

CHAPTER 4

Assessing Transformative Practice: Methods and Approaches

James R. Antes

A fundamental question asked by all aspiring mediators is: Am I doing it “right”? That is, “Am I engaging in competent practice?” The follow-up question that is frequently asked is, “What do I need to do to improve?” Related questions are asked by agencies, organizations, and businesses that make use of mediators.

Stakeholders want some assurances of the competence of the mediators they employ. Parties to mediation may not ask questions about mediator competency but they commonly assume that the mediator has the background and skills to help them. They expect the most effective treatments when they visit the physician, dentist, and psychologist and have similar expectations when they engage a mediation professional.

These are all questions of quality assurance. The expansion of mediation beyond the labor relations arena in the last three decades or so, including the development of court-connected mediation programs and community mediation centers, naturally raised concerns about maintaining high-quality mediation practice as more and more people entered the mediation field. Recognizing these concerns, organizations within the mediation community established study groups to examine the issues and make recommendations.

[\[146\]](#)

In this chapter, I describe three different transformative mediator assessment processes that have been developed by the Institute for the Study of Conflict Transformation (ISCT). They are here given the designations Coaching Process, Certification Process, and Live Action Process.[\[147\]](#) The emphasis in this chapter is on providing a description of how each performance assessment tool is used. Following the three sections describing these assessment processes I describe key issues associated with performance-based assessment.

Coaching Process

The Coaching Process was developed so that transformative mediators at all levels of experience could improve their practice. Competent transformative practice means practice that is in alignment with the premises of transformative theory. Everything a mediator does—whatever his or her orientation—derives from an explicit or implicit set of premises about people and conflict. The transformative orientation is unique in that these premises have been articulated. Most mediators are not aware of the specific link between purpose and practice and base their moment-by-moment decisions (Should I be quiet now? Should I make note of the party's tone of voice? Should I say something about the point the party keeps repeating?) on "intuition"—their accumulated wisdom from their experience, training events, and what they have read. Events happen quickly in mediation and, therefore, mediator decisions are made quickly. There is little time to mentally assess a potential intervention for its alignment with best practices, let alone with underlying premises. The Coaching Process provides a mechanism to "slow down" the interaction so that explicit links between purpose and practice may be made. Mediators are given the opportunity to consider specific interventions they made during mediation and discuss their alignment with the model, and to contemplate alternative interventions that may have been more appropriate.

The Process. This assessment process is used most frequently in role play situations in which the mediation is continuously videotaped for at least 30 minutes. Immediately following the mediation, the coaching process ensues.

Participants. The process involves in-depth interaction between a coach (the term "coach" will be used in this description rather than "assessor" because the emphasis is on the development of the mediator) and a mediator. The coach is an expert transformative mediator and knowledgeable about transformative theory. Sometimes also present for the discussion are the mediation parties, especially if the mediation is a role play that was videotaped just prior to the interaction. It is also possible for observers (fellow

mediation trainees) to be present, but their role in the interaction is limited.

Materials. Because the process involves video playback, video recording and playback devices are needed, with remote control of the playback device if possible. In addition, because the discussion involves specific reference to transformative *premises* and *principles*, [148] it is helpful to have printed lists of the premises and principles.

Steps in the process. The coaching session proceeds as follows:

- 1) Prior to the taping, the coach asks the mediator if there are any aspects of his/her mediating to which special attention should be paid. This allows the coach to watch the mediation and make note of circumstances for later stopping the videotape.
- 2) The mediation proceeds for at least 30 minutes. The coach makes note of events for later discussion with the mediator.
- 3) Prior to the playback of the tape, the coach explains the guidelines of the coaching session. Either the coach or the mediator may stop the tape for discussion. With each stoppage of the tape, discussion proceeds through four topics:
 - a) *Context.* *The coach asks the mediator what he/she saw in the parties' interaction that led to the intervention. If the coach saw something different, that point is discussed.*
 - b) *Purpose.* *The mediator is asked to talk about the purpose behind the intervention, using the language of transformative theory.*
 - c) *Effect.* *The mediator is asked to discuss the potential or actual effect on the parties of the intervention. At this point, if the parties are present, they may be asked to contribute to the discussion.*
 - d) *Linkage.* *The coach asks the mediator to link the intervention to the premises and principles of transformative theory. This discussion naturally involves consideration of the compatibility of the intervention with the theory. The coach may invite consideration of other interventions that would be more compatible with the theory.*

- 4) Playback of the mediation tape proceeds, with stoppages initiated either by the mediator or the coach and discussion structured as described above.
- 5) At the conclusion of the session, the coach and mediator discuss key points for the mediator to work on.

