

Application of SF Methods to Family Court proceedings – Jody Merelle

Around fifteen years ago, I walked into a small meeting room at court to meet a long-standing client of mine, whom I will refer to as Amy. As her barrister in a contact and residence case involving her children, my job was to give her legal advice and represent her at court proceedings. Although we had a good working relationship, Amy was known both within and outside the court setting as someone who was “difficult”. She had a diagnosed personality disorder and often reacted in ways deemed to be stubborn and unreasonable. We had been backwards and forwards to court around ten times over a two-year period.

Things had become so complicated, with Amy breaking or ignoring numerous court orders, and the judge too, commenting several times on Amy’s refusal to agree or change her mind), that I had felt it necessary to apply for the assistance of Queen’s Counsel (QC, a more senior lawyer used in exceptionally difficult cases) and this was approved.

So, having explained the background to Sally Bradley QC (now sadly passed away), she joined me for the first time in meeting with Amy. For the next hour in the meeting, as we planned the way forward for the next hearing, I watched in amazement. Something was happening, although I didn’t at the time understand what it was. This difficult, often intransigent, thus far unreasonable client was suddenly showing a completely different side to herself. She was responsive and far less stubborn; for the first time there was movement on matters which had been discussed a hundred times before.

Apart from filling in some missing detail I took little part in the process. I just sat and watched. Despite the four binders full of reports, court orders and case material, the meeting lasted for little more than an hour. At the end of that time, significant progress had been made. Amy had moved her stance on issues that previously she would not have moved on. We had an agreed plan and were ready for the next hearing with what seemed to me at least to be a reasonable proposal. After thanking Amy for coming I turned to Sally, who was also a friend of mine. “How on earth did you do that?” I asked her.

Familiar with the background of the case, the many reports, hearings and broken court orders that it had involved, Sally did not need to ask what I meant. She had come into the room fully aware that Amy had been branded “difficult” and had focused on making progress regardless of that fact. Her answer was simple. “It’s not that hard,” she said, “I just thought beforehand about where we needed to

be at the end of the meeting and made sure that's what we were working towards all the time." This explanation sounded almost simplistic.

Years later, armed with an understanding of solution focused practice, I realised there was much more that had contributed to the success of the hour than simple goal-setting. At the same time as knowing what needed to be achieved, Sally had also entered the room with no pre-conceived ideas, despite my warnings about the "difficult" client. She treated Amy with total respect. She handled both client and case in the uniquely individual way they both merited. Sally spoke her language, worked within *the client's* framework of understanding (which was quite different from the legal one) allowing them collaboratively to identify the next steps that would take them forward in the case.

Despite the many papers involved, Sally also put herself in a position of "not knowing"- allowing herself to be led by the client rather than assuming she already knew everything there was to know. (Anderson and Goolishian, 2005) Having already been the object of several scathing reports, this new approach allowed Amy to feel part of the goal-setting process, (which after all involved her life and children), and therefore much more motivated and open towards working towards them.

Although I didn't know it at the time, (and in actual fact nor did Sally herself) this was my first ever demonstration of solution focused practice at work. It was a style I would return to many times in the future but only come to fully understand years later, having trained as a solution focused practitioner myself.

As a barrister specialising in family law, my practice involved all aspects of family breakdown, from disputes over financial assets at the end of a marriage, to disagreements over contact and residence arrangements of the children, domestic violence cases and care proceedings involving abuse and/or neglect brought by the local authority.

I have heard it said somewhere that what people remember at the end of their lives are births, deaths, marriages and days in court. There is some truth in that. For the majority, being at court is an intimidating process involving issues of crucial importance to them. In a family law hearing there is always much at stake and feelings often run high. So even though the function of a barrister is to be on the side of the client, meeting one for the first time feels daunting to many.

