

March
2010

**MESSAGE FROM OUTGOING PRESIDENT
LEIGH ANN ROBERTS**



TAPM Members, it is truly hard to believe that my time as TAPM President is coming to a close. It makes me sad that many of you will no longer have cause to call me Madame President – but, alas, it is time for some new blood and a real bridgebuilder, Larry Bridgesmith, to take the reigns. Larry and I have worked closely this year toward a vision for a more expansive TAPM membership, greater committee and member involvement and an increased impact on mediation and conflict resolution in our state. It is my sincere hope that the work done by me and, more importantly, by the many TAPM member volunteers, committee members and chairs, will provide a strong foundation for the work to come. I would like to thank our Board, Lisa Smith, Regina Newson, our Committee Chairs and Members and all of you that participated in our peer groups and community meetings. Thank you for your service and commitment this year. It has been a pleasure to get to know each of you better and to serve along side of you. And to our full membership, now spanning throughout the state, it was great to see you at the TAPM conference in March where we enjoyed an amazing speaker, increased our skills and some of you called me Madame President once more, for the road. But, without further adieu, Larry.....

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**MESSAGE FROM INCOMING TAPM PRESIDENT 2010-2011
LARRY BRIDGESMITH**



Let's hear a rip roaring "Hip, hip, hooray!" for the great work Leigh Ann did with TAPM this year. There is more energy and synergy in the many faces of TAPM than I have known. Redesign of the TAPM website, significantly expanded board and committee structures, clearer vision for statewide and cooperative relationships with

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MEET THE MEDIATOR, CLAYTON OSBORN



Clayton is an entrepreneur at heart and started a technology company, TurnItUp Media, which synergized the music, advertising, and IT industries. He has also gained substantial experience in People Development and Leadership Consulting while interning with the Human Capital Group and now as the Technical Designer at Correct Care Solutions. In addition to Clayton's professional pursuits, he finds time to be actively involved in his faith as a youth pastor for young men ages 14-16. One of Clayton's greatest accomplishments was completing a 2-year full-time LDS mission trip where he ministered to the people of inner city Kansas City, MO. Educationally, Clayton earned a bachelors degree in Business Administration from Cal Poly University where he also was awarded a full-ride basketball scholarship. He obtained a Master of Conflict Resolution from Lipscomb University, in which he was recently asked to come back and teach Mediation as an adjunct professor. He boasts that his training in ADR has made him a better husband! Clayton is married to his beautiful wife Kaillee Osborn.

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

My favorite tool in my kit is the envisioning technique. This relates very closely the BATNA (Best Alternative To a Negotiated Agreement), WATNA (Worst Alternative...), and MLATNA (Most Likely...). When parties are at a perceived impasse...it is always helpful to guide them into reality as you candidly ask them, "help me understand what that looks like?" I would say in my limited experience I get a 90% success rate, meaning the mediation continues forward.

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

Huh...I don't know, but I do wish I were Batman!

What is your pet peeve?

Messy houses, offices, cars, yards...you get the point, I am a neat freak!

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

I am married to my best friend, Kaillee, no kids yet...but when people at church bother me by asking the same question over and over, "When do you think you will have kids?" I look at them square in the eyes and say very seriously, "We practice A LOT!" ha ha...they never ask again.

What are your hobbies?

I love playing basketball any chance I can get. Lately, my wife and I have gotten into P90X...I have never eaten so healthy in my life. I can't forget going to the movies...love it! The nerdy side of me...well, I am endeared to computers.

Why did you become a mediator?

I believe in finding a better way. I am an advocate for the power that lies in each individual. Nothing is more fulfilling to me than seeing a person realize their potential. Each person has the ability to act and not be acted upon. Mediation is a forum that I have found that helps people realize this basic principle.

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What is your favorite mediation read?

Beyond Reason by Roger Fisher and Daniel Shapiro

What is your phobia?

I despise throwing-up (although it feels good afterwards). The anxiety right before the burst is the worst!

What is your favorite vacation spot?

My favorite so far is Paris and London...we went with some friends over Christmas and New Years, and I have never witnessed anything close since.

Personal or professional accomplishments you are particularly proud of:

Ahh...shucks, now you put me on the spot! What I like most about me is that I have a drive to succeed even when I am in the most unfavorable (perceived, of course) circumstances...I refuse to quite or fail.

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

I was born in Magna, Utah. Family, school, and well...that is what my wife and I felt the next adventure should be. We don't know how long we will be in Nashville, but we have enjoyed all the many wonderful opportunities and people we have been blessed with.

