

How do I mediate? Let me count the ways (With apologies to Elizabeth Barrett Browning)

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Abstract

Mediation is now a well established practice within our society at large. Mediators can now get accredited to National Mediation Standards and training courses for new mediators are accessible through peak bodies and universities around the country. All the hallmarks for establishing a profession are in place. But is it a profession in the strictest sense? Is it possible that the orthodoxy attendant to a professional discipline is potentially counter-productive in stifling the creativity that lies at the heart of such a diverse and dynamic practice?

Back Story

My stomping ground is the workplace. One way or another I have been involved in workplace conflict resolution since the mid 1970's. In 1976 I was elected AWU secretary at The Rosebery EZ Company mine site on Tasmania's west coast. I was 23 years old and knew nothing. My two principal colleagues were tough and canny 'no nonsense' miners and negotiators twice my age. I learned a lot in a short space of time. I also learned of the recurrent futility and hostility of adversarial negotiation and grand standing. What I can say is this: for the most part we were honourable and likewise our adversaries but a lot of wasted time, energy and posturing was extended on not achieving very much - except perhaps for safety.

This was a time when the forty hour week prevailed and the workforce was sourced from the local community. Around this time nearby Mt Lyell in Queenstown announced the retrenchment of 400 workers. For an unskilled worker such as myself the signs were too ominous to ignore. I struck out on an odyssey that would see me ultimately sign on to a University Social Work, course complete my degree and venture into the embryonic Employee Assistance Program (EAP) field almost a decade later. In the interim the small mining communities that had waned and waxed for the better part of seven decades began an immediate and steady decline. By the early 1980's Rosebery was on the receiving end of massive retrenchments and the twelve hour shift drive/fly in fly out culture was to become the new norm. Unions were blindsided almost overnight and their influence was dramatically reduced.

In the EAP field the key focus then was on alcohol and drug counselling under the broad brush approach of providing employees access to free confidential counselling for problems ranging from family/marital to financial - for the extremely practical and relevant reason of avoiding the stigma of being referred to an alcohol and drug counsellor (mental health professionals please take note). It was not long before conflict began to frequently walk in the counselling door. At the same time I was being approached by supervisors and managers to assist with conflicts between team members and between themselves and team members. This time whilst I certainly knew something from my social work training and union experience it was a little knowledge of the dangerous kind.

My first port of call for assistance and new knowledge was The Conflict Resolution Network - a substantial and generous resource headed by Stella Cornelius and backed by capable and professional

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staff including the wonderful Shoshana Faire. This led me on to tertiary study at Latrobe University and the completion of a Conflict Resolution Certificate under the tutelage of Professor Tom Fisher. I have now been practising as a workplace mediator since 1995.

In my early years as a workplace mediator I likened myself to an amateur fly fisher fishing in thongs. I stepped into some very deep holes. Nothing teaches you about mistakes that can be readily learned and remedies applied like mediation in the workplace. In terms of the fly fisher I am willing to stride into deep and flowing waters but I am now wearing chest deep waders and seeking out firm footholds.

At an Advanced Mediation course conducted in Melbourne in 2005 by Professor John Wade I could not help but compare his business sized cards containing dot point strategies for duelling experts and various forms of apologies in mediation - to my own journey. There was a man, I said, who has also learned from his own unforeseen experiences. And so here I am. Still engaged in workplace conflict and casting a keen eye over our striving for professional status and the challenges and pitfalls of orthodoxy. We may know which brand of waders is best but we still have to know where and how to fish. Let's start with how today's mediators are trained and fledged.

Contemporary Mediator Training

Imagine you are training to be a pilot. You need the skills and knowledge. You need a flight plan. You need a well maintained and trusted conveyance. You need an appropriate screening process before take off. You need to be able to return to land. The basics.

With a model with a proven ability to do all of the above and with methods similar to those used with a flight simulator this is how today's mediators are taught and assessed.

Once we are up and flying - and able to return safely to land - we may be ready for new knowledge and experience but we are in no mind to be told what we should be doing because our model is basic and someone else's is better. We are flying.

I have fallen into this trap and I see it repeated over and over to the point that the only thing that makes sense to me is this: there is no one way with mediating human beings and our relationships - we are complex, paradoxical creatures whose very contrariness rests at times on the fact that someone has assumed that they know what we want and who we are. In this context the opposite also applies in regard to any model we have learned - it is not a prescription. It is an option - one among many.

