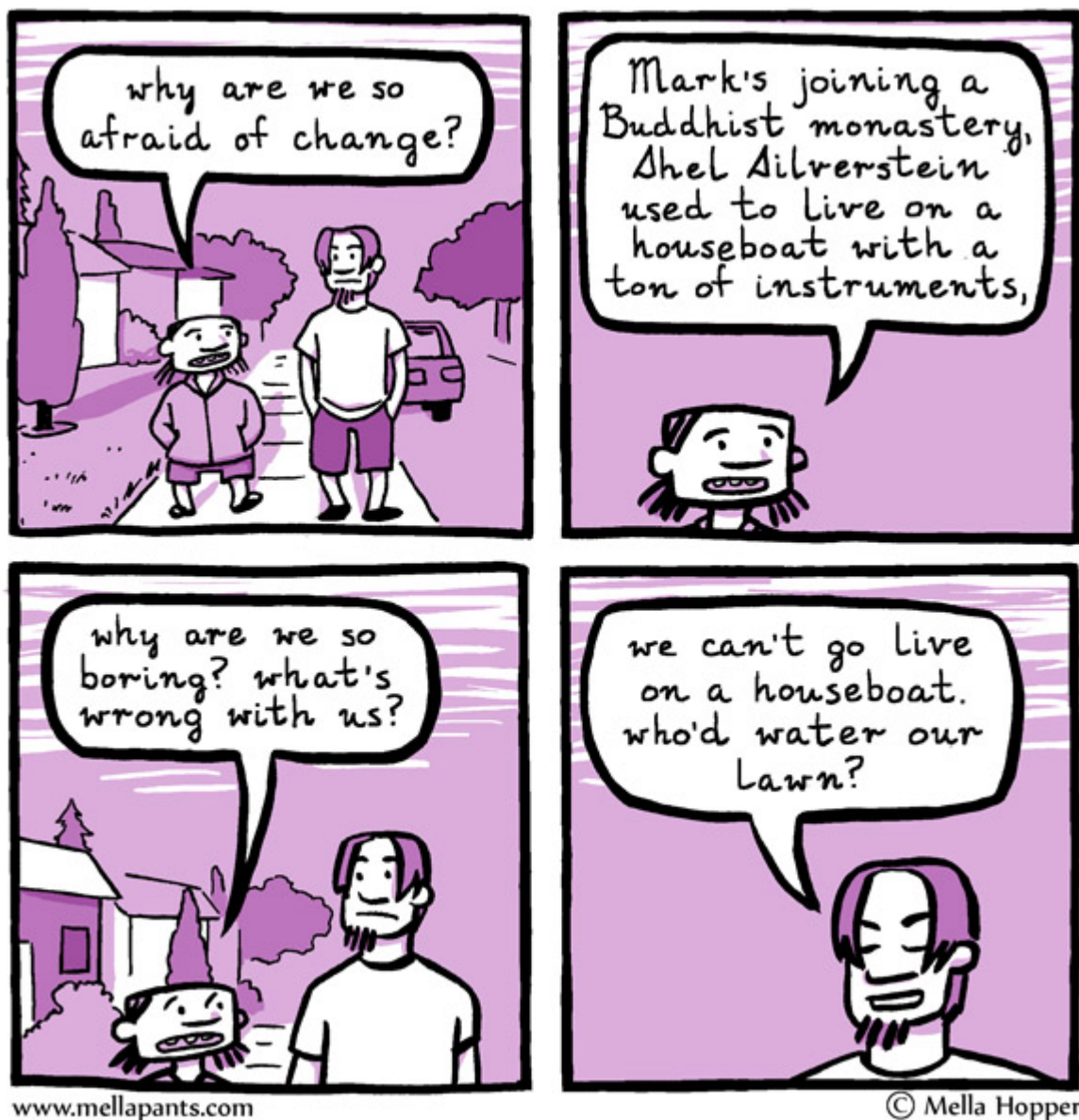


Kluwer Mediation Blog

Fear, Change, and IMI – What To Do When The Rebels Take Over

Bill Marsh (Editor) (Bill Marsh Mediator) · Thursday, April 4th, 2013



A few years ago, the mediation world was alight with gossip about the proposed launch of IMI, the International Mediation Institute (see www.IMImediation.org if you have never heard of it). Proponents and opponents in equal measure gathered either to welcome a fresh initiative, or to man the barricades against an attack on cherished turf. The strength of feeling in some quarters was

truly remarkable.

As these things so often do, the initial furore died down. IMI came into being. Those welcoming it joined, those opposing it presumably didn't. And no doubt a few of the "don't knows" jumped on board just in case.

The purpose of this blog is not to re-ignite that debate (heaven forbid!). Nor to argue for or against IMI. Though in the interests of transparency I should say that I have sat on its Independent Standards Commission – which as its name suggests is a group of independent people (mainly mediators) tasked with commenting independently, objectively and frankly on some of what IMI was doing – and I have enjoyed doing that. And I am an IMI-certified mediator with a listing on the IMI website.

