MEDIATION:
PRINCIPLES & PRACTICE

THE TRANSFORMATIVE FRAMEWORK

Prague, Czech Republic
October 23-26th 2014

Joseph P. Folger Ph.D.

CONTENTS

FOREWORD

This training manual is part of a comprehensive, basic introduction to the theory and practice of mediation from the transformative framework. The transformative approach to mediation is based on the theory and principles set forth in The Promise of Mediation, by Robert A. Baruch Bush and Joseph P. Folger (1994; Rev'd 2d Edition, 2005).

This program builds on the work of numerous scholars and practitioners over the past several decades. Much of the material is the result of initiatives that took place as part of the Training Design Consultation Project (1995-1996), and the Practice Enrichment Initiative (1997-1999), supported by funding from the William and Flora Hewlett Foundation and the Surdna Foundation.

During this same period, Robert A. Baruch Bush, Joseph P. Folger, Dorothy J. Della Noce, and Sally Ganong Pope worked with the United States Postal Service to design an award-winning nationwide mediation program for EEO disputes ("REDRESS™") that utilized the transformative framework. They designed the original training programs for the USPS internal stakeholders, outside mediators, and a corps of mediation trainers. Over 3,000 outside mediators were trained in the transformative framework through the REDRESS Program.

In 1999, Bush, Folger, Della Noce and Pope founded the Institute for the Study of Conflict Transformation, in affiliation with Hofstra University School of Law. The Institute is a think tank dedicated to supporting the development of resources for the conflict resolution field, as well as supporting practitioners and policy-makers who wish to pursue the transformative approach. The Institute works nationally and internationally to provide innovative training programs for public and private agencies, host conferences and symposia, conduct research into the effectiveness of mediation programs, and publish a variety of print and video resources for practitioners and scholars. The Institute offers a research-based certification process for transformative mediators.

Current initiatives include introducing the relational theory of conflict to faith communities, providing support to community centers using or transitioning to transformative practice, continued conversations with international practitioners about the application of transformative practice to ethno-political conflicts and work in Sweden on young people and crime.

In the spring of 2010, the latest publication, Transformative Mediation: A Sourcebook for Conflict Intervention Practitioners, Lawyers and the Courts. The book is a compilation of the most recent research, theory, and practice applications of the transformative model of mediation.

Information about the Institute's workshops, certification process, resources and activities can be found at its website, www.transformativemediation.org.

LEARNING OBJECTIVES

Upon completion of this program, participants will:

- Understand transformative conflict theory.

- Be familiar with the concepts of empowerment and recognition.

- Understand the purpose of third party intervention in the transformative framework.

- Understand the practices a mediator employs to support party empowerment and inter-party recognition.

- Be able to engage in the basic practices of a transformative mediator.

THE TRANSFORMATIVE THEORY OF CONFLICT

THE STARTING POINT:
STANDING IN THE PARTIES' SHOES

- Mediation is a form of intervention in conflict, meant to help the parties who are engaged in conflict

- To be of real help, the intervener must understand what conflict "means" to the parties

  - what they see as difficult about what they are going through,
  - what they need help with, and therefore
  - what kind of help they need

- More generally, for any professional: to help your client you have to understand what your client is going through, as they see it

- Therefore, we start with this basic question:

  - What is conflict, as the parties understand and experience it?

THEORIES OF CONFLICT

- Different theories exist, offering different answers to the question "What is conflict?"

    o Power Theory: Conflict is a struggle for domination

    o Rights Theory: Conflict is a contest between competing claims of "rights"

    o Needs and Interests Theory: Conflict is a problem in how to meet incompatible needs with limited resources

- Each theory suggests a different type of intervention is needed to help

    o According to Power Theory, parties need help in organizing and mobilizing

    o According to Rights Theory, parties need help in argumentation and advocacy

    o According to Needs/Interests theory, parties need help in problem solving

- Transformative mediation is based on a different theory of conflict: According to Transformative Theory,

    o conflict is a crisis in human interaction, and

    o parties need help in overcoming this crisis and restoring constructive interaction

UNDERSTANDING CONFLICT – I

Conflict can best be understood as a **crisis in human interaction**.

More specifically:

- The occurrence of conflict tends to destabilize the parties' experience of both **self and other**, so that they interact in ways that are both more vulnerable and more self-absorbed than they did before the conflict.

- People in conflict tend to experience a sense of both:

    - Relative **weakness**
      (confusion, fear, disorganization, vulnerability, powerlessness, uncertainty, indecisiveness)
    and

    - Relative **self-absorption**
      (self-protection, defensiveness, suspicion, hostility, closed-mindedness).

- These negative dynamics often feed into each other in a vicious circle that intensifies each party's sense of weakness and self-absorption.

- As a result, the interaction between the parties quickly degenerates and assumes a mutually destructive, alienating, and dehumanizing character.
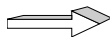
UNDERSTANDING CONFLICT -- II

- Despite conflict's destabilizing impact, people have the ability to rebound and recover from its alienating effects.

- Specifically, people can and do make dynamic **shifts** along two dimensions while conflict unfolds:

  - **Empowerment**
    (shifts toward increasing clarity, confidence, personal strength, organization, decisiveness)

  and

  - **Recognition**
    (shifts toward increasing attentiveness to other, responsiveness to other, openness to the other's humanity, and appreciation for the other's situation).

- Thus, despite conflict's potentially destructive impacts, people have the capacity to move back into their sense of personal strength or self-confidence (the empowerment shift) and their sense of openness or responsiveness to the other (the recognition shift).

- As these positive shifts feed into each other, the interaction can regenerate and assume a constructive, connecting, and humanizing character.

EMPOWERMENT AND RECOGNITION SHIFTS: THE POTENTIAL IN CONFLICT

EMPOWERMENT SHIFTS

Empowerment shifts occur when disputing parties experience a strengthened awareness of their own self-worth and their own ability to deal with whatever difficulties they face regardless of external constraints.

The Shift:

Weakness ⟹ *Strength*

Unsettled	Calmer
Confused	Clearer
Fearful	More confident
Disorganized	More focused
Unsure	More decisive

Empowerment shifts may be as to:

Goals
Options
Skills
Resources
Decision-making

RECOGNITION SHIFTS

Recognition shifts occur when, given some degree of empowerment, disputing parties experience an expanded willingness to acknowledge and be responsive to other parties' situations and common human qualities.

The Shift:

Self-absorbed ⟹ *Responsive to Other*

Self-protective	More attentive to other
Defensive	More open
Suspicious	More willing to accept other's good faith
Incapable of stepping outside own frame	More able to see other's perspective

---

Recognition shifts may consist of:

Consideration of giving recognition
Desire for giving recognition
Giving recognition in thought
Giving recognition in words
Giving recognition in actions

THE "VIRTUOUS CIRCLE" AND ITS IMPACT

Empowerment and recognition work together.

Empowerment
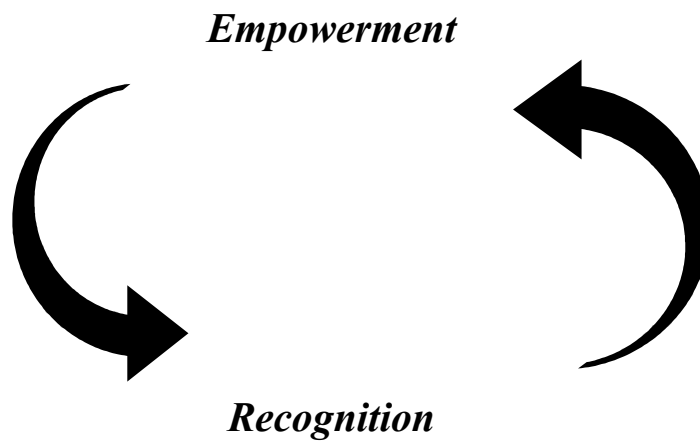
Recognition

- "As I grow stronger, I'm more able to offer recognition. As I give recognition, I tend to feel stronger."

- The interplay of empowerment and recognition fundamentally changes the quality of the interaction between people.

- The experience of the transformation of the conflict is of ultimate value to the parties.

CHANGING CONFLICT INTERACTION

POSITIVE
CONSTRUCTIVE
CONNECTING
HUMANIZING

EMPOWERMENT

WEAK   STRONG

RECOGNITION

SELF-ABSORBED   RESPONSIVE

NEGATIVE
DESTRUCTIVE
ALIENATING
DEMONIZING
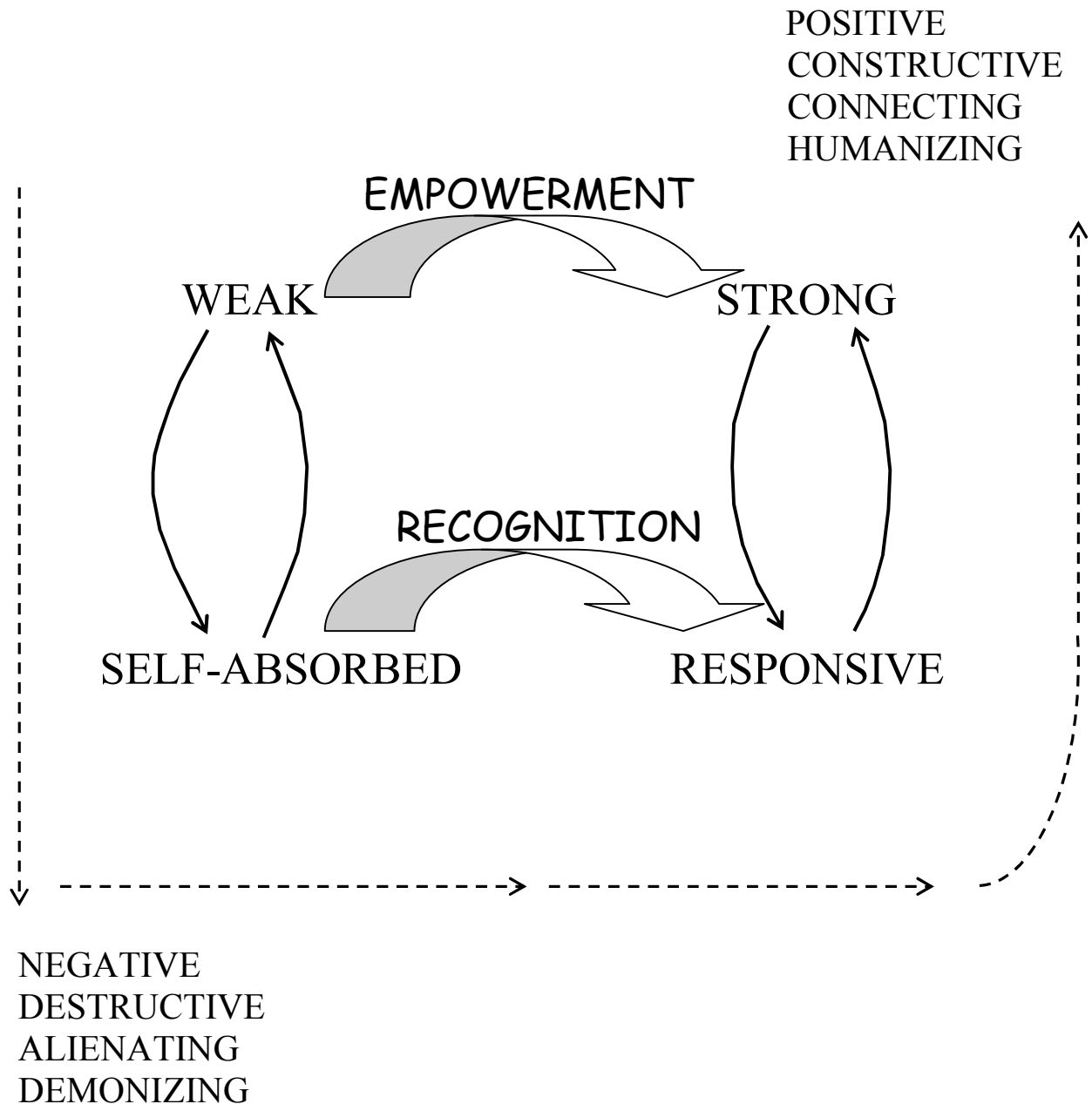
WHY TRANSFORMATIVE CONFLICT THEORY?: RESEARCH ON CONFLICT EXPERIENCE

QUESTION: Why choose to understand conflict according to the transformative theory, rather than a different theory of conflict?

