CHAPTER 2

Transformative Mediation: Core Practices

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As discussed in a previous chapter,[37] the role of the transformative mediator is to support conflict transformation – that is, to support the parties in a process of changing the quality of their conflict interaction and reversing its negative and destructive spiral. Transformative mediators provide important help and support for the small but critical shifts by each party, from weakness to strength and from self-absorption to understanding – empowerment and recognition shifts.

Therefore, as explained previously, the definition of mediation itself and the mediator's role, in the transformative model, differ markedly from the normal definitions found in training materials and practice literature.[38] In the transformative model:

- Mediation is defined as a process in which a third party works with parties in conflict to help them change the quality of their conflict interaction from negative and destructive to positive and constructive, as they explore and discuss issues and possibilities for resolution.
- The mediator's role is to help the parties make positive interactional shifts (empowerment and recognition shifts) by supporting the exercise of their capacities for strength and responsiveness through their deliberation, decision-making, communication, perspective-taking, and other party activities.
- The mediator's primary goals are: (1) to support empowerment shifts, by supporting – *but never supplanting* – each party's deliberation and decision-making, at every point in the session where choices arise (regarding either process or outcome) and (2) to support recognition shifts, by encouraging and supporting

– *but never forcing* – each party's freely chosen efforts to achieve new understandings of the other's perspective.

The aim of this chapter is to offer a more concrete picture of the specific kinds of practices that transformative mediators use to achieve the above goals. In order to make that picture most useful, we will frame the discussion against the background of an illustrative case, in which parties want help from a transformative mediator because they are looking not only for a settlement but also for a way to put their destructive conflict interaction back on a positive, constructive footing. While fictional, this case reflects very closely the character of many cases we have mediated and observed.

An Illustrative Case

Rick Harris and John Williams are the two managing partners in Williams Furniture, a multi-outlet retail business founded by the Williams family three generations ago and now co-owned by both families. Since its founding, the business has sustained the Williams family, providing its members with jobs, income and, in a real sense, a way of life. The business was joined by Rick Harris (and his two brothers and their families) ten years ago, bringing a new infusion of energy, capital and ideas – but eventually leading to a conflict over business vision and management approach. Harris and Williams represent the two factions involved in this conflict, both figuratively and literally. Williams, nearly seventy years old, grew up in the business when it still made most of its own product, and is the descendant of generations of furniture craftsmen. Harris, in his mid forties, was the child of two lawyers; he got an ivy-league MBA, made a sizeable sum in consulting, and then convinced his brothers to join him in buying into Williams Furniture, which he saw as a high quality operation with a great product and terrific potential for expansion. Harris became managing partner two years ago, when Williams began to step back and prepare for retirement.

However, over the past year, tension has arisen because of different views about changes in the market for the firm's product, and changes in the neighborhood where the "flagship" store is located. Harris wants to change the inventory, mixing in more mid-price

modern items with the traditional, high-craft products Williams Furniture has always sold, in order to draw in a wider and younger clientele. And he wants to sell off the original “home” store, located in a declining inner city area, and redesign the remaining three stores with the look of the home store, but somewhat modernized. Williams and his family members are not opposed to adding some mid-price items, but they are deeply opposed to broad-base changes that they think would “change the character” of their family business drastically, and they are dead-set against selling the home store. The differences over these issues have deepened into an open conflict, with hard feelings and harsh exchanges. It appears the business may be headed for a split, although everyone says they want to avoid this result.

Rick Harris and John Williams are the lightning rods in this conflict. Here is what they say bothers them most about this conflict, in response to questions such as: "What affects you most about this conflict you're involved in? What's the worst part of this? What's the impact that seems to strike you hardest?"

> ***Williams****: You know, the heart of this is the family business, even though there are personal things as well. And to have Rick Harris tell me that I was ignoring the good of the business, that I had lost touch with the market and was only interested in the past! That I’m just not up to a leadership role anymore! That made me so angry; but it also made me doubt myself. I was shaken. I mean, should I insist on pushing for what I thought was best for the firm? Did I really know anymore what that was? Maybe I had lost touch after all. And anyway, what could I do against this kind of relentless pressure that Harris was keeping up to move? That sense of helplessness and uncertainty was really hard for me.*
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> *Plus, it was just very hard to find myself so full of anger for Rick himself… He’d been almost like a son to me since he’d joined us, learning the business with me, coming over to our house. How hard he worked to get up to speed, and to strengthen the business and build us up from two stores to six! It was like a*

new burst of life. But I found I couldn't see that anymore. All I could see was him closing his mind to me and my family, who'd sustained this business over the generations. Sitting with his consultants and shutting us out, avoiding me at the office. And then he announced that, besides plans for changing our product lines, he wanted to close the home store down and redesign the other stores on what he called an IKEA model. Apparently our style wasn't good enough for him, even though he said he'd learned so much from us!! That was just too much! The helplessness and the hostility, that's what was so hard. And the more this has gone on, the worse that has gotten.

