

Preparing Elderly Persons to Mediate Issues of Historic Abuse and Conflict - Moving from Mediating the Problem to Mediating the Moment

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Many elderly persons are the victims of historic abuse either at the hands of religious institutions or other family members. Others find themselves at the end of their lives suffering the effects of old unresolved patterns of conflict. While their short-term memory has faded their long-term memory is still vivid and haunting. Pre-mediation meetings and careful preparation are essential not only for the elderly person but also for the other parties and for the mediator. The aim is to bring the elderly person out of the past and into the present.

Mediation

Mediation, at its essence, is a venue at which people meet to discuss their problem. Mediation differs from negotiation simply by having a third person present with the specific role of managing the meeting.

At a deeper level this meeting or venue creates a shared moment in time for all the parties and the mediator. This shared moment is something that is unique to the particular time and place and to the particular parties. No matter how distant the parties are apart in their conflict or how long ago the conflict originated the shared moment is a uniting element that has a powerful effect on behaviours and emotions.

However, sharing a moment in time with someone with whom you are in conflict does create a level of uncertainty. There is no way of predicting what will happen. Much will depend on each person's capacity to deal with that uncertainty. Part of the mediator's role is to provide a process or a structure to help the parties traverse those feelings. This is done by a process of modelling by mediators in which they demonstrate a capacity to sit with their own uncomfortable feelings and uncertainty about the process and the outcome.

Being present in the moment with an opponent opens the door to infinite possibilities.

Sharing a moment with an opposing party can be unsettling. It is therefore not surprising that many people in high conflict avoid direct contact with each other. This is perpetuated by the legal culture of keeping clients separated. There is a relative security and degree of certainty (although illusory) in holding fast to a fixed position.

The uncertainty created by the sharing of a moment with an opponent is seen as a far greater danger than remaining with the ongoing destructive effects of the conflict.

This fear attests to the power of the moment.

Preparing elderly persons to be in the moment

For many elderly persons who are the victims of historical abuse it is difficult to be mentally present at the mediation. They usually come to the mediation having managed to suppress the trauma of a child abuse for many years. However, in later life they often find themselves revisiting distant past traumatic events with particular clarity. While they can act like mature adults and think rationally part of them is still frozen in time back in their childhood years.

When mediating between survivors of childhood abuse and representatives of the institution within which it occurred (such as religious organisations) the mediator will need to manage individuals who are confronting re-emerging memories of the abuse.

One way of assisting them to reintegrate those childhood experience into the current moment is to ask the following question in the pre-mediation meeting - "although you are a mature person and can think like a mature person, it is the x-year-old boy or girl (where x is the age at which the sexual abuse occurred) that will be meeting the religious representative". The victims' responses to this question can indicate their level of emotional progression from the incident of abuse to date. The purpose is not to elicit an answer from them, but to plant the thought in their minds of opening up to a different way of thinking about themselves in relation to the forthcoming mediation. In fact, any answer they give at the time is not important. The most powerful questions a mediator can ask are ones that do not need to be answered.

At an appropriate time in the mediation session the mediator can ask the victim how the x-year-old boy or girl is feeling at that moment. It often allows them to reflect openly on their progress. It is a practical way of bringing the elderly person back into the moment through the eyes of the young boy or girl within.

It also helps the religious leader to understand that, while the elderly person sitting opposite them appears mature and rational, there is a fragile and emotional person within. It can provide an opening for the representative of the religious institution and the victim to connect in the here and now of the moment. It draws that distant traumatic event into the mediation room.

Mediating the Moment

Unresolved conflict or disputes are in effect the shattering of a relationship and the loss of shared moments. For people in high conflict the split between the parties in that conflict is real and personal. For those who have suffered childhood sexual abuse the split is more internalised. It is expressed through beliefs, statements of principle and honour which are driven by the fear of loss, depression, anger and shame. It is by the mediator bringing the parties back to the shared moment that a pathway towards resolving the split and moving

forward is created. It is a fresh shared moment in the here and now of the mediation session

In our view the ability of the mediator and the parties to share a moment in time provides a rich source of creative energy for the mediation process. It is not easy and has to be managed with subtlety and understanding by the mediator as well as the important ability to know how far to push it and when to stop. It requires a mediator to be comfortable with the uncertainty of the moment and to be present in the here and now with the parties.

