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# Transformative mediation: the opportunity and the challenge

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# The ADR Bulletin

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### General Editor



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### New frontiers for mediation

# Transformative mediation: the opportunity and the challenge

*Anne Ardagh*

On 17 and 18 May 1999 an advanced mediation workshop was held in Sydney on the topic of transformative mediation. It was conducted by Professors Robert Baruch Bush and Joseph Folger, internationally renowned academics, authors and mediation practitioners. The workshop was limited to 20 mediator participants. It was presented by Higher Grounds Initiatives, under the auspices of the Australian Dispute Resolution Association. Prior to the Sydney workshop Bush and Folger had conducted a similar program in Melbourne.

## Understanding transformative mediation

The key elements that characterise transformative mediation are empowerment and recognition (Bush and Folger, 1994).

- *Empowerment* is the capacity for parties to make decisions for themselves. This leads to self-determination; the ability for parties to know what their options are and make decisions accordingly.
- *Recognition* is the capacity for parties to understand others' perspectives and be responsive to them.

In their writings Bush and Folger describe mediation as 'a process that enables people in conflict to develop a degree of both self-determination and responsiveness to others, while they explore solutions to specific issues' (Folger and Bush, 1994). It should be noted that this definition focuses on the parties in

dispute, without even referring to the mediator.

In the workshop they defined mediation as a process in which parties work with the help of a neutral third person to change the quality of the conflict interaction. These are quite different definitions to the standard ones most mediators are familiar with. For example Boulle (1996) refers to a traditional definition of mediation as 'a voluntary system in which a neutral mediator controls a process but does not intervene in the content of a dispute and which leads to consensual outcomes for the parties'. The Bush and Folger model is not outcome focused, nor is it process focused in the sense that there is a strict adherence to stages of mediation.

Bush and Folger contrast transformative mediation with what they call a 'directive' approach, one that they maintain has become the mediation norm. Directive mediation is characterised as being impositional, non-participatory and settlement focused. It is a method where mediators exert pressure on the parties and often make judgments about what is a good or bad agreement, or what is fair. It is an orientation to mediation that represents conflict as a problem to be solved. This is reflected in legislative provisions to mediate disputes and the entry of lawyers into the mediation field. It has been questioned whether mediation in Australia is 'beyond the adversarial >



## Editorial Panel

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➤ system' (Ardagh and Cumes, 1998).

Transformative mediation is based on a different understanding of the nature of conflict and third party intervention. It is a proactive facilitative process where the mediator's orientation is one in which conflict is viewed as an opportunity for individuals to change their interactions with others, if they choose to do so. The choice is to change from a destructive interaction to a constructive one, thus bringing about a conflict transformation. The mediator helps create an environment where parties move from being uncertain and hostile to become clearer and more accepting.

Parties' reasons for high satisfaction with mediation, according to Bush and Folger, relate to the extent to which parties can deal with issues that they themselves feel are important, the extent to which they can present their views and a process which helps them to understand each other. The test of success is not whether mediation is a cheaper and faster way of resolving conflicts or that a settlement is reached. Rather, it is the way the process works, the sense of control by the parties and the richness of the communication between the parties.

### Bringing about transformation

The transformative effects of the Bush and Folger framework are brought about only to the extent that mediators 'develop a mindset and habits of practice that concentrate on the opportunities that arise during the process for party empowerment and inter-party recognition'. The question then becomes, what is the mindset? And how does a mediator develop the requisite habits of practice?

The answer lies partly in the quest on the part of mediators for finding out how the process can be conducted better. In order to do this mediators need to be clear about what Bush and Folger call the *what* and the *why* of that which they are doing, asking themselves: what is the purpose of mediation? In their view, 'purpose drives practice'.

If the purpose of mediation is transformation, then the mediator's purpose in assisting to bring about change is to support, in a non-directive way, parties who are in conflict. Facilitating discussion with the purpose of transformation has the goals

of helping parties to gain clarity and strength about their options (empowerment) and to help them to see and appreciate (have compassion for) the other side's point of view (recognition).

When parties are empowered and can recognise another's situation, they become clearer about the conflict and their own needs and resources for solutions and decision-making, as well as becoming less defensive and more open and responsive to each other. Bush and Folger stress that by recognition they do not mean reconciliation, and the goal is certainly not to get parties to agree.