***Harris**: What's been hardest? Well, first of all, when John showed up at my meeting with the bankers and declared in no uncertain terms that "the home store would never close", that really threw me. Do you know how many sleepless nights I've poured into this business, since John stepped back and employees – his own family members! – came to me begging me for a plan to save the business? John's not Managing Partner anymore, and a business can't have two leaders; I thought he'd understand that. But instead he's announcing in front of everyone that I'm disregarding the Williams family and splitting the business! I was stunned. Wasn't I proposing the move precisely in order to save the firm from dying? I thought so, but now I wasn't absolutely sure. Maybe I didn't know the business as well as he did. Maybe I was exaggerating the neighborhood decline because I'd come from such different surroundings. It suddenly seemed a very big responsibility, and I was getting confused.*

The other hard part was the bad feeling that welled up toward John and his wife, Emily. She was always suggesting that he should "stay involved in the management" even after stepping down, so that he could "make sure Rick knows what he's doing." I thought I was pretty good at overlooking things and "giving the benefit of the doubt." But I started to see John and Emily as jealous old fools. I thought to myself, the real reason he's making trouble is that he just doesn't want the business to

succeed without him. He's determined to keep the past alive, even if it means that the business dies. That's also why he opposes closing the old store, I thought, even though he's the one who encouraged me to "grow" the business. I felt ashamed attributing these kinds of motives to John and Emily, but I couldn't help it. The worst thing about this conflict is that it's brought out the worst in me – my insecurities, my mean-spiritedness, my smallness.

John's and Rick's "voices" echo what we regularly hear when parties talk about their personal experience of conflict (though they may be more articulate than many). What many people find hardest about conflict is not that it frustrates their satisfaction of some right, interest, or project, no matter how important, but that it leads and even forces them to behave toward themselves and others in ways that they find uncomfortable and even repellent. It alienates them from their sense of their own strength and their sense of connection to others, and thus it disrupts and undermines the interaction between them as human beings.[39] In short, as discussed earlier in this volume, conflict precipitates a crisis in human interaction that parties find profoundly disturbing, and help in overcoming that crisis is a major part of what parties want from a mediator, in any type of conflict.

Certainly there are problems to be solved in any conflict – the best plan for saving the business, the right choice for product lines and store design – and parties do want to solve those problems. The reality is, however, that they want to do so in a way that preserves their sense of their own competence and autonomy and avoids taking advantage of the other. They want to feel that they have behaved well in handling this crisis, and this means making changes in the difficult conflict interaction that is going on between them, rather than simply coming up with the "right" answers to the specific problems. The corollary, explored below, is that in order to be useful to parties, mediation cannot only be about problem solving, about satisfaction of needs and interests; it must directly address the interactional crisis itself.[40] It must support the parties in a process

of changing the quality of their conflict interaction, and most importantly, reversing its negative and destructive spiral.

Translating Theory into Practice: How Does the Transformative Mediator Work?

How does a mediator translate the theory of conflict transformation into specific mediation practices? In this section, we discuss the practical skills of transformative mediation, with examples framed from the fictional conflict between John Williams and Rick Harris.

Before proceeding with that discussion, however, we emphasize that this chapter is intended *only as a brief introduction* to the core skills and practices of transformative mediation; it should by no means be considered a "how-to" manual sufficient to support competent practice. The practices discussed below are properly learned only through a skills training class taught by an expert in transformative mediation, followed by appropriate mentoring. Even our descriptions of the core practices here are necessarily presented in very brief form. Fuller descriptions and explanations of these practices can be found in other published work on the skills of transformative mediation, and we encourage interested readers to consult those sources for further guidance.[41]

The Prerequisite Skill: Overcoming skepticism about the model

Paradoxically, the most important and "first skill" of the transformative mediator is to keep firmly in mind the "why and what" of the work he is doing as mediator: supporting the parties as they discuss the issues between them, and especially supporting their shifts from weakness to strength and self-absorption to responsiveness – empowerment and recognition shifts.[42] Understanding and embracing this mission, and being confident in its value to the parties, is essential to everything the transformative mediator does.

In training mediators, this "first skill" seems to present the greatest challenge. Perhaps because many mediators are trained in "helping professions" where diagnosing problems and offering prescriptive advice are core activities, they have great difficulty in accepting that

they can serve usefully – or ethically – as mediators without offering advice to the parties, based on their pre-existing expertise.[43] They remain skeptical because they simply cannot believe that contentious disputes will ever be settled without a substantial measure of authoritative advice-giving and direction – and they assume that reaching a settlement is what the parties most need and want.[44] In short, they question whether the transformative mediation theory is either practical or appropriate for use by mediators handling conflicts like that between Williams and Harris. Nevertheless, to practice transformative mediation effectively, such doubts must be worked through and overcome. There are a few steps that may be helpful in doing this.

