Kluwer Mediation Blog

Style Wars

Charlie Irvine (University of Strathclyde) · Tuesday, February 12th, 2013

Interesting ripples on the interweb about mediator ‘styles’ – (see the LinkedIn group ‘ADR, Conflict Resolution and Mediation Exchange’). One discussion thread was prompted by a nice ‘Emperor’s New Clothes’ question: can a mediator have any style or does the style vary from situation to situation?

The discussion has ranged from styles to models, with some fascinating contributions from practitioners, experienced and not. The topic must be in the zeitgeist, because two journals have also touched on it in recent issues. Kenneth Kressel and James Wall, two distinguished mediation researchers, edit a Special Issue on the subject in Negotiation and Conflict Management Research (2012, Vol.5, issue 4). I confess I haven’t read it all but Kressel and Wall’s summary is fascinating. Kressel, along with Henderson, Reich and Cohen, is in action again in Conflict Resolution Quarterly (Vol 30, no 2, Winter 2012) this time actually observing seventeen mediators in a repeated simulation. As several writers point out, too much of the material on mediator style (and almost all other aspects of mediation for that matter) is based on self-reporting, so it is refreshing to see some observational material beginning to appear.

This blog doesn’t permit a detailed summary of the articles, but two key insights catch the eye:
– mediators are not terribly good at knowing what their own style is. Kressel et al found that most described themselves as ‘eclectic’; observers and parties categorised them as straightforwardly ‘facilitative’.
– those who were deemed most skilful, again by observers and parties, tended to use their own style flexibly. Conversely, those who stuck rigidly to a style were viewed as unskilled.

This reminded me of a short piece written by my friend Barry Winbolt some years ago (‘So…Why Does it Work?’ The Therapist Vol.3, No.2, Summer 1995). In it he summarised a much larger body of research into psychotherapy, of which there were estimated to be some 400 models in the USA at that time. Even more than in mediation, competing stylistic allegiances tended to be debated in learned journals, training programmes and among practitioners. The conclusions of empirical research are sobering, however. One study found three key ingredients which “cut across

the parochial theories of psychotherapy and appeared to be common elements (in a wide variety of models.)" (Truax and Mitchel, 1991, cited in Winbolt, 1995). An effective therapist had to be:
– *'authentic, non-phoney and genuine in his or her relationships*
– *able to provide a safe, non-threatening, secure and trusting atmosphere through acceptance of the client*
– *able to understand and have a high degree of empathy with the client.'*

Reviewing numerous studies, Miller, Duncan and Hubble (1995, cited in Winbolt, 1995) refined four key factors which contributed to a successful outcome, irrespective of the model, style or number of sessions:
• *'therapeutic technique: all therapies involve the therapist talking*
• *therapeutic relationship: clients who are 'connected 'with the therapist will benefit most*
• *expectancy and placebo: the client's increased hope and expectancy for change*
• *client factors: the client's perceptions of the therapeutic process.'*

Challenging stuff, particularly for those who argue for the superiority of one model over another. While 'mediation is not therapy' sessions abound (of which I'm sceptical – subject for another blog), it would stretch credibility to think that mediators have nothing to learn from these findings. Not least, the third and fourth factors have almost nothing to do with the therapist, being internal to the client. Surely the same must hold for mediation: as Bill Clinton might have said, 'It's the clients, stupid.' Put simply, if the clients want to settle or make peace even the most inept mediator finds it hard to get in their way. Conversely, some people are so overwhelmed by conflict that agreement feels like defeat, and no amount of skill can alter that.

The first factor, communication, is an applied life skill which can and should be honed constantly. I once had the privilege of training a group of systemic therapists in mediation. While they found aspects of conflict resolution novel, even shocking, their skills 'in the chair' were impressive. I suspect this is why we can continue to improve after 5, 10 or even 20 years as mediators: following the '10,000 hour rule' (Malcolm Gladwell, 2008, *Outliers: The Story of Success*) we develop artistry or 'flow' which has precious little to do with models or allegiances and everything to do with responding as human beings to other human beings. As far as I know no-one has yet hooked up a mediator to an FMRI scanner while they are actually working. When we do my hunch is that we will find that the brains of experienced practitioners are 'wired' to notice and respond to conflict in a specialist way, just as we can spot specialist brain regions for violin virtuosity or sports skill.

The second factor, relationship, is widely known to practitioners. One of Scotland's most prominent mediators, John Sturrock, is fond of the 'coffee and croissants' beginning. The simple sharing of calories and chat forges a form of 'therapeutic alliance' which can help people over the hump of substantive disagreement later in the day. Winslade and Monk (2001, *Narrative Mediation: A New Approach to Conflict Resolution*) write elegantly about 'rituals of engagement'.

In spite of what I have said above, mediation is not the same as psychotherapy. For one thing it is significantly older. People appear to have been acting as mediators in the ancient world and it can be plausibly argued that mediation pre-dates all formal legal systems (Derek Roebuck (2007) 'The Myth of Modern Mediation' *73 International Journal of Arbitration, Mediation and Dispute Management (1) 105-116*). At the same time mediation has received considerably less academic attention (perhaps because it makes few claims to improve health). I fear this has led to a significant confusion among practitioners and, more importantly, teachers and trainers. The

confusion is between DESCRIPTION and PRESCRIPTION. The canonical mediation writers (see Irvine, 2007 for one list – http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1686195) were all attempting to describe an existing process for the purpose of clarifying, systematising and teaching. They did not sit in an armchair and think 'Now how would I go about this thing?' Even those with a prescriptive edge (such as Bush and Folger, Winslade and Monk, or Haynes and Haynes) claim no more than to be describing mediation done properly.

And so mediation models, insofar as they clarify, systematise and teach, are useful. When they start to offer prescriptions we ought to be more cautious. Mediation is a supremely reactive discipline. We are in a room with two or more individuals in dispute: this is a living, evolving system and every move, including our own, can have unpredictable effects. Our models are no more than maps: to plagiarise Alfred Korzybski, they are not the land. To set off into the terra incognito of other people's conflict we need more than good charts. We need a (moral) compass, keen eyes, open ears and our wits about us.

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