1st Asia Mediation Association Conference, June, 2009. Singapore.

The Use of Questions in Mediation:

Empowering Clients to Manage, Transform or Resolve their Own Conflicts

Associate Professor Dale Bagshaw, PhD[1]

Director, Centre for Peace, Conflict and Mediation, Hawke Research Institute

University of South Australia.

Abstract

Mediation is a voluntary, consensual process and relies upon the parties setting their own mutual goals and making their own mutual decisions. The presenter explores some postmodern social-constructionist ideas that have influenced her approach to mediation training and practice and highlights the value of reflective questions. Reflective questions which are based on these ideas can assist clients to construct their own goals and focus on future solutions, deconstruct dominant discourses and reframe their stories about and perceptions of conflict. Most importantly, reflective questions can assist the mediator to empower clients from different cultural backgrounds to manage, resolve or transform their own conflicts and disputes.

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Lang and Taylor highlight the differences between prescriptive and reflective (elicitive) approaches to mediation. With reflective approaches the mediator is a *catalyst* for change, views the clients as the experts and asks questions that nurture exploration and discovery [1]. The notion of reflective thought was first introduced by John Dewey in a book titled *How we think*, published in 1910 [2]. It involves reviewing our attitudes and behaviours in ways that help us identify underlying assumptions, without necessarily challenging their ideological bases or taking power positions into account. *Reflective learners* take time-out to critically challenge their value assumptions and habitual behaviours and are receptive to feedback from

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[1] Associate Professor Dale Bagshaw, PhD: Director, Centre for Peace, Conflict and Mediation, Hawke Research Institute and Director, Postgraduate Studies in Mediation and Conflict Management, University of South Australia. She has published widely in books and refereed journals, trained mediators nationally and overseas and is currently Vice-President, World Mediation Forum and the inaugural and ongoing President, Asia Pacific Mediation Forum.

others. In this paper, however, I argue that mediators should adopt the postmodern concept of *reflexivity* and *self-reflexivity*, which takes the idea of self reflection further. *Self-reflexivity* is generally assumed to mean 'reflecting upon and understanding our own personal, political and intellectual autobiographies' and requires mediators to make explicit where they are in relation to their clients [3, p.121].

The theoretical perspective of *social contructionism* maintains that people develop their sense of what is real, or their 'truths', through conversations with and observations of others [4], and 'maintains that 'reality' is knowledge that guides our behavior, but we all have different views of it. We arrive at shared views of reality by sharing our knowledge through various social processes which organize it and make it objective. Social activity becomes habitual, so we share assumptions about how things are …[and] … behave according to social conventions based on that shared knowledge' [5, p.14]. From this perspective it is impossible for a mediator to be 'neutral' or 'objective', which requires mediators to take a *reflexive* approach to practice [3, 6-9].

Postmodern mediators are conscious that their personal and professional experiences, beliefs, values and assumptions, personality, ethnicity, sex, class, ability, age and so forth shape the way they view conflict, approach conflict and interpret or privilege the various accounts of conflict provided by their clients. They acknowledge that all knowledge is situated and is influenced by culture, history, one's position in a society or group, power and so forth. This means, among other things, that the mediator is directly implicated in the knowledge that he or she produces, such as in the way a mediation is conducted, questions are asked and the agreements are shaped [10]. The way the clients are invited to participate in mediation; the information they are given prior to the mediation; the context, timing and location of the mediation; the particular aspects of the conflict that mediators select to focus on or give priority to; *the type of questions they ask; who they ask, when and how; their interpretations of the answers* - all situate knowledge in a particular way. In addition, the clients' social context, personalities, culture, health, experiences and perceptions also *shape the meaning given to questions* and events, and influence the knowledge that is produced [10].

In this paper I explore the importance and usefulness of *reflective questions* in mediation. I have highlighted the importance of language and culture in many prior publications and conference papers [11-19]. Stories about conflict that people bring to mediation can be seen as constructions in language that shape their experience. From a social constructionist

perspective, people from different cultural backgrounds who are in conflict view things from a particular cultural position and their perspectives are particular social or cultural views of reality that serve certain interests and have a specific meaning. *Conflicts arise over whose meanings get to be privileged.* People's needs, perceptions and interests, therefore, are not viewed as 'essential' or fixed, they are constructed in discourses that both emerge out of and shape social processes.