Alternative formats. Sometimes the process is used in a circumstance in which the mediation is taped at a different time than the coaching session. In such situations, the coach will not have the benefit of viewing the mediation as it is occurring and, most likely, will not be able to include the parties in the discussion.

A more extensive modification of the process is to use it without taping the mediation, with a live-action role play. The coach or the mediator may stop the mediation at any time for a context-purpose-effect-linkage discussion. This has the advantages of discussing events “in the moment” and providing the mediator opportunities to attempt other interventions. It has the disadvantages of relying on memory (“I didn’t really say it that way”), not allowing the mediator the benefit of seeing him/herself, and losing the “flow” of the mediation.

Use of the process. The Coaching Process was field tested at six different sites in the United States and United Kingdom.[\[149\]](#) Some of the recommendations for implementation of the process described above are based on the field test findings.[\[150\]](#) Several transformative mediator centers regularly use this process as a standard component of their mediator development efforts. They find it to be effective regardless of the level of expertise of the mediator—everyone learns something from the experience. It is the process that the United State Postal Service has used to enhance the skills of their most frequently called upon mediators in the REDRESS™ program, in what the USPS has called its “Blue Ribbon” training events.

One aspect of the process has been particularly useful beyond the context of a mediator coaching session. Transformative mediator trainers find the context-purpose-effect-linkage language very helpful

in group training sessions as a tool for processing mediation demonstrations and videos.

Certification Process

As transformative mediation became more popular, and more and more mediators and mediation training organizations claimed the term “transformative”, it became clear that a certification process needed to be developed in order to maintain the integrity of transformative practice as described by Bush and Folger.[\[151\]](#) It was important to be able to document if mediators had achieved a level of transformative practice that would be recognized as competent practice.

At about the same time that this need was recognized, Della Noce described the findings of a research project that identified five major “strategies” employed by competent transformative mediators, where strategies were defined as “[H]ow mediators braided together a number of moves in recurrent patterns and sequences of interaction.”[\[152\]](#) These five strategies were identified as:

- 1) *Orienting the parties to constructive conversation—at the opening of the mediation and throughout the interaction, the mediator supports a conversation between parties where empowerment and recognition may occur.*
- 2) *Orienting the parties to their own agency—the mediator supports the parties’ ability to act on their own behalf and pursue their goals.*
- 3) *Orienting the parties to each other—the mediator supports opportunities for parties to enhance understanding of each other.*
- 4) *Opening the parties’ verbal conflict—the mediator supports interactions on issues/topics where differences exist between parties.*
- 5) *Orienting the parties to the decision-making process—the mediator highlights decision points for the parties, both substantive and procedural.*

For each of these strategies particular mediator “moves” were associated, which were defined as “[S]pecific discursive utterances of the mediator, usually contained within a single turn at talk.”^[153] Thus there were certain mediator activities, within the context of the unfolding interaction, which comprised each of the strategies. It is important to emphasize a point embedded within the preceding sentence: All of the strategies are understood within the context of the ongoing interaction between parties. No mediator intervention should be examined without also considering the flow of the conversation leading up to the point the intervention is made.

Della Noce also studied mediators who did not claim to practice from a transformative perspective and found a different set of strategies associated with their practice. Thus, from this research there emerged a set of mediator practices uniquely associated with competent transformative practice.

These research findings supplied one important component of a transformative mediation certification process. In particular, they provided a picture—a description of specific mediator interventions—that represents competent practice as a transformative mediator. They also provided a description of interventions, associated with other forms of practice that are not compatible with the transformative orientation.

But examination of mediator practices, even within the context of the ongoing interaction between parties, does not do enough to assess transformative mediator competence, defined as alignment with the premises of transformative theory. It does not fully assess how well the mediator understands the theory and his/her ability to link interventions to the premises of the theory. It is possible for a mediator to memorize a set of behaviors that apply to particular circumstances, but not understand why particular interventions are appropriate or not appropriate. In the view of ISCT, it is important for the mediator to understand the rationale behind any intervention. Competence as a transformative mediator implies that the mediator understands the link between theory and practice, so that the orientation may be applied to any circumstance, not just a handful of scenarios that might be memorized.

