Whyman

MCFM PRESENTS ITS 9th ANNUAL FAMILY MEDIATION INSTITUTE

NOVEMBER 19, 2010
8:30 - 5:00 PM
Wellesley Community Center

COME MEET MARSHA KLINE PRUETT AT HER KEYNOTE PRESENTATION: PARTNERSHIP PARENTING: How Fathers and Mothers Parent Differently & Making The Most of it For Your Children

Marsha Kline Pruett, Ph.D., M.S.L. is the Maconda Brown O'Connor Professor at Smith College School for Social Work. She is nationally noted for her research regarding father involvement, child adjustment to divorce, parenting plans for young children, school interventions, and work/family conflict. Dr. Kline Pruett has written over 75 articles, chapters and reviews and is the co-author of Your Divorce Advisor: A Lawyer and a Psychologist Guide You through the Legal and Emotional Landscape of Divorce and Partnership Parenting: How Men and Women Parent Differently and Why it Helps Your Kids and Can Strengthen Your Marriage. Come learn how parents can form a team, enabling them to put their differences to constructive use, bringing diversity and dynamism to the family, and fostering the growth of their children.

SEE ENCLOSED FLIER FOR DETAILS
SAVE THE DATE BY REGISTERING EARLY

MEDIATION PEER GROUP MEETINGS

Merrimack Valley Mediators Group: We are a group of family law mediators who have been meeting (almost) monthly since before the turn of the century! The criterion for membership is a desire to learn and share. Meetings are held at 8:15 AM on the last Tuesday of the month from January to June, and from September to November, at the office of Lynda Robbins, 11 Summer Street, Chelmsford. Please call Lynda at (978) 256-8178 or Karen Levitt at (978) 458-5550 for information and directions. All MCFM members are welcome.

Pioneer-Valley Mediators Group: This Western Mass group is newly organized and will be meeting monthly in December on the first Wednesday of every month at the end of the day, from 4 to 6 pm or 6 to 8 pm (depending on the interest) in Northampton at a location to be announced. Please email Kathy Townsend for further information at <Kathleen@divmedgroup.com>

Mediators in Search of a Group? As mediators we almost always work alone with our clients. Peer supervision offers mediators an opportunity to share their experiences of that process, and to learn from each other in a relaxed, safe setting. Most MCFM directors are members of peer supervision groups. All it takes to start a new group is the interest of a few, like-minded mediators and a willingness to get together on a semi-regular, informal basis. In the hope of promoting peer supervision groups a board member will volunteer to help facilitate your initial meetings. Please contact Kathy Townsend <Kathleen@divmedgroup.com> who will coordinate this outreach, and put mediators in touch with like-minded mediators.

CLASSIC MCFM "T" SHIRTS

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Ramona Goutiere
P.O. Box 59
Ashland, NH 03217-0059
QUESTIONS: 781-449-4430

HELP BUILD AN ARCHIVE!

In the spring of 2006, MCFM entered into an agreement with the Department of Dispute Resolution at the University of Massachusetts to create an archive of Massachusetts family-related mediation materials. The two key goals are to preserve our history and make it available for research purposes.

We're looking for anything and everything related to family mediation in Massachusetts — both originals and copies — including: meeting agendas and minutes, budgets, treasurer's reports, committee reports, correspondence, publications, fliers, posters, photographs, advertisements and announcements.

We need your help to maximize this opportunity to preserve the history of mediation in Massachusetts. **Please rummage through your office files, attics, basements and garages.** ***If you discover materials that you are willing to donate please contact Les Wallerstein at wallerstein@socialaw.com.***

OFFER MCFM BROCHURES IN YOUR WAITING ROOM

Copies of MCFM's brochure are available for members. Brochure costs are as follows: Two for $1; 25 for $10; 60 for 20; 100 for $30; and 150 for $40. **A blank area on the back is provided for members to personalize their brochures, or to address for mailing.**

TO OBTAIN COPIES MEMBERS MAY
call Ramona Goutiere: 781-449-4430
or email: masscouncil@mcfm.org

"If you would marry suitably, marry your equal."

Ovid

ANNOUNCEMENTS

* *

All mediators and friends of mediation are invited to submit announcements of interest to the mediation community to wallerstein@socialaw.com, for free publication.

