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Wilson: The silent mediator

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Skills for ADR

The silent mediator — when nothing is a good thing to say

Barbara Wilson

This title, from a quotation by Durrant ('Nothing is often a good thing to say, and always a clever thing to say'¹) may seem paradoxical for a mediation article. Mediation practice is founded on words and there are numerous books and courses dedicated to helping practitioners to say the right thing at the right time. Words are intrinsic to relationships and are usually axiomatic to how they begin and end. Although both love and hate find expression in peoples' actions, former partners are wounded equally, if not more, by what is said when things go wrong.

The degree of miscommunication demonstrated within mediation meetings often reveals the level of misunderstanding between people and gives some indication of the problems that led to relationship breakdown. Among the most basic activities and skills of the mediator is reframing; helping people to communicate more accurately with each other and carefully choosing the most apt phrases in order to neutralise conflict.

The purpose of writing about silence is not to detract from the importance of words. Skilled mediators will continue to refine their use of questions, statements and other interjections in their attempts to perfect their interventions. All mediators have experienced the damage words can inflict, especially when negotiations are precariously balanced between success and failure. At worst, the mediator may sometimes feel as if he or she is walking on

ice, when even an inadvertent comment may do more harm than good and leave him or her trying to retrieve an already difficult situation. Further, clients may already be feeling stressed and therefore do not always listen to what is actually said. Even the most straightforward and innocent remark may be misinterpreted. In sensitive situations mediators have the dual task of paying maximum attention to what they themselves say as well as facilitating the parties' exchange.

If words are the mediator's tools, what is served by writing about silence? Words are not the only issue in facilitating negotiations and mediators already consider issues other than speech. They are trained to observe body language (although with caveats as to misinterpretation — understanding body language is not an infallible art) and are used to thinking about logistics such as how to arrange the room. However, little is taught regarding the appropriate and creative use of silence in mediation, although Greatbatch and Dingwall² discuss the use of 'conversation analysis' to examine how mediators deal with silence. They note the use of 'extensions' (that is, sequences of mediator interventions when there is no vocal response from clients) and how these impact on the process.

Silence is powerful and may be wielded oppressively as an instrument of control or punishment. In the UK the phrase 'sent to Coventry' has serious connotations of ➤



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➤ censure and exclusion. Silence is difficult for some people to tolerate under any circumstances. Mediators often deal with 'silent' couples, who have already withdrawn from speaking to each other and have no direct dealings outside of the mediation sessions. Their failure to speak may even involve inappropriately conducting essential communication through their children ('tell your father/mother ...').

There is nothing 'neutral' about silence. Facilitative silence in mediation may substantially help the process. However, as Tannen observes in her book *You Just Don't Understand*,³ '[i]ncertitude itself can be an instrument of power'. Tannen devotes several sections of her book to examining the difference between how men and women experience and use silence within their relationships. She notes that men have been accused of exerting power by talking more than women but also cites researchers whose 'studies claim that men's use of silence and refusing to speak is a show of their power'. Tannen accordingly calls chapter 8 of her book 'Damned if you do'. She argues that, stereotypically, men use language to report and women use language to relate.

Tannen's book makes a significant contribution to understanding how gender differences may affect clients' perceptions of silence and her comments on these dynamics provide a useful cognitive framework for mediators.

The meaning of silence extends beyond gender boundaries. Jung⁴ wrote extensively about personality differences and introduced the terms 'introvert' and 'extravert' to describe what he perceived as essential differences in how people think and act. Jung's concepts have been popularised and used, perhaps sometimes negatively, to label people; however, they have long been enshrined within many psychometric tests (for instance, those administered to job applicants) and are now widely accepted as broadly predictive of how people prefer to behave in given situations.

Introverts do not easily volunteer their thoughts and are generally less likely to verbalise them, whereas extraverts will usually leave no doubt as to what they are thinking. Working with couples polarised

by these intrinsic differences means that the mediator must not make assumptions when a client — male or female — is silent. The impact of personality differences on the mediation process does not appear to be accounted for by conversation analysis researchers. Personality type is only one determinant of parties' behaviour and the sensitive mediator will try to ascertain how each individual is responding to the specific context of the session, ensuring both clients are able to participate fully in their unique ways.

In the UK, at the beginning of 'all issues mediation' cases⁵ mediators have a considerable amount to say in order to ensure that the clients understand the documents and procedures and are aware of the process into which they are entering. Clients may need to ask questions and get help with the completion of the forms. The mediator must gather any information not already obtained in the intake (assessment) meetings and the first session can easily turn into a mediator monologue. However, once financial information is disclosed and negotiations start in earnest, it may be relevant to consider the strategic value of using silence.

Allowing periods of silence in mediation can be nerve-racking for mediators, especially those from a background where their original training was geared to advice giving and problem solving. It is tempting for mediators to intervene very early in the process and offer possible solutions to the dilemmas. Intervening inappropriately (including the use of 'extensions') may mean implicitly sending messages to the clients that there is a predetermined outcome to their problems which they will be required to adopt. The mediator thus operates within the 'comfort zone' of their discipline of origin and risks giving advice rather than information. Premature interventions of this type may trigger a variety of responses in clients: relief that someone is telling them what to do (although this may well be seen as favouring one party); annoyance that they are not being given a chance to work things through; or they may react to pressure on them to respond. However received, the mediator risks stepping ➤



➤ outside his or her role, appearing biased and disempowering the clients by effectively interfering with their decision making autonomy.

