

Keynote Address for Belfast Local Mediation Development Project on 18 November 2010

Charlie Irvine

Mediation is a funny old word. If you put 'mediation' into google images you get handshakes, jigsaws, tin-can phones and complicated diagrams. Some suggest agreement; some complexity; some downright difficulty. Mediation certainly means different things to different people. The dictionary definition is simple: *'to settle (dispute, strikes, etc) as an intermediary between parties; reconcile.'*¹

However, I am less interested in what mediation means than in what it says, or what it tells us. I believe that mediation says something important about the people who mediate, about the people they mediate with and about society as a whole.

People who mediate

1) Are doing something rather than nothing

We all know it's easier not to get involved. Getting involved means giving your time and energy to people who may not seem grateful; being viewed with suspicion by both sides – or all sides; being seen as weak; running the risk of being blamed when things go wrong; and (something which haunts us all) failing.

So why do we do this work? Recent research highlighted persistence, patience, effective listening and a practical sense of what will work as qualities clients most appreciated in mediators.² Where do these qualities come from? What is it about mediators that motivates them to place themselves at the heart of other people's conflict?

I have often wondered about this, and want to speculate about one possibility. Here's a quote from Bruce Springsteen:

'I think anybody who was ever seriously kicked around never ever forgets. You know, that stuff never leaves you, and I think if you're a person whose job is to mine your imagination, you keep every aspect of your life wide open. It's never a closed book. You never say, 'Well, that was then'. It's always now. It's all always now.'

This rings a bell with my own experience. For about the first three years of secondary school I was bullied. I don't want to over-dramatize this: I didn't experience a great deal of violence and most of it came down to verbal intimidation and humiliation. Nonetheless I lived in daily fear for a considerable period of time. And I think this has had a long-term impact. I now know that the brain is growing and developing all the time, creating neural pathways for particular skills and abilities. One by-product of this experience is a kind of hyper-vigilance. In any room or street or situation I seem to have a keen sense of who will be a threat. I think I became quite adept at spotting the potential for male violence before it erupted.

¹ www.dictionary.com

² For more details on this see John Lande (2008) 'Doing the Best Mediation You Can' 14 Dispute Resolution Magazine (3) available for free download at: <http://www.law.missouri.edu/lande/publications/Lande%20Doing%20Best%20Mediation%20You%20Can.pdf>

Mediation has been a way to channel this ability. One of the skills required of any mediator is to 'read the room'. We have to be able to work out very quickly what's going on – who is feeling anxious, angry, confident, wary, who looks on edge and who is likely to explode. I also think I draw on my sense of what it's like to be an outsider to imagine what it's like for other people who see themselves as victims of conflict. I am not saying you have to have been bullied to be a mediator, but I have noticed a certain 'outsider' quality to people who do this work. They are often people who know what it's like not to be a success, not to have power and influence. As Bruce says, it's always now.

2) They can believe two contradictory things at once

When you start training as a mediator one of the first questions people ask is '*what do you do when you know one person is totally in the wrong?*' Yet, strangely, this seems to become less of an issue the more you do this work. It's not that I'm pretending to agree with people for the sake of peace. I really do believe both sides. Or rather, I can see what they mean.

And here I touch on the impact of this work on the mediator. The first time you hear one side of the story you feel very sympathetic. You hear about all the terrible things the other lot have done and it is hard not to imagine you are going to meet some kind of monsters. And then you meet the other lot and hear the other side of the story and, to your amazement, they seem totally plausible too. And, when you finally bring them together, the story changes again. So which one is 'true'? I'm not saying it doesn't matter, but I would say that after a few years of doing this work the idea of 'truth' stopped being terribly useful.

But stories do matter. In our stories we tell who we are and, in a sense, we speak our world into existence. And once people start to talk to each other, new, alternative stories become possible. John Forester has just written a fascinating book in which he went out and observed really good environmental mediators at work.³ And one of the things he noticed about people in long-term conflict was what he called '*the gullibility of cynicism*': in other words, when conflicts are entrenched and long-standing, people are taken in by their own negativity, and give up too soon. He noticed that these experienced mediators would say something like 'Well, let's just see what happens' and, amazingly, something often did. Here's a quote from the book: '*Experienced mediators seem to know that in contentious disputes there's always more going on than meets the eye, that parties always care about even more, sometimes much more, than they say or defend as a matter of public posture.*'⁴

So these mediators keep going; they create repeated opportunities for dialogue; they listen respectfully to everyone; sometimes they tell it like it is. They know that success in mediation is much less about reconciling contradictory stories than about finding a practical way forward that everyone can live with.