At the National Mediation Conference in Melbourne in 2014 I attended some sessions where there was a presumption that a certain model, a certain practice - a certain orthodoxy if you like - was the faithful umbrella under which we all practice. Now I acknowledge this is now several years ago but if anything the concerns I am addressing here have intensified. A very old friend who attended Cambridge as an undergraduate once told me that in his first year you could attend whatever lectures and tutorials you liked as long as you passed whatever subject you sat for. He eventually sat and studied for what he became interested in and not what he entered University for in the first place. With this in mind - and I was unable to attend a number of sessions that did particularly interest me - I want to identify some variations to practice and at the same time make reference to those speakers who seem to be encouraging such practices, at least in spirit.

Conflict Management Assessment

Well respected South Australian mediator Greg Rooney²³⁰ is one practitioner who puts a fair bit of work into the front end. This is a whole subject on its own involving intake and pre-mediation among other things. In our own practice we have dispensed with pre-mediation meetings and now just call them conflict management assessments with the express purpose of determining the most suitable intervention(s) and appropriate levels of support. If someone needs conflict coaching or counselling we separate these roles from that of mediator. In our practice a mediator generally cannot coach and mediate the same parties. We still have a pre-mediation agreement document. The role of the workplace mediator, which is where we practice, is increasingly taking on that of a facilitator in which you are often negotiating support for the process and communicating with a range of people including participants, support persons, rehab coordinators, unions, HR, managers, doctors, insurance companies etc. Better to have all of these on board and working with you than to have them sit completely outside the process not knowing what is going on and influencing the outcome in isolation.

Just leave them to it

Greg also spoke about situations where the parties have fallen out over a single issue - a much less common occurrence than the complexity that comes with most conflicts, particularly workplace conflicts - where there is often a long history of conflict with much more than personality/relationship issues at stake. Where a misunderstanding can be cleared up in a relatively short space of time the relief felt by both parties is often palpable. There is often history surrounding this conflict in the sense that what has occurred since the first falling out has polarised the parties and left them feeling quite distressed, but the fundamental underpinnings of their relationship still appear to be quite intact. Whenever this occurs and the issue between them has all but resolved I offer them the opportunity to stay in my room and I withdraw to just leave them to it. Mostly I go for a walk and by the time I return they have gone. My staff always report that they walked out conversing and relaxed, that the shortest amount of time they stay chatting is 20 minutes and sometimes they stay for close to an hour.

Get the parties to active listen

Coming from a Social Work background and working in Employee Assistance Programs for almost ten years before I began mediating, practising and applying listening skills and managing emotions were essentially my bread and butter. Swedish mediator Liv Larsson²³¹ draws heavily on the power of empathy in mediation. In her presentation she made the fascinating observation that Shame and Empathy are two parts of the same whole. That the sense of shame one feels builds up a powerful sense of denial because within our heart it is what we feel that makes us ashamed just as what we feel underpins our capacity for empathy. I have been asking the parties to actively listen to each other right from the start of the first joint session - for the past two decades of my practice. They don't always get it right. Sometimes they get very defensive and sometimes they just refuse to listen. Mostly though they do a good enough job, some of them do an exceptional job. The mediator is always there to help. The parties are told that it is natural to feel defensive and that if they do - that is okay and I will just remind them that this first session is different to most discussions they have been involved in and that I just want them to listen.

For many parties this is the first time that they hear the other party acknowledge their concerns and I think this is a powerful first step to take in a mediation. They are reminded that acknowledging is not agreeing

²³⁰ Greg Rooney, 'How Mediators Think Matters' (Speech delivered at the National Mediation Conference, Melbourne, September 2014).

²³¹ Liv Larsson, 'Reclaiming Diversity and Transforming Shame: An Approach to Mediation' (Speech delivered at the National Mediation Conference, Melbourne, September 2014).

- nonetheless you can often sense any defensiveness beginning to dissipate during this session. This of course is not true for all. Sometimes parties are very stuck and find it very hard to move beyond continual justification of their own grievances. Sometimes they just refuse to listen. We always plan our mediation sessions for two hours on the understanding that most of us spend more time with the people we work with than the people we live with. This is potentially a medium to long term relationship. It makes absolutely no sense to us to attempt to resolve everything in one go. When someone is struggling to listen we will curtail that session and recommend some one-on-one work for that party with a conflict coach, counsellor or both before we conduct another joint session. We would do the same thing for someone who is struggling to assert themselves.

Whilst I do find this to be constructive and achievable there is one other very good reason for encouraging such a practice and this the educational benefit. We are literally encouraging them to work on their communication skills and their relationship from within the mediation.