Please complete these sentences:

"I have a burning desire to provide for my family and have a lot left over to help others."

"People tell me I look like Jean Claude Van Damme and Ryan Seacrest."

"If I could have a 30 minute conversation with anyone (alive or otherwise, famous or not), I would want to speak with Richard Simmons...how does he get those beautiful curls?"

What is your favorite TV show?

24, Lost, and The West Wing...that is when I have time.

What is your favorite food/restaurant?

Italian all the way...nothing better than a plate full of spaghetti with "big-old" meatballs!

What is your favorite flavor of ice cream?

I actually love fresh fruit malts. Peach, strawberry, raspberry, and banana. If I have to get a store-bought half-gallon, I usually go for Rocky Road or Oreo.

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

Hindsight is always 20/20...When I figure out what I want to do for a career, I will let you know!

TAPM ANNUAL MEETING AND SEMINAR

By Regina B. Newson

TAPM held its annual meeting and seminar March 4-6, 2010 at Lipscomb University, with a series of events that gave approximately 80 TAPM members who attended an opportunity to expand their mediation tools and network with fellow mediators. It began with a reception and pre-seminar dialogue with our guest speaker on Thursday night and then continued with the seminar on Friday and followed with a post-seminar mediator summit on Saturday morning geared toward further discussions about how to expand mediation services throughout the state.

Report on Annual Business Meeting

TAPM held its annual meeting during lunch on the day of the seminar. New officers were elected as follows:

President: Larry Bridgesmith

President-Elect: Richard Murrell

Secretary: Mark Travis

Treasurer: Clayton Osborn

Immediate Past President (and ex officio board member): Leigh Ann Roberts

In addition to the above officers who serve on the board, Jay Barry of Lebanon, Howard Vogel of Knoxville and Stephen Shields of Memphis were elected to join existing directors Douglas Berry and Doris Brocker TAPM Board of Directors. Paul DeHoff was honored as an outgoing member of the board, and Leigh Ann Roberts was honored for her service as president. (I was also recognized for serving as secretary and for my "bull dog" role in pressing people to turn in articles for the newsletter over the past few years.)

Review and Commentary on Education Program

The featured speaker this year was Jack Himmelstein, co-founder and co-director of the Center for Understanding in Conflict, a national nonprofit educational institute which trains lawyers and other professionals in what he describes as the "understanding-based" approach to resolving conflict. He is co-author of the award-winning *Challenging Conflict: Mediation Through Understanding*, recently published by the American Bar Association in cooperation with the Harvard Program on Negotiation (co-winner of the CPR International Institute for Conflict Resolution Outstanding Book Award). For the past 25 years, he has conducted introductory and advanced trainings in this approach to conflict resolution throughout the United States, as well as in Europe and Israel, including trainings for attorneys at the Harvard Program on Negotiation. More recently, these trainings have included bringing this approach into the teaching of collaborative practice.



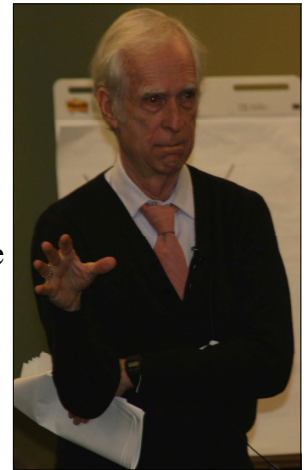
TAPM started its meeting on the evening of March 4th with a reception for Mr. Himmelstein. This turned into essentially a two-hour advance class which prepared us for what was to come on Friday the 5th when the primary 6-hour seminar was conducted. On Thursday evening, we were introduced in small groups to the concept of "looping" and that concept was further explored during the Friday seminar, along with other concepts in Mr. Himmelstein's "understanding-based" approach to mediation."

Looping is basically the process where the mediator listens to the parties and then repeats back to the parties what he thinks he heard – and, most importantly, obtains confirmation from the parties that the posi-

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tion has been stated correctly. If the parties do agree with the mediator's statement, then they have just "looped." However, if that is not what they meant, then the parties clarify what they said. The mediator asks the parties for more information until they agree that what is being said is correct. The mediator is seeking to understand the conflict. Not only is the mediator trying to understand the conflict, he is helping the parties themselves to understand the conflict and the root cause of the dispute. This understanding of the cause of the conflict will hopefully help the parties understand what they need to settle their dispute. It takes the traditional use of reframing to a different level – with the focus on true understanding of the parties' position and clear confirmation from the parties of that understanding, and not simply an acquiescence by the parties in how the mediator has chosen to restate their positions.