* *

CALL FOR NOMINATIONS
THE 6TH ANNUAL JOHN FISKE AWARD

In 2005, the Massachusetts Council on Family Mediation established the John Fiske Award for Excellence in Mediation. The recipient is someone who has shown excellence in and/or contributed to family mediation in Massachusetts.

We are seeking nominations for this year's award, to be presented at the Fall Institute on November 19, 2010.

Please tell us in 100 words or less why you are making the nomination. Submit your nomination directly to me at lynn@lynnkcooper.com no later than September 15, 2010.

I look forward to hearing from you!

Thanks,

Lynn K. Cooper
President, MCFM

MCFM'S 2010 - 2011 FREE
PROFESSIONAL DEVELOPMENT PROGRAMS

TOPICS & SPEAKERS ARE WORKS IN PROGRESS

SAVE ALL THE DATES!

October 13, 2010—Wellesley Free Library
December 8, 2010—Weston Public Library
February 9, 2011—Weston Public Library
April 13, 2011—Wellesley Free Library

2:00 - 4:00 PM

CHECK WWW.MCFM.ORG FOR UPDATES

JOIN MCFM'S NEW AUDIOVISUAL COMMITTEE

Dear Colleagues,

On behalf of the Massachusetts Council of Family Mediators (MCFM), which has been serving the needs of divorcing families and mediators since 1982, we are contacting professionals in Massachusetts in organizations that work with families in conflict, including divorcing and divorced families.

MCFM has designated us as a Committee (shudder!) to develop a library of audiovisual materials relating to family conflict and divorce as an inventory available for professionals across Massachusetts to borrow and use. Ideally, this could be a joint project of a consortium of organizations and designed so that we create the ultimate resource on divorce to meet the needs of our clientele and the professionals who serve them throughout the Commonwealth.

Our vision is to catalogue and locate the materials both virtually, online at a website, and at a physical repository, such as a library, or the Social Law Library, MCLE, a law library of a Courthouse, or a volunteer law firm willing to house it.

Ideally, this could be a joint project of a consortium of organizations and designed so that we create the ultimate resource on divorce to meet the needs of our clientele and the professionals who serve them throughout the Commonwealth.

Volunteers and ideas for audiovisual resources (e.g., popular movies about divorce, psychoeducational DVDs and CD-ROMs, useful websites, and/or videogames are most welcome. Also, let us know of other organizations or individual professional practitioners who may also be interested in this project.

We look forward to hearing from you. Don't be bashful. This could be an exciting and worthwhile project which will benefit everyone across the State.

Thank you for giving this your attention.

Please forward all communications to our MCFM Administrator, Ramona Goutiere, using the email address admin@mcfm.org. You may also donate materials by sending these to Ramona at: Ramona Goutiere, Administrator, Massachusetts Council of Family Mediators (MCFM), P.O. Box 59. Ashland, NH 03217-0059 (Phone and Fax: 781-449-4430).

Sincerely,

Steven Nisenbaum, Ph.D., J.D., Chairperson
Diane Spears, Esq.
Jon Fields, Esq.

ELDER DECISIONS / AGREEMENT RESOURCES, LLC

A Three Day Advanced Mediation Training in Elder (Adult Family) Mediation

Tuesday, Wednesday, Thursday
October 19-21, 2010

9:00 AM - 5:00 PM on days 1 & 2
9:00 AM - 4:00 PM on day 3

Elder mediation helps seniors and their adult children resolve conflicts around issues such as living arrangements, care giving, financial planning, inheritance/estate disputes, medical decisions, family communication, driving, and guardianship. This three-day course will cover:

Mental & Physical Effects of Aging: Normal Aging, Physical Changes, Cognitive Changes, Alzheimer's Disease and Other Forms of Dementia, Depression in the Elderly, Families and Caregiving- Intergenerational Relationships, Long Term Care and In-Home Services, Costs of Care, Who pays for Services and Maintaining Independence.

