

## Mediating In The Shower?

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Global Legal Post recently carried an article intriguingly entitled "Lawyers find Eureka moments in the shower". Sadly the article itself lacked the slightly salacious promise of its title. Instead, it focused on the results of a survey of London city lawyers, indicating that those surveyed did their most creative thinking in the shower or commuting (27% in each case). By contrast, only 10% attained their creative peak in the office.

Intuitively, this doesn't surprise me. There is inevitably (and quite properly) a rigour and a structure to office life. Institutions usually function that way, particularly the larger ones. Perhaps they need to, to avoid chaos.

But everything has its price. And part of that may be a loss of creativity.

So what really strikes me is that when we mediate we often replicate the same office environment in which (so the survey tells us) 90% of lawyers are not at their most creative. Most (but not all) of my mediating is done in a very "corporate" setting. It's usually very comfortable and well resourced - and has enabled me to create my own private league table of the best and worst law firm lunches - but that's another story!

I don't usually get to choose the venue for a mediation, and nor am I blaming those who do. It is simply a reflection of what has become an established norm in the commercial world. But it does behave us all to stand back and acknowledge that perhaps it is a little odd.

We often present mediation as an opportunity to generate some more creative thinking about outcomes and process, to be less confined by the constraints of binary, win-lose, court-focussed, rights-dependent outcomes. And then we hold the mediation in an environment associated with exactly those characteristics! Of course, some mediations are very binary and rights-focussed, whatever we hope for or attempt. But we are not exactly helping with our venues.

I acknowledge that much of this is economic and practical necessity. Whilst creativity might be boosted by mediating at a stately home/seaside cottage/mountain top retreat/Mongolian yurt (delete as appropriate), that is not always available and parties may not want to go there, or indeed pay for it. But nor should we lose sight of the impact of the choices made about venues, whoever makes those choices. I can vividly recall the impact on everyone of a mediation done in cramped, over-heated offices with no natural light, and equally the inspiration and "lift" provided by mediating in a beautiful 17th century country hotel.

And the question still arises - in the absence of the perfect venue, what can we do to improve the environment? My good friend and fellow mediator Joanna Kalowski in Australia tells me that she always brings large quantities of fresh fruit with her to mediations - especially strawberries. Another friend and mediator in Israel says he majors in freshly-baked biscuits for the participants. And the late, great David Shapiro spoke often of deals done in the sauna.

When I am fabulously wealthy(!) I will build the perfect mediation venue. In the meantime, maybe I should spend more time thinking in the shower...