

Kluwer Mediation Blog

Olympian Mediation?

John Sturrock (Core Solutions Group) · Friday, September 9th, 2016

The Olympics have come and gone with all of the emotion and inspiration they bring. In our recent, fully-subscribed, residential Summer School on mediation skills for leaders, we reflected on the learning from Rio. We watched a video replay of the men's taekwondo -80kg final in which Team GB's Lutalo Muhammad lost to his Ivory Coast opponent in the last second of the bout, giving the latter his country's first ever Olympic gold medal.

Unmitigated tragedy for one, unremitting joy for another. Tears of pain and tears of exhilaration. And it all swung on the events of one second. A momentary loss of concentration, perhaps assuming that victory was assured. On the other hand, a moment of persistence, never say die, it's not over until....

Which athlete will benefit most from this experience? That may not be as obvious as it first appears. Loss and suffering are an essential part of the human journey. Gold medals are rare. Success may be measured just as much by how we deal with failure as with a "winning" achievement.

That Olympic story gave our course participants the prompt to discuss how much in life happens in the margins, in a moment. And to recognise that how we react under pressure in that moment may define us and the future of others, whether as mediators or more generally. Indeed, we realised how such a future may be determined simply by a remark made or a question asked, a raised eyebrow or a furrowed forehead. We realised how precision of language, a short pause, self-discipline in reacting to unforeseen events, can all shape a conversation, a new business alliance, our approach to impending conflict or indeed whether we go to war. In that last example, for one or two in exalted positions, that reaction might even determine whether we press a certain button or not.

At the same time, top athletes must learn to perform without hesitation: if Usain Bolt had paused in the 100 metres final, he would not hold three Gold medals from each of the last three Olympics. In another setting, the ability to react in the heat of the moment with poise and skill may mark out the master surgeon from his peers. And what about the police officer faced with an apparently armed person seemingly intent on killing? No time to delay.... Sometimes the choices we make, in spite of months or years of training, will lead to outcomes which will be judged using a binary, "hindsight is a great thing" assessment, as "wrong".

In our mediation Summer School, these considerations led us to acknowledge the need both to practice effective skills until they become second nature and, paradoxically perhaps, to be much more consciously aware of what, why and how we are doing or communicating at any particular

moment – which might just be a pivotal one in a mediation or meeting. Touchpoints, we might call them – or, as a senior team leader in UK Sport just back from Rio described them to me, “traceable moments”.

In some recent mediations, I have been aware of several of these traceable moments. There was the meeting of an estranged mother and son in a mediation about a family business. They hadn’t spoken for many months and the judgment call for me was whether to leave them alone to chat or sit with them in case animosity spilled over. I took the former route, almost instinctively, and they reconciled in the privacy of being on their own, which made resolving business issues much easier. Of course, what had gone before, quite consciously, in setting up the meeting (discussing what, who, how, when, where and why) had been important to that rewarding outcome.

In another situation, I chose to break a golden rule not to use judgmental language. I described the conversation between two business people as akin to “wallowing in a morass of self-indulgence”. (They had already indicated that they, frank speakers themselves, would welcome frank speaking from me). For one, my approach worked really well. For the other, some immediate repair work was required. Sometimes, we as mediators need to take a risk. Even then, though, managing the risk is important: to minimise the prospect of an adverse outcome and maximise the positive impact of an intervention. We can ask ourselves, in that moment of pause: “Why are we making this point at this time to these people in this way using these words?”

In a recent article in Time Magazine’s online resource, readers were treated to nine questions they should ask their doctors. The last was “What question have I not asked that I should have asked?” For some of us, seeking only reassurance, that might of course be the very last question we wish to ask our doctor! But, as a mediator, it is one of the most powerful. “What else do you think I need to know which will help me to help you all?”, I asked of the chairman of a public governance body, just as I was about to close off our meeting. What came in response was gold dust – and enabled me to begin to reshape the whole process. It was a question in the margins but it was crucial to our progress.

I conclude with an example that may not seem to be about margins at all but which might be described as substantial risk-taking, or foolishness! Not that long ago, in a multi-million pound matter in which the parties had the luxury of designing the process, we decided to have an initial day of mediation (or facilitation, just to soften the tone) followed two weeks later by two further days. The first day was all about confidence-building in delivering a long term project, renewal of trust, sharing frustrations, identifying big issues (and problems), recommitting to the overall strategy, (re)building relationships and exploring communication.

In order to try to make the best of this, I arranged the day as a hybrid: a mix of the first day of the Summer School I refer to above (presented as a kind of “Master Class in Contract Management”) and the opening stages of a traditional mediation. It seemed to work a treat. There was an element of surprise – and real engagement – in our discussions about developments in neuro-science and cognitive errors (including the fight and flight responses and system 1 and 2 thinking), conceiving a proper structure or framework for negotiations, and the ideas behind interest-based/gain optimising theories for creating value (I try to avoid using “win-win”).

We even discussed that taekwondo final and the learning from it. Using their own situation and differences, the parties explored and practiced questioning skills and (real) listening (in pairs), along with strategies for really effective preparation (in groups). We recognised that this sort of

system 2 work is energy-consuming and tiring. It took – and takes – conscious effort. Just the sort of effort that Olympic athletes commit to for years.

The result of the day was lots of little marginal gains, specks of gold dust, which would enable the parties to collaborate in a way they had not had the capability to do thus far. After an exercise involving a flip chart and sending the project leaders from each party out of the room to draft a joint statement of purpose, the whole group agreed that a reframed project objective would be to “work together to build a truly world-class.....”. In setting that objective and beginning the journey with new skills, they had become Olympians themselves.


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