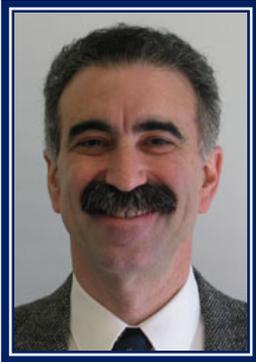


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## Why Mediation Still Matters

By: Harry Goldman  
Mediator, Arbitrator

### INSIDE THIS ISSUE

Why Mediation Still Matters	1
Focus: William J. Rush	2
WAMS Buzzz...	3
Article continued from page 1	3
WAMS Celebrates 30 Years in 2011	4

When I joined the WAMS mediator panel in 1986, the concept of mediation in civil litigation was a fairly new idea. It has been my privilege to have participated in the growth of what is now a key component in the litigation process.

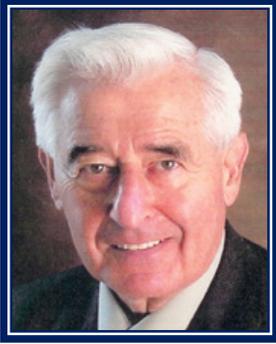
Many lawyers were initially hesitant or openly hostile to mediation, as it was perceived by some as usurping the role of counsel. Part of my job was to explain to my colleagues that mediation was actually a useful settlement tool that could be employed by representatives of both plaintiffs and defendants to educate clients about the risks of trial and complexities of litigation. The intervening years have seen a gratifying evolution in attitudes toward mediation, as we now have court-ordered mediation in many jurisdictions. Courts such as the U.S. District Court for the Western District of Washington have implemented specific reporting procedures by the mediator to federal judges. Business contracts commonly require mediation prior to instituting litigation. Mediation and other forms of alternative dispute resolution are frequently taught in law schools. ADR seminars are regularly presented throughout the country; for example, the University of Washington conducts an annual ADR conference that draws an international audience.

If mediation is so firmly established in 2011 as part of the framework of litigation, why would I choose to

discuss its relevance and importance now? I believe that mediation is beneficial on many different levels, regardless of the outcome. Of course, everyone wants his or her dispute to resolve, but parties often gain valuable information and a perspective that may not have been present beforehand in that small percentage of cases that do not settle. As a possible analogy to the mediation process, consider that computers were also in their comparative infancy in 1986 and have evolved exponentially in succeeding years. Computer users no longer need to know an intricate version of DOS to operate their systems, and few of us use more than a fraction of the computer's functionality. We are frustrated when the computer doesn't perform in accordance with our expectations, even if the malfunction is partly due to our failure as users to properly appreciate and contribute to the proper operation of the computer. That being said, few would deny the benefits of computers.

In a similar vein, users of the mediation process have come to assume that the mediator will succeed in achieving a settlement in every case. This is a reasonable goal as the parties are paying a considerable price for the service and coming to the table to settle the case. When the mediator is a trained professional, the participants have a right to expect that he or she will use experience and skill to craft a settlement of the dispute. It is important for all participants to remember, however,

*...Continued on Page 3*



## Mediator Focus: William J. Rush

By: Penny Gans, WAMS Staff

Bill Rush is a gracious and wise “old school” lawyer with a twinkle in his eye and lifetime of stories to tell. For the last twenty-five years, WAMS clients have benefited from his broad legal experience and mediation skills. Bill’s introduction to mediation came through his participation in the voluntary Federal Court 39.1 alternative dispute resolution program that began on a trial basis in 1968–69. Then in 1986, WAMS founder Michael Gillie invited him to join Harry Goldman and Larry Levy on the WAMS mediator panel, trained by ADR pioneer Alan Alhadeff. Unlike his two mediator trainee colleagues who have been full-time mediators for many years, Bill has continued his private law practice while mediating hundreds of cases at WAMS.

Mentor, teacher, author, occasional Judge Pro Tem and highly respected member of the Washington State Bar, Bill was born in Tacoma and earned his BA from the University of Puget Sound and his JD from the University of Washington law school. His firm, Rush, Hannula, Harkins & Kyler, was founded in 1959 and presently numbers eight attorneys, all graduates of Washington law schools.

In 50 years of practicing law, Bill has represented both plaintiffs and defendants in matters ranging from medical negligence and product liability to construction, business, and family law. He is admitted to practice before the U.S. District Courts in Washington, the Ninth Circuit Court of Appeals and the U.S. Supreme Court. Bill has taken nearly 30 cases to the appellate level, some of which have established legal precedents that are still being cited. His case involving the relationship between emergency room doctors and a local hospital established the Ostensible Agency principal. Another case established rules regarding a general contractor’s overall responsibility for the safety of a worksite. In a

third memorable case, Bill won a verdict against the State of Washington when a convict serving a life term in the State penitentiary was included in the warden’s experimental “take a lifer to dinner” rehabilitation program. The convict escaped through the bathroom window of the host’s home, fled to Tacoma, and subsequently shot and killed the owner of a gun shop during a robbery attempt.