The additional component incorporates the mediator's voice. Can the mediator identify specific interventions in the mediation session that are compatible with the transformative orientation and explain why? Can the mediator identify interventions that are less compatible with the orientation, explain why, and offer alternative interventions that are more appropriate? Can the mediator discuss the mediation, correctly using concepts from the theory? These two components, then, were incorporated into a process for assessing transformative mediator competence for mediators seeking the designation of Certified Transformative Mediator©.

The Process. To apply for certification a mediator submits a video recording of a mediation session and two brief essays in which the mediator discusses an intervention from the mediation that was compatible with the model and one that was not compatible with the model. An assessor carefully views the recording for evidence of the five strategies of competent transformative mediation and also reviews the essays. Following this the assessor schedules an interview with the mediator, usually occurring by telephone, during which specific events in the mediation are discussed. The reviewer then makes a decision on whether or not the mediator may be designated a Certified Transformative Mediator©.

Participants. The process involves two people: the mediator and the assessor. The mediator is anyone who wishes to achieve certification. The assessors are expert transformative mediators who are thoroughly knowledgeable about transformative theory and who have had specific training in the certification process.

Materials. The mediator prepares a video recording of a mediation session about 30 minutes in length that demonstrates sufficient conflict for the mediator to demonstrate his/her abilities. The mediation may be an actual case or an unscripted role play. The mediator must gain permission of the parties to submit a recording of an actual mediation. In addition, the mediator submits two brief essays, one describing an intervention from the recording that was compatible with the model and another that was incompatible. The mediator is instructed to structure the essays using the context-purpose-effect-linkage format described above for the Coaching

Process. The mediator also submits a brief background sheet, providing contact information and a description of prior transformative mediation training and experience.

The assessor uses the *Assessor's Guide to Mediator Moves and Strategies*,^[154] which provides a summary listing of the five strategies and the mediator moves that support each strategy and those that are incompatible (the *Assessor's Guide* may be viewed by anyone and may be accessed on the ISCT web site). The assessor also uses a *Coding Form* to summarize the compatible and incompatible moves associated with each strategy. At the conclusion of the assessment, the assessor prepares a *Summative Assessment Feedback Form* that is sent to the mediator. The form summarizes the assessor's evaluation for each strategy that includes a judgment of "satisfactory" or "needs improvement." The form also summarizes the assessor's judgment of the interview with the mediator and provides a statement of approval or deferral for certification.

Steps in the process. The mediator submits materials to ISCT and one of the assessors is assigned to conduct the assessment. The assignment is based upon availability and lack of prior relationship with the mediator. The assessment then proceeds in the following manner.

- 1) The first step of the assessment involves careful and thorough examination of the materials submitted by the mediator, beginning with the recorded mediation session. Analysis of the mediation is divided into three distinct phases.
 - a) *Observation phase. The assessor views the mediation recording in start/stop fashion and takes extensive notes on events in the mediation and the mediator's interventions, using actual language of the parties and the mediator. In my own work as one of the assessors, I typically record about 15-20 pages of notes during this phase and the notes come very close to being a verbatim transcript of the session.*
 - b) *Coding phase. The assessor examines his/her notes, identifies and numbers the mediator moves, notes the strategies with which the moves are associated, and renders*

a judgment of whether or not the move was supportive of the strategy. The assessor then summarizes these judgments using the Coding Form, which consists of five rows corresponding to the strategies and two columns corresponding to supportive versus not supportive judgments. The numbers assigned to each of the moves are placed into one (or more—a move could be associated with more than one strategy) of the 10 cells of this chart.