ANSWER: Research supports the view that interactional degeneration is what affects people most about conflict

- Communications research documents that when people describe conflict experiences in metaphors, most of the negative metaphors reflect powerlessness and alienation from the other party – interactional crisis.

- Cognitive psychology research documents that people confronted with challenge or threat, as in conflict, experience diminishment and powerlessness, leading to suspicion and anger towards the other party – interactional crisis.

- Social psychology research documents that fear and anger are the main drivers of conflict escalation – interactional crisis.

- International relations research documents that the main sources of intractable conflicts are perceived challenges to "identity" leading to fear and hostility – interactional crisis.

- Neurophysiological research documents that conflict provokes a flood of chemicals to the brain that causes both panic and aggression – interactional crisis.

- Social psychology research supports the conclusion that what bothers people most in social processes is when they lose their sense of competency and connection – interactional crisis.

From Bush and Pope, *Changing the Quality of Conflict Interaction,* in 3 PEPPERDINE DISPUTE RESOLUTION LAW JOURNAL, (2003).

WHY TRANSFORMATIVE CONFLICT THEORY?
THE "PREMISES" BEHIND THE PICTURE

QUESTION: Why choose to understand conflict according to the transformative theory, rather than a different theory of conflict?

ANSWER: A person's view of what conflict is all about rests on deeper, underlying **premises** or beliefs about the social world generally, including the nature of human beings and their social processes/institutions.

The transformative theory of conflict is part of a larger, *Relational,* worldview that is emerging in modern society. Central to the Relational worldview are the following premises about human motivation and capacity, and about the nature of conflict as a social process. These premises give rise to, and are the logical underpinnings of, the transformative theory of conflict:

- Human beings are inherently social or connected beings, **motivated** <u>primarily</u> by a moral impulse to act with both strength and compassion -- to be neither victim nor victimizer, to interact humanely with each other -- in all their relations, including conflict.

- Human beings have inherent **capacities** for both self-determined choice and responsiveness to others, even when confronted with adverse circumstances, which enables them to achieve their desire for morally humane conflict interaction.

- Because what motivates and matters most to us as human beings is morally humane interaction with others, the most salient **meaning of conflict** is a crisis in human interaction that tends to generate destructive interaction.

- Therefore, the most important **product of conflict intervention** is a change in the quality of the conflict interaction itself, from destructive to constructive, negative to positive, regardless of the specific substantive outcome.

PREMISES OF TRANSFORMATIVE MEDIATORS

Human needs and capabilities

- A person's reality is unique to that person and based upon his/her life experiences.

- People have inherent needs both for advancement of self and connection with others.

- People are *capable* of making decisions for themselves – and *want* to do so.

- People are *capable* of looking beyond themselves – and *want* to do so.

Conflict and its effects

- Conflict causes people to become relatively weak and relatively self-absorbed, thus diminishing their capacity to make decisions or consider others' perspectives.

- Conflict is relational in nature and represents a challenge to the quality of the interaction among participants.

Empowerment and recognition

- Conflict resolution processes that promote empowerment and recognition provide the opportunity for people to restore their capability to make decisions and consider other perspectives.

THE MEDIATOR'S ORIENTATION, ROLE AND GOALS

FROM CONFLICT THEORY TO INTERVENTION: PARTY EXPECTATIONS AND MEDIATOR ORIENTATION

If you are asked to serve as a third-party intervener, and you hold a transformative view of conflict, what do you think the parties want from you? What do you see as your purpose when you walk in the room?

Mediation practice begins with the **orientation** of the mediator, his or her sense of purpose or mission as intervener.

This orientation rests on the mediator's view of what parties want and expect from an intervener. And that view of "party expectations" is in turn based on the mediator's fundamental, value-based beliefs about the nature of conflict and the motivations/capacities of human beings in conflict.

All mediators operate from some type of orientation, although not all mediators are explicit about their orientation.

_____

A mediator with a **"transformative"** orientation starts from Relational premises and therefore believes:

♦ Parties in conflict want most of all to **change** (transform) their **interaction** with each other from destructive to constructive, while they explore various topics and possibilities for resolution;

♦ The mediator's job is to help the parties achieve such change, by supporting them in making **empowerment and recognition shifts**; and

♦ If mediators do this job, parties are likely to make positive changes in their interactions and, as a result, find acceptable terms of resolution for themselves when and where such terms genuinely exist.

THE CONNECTION BETWEEN THEORY AND PRACTICE

Mediation practice is always more than a simple matter of "skills."

Mediator *interventions* are shaped by the mediator's *theoretical assumptions* about his or her *goals* for the mediation, which are embedded in the mediator's *orientation* to conflict (fundamental value-based premises or beliefs about the nature of conflict and the capacities of human beings in conflict).

Stated another way, *purpose drives practice.* Mediation cannot be practiced competently or responsibly without a constant awareness of this connection.

ORIENTATION (WHY)

↓

PURPOSE (WHAT)

↓

PRACTICE (HOW)

Consider two important questions:

> Do the premises of the transformative orientation make
> sense to me as a basis for practice?
> Are there nevertheless situations where I might find myself
> questioning them?

MEDIATION: A DEFINITION

Mediation is 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 discuss and explore various topics and possibilities for resolution.*

MEDIATOR GOALS

In general, the goal of the **transformative mediator** is to **support the possibility of conflict transformation** (constructive change in the quality of the interaction) by supporting party efforts at self-empowerment and inter-party recognition.

Therefore the mediator maintains a *dual goal focus* throughout the mediation process:

Empowerment	*Recognition*
The mediator aims to *foster* empowerment, by *supporting* (and never supplanting) each party's voluntary efforts at *deliberation* and *decision-making*, at every possible opportunity in the session(s).	The mediator aims to *foster* recognition, by *supporting* (and never forcing) each party's voluntary efforts to achieve *new understandings* of the *other's perspective*, at every possible opportunity in the session(s).
The mediator aims to *assist* and *enhance* the parties' own *decision-making* efforts.	The mediator aims to *assist* and *enhance* the parties' own *perspective-taking* efforts.

PRINCIPLES OF TRANSFORMATIVE MEDIATORS

The premises that underlie transformative mediation are expressed, in the context of mediation, through a mediator's attitudes and actions as she/he facilitates the parties' conversation.

Expressed as principles of transformative mediation, they result in a mediator's ability to:

- Be comfortable with conflict, including strong emotion and the negative pattern of interaction between parties.

- Respect party choices, including choices about participation in mediation, even if they are choices the mediator would not personally make in a similar situation.

- Be comfortable with a limited understanding of the parties' conflict.

- Respect the parties, even if their actions, appearance, language, and attitudes seem completely different from those of the mediator.

- Be patient with the parties and the process of their interaction.

- Focus on the moment-by-moment events in the parties' interaction.

- Attend to empowerment and recognition opportunities.

- Choose interventions (and non-interventions) based upon opportunities for party empowerment and/or recognition.

- Relinquish problem solving and control of the process.

WHAT ABOUT SETTLEMENT?

Settlement is certainly possible in this model, and is not discouraged. But transformative mediators take a distinctive view of settlement.

A Transformative Mediator's View of Settlement

- Settlement is *not* the *mediator's* goal.

- A settlement-focused mediator tends to overlook or ignore opportunities for empowerment and recognition.

- Settlement *may or may not* be the *parties' goal.*

- Parties may define a successful resolution, in their own terms, to include more than settlement or something other than settlement.

- Settlement is one of the many choices that might open to the parties as an incidental benefit of improved interaction.

- Parties may voluntarily choose, and be satisfied, to leave the mediation with new insights on their choices and new interpersonal understandings but no agreement, or even to take the conflict to a different forum such as litigation.

- If mediators do their job, parties are likely to make positive changes in their interactions with each other and, as a result, find acceptable terms of resolution for themselves when and where such terms genuinely exist.

- Settlement remains a distinct possibility -- one choice available to the parties depending upon how their own goals and insights develop through the mediation conversation -- but it is not the single outcome privileged by the mediator or the mediator's single measure of a successful mediation.

DO PARTIES REALLY WANT TRANSFORMATIVE MEDIATION? ANSWERS FROM RESEARCH

1. **Parties' reasons for high satisfaction with mediation:**

   - Mediation enabled them to deal with the issues they themselves felt important.

   - Mediation allowed them to present their views fully and gave them a sense of being heard.

   - Mediation helped them to understand each other.

   Note that these reasons relate to *how* the process worked rather than the outcome it produced.

2. Parties report high satisfaction with mediation, for these reasons, *even in cases where no settlement was reached, and even when they "did worse" in mediation than they might have done in court.*

3. **Parties' favorable attitudes toward mediation stem largely from *how* the process works, especially:**

   - The greater degree of participation in decision-making; and

   - The fuller opportunity to express themselves and communicate their views.

4. **Studies of mediation programs show that when the kind of mediation offered lacks the features mentioned, satisfaction levels are very low.**

From: Bush, R.A.B. (1996). "What do we need a mediator for?": Mediation's "value-added" for negotiators. Ohio State Journal of Dispute Resolution, 12 (1), 14-23.

MODELS OF MEDIATION PRACTICE

"Models" of mediation practice are defined by their *theoretical frameworks* --- i.e., the explanations offered for the nature of conflict and the goals of conflict intervention. There are two primary models for mediation practice in the field today: *transformative* and *transactional*. Key differences are highlighted below.

	Transformative	*Facilitative**
Conflict is:	Crisis in human interaction	Problem in needs-satisfaction
Successful outcome of conflict intervention:	Shifts from destructive to constructive interaction between the parties Increased party capacity for future decision-making and communication	Settlement agreement that solves the problem on fair, realistic terms
Goal of third-party intervention:	Foster empowerment and recognition Enhance party decision-making and communication	Encourage interest-based bargaining Generate an agreement that resolves tangible issues
Practice hallmarks:	Micro-focus on interaction Identify opportunities for party empowerment and inter-party recognition Support party deliberation & decision-making, and inter-party perspective-taking	Macro-focus: form global assessments of "problem" Shape settlement terms Drop "intangible" issues

*   The term *"facilitative"* is used here for a single, overarching theoretical framework that is given various names by various scholars. For example, Bush & Folger (1994) refer to this as the *"problem-solving"* orientation, Kolb (1994) refers to it as *"settlement-driven,"* Putnam (1994) calls it *"transactional exchange,"* and Kolb and Putnam (1997) refer to it as the *"negotiation analysis"* framework.

TRANSFORMATIVE PRACTICE: CORE ACTIVITIES 1 & 2

CHARACTERISTICS OF TRANSFORMATIVE PRACTICE

Broadly speaking, transformative practice in mediation has these essential characteristics (Bush & Folger, 1994, p. 100):

"First, mediators adopt a **microfocus**, concentrating on the presentation of the conflict by the parties that takes place in the mediation session itself.

Second, mediators take conscious steps to encourage parties to engage in **deliberation and choice making**.

Third, mediators consciously invite and help the parties to **consider each other's perspectives**." (Emphasis added)

TRANSFORMATIVE MEDIATION PRACTICE: THE CORE

There are 3 core practices a transformative mediator must master. These are not "steps, "stages," or even "skills," but *a core approach to interaction in-the-moment* that is enacted over and over again in the session as the conflict conversation unfolds.

