

# The coincidental mediator: a cautionary tale

## **Kluwer Mediation Blog**

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Many of my fellow bloggers on these pages, and perhaps many of the readers, will have found themselves in the position in which friends, colleagues, workmates or others call on your/our mediation experience at short notice, and in circumstances that are perhaps not ideal in terms of planning and preparation. One of the strategies I typically discuss with students in negotiation and mediation classes is how to recognise and deal with the “ambush” negotiation – those times when you suddenly realise that you’re in a negotiation or when the decision that is being asked of you really does need a prior negotiation; and you do need to hit the “pause” and “rewind” buttons in order to give yourself time to draw on those wellsprings of negotiation experience.

A recent experience of an informally-requested intervention leads me to think of some of the resources we can bring as well as some of the risks that lurk in the undergrowth. I’ll need to be somewhat elliptical, of course, in discussing this – as is the case with all mediation, characters and events needs to be disguised. But you’ll get the picture.

The basic scenario is this: a small committee of voted-on volunteers has been managing a significant budget for a larger enterprise; the purpose to which the budget is directed affects a far wider circle of individuals, all of whom have understandable concerns about the progress of work being done, the information provided from time to time, and the prospects of any budget blow-outs. Most of that wider circle of people are, of course, deeply relieved that they are not the ones dealing with the ongoing headaches – not least the challenge of ensuring

compliance with local government rules and regulations.

Two significant challenges emerged for the committee: first, the wider circle of interested parties has a Facebook page which, on the one hand, could be a venue for sharing information and updates and, on the other hand, was more likely to be a site for some fairly brutal observations about the progress of the committee's work and the integrity of the members. Second, within the committee itself, divisions emerged over the direction the work was taking, the time the project was taking, the risk to the budget . . . and, of course, personalities. While I've not been privy to any of the Facebook "conversations," the reports I've had from a variety of sources remind me why I don't "do" Facebook and why social media can be such a toxic source of factional misinformation and character assassination.

This is where the informal mediation came in. A couple of chance conversations over coffee led to the suggestion that we - my wife, Suzanne, and I - might be willing to talk to one or two people about the directions things were going, especially the descent of communication into name-calling and the the risk to the decisions affecting the overall enterprise. The committee also expressed the hope that we might be able to "ease" the conversation towards a particular outcome. We agreed; we had those conversations; we await the smoke signals as to whether anything at all has changed - and though we're reassured that the tone will be moderated on the Facebook conversations we're not confident that there will be lasting peace.

The reflections I have are these for the coincidental mediator:

1. There's a risk that the request to engage one's mediation skills (albeit informally and unofficially) can be a disguised request to do the difficult work the committee - or the individuals making the request - need to make. Think of those time when you might have been asked to act as mediator and, after initial inquiries, it becomes plain that what's actually needed is a management decision which is being avoided by opting for mediation.
2. There's a risk in being seen as the messenger for one or other of the factions, in approaching selected individuals. This might well be a classical version of the mediator - indeed, some of the traditional models from which modern mediation borrowed have the mediator as the go-between (the "moccasin man" in American First Nations experience); and there will be many modern practitioners who only act in that go-between role, if the parties cannot or will not talk directly with each other. The risk nevertheless remains for the intermediary that she or he is

perceived, fairly or otherwise, as the bearer of and agent for the message of the other party.

3. Equally, in understanding the position of those people with whom we talk, and giving them the possibly rare experience of being listened to, there's a risk that we – the mediators – will be seen as allies. This is classic Karpman victim triangle stuff, in which the mediator is seen as a rescuer and is, just as easily, seen as an ally of one or other of the factions – and especially of anyone who feels already sidelined but the history of the preceding events. Indeed, we needed to remind one of those with whom we spoke that, just because we listened to and respected his stance, that didn't mean that we were now his "supporters". Think too of the success that the central character in *Twelve Angry Men* (the 1950s version) has in seeking and finding "recruitable allies": the informal mediator might well be seen as one of those – and even if Henry Fonda's character prevailed, being 'recruited' undermines that essential mediator role and neutrality.

4. There's a risk of self-interested misreporting – for example, I heard indirectly that I apparently had told one of the parties that I (trusted adviser, legal trained mediator etc) that a thoroughly undemocratic process was warranted in order to deal with dissent. That had to be stopped at source promptly.

It's not all risk and recrimination, of course: the very act of agreeing to start a conversation is likely to have defused some of the animosity and dispersed some of the anxiety. What matters next is that this conversation – and the tone of the conversation – continues. And in that respect, the coincidental mediator can be at least a circuit breaker.