3) They care deeply about justice

³ Environmental mediators deal with large group and long-term disputes, often involving dozens or hundreds of people in communities, public authorities and businesses, sometime over highly contentious issues. John Forester (2010) *Dealing with Differences: Dramas of Mediating Public Disputes* Oxford: Oxford University Press

⁴ *Ibid.* p.54

Sometimes the idea goes around that mediation is all about feelings: as if the mediator's job is to try and keep people happy, to sweep their negative emotions under the carpet until they stop being angry and hug. But this has not been my experience of this work. We all have a sense of fairness. Anyone who has tried to reason with a two-year-old will tell you how early this develops.

Mediation feels more like wrestling. We wrestle with justice and injustice until we find a plan that everyone can sign up to. When I mediate I bring my sense of fairness into the room too. It's not my job to impose that on anyone else, but how would I know what to ask if I didn't have my own sense of what's fair? It's a subtle and fascinating process, calibrating what everyone in the room can live with.

I would say that the fire that brings us into this work gets greater not less. We start off motivated by thoughts like *'There has to be a better way'* and *'if only we could get people talking, they would sort things out'*. But once we sit in that mediator seat we start to see the world through the eyes of people in conflict. And we see that, unless there is justice, no solution will work. Whose idea of justice? It's not for me to say and it would be cheeky and presumptuous to try. However, I need to know that those in front of me find the solution fair. And not only the people in the room: I need their friends, families, supporters and communities to find it fair as well.

People we mediate with

It is not just the mediators who are doing something rather than nothing. The choice to mediate tells us something about the participants.

1) They are brave

It's not easy to go to mediation. It takes huge courage to sit in a room with people you have come to see as your enemies. Almost everyone in conflict believes two things about the other side:

- They have all or most of the power
- They are relentless

And of course if you think someone else is out to get you, you had better take steps to defend yourself. And if you approach someone who is already suspicious of you with a defensive attitude, they are likely to react in turn. So your defensive attitude, brought about by your justifiable fear of the other lot, gives them every reason to adopt a defensive posture of their own. Again and again conflict throws up these vicious circles.

When I first meet people in conflict I ask them what they would like. The answer almost always involves the other side changing: *'if only they could change their attitude/learn their lesson/see sense etc, etc.... things would be different'*. And yet, when mediation is successful and you ask participants why, they often talk about how they have changed.

So, people who come to mediation are taking a first step to reversing the vicious circle. They have shown enough courage to get through the door, even if they don't feel much optimism. That's where the mediator comes in. One writer talks about the parties existing on *'hope borrowed from*

the mediator'.⁵ And in another mediation Forester reports: *'To everyone's surprise, all felt misunderstood, and all wrongly attributed to other stronger views than they actually held.'*⁶

2) They have chosen talk over violence

While you are talking, even when you don't agree, you are not using violence. And while you are talking you are learning something about the other side's perspective.

When we stop talking, bad things can happen. Conflict scholar Morton Deutsch talks of three:

- 'autistic hostility' where people's hostility towards each other reaches such a pitch that they stop communicating altogether. The other person's thoughts and motivations are no longer visible to them. Once we fall victim to autistic hostility we no longer have any information about what is really going on in the other person's head. We have to rely on our guesses. And of course those guesses are informed by our previous experiences, meaning we are unlikely to give them the benefit of the doubt. So our guesses are likely to err in the direction of assuming too much negativity, too much suspicion, too much hostility.
- 'self-fulfilling prophecies' *'where you engage in hostile behaviour toward another because of a false assumption that the other has done or is preparing to do something harmful to you: your false assumption comes true when it leads you to engage in hostile behaviour that then provokes the other to react in a hostile manner to you.'*⁷ So you end up being right to think they are provocative, untrustworthy and malevolent – you are too.
- 'unwitting commitments' where people over-commit to negative attitudes and rigid positions as a defence against the other's attacks.