Attend

The mediator pays close attention to the unfolding conversation, in order to *identify opportunities* for empowerment and recognition as they arise. This is also known as maintaining a *"microfocus."*

Monitor/Maintain

The mediator thinks before intervening, in order to *check his or her own intentions* for intervening, ensuring she/he *maintains a transformative purpose* and is not directive or leading.

Respond

The mediator responds, *when appropriate*, only *to support the parties' own efforts* to make empowerment and recognition *shifts*.

CORE ACTIVITY #1: ATTEND TO THE CONVERSATION

A transformative mediator engages in *proactive listening* throughout the mediation, in order to attend closely to the parties' conversation.

Proactive listening is listening *with a purpose.*

The mediator listens *proactively* --- with a *microfocus* --- in order to identify *opportunities* for empowerment and recognition as they arise in the parties' own conversation.

This requires:

- A focus on the *here and now* of the conflict interaction

- Attention to the *dynamics* of the parties' own conversation

- An ability to *recognize opportunities* in the course of an unfolding interaction

JUST LISTEN – "LIKE A COW"

The prerequisite for proactive listening is the ability to "just listen", to attend completely to what a party is expressing (in words or otherwise), in a manner that is actually "felt" by the party him/herself.

Listening in this manner supports both empowerment and recognition, by:

- bringing a sense of calm and deliberateness to the conversation
- making a "space" for the party to fully express him/herself and "get clear"
- confirming that whatever a party is trying to express is important
- suggesting that what the party is expressing is not only worth saying but worth listening to

Listening in this manner involves not only the ears, but the eyes, the entire face, the body, and the heart, as suggested in the following quotes, the first from a doctor and the second from a teacher:

> *I suspect that the 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. And especially if it's given from the heart. 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. When we interrupt what someone is saying to let them know that we understand, we move the focus of attention to ourselves. . . . I have even learned to respond to someone crying by just listening. In the old days, I used to reach for the tissues, until I realized that passing a person a tissue may be just another way to shut them down, to take them out of their experience of sadness and grief. Now I just listen. When they have cried all they need to cry, they find me there with them.*
>
> from Rachel Remen, Kitchen Table Wisdom (1996)

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. . . . What I'm trying to construct here is a theory of attention that depends little on therapeutic skills and formal training: listening like a cow. Those of you who grew up in the country know that cows are good listeners. . . . We don't need fixing, most of us, as much as we need a warm space and a good cow. Cows cock their big brown eyes at you and twitch their ears when you talk. This is a great antidote to the critical listening that goes on in academia, where we listen for the mistake, the flaw in the argument. Cows, by contrast, manage at least the appearance of deep, openhearted attention.

from Mary Rose O'Reilly, Radical Presence (1998)

MORE THAN WORDS ALONE

"Conflict talk" is more than just words. Communication is complex, and people construct and share their meaning through:

- Words
- Tone of voice
- Intensity / volume
- Tempo
- Gaze
- Gestures
- Facial expressions
- Posture
- Movement
- Involuntary physiological behaviors
- Physical proximity / space
- Silence

This means that a mediator must attend closely to both *what is said* and *how it is said.* Both what is said and how it is said can signal opportunities for conflict transformation (empowerment and recognition shifts). For this reason, transformative mediators take care not to "shut down" the unfolding conflict between the parties.

Caution is needed, however, in interpreting a party's *affective state* from his or her *affective expression*. Affective expression varies widely among people, groups, and cultures. For example, silence can mean seething anger just as easily as verbal rage can.

In general, though, transformative mediators try to attend to and *follow the "heat"* of a conversation, often locating a party's sense of personal vulnerability (opportunity for empowerment shifts) and self-absorption (opportunity for recognition shifts) in the parties' *affective expressions* in the course of interaction.

RECOGNIZING OPPORTUNITIES:
LISTENING FOR WEAKNESS AND SELF-ABSORBTION

Weakness: Opportunities for Empowerment Shifts

Expressing doubt, confusion, uncertainty   *"I'm just not sure that..."*

Anger, frustration   *"#@!!&*..."*

Continued repetition of the same point   *"As I said before... I'll say again…"*

Expression of inability to act   *"There is nothing I can do…"*

Self-Absorption: Opportunities for Recognition Shifts

Lip service and "but"   *"Yes…but…"*

Accusations, name calling, sarcasm   *"YOU always…"*
    "Oh, that's a WONDERFUL idea…"

Assuming worst motives of other   *"You were trying to sabotage my work."*

Minimizing, trivializing, or exaggerating   *"That's no big deal…"*
"It took me a full-week's work to finish that project…"

Outright refusal   *"There's no way we can do that…"*

E/R VOCABULARY: THE LANGUAGE OF CONFLICT TRANSFORMATION

In effect, the mediator is learning to listen the exchanges between the parties in a whole new way, on a new level, and in a new language – the language of conflict transformation. . . . In this new language, every expression that conveys the message "I feel weak," in whatever fashion, is an opportunity for an empowerment shift towards greater strength. Every expression that conveys the message "I am trapped in my own perspective and cut off from the other, " in whatever variation, is an opportunity for a recognition shift towards increased responsiveness.

from Baruch Bush & Sally Pope, Changing the Quality of Conflict Interaction (2002)

 To put it more bluntly: In conflict transformation language, mediators listen for party statements that are saying either of two things:

- *"I feel bad!"*

- *"You are bad!"*

Parties find many ways of saying these two things, but whenever you hear one or the other, you know it's an opportunity for empowerment or recognition (or both).

CORE ACTIVITY #2: MONITOR AND MAINTAIN INTENTION WHEN INTERVENING

After identifying an opportunity for empowerment or recognition, the mediator *thinks before responding*, in order to *monitor his or her motivations to intervene and maintain exclusively supportive intentions.*

All mediators have some kind of influence on the parties' unfolding interaction. Transformative mediators want to ensure that their influence *supports opportunities for empowerment and recognition shifts* rather than furthering the mediator's own agenda.

Part of intention is the attitude that the mediator brings to a conflict conversation. Transformative mediation's premises include a belief in people's capacity and the uniqueness of an individual's experience. Believing that "parties have what it takes," and understanding their limited knowledge of parties' lives, the mediator's attitude embodies

- A sense of confidence in the parties' capacities and motivations

- A non-judgmental openness to each party

- A positive regard for the parties & their interaction

When transformative mediators apply their beliefs to the context of mediation, they act based on a set of principles. These are useful for monitoring intention. A transformative mediator checks to be sure that his/her intention is consistent with:

- Respect for the parties, even if their actions, appearance, language, and attitudes seem completely different from those of the mediator.

- Comfort with conflict, including strong emotion and the negative pattern of interaction between parties.

- Respect for party choices, including choices about participation in mediation, even if they are choices the mediator would not personally make in a similar situation.

Comfort with a limited understanding of the parties' conflict.

- Patience with the parties and the process of their interaction.

- Relinquishing problem solving and control of the process.

COMMON DIRECTIVE IMPULSES

One important way to monitor intention is to recognize directive impulses that commonly "bubble up." Noticing these impulses allows a mediator to counter them and maintain his/her original transformative, supportive intentions. During mediation, it is not uncommon to think:

How do I get them to…?

Things are getting out of control!

I shouldn't just sit here…

We're getting nowhere!

We're going in circles!

We're running out of time!

I can't let him / her do that!

I know just what will work…

If I can get them to agree on…

That'll never work!

I've heard enough of that…
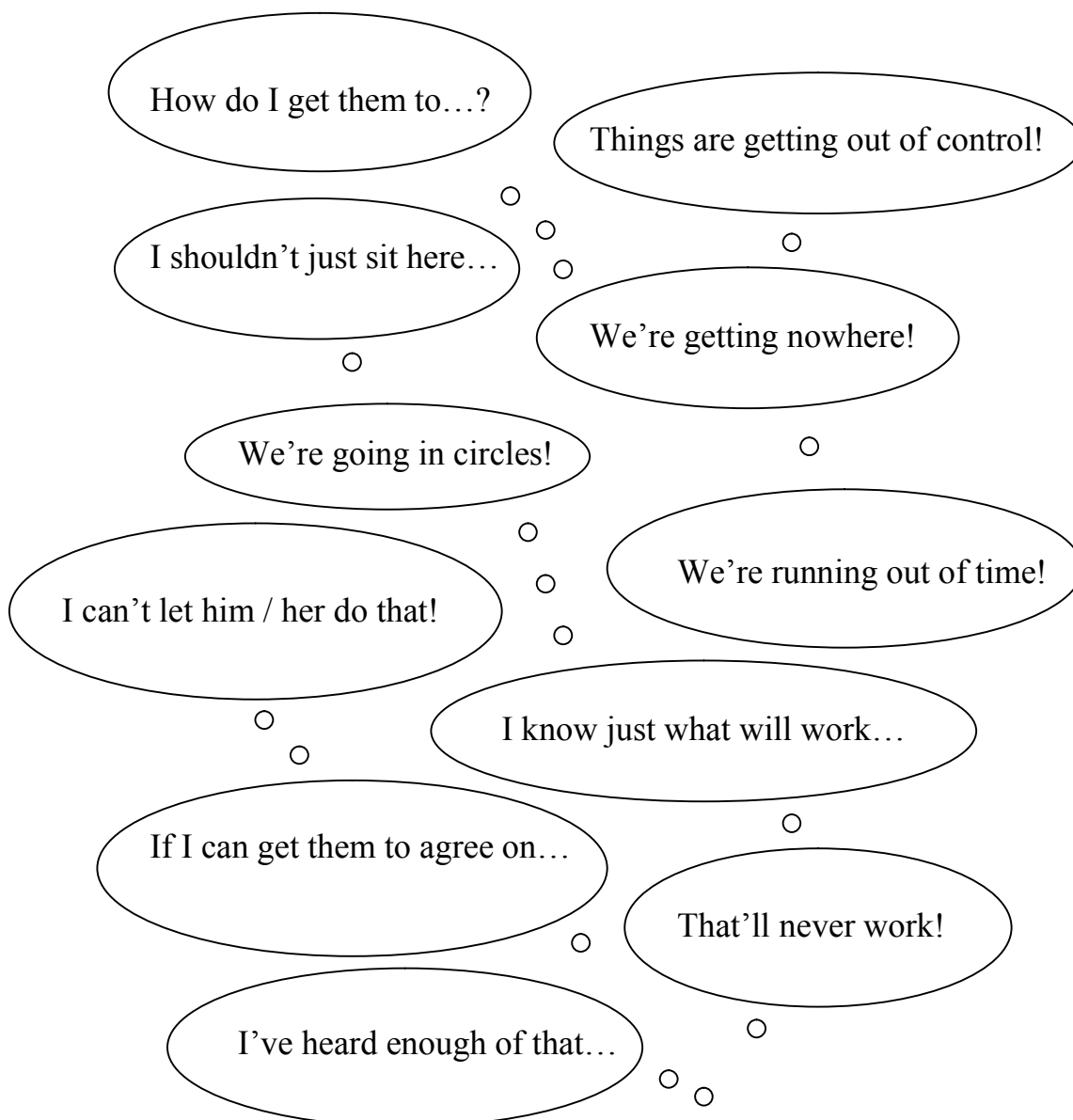
A directive impulse leads a mediator to try to "get" the parties somewhere. It involves

- substituting his/her judgment for the judgment of the parties by

- shaping the parties' comments into "solvable" problems

- focusing exclusively on tangible issues

- shaping the outcome so that it is acceptable to the mediator

- directing the parties toward, or away from, a particular substantive outcome

- controlling the process of discussion

- taking decisions out of the parties' hands, overtly or covertly

- telling the parties how to think, feel and behave

- moving the parties toward settlement

Directive impulses challenge a mediator's ability to maintain the appropriate intention, a focus on opportunities for empowerment and recognition shifts.