In the 1970s, along with many other social workers and family therapists at the time, I was influenced by the book *Change: Principles of Problem Formation and Problem Resolution.* The authors argued that a focus on problems and attempted solutions to a problem can perpetuate the problem and therefore an understanding of the origins of the problem was not always necessary [20]. For many years before he died, Dr John Haynes, who came from a similar background, advocated using future-focused reflective questions in mediation and often refocused clients in mediation by saying: *We are not here to rehash your past we are here to reshape your future.* He believed that:

> … the mediator is only useful to the clients in helping them to determine what they do want in the future and then helping them decide how they can get what they want. It is difficult for the mediator to help clients not get what they do not want, which is what clients expect if the mediator dwells with them on the past [21: p.7].

Two postmodern approaches to mediation which are based on theories that contribute to this view have recently been published in the mediation literature - narrative mediation [22] and solution focused mediation [23]. They are based on social constructionist ideas and build on the ideas of Michelle Foucault and other postmodernist philosophers [24]. Solution focused and narrative theorists assume that people's lives and identities are shaped by the meaning they give to their experiences, which is in turn shaped by and reflected in dominant 'normalising' discourses and cultural practices in society, and their historical position in the social structure [25]. They see language as a form of social action and therefore counseling and mediation are viewed as places where clients and a therapist or mediator work *collaboratively*, engage in *conversation*s and *co-construct* or reconstruct a more positive future. Both approaches are based on models and ideas that have been extensively used in therapy for many years [26-29].

Solution-focused therapy was pioneered by Steve de Shazer, Insoo Kim Berg and colleagues [27, 30-37] at the Brief Family Therapy Center in Milwaukee, Wisconsin. From a solution-focused perspective the focus is on building solutions rather than solving problems and questions are designed to change perceptions, patterns of interaction and meanings within the client's frame of reference. It is assumed that change occurs in clients when they and the mediator co-create new and more useful meanings, within the client's frame of reference. Careful attention is focused on listening for and exploring the client's words and building the next question from the client's latest answer. Solution-focused questions are deliberate and concrete and include: questions to amplify client goals (miracle questions), relationship questions to draw out alternatives and contextualized client perceptions, exception questions to uncover client successes and strengths and scaling questions to measure client progress and help clients to make their perceptions more concrete and definable. For example, in solution-focused work, practitioners regularly ask clients the following scaling question: *On a scale of 1 to 10 whereby 10 is the problem with which you came with is solved and I is 'the worst it has ever been,' where is it now on that scale*?[34]

Narrative therapy was pioneered by Michael White and David Epston [28, 29, 38, 39] in the early 1980s in the Dulwich Centre, Adelaide, South Australia and their ideas have been developed in a narrative model of mediation by John Winslade and Gerald Monk, two New Zealanders [22]. From a narrative perspective, the mediator does not focus on problems but is more concerned about how clients' world-views, or constructions of the conflict or events, are getting in the way of an effective solution and will ask questions in ways that surface these assumptions and world-views and encourages clients to think about them differently [22]. Social constructionists argue that there is not one 'truth' or 'reality', but there are multiple ways of looking at similar issues within different contexts. They highlight how socially agreed upon ways of talking about things (or dominant discourses) construct people's reality and their interpretation of experiences. In narrative approaches these discourses are deconstructed through artful questioning and it is assumed that once they are made visible they can lose their power. For example, people experiencing a similar event can define themselves as *victims* of terrible injustice, *strong* in the face of injustice, or as being primarily *unaffected* by the event. These constructions will be influenced by the cultural context and factors such as age, gender, ethnicity, class, social status, sexuality, ability and so forth. 'Macho' males in most cultures will be less likely to describe themselves as 'victims' or as 'being fearful', for example, as it goes against the dominant social constructions of

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masculinity. It is also important for the culturally aware mediator to recognize that some people's versions of reality are privileged in certain contexts (such as young, white, Western males in Australia) and others are marginalised (such as children, elderly or indigenous people) or silenced (such as new immigrants or refugees from Asia).

