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Transformative mediation: differentiating principles from illusions — Part 2

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Part 1 of this article ((2006) 9(3) ADR 44) provided some illustrations of the confusion surrounding approaches to mediation that describe themselves as 'transformative'. It then focused on the premise, purpose and principles of the framework first described by Baruch Bush and Joseph Folger in The Promise of Mediation *(1994) and since developed by them and colleagues associated with the Institute for the Study of Conflict Transformation. This approach I labelled Transformative Mediation, with an upper case beginning for each word, to distinguish it from other uses of the terms 'transformation' and 'transformative'.*

In Part 2 we move from theory to practice and look at the key interventions of Transformative Mediation (TM) that follow from the concepts discussed earlier.

Role of the mediator and specific TM practices

What, then, is it that mediators practising within the TM framework, do and don't do? TM theory explicitly acknowledges the influence of the mediator and seeks to harness it to support shifts in empowerment and recognition within the context of the conflict interaction between the parties.[1] It thus seeks to promote those mediator behaviours that are congruent with the premises, purpose and principles of TM. These behaviours can be divided into three types:

- *strategies*, or 'recurrent patterns of goal-oriented moves' that support party efforts towards empowerment and recognition;
- *moves*, or the ways in which mediator interventions occur to support such shifts within specific conflict contexts; and

- *means*, which are defined as 'specific linguistic forms that mediator intervention takes'.[2]

The attention of the TM practitioner is directed toward a microfocus on the conflict interaction within the room, and the *means* she or he employs are designed to support party shifts in empowerment (enhanced party experience of self-worth and capacity to deal with the presenting situation) and recognition (acknowledgment of the other party's situation).[3] They are encompassed by five basic behaviours:
- reflecting
- summarising
- questioning
- checking in
- staying/backing out.

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Reflecting

Reflecting is capturing 'both the substance and emotional tone' in words close to those of the party who has just spoken,[4] for example 'So, Clare, to you, Ann's behaviour was designed specifically to "*rain on [your] parade*"'. The intention of this reflection is to mirror both Clare's verbal and emotional expressions by using the exact metaphor

she originally employed.

There is no attempt to reframe, normalise, mutualise or sanitise the original expression, which would run counter to the principle of empowerment, for example 'For you, then, Laurence, what Tom says is simply *bullshit!*' This type of reflection allows the speaker to experience empowerment through hearing their own voice. Moreover, once they have got 'on the record' they may perhaps add a clarifying comment that could lead to recognition that there are alternative ways of making sense of the dispute.

Summarising

Summarising means condensing, in an inclusive manner, the essential topics covered by *both or all* parties, for example 'You've been talking about the last training program you delivered and have quite different views about what happened. *Ann*, you indicated … And *Clare*, you said …'

Summary in TM practice, like reflection, does not seek to interpret through the mediator's eyes the substance of what the parties said by any form of

reframing. Rather it 'follows the heat', allowing difference, where it exists, to be marked, without of course ignoring agreement. It may serve to augment empowerment in various ways, including by underscoring the gap between the parties or by giving them an overview of the situation from a new perspective. Recognition may be promoted by one or more parties seeing things from another point of view.

Questioning

Questioning is 'usually done with open-ended questions that encourage reflection, elaboration, or deliberation'.[5] TM practitioners use questions in two fundamental ways:
- as an invitation to parties to expand or clarify what they've said or perhaps indicated through their body language and, more commonly,
- in conjunction with 'check-ins', which are discussed below.

Since, as we have seen earlier, 'purpose drives practice', the first type of question is aimed at enhancing speaker clarity, not satisfying mediator curiosity or leading the speaker in a certain direction, for example 'You've just indicated, Ann, that you were very surprised at what Clare said. *Would you like say a bit more about that?*' In such situations the mediator, of course, must be prepared to accept 'no' as a response. Such questions may promote empowerment by providing an opportunity for the speaker to amplify their comments and encourage recognition by the listener of speaker's point of view.

