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# Kluwer Mediation Blog

## “Smoko” time! “Bill’s Law” v.1.1

Ian Macduff (NZ Centre for ICT Law & School of Law, Auckland University) · Sunday, July 14th, 2013

This note is a response to, and affirmation of the idea behind Bill Marsh’s provocative notion that the best mediators and negotiators smoke. Of course, in these non-smoking times, we couldn’t possibly agree with the apparent endorsement of smoking and yet the underlying idea Bill conveys is an important one – about the structure of conversations and the management of time and interaction.

First, an anecdotal response. In 2000, my wife/co-trainer and I had been asked to run a conflict management workshop in Pisa, through the University I was working at. So far so good. The workshop was part of a two-week programme for high-ranking military officials and officers from the former Yugoslavia – with the conflict there in very recent memory. The workshop participants were Serbian, Bosnian and Croatian and, as it turned out, all male, and all of whom introduced themselves only by rank and surname. We also had to conduct the whole thing through translators (to and from Serbo-Croatian); and had been told by the convenors that on no account were we to mention the war. If we did so, we were told, at least one of the delegations would walk out – as indeed they threatened to at one of the sessions when, inadvertently, the facilitator referred to the recent conflict. This was not looking like a fun day.

We went through the range of conflict analysis elements that most of you will know about, emphasising that this was a conflict analysis workshop, and not a conflict resolution workshop.

The link to Bill’s blog is this: on almost every occasion when we paused to ask if there were any questions, a hand would go up and the question was “can we take a break for a cigarette?” Our reaction then – apart from conceding to the request – was that we weren’t getting anywhere and the whole thing was a distraction from what they really wanted to do, which was to go shopping in Pisa or Florence.

But Bill’s comments remind me of the post-cigarette turning point, and this may be an affirmation of the idea of taking those unplanned, unstructured breaks: about two-thirds into the workshop, one of the participants (from which group we didn’t and don’t know) raised his hand asked for the microphone, stood up and said words to this effect: “We’ve spent nearly two weeks in this whole workshop, including this conflict analysis session, and we’re not talking about the things we should be talking about. Help us find ways of talking with each other about the things that matter and that we’re avoiding.”

This, of course, was the breakthrough we needed and that we could not have engineered; and (with

heart in mouth) it provided the opportunity to facilitate that conversation.

It's entirely plausible to think that, without the cigarette breaks (or, in the old language of New Zealand's labour relations the "smoko break") the participants would not have had the chance to get together in their separate identity groups and might not have gathered the confidence to take the risk of the difficult conversation. We had also taken the chance – indeed, as Bill also suggests – to join each of the little clusters during their cigarette breaks, in order to check with them, without the intermediary translators (and in sufficient English) how the workshop was going and what more they might need or want to cover.

I've also spent time in a remote part of New Zealand co-facilitating a mediation between two factions of a group, each claiming rights over significant resources (Geoff Sharp will know this one!). Given that the "mediation" involved at least 25 members of each faction in the room at the same time, I found that the more useful conversations took place after hours, in the local pub – and back in the days when smoking was still allowed in bars. These weren't secret conversations as members of each faction were also in the bar and could see what was going on. But this is where shuttle (or, after a few beers, shuffle) mediation began to show its advantages. The one mistake we made there – and this needs to be a refinement to "Bill's Law" – is that the lawyers for each party were not at the pub, though there were in attendance, more or less, at the mediation. Maybe it helped too that I'm a motorcyclist and there was an inordinately high level of bike ownership on all sides.

Is the point, then, that there are times that we need to find ways of talking about other stuff, away from the table, that will then build confidence that we – or rather the parties – can come back to the table and deal with what is officially on the agenda?

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