INTENTION AND MEDIATOR "NEUTRALITY"

Neutrality cannot mean the absence of all influence in a mediation by the mediator. A mediator is intentional and inevitably has influence of some kind on the unfolding conflict. A mediator monitors her/his intention to ensure that it is consistent with transformative premises and goals and that the effect of any particular intervention furthers these.

In the transformative framework, *neutrality* is a commitment by the mediator to use his or her influence *only*:

- For the sake of keeping decisions in the parties' hands

- To make sure that *parties* maintain control of decisions

This definition could be misleading *unless* you remember that in communication, shaping *how* things are done shapes what *outcomes* are possible.

Because shaping the "process" shapes the "outcome," mediators are intentional in using their influence to keep decisions about *how* things are done in the parties' hands, as well as decisions about outcome.

TRANSFORMATIVE PRACTICE: CORE ACTIVITY 3

CORE ACTIVITY #3: RESPOND TO SUPPORT E/R SHIFTS

The mediator ***responds to opportunities*** for empowerment or recognition, when appropriate, with interventions that help or allow the parties to:

- ***Gain clarity and make their own choices***
  because doing so helps them regain their sense of strength.

- ***Consider, acknowledge or respond
  to the perspective of the other party***
  because doing so helps them regain their sense of connection.

BASIC REPERTOIRE OF MEDIATOR RESPONSES

Reflecting is when the mediator says back to the speaker what the mediator believes the speaker has just expressed, using language that is close to the speaker's own. A good reflection captures both the substance and the emotional tone of what the speaker has said, without parroting.

"So, for you, what's happening is that …"
"What you seem to be saying is…"
"You're feeling …"

Summarizing is when the mediator condenses a series of things the parties have said, or a series of things that have happened, into essential points. A good summary is inclusive --- nothing is strategically "dropped out."

"So what you want to talk about today is…"
"To summarize what you've both talked about so far…"
"There are a number of things you're disagreeing about, including…"

Checking in is a way the mediator asks questions that help parties make decisions about the mediation process, the content being discussed and their engagement. The mediator notes a decision-point and asks parties if it is one they want to consider and/or act upon.

"So where do you think the discussion should go at this point?"
"Are you ready to move on to [this new point] or do you want to stay with this part of the discussion a while longer?"

Staying/Backing out is when the mediator withdraws from direct involvement in the conversation, remains silent, and allows the parties to talk directly to each other without interruption.

REVISITING THE CONNECTION BETWEEN THEORY AND PRACTICE

Mediation practice is always more than a simple matter of "skills."

Mediator *interventions* are shaped by the mediator's *premises* (fundamental value-based beliefs about the nature of conflict and the capacities of human beings in conflict).

Stated another way, *purpose drives practice.* Mediation cannot be practiced competently or responsibly without a constant awareness of this connection.

PREMISES (WHY)

↓

PRINCIPLES (WHAT)

↓

PRACTICES (HOW)
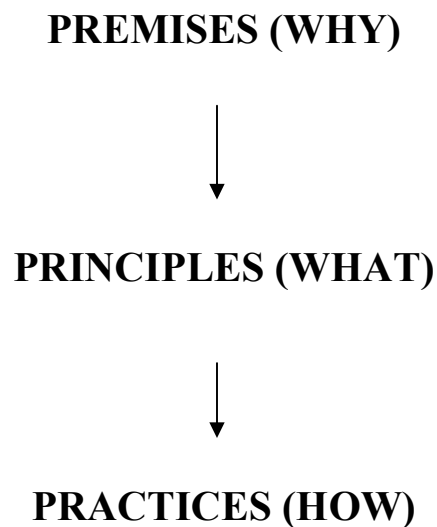
MEDIATOR RESPONSES: "MOVES", NOT JUST "MEANS"

Effective transformative practice requires an understanding of the way in which mediator responses should be "moves" and not simply "means".

- Responses like reflections, summaries and questions are, in themselves, simply "forms" of communication, without intrinsic purpose or impact.
  - o Any of these responses may be the "means" to different ends.
  - o For example, the very same "means" can promote settlement, or empowerment and recognition, depending on how they are used.

- When "means" of communication (reflections, summaries questions) are consciously and consistently used for a particular purpose, by using them in particular ways (and not otherwise), they become "moves" in an intentional approach to practice.

- Transformative mediators learn to see and use the various "means" of communication as "moves" that, taken together, form an approach to practice that consistently fosters empowerment and recognition.

- Effective transformative practice requires constant awareness of whether specific "means" are being used properly, as "moves" that foster rather than obstruct empowerment and recognition.

REFLECTION: PRACTICE GUIDELINES

Reflection is most effective if practiced within some basic guidelines:

- Reflection is done with one party at a time, and with complete engagement with that party alone – not moving back and forth between the parties

- Reflection involves "mirroring" to the speaker whatever s/he has expressed
    - It does NOT mean "carrying" the speaker's message to the other party

- Reflection means providing an undistorted mirror: this means a reflection should be complete and close.
    - It is most effective when inclusive, capturing the full range of what has been said
    - Try not to edit, soften or filter anything the speaker has said

- Reflection can and should include reflection of emotions expressed – not just what has been said, but how the speaker appears to be feeling
    - There is hardly any form of "comment" that cannot be usefully reflected – even silence, reluctance to speak, etc.
    - In other words, what is being reflected is any and all communication or expression, not just speech

- Reflection is most effective when it "matches" the intensity of the comment – matching the energy, not the emotion

Reflection usually carries its own confirmation:

- An effective reflection will usually evoke an immediate confirmation response from the speaker:
    - "Yes, that's it;" or
    - "That's right, and also . . ."

- Even if the reflection missed the mark, it usually evokes a response from the speaker that "cures" the mistake:
    - "That's not it at all, here's what I said"
    - "I'm not just mad, I said furious!"

- In other words, provided the mediator is genuinely trying, reflection is self-confirming and self-correcting.

- The positive "empowerment" effect of reflection can be seen whether the speaker confirms or corrects the reflection – in either case, s/he is gaining clarity and strength

REFLECTION: HOW IT CAN SUPPORT E/R SHIFTS

To practice reflection seriously, it helps to understand just how powerful it can be in supporting both Empowerment and Recognition shifts, for both the "speaking party" and the "listening party".

- Reflection can help the "speaker" make empowerment shifts by:
  - helping the speaker to "get on the record", establish their presence in the room
  - giving the speaker the chance to "get clear" by "listening to himself" through the reflection
  - allowing the speaker to deliberate and choose to edit, modify and clarify comments

- Reflection can help the "listener" make empowerment shifts by:
  - allowing the listener to "listen in" to what the speaker is saying without threat, "from a safe distance", and thus
  - offering the listener the chance to hear and think about "new information" without pressure

- Reflection can help the "speaker" make recognition shifts by:
  - allowing the speaker to hear when he has "gone too far" and reconsider and retract negative comments

- Reflection can help the "listener" make recognition shifts by:
  - allowing the listener to hear the speaker's comments "for the first time" or "in a different way", because of the reflector's voice

In general: Reflection, practiced properly, acts as an "amplifier" of the conversation for each party – it makes what is being said more audible and intelligible to both parties. This gives strong support to party decision making and interparty communication.

SUMMARY: PRACTICE GUIDELINES

Summary is most effective if practiced within some basic guidelines:

- Summary, unlike reflection, directly involves both parties – that is, it involves what both have said during a "chunk" of the conversation, and it is delivered in a way that addresses both parties

- Summary is not a literal "reflection" of everything said, but rather a thematic replay of the "subjects of discussion" that have emerged
  - subjects summarized should include whatever topic either side brought up
  - subjects summarized should include what the parties seem to agree about and, especially, what they disagree about – subjects of disagreement
  - summary of subjects disagreement should include the different views each side expressed on each point

- In summarizing subjects discussed and areas of disagreement, engage with both parties alternately, but directly – not "he said this, she said that," but "you said this, and you said this"

- Summary, like reflection, should use parties' language where possible, and subjects should not be omitted, edited or prioritized for the parties
  - Most important, summary should not soften or dilute differences and disagreement
  - Rather, summary should highlight sharp differences

- Summary is often usefully followed up with a "check-in"

As with reflection, summary usually produces its own confirmation of effective practice:

- In response to a summary, parties will usually move the conversation in a direction, or choose a next step, that the mediator could not have predicted

- This unpredictable movement is the sign that the summary was effective in supporting party choice, unaffected by any mediator judgment or agenda

SUMMARY: HOW IT CAN SUPPORT E/R SHIFTS

Summary, like reflection, can also be a powerful tool for supporting Empowerment and Recognition shifts, for both parties – depending on how it is used.

- Summary can support empowerment shifts, by:
    - helping the parties to "part the fog" of details and see the "big picture" of their conflict conversation, without confusion
    - allowing them to hear/see a "replay" of what they've discussed and edit/add to/subtract from that picture
    - giving the parties the opportunity to assess the whole conversation and choose for themselves what specific area to address next
    - revealing for the parties where their most serious differences are, so they can decide whether/how to address them

- Summary can support recognition shifts, by:
    - highlighting for the parties the differences in how they see things, so they have the opportunity to appreciate the other's "different reality"
    - allowing the parties the opportunity to see what the other party values (wants to focus on) and why

Like reflection, summary, practiced properly, can have an amplification/ clarification effect, but now at the level of conversation rather than individual comment. It makes the conversation as a whole, including the differences revealed and the choices offered, more "visible" to the parties, so they can make clearer choices about what to do.

ANATOMY OF A SUMMARY

A summary generally follows a period of party-to-party talk. By intervening, the mediator is likely to draw attention to himself or herself, and away from party interaction. Nonetheless, this intervention is helpful because it supports the goal of party empowerment (fostering strength of self through party clarity and choice), and if done properly and at the right time, also supports inter-party recognition (fostering the development of party-to-party connection through interaction and understanding). Therefore, these guidelines are offered to help you in constructing a summary that is helpful for the parties and consistent with the transformative framework.

1. **Begin with a "metacomment."**
    a. A metacomment is a comment on the conversation itself, that acknowledges the fact, richness, and/or complexity of the conversation and the participation of both/all parties.
    b. Example: "The two of you have put a lot out on the table in your conversation."

2. **Be transparent.**
    a. State your intent in intervening. Emphasize party agency/control by downgrading your role and using "tentatives."
    b. Example: "Maybe it would be helpful to you if I kind of summarize the points where you agree and those where you disagree, so you can decide how to proceed next.

3. **Organize by themes.**
    a. Do not provide a chronological replay of the conversation. Instead, highlight themes that the parties raised, each party's view on that theme, and the reason for each party's view, if stated.
    b. Example: "You both agree that a Manual is necessary for training. However, you disagree on the amount of preparation needed with respect to an agenda. Jim, you prefer an agenda that is planned from start to finish, because it takes care of group anxiety and lets everyone know where the program is going. Judy, you prefer to have a detailed agenda for the first day only, and a rough skeleton after that, because you believe this lets you respond to the needs of the group in the moment, and deal with the fact that each training group is different,…" [and then on to the next theme(s)].

4. **Give control back to the parties.**
   a. A pause at the end of a summary is often enough to invite the parties back in. Leaving some space allows parties to think about what they have heard
   b. If neither party picks up the conversation, a mediator may check in, including with "you-talk" and tentatives that downgrade mediator agency and ensure that parties choose how to continue.

   Examples:

   > *"So, that is just what I observed in your conversation. You decide what to do from here. For example, you might want to talk more on any of these topics, or raise a new topic, or do something completely different. That is up to you. So what do you think…?"*

   > *"So those are some of the differences you were talking about. Where would you like this conversation to go now?"*

CHECKING IN: PRACTICE GUIDELINES

- The purpose of a check-in is to allow parties to make decisions about the mediation process and their participation. They are questions that offer parties a choice rather than make a demand, giving parties the opportunity to take control.