Self determination under serious constraint

In a presentation by well known Melbourne mediator Jim Cyngler²³² he read a passage from Viktor Frankl's *Man's Search For Meaning* where Frankl is considering escaping from the Death Camp and he looks into the eyes of a fellow prisoner he is administering and changes his mind. Frankl concludes that he felt at peace with himself after making his decision. Liv Larsson in her presentation speaks of the anguish she felt at a failed outcome for a difficult mediation between indigenous displaced people of the Arctic Circle and a Swedish Government agency. The connection in both of these instances is what resides within the heart of the carer/mediator. In both instances there are sufficient reasons to justify escaping or why agreement was not found. In both instances justification is cast aside and a deeper reflection is conjured on the choices we make and how we apply them. There will always be reasons why outcomes are less than satisfactory. Often we could not have reasonably predicted what may eventually undo a mediation process. Nonetheless with hindsight it is far better to apply what we learn as a means of generating better outcomes for the future. This seems almost unnecessary to even state. Yet if we do go down a path of justification and fail to reflect on our own practice and what we can do better we can equally begin to justify our own methods at the expense of opening ourselves up to more enlightened strategies and processes.

Orthodoxy is necessary to some degree in establishing a profession such as mediation. It is also an ever present straight jacket into which we must ceaselessly ensure we are not being cast. In mediation we learn far more from our failures than we do from our successes.

Stop, summarise re-state

In their session on neuroscience and particularly on an experiment in which testosterone levels were measured and raised and - in conjunction - aggression and anger, North American neuroscience researchers Martha McClintock and Jill Tanz²³³ somewhat reassuringly remind us of the need for and the existence of sound strategies in managing aggressive situations within mediation. As it turns out prominent American psychologists of the fifties and sixties, Carl Rogers and Gerald Egan, were right on the money. I have a slide which contains the above heading which I refer to in supervisor and manager training for conducting difficult conversations when the temperature begins to rise. Stop at once from problem solving and call for a break. You can use a pretext or you can name it up. You

²³² Jim Cyngler, 'Maximising Self- Determination - Deal or No Deal' (Speech delivered at the National Mediation Conference, Melbourne, September 2014).

²³³ Martha McClintock and Jill Tanz, 'The Neuroscience of Conflict: Lessons for Mediators' (Speech delivered at the National Mediation Conference, Melbourne, September 2014).

can stop for five minutes, an hour, a day or a week.

Summarise - when you return make the effort to summarise what you have been hearing from the other party. Check in with them. Ask them what they have been hearing you or the other party say. You may be very surprised at their perceptions or lack of them.

Re-state your needs and change them if you need to.

I was listening to an interview with the Australian actress Jackie Weaver. She was relating a story in which during a live play a member of the audience collapsed and had to be treated by a doctor in the audience before being taken from the theatre. During this time the audience came immediately back to the present as did the actors. Once the play resumed the reverse occurred and all present were now back in the play. I have seen parties engaged in rising emotional conflict respond to the request to stop, go outside and share a coffee and start conversing amiably about the football. Does this make mediation a drama? Well we know it is so. Nonetheless our difficulty to resolve and discuss issues when emotions are high is all too real just as our desire to be connected and understood is all too real.

Sometimes we need to know just when to stop because if we do this well we will almost always be able to resume - and in so doing we also be giving our selves the confidence and opportunity to acknowledge emotions and not suppress them.

Bringing things to a head

Greg Rooney talked about irritation. This was almost like watching Greg have a conversation with his shadow. His angst was palpable as was his degree of sensitivity to the intangibles of a mediation process - the 'holding of the energy and intimate dynamics' generated within a mediation and the ultimate responsibility of the mediator to honour and respect such. My take on Greg's irritation is a little more mundane. Even though I think a serious connection can be made. In the workplace we are often requested to mediate after a series of conflict misadventures generally conducted over a significant period of time. By the time it reaches us there are many strands and missed opportunities that need 'bringing to a head'. We are effectively concentrating the drama and identifying a range of accountabilities that need to be accepted in order for the essence of the conflict to be satisfactorily distilled. In this light the level of irritation is at a quite inflammatory stage by the time we get to roll up our sleeves.

We know we will be making significant progress in the workplace when mediation is a genuine early intervention and not a bail out option. We spend most of our mediation conferences talking to ourselves. A few years ago I put it to our peak body that it was time for a workplace mediation conference where we were meeting and conversing with our clients and the panoply of players that regularly engage around workplace conflict. That time is surely due.