One of the ways I found very useful to address this was to tell the client right at the beginning that they were my boss, not the other way around. I made it clear that this was their life and their case. I would explain that I had no agenda other than to assist them in the court process and help them find a way forward in what were often very challenging circumstances. My job was to help them get the best

result possible within the law. The change in the client after this little speech was almost always tangible. The dynamics within the relationship shifted from the client thinking things like, “this person is above me”, or “this person is intimidating”, to “ok, now we are working together. I am not powerless in this situation but can influence what we are working towards”.

Once again, not having any solution focused training at the time, I did not stop to think why this little speech was so effective. But it worked, the shift in the client(s) was immediate. In solution focused terms this can be explained by the fact that as soon as the client understands that they are being respected as part of a collaborative process rather than being caught in a process over which they have no control, both communication and therefore progress suddenly become much easier to achieve.

Barristers have a reputation for being patronising, snooty, know-it-all types who are bad communicators outside the courtroom itself. I have met several barristers who fit this description. However, there are many more who do not. The ones who excel at their work are those who instinctively treat the client with respect whatever the client’s background or difficulty. They allow the client to both be and feel fully involved in decisions made, and recognise that each case is entirely individual. They are able to use a legal framework to fit around the needs and circumstances of the client rather than the other way around. In addition, the best barristers are able to speak the language of the client, explaining often complex concepts in terms that are easily understood.

In jury cases the skill of a barrister is in breaking down complex material and presenting it in a way anyone can understand. It is impossible to be fully involved in determining outcomes, either as a client or otherwise if you have no idea what is being talked about.

In many cases involving children, including disputes over residence, contact between parents and care cases brought to court by social services, a solution focused approach would have a huge amount to contribute. Repeatedly, by the time a case had reached court, positions between parents and social workers had become utterly entrenched. The social workers made it clear that they saw the parents as being little more than hopeless and the parents felt (often justifiably) that the social workers were their enemies. Any thoughts of collaboration had all but disappeared. Naturally the first job of any social worker is to ensure the safety and well-being of the children involved. But this inevitably becomes much harder to do in an atmosphere of accusation and mistrust.

The results where a social worker took a more solution focused approach were much better. In cases where parenting was shown to have fallen below an acceptable level, the social worker was able to do really constructive work by focusing on those times when parenting *had* been “good enough”. A major principle of solution focused thought is that no problem occurs all of the time and that exceptions, or

at least times when the problem occurs with less intensity, can always be found. (De Jong and Berg, 2002) In parenting terms, focusing on the times when parenting has been at or above an acceptable standard allows social workers to identify what other factors are present at these times. They can work on what resources are available, what the parents' own needs might be, how these can best be met and how these positive exceptions can be built upon.

Parents who have struggled to adequately raise their children almost always have unmet needs of their own. One important way of working with these parents at an early stage is to focus on their own "preferred future" and establish what they would like their world to look like. (Iveson, 1994) This leads to parents feeling respected and listened to. It also means they feel they have a genuine part in allowing positive change to occur, rather than just being part of a process over which they have no control.

It is this latter scenario which so often leads to parents simply "giving up". They feel there is no point in trying anymore if losing their children is the inevitable outcome anyway. Once a parent is able to identify a preferred future, the next step is to look at how much of this is already present. It is amazing how often the future that a client (in any circumstances) dreams of, is largely or at least in part already acquired. By establishing the positive factors already present the client can then enlarge and expand them and identify steps to move closer towards the relevant goals.

Now working in a therapy setting, just yesterday I met a client for the first time who presented with severe depression and low self-esteem. Without going into any of the background reasons for this, we spent half an hour looking at what she would like her future to be. I wrote all her ideas down on paper and gave it to her to look at. Then I asked her, on a scale of 1-100, how much of what was written down she felt she already had. Even I was surprised to hear that the answer was fifty per cent - she already had half of what she was dreaming of! This was a major revelation to her. She had not realised before this exercise how many things were actually just the way she wanted them to be. All that had happened within the session was a shift in her focus, but the immediate change in her demeanour was significant.

This, of course, is one specific example in a therapy setting, but the point is far from unique and can be repeated in almost any setting. In a world where we are surrounded by and automatically focus on problems and challenges, a focus intensified many times over in the court arena, the flipside is that at the same time focus is taken *off* those things which are actually going well. And it is hard for anyone to benefit from positives if you simply can't see them.