First, the would-be transformative mediator should reflect on the reality that the risks involved in mediator advice-giving are both substantial and unavoidable. If the advice given, for example, involves legal or counseling expertise, the mediator giving it may be violating applicable ethical codes – whether mediation ethics or those of the other professions involved.[45] Furthermore, since the information offered in the course of a mediation session is rarely subject to any kind of quality control, any advice based on the information proffered by the parties is unlikely to be very sound. Finally, it is practically quite difficult to offer advice to parties in conflict without effectively taking sides – in the eyes of one or both parties, if not in reality.[46] The result is that advice-giving will very likely alienate at least one of the parties to the conflict, and possibly others with whom they are allied. That certainly seems likely in the Williams/Harris case. Advice-giving, therefore, will usually be counterproductive, on many dimensions.

Second, the transformative mediator must genuinely understand and accept that reaching a settlement is *not* what the disputing parties most need and want, unless it is a settlement accompanied by interactional change.[47] Clearly, what bothers both Harris and Williams is not simply what will happen to the *business*, but what *is* happening in the interaction between them (and their families) as fellow human beings. Even if the mediator comes up with a very wise solution to the expansion/moving argument, the solution will

mean little to Harris and Williams unless they have changed that embittered interaction. That process cannot be short-circuited by moralizing or advice-giving. But a change in their interaction can and will emerge organically from a process that supports empowerment and recognition shifts on both sides. Realizing that this is what is really at stake for Harris and Williams is essential, in order for the mediator to do the specific things needed to help them.

Finally, even to the extent that reaching a practical solution is important to the parties – and despite understandable skepticism about this point – mediator advice-giving is *not* in fact necessary to help the parties reach resolutions in specific cases. This has been demonstrated by over a decade's experience using the transformative model in diverse contexts – including workplace disputes, family conflicts, student conflicts in schools, neighborhood and community conflicts, and public policy disputes.[48] In all of these arenas, mediators employing the transformative approach of supporting party decision-making and communication, but without direction and advice-giving, have achieved roughly the same results as more directive mediators, in terms of achieving settlements.[49] There is simply no convincing evidence that a nondirective, transformative approach to mediation will result in fewer conflicts being resolved, and there is a developing body of evidence to the contrary.

The prerequisite "skill" for transformative practice is therefore the ability to trust that the model can and does work. When the mediator can do this, it allows him to be finely attuned to the kind of interaction the parties are having and to indications of individual weakness and self-absorption. When weakness and self-absorption are evident, the mediator views those as markers of opportunities for empowerment and recognition. He then responds, at appropriate points, with several simple but effective kinds of interventions, all of which are used throughout the session to support conflict transformation – which he always sees as the essence of the process.

Essential Skills: Mastering the vocabulary of empowerment and recognition

In order to notice opportunities for supporting empowerment and recognition shifts, the mediator pays close attention to the parties' own conversational cues in the immediate interactions between them – what they do and say. The mediator stays "in the moment" of the conversation between the parties in order to see and hear what they are saying. She understands that when the mediation first begins, parties may not be able to talk about the issues or listen to each other effectively and productively, and they may be confused about what they want. As a result, the mediator will first focus on listening and observing for indications of weakness and self-absorption – because these are the points of opportunity for interactional shifts.

The mediator must know how to recognize these opportunities; in other words, she must know what she is listening and looking for. In effect, she is learning to listen to the exchange between the parties in a whole new way, on a new level, and in a new language—the language of conflict transformation. Therefore, she must master the vocabulary of empowerment and recognition, starting with signifiers of either weakness or self-absorption.[50] For example: If Williams turns to the mediator after Harris's arguments for closing the home store and asks, *"What should I do?"* it shows that Williams is unsure of himself and sees himself as dependent on the mediator as the decision-maker. If, in trying to respond to Harris, he says, *"I'm really confused,"* this expresses lack of clarity and uncertainty. If Harris throws up his hands and exclaims, *"I've had enough of this!!"* his comment shows a sense of helplessness or frustration. All these are expressions of weakness. If Williams responds by asking *"What do you expect from someone like that?"* it indicates a negative view of Harris, and hence self-absorption. If either one defends himself from criticism by insisting *"That's not what I meant,"* or *"You don't understand what this situation is like for me,"* these are statements that show not only frustration but also a sense of alienation from the other party.

A mediator listening with a transformative ear will not ignore or dismiss statements of these kinds as the mere "venting" of frustration or hostility. The statements will be seen and heard as important markers of opportunities for shifts in the conflict interaction. In this

new language, every expression that conveys the message, *"I feel weak,"* in whatever fashion, marks the opportunity for an empowerment shift towards greater strength. Every expression that in some way conveys the message about the other party, *"You are someone I can't begin to understand, and don't even* ***want*** *to,"* signifies an opportunity for a recognition shift towards increased responsiveness.