- c) *Analysis phase. The assessor examines the Coding Form and reviews his/her notes from the mediation and makes a decision whether or not the mediator's practice corresponding to each of the strategies was "Satisfactory" or "Needs Improvement." There are five such judgments, one for each strategy. Then the assessor completes the first portion of the Summative Assessment Feedback Form, describing his/her assessment of the mediator's practice in supporting the five strategies. In order to "pass" this component of the assessment, the mediator must receive "Satisfactory" ratings for each of the five strategies.*
- 2) The assessor then prepares for the interactive component of the assessment. If the mediator did not pass the first component—the assessment of the recorded mediation—then the certification decision is to "Defer" and the interactive component involves a coaching session in which the goal is to help the mediator improve his/her practice. If the mediator passed the first component, then the goal of the interactive component is to gauge the mediator's knowledge of transformative theory and how to apply it to specific mediation events. In preparing for the interaction with the mediator, the assessor reads the mediator's two brief essays identifying one compatible and one incompatible move. In addition, the assessor examines his/her notes and identifies several events in the mediation to discuss with the mediator.
- 3) The assessor arranges for the interview with the mediator and asks the mediator to prepare for it by reviewing the mediation and being thoroughly familiar with it. The interaction with the mediator involves a discussion of specific events in the mediation, and

commonly follows that context-purpose-effect-linkage described above for the Coaching Process. This is why it is so important for the mediator to prepare for the interview by re-examining the recording of the mediation. I begin the discussion with the two events described in the essays submitted by the mediator and then move to other events. I typically will select some events that were handled well by the mediator as well as those that were not handled so well. Since the interviews are almost always conducted on the telephone, the assessor needs to describe enough of the context so that the mediator recognizes the moment being discussed. The assessor listens for correct usage and application of concepts from the theory and for the ability to link interventions to premises of the theory. The interview proceeds in a similar manner if the result of the first component of the assessment is to defer certification. The main difference is that this is a teaching session, to help the mediator understand how to make his/her practice more compatible with the orientation.

- 4) After the interview has concluded the assessor completes the last part of the *Summative Assessment Feedback Form*, which includes an analysis of the interview, a listing of two or three areas of practice recommended for the mediator to concentrate on for further development, and a decision as to "approval" or "deferral" for certification. The *Feedback Form* is sent to the mediator and to the ISCT office for record keeping. If certification is deferred, the mediator has the option to (1) submit another mediation recording later, or (2) have the first submission reviewed independently by another assessor, either of which is without further charge.
- 5) In order to maintain certification, every two years the mediator must submit evidence of (1) participation in at least eight mediations, and (2) at least twenty hours of continuing education in the transformative framework.

Use of the process. From the time the Certification Process was introduced in 2003, 65 mediators have submitted materials for certification and 54 have been approved (not including submissions

“under review”). Two of the mediators who received an initial “defer” decision subsequently submitted a second tape and were approved for certification after the second tape was evaluated. It is a requirement of the mediator roster maintained by ISCT that all mediators be Certified Transformative Mediators[©]. Other transformative mediator rosters recommend certification and give priority to those who have achieved certification. It is viewed as an important quality control safeguard.

Live Action Process

An organization with a sizable transformative mediator roster approached ISCT with a request for an assessment process that would be used mostly for purposes of mediator development involving observation of actual mediations live. For reasons of confidentiality, the organization was unable to allow mediations to be recorded. For reasons of economy, the organization wanted to be able to conduct the assessments using its own staff as assessors. For reasons that included both economy and validity, the organization wanted to conduct the assessment in the context of actual mediations at the time they occurred. Thus, the organization wanted to enhance the skills of the mediators on their roster using staff that were already employed and mediations that were already taking place. These needs surfaced two special challenges that are addressed, in turn, below: (1) how to direct and maintain the assessor’s attention over the course of a mediation that might be four hours or more in length; and (2) how to prepare staff members of the organization to conduct the assessments.

Focusing and maintaining the assessor’s attention. Events occur very quickly in mediation and there obviously are no “pause” or “rewind” buttons when the action is live. It is impossible to pay attention to everything that is occurring in the complex interaction of a mediation session. Further, efforts to attend closely to such an interaction cannot be sustained for a long period of time, especially if the additional requirement of note-taking is imposed. These are the problems of “focusing” and “maintaining” attention.

In addressing the “focusing” problem, the ISCT process developers (hereinafter ISCT) sought a procedure for directing the assessor’s attention to a limited portion of the interaction, while still maintaining the validity of the assessment. The principle that was developed was that of “diagnostic events”: occurrences in the parties’ interaction that called for a type of transformative mediator intervention that would differ from interventions arising from other mediation perspectives. The metaphors that were used are “signposts” and “crossroads.” Signposts are the events in the parties’ interaction that call for particular kinds of transformative interventions. When a signpost event occurs, the mediator is at a crossroads, where one of two (or more) paths may be taken. The transformative path includes the type of interventions that are compatible with the transformative orientation. The non-transformative path(s) include(s) interventions that are commonly recommended by advocates of other mediation perspectives but which are not compatible with the transformative framework. And, of course, the non-transformative paths might also include interventions that are not compatible with any model of mediation.

