

Mediating Minimally

Kluwer Mediation Blog

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John Sturrock (Core Solutions Group)

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As the year comes to an end, I am expanding upon a story to which I referred in a previous blog, in the hope that it may provide a couple of useful reminders of what we do as mediators.

I had eaten a chicken curry rather hastily at the hotel where I had been mediating the day before, just prior to boarding the overnight sleeper train to London for the following day's mediation. I had settled in fairly well and slept as well as one can in a moving carriage with its usual fits and starts.

However, on waking at about 5.30 am, I felt distinctly unwell. By the time the train had arrived in London at 7.15 and we were due to leave our cabins, I was unable to stand up without an overwhelming sense of nausea. I had not felt so ill for a long time. Eventually, the staff kindly provided a rather primitive buggy to carry me from the train to the first aid post in Euston station, an uncomfortable journey and one which I was unable to complete without renewing my acquaintance with my chicken curry.

In the first aid room, I had the presence of mind to send an email to the lawyers in the mediation which was due to start at 9.00 am, to say that I might be a little late. I also requested that they secure me a bedroom to enable me to lie down on my arrival (fortunately, we were mediating in a hotel nearby). Fortified with medication from the station pharmacy, I made my way gingerly to the hotel and to my room.

I emailed the lawyers again and suggested that they come to my room separately for our initial private meetings. This they did, rather reluctantly at first, but we avoided any physical contact. Although I was unable to sit up, we had a useful pair of meetings. They were keen to suggest that we should just abandon the day.

However, I knew from earlier communications that this was an important matter and that many people's work situations could be affected by what was decided that day. It couldn't really wait. I said I would do what I could and work my way carefully through the day. We agreed to proceed.

I managed to make my way down to the basement conference rooms for the first joint session. While there was sympathy for my circumstances, that did not extend to the parties modifying their views of each other. Opening presentations were as robust as one might have expected. As the morning wore on, I was helped by one principal client calling for a break to attend an urgent meeting. This enabled me to head back to my room and enjoy a warm bath. Taking a bath in the middle of a mediation is a new experience for me and one which I thoroughly recommend. It brings a sense of calm and perspective – as does good anti-nausea medicine.

As the day progressed, the participants were kind about my stamina. In reality, however, they did all the hard work. And it was hard work. The other reality was that had a mediator not been present, the negotiations would almost certainly have broken down in acrimony and with possibly serious repercussions for thousands of people. Indeed, it took an exceptional effort to secure the final breakthrough at about 7.15 pm.

Why tell this story? Well, I learned two things. Firstly, we mediators often feel the need to take on more of the load than is necessary or appropriate. Less is more. I had to conserve my energy that day and play a limited role. I had little choice but to do the minimum I was able – and needed – to do. Paradoxically of course, this enabled (or perhaps compelled) clients and lawyers to take responsibility and make informed choices. Secondly, as I allude to above, a mediator's role, even with minimal intervention, is usually crucial. It provides the necessary third party presence, a watchful eye at least, a calming influence, a degree of accountability for behaviour and, very often, a strategic sounding board, while delivering the extra final push can make the difference in the toughest of situations.

As we move into another year, reminding ourselves of these two central features of what we do as mediators may enable us to achieve even more than we do already in our work. Happy new year!