

# Kluwer Mediation Blog

## Time Is Against Us and There Are Miles Between Us

Geoff Sharp (Brick Court Chambers / Clifton Chambers) · Sunday, June 1st, 2014



Many mediations are 80/20 – that is, 80% of the day spent in dialogue and debate with not much sign of movement and, as evening gathers, 20% frenetic activity.

So it is not unusual for the parties to sit together for many hours and ask towards the end of the day “are we any nearer each other?” or as my kids used to say from the back seat “are we there yet?”

But around dusk, just when it is darkest before the dawn, something in the air stirs and a thing we call movement appears.

Sometimes those involved assume that this ‘movement’ is facilitated by sleight of hand by the mediator, some conjuring trick learnt at Hogwarts Mediator School, but in reality good closers have no fairy dust, just a solid understanding of conflict and people’s behaviour when they are in it.

One theory is that the real work of the mediator is in that 80% and not in the 20%. And I guess if I had to pick 3 main 80% activities good mediators indulge in they would be loosely grouped around the tasks I have come to know as *inoculation*, *credit* and *energy*.

First, inoculation...

Just like my Air New Zealand pilot last week who warned before takeoff that when the left wheel retracted up into the undercarriage we would hear an unusual sound because of a new hydraulic arm – mediators can walk participants through the standard lumps and bumps of a mediation before they are encountered. This will usually be rewarded by knowing glances later in the process and with parties who are more able to ride the highs and lows of the day.

They can explain at the outset the mediation may seem slow, that it is 80/20, that they may well find themselves in an old-fashioned dance around dollars at some point and they may get offers that offend them to their very core but that if they keep their eye on the prize, they might just get to Yes.

And then there are the bespoke clues that mediators pick up and will risk inoculating early in the process”... can you be thinking how you are going to talk about x and the reaction you will get,

which I'm guessing might not be ideal....”

Next time, credit and energy.

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