Rather, in this blog I want to make a wider point about our field, and our receptiveness to change.

We do well to remember that much commercial mediation has its roots in "protest" – a protest against the perceived failings of the old litigation ways. We mediators offered a brave new world of change, enhanced business relationships, costs savings, time savings, etc etc. You know the lines. And no doubt we occasionally over-promised. It happens. Especially in the thick of enthusiasm, and the revolutionary thrill of challenging the old order. Protest movements are great fun, and they bring out the closet rebel in us all. I was at the heart of it in the early '90s when commercial mediation was beginning in the UK. It was heady stuff.

But any student of revolution knows that too often, when the rebels get into power, they fall into the same old ways as their predecessors. The promises of a new dawn become calcified in the protection of the (new) status quo. Challenges to the new regime are just as forcefully put down.

Now all this talk of "revolution" may be a little over the top for the mediation field. But I suggest that the parallel is still useful. I have been full-time in this field for 22 years, since its very beginning in the UK, and I am lucky enough to have a well-established and thriving mediation practice. I suppose that makes me a "former rebel", now part of the "new regime". So here, for me and for those like me, are three searching challenges which confront all former rebels:

1. How do I mediate?

If you do something often enough, for long enough, you will slip into your own regular ways of doing it. Comfortable ways. And those can be important. Part of what we deliver as mediators is a process that is tried and tested, and in which we are well-practiced. Clients want to know that we have done this before and that it can work. That alone conveys confidence, hope and trust to them. I am not knocking it. But it also begs a question – Where is the cross-over point from a confident, well-practiced mediator doing what he/she always does, to someone stuck in a rut and re-producing the same (perhaps tired?) process and techniques week in, week out? I don't know the answer to that question, but I do know that I have to keep my eyes open for it.

2. How do I continue to learn?

If I am to keep my eyes open for it, then I need first to ask myself how receptive I am to change? To new thinking? And most of all, dare I incorporate it into my practice? That involves risk in an environment which is already full of challenge, and where clients certainly don't want to think they are being experimented on.

And if I am open, by what processes do I imbibe this new thinking? Is it through training courses,

observing other mediators, de-brief discussions with fellow mediators, reading? If so, do I do this on a structured and regular basis, or am I rather haphazard about it?

3. How does the field make room for newcomers?

What do the “former rebels”, now in power, say to the “new rebels”? Or put another way, how do we make room for newcomers to the mediation field? I suggest that this is an important litmus test for any profession. For established mediators, the instinct is towards the preservation of our position (and, yes, our income stream). At one level, there is nothing wrong with that. Personally, I have worked extremely hard to get here, as have all the busy mediators I know, and I am content to reap what I have sown. It’s a free market and the market can choose its mediators. Put like that, it’s hard to call it unfair. However, virtually every newly-trained mediator I have ever met questions how to enter a field where the supply (of mediators) appears to exceed the demand, and usually expresses frustration and anger at the “unfairness” or at least the “difficulty” of it. I don’t have the answer to that conundrum, but I do know this. There is always the next set of “rebels” or newcomers around the corner, looking to change the status quo. If we are serious about developing the mediation field, then that conversation needs to happen – or we will simply head into the next “revolution”!

Worse still, we may fail to engender longevity for our field. And anyway, the “rebel” metaphor breaks down here. These newcomers are not looking to overthrow, but to participate. And they are often people bringing fresh perspective and insight to what we do, and who may well carry it forward long after we are gone.

Answers

So, where do we go from here?

Forget over-night panaceas or grand gestures. My suggestion is simply to do **ONE** thing in response to each of the above three questions.

1. How do I mediate? Do **ONE** thing differently next time. Change your opening remarks. Ask a different question. Anything. And see what happens.

2. How do I continue to learn? Talk about what you do to **ONE** person from a different field and see what they say. Here’s an example:

A few years ago, I went into a coffee shop in London just before a mediation. As I bought my cappuccino, the old Italian man serving me said:

“So, what are you doing today, Sir?”

I said: “I’m mediating a dispute”.

And then, wondering if he had any idea what that meant, I added “It’s a little hard to explain what that involves...”.

To which he replied “Oh I think I understand, Sir. You are their voice when they can’t talk to each other”.

Now that’s not a bad insight to get over a morning coffee from someone with no connection to our field! And I could cite many more examples. We mediators are not the preserve of good ideas about mediation.

3. How does the field make room for newcomers? Find **ONE** newcomer to the field. Talk to them about how they are finding it, and offer **ONE** insight or idea which might help them go

forward.

And for my final word, let's return to IMI. I was recently doing an international mediation in the oil and gas sector, and the general counsel for one side remarked that I had been appointed as mediator largely because of my IMI profile, and the confidence which the parties drew from that listing. That is the *third* international mediation I have received as a result of my IMI listing – as confirmed by the parties – in the last two or so years. It seems that, for me, that was a change well worth embracing.

I guess if I was smart I would keep that advantage to myself and not mention it here, but hey, life's too short, and there are plenty of mediations out there anyway.


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