For some mediators, Mr. Himmelstein's approach to mediation is different because he seldom utilizes caucuses or separate sessions but is a strong believer that true understanding can best be achieved with the parties meeting together. While some mediators have always used a joint session approach, many mediators have come to rely extensively on "shuttle diplomacy" between the parties with very little direct contact.



As I watched Friday's session unfold I was taken back to 1995 when I first started training to be a mediator. The parties were in the same room throughout the mediation. It was never the mediators' dispute. The parties had the power to understand their dispute. It was the responsibility of the parties to determine when, how and if a dispute was to be resolved. Our job as a mediator was to help them work together and make decisions that would allow them to have a future relationship. We did this by uncovering the root cause of the dispute. We would ask question after question until we (mediators) understood the conflict. We did all of this with the parties and their representatives present. The law

was and continues to be part of the mediation process. Good lawyers and mediators work together to help their clients resolve their issues.

Somewhere along the line we got side-tracked in mediation. We began separating the parties before we even met with them. We began to take ownership of the dispute, without letting the parties own their own dispute. We shuttle back and forth not allowing the parties the opportunity to talk to each other. People in dispute are in pain. They need desperately to talk to each other. If they do not talk, the conflict continues. Our responsibility is to help them understand their conflict. Conflict is healthy; it allows people and mediators to grow. Thank you Mr. Himmelstein for reminding us of our proper role in resolving conflict.



How We Encourage and Facilitate R31 Family Mediation for Low-Income Parents in Knox County, Tennessee

by
Jackie Kittrell

In Knox County, the Community Mediation Center has been providing services to those needing excellent community-based mediation regardless of ability to pay since 1994. CMC grew out of a collaboration between the UT College of Law Legal Clinic, the Knoxville Bar Association, Legal Aid of East Tennessee, and the local courts, to provide mediation to low-income people who needed a divorce (priced on a sliding income-based scale), and to pro se parties who had hearings in General Sessions Civil Court. CMC also mediates Criminal Sessions matters screened through the District Attorney's office and Juvenile Court cases involving delinquency, truancy, unruly behavior, dependency, and never-married parenting issues such as custody and visitation. Currently, CMC accepts approximately 700 referrals each year from Knox County Courts and divorce courts in surrounding counties. In addition, we accept referrals from non-court sources: schools, police and sheriff's departments, Legal Aid, social service agencies, churches, neighborhood associations, bar associations and attorneys, and individuals who self-refer. We train volunteers to co-mediate civil and family cases and have approximately 50 volunteers who mediate regularly for us. Many of our volunteers are R-31 listed, but not all. Our basic volunteer mediation training is approved as a R-31 family training.

One of our programs is designed to help low-income parents find R-31 mediators who will mediate their case for a reduced fee or for free. The bench and bar have identified one of the most pressing "access to justice" issues in Tennessee as those cases involving domestic disputes where one or both parties have no legal counsel. Private mediation rates are going up every year (currently in Knox County \$150-\$550/hr with a 2 hr minimum). With many rural counties having little or no access to R-31 family mediators, we need to think creatively about how to help people find good mediators who will do pro bono cases. The judicial system needs help to find mediators for parents who are willing and ready to sit down and work out their parenting rights and responsibilities in a way which preserves and improves their sanity, their limited financial resources, and their healthy relationships with their children. Our program also helps mediators get referrals!

To help fund programs such as ours, the Tennessee General Assembly passed TCA Section 36-6-413 (b) (2)(A) to create funds (by taxing marriage licenses) so that people could access parenting mediation and mandatory parenting classes even if they couldn't afford market rates. The fund is administered through the Administrative Office of the Courts. The AOC offers competitive grants to groups like CMC and also subsidizes mediation costs. People getting a divorce or in juvenile court can request that the judge order a low-cost or no-cost mediation to be done by a R-31 family mediator. (The fund also covers costs for "parenting education programs and any related services to resolve family conflict in divorce and post-divorce matters."). The Tennessee Supreme Court Rule 38 then provides the guidelines for: how the AOC administers the Fund; how a mediator is requested and appointed; and how s/he will be paid from the fund. The necessary forms for judges, legal counsel and mediators are on the AOC website.