The concept of being in the moment has its origins in the field of psychoanalytic psychotherapy starting with Sigmund Freud in 1912. Freud wrote only five papers on technique. The following is his suggestion on the preferred state of mind of physicians who wish to practise analysis:

“It consists simply in not directing one’s notice to anything in particular and in maintaining the same ‘evenly-suspended attention’ (as I have called it) in the face of all that one hears. In this way we spare ourselves a strain on our attention which could not in any case be kept up for several hours daily, and we avoid a danger which is inseparable from the exercise of deliberate attention. For as soon as one deliberately concentrates his attention to a certain degree, he begins to select from the material before him; one point will be fixed in his mind with particular clearness and some other will be correspondingly discarded, and in the making of this selection he will be following his expectations or inclinations. This however, is precisely what must not be done. In making the selection; if he follows his expectations he is in danger of never finding anything but what he already knows; and if he follows his inclinations he will certainly falsify what he may perceive. It must not be forgotten that the things one hears are for the most part things whose meaning is only recognised later on” (Freud, 1912, p. 432).

Freud suggested we only learn or evolve through experiencing an experience. This applies for the therapist as well as for the parties. He suggests that it is only after experiencing something that we can recognise its meaning.

Applying this to the mediation context, if the mediator can be totally present in the moment, with the parties, their mind evenly suspended, observing the parties without judging or rationalising, then he or she can draw on that experience to allow an intuitive awareness to crystallise. This intuitive response arises out of the here and now of the moment and can assist the mediator in deciding what to do next in the session.

Wilfred Bion expanded on Freud's thesis. He suggested that for analysts to be present fully in the here and now of the session they have to detach from their memories, desires and the need to understand what is happening at a particular point in time. He stated that the problem is not having *memories, desires and a need to understand*. We all have them. The

problem is our attachment to them in the session. These attachments get in the way of being in the moment. They fill a space in our mind that blocks out something new coming in. Both Freud and Bion encouraged analysts to be in a state of mind that allowed themselves to be surprised (Havens, Rooney 2008, 2011).

A number of modern writers have expressed these concepts using different terms. The concept of 'mindfulness' also refers to paying attention to the moment:

"It is a way of paying attention moment to moment with equanimity and without attachment to whatever passes through the conventional senses and the mind. A person in this state of present moment, non-judgemental awareness can yet enjoy a degree of freedom from them which can lead to a better performance in negotiation or mediation or any activity" (Riskin).

Another term used is 'suspension':

"In practice, suspension requires patience and a willingness not to impose pre-established frameworks or mental models on what we are seeing. If we simply observe without forming conclusions as to what our observations mean and allow ourselves to sit with all the seemingly unrelated bits and pieces of information we see, fresh ways to understand a situation can eventually emerge". (Senge, Scharmer, Jaworski and Flowers)

Thomas Moore emphasises the importance of moments. He notes that there is a tendency for people to try to resolve tension as soon as possible. He suggests that this is such a natural reaction that it may seem strange to suggest that parties willingly remain in their discomfort. He states that we are conditioned to want quick solutions. He points out that there are benefits from being patient with contradictions and paradoxes. One benefit is the possibility of finding more profound and lasting solutions to life's problems. He states:

"A rush to find solutions can lead to something being quickly put together. If we can tolerate moments of chaos and confusion then something truly new can come to light. There may be new tensions and unfamiliar ambiguities to deal with, but having won a fresh vantage point through the courageous endurance of tension, we may be better equipped to understand the process, realising that illusions and follies have their own roles to play in the mysterious alchemy of the soulful life".

(Moore).

There has also been some recent research confirming that being in the moment elongates time perception. Writing in the Journal of Psychological Science, scientists from Stanford University in California led by Melanie Rudd and Jennifer Aaker together with Kathleen Vohs from the University of Minnesota concluded, on the basis of research, that being in the present moment elongates time, that experiencing awe relative to other states cause

people to perceive that they have more time available and that it can lessen impatience. This was found to lead to a stronger desire to spend time helping others and partake in experiential goods over material ones. They noted that *awe* can be elicited by a walk down memory lane, a brief story or even a sixty second commercial.

Daniel B Wile refers to solving the moment rather than the problem. He maintains that what distinguishes Collaborative Couple Therapy from other approaches to couple therapy is that it focuses on the moment rather than the problem. He states that collaborative couple therapy is based on the concept that when issues arise in the relationship between the parties each one suffers loss of voice. Also as a couple they lose their connection. Further he states that the therapist also has a problem in that the therapist loses empathy with the parties when the parties lose connection with the moment.

Wile maintains that the therapeutic task is to solve the moment rather than solve the problem. He states that by focusing on the moment it allows parties individually and collectively and the therapist to recover from these losses. He states:

“Solving the moment is a collaborative couple therapy way to solve the couple's problem, since it creates the collaborative spirit that enables couples to arrive at whatever practical solutions might be possible” (Wile).