Legal Planning: Planning for Financial Management, Medicaid Eligibility, Medical Decision Making, Asset Protection and Guardianship.
Advanced Multi-Party Mediation Skills & Challenges Of Elder Mediation: Neutrality vs. Mediator Advocacy, Common Hurdles, New Strategies for Intake, Exploring the Hybrid Model of Elder Mediation, Working with Large, Dispersed Family Groups, Ethical Concerns, Age Bias, Considering and Maximizing Capacity, Complex Multi-Party Role Plays and more!

Seminar on Marketing Your Mediation Practice: Interactive exercises and specific tools for elder mediators.

Elder Decisions' Training Team: Arline Kardasis, MAT & Crystal Thorpe, MBA, MSW.

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Continued on next page

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ELDER DECISIONS / AGREEMENT RESOURCES, LLC

$725 by early registration deadline ($825 thereafter)

See website for details www.ElderDecisions.com

Breakfast pastries, coffee & lunch on site.
Snacks & course materials included.

Social Work CEUs Offered

To be held at The Walker Center
A Charming B&B and Conference Center in Newton
Just off Rte. 95 and the Mass Pike (Rte. 90)
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John A. Fiske, Esq. & Laurie Israel, Esq.

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Established in 1979, the CDSC is a private, not-for-profit mediation service dedicated to providing an alternative and affordable forum for resolving conflict. CDSC also provides training programs in mediation and conflict management to individuals and organizations. For more information please contact us at (617) 876-5376, or by email: cdscinfo@communitydispute.org, or at our web site: www.communitydispute.org.

THE FMQ WANTS YOU!

The Family Mediation Quarterly is always open to submissions, especially from new authors. Every mediator has stories to tell and skills to share.

To submit articles or discuss proposed articles
call Les Wallerstein (781) 862-1099
or email wallerstein@socialaw.com

NOW'S THE TIME TO SHARE YOUR STORY!

"Nothing is an unmixed blessing."

Horace 65 - 8 B.C.

Honoré Daumier (1808 – 1879)

Honoré Daumier was a French political cartoonist who penned thousands of satirical drawings. Amongst his most famous lithographs were the Lawyers and Justice series, many of which were published in a Parisian newspaper, Le Charivari.

No. 39 May, 1849

You are very pretty... We shall easily prove it was all your husband's fault...

JOIN US

MEMBERSHIP: MCFM membership is open to all practitioners and friends of family mediation. MCFM invites guest speakers to present topics of interest at four, free, professional development meetings annually. These educational meetings often satisfy certification requirements. Members are encouraged to bring guests. MCFM members also receive the Family Mediation Quarterly and are welcome to serve on any MCFM Committee. All members are listed online at MCFM's web site, and all listings are "linked" to a member's email. Annual membership dues are $90, or $50 for full-time students. Please direct all membership inquiries to **Ramona Goutiere at masscouncil@mcfm.org**

REFFERALDIRECTORY: Every MCFM member is eligible to be listed in MCFM's Referral Directory. Each listing in the Referral Directory allows a member to share detailed information explaining her/his mediation practice and philosophy with prospective clients. The Referral Directory is printed and mailed to all Massachusetts judges, and to each listed member. The most current directory is always available online at www.mcfm.org. The annual Referral Directory fee is $60. Please direct all referral directory inquiries to **Rebecca J. Gagné at rebecca@gagneatlaw.com**

PRACTICE STANDARDS: MCFM was the first organization to issue Practice Standards for mediators in Massachusetts. To be listed in the MCFM Referral Directory each member must agree to uphold the MCFM Standards of Practice. **MCFM's Practice Standards are available online at www.mcfm.org**

CERTIFICATION & RECERTIFICATION: MCFM was the first organization to certify family mediators in Massachusetts. Certification is reserved for mediators with significant mediation experience, advanced training and education. Extensive mediation experience may be substituted for an advanced academic degree. **MCFM's certification & recertification requirements are available online at www.mcfm.org**

MCFM's certification & recertification requirements are available online at www.mcfm.org. Every MCFM certified mediator is designated as such in both the online and the printed Referral Directory. Certified mediators must have malpractice insurance, and certification must be renewed every two years. Only certified mediators are eligible to receive referrals from the Massachusetts Probate & Family Court through MCFM.