The point of hearing the conversation in these terms is *not* so that the mediator can jump in at every point she hears expressions of weakness or self-absorption. Rather, there are two different reasons that explain the need for this skill: First, learning to hear this level of the conversation – listening to *how* the parties are talking rather than to *what* they are talking about – allows the mediator to maintain her focus on supporting interactional change, instead of being drawn into a focus on how to solve the specific problems being discussed. Listening for problems orients an intervener to addressing problems; listening to interactional distress orients her to supporting interactional change. Second, in order to intervene helpfully in the conversation, the mediator needs to have a sense of where each party stands in the cycle of negative conflict at a given moment, and therefore what kinds of support could be helpful to them. If she is listening to the "what" rather than the "how" of the exchange, she won't have a handle on where the parties are in the cycle, and what support will help them.

Once able to work in the language of conflict transformation, of course, the mediator also needs to be able to enact supportive responses that assist Williams and Harris in making empowerment and recognition shifts, and to do this without pushing, directing or having any agenda for them.

Essential Skills: Supportive Responses

Profound listening. Conflict intervention literature regularly acknowledges the importance of close or active listening.[51] In transformative mediation, this skill takes on new importance for several reasons. First, by close listening we mean listening "without any agenda," and that kind of mediator response is itself strongly

supportive of party empowerment shifts. This kind of listening is done with no other goal in mind except to hear what is being said and to be fully present to the person speaking. Such listening helps the speaking party to feel more comfortable and confident in their own self-expression, a key empowerment shift. By contrast, if the listener has any agenda whatsoever – even to look for information that may be helpful to solving a problem – the impact is very different. As a doctor explains,

> *[T]he most basic and powerful way to connect to another person is to listen. Just listen. Perhaps the most basic thing we ever give to each other is our attention…. When people are talking, there's no need to do anything but receive them. Just take them in. Listen to what they're saying. Care about it. Most times caring about it is even more important than understanding it. . . . We connect through listening.*[52]

A prominent educator concurs:

> *Pay attention . . . Just be there. Don't be thinking about a solution, or how you should fix it. Just listen hard and try to be present. It's very bad business to invite heartfelt speech and then not listen. . . . [Just listening} is a great antidote to the critical listening that goes on in academia, where we listen for the mistake, the flaw in the argument.*[53]

In sum, listening alone, in itself, offers critical support for empowerment shifts.

Furthermore, with the understanding that one of the "hallmarks" of transformative mediation is that "small steps count," the transformative mediator who engages in close listening will notice small changes in the parties indicating that empowerment and recognition shifts are occurring, and that strength and responsiveness are emerging.[54] Since the goal is to support shifts from weakness to strength and from self-absorption to responsiveness, she must be able to observe and listen closely as the conversation unfolds to keep pace with those changes.

This is a foundational skill and is used continuously throughout the mediation. Nuances in the language used by the parties as they move through the discussion are crucial indicators of shifts, and body language is as important as the actual words spoken. Good, attentive listening makes possible the effective use of other key skills discussed below. Without close and attentive listening, effective transformative mediation is impossible.

Reflection. This is another primary supportive response. In *reflecting* a party statement, the mediator simply says what he hears the party saying, using words close to the party's own language, even (or especially) when the language is strong, loud, negative or strongly expressive. The mediator does not soften the party's language or remove its "sting." For example, if Harris angrily says *"John, I can't stand the way you keep trying to run things, when it's me who's Managing Partner!"* the mediator does not "reframe" Harris's anger into a polite request for behavior change by saying, "So you are asking John not to interfere with you doing your job." Rather, he simply reflects the statement straight, together with the anger it expresses: *"So Rick, you're saying that John is still trying to run things, even though you're Managing Director now, and you're very angry about that."*

By using the exact or similar language, without intentional distortion or softening, the mediator leaves room for Harris to choose to expand on the angry or negative statement, explain it further, or rethink it and amend it to reduce hostility or exaggeration. All of these can and do happen. So Harris may respond to the mediator's reflection by clarifying: *"It's true, I do get angry, but really it's more that I'm frustrated because I can't get things done."* In this brief exchange, Harris has become clearer and more articulate about what's bothering him – an empowerment shift.

Reflection is particularly helpful to assist a party to think through something that seems unclear or complex, or to help a party who seems uncertain or ambiguous about what he is saying. In all these ways, reflection allows a party to "listen and talk to himself," and by doing so to gain clarity and confidence about what he is saying. It also may give the other party an opportunity to hear something she

may not have heard or understood when it was first being said. The overall effect of reflection is to "amplify" the conversation for both parties, to make what is being said more audible so the parties can understand themselves and each other better.