Checking In

Checking in requires the asking of questions that make the process transparent, that is asking if the parties have reached a decision point, for example asking about what to do next. One type of check-in may follow a reflection or summary and is in any case offered quite tentatively, since a third party can never be certain what meaning a speaker's words have to the speaker, or example '*I'm not quite sure that I've got it right*, Laurence, *but it seems to me* that your view on what Tom said is … *Is that correct*'? Such check-ins may encourage empowerment by allowing clients to contradict the mediator

as well as to hear their own views acknowledged publicly. A second kind of check-in generally follows summaries and highlights the opportunity for parties to make a decision about what to do next, for example: 'Where do you want to go from here?' Within the TM context, process and content are not seen as separate.

By forcing, or even just encouraging, parties to move on to the 'next stage' of a more structured mediation model, a mediator may be robbing parties of their own empowering role in making decisions for themselves. Thus, the TM practitioner checks to see what step, if any, the parties themselves wish to take next.

Staying/backing out

Staying/backing out means allowing the parties to converse with each other without interruption, and retreating when interrupted by a party. As a supporter of party empowerment, the TM practitioner stays out of the conversation that unfolds between the parties, even when there are high levels of emotional expression, focusing instead on finding opportunities for reflection and summary. Similarly, she or he 'backs out' whenever a party wishes to speak, even if the party is interrupting a mediator intervention. For example, as the mediator begins a summary, one party might suddenly wish to comment on or amplify upon what just has been said.

The TM practitioner will not try to hold the floor by asking or indicating to the party to wait until the mediator is finished, thus denying party control and missing an opportunity for empowerment. Rather, she or he simply 'lets go' and, once again, awaits a further chance for intervening in a way that supports empowerment or recognition but may elicit an entirely different mediator intervention.

Using TM in practice

These individual 'means', however, do not signify anything in isolation. To be meaningful such interventions must be patterned into clusters of *moves* designed to be consistent with the basic premise that the '*parties have what it takes*'[6] to move from relative weakness and self-absorption to relative strength and

responsiveness. Thus a move is defined as a 'meaning-making unit',[7] or 'how a mediator structures his or her turn in the interaction, in response to preceding interactions, by constructing one or more means of intervention in context'.[8] To support the principles of empowerment and recognition, however, these moves must be knit into broader *strategies*, defined as 'recurrent patterns of goal-oriented moves that braid together over time'.

TM strategies

The TM framework encompasses five basic strategies:
- orienting parties to a constructive conversation
- orienting parties to their own agency
- orienting the parties to each other
- supporting the parties' conflict talk
- supporting the parties' decision-making process.[9]

There are various ways in which a TM practitioner may support the strategy of *orienting parties to a constructive conversation*. For example, in opening the mediation, she or he may use metaphors like 'conversation' or 'discussion'. The TM practitioner obviously will not need to provide an outline of the likely stages of the process and will usually state that a range of outcomes may emerge from the process, with written agreements one of the possibilities. Such moves might assist the parties to view the process as informal and flexible and to increase their 'ownership' of it.

To encourage *parties to exercise their own agency*, or capacity to exert influence on the mediation session, the TM practitioner may simply be conscious of using the words 'you' and 'your' rather than 'we' and 'our', thus downplaying the agency of the third party. TM practitioners consciously refer to each party as 'you' or by their name, for example: '... and *you, Laurence* ...' They also encourage party choice about process, for example. 'Now, where do *you* [rather than *we*] want to go from here?' Such a move allows the parties to make their own choices about what should follow rather than being told 'It's time to move on to the next stage.'

Accurate reflection of statements by each party may serve the same

purpose. Moreover, the TM framework eschews normalising language, which may undermine an individual's sense of uniqueness. Thus, instead of commenting, 'It is common for people in your situation to feel this way', a TM practitioner may say, 'So when you came home to an empty house, you felt like ringing the police and charging Glenda with kidnapping.' It's likely that the speaker might respond in an empowered mode at experiencing recognition by the mediator with a statement like, 'Yeah, that's *exactly* how I felt!'

