

# THE CAUCUS

The F.M.C.S. Retiree Newsletter by Friends of FMCS History  
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## **FMCS Best Place to Work**

With rankings first being held in 2003, this marks the fifth time FMCS was selected for the top spot, having earned this distinction in 2005, 2007, 2015, and in 2017. Additionally, the Agency has consistently ranked in the top 4 since the “small agency” category rankings were first included in 2007. Data points revealed that FMCS’s 2018 employee engagement score is 87.2 out of 100, which placed FMCS at 1 out of 29 small agencies. The FMCS score improved by 0.3 points since last year.

## **Oral History Interviews**

Since the Fall 2018 Caucus, three additional interviews<sup>1</sup> were recorded, making the overall total 215 interviews since the first interview of retired mediator Rolf Valtin on June 6, 1983. During those 36 years, I’ve conducted an average of 6 per year.

GWU Special Collections recently made available the interviews of these six former Directors: Bernie Delury, Jim Scarce, Kay McMurray, Ken Moffett, Peter Hurtgen, and Wayne Horvitz. To view those, click below.

<https://archive.org/search.php?query=lac0007>

As I have reported several times before there are a number of other interviews on my website (mediationhistory.com). These include: Jewell Myers, Pete Nichols, Jim Chandler, Nita Niehoff, Dan Edwards, C.K. Call, Jack Toner, and Lou Towers.

## **FMCS Office of Arbitration Services: New Policies and Prices**

In a recent message to arbitrators and the public, FMCS announced updated and revised Policies and Procedures. The announcement also included small increases in the various fees charged for arbitration services.

## **FMCS Commissions New Mediator Class of 2019**

18 new mediators were sworn in March 19, 2019 in the National Office before

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<sup>1</sup> Kathleen Tunney, Tim Healy (Chicago), and Shane Davis (Minneapolis)

participating a five-day training program designed to prepare them for their role as dispute resolution and conflict management experts.

The training included transitioning to a neutral, administrative procedures, mediator code of conduct and ethics, FMCS history, the NLRA and alternative dispute resolution, and a Welcoming by Deputy Director Richard Giacalone.

The Director told them that FMCS is evolving from a focus on resolving labor-relations disputes to a new and exciting work on both the domestic and the international arena and in very sophisticated areas like negotiated rulemaking.

Giacalone offered his advice: Learn to listen. That's half of what we do, making sure we understand what the problem is that the parties are facing and understanding it completely. That helps us to help them and helping them is what it's all about."

## **Passing of Former Director Bernard E. DeLury**

Former Director Bernard "Bernie" E. DeLury passed away on March 20, 2019. Bernie was the 12th FMCS Director. Nominated by President H.W. Bush, he was sworn in on April 27, 1990. He services as Assistant Secretary of Labor and New York State Labor Department official, Bernie began his career as a journeyman building tradesman. His corporate labor relations experience included Vice President of labor relations for the Sea Land Corporation. He served FMCS until 1993. Bernie was the kind of Director who loved to mediate so he dealt successfully with many tough negotiations. (See page one to hear Bernie in an OH Interview.)

## **FMCS and EEOC AGREE to Share in the Resolution of Federal Workplace Disputes**

The Equal Employment Opportunity Commission (EEOC) and FMCS have officially committed to work together to resolve federal workplace disputes by utilizing Alternative Dispute Resolution (ADR) as a means of efficiently reducing the backlog of federal sector charges.

Acting EEOC Chair Victoria A. Lipnic and FMCS Director Nominee Richard Giacalone signed a national memorandum of agreement, creating a voluntary working relationship between the two agencies. Under its terms, FMCS will work with the EEOC to identify parties involved in federal sector complaints and provide the opportunity to resolve pending conflicts prior to a decision by an EEOC Administrative Judge.

## **Time for a National Mediation Policy Act!**

by Jim Melamed, CEO [Mediate.com](http://Mediate.com)

The current state of discourse in America has become polarized to the point of dangerous dysfunction. Joint action is needed to address this polarization. How can we effectively move forward as a society when every issue is presented as a cynical debate? What are our options here? What would be the most effective way for our society to consider the daunting challenges that we face?

One answer is a National Mediation Policy Act. Consistent with the essential voluntariness of the mediation process itself, this Act would not require anyone to do anything. Rather, a National Mediation Policy Act would express a national policy preference that people experiencing conflict should have available quality opportunities for mediation. A National Mediation Policy Act would express a social preference that it is better for citizens and for America that disputants have the early opportunity to reach agreement in mediation, rather than to have disputes result in expensive and burdensome litigation, remain unresolved or lead to violence.