Here is another example of how reflection might work in practice, in the Williams/Harris case:

> Williams says,
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> *Dammit, this business is ours, even if they bought in. Our grandparents built it before we were born. We grew up in that home store on Grant Street. We built the furniture sold in it with our own hands. This is not a business, it's our lives, and no one is going to close it down or turn it into Walmart!*
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> The mediator's reflection could be:
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> *So, John, you feel strongly that the business is yours. Your family built it, and you grew up in it with them. What you sold in it was made with your own hands. So to you this business is not just buildings and products, it's 'your lives' as you put it, and you are not going to let anyone close it or change it.*
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> Now Williams may respond to this reflection by adding:
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> *That's right, our lives. We worked here; we were taught the right and wrong of business here. We saw our grandparents turn wood into masterpieces here. When the roof fell in, we climbed up and fixed it. When they broke our windows and painted graffiti, we repaired them and cleaned up – and our children helped each time. I don't mean to say the business is* ***only*** *ours – the Harris family has done a lot since they came in. But you can't forget what it means to us, and you can't just replace it with a concrete box store.*

Even in this brief example, it is evident that the mediator's reflection has helped John *himself* hear and think about what he is saying, consider whether he wants to elaborate or modify it in any way, and decide what to say next. The result is an elaboration that is clearer

and stronger – an empowerment shift. The reflection also allows Rick Harris to listen in, hear and consider what Williams is saying without immediate pressure to respond, and decide what he thinks about it. In short, it supports empowerment for both parties, in a small but significant way.

Practicing this sort of reflection may sound simple and easy: just listen and say what you heard the parties say. In fact, it is not easy at all. Really hearing what is being said – hearing and reflecting the whole party comment without editing its content or judging its likely impact – is actually very difficult. First, it absolutely requires the kind of close listening without agenda described above. Second, when party comments are longer than a few sentences, it will be a challenge simply to recall all or most of what was said, in order to offer a full and accurate reflection.

From another angle, the mediator may worry that his reflection will actually harden the party's position, or be seen as agreeing with that position; nor does he want to implicitly dismiss consideration of other, contradictory views. Additionally, he may be concerned that the listening party will object to the other party "getting so much attention," in a climate where all subjects are personal and emotional. To avoid these pitfalls, the reflection must have a properly tentative tone and demeanor, indicating that the mediator is simply trying to "get" what is being said, in order to assist party decision-making and communication, without introducing any standards for judging the comment.

Finally, the mediator must remain focused and not be distracted from his or her close attention to what is being said by the speaking party, even by a sense that the other party is waiting impatiently for his or her turn. The calmness and presence of mind required for this kind of focus is far from easy to maintain. In sum, reflection is simple, but not easy. Like other supportive interventions in transformative mediation, it can be seen as a "discipline", like the simple but disciplined movements of a dancer or athlete. Done properly it is highly effective in supporting interactional shifts – but it is not easy to do properly.

Summary. Once the parties start talking directly with each other, *summary* may be the preferred response, rather than reflection. In fact, in mediation using the transformative model, the parties often begin talking directly to each other early on, and for extended lengths of time. Mediator participation in the discussion may be quite minimal for those periods, but the intense focus on listening by the mediator will continue. In this situation, *reflection* will be used less, and *summarizing* will be the more likely response when the mediator enters the conversation. The difference between reflection and summary is important. In a reflection, the mediator is *speaking to one of the parties*, engaging that party directly and allowing the other to "listen in" from a safe distance. In a summary, the mediator *speaks to and with both parties* and includes larger blocks, or "chunks," of the party conversation and interactions. For this very reason, it is harder to give a realistic example of summary in a short space.

Nevertheless, for purposes of illustration, consider the following continuation of the conversation started above about the business, and especially the home store on Grant Street. Suppose that Williams continues his response to the mediator's reflection by speaking directly to Harris, saying, *"You just can't replace that store. So we're not moving out or redesigning it. No way! No matter what you say!"*

Now Harris jumps into the conversation and says,

John, I can't believe your attitude! If it weren't for me and the people I've brought into the business, you'd have had to close down last year! You wouldn't bring enough customers in to even cover the payroll most weeks. You haven't complained about the new life we put into the business, have you, and the work we've done to modernize it. And now it's your business and your store? For what, to make into a museum? Great, so let's charge admission instead of selling furniture.

The exchange then continues:

Williams: *You didn't think it was a museum when you first came. You yourself said it felt like you were 'coming home.' You loved the atmosphere, the old décor, the craftsman's tools we displayed. You loved the whole "flavor" of the store – just the way it was and is. And you say you put in new life? Well, who kept it alive all these years so you could find it, when you finally realized you wanted something like this in your life instead of your spreadsheets and computers? I thought you loved the store like we do. Now I find out that's what you thought? That you were coming to a museum?*

Harris: No, no, I'm not saying that. When I came, it was like coming home to something I'd lost – or never had. But what's the point of having a home with no one living in it? The store can be a wonderful experience for lots of new customers, a new generation, people like me who never even saw such a place much less shopped in it. But that can't happen on Grant Street anymore, John. The neighborhood is dying, it's already dead, and no one's coming any more. Do you want to hang onto the store and let the business die, and take your tradition with it?