- There are many decisions being made during a conflict.
    - Some decisions relate to how a party chooses to express him or herself, including what to bring up and how much to say about a particular topic.
    - Some decisions relate to the process and its structure (e.g. who speaks when, whether to have a private session, how to best use remaining time).
    - Some decisions relate to how a party acts (e.g. interrupting, not saying much, getting visibly upset).

- Check-ins make decision points transparent and provide a context for the question that is being asked.

- Check-ins sometimes follow reflections or summaries and invite the speaker(s) to add or correct what the mediator has said. This allows the speaker to be the final editor of her or his own speech.

- When check-ins are about content, they *follow* from what a speaker says rather than leading the speaker where the mediator thinks he/she should go. They are generally *open-ended,* inviting elaboration. This allows the speaker maximum discretion in terms of how he/she chooses to respond. They may actually be in the form of a question, or the question may be implied.
    - *"You keep referring to November as a turning point. Would you like to say more about what happened then?"*
    - *"It sounds like you might have a lot more to say about xxx . . ."*
    - *"You've gone back and forth several times on how to divide up the school week and seem stuck. Would it be helpful to think about other options, perhaps by looking at what professionals recommend or what others do?"*

- When check-ins are about process, the mediator notes a decision point and invites parties to consider what they would like to do. They are generally directed to both or all parties involved in a session.
  - *"I'm wondering if you have any suggestions about how you want to have this conversation?"*
  - *"You may not realize that there's about a half-hour left for this session. I wonder if you're interested in writing down some of these points you're discussing or if you prefer to leave them as verbal agreements?"*

- When check-ins are about behavior, the mediator describes what she/he sees or senses and then follows with a question that invites party decision-making. Rather than interpreting the behavior, the mediator describes it
  - *"I notice that you just turned away and covered your face with your hand. I'm wondering if you're comfortable with what's being said or might prefer to meet privately?"*
  - *"I'm aware that you haven't said anything in quite awhile and want to check in with you. Are you okay with how much you're getting to say?"*

CHECKING IN: HOW IT SUPPORTS E/R

Check-ins are a specific form of questioning that mediators use. They are powerful tools for supporting Empowerment and Recognition shifts for both parties when they are used correctly.

- Check-ins can support empowerment shifts by:
    - providing opportunities for a party to elaborate on and get clearer about what s/he has said
    - allowing a party to correct a mediator reflection or summary, and thus gain clarity and also regain a sense of control and agency
    - highlighting decision points so that parties can take opportunities to make choices for themselves

- Check-ins can support recognition shifts, by:
    - letting the non-speaking party hear fuller elaborations of what the speaker is saying, which may lead to new understandings
    - allowing each party to become aware of the choices and priorities of the other, as decisions are faced and made in different ways

- Check-ins are a concrete manifestation of a transformative mediator's commitment to keeping decision-making in the hands of the parties.

WHAT ABOUT EMOTIONAL EXPRESSION?

Emotions are part of the overall *communication* of the parties, not more, not less. Emotional tone or expression cannot and should not be separated from the parties' interaction.

The *three-level approach* applies to emotional expression:

Emotional expression often signals an *opportunity* for empowerment or recognition, or both. A party may be conveying the importance of the topic to him or her, or something about his or her sense of self, or how he or she is experiencing the conflict or the past or present interaction with the other party. The mediator *highlights the opportunity* as he or she would any other opportunity.

Resist the directive impulse. The mediator avoids the temptation to ignore emotional expression, criticize it, eliminate it (e.g., by "ground rule"), or redirect it (e.g., by insisting on a "future focus"). Emotional expression is not "static," and it is not an interference with the "rational" process of decision-making. It may well be critical to fostering interpersonal understanding and voluntary, fully-informed decisions. And, treating it otherwise could be disrespectful to the parties or an imposition of the mediator's cultural values upon them.

Respond supportively. The mediator responds in a way that highlights the opportunities for empowerment and recognition, and invites the parties to reflect, elaborate, deliberate, engage in dialogue, and/or make decisions, as appropriate.

OPPORTUNITIES AWAIT

The mediator does not create opportunities for transformation, nor does the mediator force the parties to transform anything. The mediator pays close attention to the unfolding interaction in order to:

- Notice the opportunities for transformation --- for empowerment and recognition shifts in the interaction --- that appear in the parties' own conversation

- Highlight those opportunities for the parties

- Allow the parties to choose whether and how to respond to the opportunities they themselves present

- Support whatever choice the parties make and continue to work with their interaction

One way to think of opportunities --- and to notice them in the course of interaction --- is as "places of instability" or "fractures" in the destructive conflict interaction cycle or pattern.

- These places of instability --- tiny fractures in the pattern --- are actually opportunities for change.

- They are places where the parties themselves signal that it might be possible to interact in a different --- more constructive --- way.

BUT --- WHEN TO INTERVENE?: TIMING YOUR MOVES

Even brief segments of conversation are rich with opportunities for empowerment and recognition shifts. All opportunities cannot be responded to; some choice is inevitably necessary. Points to consider:

The Flow of the Conversation

- Parties can notice and work with opportunities for transformation themselves, without any assistance. They do this every day in ordinary conversation and argument. They do not need you to intervene if "shifts are happening."

- If parties get stuck in the destructive cycle, opportunities for transformation are still likely to be arising, but the parties are not likely to be noticing or acting upon them. This could be an appropriate time to intervene.

Invitations from the Parties

- Parties sometimes stay quite engaged, even when the conflict looks to the mediator like it might be in a destructive cycle. However, they may signal to the mediator that they want help with their interaction, however, by:

  - Turning to look at the mediator
  - Asking directly for help in some way
  - Asking indirectly for help, e.g., "Do I have to keep doing this?"
  - Shifting their engagement with the other party from second person to third person (from "talking to" to "talking about")

Timing generally

- Some degree of empowerment generally comes before an offer of recognition. Consider whether the parties are interacting with relative increases in personal empowerment before highlighting recognition opportunities.

- Conversation tends to have "rhythms", with periods of intensity and then points where the conversation "lulls". The "lulls" or "pauses" in the conversation can provide opportunities to intervene without interrupting the parties' own flow.

OPENINGS, CLOSINGS
AND RELATED PROCEDURES

OPENING THE MEDIATION

*"THE OPENING
STATEMENT SAYS
IT ALL"*
-Folger & Bush (1996)

■ The mediator generally opens the mediation with some discussion that explains what the parties can expect from the mediation process.

■ Some mediators prefer to start off with a brief, prepared opening statement, while others adopt a more conversational, interactive approach. Regardless of the preference of the mediator, if he or she is operating from the transformative framework, the mediator should emphasize in the opening discussion that:

- The objective of mediation is to ***provide a context*** in which the parties can (1) clarify their own goals, resources, options and preferences, and make voluntary, fully-informed decisions about their situation for themselves, and (2) consider and better understand the perspective of the other party, if they wish to do so.

- While a formal settlement agreement is one possible outcome of the process, other outcomes are possible and can be equally important to the parties, such as new insights on the dispute, greater clarity about choices and options, and new understandings of each other's views and situations.

- The mediation session is, basically, an opportunity for the parties to have a constructive conversation about whatever matters concern them, with the mediator's assistance. In other words, it is helpful for the mediator to use "the conversation metaphor" from the very opening of the session.

WHAT ABOUT GROUND RULES?

In the process of opening a mediation, some mediators discuss with the parties certain ground rules for how the conversation can and cannot occur. However, the idea of *imposing* ground rules is contrary to the notion of following the parties and responding to their needs, and can easily foster **directiveness** on the part of the mediator.

A mediator with a transformative orientation is interested in discussing **how the conversation will take place**, but opens that discussion to the parties. For example, the mediator might:

- *Invite* the parties to discuss whether they need ground rules for their conversation, and what those ground rules should be.

- *Suggest* guidelines for the discussion, if the parties ask for help, or seem confused by the mediator asking them how they want to have the discussion. The mediator will check in with the parties to see if they think any of the suggestions made would help them.

- *Check in* with the parties if it appears at any time during the process that they are not following ground rules they themselves have chosen. While imposing ground rules puts the mediator in the role of "enforcer" if the parties "break the rules," when the parties have made their own ground rules the mediator need not be the "enforcer." Instead, the mediator can check in with the parties about what happened, what it means to them, and what they might want to do about it.

- Treat ground rules as an ***ongoing discussion***, inviting the parties to raise the topic at any time they wish as the mediation progresses.

USING "AGREEMENT TO MEDIATE" FORMS

Mediators often use written "agreement to mediate" forms early in a mediation. These forms allow the mediator to make certain disclosures to the parties in writing, often about such topics as confidentiality and consultation with attorneys or other representatives. Mediators ask parties to sign these forms to indicate their understanding of the process, and their voluntary agreement to enter the process.

To some mediators, the formality of the forms may seem at odds with the personal, interactive nature of the transformative framework. Some mediators worry about "imposing" the forms on the parties. However, the necessary forms may be used within the transformative framework if the mediator is guided by the principles of empowerment and recognition (and if the language on the forms is consistent with the principles of empowerment and recognition).

Signing the forms should be a voluntary, fully informed decision on the part of each party. This is more likely to be the case if:

- the mediator and the parties discuss the mediation process together and reach a shared understanding of the process before they review the form

- the mediator treats the form as an additional piece of information about the mediation process, and an additional opportunity to engage with the parties about their expectations of the process and their understanding of what has brought them there

- the mediator reviews the form with the parties, inviting and responding to their questions, and

- the mediator emphasizes the voluntary nature of the mediation process, and leaves open to the parties the choice of not signing the form, and therefore not proceeding with the mediation.

SEPARATE MEETINGS

A *separate meeting* sometimes happens, generally between the mediator(s) and one of the parties.

Separate meetings can:

- Support empowerment by helping a person gain clarity about his or her goals, resources or options in private.

- Support recognition by helping a person consider new information and what new understanding he or she may be realizing, and what if anything to do about that

- Provide an opportunity for a person to talk about a difficult subject in private.

- Allow the mediator to check in with a person, to see how she or he perceives the mediation process and whether there is anything that he or she would be more comfortable discussing in private.

Parties may request a separate meeting at any time during a mediation. A mediator may suggest one as well, often as part of a **check in**.

Reasons that a mediator may check in about a possible separate meeting include:

- One party is indicating in some fashion that intense emotion or difficult issues is making him or her uncomfortable continuing in joint session.

- A party suddenly changes her/his mind in ways that are inconsistent with what has happened up to that point.

- A mediation seems stalled but parties want to continue.

- Something doesn't feel right.

Procedural issues to remember:

- Mention meeting privately as an option when the mediation begins, noting that any party or the mediator can suggest a private session.

- Be transparent: if you suggest a separate meeting, discuss why you think it would be useful.

- Offer a separate meeting as one of several options, including for instance continuing together or taking a break.

- Discuss in advance how information shared in a separate session will be handled. Generally what is said is confidential between the mediator and the party.

- Remember that it is up to the parties to decide whether or not to meet separately.

- If you meet separately with one party, offer the opportunity to the other, but it is his or her choice about whether or not to meet with you privately.

During a separate session

- A mediator's goals and responses are the same as in a joint session

- Begin by acknowledging what preceded the separate session and how the one-on-one time may be useful

- Be aware of the time you spend in a separate session, remembering that the other party is waiting.

- Talk with the party you are meeting with about what that party wants to share and how he or she might do it.

When you resume the joint session

- Acknowledge the time spent separately with one or more parties and check in about where parties would like to go with their conversation.