Certification applications cost $150 and re-certification applications cost $50. For more information contact **S. Tracy Fischer at tracy@tracyfischermediation.com** For certification or re-certification applications contact **Ramona Goutiere at masscouncil@mcfm.org.**

DIRECTORATE

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EDITOR'S NOTICE

MCFM
Family Mediation Quarterly

Les Wallerstein, Editor
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The FMQ is dedicated to family mediators working with traditional and non-traditional families. All family mediators share common interests and concerns. The FMQ will provide a forum to explore that common ground.

The FMQ intends to be a journal of practical use to family mediators. As mediation is designed to resolve conflicts, the FMQ will not shy away from controversy. The FMQ welcomes the broadest spectrum of diverse opinions that affect the practice of family mediation.

The contents of the FMQ are published at the discretion of the editor, in consultation with the MCFM Board of Directors. The FMQ does not necessarily express the views of the MCFM unless specifically stated.

The FMQ is mailed and emailed to all MCFM members. The FMQ is mailed to all Probate & Family Court Judges, all local Dispute Resolution Coordinators, all Family Service Officers and all law school libraries in Massachusetts. An archive of all previous editions of the FMQ are available online in PDF at <www.mcfm.org>, accompanied by a cumulative index of articles to facilitate data retrieval.

MCFM members may submit notices of mediation-related events for free publication. Complimentary publication of notices from mediation-related organizations is available on a reciprocal basis. Commercial advertising is also available.

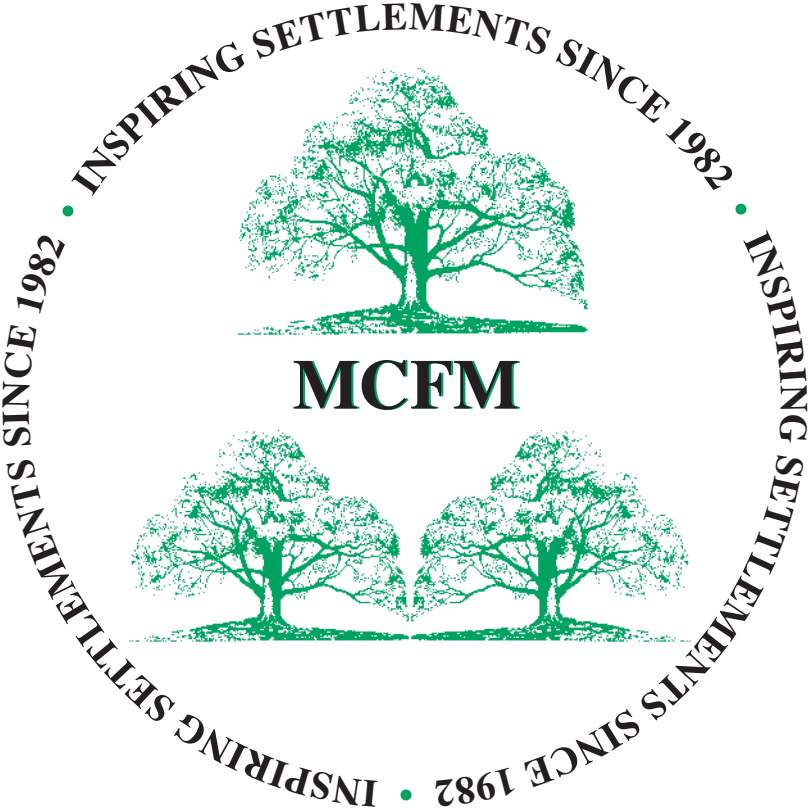
Please submit all contributions for the FMQ to the editor, either by email or computer disk. Submissions may be edited for clarity and length, and must scrupulously safeguard client confidentiality. The following deadlines for all submissions will be observed:

Summer: July 15th Fall: October 15th
Winter: January 15th Spring: April 15th

All MCFM members and friends of family mediation are encouraged to contribute to the FMQ. Every mediator has stories to tell and skills to teach. Please share yours.

MASSACHUSETTS COUNCIL ON FAMILY MEDIATION

www.mcfm.org



The Family Mediation Quarterly is printed on paper stock that is manufactured with non-polluting wind-generated energy, and 100% recycled (with 100% post consumer recycled fiber), processed chlorine free and FSC (Forest Stewardship Council) certified.