Clients may be reassured if someone tells them what to do, and some try to elicit advice from mediators. Most people are used to professionals directing them and some prefer to 'leave life decisions to a godlike advisor'.⁶ However, mediation is about empowerment and self-determination, with the mediator providing a safe and structured environment where negotiations can take place and where clients are offered information as opposed to advice. Part of facilitating this environment involves recognition that it is up to the parties to solve their problems, not the mediator. Regrettably, in my view, the Legal Services Commission (LSC) Recognition Assessment portfolio (Element 2.4 e)⁷ seeks evidence from the mediator that he or she will need to:

... suggest ways in which gaps between the position of each party can be narrowed.

This may well be the right thing to do in certain situations, and it is not suggested that mediators should deliberately leave parties floundering and unable to find a way forward; however, the LSC wording may also be interpreted as implying that the mediator is ultimately responsible for generating solutions to the parties' problems. The point is made that intervening too soon, or saying something because the mediator is uncomfortable with silence, may actually stop the parties negotiating for themselves. Silence does not necessarily mean that the clients are not working on the issues or formulating their own ideas about ways forward; in fact, silence in mediation may mark the beginning of genuine dialogue. If the silence seems oppressive the mediator should consider an appropriate intervention. If, however, it appears constructive, he or she should consider facilitating the potential for creativity by keeping silence with the couple.

There are drawbacks to saying nothing. Badly judged, it can be as inappropriate as interposing an unhelpful statement. It may also create a false impression of

inscrutability, implying that the mediator knows the solutions and is deliberately withholding these rather than waiting respectfully for the parties to find their own. It can also raise anxieties that the mediator is no longer engaged in the process. The apt silence is another form of question. Sometimes the mediator has an idea of what that answer might be; nevertheless, the response needs to be from the parties, not the mediator's. Silence should never create undue pressure.

In *Blackfoot Physics*⁸ Peat, a noted physicist, seeks to relate Western constructs and scientific beliefs to those of indigenous peoples, particularly those of Native American origin. Peat finds remarkable convergence between the two schools of thought, despite the initial appearance of irreconcilable differences. In particular, he notes the 'special quality of silence and alert watchfulness' by which Native people learn. He reminds us that in quantum physics there is a 'kind of vibrant silence ... the state of total and absolute emptiness'. He goes on to suggest that '[t]he theories of modern physics indicate that this state of nothingness is in fact an infinite ocean of energy in potential'. The seeming emptiness of outer space, as we currently understand it, resonates with vibration, sometimes called the 'music of the spheres'. Perhaps understanding silence as 'energy in potential', rather than a gap to be filled or an embarrassing pause in the middle of what should be brisk and businesslike exchanges, might encourage mediators to view silence as an opportunity for change to occur despite, rather than because of, their interventions.

Often the most rewarding moment in mediation is when the parties take over the process, start talking directly with each other rather than through the mediator and thus fully own both the negotiations and the determination of the outcome. When this happens the mediator experiences the power of the mediation model to enable resolution and the relevance of his or her role recedes as agreement is secured. Ultimately, the task of mediators is to make themselves redundant.

Mark Twain, master of the aphorism, said, 'The right word may be effective, but no word was ever as effective as a rightly timed pause.'⁹ Learning to accept and work with silence in mediation means learning to take risks. Experience, as ever, helps, but there is no definitive answer as to when or when not to intervene, although specific training could help develop the necessary micro-skills. As in every other aspect of their work, mediators need to discover for themselves how to analyse each stage of every meeting, having regard to how both clients are managing the process and interacting with each other. It might be a useful exercise for those practitioners used to making frequent interjections to try holding back — provided the parties are not unduly discomforted and can tolerate the experience of silence (their own 'energy in potential'). To be silent in such circumstances is to discover the value of saying nothing. ●

Barbara Wilson is a family mediator and practice consultant and a member of the UK College of Family Mediators and can be contacted at Barbara.Wilson@btinternet.com.

Endnotes

1. *New York World, Telegram & Sun*, 6 June 1958.
2. 'Construction of interventions' in Folger and Jones (eds) *New Directions in Mediation* Sage Publications Inc 1994.
3. *You Just Don't Understand* Ballantine Books 1990.
4. Jung C *Psychological Types* Pantheon Books 1923.
5. This refers to 'all issues mediation', dealing with children, property and finance.
6. Wade J 'Don't waste my time' (2001) 18(3) *Mediation Quarterly* 855.
7. This is part of the LSC assessment process whereby they 'recognise' UK mediators (from whatever background) as competent to conduct publicly funded mediations.
8. Peat *Blackfoot Physics* Fourth Estate Ltd 1994.
9. Paine AB *Mark Twain Speeches* 1923.