- It may also be appropriate to summarize what happened in the joint session before the separate session(s).

RECORDING ACCOMPLISHMENTS

- The parties determine *whether there should be anything in writing at all*. They may want a written record of the outcome, even if no agreement was reached, or a partial agreement was reached. Likewise, they may not want anything in writing, even if agreement was reached. The mediator should facilitate this discussion.

- Writing any summary or agreement is part of the *process*. Producing the document should be an interactive, conversational process in which the parties are actively involved.

- The *parties determine what is significant* and what should be recorded; the mediator facilitates their decision-making in this regard.

- *Opportunities for decision-making* exist with respect to whether to write, what to write, who should write, when to write, how to write, what the writing should be, who should be involved in writing, who should be involved in any review of the writing, and how review should take place.

- Writing a summary or record can occur at *any time* during the process, not just "the end." Parties sometimes want to have summaries of their accomplishments as they move through the mediation, particularly if there are multiple sessions.

- A written summary or record of outcome should record *all significant accomplishments* of the session that the parties want recorded. This might include decisions about the process of the mediation itself, decisions to give recognition to the other, and substantive decisions about the dispute.

- During the writing process, the mediator checks with the parties constantly for clarity, choice, and understanding.

ENDING A SESSION

Decisions about ending a mediation session, like others, are primarily the responsibility of the parties. A mediator may check in with parties if they see indications that a conversation is winding down or a negotiation is completed. Such indications include:

- One or both parties expressing clarity about their situation

- Parties completing an agreement – whether verbal or written

- One or both parties expressing a sense of frustration or hopelessness about making further progress

- One or both parties saying the same things again and again

Time is often a limiting factor. Most mediation sessions are scheduled for a fixed amount of time, and mediators may check in with parties about time remaining and how they want to use it.

As a session is approaching its end, a mediator often **provides a summary** of the session. This can highlight empowerment and recognition shifts as well as content covered. This summary may include:

- The key points discussed during the session,

- Areas of both agreement and disagreements,

- New understandings that the parties may have obtained through the conversation.

In addition, a mediator may **check in about next steps**, including:

- What, if anything, parties want as a written record of the session.

- Whether or not parties want to return for a second session.

PATTERNS AND DYNAMICS
OF TRANSFORMATIVE PRACTICE

DISTINCTIVE PATTERNS OF TRANSFORMATIVE PRACTICE

Observing skillful transformative mediators at work reveals that, while there are definitely differences in style among them, there are certain patterns of practice in common. The patterns listed here are not intended as a "recipe book" for practice, but a set of parameters that may help in guiding your practice, based on the experience of others.

Skillful transformative mediators tend to:

Allow/give parties control of topics/order/discussion (follow the parties).

Allow high emotion / maintain own calmness in presence of party emotion.

Allow party discussion of the past.

Avoid interrupting parties, but allow parties to interrupt mediator/each other.

Back off when parties start talking or when parties interrupt mediator.

Engage in less mediator talk, support more party talk.

Use mostly Reflection, Summary, Check-in.

Include the negative in Reflection and Summary.

Highlight difference rather than common ground, especially early on.

Use exact/close language of parties in Reflection and Summary.

Avoid filtering/softening of parties' language.

Display hesitant/unpolished manner and talk.

Address parties as "you" not "we", avoid "we" usage.

Check-in with parties about choices/direction.
   ("Where do you want to go next?")

Show no indication of any "mediator agenda", and have none.

RECOGNIZING SUCCESS WHEN YOU SEE IT

In the transformative model, conflict transformation is marked by shifts in the *quality of the parties' conflict interaction.* Therefore, the mediator pays close attention to the parties' interaction for evidence of these shifts, which are the indicators of success in mediation.

Empowerment shifts can be evidenced by (for example):

Parties addressing each other directly in language (you v. s/he)
Parties turning to each other directly in body language
Parties growing more articulate and fluent in language
Parties expressing more emotion
Parties showing more confidence in talk and body language
Parties showing less dismissiveness toward the other

Recognition shifts can be evidenced by (for example):

Parties talking to rather than about each other
Parties listening more and more attentively when other speaks
Parties interrupting each other less
Parties acknowledging new information from the other
Parties attributing better intentions to the other
Parties apologizing to the other

It's difficult to sustain yourself in practice without some way of knowing if you're succeeding. So it's important to know how to "read" these, and other similar, signs that the mediation is succeeding in empowerment and recognition terms.

THE DYNAMICS OF CONFLICT CONVERSATIONS

For the transformative mediator, the mediation session is a ***conversation between the parties***, which contains within it opportunities for transformation through empowerment and recognition. It is useful to recognize how those opportunities may arise.

1. **Multiple opportunities for empowerment and recognition may exist within a single statement.**

   - The same statement may reflect a desire for both empowerment and recognition.

   - Opportunities to surface empowerment and recognition needs may occur in rapid succession.

   - Responding to one opportunity may temporarily cut off the chance to explore another.

   - Missed opportunities are likely to resurface.

2. **Empowerment and recognition act in concert.**

   - Parties are empowered by the greater clarity that comes with beginning to understand (or offer recognition to) one another.

   - Believing that you have already given recognition sometimes prevents you from offering more.

   - It is confusing (and disempowering) not to understand the thinking and behavior of someone you thought you knew (or to whom you had given recognition).

   - Empowerment usually precedes recognition: Until you feel stronger, you are unlikely to offer recognition; once you feel stronger, you may well do so.

3. Lack of empowerment is easily missed.

- Weakness often masquerades as strength, as disempowerment causes feelings of anger and frustration that may come out in aggressive language and behavior.

- Mediators may mistake a party's formal or informal power over another as personal empowerment, assuming that gaining (or regaining) relative power over another is the same as movement toward greater empowerment.

4. Giving recognition can be easily misinterpreted.

- What appears to be recognition may not actually be genuine recognition, but rather instrumental recognition ("enlightened self-interest" or "instrumental empathy").

- What appears not to be recognition may in fact be recognition offered subtly, or in a way that is intended to save face.

5. "Receiving" recognition is in the eye (and ear) of the beholder.

- Recognition, even when genuinely offered, is not always received by the other party, perhaps because of that party's own disempowerment.

- Recognition may not be received as offered when the relationship has been fraught with mistrust and suspicion.

Adapted from Moen, J.K., Hudson, D.T., Antes, J.R., Jorgensen, E.O. Hendrikson, L.H.., Identifying Opportunities for Empowerment and Recognition in Mediation. In J.P. Folger & R.A.B. Bush (Eds.) Designing Mediation: Approaches to Training and Practice within a Transformative Perspective (Institute for the Study of Conflict Transformation, 2001).

THE DYNAMICS OF THE PROCESS

"FOLLOWING THE PARTIES AROUND"

- Using a transformative framework for mediation, the mediator develops a *mindset* and a *habit* of *"following the parties around,"* and thinks of the process in terms of *dynamic cycles* of activity.

- *Empowerment and recognition* can be considered the *driving forces* which help the cycles to unfold. The mediator does not need to direct movement from cycle to cycle, or lead the parties through discrete "stages". He or she need only attend to empowerment and recognition.

- The cycles can be thought of as *activities that will take shape* in any mediation if the mediator attends to empowerment and recognition: creating the context, exploring the situation, deliberating, exploring possibilities, and making decisions.

- Activity within the cycles will *naturally occur (and recur)* in a *unique sequence* for each mediation, as the parties give cues to empowerment and recognition opportunities, and the mediator highlights these opportunities and responds in such a way as to foster deliberation, perspective-taking, and decision-making. There is *no wrong direction* through the cycles. Cycles can develop and unfold in any order, and can recur again and again.

UNDERSTANDING THE DYNAMICS

A model for mediation as a transformative process

Empowerment

A   B

E

C   D
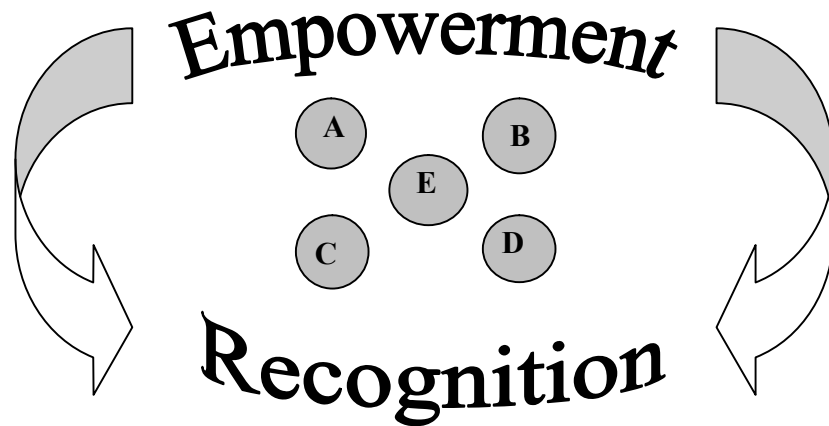
Recognition

Outer ring:
Mediator's focus
Attending to empowerment and recognition

Inner ring:
Spheres of activity naturally shaped and reshaped
through the conversational interactions in the session

A: Creating the context (How do I want to do this?)
B: Exploring the situation (What is this about?)
C: Deliberating (What does this mean?)
D: Exploring possibilities (What is possible?)
E: Decision-making (What do I do?)

STAYING ON TRACK

MEDIATOR PRACTICES: SUMMARY

Mediator defines ***proper role as:***	• Facilitative • Non-directive • Supportive

---

Mediator's goals
for intervention are:
	• Facilitating empowerment & recognition
	• Supporting full deliberation and
	    informed decision-making by parties
	• Supporting voluntary and mutual
	    perspective-taking by parties
	• Enhancing parties' decision-making
	    and communication

Mediator's mental "map"
of the process:
	• Organic, dynamic, flowing, flexible
	    with opportunities for decision-making
	    and perspective-taking throughout

Opening comments
by mediator:
	• Emphasize focus on decision-making and
	    perspective-taking
	• Frame agreement as one of the many
	    possible decisions and outcomes
	• Frame increased clarity and understanding
	    as valuable accomplishments
	    in themselves

Ground rules are:	• Laid open for discussion by mediator,
	    early in the process and throughout
	• Decided by parties according to what they
	    think they need in order to listen,
	    talk, improve understanding and
	    make decisions

Typical mediator communication strategies:

Listening is done:	• With a **micro-focus** on the cues to empowerment and recognition that emerge in each turn at talk
Feedback to parties:	• Focuses on highlighting opportunities for decision-making and perspective-taking
	• Involves reflective paraphrasing and summarizing of parties' own comments to aid clarification and understanding
Questioning is:	• Open-ended
	• Exploratory
	• Genuine or appreciative inquiry

_____

Suggestions by mediator are:	• Offered provisionally and tentatively
	• Based on cues the parties have given
	• Phrased with multiple alternatives
	• Offered only after attempts to elicit parties' own suggestions first

_____

Parties' rejection of mediator's suggestions are:	• Welcomed by a clear message that parties may reject mediator's suggestions
	* Viewed as an exercise of empowerment, and as a further cue to direction of the dialogue between parties

Movement through the mediation process is:	• Directed by parties with mediator following and focusing on opportunities for empowerment and recognition
	• Kept "transparent" so parties can make clear decisions on direction, pace and "stage"

"Violations" of ground rules are:	• Seen as opportunities for empowerment and / or recognition
	• Met by invitations to reopen discussion of ground rules as an important issue

---

Caucus is seen as tool:	• To be offered to and chosen by parties
	• To allow parties space / time to think / deliberate more calmly
	• To allow parties to surface thoughts, ideas, emotions not comfortably expressed with other party present
	* To invite parties to consider / reconsider options / alternatives, including alternative perspectives of other party's situation or motivation

---

Document preparation is seen as opportunity to:	• Record all accomplishments of session
	• Note all decisions regarding process, content, and recognition throughout the session
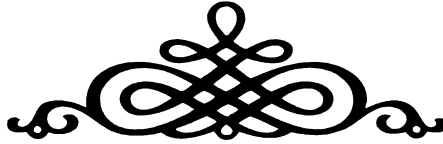
Thoughts Before a Mediation

Explain the process in terms of empowerment (decision-making)
and recognition (perspective-taking).