This concept of "bringing mediation to the masses" is ever more realistic and vital. Mediation has been growing in America and globally for decades. Organizations such as [Mediate.com](http://Mediate.com), the National Association for Community Mediation ([NAFCM](http://NAFCM.org)), the Association for Conflict Resolution ([ACR](http://ACR.org)), and the Academy of Professional Family Mediators ([APFM](http://APFM.org)) have been leading the way in making mediation a part of everyday life in America. It is now time to recognize this societal shift in how we best resolve disputes and embrace mediation as a national policy preference. Importantly, the increasing use of online mediation is now providing access to valuable online mediation services. A mediator is now readily available to each of us with a few clicks on our computer or phone.

Most capable conflict resolution and problem-solving conversations do not happen on their own. Conflict engagement without a capable impartial mediator too often results in grandstanding, vitriolic accusations between "us" and "them," and a continued fraying of our social fabric. Our current social and political contentiousness, including "hate of others," will not cure itself, particularly when our political leaders are perhaps most guilty of riling up the masses for selfish perceived political gain.

What our society needs is new leadership, one that recognizes that the one and only way we can most capably resolve the many daunting issues facing our society, the world and us as individuals is an agreed-upon process that supports all sides most effectively "saying our piece" and, critically, also "listening to the other side." When opportunities are created for this mutual exchange to occur in a safe and respectful environment, true progress can and will be made, whether the issues are within our immediate family, our workplace, or our greater national and international communities.

And thus, while we understand that, "Rome was not built in a day," it is also true that "the longest journey begins with but a single step." Our answer for a better future has never been clearer: **We as a society must recommit to the value of advancing most**

**capable conversations. Our ability to thrive – indeed, our very survival as a people and as a planet – depends upon our commitment to solve problems and resolve conflict in the most productive and beneficial ways possible.**

On these bases, [Mediate.com](https://www.mediate.com) and the broader mediation and conflict resolution communities are calling for each 2020 Presidential candidate to declare their support for a “National Mediation Policy Act.” The Act can be very simple. We suggest that a first National Mediation Policy Act might be a simple and elegant policy statement along the lines of the following:

*“It is the policy of the United States that, when two or more individuals or entities are in protracted dispute, it is preferable that such disputants actively and voluntarily take part in solution-seeking mediation, rather than allowing the dispute to remain unresolved or result in costly litigation, continued conflict, and elevated risk of violence.”*

And so, paradoxically, it is out of our most troubled times that there can now emerge a critical recognition of the opportunity for our country and for the world to “see the light” and now embrace most capable mediated conflict resolution and problem-solving discussions for our personal, national and global survival.

Please now join [Mediate.com](https://www.mediate.com) in recognizing the importance of mediation and of promoting a National Mediation Policy Act by [completing this form asking each 2020 Presidential candidate to support a National Mediation Policy Act](#). We will then be in touch with suggested next steps for our making a 2020 National Mediation Policy Act a reality. This is the shift in social and civic consciousness, American exceptionalism, and American leadership that we and the world now need. [Please join us!](#)

### **Cyrus Ching: First FMCS Director (1947 to 1953)**

In Spring 1964 during an orientation of new FMCS mediators, I attended a lunch with other new mediators at the historic Occidental Restaurant, where the Cuban missile crisis had been resolved a few years earlier, just one block from the White House. While the enjoyment of visiting that historic restaurant was great, it didn’t compare with the guest at our table. Cyrus Ching regaled us with his humor and wit throughout the entire meal. His best story came at the near end of the meal, while we were enjoying dessert, Ching began filling his pipe with tobacco. As he did that, he said: “Notice how long this process with my pipe can take.” Then he held it high so we could all see it clearly, and said: “This pipe is a wonderful mediation tool because it can take as much time as I wish to fill it, light it, relight it, or clean it. When I do that in a mediation session, with all eyes on my pipe and me, there is a long pregnant period of awkward silence, and very often it will be filled eventually by the voice of a nervous bargainer expressing unintended but useful information.

## **The Cyrus Ching Conference Room at FMCS**

In 1973, FMCS Director Bill Usery dedicated the main FMCS conference room, in the old Department of Labor building at Constitution and 14<sup>th</sup> Street NW, to Cyrus Ching. A photo made at the time, shows Usery with Ching's widow looking at the painting of Cyrus Ching during a dedication ceremony establishing the Cyrus Ching conference room.

In his dedication remarks, Usery noted how appropriate the naming of the conference room was since Ching had been the first FMCS Director. Usery also said he hoped that wherever the FMCS National Office might move in the future, there would always be a conference room dedicated to Mr. Ching.

At the first location after leaving the old Department of Labor building, FMCS Director James Scarse responded to Usery's hope by designating the main conference room as the Cy Ching conference room. At that location at 21<sup>st</sup> and K NW. the FMCS National Office remained from 1976 to late 2016.

Since late 2016, the FMCS national office has been at 250 E St SW, Independence Square, and Director Allison Beck followed the practice by designating the main conference room as the Cyrus Ching conference room.

