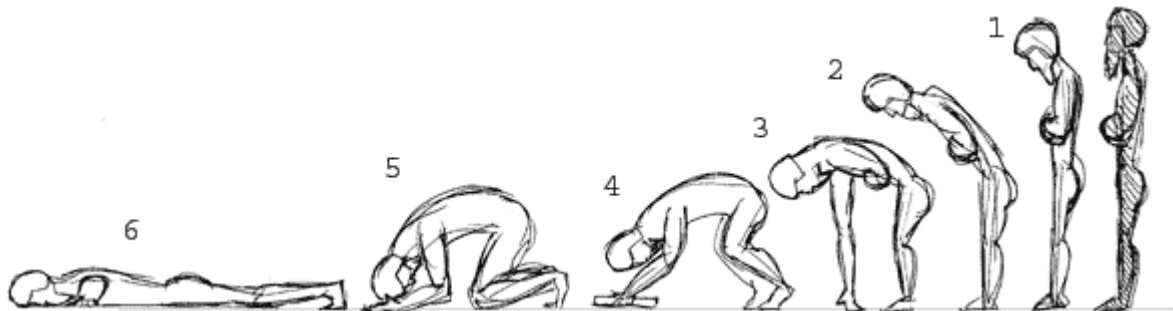


Kluwer Mediation Blog

The Physical Dimension of Mediation: lessons from Africa

Charlie Irvine (University of Strathclyde) · Tuesday, August 12th, 2014



I have written before on this blog about ‘mediating from the neck up’: my conviction that I was taught (and teach) a rationalistic, even cerebral, process that privileges thought over emotion and language over movement (see <http://kluwermediationblog.com/2013/12/13/mediating-from-the-neck-up/>).

As I acknowledged at the time, having this insight and doing something about it are two quite different propositions. How in practice do we mediate with the whole person?

Last week I witnessed a startling illustration of the power of the physical realm in our work. Strathclyde Law School (Glasgow, Scotland) runs an annual mediation summer school with John Marshall Law School (Chicago, Illinois). Students from the USA are thrown together with students from Scotland and beyond. As well as focusing on mediation practice the event provides a fantastic opportunity for inter-cultural learning. I could write at length about the contrast between “American can-do-ism” (Menkel-Meadow) and Scottish “expressions of powerlessness and general pessimism” (Genn and Paterson). This year we were also joined by a Nigerian chap, currently doing his PhD at Strathclyde. To spare his blushes I won’t name him but his contribution was priceless.

In classic fashion we ask students to “learn by doing” via mediation simulations. We saw the US style of mediation – direct, inquisitive and confident; and the Scottish – more diffident and reactive. Early in the week I had witnessed one element of the Nigerian approach. The student began his mediator’s introduction by informing the clients where he and his co-mediator lived and inviting them to come and speak to their families to find out what kind of people they were. Our Western students were astonished. Our tradition of the ‘neutral’ third party with no conflict of interest

inhibits that kind of personal contact. Yet it made perfect sense in terms of trust-building and mediator credibility.

On the final day we worked on a medical negligence scenario. A man had died after five hours in one of Glasgow's overstretched accident and emergency departments, the result of a burst appendix. His widow was seeking £1 million in compensation. Our Nigerian student was playing the role of Health Board Chief Executive and it had been agreed in private session (caucus for Americans) that the Board should make an apology to the widow. When the parties got back together the Chief Executive turned his chair to face her and began:

"In my country I would lie on the floor at this point."

(We all wondered what would happen next.)

He then took the lady's hand between his and bowed his head until it was some inches lower than hers. She looked astounded.

With his head lowered he spoke softly: "I am truly sorry for what happened to your husband."

The effect was instant and electric. I could see tears welling up in both the widow and one of the mediators. The widow accepted his apology. She went on to negotiate a decent settlement (at the upper end of the range in her instructions) but in a calm and conciliatory spirit. The mediation finished with a handshake and thanks.

Of course, the sceptics will cry, this is only a roleplay. True enough. Roleplays can be wooden and unrealistic. But when someone connects emotionally with another my impression is that the reactions are not forced. We forget about acting and respond as ourselves. The tears were no act, nor the ensuing atmosphere of cooperative problem-solving.

The impression I am left with is of the simplicity of the act. The words mattered, as did tone of voice, facial expression and the physical contact. But the real power lay in positioning himself lower than the person wronged. Here is supreme emotional intelligence: the Chief Executive, an authority figure, places himself lower than a grieving widow and instantly symbolizes sorrow and regret.

And that became the pivotal moment. Before, all was tense, sad and wary. After, the tone was utterly transformed. The remaining negotiations took place in a spirit of courtesy, respect and humanity.

I don't know enough about Nigeria to know whether this was typical or whether our student was particularly gifted in the emotional realm. The episode was, however, a stark reminder of how much Western cultures have lost by our habit of formalizing dispute resolution, and indeed human encounters. I have often found myself coaching clients on the elements of a good apology: an expression of sorrow, an admission of responsibility, an explanation of events and the "remedial dimension", or what I will do to make things right. And yet there I go again, mediating from the neck up, ignoring the physical. Couldn't my clients do a better job just by lowering their heads?

I know it's not that simple and yet I know what I witnessed. Our bodies are as much part of mediation as our minds and they matter, hugely, in our judgements. That little

tableau gave me a sharp emotional jolt. I doubt if I will ever forget it.

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The image shows a screenshot of the Kluwer Arbitration Practice Plus web application. The interface is dark-themed with blue and white text. At the top right, there is a navigation menu with options like 'Home', 'About', 'Features', 'Pricing', 'Contact Us', and 'Log Out'. Below the navigation, there is a header section with a checkmark icon and the text 'Explore Practice Plus'. The main content area displays a profile for 'Gary R. Egan' with a profile picture, name, and contact information. Below the profile, there are several data visualizations, including a 'Relationship Indicator' section with a circular chart and a 'Results Based on cases within Kluwer' section with a bar chart. The bottom of the image features the 'Kluwer Arbitration' logo on the left and the 'Wolters Kluwer' logo on the right.

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