Remain "in-the-moment," paying close attention to the parties, and following rather than leading
them.

Recognize and call attention to opportunities
for empowerment and recognition.

Leave responsibility for the outcomes with the parties.

Maintain my humility: accept that I know very little for sure
about the parties, their situation and their lives as a whole…and certainly less than the parties
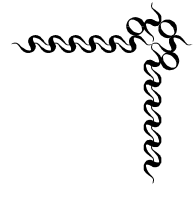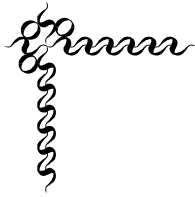themselves do.

Resist the urge to substitute my judgment for the parties' judgment.

Allow and respond to the parties' expressions of emotions.

Be responsive to statements about past events.

Maintain my optimism.
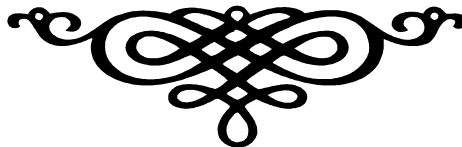
HALLMARKS OF PRACTICE

Mediators who are committed to empowerment and recognition:

**Describe their role and objectives in terms of
empowerment and recognition.**

Do not feel responsible for the outcome of the mediation.

**Consciously refuse to be judgmental about the parties'
views and decisions.**

**Take an optimistic view of the
parties' competence and their motives.**

**Allow for and are responsive to the parties' expression of emotions.**

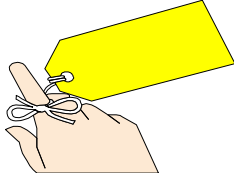**Allow for, and explore, parties' ambiguity.**

Remain focused on the here-and-now of the conflict interaction.

Respond to the parties' statements about past events.

View an intervention as one point in a larger sequence of conflict intervention.

**Feel a sense of success when
empowerment and recognition occur,
even in small degrees.**
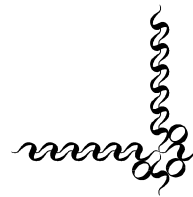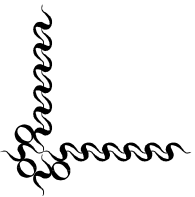
WATCHWORDS

FOR MEDIATORS

Parties care about the HOW as much as the WHAT.

LIVING WITH NO is as important as getting to yes---
if not more so.

Purpose drives practice---so ask:
Do I know WHY I'm doing what I'm doing?

Parties want to be neither victims nor oppressors of each other.

Parties LOSE when mediators CHOOSE.

What parties want is VOICE and CHOICE.

The voice of DIRECTIVENESS:
If I don't hear it, I can't resist it.

Opportunities for E/R: KEEP YOUR EYES OPEN!!!
If you don't point them out, the parties may miss them;
but if you don't see them, you can't point them out.

THE CHALLENGE: not achieving solidarity by finding common ground,
BUT achieving solidarity in the face of continued DIFFERENCE.

You can't move in CLOSE to see the small picture,

when you're stepping BACK to get the big picture.

DIRECTIVENESS abhors a vacuum:
Have something ready to put in its place.

SUPPLEMENTAL MATERIALS
AND READINGS

ROLE PLAY GUIDE

Role-plays provide opportunities for mediators to apply the concepts they are learning, and to practice new skills, in a safe, simulated situation.

To optimize the learning value of role-playing, we suggest:

If you are playing a party to a conflict:

1. Stay in the moment, in the interaction. Act naturally in your role, just as you think a party would in the same situation. Stay with the mediator and respond to his or her interventions in an honest way. Do not get "ahead" of the mediator or try to think of ways to "trick" the mediator.

2. Role-plays are best if unscripted. This keeps the focus on interaction. We may ask you and your partner (the other party), if you're willing, to discuss a real conflict situation either or both of you have encountered and use this as the subject of your role-play. Or, we may ask you and your partner to use one of our "scenarios" as the subject of your role-play.

3. Try to get into your role. Talk about it and think it through, but do not worry about memorizing facts. Once you begin, stay in role. There should be no need to look at directions once the role-play begins. The interaction in the moment is paramount.

If you are playing a mediator:

1. Take a few moments to review your notes before the mediation. Think about areas you particularly need to try out or practice.

2. Calm yourself.

3. Stay focused on the interaction. There are no hidden agendas, "tricks," or canned answers for you to figure out. There is no particular outcome you have to achieve.

GUIDE FOR POST-ROLE PLAY DISCUSSIONS

Parties and coaches will join the mediator for a debriefing discussion. The goal of this discussion is to foster constructive learning from the role-playing experience.

Be as open as possible to new insights from this discussion. There is no need to be defensive. Everyone is learning.

1. Begin with positive feedback, noting what went well from your point of view.

2. For any specific interactions you discuss:

   - Describe what you experienced, without making a judgment about the action

   - Discuss **context:** what party behavior was the mediator reacting to

   - Discuss **purpose:** what was the mediator hoping to accomplish

   - Discuss the **effect** the action had on the parties and their unfolding interaction

   - Discuss the compatibility of the behavior with the transformative framework

   - Discuss other possible interventions, including those more consistent with the transformative orientation

DIRECTIVENESS IN PRACTICE: RESEARCH

In a well-known study of prominent mediators, researchers found that roughly two-thirds of those studied employed noticeably directive practices, which were summarized as reflective of a "settlement orientation" to practice. Some of the key findings, paraphrased from the study's conclusion, illustrate the various forms that mediator directiveness can take:

- For **settlement-oriented mediators**, getting agreements that work is the overriding goal that drives their activities and the primary basis that they use to judge themselves.

- **Settlement-oriented mediators** want to find a substantive outcome that will result in a "deal."

- **Settlement-oriented mediators** interrogate the parties for some period of time until the mediators develop an idea of how to solve the particular problem.

- **Settlement-oriented mediators** tend to be **directive in their style:**

    - Orient their activities toward solving concrete problems
    - Frequently make suggestions on agreements and outcomes
    - Use persuasion and influence
    - Use questions to promote their specific ends
    - "**Make judgments about what is a good and bad agreement and try to influence the parties in the direction of the good.**"

- **Settlement-oriented mediators** "**know what should happen, but the challenge is to make it occur.**"

Adapted from: <u>When Talk Works</u>, Kolb and Associates, (Jossey-Bass 1994), pp. 470-474.

ARE MEDIATORS REALLY DIRECTIVE?: RESEARCH

Numerous research studies demonstrate that mediators exhibit various forms of directiveness in their sessions:

- **Kolb (1983)** categorized two forms of mediator influence: "deal-making" influence, whereby the mediators actively shaped the terms of the parties' settlement, and "orchestrating" influence, whereby the mediators actively shaped the communication process of the parties.

- **Vanderkooi & Pearson (1983)** demonstrated that "mediators play an active role in the development of mediation agreements" by reframing, persuading, making suggestions, logrolling, and even contributing clauses to an agreement that had been created by other couples in other cases.

- **Bernard et al. (1984)** identified through case studies a variety of interventionist strategies on the part of mediators that appeared to be contrary to claims of neutrality.

- **Folger & Bernard (1985)** illustrated the extent to which mediators would intervene to shape divorce settlements, and the rationales the mediators gave for their interventions, by examining mediators' responses to scenarios provided in a mail survey.

- **Silbey & Merry (1986)** identified strategies mediators used to "nudge the parties toward settlement."

- **Dingwall (1988)** identified strategies through which a mediator obstructed an agreement the parties were prepared to make and pushed for her own version of an acceptable outcome.

- **Slaikeu, Pearson & Thoennes (1989)** found that mediators asked most of the questions in a session and produced most of the proposed solutions.

- **Greatbatch & Dingwall (1989)** identified the process of selective facilitation, through which mediators discursively controlled the choices available to parties.

- **Alfini (1991)** obtained self-reports from mediators about how they conducted their mediations in the Circuit level civil courts in

Florida. He identified three types of mediators, based on the collection of intervention strategies each used: "trashers," "bashers," and "hashers." Trashers offered case evaluations by tearing apart each party's case and discouraging the parties from talking directly with each other. Bashers used a directive style to obtain each party's initial settlement offer and then "bash[ed] away" until the parties agreed to a figure somewhere in between (p. 69). Hashers were more flexible, and less directive, preferring to have the parties speak with each other to hash out an agreement, but willing to switch to trashing and bashing if needed.

- **Cobb & Rifkin (1991)** demonstrated how mediators privileged the first story told in mediation.

- **Donohue (1991)** compared mediator strategies in mediations that reached agreement and those that did not. He found that in no-agreement mediations, the mediators maintained a focus on making proposals to settle the factual dispute, while the parties wanted to talk about relational issues.

- **Garcia (1991)** demonstrated various ways in which mediators suppressed or mitigated the features of ordinary argumentation as it would be enacted by and between the parties in ordinary conversation.

- **van Eemeren, Grootendorst, Jackson & Jacobs (1993)** demonstrated how mediators used formulations and questions to accomplish, indirectly, argumentation with the parties that the mediators would be prohibited from accomplishing directly.

- **Greatbatch & Dingwall (1994)** studied the relationship between party contributions to the mediation discourse and mediator contributions. They concluded that, while party contributions should not be underestimated, they essentially set the context within which the mediator worked. But the mediator was the "keeper of the frame," and "the architect of the short-term in situ agreements out of which a longer term unity can be built," and therefore "mediation is a process that leaves far less autonomy to the parties than many of its advocates would claim" (p. 108).

- **Tracy & Spradlin (1994, pp. 110-111)** identified the ways in which mediators discursively constructed their own "interactional power," that is, "the assumed right to influence and shape the final outcome."

- **Kolb & Associates (1994)** identified the strategies by which "settlement-driven" and "communication-oriented" mediators influenced the outcome of mediation.

- **Shailor (1994, p. 48)**, in detailed case studies of three mediation sessions and interviews with the mediators and parties, found that for two out of the three mediators studied, "everything the mediators do is geared toward the proper enactment of mediation procedure, and procurement of mediation's product – an agreement." In addition, Shailor observed that mediators created their own meaning for what a good agreement is.

- **Garcia (1995)** identified the strategy of "mediator representation," by which mediators restated, paraphrased or summarized party comments in a manner that changed the meaning of those comments in potentially significant ways. Specifically, through this strategy the mediators spoke for or represented a party, extended or elaborated party positions, and even negotiated on a party's behalf.

- **Cobb (1997)** detailed how mediator interventions "domesticated" participants' stories of violence: "victims and victimizers are erased, rights are reframed as needs, and relationships are constructed as economic arrangements" (p. 400).

- **Burns (1998)** studied mediation of large money damage cases by acting and former judges who worked for JAMS. She identified strategies the mediators used to address "settlement obstacles," including: preventing reverse movement in opening offers or demands, threatening to terminate the mediation if no opening offer is forthcoming from the defense, feigning that the parties are too far apart for settlement progress to be made as a way of obtaining assurances of willingness to make concessions, pressuring certain defendants in order to secure their participation in apportionment of damages, and persuading litigants to turn to another ADR device rather than litigation if the case fails to settle, on the grounds that ADR saves time and money and minimizes risk.

- **Phillips (1999)** demonstrated that purely neutral paraphrasing and formulation of the parties' narratives was impossible, and suggested that reformulations shaped narrative development in accordance with the theoretical framework of the mediator.