But when people talk, these negative guesses, or attributions, can be corrected. And this is where mediators have to work really hard, using questions like: *'Can you say what you think you just heard?' 'Is that what you meant? No? Would you mind explaining again what you intended?'* This kind of painstaking calibration goes on throughout mediation, allowing talk to be accurate and effective.

3) They are also negotiators

We shouldn't forget this either. When we sit in a mediation, whatever our motivations, there is a part of us that wants to win. Think about bargaining for something. We know the rules: start high, knowing that you'll concede a bit before settling on a reasonably fair price. Well, in a sense, every mediation is a negotiation. No-one wants to feel they have been taken advantage of. One phenomenon I have encountered is known as *'reactive devaluation'*: if you say it, it must be wrong.⁸

⁵ Thomas Lindstein and Barry Meteyard (1996) *What Works in Family Mediation* London: Russell House Publishing 1996, p.193

⁶ Forester (2010) p.88

⁷ Morton Deutsch (2006) 'Cooperation and Competition' in Deutsch, Coleman and Marcus (Eds.) *The Handbook of Conflict Resolution* San Francisco: Jossey-Bass, p.28

⁸ *'It appears that a given compromise proposal is rated less positively when proposed by someone on the 'other side' than when proposed by an apparently neutral third party'* Robert Mnookin and Lee Ross (1996) 'Introduction' in Arrow et al *Barriers to Conflict Resolution* New York: W. W. Norton & Co

Furthermore, if you offer some concession, it can't have been that important to you in the first place.

So, mediators need to be dealmakers too. Mediation often starts with exploring the issues. This leads pretty quickly into people telling their stories. The stories revolve around and around, circling through allegation, denial, counter-allegation and counter-denial. Sometimes concessions are made. But often there comes a moment when it seems that things are going nowhere. And at this point the mediator will often say, *'So – how are we going to fix this?'* or *'So – what needs to happen?'* It's as if the stories need to be told and honoured, for just the right amount of time. Then someone needs to put their foot on the gas and push/lead people towards the future.

How do we know when to do this? Pure instinct. That instinct can be developed and honed – this is the essence of reflective practice. We all have some working 'theory of practice', that says, in effect, *'if I do this, that will happen'*. This is constantly updated and modified according to each case. Thus we become more subtle, capable of noticing more and also ignoring more. My view is that, when we dare to intervene in other people's lives, we should do so *'with fear and trembling'*.⁹ We therefore owe it to our clients to do everything in our power to hone our instincts – giving ourselves 'time out', talking to colleagues or more experienced mediators and taking the time to write something reflective after each mediation.

The wider society

Last and most importantly, the presence of mediation says something about the wider society.

1) It values the 'third side'

A society where people sort things out by talking may not be trouble free – in fact it can be pretty fractious. And it is a measure of mediators' confidence that they can tolerate strong feelings and high emotions. These strong feelings tend to come out in mediation. We as mediators owe it to people to honour their stories. According to one of the founders of our field, William Ury, there are not two sides to a conflict, but three.¹⁰ The third side is taken by the onlookers who witness a conflict. In many traditional societies the third side has sufficient moral authority to ostracise combatants who are deemed to be too violent. 'Third-siders' can shame people into peace. Mediators belong in the third side.

2) It is moving from top-down to bottom-up government

Mediation implies that people are able to take responsibility for their own decision-making. This represents a shift in thinking from representative to participatory democracy. Representative democracy assumes that leaders are elected and then act in a representative capacity for the good of those who elect them. If they don't do this to the satisfaction of the electorate, they can be kicked out. This is necessarily a blunt instrument, with elections acting as an all-or-nothing contest every few years. In contrast, participatory democracy assumes that elections are just one ritual in a

⁹ The Epistle to the Philippians, 2:12

¹⁰ William Ury (1999) *The Third Side: Why We Fight and How We Can Stop* New York: Penguin

whole web of decision-making. Citizens are assumed to have the capacity to make decisions affecting their day-to-day lives.