Narrative and solution focused approaches to mediation are based on similar philosophies and ideas, which impact on how questions are framed and used by the mediator:

- Reflective questions are used to assist clients to set their own mutual goals and transform or resolve their own conflicts.
- The focus of questions is not on problems but on the way that clients construct the conflict, which influences the way they respond to it. For example, in narrative mediation the focus is on developing an alternative "story" of cooperation, understanding and mutual respect' [23, p.178]. In solution-focused mediation, the focus is on forming solutions rather than solving problems, such as on 'what has worked (or is still working) rather than on what has not worked (or is not working)', and on acting rather than on thinking or feeling [23, p.179].
- The aim of questioning is to deconstruct, reframe, transform and/or change perceptions of and therefore responses to conflicts. Questions are designed to challenge old ideas and trigger new ideas.
- The past is only questioned to identify the extent of past cooperation and to search for times when clients have not been dominated by the problem or their lives have not been disrupted by the conflict.
- Questions are designed to assist clients to externalize the conflict, or to detach the conflict from themselves, so that they can see it as a negative external influence, which can be tackled together.
- Reflective questions are designed to assist clients to recognize and build on their strengths and competencies. It is assumed that clients have the inherent strengths and resources to help themselves.
- Clients are seen as the 'experts' and therefore the mediator takes a 'not-knowing', 'bottom-up', curious stance when asking questions.
- Mediators are encouraged to use mutual, open-ended questions ('how', 'what', 'when'), which encourage clients to reflect on their situation. Mediators are discouraged from

using questions that place the mediator in the position of 'expert', such as closed ended, cross-examining, probing or 'why' questions, which can put clients on the defensive.

- Questions are framed in a way that focuses on future, 'positive possibilities' and the language used is 'mutual, respectful, and nonthreatening' (ibid, p.179).

The problem-solving model of mediation tends to focus on problems or interests and cause-and-effect and uses a structured, staged approach, with the mediator managing the process. In this model mediation is described as a process of assisted negotiation with the goal of clients reaching an agreement [40]. However, mediators using problem solving approaches can fall into the trap of categorising and labeling their clients and their problems, and ask questions in ways that reify and reinforce the power, knowledge and expertise of the mediator. The focus on 'problems' or 'conflict' is negative and the way problems are defined determines the approaches to their resolution.

From a postmodernist perspective the mediator accepts that there is no 'normal' way of being (whilst recognising that some dangerous ways of being are unacceptable or illegal). It is assumed that if people's experiences and behaviors are accepted or 'normalised' by the mediator they will be less likely to take a defensive stance and will be more receptive to new realities and exploring new ways of being or behaving.

Reflective questioning techniques that I use in mediation are based on the postmodernist, social constructionist ideas that I have outlined and can assist mediators to 'empower' their clients to set their own mutual goals for mediation and reflect on their situation in a way that produces new insights and possibilities. Reflective questions can enhance the conflict literacy of the clients, widen the context, and privilege *their* knowledge, not the knowledge of the mediator. They can provoke insights that can change their attitudes and behavior and expand their views of the world. They encourage the client, not the mediator, to do the 'thinking work' in mediation sessions and can assist parties to surface some of their culturally embedded ideas around social constructs that impede the successful resolution of a conflict. For example cultural constructs of femininity and leadership can be surfaced by the mediator asking: *What has led you to believe that women cannot be effective leaders?*

For reflective questions to be effective they should be:

- specific

- cast in simple, positive language

- active, not passive

- curious, exploratory

- respectful, without implying judgment, blame or creating defensiveness

- open

- mutual – the same question should be asked of each participant

Here are some examples of reflective questions, based on postmodern ideas, that I have used in a timely way in mediation in a number of contexts and for a number of purposes:

- To assist clients to reconsider or modify views, attitudes or positions: *How is it that you think that you two can't resolve this conflict when you been able to mutually resolve other conflicts in the past?*

- To externalise problems: *How has <u>this conflict</u> been allowed to escalate like this when you've been such good colleagues for many years?*

- To stimulate insight: *What did you hear Bill say and what did it mean to you?*

- To anticipate change: *What would have to happen over the next month for you to reconsider your position?*

- To motivate clients to change by focusing on a future in which the conflict would no longer exist: *Imagine the conflict is resolved, what would you then be doing differently?*