The Third

The art of mediating each moment requires the mediator to achieve a state that is totally in the here and now. Being in the moment creates a third state (“a third”) that exists in the space between the mediator and the parties. This third is an actual entity being more than the sum total of the parties. It is experienced in the context of each person’s own personality system, personal history and psychological make-up. It is not identical for the participants.

‘The third’ is generated in the context of the mediation setting and is the vehicle of the powerfully defined roles of the mediator and parties. The mediator constructs a “golden bridge” by always being in the moment. This traverses the space between the participants, providing a framework of connections that assists in managing the relationships between them. It is a new construct and a new existence.

Wile asserts that it is the therapist's empathy that is the connecting bridge between a therapist and the parties. However there is an alternative view. Thomas H. Ogden suggests that in addition to the therapist and the individual party or parties there is another entity in the room which is made up of a combination of all three. It has been referred to as an intermediate third area of experience which is contributed to by the analyst and the parties. Ogden maintains that the intermediate area of experience belongs to both and to neither.

In psychoanalytic terms this entity has been called 'the analytic third'. It has also been called 'intersubjectivity' (Ogden). It can be understood as the space between the parties or the field which exists whenever the parties and therapist are present together. The third or the field is jointly created in the conscious and unconscious relationship between the people. It mostly dissipates when they cease being together in that setting. It fully exists in the shared moment.

In the context of mediation the 'analytic third' or in this case the 'mediatory third' (or it might have to be the mediatory fourth or fifth depending on the number of parties in the mediation) is the creation of the interaction of shared time, space and interrelationship experienced by the mediator and the parties. Although each party still exists within his or her own subjectivity, the parties, by being in a mediation relationship with other people, also exist in the intersubjective experience of that relationship.

All parties experience "the mediatory third" in the context of their own personality systems, personal history and psychological makeup. While the 'third' is jointly created by all three parties it is not identical for each participant. Because it is a shared experience all parties including the mediator, add to or subtract from it with their conscious and unconscious thoughts and actions.

For the mediator who is totally in the moment and detaches from his or her own memory and desire the intuitive thought arising in their mind from this shared relationship experience (intersubjectivity) can be highly pertinent. The mediator can allow the co-created intersubjective area of experience to inform him or her as to what is emerging in the mediation.

This connection of the mediator to the parties via the 'third' emphasises the importance of Bion's dictum of letting go of any overt attachment to our own memories, desires and the need to understand and Freud's maintenance of an evenly suspended attention. In practical terms it means that the mediator's own negative thoughts about the parties or the prospects of success of the mediation directly affects 'the third' at both a conscious and unconscious level. Likewise positive thoughts about the parties and the success of the mediation also feed into the collective 'third'.

The mediator is as much a part of the energy in the room as are the parties. The mediator's personality system, personal history and psychological makeup play an equal part in the mediation process with those of the parties. This challenges some of the traditional mediation concepts of impartiality and neutrality.

The presence of this 'third' is often expressed in religious and spiritual connotations with terms such as the Christian concept of 'The Holy Spirit', the Dao 道, the ten thousand things and becoming one with the Tao.

An example of the presence of 'the third' can be found in the comments of M. J. Slattery Q.C. when noting the connection between participation and human reactions in his review of his first experience acting as a lawyer for a party in mediation:

“The fatal step in mediation is to say yes to the idea in the first place. Mere participation in the process works insidiously over time to suspend, then overcome, much of the detachment of lawyers and the cynicism of their clients. Once hours, days or even months have been spent mediating in a structured environment, human reactions attempt to give all this activity some purpose. The motivation to settle then appears”. (M. J. Slattery Q.C).

Greg Rooney has been a practising mediator in Australia since 1991. He retired as a lawyer in 1996 and has since then worked full-time as a mediator and arbitrator. Greg has mediated more than 1,500 disputes in a diverse range of conflicts including multi-party disputes involving government institutions, commercial and industrial disputes, agricultural disputes, franchise disputes, matrimonial disputes and disputes involving conflict in the workplace. For the last eight years Greg has mediated over 250 face-to-face mediations between religious leaders and individual victims of sexual abuse in the Catholic, Anglican and Protestants religions in Australia. He has published papers on mediating sexual abuse cases, the use of intuition in mediation, Project Alliancing and a number of other mediation based topics. He conducts, annually, a five-day residential mediation workshop in Tuscany Italy with Margaret Ross and Barbara Wilson from the UK. www.gregrooney.com.au

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