CMC maintains a list of local R-31 family mediators who agree to take R-38 mediations. We then assist the parties to select a mediator from our list. We do preliminary domestic violence screening on each case, as well as screening for whether there are allegations necessitating a Guardian Ad Litem for the child. We also refer to legal counsel if an unrepresented party needs legal advice before mediating. Staff then assists the R-31 mediator in filing any paperwork, be it 30-day or final mediation reports, invoice or time sheets. CMC mediation space is available for R-31 mediators on our list to use for free for these cases.

The Transformative Power of Apology in Mediation

by [Kregg Nance](#)

In a recent ADR Newsletter, Tamara Ambar Losel, the executive director of the Nashville Conflict Resolution Center, wrote a very good article about forgiveness and the power and healing that this can bring to people. I would like to expand on that and discuss the transformational opportunity that I have experienced in mediation when a sincere apology is possible.

I am still somewhat new to mediation, having worked the past two years with NCRC and Sumner Mediation Services doing victim/offender as well as civil mediations. However, I have noticed how often apology can be an impasse-breaker no matter the subject.

A transformative moment happened during one particular mediation between a pastor of a church and a former congregant, who had become disaffected with the church and was now taunting and disparaging the pastor. The pastor had gone to the police to try to get the young man to stay away and not bother the other congregants as they came to church. We spent an hour or so going through both sides and had been able to address some of the technical issues and turn it into an agreement, including that the young man would not trespass or bother other church-goers. I had assumed that we were going to be wrapping it up soon when unexpectedly the pastor turns to me with tears in his eyes and says "I am a third degree black belt, please help me". This came out of the blue and in my haste to get the agreement down on paper I had failed to notice the underlying interest for the pastor. He was deeply hurt and angry that this young man, who he used to think of almost as a son, had rejected him and was now degrading him to others. The pastor seemed to be saying that his emotions were too unresolved and that if the young man didn't stop, he was afraid he might really lose his temper and hurt him.

I decided to set aside the agreement for a moment and began to ask the young man if this was the first time he had seen the effect of his taunting on the pastor. Even though the young man was extremely proud and defiant in his new beliefs, he seemed to recognize the pain his actions had brought. It took some more time, but at one point, the young man came forth with a sincere apology. The pastor's face went from a pained and angry sadness to full relief. It was as if the world was right again and no agreement on trespassing would have ever achieved the same thing.

This really stayed with me and soon after that mediation, I took a wonderful course at Lipscomb University's Institute for Conflict Management on apology that further deepened my appreciation. The book assigned to this course was called *On Apology* by Aaron Lazare. Lazare writes that there are good and bad apologies and that bad apologies can make a situation worse, while good apologies can be transformative and even help make forgiveness easier. There are five elements of a good apology. The first is to acknowledge the offense by "acknowledging the offending behaviors in adequate detail." The second element is to offer explanation, but make sure it doesn't sound like an excuse. Then it is good to show remorse with the actual words of apology and even a bit of "self scolding" and genuineness. The fourth element is to make reparations by offering a promise of future action or a way to repair what damage may have been done. And finally, the element of timing can be crucial. A good apology at the wrong time, such as too early or too late, can misfire; at the right time, it is more likely to be accepted.

It is obviously difficult to have all elements happening at once in the midst of a mediation, but the common theme across all elements was sincerity. I understand that apology does not need to be a part of every mediation for it to be successful. It does seem, however, that there might be more opportunities than we realize to explore that option, especially given its transformative power.

TAPM Civil Mediators Debate Issues & Learn about Ethics 20/20by Marnie Huff*

TAPM mediators and guests met at a February 10, 2010 Civil Mediators Peer Group lunch & learn program on "**Ethics 20/20 Issues & ADR: A Report on the ABA Ethics 20/20 Commission.**"

Having just returned from the American Bar Association's Ethics 20/20 Commission meetings in Orlando, I was happy to share information that was just made public. I also provided copies of the Commission's Preliminary Issues Outline, available online at <http://www.abanet.org/ethics2020/outline.pdf>.

I expect the ABA will consider changes in its model ethics rules for attorneys as early as this August, including rules governing foreign attorneys who wish to appear in U.S. arbitrations and court cases. Outsourcing, "virtual" offices, and concerns about non-encrypted client information in emails or on the Internet are also high on the agenda.