The basic rationale developed by ISCT, then, is that the assessor’s attention may be directed to a limited number of signpost events. What the mediator chooses to do (the path chosen at the crossroads) provides evidence of the mediator’s alignment with the model. ISCT developed a list of events that commonly occur during mediation where the mediator intervention is particularly revealing of his/her orientation to practice. The list of about 20 events was narrowed to five, using the premise that an assessor can only adequately direct attention to a limited amount of information. Two main principles were used in the selection: (1) the events should occur regularly in mediation; and (2) the transformative and non-transformative paths should be clearly evident and divergent.

These are the five signpost events that were selected:

1. *Opening the session—what happens at the beginning of the mediation.*

2. *A party narrative—when a party attempts to communicate something about the situation and what it means to him/her.*
3. *Attempts at direct party-to-party engagement—when a party attempts to communicate, verbally or nonverbally, with the other party.*
4. *Conflict talk—when a party expresses something in opposition to or about the other party.*
5. *Process choice points—when there are choices to be made about what to do next.*

A description was developed of the signpost events in the context of party interaction. Included was the observation that more than one signpost event could occur simultaneously. For example, party narratives and attempts at direct engagement often also include conflict talk. In addition, a detailed description was made of the transformative path and the non-transformative paths at the crossroads marked by each of these signposts. In other words, the description captured what one sees in mediator behavior that indicates the path taken at each of these crossroads.[\[155\]](#)

The second problem was how to maintain the assessor's concentration throughout a potentially lengthy mediation. The principle that was followed here is similar to that underlying the Certification Process—much is revealed about the mediator's practice in 30 minutes of mediating. Thus in the guidelines that were developed, assessors are instructed to pay particular attention to the signpost events and mediator interventions in the early part of the mediation. Pay attention to the opening. Make note of what the mediator does with party narratives. In other words, look for examples of each of the signpost events and the mediator interventions. Once several illustrations of each of the signpost events have been noted (except, of course, the opening), then look for deviations in the pattern of response that the mediator has established and for specific illustrations that may be used in providing feedback to the mediator at the conclusion of the session. Thus the most intensive observation and note-taking occur in the first half hour or so of the mediation.

Preparing the assessors. The staff of the organization who were to become the assessors had already received extensive training in transformative mediation and it was already a component of their job descriptions to observe mediations. However, for the most part, although most of them had observed many transformative mediations, few of them were practicing mediators. The plan for preparing these assessors, then, who already had considerable background in the orientation, was three-fold:

1. *Provide a review of the theory and practice of transformative mediation (3 days).*
2. *Provide experience in mediation practice with feedback from an expert transformative mediator, using the Coaching Process (2 ½ days).*
3. *Provide in-depth training and practice with the Live Action Process (2 days).*

The latter training included opportunities to identify signpost events and mediator paths through observation of role-play mediations. Also each participant served as an assessor of a role-play mediation while being coached by an expert transformative mediator. These assessors, at the end, may not have been expert transformative mediators because of their limited experience as actual mediation practitioners; but they were experts in terms of their knowledge and understanding of the theory and their ability to recognize competent transformative practice.

The Process. The process involves the observation by an assessor of the full length of an actual mediation. Just as in the other processes, the mediator's voice is included. Following the mediation session, a few minutes are taken for the mediator privately to reflect on the session in preparation for discussion with the assessor. During that time of reflection, the assessor prepares for the feedback session. At the end of the feedback discussion, the mediator receives a list of two or three key areas to work on for further development of his/her transformative practice.

Participants. The mediator and the assessor are the essential participants. The mediator is anyone who desires feedback about his/her transformative practice. The assessor is thoroughly knowledgeable about transformative theory and practice and has received training in the Live Action Process. It is desirable for the assessor to be an expert transformative mediator, but short of that, able to recognize competent transformative practice and communicate why an intervention is or is not compatible with the transformative framework. During the mediation the parties are (obviously) present but they are not present during the feedback session with the mediator.