Not everyone is in favour. Some have associated mediation with a kind of free-market capitalism in which public decisions are effectively conducted by bargaining. This can favour the strong and fanatical. But I sense that the kind of mediation project you are founding here in Belfast seeks to put down roots within communities. It will require bargaining and patience and time, but the hope is that people will own and live with the decisions thus made.

This assumption that people are capable of making decent decisions about things that affect them permeates the writing of Robert Bush and Joseph Folger. Among mediation's 'hallmarks', they include this:

*'The Parties Have What it Takes: Taking an Optimistic View of Parties' Competence and Motives'*¹¹

Here is a challenge to all of us who mediate: even if you don't always feel this, it is by far the most useful stance for a mediator to take. Assume good faith. Assume that when people open their mouths to speak they have done so for reasons that seem good to them.

3) We are all connected

We share many things with those around us, even with our enemies – streets and bins and air, taxes and bills and economies. As one writer puts it, violence can be overcome when we recognise that *'the wellbeing of our grandchildren is directly tied to the wellbeing of our enemy's grandchildren'*.¹² When we mediate, when we choose mediation or when we offer mediation, we are saying in effect: 'I am in some way connected to you. I may not like you. I may struggle to trust you or to wish you well. But I can't go forward without you.' To return to William Ury, *'the community – the precious web of ties on which all depend – needs to be made whole again'*.¹³

Conclusion

Mediation is not just a fringe activity for do-gooders. It says something about us all. Of mediators, it says we are doing something rather than nothing, that we can live with contradiction and that we care passionately about justice. Those who use mediation are, first of all, courageous, entering a process that may ultimately change them. Second, they are choosing talk over violence. And third, they are negotiating, seeking to cut the best deal they can. And finally mediation says something about the whole society: that it values the 'third-siders' in its midst; that it is moving in the direction of participatory democracy; and that all its members are linked. Mediation is messy and time-consuming and tricky, but it seems to me to be a way for modern societies to rub along, honouring different perspectives (the principled part) while also getting things done (the pragmatic part).

And this is where I finish. Mediation is a stunningly pragmatic activity. It is, like politics, the art of the possible. It is a set of techniques and a set of principles and a role. So, we apply our techniques,

¹¹ Joseph P Folger & Robert A Bush (2001) *Designing Mediation: Approaches to Training and Practice With a Transformative Framework* New York: Institute for the Study of Conflict Transformation, p.27

¹² John Paul Lederach (2005) *The Moral Imagination*, p.34

¹³ Ury (1999) p.168

like identifying issues, actively listening to both sides, helping people come up with options and recording agreements. But techniques are just bare bones. In order to know what to actually say, we turn to a set of guiding principles: like assuming the best of the people who sit in front of us, knowing that folk need to tell their stories, and believing that people who are different from us still deserve respect. And behind these principles are our values: that talk is better than violence; that conflict and justice are intimately linked; that unresolved conflict eats away at us and harms us; that your story makes sense to you even if it doesn't to me.

So, wear the mediation model lightly. It will change you because it demands that you place yourself in the way of harm, in between people in conflict. But you will change it. I have often noticed that the first breakthrough for new mediators is when they make the model their own. They may say, '*Am I allowed to do that?*' Well, if it works, you are. I have a friend who is very quiet. When he began mediating I found it quite frustrating and thought he wasn't taking enough control. But I have now seen him in a number of situations and know that, when it comes to sitting in silence with people, giving them space to think and choose their next step, he has far more nerve than I do. So, he inhabits the model of mediation and has altered it. I have no doubt mediators in Belfast will do the same thing.

This brings me back to the impact of this activity on us. It is impossible to glimpse the dark heart of conflict without being touched at some level. I am less dogmatic and yet more optimistic than when I first started this work. Just because I can't see a solution doesn't mean that none exists. And it is not my responsibility to find it. To quote someone who has attempted to apply thinking from quantum physics to the business of managing people and organisations: '*You cannot direct a living system. You can only disturb it.*'¹⁴ As mediators our job is to disturb the fixed certainties of long-term conflict, to get alongside people and offer them some hope, some optimism that the past does not have the last word.

¹⁴ Margaret Wheatley (1996) 'The Unplanned Organization: Learning from Nature's Emergent Creativity' 37 *Noetic Sciences Review* 20-21