- **Garcia (2000, p. 331)** demonstrated how mediators used "specific solicits" to put "candidate proposals" on the table or "otherwise limit the parameters of possible solutions."

Note: In each of the above studies, no particular framework or style of mediation was identified as the subject of the study.

SELECTED BIBLIOGRAPHY

About the transformative framework

Antes, J.R., Folger, J.P. & Della Noce, D.J. (2001). Transforming conflict interactions in the workplace: Documented effects of the USPS REDRESS^TM program. Hofstra Labor & Employment Law Journal, 18 (2), pp. 429-467.

Antes, J.R., Hudson, D.T., Jorgensen, E.O. & Moen, J.K. (1999). Is a stage model of mediation necessary? Mediation Quarterly, 16 (3), pp. 287-301.

Antes, J.R., & Saul, J.A. (in press 2003). What works in transformative mediator coaching: Field test findings. Pepperdine Dispute Resolution Law Journal, 3 (1).

Antes, J.R. & Saul, J.A. (2001). Evaluating mediation practice from a transformative perspective. Mediation Quarterly, 18 (3), pp. 313-323.

Beal, S. & Saul, J.A. (2001). Examining assumptions: Training mediators for transformative practice. In J.P. Folger & R.A.B. Bush (Eds.), Designing Mediation: Approaches to Training and Practice within a Transformative Framework, pp. 9-19. New York: Institute for the Study of Conflict Transformation.

Brodrick, M. (1999). In *people* we trust: The essence of mediation. SPIDR NEWS, Fall, Volume 23, No. 4. Response to Hoffman, D. A. (1999), Confessions of a problem-solving mediator, SPIDR NEWS, Summer, Volume 23, No. 3.

Bush, R.A.B. (2001). Handling workplace conflict: Why transformative mediation? Hofstra Labor & Employment Law Journal, 18 (2), pp. 367-373.

Bush, R.A.B. (1996). The unexplored possibilities of community mediation. Journal of Law and Social Inquiry, 21, pp. 715-736.

Bush, R.A.B. (1996). "What do we need a mediator for?" Mediation's value-added for negotiators. Ohio State Journal of Dispute Resolution, 12, pp. 1-36.

Bush, R.A.B. (1994). The dilemmas of mediation practice: A study of ethical dilemmas and policy implications. Journal of Dispute Resolution, 1994, pp. 1-55.

Bush, R.A.B. (1989). Efficiency and protection, or empowerment and recognition? The mediator's role and ethical standards in mediation. Florida Law Review, 41, pp. 253-286.

Bush, R.A.B. & Folger, J.P. (2d Edition, 2005). The Promise of Mediation: The Transformative Approach to Conflict. San Francisco: Jossey-Bass.

Bush, R.A.B. & Pope, S.G. (2004). Transformative mediation: Principles and practice in divorce mediation. In J. Folberg, A. Milne & P. Salem (Eds.), Mediating Family and Divorce Disputes. New York: Guilford Press.

Bush, R.A.B. & Pope, S.G. (2003). Changing the quality of conflict interaction: The principles and practice of transformative mediation. Pepperdine Dispute Resolution Law Journal, 3 (1).

Charbonneau, P. (2001). How practical is theory? In J.P. Folger & R.A.B. Bush (Eds.), Designing Mediation: Approaches to Training and Practice within a Transformative Framework, pp. 37-49. New York: Institute for the Study of Conflict Transformation.

Della Noce, D.J. (2002). Ideologically Based Patterns in the Discourse of Mediators: A Comparison of Problem Solving and Transformative Practice. UMI Dissertation Services (UMI #3057068). Ann Arbor, MI: ProQuest Information and Learning.

Della Noce, D.J. (2001). Mediation as a transformative process: Insights on structure and movement. In J.P. Folger & R.A.B. Bush (Eds.), Designing Mediation: Approaches to Training and Practice within a Transformative Framework, pp. 71-95. New York: Institute for the Study of Conflict Transformation.

Della Noce, D.J. (1999). Seeing theory in practice: An analysis of empathy in mediation. Negotiation Journal 15 (3), pp. 271-301.

Della Noce, D.J., Bush, R.A.B. & Folger, J.P. (in press 2003). Clarifying the theoretical underpinnings of mediation: Implications for practice and policy. Pepperdine Dispute Resolution Law Journal, 3 (1).

Della Noce, D.J., Bush, R.A.B. & Folger, J.P. (2001). Myths and misconceptions about the transformative orientation. In J.P. Folger & R.A.B. Bush (Eds.), Designing Mediation: Approaches to Training and Practice within a Transformative Framework, pp. 50-54. New York: Institute for the Study of Conflict Transformation.

Della Noce, D.J., Folger, J.P. & Antes, J.R. (in press 2003). Assimilative, autonomous, or synergistic visions: How mediation programs in Florida address the dilemma of court connection. Pepperdine Dispute Resolution Law Journal, 3 (1).

Folger, J.P. (2001). Who owns what in mediation? Seeing the link between process and content. In J.P. Folger & R.A.B. Bush (Eds.), <u>Designing Mediation: Approaches to Training and Practice within a Transformative Framework</u>, pp. 55-60. New York: Institute for the Study of Conflict Transformation.

Folger, J. P. (2001). Mediation research: Studying transformative effects. <u>Hofstra Labor & Employment Law Journal, 18</u> (2), pp. 385-397.

Folger, J.P. & Bush, R.A.B. (2001) (Eds.). <u>Designing Mediation: Approaches to Training and Practice within a Transformative Framework</u>. New York: Institute for the Study of Conflict Transformation.

Folger, J.P. & Bush, R.A.B. (2001). Developing transformative training: A view from the inside. In J.P. Folger & R.A.B. Bush (Eds.), <u>Designing Mediation: Approaches to Training and Practice within a Transformative Framework</u>, pp. 168-182. New York: Institute for the Study of Conflict Transformation.

Folger, J.P. & Bush, R.A.B. (1996). Transformative mediation and third-party intervention: Ten hallmarks of a transformative approach to practice. <u>Mediation Quarterly, 13</u> (4), pp. 263-278.

Folger, J.P. & Bush, R.A.B. (1994). Ideology, orientations to conflict, and mediation discourse. In J. P. Folger & T. S. Jones (Eds.), <u>New directions in mediation: Communication research and perspectives</u>, pp. 3-25. Thousand Oaks, CA: Sage.

Folger, J.P. Bush, R.A.B. & Della Noce D.J. (eds.) (2010). Transformative Mediation: A Sourcebook. The Association for Conflict Resolution & The Institute for the Study of Conflict Transformation. (www.transformativemediation.org)

Folger, J.P., Della Noce, D.J. & Antes, J.A. (2001). <u>A Benchmarking Study of Family, Civil and Citizen Dispute Mediation Programs in Florida</u>. Conducted for Florida's Dispute Resolution Center. Available from the Institute for the Study of Conflict Transformation.

Fox, K.H. (1999). Exploring the convergence of organizational and conflict theory: Can mediation support organizational learning? <u>Alternative Dispute Resolution in Employment ,1</u> (3), pp. 30-36.

Hudson, D.T. & Antes, J.R. (2001). Transformative mediation at work: A case study from the REDRESS^{TM} program. <u>The Journal of Alternative Dispute Resolution in Employment, 3</u> (2), pp. 41-47.

Jorgensen, E.O., Moen, J.K., Antes, J.R., Hudson, D.T. & Hendrickson, L.H. (2001). Microfocus in mediation: The what and how of transformative opportunities. In J.P. Folger & R.A.B. Bush (Eds.), <u>Designing Mediation: Approaches to Training and</u>

Practice within a Transformative Framework, pp. 133-149. New York: Institute for the Study of Conflict Transformation.

Moen, J.K., Hudson, D.T., Antes, J.R., Jorgensen, E.O. & Hendrikson, L.H. (2001). Identifying opportunities for empowerment and recognition in mediation. In J.P. Folger & R.A.B. Bush (Eds.), Designing Mediation: Approaches to Training and Practice within a Transformative Framework, pp. 112-132. New York: Institute for the Study of Conflict Transformation.

Pope, S.G. (2001). Beginning the mediation: Party participation promotes empowerment and recognition. In J.P. Folger & R.A.B. Bush (Eds.), Designing Mediation: Approaches to Training and Practice within a Transformative Framework, pp. 85-95. New York: Institute for the Study of Conflict Transformation.

Pope, S.G. (1996). Inviting fortuitous events in mediation: The role of empowerment and recognition. Mediation Quarterly, 13 (4), pp. 287-294.

Pope, S.G. & Bush, R.A.B. (2001). Understanding conflict and human capacity: The role of premises in mediation training. In J.P. Folger & R.A.B. Bush (Eds.), Designing Mediation: Approaches to Training and Practice within a Transformative Framework, pp. 61-67. New York: Institute for the Study of Conflict Transformation.

About conflict

Folger, J.P., Poole, M.S. & Stutman, R.K. (1997). Working through conflict: Strategies for relationships, groups, and organizations. (3rd Ed.). Addison-Wesley Educational Publishers, Inc.

Grimshaw, A. (Ed.)(1990). Conflict talk. Cambridge, UK: Cambridge University Press.

Pearce, W.B. & Littlejohn, S.W. (1997). Moral conflict: When social worlds collide. Thousand Oaks, CA: Sage.

About the Relational Worldview

Bellah, R.N., and others (1985). Habits of the heart: Individualism and commitment in American life. Berkeley: University of California Press

Broome, B.J. (1993). Managing differences in conflict resolution: The role of relational empathy. In D.J. Sandole & H.van der Merwe (Eds.), Conflict resolution: Theory and practice, pp.97-111. NY: Manchester University Press.

Bush, R.A.B. & Folger, J.P. (1994). The promise of mediation: Responding to

conflict through empowerment and recognition. San Francisco: Jossey-Bass.

Folger, J.P. & Bush, R.A.B. (1994). Ideology, orientations to conflict, and mediation discourse. In J.P. Folger & T.S. Jones (Eds.) New directions in mediation: Communication research and perspectives. Thousand Oaks, CA: Sage.

Gilligan, C. (1982). In a different voice: Psychological theory and women's development. Cambridge, MA: Harvard University Press.

Gray, B. (1994). The gender-based foundations of negotiation theory. In R.J. Lewicki, B.H. Sheppard & R.J. Bies,(Eds.), Research on negotiation in organizations (Vol.4), 3-36. Greenwich, CT: JAI Press.

Greenhalgh, L. (1995). Competition in a collaborative context: Toward a new paradigm. In R.J. Bies, R.J. Lewicki & B.H. Sheppard (Eds.), Research on negotiation in organizations (Vol.5), 251-270. Greenwich, CT: JAI Press.

Greenhalgh, L. & Chapman, D.I. (1995). Joint decision-making: The inseparability of relationships and negotiation. In R.M. Kramer & D.M. Messick (Eds.), Negotiation as a social process, 166-185. Thousand Oaks, CA: Sage.

Mansbridge, J.J. (1983). Beyond adversary democracy. Chicago: University of Chicago Press.

Mansbridge, J.J. (Ed.) (1990). Beyond self-interest. Chicago: University of Chicago Press.

McNamee, S. & Gergen, K.J. (Eds.) (1999). Relational responsibility: Resources for sustainable dialogue. Thousand Oaks, CA: Sage.

Putnam, L.L. (1994). Challenging the assumptions of traditional approaches to negotiation. Negotiation Journal, 337-346.

Sandel, M. J. (1996). Democracy's discontent: America in search of a public philosophy. Cambridge, MA: The Belknap Press of Harvard University Press.

Wheatley, M.J. (1992). Leadership and the new science. San Francisco, CA: Berrett-Koehler Publishers, Inc.

Tento program byl připraven ve spolupráci s firmou FyzioProfi s.r.o.