Materials. The assessor has available a chart for each of the five signpost events that identifies indicators of the transformative and non-transformative paths. The assessor also uses a note-taking guide that has a column for recording party talk, a column for recording the mediator's intervention, and a key that reminds the assessor of the five signpost events.

Steps in the process. These are the basic steps in the process.

- 1) The assessor contacts the mediator to discuss the assessment process. Included in this discussion are a description of the assessment process and its purpose, a request of the mediator for any specific areas of practice about which he/she would like to receive feedback, and encouragement for the mediator to review the model.
- 2) The assessor prepares for the assessment by reviewing the process and the signpost events and their associated transformative and non-transformative paths.
- 3) The mediation occurs. The mediator introduces the assessor to the parties as one who is present in order to observe the mediator. As the mediation progresses, the assessor's observations and note-taking are broken roughly into two phases.
 - a) *During the early part of the mediation, the first half hour or so, the assessor closely monitors the interaction, looking for signpost events and the associated mediator interventions. For each signpost event, the assessor takes notes, using as*

nearly as possible the actual language of the parties and the mediator.

- b) *Once several illustrations of the signposts and mediator paths are noted, the assessor is in a position to determine if the pattern of mediator response at each signpost is consistent. If not, thorough observation continues until the assessor is confident of the mediator's intervention tendencies at each signpost. Once a consistent pattern is observed, the assessor looks for additional specific illustrations of the mediator's intervention tendencies that may be carefully noted and reported to the mediator later. The assessor also is alert for variations in the pattern of response that the mediator had earlier established. For example, three hours into the mediation, is the mediator less patient with the parties' interaction and becoming more directive in response to conflict talk? In general, then, there is continued careful observation but less note-taking during this second phase of the observation.*
- 4) Following the mediation, after the parties are excused, a period of reflection occurs for both the mediator and the assessor. The mediator is asked to think about the mediation and identify one event that went particularly well and one that did not go well. The assessor uses this time to organize feedback for the mediator. He/She examines each signpost event for a pattern of mediator response with specific illustrations from the mediation. The assessor is careful to note interventions that the mediator used that were in alignment with the model as well as those that were not. Finally the assessor considers the big-picture question of what two or three areas of practice are most important for the mediator to work on. It is very easy for a mediator to lose sight of the most important points of feedback in the midst of hearing multiple observations about the just-completed mediation. So, it is essential to help the mediator focus on what is most important for further development. Thus, the assessor prepares a list of two or three areas with specific ideas for further work.
- 5) The assessor and the mediator meet to discuss the mediation. It is helpful to begin this discussion with the reminder to the

mediator that the purpose of the assessment is formative, to help the mediator develop his/her practice. The discussion then proceeds according to the following agenda.

- a) *The assessor invites the mediator to describe the event that went well. It is helpful to structure this discussion using the context-purpose-effect-linkage organization described above for the Coaching Process. The assessor listens for proper usage of the model and connection to its underlying premises.*
- b) *The assessor then describes a situation that seemed to go well, first providing the context to help the mediator remember and then the mediator's intervention. The assessor asks the mediator to talk about purpose, effect, and linkage.*
- c) *The assessor then invites the mediator to describe the event that did not go well and to explain why it did not go well, again using the context-purpose-effect-linkage framework. At this point, as well as any other place during the feedback session, if the mediator's usage of the model is incorrect, the assessor says so and describes the correct usage. Possible more appropriate mediator interventions are discussed.*
- d) *The assessor describes an event where the mediator response seemed not to be aligned with the model, by first providing the context and the mediator intervention. The mediator is asked to discuss purpose, effect, and linkage. Discussion ensues, with the goal of helping the mediator understand why the intervention was not compatible with the model and what responses would have been more appropriate (and why).*
- e) *Depending on the time available for the discussion, additional events in the mediation are discussed. It is desirable to have specific discussion of the signpost events where additional mediator development is recommended. It is also important to discuss those aspects of the mediator's practice about which he/she expressed an interest in hearing feedback*

- f) *The feedback session concludes by the assessor identifying two or three areas for further work. For each area, it is desirable for the assessor to (1) describe specific instances from the mediation where the need for work was revealed, (2) provide illustrations of interventions that are compatible with the model, and (3) explain why work on the area is important.*

It is important for the assessor to resist the temptation to structure the feedback session chronologically by events in the mediation. It is tempting to do so especially because his/her notes from the mediation are obviously organized that way. Instead the feedback session is structured conceptually, by areas of importance to consider.[\[156\]](#)

Use of the Process. The signposts/paths concepts and note-taking strategy have been used in observing and coaching role-play mediations during training events. In that context it has been particularly helpful to remember that a mediation trainee can only remember a few key points of advice for further development.