To *support party-to-party talk*, a mediator move consistent with TM principles is to allow parties to talk — even heatedly — with one another, permitting the emotional temperature to rise, rather than interrupting to enforce ground rules (unless these had been specifically requested) or reframe

the emotional content in terms of a problem to be solved. Both of these latter interventions may hinder the flow of the conversation and thus undermine party empowerment.

Should one party find the conversation so difficult that they turn to the mediator and say something like, 'Look, I can't even get a word in edgewise', an appropriate response within the TM framework might be a reflection (followed by a possible check-in) along the lines of 'So, you're finding it difficult to conduct this conversation. (What might you find helpful?)' This type of intervention may result in a change in dynamics, without the mediator attempting to redress a perceived 'power imbalance'. Or it may not, and the conversation would continue until there arose another potential opportunity for

mediator support of empowerment or recognition.

There are various moves that a TM practitioner may use to *support the parties' conflict talk*, such as reflecting the 'hot' words used by one or both parties in both reflection and summary, as well as consciously pointing to areas of disagreement, for example, 'Ann, you said that Clare's housekeeping habits were "slovenly", while to you, Clare, Ann is being a "prissy, little goody two-shoes".'

Finally, mediator moves that *support the parties' decision-making capacity* include 'checking in', as described above, and highlighting decision points arising from party talk through accurate reflection and summary, for example 'So Laurence, you said that you are not sure you want to continue this process for now ...?' Furthermore, any mediator

suggestions, usually prompted by direct party request, would be offered tentatively and include more than one alternative.

TM is a distinct form of mediation

Resulting from the premises, purpose, principles and mediator behaviours described in the two parts of the article, TM displays some general characteristics that, as a package, distinguish it from other forms of mediation.[10] Among them are the following:
- '*Success*' in mediation is defined by the extent to which opportunities for shifts in empowerment and recognition are supported, not any substantive or outcome-related criteria that may or may not occur.
- *Settlement* may of course result

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from a TM process and certainly is not discouraged, particularly if that is what the parties say they want. Acquisition of new information, increased understanding of other viewpoints as well as one's own, and clarification about the past and the next step to take are all outcomes congruent with the principles of supporting parties' empowerment and recognition.

- Since a central purpose of TM is the transformation of the conflict interaction, the TM practitioner exercises a *microfocus* on what is taking place in the room, though outside constraints must be recognised for legal or safety reasons. Not worrying directly about balancing power or representing absent third parties allows the TM practitioner to concentrate on party interaction as it happens as she or her monitors opportunities for empowerment and recognition shifts.

- TM practitioners have a high degree of *tolerance for conflict talk* and do not seek to dampen it. In support of party empowerment, TM practitioners tend to highlight *difference* as well as acknowledging emerging agreement or existing similarity. In their reflections and summaries, they use the 'hot words' spoken by the parties rather than sanitising their language. Paradoxically, rather than heightening conflict talk, capturing the heat and emotional essence may serve to reduce conflict, as parties feel they have been heard and consequently gain strength and clarity.

- Interventions like reframing or normalising, which reflect mediator judgments of what is appropriate for the parties, may detract from the force and uniqueness of the experiences of the parties. They are replaced by finely-tuned and consistently attentive *reflection and summary* of what is expressed by the parties themselves, from mutual recrimination and strong disagreement to emerging accord and collaborative decision-making that may result in substantive and detailed outcomes.

- There is *no separation between content and process*, as TM operates from the premise that the mediator seeks to foster direct inter-party

communication and highlights process decision points so that the parties can make the choices most appropriate to them and their particular conflict.

- Similarly, TM practitioners '*follow the parties*' rather than confining them to a pre-determined structure. Agendas and stages are replaced by the five 'means' described above, particularly periodical checking in, to support them in making their own decisions about how to proceed at any given point. Empowerment is fostered by trusting the parties to find their own way, not following the lead of a mediator who 'controls' the process.