Williams: *What a terrible way to put it!! Look, the store may be old and the neighborhood run down, but when your parents get old and sick, you don't leave them behind for the suburbs because it's nicer there. You stay and take care of them. Same with a store, you don't cut and run – even if the neighbors change. This store isn't a piece of concrete – it's alive, it's part of us. In our family, we believe in honoring our past – or else there won't be anything to pass on to the future. No one is closing this store. You want to move the home store someplace else? So let's split up and you can start your own business wherever you want!*

Assuming the conversation seemed to slow or "lull" at this point, the mediator might offer this summary:

It's clear that the business and the Grant Street store mean a lot to both of you, but you also have some very strong differences

about them. First of all, you have different views about the importance of what each of you has put into the business. Rick, you're saying that you and your family have brought in new life, strengthened the business and modernized it so that it could survive. But John, you're saying that you and your family are the ones who kept the business alive over the years, and who created the "flavor", to use your word, that Rick and his family found so meaningful when they came.

And then, besides what you've each put into the business, you also seem to have pretty different views of how to see it today, especially the home store on Grant Street, and what it represents to you. John, you're saying that the store itself is like a living being, a parent, whom you can't abandon. And you see honoring the past, including the store building, as part of your family's values. While Rick, you see the store as a strong image of a traditional business, but it's the image that's important, not the building, and that image could be placed in a different neighborhood if need be. And for you, what's most important is reaching out to newcomers who grew up without this kind of traditional business experience, in order to make it accessible to them. I don't know if I have that all correct, but there do seem to be some serious differences between you on these points.

This example illustrates both the value and the difficulty of using summary. Summarizing is often used when there have been long periods of direct exchange, and the parties come to a natural break. It is also helpful when the parties don't know "where to go next" or seem stuck. Since a good stretch of ground will have been covered during the conversation, the summary provides a review of what they have been talking about and what each has been saying. It helps the parties to remember what they were discussing and to make more informed choices about where they want to go next. All of this can support empowerment shifts. However, for this very reason, offering a good summary can be difficult: the mediator must be able to recall and describe the whole stretch of ground covered, and this itself is a difficult skill to develop.

Moreover, like reflection, a summary is inclusive. The mediator does not select from what has been said, does not "soften" what was said, and does not drop any issues, particularly intangible ones. The summary is not a lecture by the mediator and has no agenda or direction built into it. It is an especially powerful tool for supporting empowerment and recognition when it highlights the *differences* between the parties and thus the choices they face. But for all these reasons, it is challenging. It requires the mediator to resist emphasizing superficial "common ground" and to highlight instead the deeper "fault lines" in the parties' conversations – as in the above summary of Williams and Harris's exchange – because realizing the nature and depth of their differences, and then making choices about how to address those differences, will be the greatest support for both parties in making empowerment and recognition shifts.

Checking in. Without any other skills, the transformative mediator could effectively mediate in a supportive way using only listening, reflection and summary. "Checking in", however, is an important and effective addition to the other essential skills and is frequently coupled with reflection and summary. Checking in might have followed at the end of the above summary, with the mediator asking Williams and Harris, *"So, given these differences, where do you want to go from here?"* It is often used as an intervention when it seems the parties have come to a choice point in the mediation, and it provides them with the opportunity to make a clear decision. One such choice point arises when it seems that parties have nothing more to say to each other. So, if Harris and Williams were silent after the summary as above, the mediator might ask: *"Do you want to continue talking about the differences in the way you see things? Do you think the conversation has gone as far as it can? Do you want to call it a day, or take a break?"* In effect, the conversation has come to a fork in the road, and it is helpful for the mediator to point it out and ask the parties which direction they want to take. Doing so allows party choice and powerfully supports empowerment.

Questioning. Questions are obviously used for checking in, as just described. They are also used in other supportive ways, provided that they do not lead or direct a party in any way. The risk is that

questions can put the mediator ahead of the parties, leading the discussion and having the parties respond to him, rather than allowing the parties to have their own conversation about the matters important to them.[55] In transformative mediation, questions are used to open doors or invite further discussion. *"Is there more you want to say about that?"* is one such question, and there are others. However, the mediator does not use questions for his own purposes, such as to gather information or to understand what the parties are talking about. The reason for this is simple: questions that support party deliberation help them get stronger; but questions that direct or control party thinking keep them from regaining their own sense of strength.

Staying Out or Backing Out. There are other responses that can support empowerment and recognition shifts. *Silence* can be an intentional response by mediators, in at least two different situations. First, when parties are directly engaging, the mediator's silently *"backing out"* and nonintervention can support party decision-making and communication. Second, during and after a period of intense conversation, *"staying out"* to allow time both for the exchange and for some reflection after the exchange, is also an appropriate mediator response. When something powerful has been said or has happened during the parties' interaction, it is helpful to simply let the parties decide how they want to respond even if there is a long period of silence. The mediator does not need to do something just because there is silence. Moreover, eye contact, facial expression and gestures are also part of the mediator's communication. Just by looking at the other party when one party seems to be finished speaking, the mediator may unwittingly send the message that she is asking the second party to speak, and this may put pressure on a party who is not really ready to respond. In other words, since silence and nonverbal messages can be used in directive as well as supportive ways, the mediator needs to consider them as carefully as any verbal communication.