This process may also be used for summative purposes (mediator competency decisions). Indeed, the organization for which the process was designed had that in mind as well. A potential summative use of the process involves keeping records of the results of the assessment over time. The assessor may record areas of strength and areas in need of development. The organization may communicate to the mediator the need to demonstrate growth in particular areas of practice. Over time, if that growth does not occur, the organization will have documentation of the mediator's progress and will be in a position to discuss additional training for the mediator or, possibly, to discontinue the relationship with the mediator.[\[157\]](#)

The Requirements of Performance-Based Testing

A major goal of mediator assessment is to make judgments about competency as a mediator doing mediation. Generally speaking, assessment should occur in a context that closely resembles the circumstances where competency is to be demonstrated. This is the issue of performance-based assessment—assessment of mediators

actually mediating. Although it may appear to be self-evident that performance assessment is preferred over other forms of assessment, such as written exams or education requirements, arguments have been made against this form of evaluation.[\[158\]](#) After extensive study of the issue, the ACR Mediator Certification Task Force concluded, “[t]hat inclusion of a performance-based component of observable mediation skills is not desirable at this stage of development of the mediation field. The Task Force also concluded (albeit without benefit of an actual business plan) that performance-based assessment would demand greater human and financial resources than are likely to be available at the outset.”[\[159\]](#) Nevertheless, some performance-based mediator assessment processes do exist.[\[160\]](#)

Performance-based assessment is central to processes designed to evaluate transformative mediators. All three processes described above are performance-based, relying heavily on the observation of live or video-taped mediation. Three issues emerge once a decision is made to conduct performance assessment. First, is the mediation a role-play or an actual case? Actual cases more closely represent the arena of desired competency, but, as every mediator knows, unscripted role plays provide experiences that are very similar to actual cases. Second, is the mediation observed live or recorded? Live mediations don't have the potentially inhibiting effect of recording equipment in the room. In addition, confidentiality concerns often make mediation parties or the organization sponsoring the mediation reluctant to have any recording of the interaction. Recorded mediations have the obvious advantage of playing back specific episodes that occurred during the mediation, without relying on memory. Third, how much of the mediation must be observed in order to make a valid assessment? This is a question that has not received research scrutiny, but Della Noce, Antes, and Saul have argued that a half hour is generally sufficient time for an assessor to gain a valid indication of a mediator's alignment with the transformative framework.[\[161\]](#)

In the three assessment process described here, the answers to the above issues vary, resulting from the needs giving rise to the

particular process. Either role-plays or actual cases are involved based upon the wishes of the mediator and the needs of the sponsoring organization. In practice, the Live Action Process has been the only process involving actual mediations. Regarding recording the mediation session, the Certification Process requires a recorded mediation, the Live Action Process obviously involves a live mediation, and with the Coaching Process there is an option. With the Certification Process there is a specific 30-minute guideline, with the Coaching Process the time is based upon practical constraints in the time available for performance feedback, and with the Live Action Process—since it involves an actual live mediation—there is no limitation.

In very basic forms of assessment, an exam is administered that contains questions with a constrained set of alternatives (e.g., a multiple choice test). Although the exam requires substantive expertise when it is constructed, scoring may usually be accomplished by a non-expert who simply compares the examinee's answers with the correct answers supplied by the expert.

Performance-based assessment is vulnerable to a greater degree of subjectivity. Biases or irrelevant considerations might enter into competency judgments. Several measures have been taken to mitigate these possible effects. First, assessors need to be thoroughly knowledgeable about the theory and practice of transformative mediation and be skilled transformative mediators themselves. Second, assessment is made of competency as a *transformative* mediator and not mediation "in general." Thus, there is great clarity on the part of the assessor in terms of what is and what is not competent transformative practice. A substantial problem with mediator performance assessment processes that purport to incorporate all forms of practice is that many mediator behaviors rated "skilled" according to one form of practice would be judged "inappropriate" according to another form of practice.[\[162\]](#) Third, assessors reviewing videotapes of applicants seeking the designation of Certified Transformative Mediator[©] are restricted from reviewing tapes of applicants with whom they have a prior

relationship. Fourth, all assessors involved with the processes described here receive extensive training in using the process.