Training, certification and resources

TM also offers a consistent training package and a rigorous mechanism for assessing its practitioners. Trainers are approved by the board of the Institute for the Study of Conflict Transformation (ISCT), based at the Conflict Resolution Center at the University of North Dakota (UND) and affiliated with a consortium of universities including UND, Hosftra University, Temple University and James Madison University. The ISCT has created a 95-page manual for a three- or four-day *basic skills training program* that covers the TM theory of conflict, the mediator's orientations and role, basic practices, and a useful bibliography. In the four-day version offered at La Trobe University over the past three years, for example, the first two days cover theory and microskills, and the last two are devoted almost exclusively to role-play simulations and detailed debriefing. Each group of three to five students normally has an individual coach. Ideally coaches have undertaken training specific to TM that employs a considered approach to assessing TM competency that is described below.

Advanced Transformative Mediation training is based on a video-coaching session in which participants are video-recorded while mediating a simulated dispute. Following the roleplay, a coach provides detailed comments to the student, using the video-recording to illustrate specific points. ISCT has a separate manual for the advanced training, which both condenses material from the basic manual and illustrates how the purpose, premises, and

principles of TM can be brought to bear on specific mediator behaviours, using the concepts of 'signposts' and 'crossroads' (see below). It incorporates a '*summative assessment*', or 'a summary evaluation at a specific point in time of a mediator's competence'.[11]

Training for coaches centres on '*formative assessment*', 'a process that is oriented to *supporting* learning and development'.[12] The central task of the coach is to assess the extent to which the student/trainee 'is interacting consistently with the parties in ways that support the goals of transformative mediation — fostering conflict transformation by supporting party efforts at empowerment and recognition'.[13] The coach concentrates on mediator 'moves' (rather than 'strategies' or 'means')[14] to assess competency in three specific areas:

(1) understanding of the TM framework;

(2) application of that understanding to specific situations; and

(3) demonstration 'with some consistency' moves and strategies embodied in TM practice.[15]

Effective coaching focuses on which 'crossroads' mediators elect to follow when encountering a '*signpost*' in the course of the conflict interaction between their clients. In other words, at certain moments in the unfolding of the conflict interaction ('signposts'), the mediator has choices on whether and how to intervene ('crossroads').[16]

What choice of 'move' the mediator makes (including 'staying out', of course) reflects her or his understanding of the theoretical framework within which they are operating. So, for example, when one party uses strong language, a TM practitioner may follow the road of reflecting back the 'hot words' to support an opportunity for empowerment (hallmark: '*there are facts in the feelings*'), while a more problem-solving mediator may use less inflammatory words in the service of creating a more 'rational' atmosphere to allow the parties to 'separate the people from the problem'.

The ISCT has started to implement a formal system to certify mediators who wish to operate within the TM framework. It involves a summative assessment of the mediator's practice competency, as demonstrated on a videotape and accompanying written self-assessment, and an interview with the assessor by phone or face-to-face. Certification must be renewed biennially.[17]

The *theoretical foundation* of the summative assessment for TM is based on extensive research, much of it published in the *Ohio State Journal on Dispute Resolution*.[18] One article presents the Interactive Rating Scale Assessment specifically designed for TM. It focuses on mediator discourse patterns and rates how well specific mediator moves may support more general TM strategies.[19]

Research on mediator evaluation, however, is only one part of the extensive *research* output relating to TM. There is by now a wide-ranging literature on the theoretical framework behind it, empirical practices that support it, and effective ways of teaching it.

Much of the underlying research is summarised in the revised edition of Bush and Folger, *Promise of Mediation* (2005),[20] and short contributions to theory and practice concerns are collected in Folger and Bush (eds) *Designing Mediation* (2001).[21] In addition, special issues of major journals have been devoted to TM. These include (1996) 13:4 *Mediation Quarterly*, (2001) 18:2 *Hofstra Labor & Employment Law Journal*, (2003) 3.1 *Pepperdine Dispute Resolution Law Journal* and (2004) 19:3 *Ohio State Journal on Dispute Resolution*.