All the above mediator responses—reflection, summary, checking-in, questions, backing-out, and staying out — are used over and over again throughout the mediation.[56] They are also used steadfastly,

resisting the temptation to substitute other responses that are inconsistent with transformative theory. The mediator cannot "try out" transformative moves and then abandon the approach when the "going gets tough."[57] This approach to mediation requires courage – courage that comes from convictions. Courage to allow and help the parties to deal with differences, even differences expressed in chaos, confusion and high conflict, is essential for the transformative mediator. She must be able to summarize the confusion and the differences, as well as any negative views of each other that parties might express. The courage to do so comes from trust in the parties and their ability to make empowerment and recognition shifts and make the best decisions for themselves.

This approach also requires a certain degree of tentativeness in the use of responses. An "in charge" mediator will interfere with the parties' empowerment and undermine the potential for shifts. Instead, the transformative mediator realizes that her reflections or summaries may not be entirely accurate, and that they should therefore be presented in ways that allow and encourage correction by the parties. Similarly, questions should be asked in ways that allow parties to refrain from answering them if they so choose. The message in both words and mediator "style" should be that this is the parties' process, not the mediator's.

The preceding sections describe the essential "hows" of transformative mediation. These are the primary skills needed to practice effective transformative mediation (although, to repeat the caveat given at the outset, the presentation here is *only a very limited introduction*). Mediator personality and conversational style have an impact on how responses are used, but consistency in the use of the skills discussed here are what make an effective transformative practitioner. The mediator does not act differently depending on what "kind" of case is involved. No new skills or special techniques are used in mediating family disputes, in comparison to business or community conflicts. Indeed, the examples given above from the Williams/Harris case could equally have been drawn from a typical marital or community conflict. In all kinds of cases, the mediator can be effective in helping her clients if

she uses the basic responses described and illustrated here. And all these responses are based on the transformative theory discussed earlier.

Essential Skills: Avoiding Directive Responses

Using the essential skills of reflection, summary, checking in, and so on, the mediator "follows" or “accompanies” the parties; he does not have a set agenda of steps to accomplish.[58] The parties begin where they choose to begin, and in the course of the discussion talk about anything of importance to them. The mediator will not rule out any subject as inappropriate or unhelpful. The mediator will not tell the parties how to have their conversation, or when to continue or end it. This fundamental principle of “nondirectiveness” is rooted in the underlying transformative theory: Recapturing the sense of competence or strength is the beginning of the conflict transformation cycle, because the empowerment shift begins and drives the overall shift from destructive to constructive interaction. But *mediator directiveness*, in any form, reinforces parties’ sense of incompetence and dependency, reverses empowerment shifts, and short-circuits conflict transformation. It is therefore the major *“don’t”* in transformative mediation practice. However, since directive impulses are natural to almost everyone, learning to recognize and control these impulses is one of the major *“do’s”* for transformative mediators.

Directive impulses arise when the mediator has his own view of what the parties should accomplish, such as reducing conflict or avoiding unfairness.[59] Such impulses will almost certainly get in the way of the mediator’s continuing ability to "follow" the parties. For example, interrupting an argument about past events by turning the focus to the future, or by asking a question about another subject, substitutes the mediator’s judgment for the parties’ as to the proper focus for discussion. To change the illustrative context, for the moment, to the family conflict arena: Why a husband walked out of a family event some months back, with no explanation to his wife, may be a crucial subject for discussion when the parties first appear for a mediation about their child’s educational situation – even if it appears “irrelevant” to the subject at hand. However, the mediator who tries

to “focus” the discussion and refuses to allow discussion of the walk-out, is disrespectful of the parties and is not following them or helping them have the discussion they choose. And if it transpires that only one person wants to discuss that event, and the other refuses, then that disagreement itself becomes the subject for the conversation.

In short, the transformative mediator is not the director of the discussion. He will not tell the parties how to talk to each other, or direct the course of their discussion or its content in any way. The mediator positions himself as a reflective and helpful “conversational companion,” regardless of what the parties choose to talk about.[60] He supports, but never supplants, party decision-making. He assists the parties with their decisions by helping to identify choice points throughout the conversation, and by restraining himself from making any decisions for the parties about the process itself or the substantive results. He respects the parties and their choices. He trusts the parties. He has confidence in them, the confidence that they know best, that they know what is right for them and their situation. He will not attempt to substitute his judgment for theirs. He will not try to steer them in the direction of what he thinks is the best arrangement for them. He will not decide what is fair for them, or what is unfair. He respects and trusts the parties to make those decisions for themselves. The mediator is not trying to “get” the parties to do anything, whether to talk to each other, to stop arguing – or to live up to legal or moral obligations.[61]