As a mediator, Bill feels that his job is to help parties find their own settlement. He believes that the best way to “take the acrimony out of the process” is to separate the parties, although “it’s OK for the parties to be vitriolic with the mediator.” In Bill’s experience, the client is usually well represented by the attorney, who may be aware of facts and issues that are unknown to the mediator. Bill is sensitive to the relationship between attorney and client and is careful to follow the attorney’s wishes as to how he can best work with the client. He encourages attorneys to provide enough case background to enable him to move the negotiations expeditiously toward settlement.

When not working with clients, Bill stays fit playing handball and racquetball and has enjoyed Husky football as a season ticket holder for 50 years. Also an avid traveler, Bill and his wife (a professional photographer) have visited almost every corner of the world. Highlights include a people-to-people trip to China in the early 1980’s to discuss medical malpractice issues with Chinese doctors and court representatives; a behind-the-scenes tour of Oman, Dubai, and Kuwait before 9/11; a 1991 trip to his parents’ Ukrainian birthplace where he met nine first cousins still living there; and journeys to both the North and South Poles. The trip to the North Pole was on a 300-foot Russian icebreaker and included a brief swim in a hole carved out of the ice over 8400-foot deep water while the ship’s armed crew kept a lookout for polar bears. That’s Bill’s idea of fun!

WAMS congratulates Bill on his exceptional career and wishes him many more years of good health and mediation success. Bill, along with Harry and Larry, was honored by WAMS in January for his distinguished career as a WAMS panel member.



## ...WAMS Buzzz

2011 marks the 30<sup>th</sup> anniversary for WAMS as well as a significant career milestone for Harry Goldman, Larry Levy and Bill Rush. WAMS honored them for their 25 years of service as WAMS Super Mediators at our Twelfth Night celebration in early January. Historically, Twelfth Night was an annual event in medieval Europe and colonial America that provided a catharsis of social tensions, frustrations and anxieties. Seems like a very appropriate day to honor these mediators who have done the same for 25 years. Congratulations!



Harry Goldman, Bill Rush, and Larry Levy

### *"Why Mediation Still Matters" Continued from page 1...*

that mediation is a collaborative process that requires everyone to exercise his or her best efforts if a resolution is to be achieved. Success is defined not only by the result but also by how it is accomplished.

In order to achieve success, the mediator needs the assistance of everyone involved in the process. First and foremost, each participant, whether it is the client, the attorney, an insurance claim representative, or any other decision-maker, must be willing to commit him or herself to the effort. If someone is present only because the mediation has been court-ordered, the likelihood of success drops. If an individual is convinced even before the mediation starts of the righteousness of his or her position, believes the sole reason for the mediation is simply to move the other side, is not interested in listening to the opposition, or is unwilling to consider the potential risks of going forward to trial, mediation may not be productive. If all parties are not engaged in the discussion, the mediator's task is much more difficult. Everyone must come prepared to do what is necessary to accomplish the universal goal of resolution and remain committed to that end.

The relevance and importance of mediation can be sustained through this collaborative effort. In this increasing era of congested court dockets and the ever-mounting expense of litigation, we must use our best efforts to achieve the optimal result for the participants.

It is easy to forget that not everyone at the mediation understands the process or is familiar with the format. I always start my mediations by explaining to people who are new to the process what my role is and what the general framework of the sessions will be. I want every person in the room to know what is going on and understand what we are doing and why. It matters how the road is traveled to the final destination.

To achieve the ultimate goal of resolving a dispute in mediation, it is critical that everyone from the most sophisticated user of the process to the bewildered first-time participant become engaged in the effort. I want mediation to be relevant, not only in resolving the dispute itself, but in helping parties appreciate the risks of going forward so they will be comfortable with the outcome.

I am confident as I approach my 5,000<sup>th</sup> mediation and a quarter century of assisting others in resolving disputes that the process is even more relevant today than it was in 1986. Few people today question the importance of mediation as a settlement tool. A voluntary settlement, even if imperfect, is almost always preferable to a result imposed by a third party. Because of the ongoing commitment of everyone involved in the process, I believe mediation will continue to evolve as an effective way to help settle disputes and will still matter for many years to come.

## Did you Know?

The WAMS website now offers a mobile version for easier viewing on your mobile phone or blackberry. Just click "Switch to mobile site" on the homepage to utilize this feature. [www.usamwa.com](http://www.usamwa.com)



**Don Kelley**

"Mr. Kelley handled the matter in a highly professional and competent manner, and I would recommend him to anyone seeking a careful, compassionate, competent and craftsman-like mediator."

- WAMS Client

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Since then, Washington Arbitration & Mediation Service has grown to become the leading alternative dispute resolution organization in the Pacific Northwest. Through the combined efforts of the WAMS administrative staff and panel members, WAMS has earned a reputation over the past 30 years for excellence in all aspects of ADR.

Visit the WAMS website at [www.usamwa.com](http://www.usamwa.com) to learn more about the history of WAMS and its evolution since 1981.

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