The importance of giving positive feedback cannot be over-estimated either. This does not mean throwing around empty platitudes for the sake of it. It means noticing genuine positives and progress and deliberately highlighting them. The occasions when a judge took the time to publicly compliment a mother on her progress, when her parenting had been heavily criticised in the past, were often moments of significant change in the life of that mother. Some people have had very little exposure to positive encouragement, particularly in the care proceedings arena. So simply noticing and commenting upon past achievements or positive change can lead to dramatic change in the attitude and motivation of that person. Even in cases where the client appears to have little or no motivation to change, which is commonly assumed with offenders in domestic violence cases, solution focused approaches have proved to be highly effective in producing positive results (Lee, 2003)

Another way in which SF tools could usefully be implemented in the court arena is the area of report writing. Social workers, court welfare officers and other experts regularly produce reports for the courts on failures and strengths in parenting. They make recommendations on contact and residence issues and what appears to be the best outcome for the child or the children. Sometimes a report could be from a social worker stating why children could no longer remain at home. Alternatively, a psychologist might report on a parent's personality disorder and how this affects their capacity to parent.

Court welfare officers take all these circumstances into account and write recommendations as to what should happen next in the best interest of the children. As a lawyer dealing with such reports every day, the best reports were those which steered clear from unclear broad statements and sweeping generalisations. Instead they stated explicitly what positive steps could still be taken and how this might be achieved. Reading them, it was easy to distinguish between those cases where a social worker had already given up on the parent(s) and focused only on past or existing problems, and those where concrete steps had been identified and a constructive working relationship was still on offer. At the end of the day, no social worker and no report can be enough in itself to force change to occur. However, the likelihood of a parent remaining engaged and motivated is many times more likely when they feel they are part of a team instead of a target of an expert's contempt, criticism and derision.

Having moved to live in Finland in 2007 I took the decision not to continue as a lawyer within the Finnish system. There were several reasons for this. Having come from a court background, I would be expected as a Finnish lawyer to spend most of my time in an office. This was an idea which I simply could not bear. In looking at the elements of the Bar I had enjoyed the most, listening to people, having the privilege of hearing about their lives and being in a position of offering support in moving forward, it became clear to me that these were all elements to be found within the world of

psychotherapy. Several years on, I now have training from within the solution focused, integrative and psychoanalytic models. However, in my work it is the solution focused model which I consistently return to and which has helped my clients the most. How do I know this? Because they have said so. Because when a client says they are feeling better and no longer need to come for therapy, you know that something must be going right.

Spending large amounts of time focusing on problems, looking for the reasons behind them and as a result increasing their significance, is a common approach supported by countless amounts of theory. However, what I have found my clients really want is not to spend weeks, months and sometimes years focusing on the problem, it is to find a way *forward* despite what has gone before. They come to therapy because they want to feel better, not to concentrate on their problems and ultimately often feel worse. The same is the case for all problem situations whether for individuals, in business or within a legal setting. Opportunities arise all the time to apply a solution focused approach to a problem focused scenario, (Shennan 2014) and the results are often both quick and dramatic.

Now practising as a solution focused lecturer and therapist, I wish I had had this full remit of solution focused tools at my disposal ten years ago when still working in the courts. Far from just being a way of doing therapy, what I have realised is how adaptable solution focused methods and tools are to any situation or environment at all. Treating people as equals, letting go of pre-conceived ideas, working as a team, looking for exceptions, building a preferred future, assuming people have the capacity to find their own solutions, giving good feedback and focusing on the positives are straightforward ideas which can be adapted to any arena and will almost inevitably produce movement towards positive change. And in a world which chooses so often to focus only on the negatives that, in my opinion, can only be a good thing.

References

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About the Author

Jody Merrelle is a British/Finnish solution focused therapist, coach and lecturer with her own practice in Finland. A former disc jockey as well as a barrister, she is also a mother of seven children.