One upshot of this: **attorneys may soon insist that mediators and arbitrators beef up their computer security in order to protect confidential client information.**

A fun portion of the program was our informal discussion of ethical dilemmas and sharing of information:

- disclosure obligations of ADR professionals who market their businesses on Facebook and other social networking sites
- mediators' disclosure obligations with regard to "repeat player" clients, given the rules on confidentiality, impartiality, and disclosure of conflicts of interests and relationships in Rule 31 and Appendix A to Rule 31
- ethical perils of multi-jurisdictional practice, including the recently amended Rule 5.5 of the Rules of Professional Conduct applicable to Tennessee attorneys
- what happens when confidentiality issues intersect with Tennessee public records laws or government/corporate policies regarding preservation of email (and is email to a mediator included in those policies)
- Rule 31 mediators may now submit written requests to receive written ethics advisory opinions from the Tennessee ADR Commission, pursuant to new paragraph (d), Section 9 of Tennessee Supreme Court Rule 31, available via <http://www.tsc.state.tn.us/geninfo/Programs/ADR/adrdir.asp>

Needless to say, our 90 minutes together for learning and networking flew by!

It's been a pleasure to chair the Civil Mediators Group during the past year. Peer discussions coupled with CME/CLE programs are a wonderful TAPM membership benefit. Thank you, TAPM President Leigh Ann Roberts, for inviting me to serve TAPM this year.

If you would like to plan a future lunch & learn program for the TAPM civil mediators peer group, contact me at 615-812-5557. I will pass your ideas on to my successor.

Save the dates: next TAPM Civil Mediators Peer Group lunch & learn: **Wed. April 14, 2010** at 11:30 am at Vanderbilt Loews Kraus Gallery (across the hall from restaurant): **Richard Murrell on Mediation of Workers Comp and Other Employment Disputes.**

See you at future TAPM events!

Warm regards, Marnie Huff

(Bridgesmith Continued from page 1)

the entire mediation community are but some of the contributions she shepherded this past year. The organization is more robust and more inclusive than ever before. We are indebted to Leigh Ann for her work on our behalf. I can only hope to be half as successful.

I welcome both the honor and the responsibility for assuming her mantle and intend to capitalize on the momentum I have inherited from her leadership. TAPM has a critical opportunity awaiting it to become an increasingly valued resource and trusted advocate for mediation in all its forms across the entire state of Tennessee. In the wake of the work done on behalf of mediation with the Supreme Court Access to Justice Commission and the statewide participation in the Mediation Vision facilitated by Roger Conner, we must continue to validate, educate and mediate our way to success as practitioners of a unique and vital craft. Mediation in courts, communities and companies holds the promise of culture change and social enhancement. Our state and its citizens deserve our best efforts.

On the shoulders of giants we all stand, and the time has come for us to become the giants the next generation of problem-solvers relies on to reach even greater heights.

I cannot wait to work with you to do just that. Please join me.

MEMBERSHIP DUES 2010-11 RENEWAL FORM

Name: _____

Address _____ City _____ State _____ Zip _____

Email: _____

Phone _____ Fax _____

Please renew my TAPM DUES – ANNUAL MEMBERSHIP (JAN – DEC.)

_____ **Member: \$100 (Rule 31 trained) - This entitles you to be a voting member, attend all meetings, receive e-news, maintain an individual web page on the TAPM website, plus discounted CME.**

_____ ****PLEASE SET UP 3 RECURRING MONTHLY PAYMENTS OF \$35.00 EACH (Total of \$105.00 – includes Annual Dues of \$100.00 plus \$5.00 handling fee) USING MY CREDIT CARD INFORMATION BELOW.**

_____ **Non-voting Member: \$50-- This category includes students, volunteer mediators and interested members of the public or judiciary. This entitles you to attend all meetings, receive e-news, and have discounted CME.**

Pay online at www.tennmediators.org, or mail a check to TAPM, P. O. Box 150626, Nashville, TN 37215



TAPM MISSION STATEMENT:

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

P.O. Box 150626
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TAPM CALENDAR OF EVENTS

**CIVIL PEER GROUP
MEETS WEDNESDAY**

**April 14, 2010
11:30 a.m. to 1:00 p.m.
Richard Murrell
will discuss**

**Mediation of Workers Comp and Other Employment Disputes
Loew's Vanderbilt Hotel
EAT Restaurant**

**TAPM BOARD
2010-2011**

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President**

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**Howard Vogel
Director**

**Leigh Ann Roberts
Immediate Past President**

**FAMILY PEER GROUP
MEETS THURSDAY**

**APRIL 15, 2010
Noon
Brown Bag Lunch
Oasis Center
1704 Charlotte Ave.
Nashville, TN 37204**

TAPM Mediation News will be published on the following dates:

- May 15, 2010**
- July 15, 2010**
- September 15, 2010**
- November 15, 2010**

**Lisa W. Smith
TAPM Administrator
615-383-TAPM**

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