The TM framework is employed not only by individual mediators but by organisations ranging from family and community mediation centres[22] to the massive United States Postal Service (USPS), with its 800,000 employees. An independent evaluation of the USPS program showed high participant satisfaction rates, a significant decrease in the number of formal complaints, strong support for the TM practices of the mediators, relatively high indicators that empowerment and recognition took place, and evidence that the conflict management skills of supervisors had improved.[23]

The Institute for the Study of Conflict Transformation was founded in 1999 'to study and promote understanding of conflict and intervention processes from the transformative perspective'. It 'provides a forum for the work of scholars and practitioners in the conflict intervention field who approach conflict from a transformative view'. Its explicit mission is 'to study and promote the understanding of conflict processes and intervention' through research, publications, development of education and training materials, presentation of education and training, organising of various forums, and development of a network of TM practitioners, educators and researchers.[24]

Conclusion

Understanding and discussion of conflict transformation and mediation have been hampered by differences in the usage of the words 'transformation' and 'transformative', which cover a variety of objectives and practices. Rather than pass judgment on these, the focus of this article has been upon the one specific usage that I suggest be called

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Transformative Mediation (TM).

TM is an integrated system of premises, purpose and principles that translate into specific practices. The TM framework was first set forth systematically by Baruch Bush and Joseph Folger in 1994 and has been further articulated by them and their close associates, particularly members of the Institute for the Study of Conflict Transformation. TM incorporates a clearly articulated theoretical base, a body of research, and clear and consistent criteria for teaching, coaching and evaluating TM mediators. In addition, the Institute is making available a growing body of resources for those interested in TM.

Ultimately, however, one size does not fit all. As mediators we must all find our own way of doing the job. We do so hopefully by reflecting on our purpose for being in the field and making conscious choices about the principles we espouse and the ways to make our practice congruent with them. ●

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Endnotes

1. Bush R and Folger J *The Promise of Mediation* Jossey Bass San Francisco 2005, pp 65–72.

2. Della Noce, D, Antes J and Saul J 'Identifying practice competence in transformative mediators: an interactive rating scale assessment model' (2004) 19(3) *Ohio State Journal on Dispute Resolution* 1021–1023.

3. See Part 1 at notes 44–48.

4. *Mediation Practice: The Transformative Practice — Advanced Mediation Training* New York Institute for the Study of Conflict Transformation, Inc. Hofstra University School of Law 2003, p 14.

5. Above note.

6. This is one of the 10 'hallmarks' of transformative practice. See Folger J and

Bush R 1996 'Transformative mediation and third party intervention: ten hallmarks of a transformative approach to practice' *Mediation Quarterly* 13(4) 263.

7. Above note 2 at p 1022.

8. Above note 4 at p 8.

9. For a much fuller discussion of strategies and moves, with illuminating examples see above note 2.

10. For a more detailed description of such key attributes, or 'hallmarks', see above note 3.

11. Above note 2, at p 1009.

12. Antes J and Saul J 2001 'Evaluating mediation practice from a transformative perspective' *Mediation Quarterly* 18(3) 313.

13. 2003. *Mediation Practice: The Transformative Framework—— Mediation Coaching and Assessment* Institute for the Study of Conflict Transformation 2003, p 6.

14. Above note 13 at p 10.

15. Above note 13 at p 7.

16. Della Noce J, Antes J, Bush R, and Saul J 'Signposts and Crossroads: A Model for Live Action Mediator Assessment' unpublished paper presented at the 2005 Annual Conference of the Association for Conflict Resolution. Minneapolis, MN. Cited with permission.

17. See <www.transformativemediation. org/Application%20and%20Descriptio n%202005.pdf> accessed 25 September 2006.

18. See (2004) 19 *Ohio State Journal on Dispute Resolution.*

19. Above note 2 at 1028–1030.

20. Above note 1.

21. *Designing Mediation: Approaches to Training and Practice within a Transformative Framework* New York, Institute for Study of Conflict Transformation.

22. DePorto D and Miller J 'Honoring the victim's voice: The Domestic Violence and Mediation Safety Project' *ACResolution* (2005) 4(2) 22-27.

23. Bingham L 'Mediation at Work: Transforming Workplace Conflict at the United States Postal Service' in *Human Capital Management Series*. Arlington VA. IBM Center for the Business of Government 2003, 23–27.

24. See <www.transformativemediation. org/about.htm> accessed 25 September 2006.