- To reframe a conflict in a mutual way so that it promotes cooperation: *How can you both cooperate as parents so that John* [the son] *can get what he is entitled to, the best of each of you?*

- To stimulate new ideas, attitudes, behaviours and/or options: *What do you think you can do differently to assist Jane to agree with what you want?*

- To encourage empathy: *If you were to imagine what it would be like to be in Bill's shoes, how would you respond?*

- To stimulate people to expect positive outcomes: *If you did get what you want, what would it be like?*

- To identify and highlight clients' competencies and strengths: *How did you decide to do that? How did you manage to do that?*

- To assist people to focus on the future: *If you could move forward a year and things could be the way you want them to be, how would things be different?*

- To formulate goals, for example the solution-focused 'miracle question' is useful in some situations to help clients to formulate their goals for mediation:
  If you could wave a magic wand and a miracle happened and the conflict that has brought you here was gone. What would be the first thing/s that you would notice that would tell you that something was different? Then: *If you were to pretend that the miracle has happened, what would be the first thing you would do?* (This is a strong suggestion that the client has to do something different to solve the problem). *If you were to do that, what would be the first change you would notice about yourself?*

- To highlight 'exceptions' to the pattern of conflict: *I have a good picture of what happens when there are problems. In order to get a more complete picture, can I ask about times when the problem does not occur or is less troublesome?* 'Exceptions' are times when the problem did not happen. If the mediator and clients then examine who did what, how, when, and where, the answers may identify whether something that has helped at an earlier stage can be tried again. This can foster a sense of achievement and empower clients.

- To stimulate clients to reflect on changes or achievements in order to enhance motivation and confidence, or to assess the severity of a problem or conflict, levels of feeling, different perceptions, level of hope for change, evaluation of progress and so forth, the solution-focused 'scaling questions' (using a continuum from 1 to 10) can be used: *On a scale of one to ten, with one being 'not at all ' and ten being 'completely', how hopeful are you that this conflict can be resolved to your satisfaction*?

Finally, Dr John Haynes and I made a series of mediation training tapes just before he died, which illustrate how variations on the following two sets of reflective questions can be used by the mediator at various stages in the mediation process in order to put dissonance into clients' thinking, shift them from their positions and inject the notion of change. These two questions also encourage empathy, as each person has to consider the other in the answer. For example in a dispute between Bill and Jane, the mediator asks the parties two sets of reflective questions in turn, using the following sequence (note that one starts first with the first question, and the other starts first with the second):

1. *Bill, what are you prepared to do differently to assist Jane to agree to what you want?*

2. *Jane, what are you prepared to do differently to assist Bill to agree to what you want?*

3. *Jane, what can Bill do differently to assist you to agree to what he wants?*

4. *Bill, what can Jane do differently to assist you to agree to what she wants?*

These questions are particularly useful when generating options. They can also be given to clients as homework.

In summary, postmodern, social constructionist ideas and the associated concept of reflexivity highlight that our practices are socially and culturally specific [41], not neutral, and demand that mediators be 'explicit about the operation of power' [42, p.162] and mindful of their power position in the mediation process. Mediators using postmodernist approaches, such as those based on solution focused and narrative theories, should therefore engage in self-reflexivity, both within the practitioner-client interaction, and in the production of accounts and interpretations of the interaction [9, 43]. The reflexive mediator assumes a non-hierarchical position ('bottom up' rather than 'top down') and works collaboratively with clients in a collegial, partnership role, sometimes described as engaging in *conversation* [14, 43, 44]. It is the *clients'* knowledge that is privileged, and the *clients* who supply the interpretive context for determining the meanings of events. For example, in narrative and solution focused approaches to mediation, the mediator is primarily interested in clients different world views, as expressed through their stories about the conflict, and reflective questions assist them to open up to alternative views or stories that might be more useful to their future situation and to the transformation or resolution of their conflicts.

There are many tools that practitioners can use to engage in self-reflexive learning or practice and to promote self-reflection in their clients. For example, *learning journals* are useful to help mediators or trainees to develop a habit of reflection and the discipline of critical analysis (Lang & Taylor, 2000). They are a useful way of systematically recording the mediator's thoughts, impressions, concerns, questions and reflections. They may also be useful for participants in mediation as a way of recording their responses to reflective questions between sessions.

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