So, while intensely engaged in listening and observing and enacting supportive responses, the mediator constantly maintains an awareness of and represses his own directive impulses. In a dispute between an elderly parent and her children about her desire to move in with them after her spouse has passed away, the parent may say, *"I just don't know what to do. I'm afraid to be on my own."* An almost automatic mediator response would be to explain that many people feel that way when they find themselves alone in later years, and then move the discussion on to the "real business" of finding a solution. But that response actually minimizes the feeling of the parent: the intense feeling is “normalized” and it is then ignored –

perhaps with a referral to a popular book on aging. This is directive because the mediator controls the content of the discussion by characterizing the feeling and then moving the discussion on. A supportive response that truly responds to the opportunity for empowerment being presented would be to simply reflect the statement, as illustrated earlier, and then allow time for the parent to respond as she chooses. She might in fact choose to move on to other points; she might herself conclude that her fear is "just normal, I guess;" she might ask how to get help in dealing with her loss and her fears; she might elaborate further on how she feels, how her children are behaving, and what she wants to do about it. Any of these possible responses will be empowering for this parent who is feeling weak and confused at the moment.

There are many other kinds of directive impulses that frustrate empowerment and recognition shifts and thus conflict transformation: [62]

- Trying to keep the parties "on track" or “moving the discussion along” interferes with the natural cycles of conversation of the parties.
- Pointing out “common ground,” such as *"You both really care about the business"* or *"You both have fears about the finances,"* does little if anything to bring parties together and probably obscures the real and important differences between them. Differences should not be downplayed in the attempt to find, and stress, common ground.
- Probing for what the mediator believes are the “real, underlying issues” is leading, directive and disrespectful of party autonomy. Following the parties in their discussion will highlight all of the issues they choose to put out on the table. Pushing them, probing and asking questions to get them to do more will be experienced as just that. The parties will feel they are being pushed, and opportunities for empowerment and recognition will almost certainly be lost.

- “Hypothesizing” by the mediator about what is important to one of the parties, or what will be an acceptable settlement, detracts from the intense focus needed to pay attention to what is actually going on right in front of the mediator. Hypothesizing requires the mediator to develop a line of questioning to follow up on and test the accuracy of the mediator’s hypothesis; the result is the pursuit of the mediator's agenda, not that of the parties, and the loss of focus on changing conflict interaction.
- Filtering, controlling or managing strong emotions, of whatever variety, disempowers parties by depriving them of control over their own mode of expression, and by implicitly telling them that they lack the competence to choose how to express themselves.

All of these forms of directiveness come very naturally to “helping professionals” of all kinds, including mediators. The essential skill for the transformative mediator is to recognize the impulse to be directive when it arises, to know how to control it, and to put in its place one of the supportive responses discussed above.

Conclusion: Practices that Fulfill the Promise of Transformative Mediation

The skills employed by the transformative mediator are simple to describe: listening; reflecting; summarizing; questioning to open doors, to invite further discussion on a subject raised by the parties; "checking in" on what the parties want to do at a choice point in the discussion; backing out or staying out to allow for party exchange or silent party deliberation – and avoiding directive impulses. These are not complex skills to describe. They are, however, difficult to employ. It is much easier to allow our directive impulses to steer us into leading and guiding the discussion, and as a result, the outcome. Although it is difficult to stay with the parties through their cycles of conversation as they develop strength and understanding, doing so is the work of the transformative mediator, and it is the help that many parties in conflict value most – and the reason they have come to a transformative mediator.

The "how" of transformative mediation practice flows from the "why and what" of transformative conflict theory. When clients come to a mediator for help not only in addressing concrete issues but also in changing destructive interaction, the mediator can support their conversation with transformative practices that help restore confidence, connection, and constructive interaction – all of which can lead organically to sustainable solutions that make sense to the parties in their own terms. An advice-giving, directive mediation process may not only put the mediator's legitimacy and effectiveness at risk, it will probably leave the negative conflict cycle in place and may even increase hostility – even if it produces an agreement.

And yet, how can a professional whose mission is conflict resolution *not* offer direction and guidance at a critical moment when clients are embroiled in conflict? This is the question that many pose about transformative mediation's core practices.[63] The answer is that, in this situation, the mediator can offer a kind of help that is even more valuable than specific advice or solutions.[64] She can help parties to engage in and work through their conflict, for themselves, in a confident and compassionate way – by showing that she trusts that they can do so, and by giving them *support rather than direction*. By doing this – that is, by using the transformative approach to mediation – she not only helps them find a resolution of the conflict at hand, but supports them in enacting two of their highest human capacities: the capacity for self-determination and strength of self, and the capacity for empathy and connection to others. This is the practice that, in our view, fulfills the unique promise of mediation. For those interested in exploring that practice beyond this brief introduction, ample resources can be found, beginning with those cited in the notes to this chapter.