In their book *The Promise of Mediation* (1994) the authors explain recognition in the following terms: 'recognition is achieved 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'. They believe that recognition and empowerment work together: that the 'accomplishment of one is likely to lead to the other, with each reinforcing the other' (workshop notes p 13). 'Empowerment is achieved 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' (Bush and Folger, 1994).

The goal then for the mediator or intervener within the transformative framework is to help parties to improve their communication and their decision-making, subject to the parties' own choices, by fostering empowerment and recognition.

### A different approach

How different is the Bush and Folger model from what we as mediators are used to doing? Perhaps it is harder for seasoned mediators to adopt than it is for newcomers who have learned no other way.

In the workshop Folger and Bush did stress that the transformative approach was 'on top of' the skills that we already had. In other words a new mindset and new habits can be adopted or adapted within our existing practices. This may not be so difficult for those facilitators who already view their practice as facilitative. It is, however, anathema to evaluative, ➤



➤ persuasive, directive, problem solving and outcome oriented practitioners.

The big difference between a transformative orientation and a directive one is that a mediator's focus is to respond (in the sense of listen, support, encourage and so on) to parties' communications rather than direct (tell, lead, push) them (workshop notes p 18A). Folger and Bush maintain that the problem solving approach and the transformative approach are 'fundamentally distinct and inconsistent' (Bush and Folger, 1994, p 108).

### Meaning of transformation

When the empowerment and recognition effects are achieved in mediation, the parties are transformed or changed. This may result not only in the immediate problems being dealt with (although not necessarily 'settled') but may also bring about changes in the parties' capacities for self-determination and responsiveness in future relationships and life matters.

The authors claim that these empowerment and recognition effects are 'highly valuable for the parties and for society'. This is a relational philosophy of resolving conflict as opposed to the individualistic one which they believe the win-win, satisfaction or interest-based bargaining model aims to achieve. Theirs is a radical departure from the dominant prevailing views of mediation. It is premised on several 'new' assumptions, including:

- conflict is a crisis in human interaction which represents an opportunity to change;
- the most important product of mediation is the shift from negative to positive interaction between the parties — a change and improvement in the quality of the parties' interaction;
- the parties' motivation or drive comes from a moral impulse in all to conduct themselves and to act with strength of self and concern and responsiveness to others — in other words, to act as neither a victim nor an oppressor of others; and
- peoples' capacities include the capacity for self-determination and choice and an inherent capacity for responsiveness.

This approach is also based on the view that the most important goal of mediation is

fostering moral growth and transforming human character. In chapter two of their book the authors claim that the mediation movement has lost sight of its vision that mediation can save the world. They call for a paradigm shift away from solving problems and getting settlements, towards the relational and transformative framework and a new vision of conflict, which includes a societal connection.

### Limits and the promise of transformative mediation

Given that mediation in many jurisdictions of Australia is now provided for by legislation and is often court annexed, it may be asked whether transformative mediation is possible or workable in those settings. Bush and Folger concede that settlement rates are much lower, around 60 per cent, within the transformative framework. (Of course, agreement in their model is not an indication of success in mediation.) Their response to legislating for mediation in order to produce agreement is for mediators to choose not to be involved in such programs and/or to call such models something other than mediation, for example 'settlement conferences'.

To choose the transformative approach is to make a commitment to a different set of values from that of the individualist problem solving approach. Transformative mediation is based on a relational worldview and is part of a broader knowledge shift and social commitment. It includes a view of human nature that considers the potential for humans to be both self-interested in knowing what they want and making moral choices, as well as being responsive and connected to others.

If viewed in this way the mediation movement can change social institutions and human consciousness. Conflict resolution can encourage individuals in conflict to change (transform), to take advantage of the opportunities presented for empowerment and recognition and reach new potential as human beings. Bush and Folger see transformative mediation, based on this relational worldview, as a new paradigm shift and one that is truly 'alternative' to other dispute resolution processes. ●

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### References

Ardagh A and Cumes G, 'Lawyers and mediation: beyond the adversarial system?' (1998) 9(1) *Australian Dispute Resolution Journal* pp 72-80.

Boulle L, *Mediation: Principles, Process, Practice* Butterworths, Sydney, 1996.

Bush R A, Baruch, Folger J et al, *Advanced mediation skills: practice within a transformative framework* undated workshop materials.

Bush R A, Baruch and Folger J, *The Promise of Mediation: responding to conflict through empowerment and recognition* Jossey-Bass, San Francisco, 1994.

## contributions

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