## **FMCS Director McCoy Lost his Job to Joe Finnegan**

President Eisenhower's Secretary of Labor James Mitchell (1953–1961) had extensive experience in collective bargaining and labor relations. Early in WW II, Mitchell headed the labor relations division of the Army Construction Program, later he served as director of industrial personnel for the War Department, in charge of one million men. After World War II, he returned to the private sector as director for labor relations at Bloomingdale Brothers Stores. With that level of experience prior to becoming Labor Secretary, he had strong interest in labor-management disputes even though that was the responsibility of the Federal Mediation and Conciliation Service (FMCS). But Mitchell apparently viewed FMCS as one of the divisions under his control.

FMCS Director Whitney McCoy (1953-54) viewed FMCS as an independent agency, and himself as a Presidential appointee assigned to lead FMCS. But appearances seemed to run counter to that independence. In the Department of Labor Building, McCoy's office on Mahogany Row was next to Mitchell's office and among offices of several Assistant Secretaries of Labor. The location of McCoy's office resulted from the 1947 take-over of the United States Conciliation Service (USCS) offices when the USCS was replaced by the creation of FMCS.

Secretary Mitchell insisted on getting regular updates on collective bargaining disputes, particularly major negotiations. McCoy was comfortable with providing weekly written negotiations reports, much like what he might provide to newspapers. But Mitchell

wanted an oral report at any moment he had an interest. To that end, the Secretary ordered workmen to make a doorway between his office and the Director's office.

The Secretary also insisted that McCoy attend the Secretary's staff meeting with his Assistant Secretaries. At which, McCoy was expected to brief everyone on FMCS and current labor negotiations.

McCoy, a law school professor, an arbitrator and author of a 1946 text on arbitration, did not hide his displeasure. When the disagreement reached the White House, Mitchell's stronger connection there resulted in a request for McCoy's resignation after one year and four months on the job.

McCoy returned to his law professorship and his arbitration practice just one day before his successor moved in.

Joseph Finnegan became the next FMCS Director. Since Finnegan had been Mitchell's labor lawyer when they both were in the private sector, their relationship matched what Mitchell expected. Finnegan served five years and nine months, ending with the inauguration of John F. Kennedy

### **Bill Usery was appointed by President Nixon as Assistant Secretary of Labor for Labor Management Relations in March 1970.**

A week before the start of fall classes in 1972, the Philadelphia teacher's union called a strike following failed negotiations. Since the strike was illegal, a local judge placed the top three union officials in jail when they refused to stop the strike. Several days into the strike, Assistant Secretary of Labor Bill Usery was asked to help.

At the time, I headed an office under Bill Usery, which provided information about state and local government labor relations. Usery called me to his office in early afternoon saying that the following morning he was going to Philadelphia to mediate a teacher strike. He asked me to provide him with as much information as I could find that might be helpful. Before he left the office at 6PM, I provided him with three pages of information my staff and I had gathered.

Four days later, Usery called me asking me to assemble my staff so he could thank all of us. His over the top thanks was followed by his description of what he had done to settle the strike. These are the high lights of what he said:

He called the hotel where the mediation would be held and reserved four staterooms. Next, he called the wives of the three union officials and asked them to come to the hotel where a stateroom was available for each of them. Then he went to the judge who had put the union leaders in jail, and asked the judge to release the three to his custody because he could not mediate with them not present. The judge agreed. When Usery arrived at the hotel with the union officials, who had spent five days in jail, he gave each

a key to a stateroom and told them to enjoy their evening and come to the mediation conference room at 10:AM ready to settle the dispute.

## **Why are FMCS mediators called Commissioner?**

FMCS mediators are called Commissioner because of the language in the Act that created the U.S Department of Labor in 1913.

That Act states in part:

“... (T)he Secretary of Labor shall have the power to act as a mediator and to appoint commissioners of conciliation in labor disputes whenever in his judgement the interests of industrial peace may require it to be done ...”

Therefore, from the beginning of the United States Conciliation Service (USCS) in the Department of Labor, staff members assigned to assist labor and management in resolving their collective bargaining disputes were called Commissioners of Conciliation.

In 1947 when FMCS replaced the USCS, the first Director of FMCS, Cyrus Ching, considered changing that title because he thought the title Commissioner would be off-putting for labor and management representatives, and therefore unhelpful in resolving labor management disputes.

When informed of the historic basis of the title, Ching did not attempt to make that change. However, he did change the title from conciliator to mediator since the latter had gained popular usage by 1947.

While performing mediation, FMCS mediators will occasionally be addressed by the parties as Commissioner. But more often, they will be addressed simply as mediator.

Jim Elmore, a newly hired mediator in 1964, told fellow new mediator class members, including me, that when he proudly told his Irish father his new job title, his father responded: “That sounds like you’re the guy who runs the city water and sewer department.”

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