The ISCT has taken careful and extensive steps both to assure and to document reliability and validity of its assessment processes. The efforts described above to limit subjectivity of assessor judgment contribute to both reliability and validity. In addition, the decision to use performance assessment, although potentially introducing subjectivity, was made to enhance validity. That is, mediator competency is best assessed by observing mediators actually mediating.

Assessment of reliability was undertaken by addressing the question of inter-assessor agreement. As the ISCT was developing these processes, data were gathered to investigate possible effects due to subjective judgment. Essentially the question was asked: Do independent assessors make the same judgments? The level of agreement by different assessors independently viewing the same mediation tapes, for two of the assessment processes that the ISCT developed (Certification Process and Live Action Process), was very high.[\[163\]](#) The third assessment process involves continuous interaction between the assessor and the mediator in viewing the videotape (Coaching Process) and, thus, analysis of independent assessor judgments is not possible.

Validity has been formally assessed in both the Certification Process and the Live Action Process. Della Noce, Antes, and Saul described the validity of the Certification Process by showing how judgments of assessors using the transformative mediator certification process were similar to the judgments of experts.[\[164\]](#) Both the Certification Process and the judgment of experts resulted in comparable assessments. Mediators practicing from the transformative orientation were placed in the “transformative competency” category by both methods and mediators practicing from other orientations were placed in the “lacking transformative competency” by both methods.

Assessment of the validity of the Live Action Process is described by Della Noce, Antes, Bush, & Saul.[\[165\]](#) Independent assessors

employed the Live Action Process or the Certification Process to review the same mediation. As described above, both processes include a provision for the assessor to identify key areas of practice for the mediator to work on. These independent assessors, using the two different processes to view the same mediations, had remarkable similarity in identifying these key areas. This strongly supports the conclusion that both processes are assessing the same underlying practice—transformative mediator competency.

Because of the interactive nature of the Coaching Process, it is difficult to compare the results of that assessment with another measure. Thus its validity has not been formally assessed. An informal indication of its validity is the frequent unsolicited statements by mediators who experience the process of its helpfulness.

Conclusion

Three different transformative mediator assessment processes developed by ISCT have been described and differentiated. They were developed in response to needs expressed by mediators and entities interested in mediation to help ensure competent transformative practice. This interest in quality assurance is widespread in the mediation field, and the ISCT initiatives are especially unique and noteworthy in the following ways:

1. They manifest awareness that different orientations to mediation require different processes for the assessment of mediator performance. Competent practice of facilitative mediation would not be competent transformative practice, and vice versa. Thus, the ISCT-designed processes focus exclusively on transformative practice.
2. They are based upon a fundamental principle that competent practice emerges from basic premises about people and conflict. Mediation practice is not simply a collection of “dos” and “don’ts” but instead is the application of these basic premises in the moment-by-moment events of conflict interaction.

3. The theory underlying transformative practice has been well articulated. The premises underlying competent practice have been clearly stated as have the mediator interventions that support them.
4. The processes have been designed with a clear understanding of the formative or summative purposes for which they are to be used.
5. They are fundamentally performance-based. Assessment occurs of mediators actually mediating.
6. They include opportunities for mediators to talk about their interventions. From the assessor's perspective, this provides valuable information about the mediator's understanding of the model. From the mediator's perspective, it allows him/her to explain more fully the rationale behind particular interventions.
7. Research evidence has documented both the reliability and validity of the processes. Satisfactory reliability and validity are essential qualities of any worthwhile assessment instrument.

Interest in transformative mediator assessment is growing and it seems likely that more and more organizations will adopt one or more of these assessment processes (particularly the Coaching Process or the Live Action Process) and adapt them to suit their needs. As that occurs it will be extremely helpful to document these multiple uses and to obtain some appraisal of their effectiveness. In that way, these processes may be refined and mediators, organizations that employ them, and mediation clients can be assured of the best possible practice.